

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Three Rivers/Josephine)
County School District)
)
)

CORRECTED¹
FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 08-054-028

I. BACKGROUND

On June 19, 2008, the Oregon Department of Education (Department) received a letter from an attorney sent on behalf of the parent of a child in the Three Rivers/Josephine County School District (District) alleging violations of the Individuals with Disabilities Education Act (IDEA). The attorney indicated this was to serve as a signed letter of complaint from the parent. The Department must investigate written complaints that allege IDEA violations within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint, unless exceptional circumstances require an extension.² Due to staff unavailability during the regularly scheduled summer break, and, due to the complexity of issues in the complaint, the Department extended the timeline by five weeks.

On June 27, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. The District submitted its *Response* to the Department and to the parents on July 17, 2008. On August 4, 2008, the parent’s attorney notified the Department by letter that the initial Request for Response failed to completely state one of the parent’s allegations or omitted it inadvertently. The Department sent notice of this to the District on August 6, 2008; and asked the District to send a response by August 20, 2008.

The Department’s complaint investigator determined that on-site interviews were necessary. On August 19-20, 2008, the investigator interviewed the parent; an individual who is a personal friend of the parent and who had attended significant meetings; the Superintendent; Director of Curriculum³; Speech/Language Therapist; Occupational Therapist; District Special Education Coordinator; two elementary Principals and the Education Service District Autism Specialist. The Case Manager was not available for an interview on either of these days; so the complaint investigator returned and interviewed that individual and an Educational Assistant on September 3rd and 4th, 2008. Both the parent and the District gave additional documentation to the

¹ The Department issued a final order on October 1, 2008. Subsequent to the issuance, the Department became aware of errors within the order. Specifically, the final paragraph of the Conclusions column corresponding to allegation 4 in Section II contained an unnecessary word – “not” – which has been stricken in this version. Additionally, the Corrective Action section of the order incorrectly identified the due date for corrective action item B; the corrected date is now included and is highlighted. This version also corrects an error in the paragraph numbering under Section III. These corrections do not affect the conclusions, or change the corrective action except with respect to the due dates.
² OAR 581-015-2030(12)

³ Both of these individuals had served as Director of Special Education during the period of the complaint.

Department's complaint investigator during the interview process, and shared the additional materials with each other. The Department's investigator reviewed and considered information from all of the documents and interviews in finding the facts enumerated below in Section III.

II. ALLEGATIONS AND CONCLUSIONS

	Allegations	Conclusions
1.	<p>1. <u>Prior Written Notice</u></p> <ul style="list-style-type: none"> a) Failure to issue a prior written notice of a change in placement during the 2007-2008 school year from the Education Resource Center (ERC) with other students present to a separate room where student is not with any other children; b) Failure to issue a prior written notice of the fact that the student was no longer participating in recess with peers; c) Failure to issue a prior written notice regarding the District's refusal to include a swing as part of student's sensory diet in the IEP; and, d) Failure to issue a prior written notice regarding the District's refusal to increase the hours of autism consult from five hours. 	<p>Substantiated</p> <p>Prior written notice must be given to the parent of a child before a school district proposes to initiate or change, or refuses 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.</p>
2.	<p>2. <u>Implementation of IEP</u></p> <ul style="list-style-type: none"> a) Failure to implement IEP due to inadequate supervision of the aides who were attempting to implement the IEP; b) Failure to issue progress reports pursuant to IEP; and, 	<p>Substantiated</p> <p>(a) The Department finds that the IEP was not implemented because the case manager did not insure that the assistants were taking data as they should.</p> <p>(b) In its letter of response to this complaint, the District stated that it</p>

	Allegations	Conclusions
	<p>c) Failure to establish a present level of performance when the District amended the IEP on November 13, 2007.</p>	<p>does not dispute this fact. The District noted that the “IEP has progress noted but district does not have documentation that parent was provided with progress reports specific to IEP”.</p> <p>(c) As goals were added and a Behavior Intervention Plan was developed to reflect the student’s current behavior difficulties, the rationale for doing so must be documented in the PLAAFP. The District erred by not including these.</p>
3.	<p><u>IEP Meeting on April 16, 2008 and Parent Participation</u></p> <p>a) Denial of meaningful parent participation;</p> <p>b) No discussion of proposed goals;</p> <p>c) No present level of performance from which to discuss development of goals and objectives;</p> <p>d) Use of formula to determine service amount for autism consult; and,</p> <p>e) Lack of meaningful parent participation in April 28, 2008 IEP meeting as evidenced by discrepancy between student eligibility form and prior written notice.</p>	<p>Substantiated, in part</p> <p>The IEP team was configured to provide substantial parent input opportunities. However, the Department finds that the District erred by not discussing the required content at the meeting or providing an opportunity for input into the proposed goals and objectives between meetings.</p>
4.	<p><u>Content of IEP dated April 16, 2008 and finalized on April 28, 2008</u></p> <p>a) Present level of performance</p>	<p>Substantiated, in part.</p> <p>The Department finds the District erred</p>

	Allegations	Conclusions
	<p>insufficient.</p> <p>b) Insufficient goals.</p> <p>c) Failure to include objectives for some goals.</p> <p>d) Methods of measurement of goals not sufficient to provide meaningful measure of goals.</p> <p>e) Failure to include agreed upon behavior plan training to IEP.</p> <p>f) Failure to include one to one aide on IEP (listed as adult supervisor).</p> <p>g) Failure to include agreed upon service of a trained aide on bus and instead included “bus assistant as necessary” on IEP.</p> <p>h) The three hours of autism consult time included in IEP does not reflect the five hours offered by District in IEP meeting.</p> <p>i) The IEP states that progress reports will be reported at regular reporting times which does not accurately reflect agreement in IEP meeting for reporting to occur every six weeks using the STAR profile and weekly progress reports.</p>	<p>in not ensuring that the IEP documents included the required content⁴, including a statement of measurable annual goals and, for students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives; a statement of the child’s present levels of academic achievement and functional performance; a statement of the specific special education and related services and supplementary aids services to be provided to the child; an explanation of the extent, if any to which the child will not participate with non-disabled children; a description of the supports 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; and a description of how and when the child’s progress toward meeting the annual goals will be measured and reported to parents; and, for a child whose behavior impedes the child’s learning or that of others, the use of positive behavioral interventions and supports.</p> <p>The Department does not find that the failure to include a one-to-one assistant was a failure to address the required content of the IEP. However, the IEP documents must accurately reflect the discussion and decisions of the IEP team. If the District refused to provide a one-to-one assistant in response to a request, it should have provided a prior written notice of that refusal.</p>

⁴ OAR 581-015-2200 *Content of IEP*; OAR 581-015-2205 IEP Team Considerations and Special Factors

	Allegations	Conclusions
5.	<p><u>Falsification of Records⁵:</u></p> <ul style="list-style-type: none"> a) Inaccurate representation of what occurred in IEP meeting which frustrates parent participation. b) The parent alleges that the eligibility form was altered following the IEP meeting. The parent specifically alleges that district staff collected staff signatures finding that the student met criteria for mental retardation (MR) at the IEP meeting without the parent agreeing. The parent alleges that after the IEP meeting, two notations were added to the eligibility form which determined the student not eligible for MR due to incomplete scoring data. c) The parent alleges that the prior notice of special education action mailed after IEP meeting on April 28, 2008, inaccurately states that the parent agreed to find the student ineligible. 	<p>See also Evaluation Procedures</p> <p>See also Evaluation Procedures below. The Department finds the District did not properly complete or document the evaluation and eligibility processes. (See Allegations and Conclusion #6).</p>
6.	<p><u>Evaluation Procedure:</u></p> <p>The complaint indicates that the District did not follow procedures in conducting an evaluation. The parent alleges that the eligibility form inaccurately states that the results of two tests were reviewed even though a notation on page two of the form states that the scoring was incomplete.</p>	<p>Substantiated</p> <p>The District did not conduct evaluation planning, review information, or determine additional evaluation data or obtain written informed parental consent for reevaluation that it subsequently identified in its response.</p> <p>The District did not accurately complete the eligibility determination procedures, including, with the parent as part of the team, the review and documentation of</p>

⁵ A complaint investigation is an informal process, not a judicial process, and is not intended to be comparable to a due process hearing which provides any party to a due process hearing the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. [See 71 Fed. Reg, 46601] Issues of concern related to education professionals may be directed to the school district administration or the Oregon Teacher Standards and Practices Commission.

	Allegations	Conclusions
		evaluation measures specified for each eligibility category under consideration, and the conclusions regarding the results of the measures.

III. FINDINGS OF FACT

Background

1. The child is currently 8 years old, resides in the District and attends a District elementary school. The child is eligible for special education as a child with autism.
2. The child suffers from allergies and other global health issues, and often has difficulty sleeping; so is unable to tolerate a full school day.
3. The child's IEP was written on April 26, 2007; and contained the following provisions:
 - a) 120 minutes per day of specially designed instruction in pre-reading, pre-math, pre-writing; behavioral skills, social skills and communication skills;
 - b) 30 minutes per month of direct speech/language services and 30 minutes per month of indirect speech/language services;
 - c) Supplementary aids and services that included a "sensory diet"⁶, continuous adult supervision, and other environmental changes;
 - d) Autism consultation of 3 hours per year with school staff and Occupational Therapy consultation to staff 20 minutes per month. The Nonparticipation Justification section of the IEP read: "The student will receive direct services in the resource room for reading, math, writing, social skills, communication and behavior skills due to needing a very structured, quiet environment to learn for 120 minutes per day (direct services)".
 - e) The team considered three different placements: Regular Classroom with some Resource Room (RR); Resource Room with some Regular Classroom; and Self-Contained Classroom. The team chose the self-contained classroom.
4. This IEP did not contain a Present Level of Academic Achievement and Functional Performance statement.
5. Members of the team, who wrote this IEP, and the parent, described this "self-contained classroom" as an "office" in one of two resource room classrooms

⁶There is no list of sensory diet items attached to this IEP.

which are elements of a pod design elementary school. The Resource Room teacher worked with small groups in the first classroom. This student's "office" was a desk and work area surrounded by divider walls in one area of the second classroom. The student worked primarily with one educational assistant in this setting. Other assistants worked with other students in this same classroom. In addition, the student and assistant sometimes went to a third connected classroom for some OT and other activities.

6. At the time this IEP was written, the child was in the 1st grade and was attending school for approximately 150—165 minutes per day. The child went to the lunch room with another student and an assistant, and went to recess with the assistant, and sometimes one additional child.
7. In addition, the student went to a 1st grade classroom in the building for a small portion of time most days of the week for such activities as "Calendar Time".
8. At that time, in this particular elementary school, 1st and 2nd graders did not have a morning recess, and the lunch time for these grades was scheduled for a time after this child left for the day.
9. When the 2007-2008 school year started, a new Resource Room teacher was hired for this school and became the student's case manager.
10. The team began re-writing the student's IEP on April 16, 2008, and completed it on April 28, 2008.
11. The student attended 93.5 days of 161 possible days during the 2007-2008 year. The student's last day of attendance was May 23, 2008; although the official last day of the school year was 6/10/1008. Overall, the student attended 53% of the school year.

Prior Written Notice (change of placement):

12. The student started the second grade school year attending approximately 150 - 165 minutes per day. As during the previous year, the student's placement was in the Resource Room. The student continued to use the "office", and to go to recess and lunch independently, as other second grade students had no morning recess and the lunch for them was scheduled after this student went home.
13. Very early in the beginning of the school year, other students and assistants in the second classroom of the Resource Room began complaining to the case manager that this student was making too much noise and so they could not concentrate on their work.⁷

⁷ The student is primarily non-verbal, but does make some "squealing" noises when happy, sad or frustrated.

14. The case manager discussed this with the principal and they decided to relocate the student's "office" to the third classroom in the group of three classrooms in this pod that comprise the Resource Room. This third classroom was empty, and no other students worked in the classroom, except for a short period one afternoon per week when the Occupational Therapist was in the building.
15. The case manager stated that she called the parent in the evening to discuss this move with the parent, and that the parent gave permission to go ahead with the move as long as the Autism Consultant approved of the idea.
16. On September 20, 2007, the parent sent an e-mail to the Director of Special Education, the building principal, the case manager, the Autism Consultant, and the Occupational Therapist. In the e-mail the parent notes that the case manager had called the previous afternoon to inform the parent that the case manager had moved the student into the third classroom. The case manager informed the parent that the student had been having "some bad behaviors". The parent notes the following in this e-mail:
 - a) "I was only aware of two bad days"
 - b) "The student is suffering from allergies and has 3 loose teeth at this time"
 - c) "This was NOT OK with me to isolate []"
 - d) "I asked the case manager if the Autism Consultant was part of this move. The case manager said that the Autism Consultant 'has a lot of nice input but {the case manager} felt this was best and that the {case manager} did this after the Autism Consultant left'".
17. In this e-mail the parent asked for "a meeting with the whole team, and informed the case manager that the student would not return to school until the team had met".
18. The District did not send a prior written notice of special education action, because the case manager and the principal felt it was only a change in location and not in placement as described on the April 26, 2007 IEP.

Prior Written Notice (discontinued participation in recess with peers):

19. During the 2007-2008 school year, students in grades 2 and 3 were not given a morning recess time.
20. The student occasionally went to the Recess area with an assistant and one or two other peers.

Prior Written Notice (failure to include swing as part of sensory diet in IEP):

21. In the IEP written for the student on April 26, 2007, the IEP team included "Sensory Diet" as one of the items to be provided under "Supplementary Aids

and Services: Modifications and Accommodations”. The sensory diet items are not outlined any further in the IEP.

22. The student has used a swing for vestibular stimulation for the past several years; and the Occupational Therapist describes its use as being so important to the child that it is “like air to []”.
23. The Occupational Therapist wrote a memo on April 18, 2008 listing “sensory ideas” for the student. One of the items listed is “Use a suspended swing, e.g. hammock, platform or outdoor tire swing for self directed but must be adult supervised vestibular input. OT to train staff (sic).”
24. In the IEP completed on April 26, 2008, the phrase “sensory diet items” are again listed in the Supplementary Aids section of the IEP; but are not described anywhere else in the IEP.

Prior Written Notice (District’s refusal to increase the hours of autism consult from three to five hours on the April 26, 2008 IEP):

25. The April 26, 2007 IEP specifies that the school personnel will receive autism consultation of three hours per year from the Regional Autism Consultant.
26. During the meetings on April 16th and April 26th, 2008, the IEP Team discussed how much autism consultation to provide to staff during the next year.
27. At the April 16th meeting, the parent’s attorney expressed concern that the amount of time the team was suggesting was not enough to adequately support staff. District staff explained how time is allotted to school districts from the Education Service District.
28. The Education Service District (ESD) uses the numbers of students as reported on the previous December’s Child Count. The calculation of how much time is allotted to each school district is based on the total number of students reported as receiving autism service, and the total number of hours reported for each of those children. The Autism Consultant then has to organize his or her caseload accordingly. If there are more children in the district from one year to another who need autism services, and the ESD has not allocated enough hours, the District can purchase more hours.
29. During the 2007-2008 year, the District purchased additional time to provide autism services to District students. The District has also purchased additional time for the 2008-2009 year.
30. At the April 26th IEP meeting, the parent’s attorney asked again whether 3 hours of autism consultation was enough. The case manager stated that the IEP was supposed to read “five hours per year” for autism consultation.

31. The written IEP contains the following in the section on Supports for School Personnel; “Autism Consult; 3 hours per year; self-contained classroom; 4/16/08—4/16/09; provided by LEA”.
32. The IEP also states that school personnel will be provided training on a comprehensive curriculum for two days per year for levels 1 & 2; and one day per year for level 3, followed by one hour per semester of refresher training. When originally interviewed some members of the team stated that these trainings were additional autism consultation; in actuality, the training is for use of the “Strategies for Teaching Based on Autism Research” (STAR) Curriculum⁸.

Implementation of IEP (inadequate supervision of educational assistants):

33. At the beginning of the 2007-2008 year, only one assistant worked primarily with the student. The new case manager decided to implement a program of cross-training assistants to cover times when that primary assistant could not be at school. Two additional individuals received training to work with the student, and over the course of the year, two of the three assistants rotated coverage about every six weeks.
34. On October 4th and 5th, 2007, the case manager and the two new assistants attended a two day training on the STAR Curriculum. The primary assistant had already received this training.
35. The primary educational assistant had also previously received behavior management training.⁹
36. In addition, the Autism Consultant provided training to the case manager and the educational assistants at various times over the year.
- a) The case manager received 12.0 hours of training;
 - b) The primary educational assistant received 13.0 hours of training;
 - c) New educational assistant #1 received 8.0 hours of training; and,
 - d) New educational assistant # 2 received 6.0 hours of training.
37. Some of these trainings were provided to the staff individually; and some of the trainings were provided in small groups. On some occasions, the Autism Consultant worked with the student and modeled techniques, and on some occasions the Autism Consultant observed staff working with the student and then provided feedback. The trainings were conducted on:
- a) August 29, 2007;
 - b) September 11, 19, 25, 27, 2007;
 - c) October 10, 31, 2007;
 - d) November 1, 14, 26, 27, 2007; and,

⁸ Published by PRO-ED, Inc., 2004

⁹ The assistant thought the training was Oregon Intervention System—but was not sure of the name.

e) April 16, 28, and 29, 2008.

38. On March 13, 2008, the Autism Consultant observed the student working with staff at school. After the observation, the Autism Consultant e-mailed the notes to the case manager and suggested that the staff needed a “refresher training”. The Autism Consultant did not get a response for two weeks.
39. The case manager noted that the parent had offered to provide training to the case manager and to the assistants, but the case manager felt there had been “too much water under the bridge before my time with staff”, and refused the training.¹⁰
40. All of the educational assistants working with this student and with others in the Resource Room are responsible to report to the case manager. The case manager designs the programs that educational assistants use with the student; and the educational assistants are responsible for taking data and reporting back to the case manager.
41. Other specialists also observe the assistants working with the student and share their observations with the case manager.
42. The case manager noted that she met with RR staff and did observations of them working with the student; but did not have specific dates or numbers of times this had occurred during the year.
43. The case manager also noted that staff took data on the student’s progress in the STAR curriculum at least once per month. The primary educational assistant stated that it was difficult to take data on the student.

Implementation of IEP (failure to issue progress reports as appropriate):

44. In the April 26, 2007 IEP, in the appropriate sections of each goal page; the team wrote that the progress would be reported to parents in writing and at regular report card times.
45. In the April 26, 2008 IEP, in the appropriate sections of each goal page; the team wrote that the progress would be reported to parents in writing or at conferences and at regular reporting times.
46. During the 2007-2008 year, the District had four regular reporting times, but did not make appropriate reports to the parent.
47. In its letter of response to this complaint, the District stated that it does not dispute this fact. The District stated, “IEP has progress noted but district does

¹⁰ The parent has received training in the STAR Curriculum and in Discrete Trial Training.

not have documentation that parent was provided with progress reports specific to IEP.”

Implementation of IEP (failure to establish a present level of performance when the District amended the IEP on 11/13/2007):

48. After the student had been moved into the third classroom in September, 2007, the parent asked the District about developing a behavior intervention plan to help teach appropriate behaviors. The parent did some research on line and found a sample of an Individual Behavior Intervention Plan and shared this with staff.
49. By the parent's choice, the student did not attend school from October 15 to October 25, 2007. However, several times during this period, the parent took the student to school and worked with the student in the separate classroom.
50. On October 19, 2007, the case manager e-mailed a draft of a plan to the parent and asked the parent to critique it. The parent replied by e-mail and made some specific suggestions. Later that day, the parent again e-mailed the case manager and asked that the case manager and the Autism Consultant work together to revise the student's behavior intervention plan. In this e-mail, the parent stated, "I will wait to hear when this plan has been finalized and staff is familiar with it, so that [] can return to school."
51. On October 22, 2007, the case manager e-mailed the parent and expressed concern about waiting too much longer for the student to return to school. The case manager noted much paperwork and testing and stated that a meeting with the autism consultant might be difficult to arrange. The parent replied, stating that there had been several incidents when the student had been accused of biting and hitting; and that no one had investigated the antecedents. The parent was reluctant to return the student to school. The parent also suggested that she bring the student into school and model working with the student for the instructional assistants and the case manager. In a reply e-mail the next day, the case manager agreed to this plan, if a date could be scheduled when the Autism Consultant could attend.
52. On October 30, 2007, the parent again e-mailed the case manager and expressed concern about the amount of time it was taking to get the behavior plan established. The parent noted that she had been bringing the student to recess and lunch and then to the student's work area where she attempted to do some curriculum work with him. However, she noted that appropriate materials were not readily available there, and that she was only taking the student to those areas because the case manager had told her that "there are some staff who have ill feelings towards me". The parent also noted that she had heard there had been meetings held, and asked who had been in the meetings. The

parent again requested that a meeting be held so that all members of the team could discuss the next steps.

53. The case manager replied by e-mail the same day, and noted that the staff had “been very clear about wanting the student back in school”. The case manager stated that the parent needed to return the student to school so that “we can address any of your other concerns about materials, etc.”
54. The parent replied that same day and stated that the last she had heard about the behavior plans was that they were “just a draft”. The parent again stated that “as a knowledgeable and responsible parent...it is not in [] best interest to come back until specific issues are resolved.”
55. On November 5, 2007, the parent e-mailed the case manager and other members of the team to ask again that a meeting be scheduled. The case manager replied and stated that the IEP team needed to meet to include the behavior as part of the student’s IEP.
56. On November 7, 2007, the case manager sent a meeting notice for a meeting on November 13, 2007. The meeting was held and the parent, the autism consultant, principal, and the District special education coordinator attended the meeting. The principal and the case manager agreed that the regular classroom teacher did not need to attend; and the principal excused the case manager from attending because the principal said the parent had “verbally attacked” the parent at a previous meeting¹¹. The parent was not asked to sign a written agreement excusing the case manager nor the regular education teacher from the meeting; and there was no written information from the case manager presented to the team.
57. At the November 13, 2007 meeting, the team decided to do the following:
 - a) Add a statement to the current goal statement on behavior to the effect that “Data to be collected (baseline) by end of January 2008).
 - b) Add a “Behavior Intervention Plan” to the Supplementary Aids and Services section of the IEP, to be provided “throughout the school day, all school settings, starting 11/13/2007 and continuing through 4/26/2008, and provided by the LEA”.
 - c) Add a “Daily home to school notebook check (form attached)” to the Supports for School Personnel section of the IEP, to be provided “one time per day, in the ERC, from 11/13/2007 to 4/26/3008, and provided by the LEA.”
58. The team added a list of the student’s “Antecedents to Challenging Behaviors” and a “Behavior Intervention Plan” to the student’s IEP; but made no other changes in the IEP.

¹¹ The complaint investigator was not able to verify with anyone else that this “verbal abuse” had occurred.

59. On November 13, 2007, the District sent the parent a prior written notice that the District was proposing to initiate provision of a free appropriate public education by adding an updated behavior plan to support the student in the school setting.
60. The District did not do a Functional Behavioral Assessment before developing the Behavior Intervention Plan.
61. The District did not collect any baseline data by the end of January, 2008, as stated on the revised goal statement at the meeting on November 13, 2007.

IEP Meeting on April 16, 2008 and Parent Participation:

62. The District sent out a meeting notice for the April 16, 2008 IEP meeting. The notice was dated 11/07/2007.
63. The team met on April 16, 2008 to begin re-writing the student's IEP. The parent, parent's attorney, parents friend, principal, special education director, autism consultant, case manager, occupational therapist, speech/language therapist and classroom teacher attended.
64. The meeting agenda was as follows:
- a) Introductions and parent rights
 - b) IEP present levels and progress reports on goals
 - c) Proposed new goals
 - d) Regular education Teacher input
 - e) Special factors and services page
 - f) Statewide assessment
 - g) Placement determination
 - h) Cover page
 - i) Autism eligibility
 - j) Communication eligibility
 - k) Mental retardation eligibility¹².
65. The team discussed elements a—h as listed above, but did not complete any discussion on the eligibility issues and agreed to meet on April 26, 2008 to discuss those.
66. During the meeting, both the parent and the parent's attorney expressed concern that the meeting was progressing too quickly. Both stated that they felt there was not time for a significant discussion of the student's progress, needs, and present level of performance. The attorney asked the case manager to hold the discussion on eligibility before proceeding with the IEP and the case manager responded that the testing was not yet complete.

¹² The student's eligibility was due on May 13, 2008 and the team had been conducting evaluations in preparation.

67. The case manager presented a Present Levels of Academic Achievement and Functional Performance (PLAAFP) Statement. The statement provides information on academic achievement;
- a) "as measured by the STAR program student learning profile. [The student] has improved in 28 specific areas of the Level II Profile which measures Receptive Language, Expressive Language, Spontaneous Language, Functional Routines, Pre-Academic concepts and Play and social interaction concepts. [The student] has decreased skills in two areas in the profile. See attached profile."
68. The complaint investigator did not find such a profile attached to any of the three copies of the IEP dated 4/16/26, 2008 the District provided. However, there was a copy of the STAR Program Student Learning Profile Level II in the packet submitted by the parent, and the case manager identified this as the profile referred to in the PLAAFP. The copy is dated 4/16/2008 on front, but also says 2006-2007 school year. Inside the packet there are many notations on a number of pages covering the skills of receptive language, expressive language, spontaneous language, functional routines, pre-academic concepts, and play and social interaction concept. There is no information on the Behavior Information page. The only date on any pages inside this document is 6/4/2007. That date is only noted on the page on receptive language.
69. The PLAAFP also provides a statement on Developmental History which refers the reader to "attached attendance records, autism evaluation and results of Vineland Adaptive Behavior Scale for complete information on Developmental History and status". Again, the complaint investigator did not find these documents attached.
70. The PLAAFP includes this statement:
- a) [The student] is functioning significantly below the level of peers and attempts to integrate him into the regular classroom this year have been unsuccessful. [The student] is primarily educated in a separate cubicle for Discrete Trial Learning and Pivotal Response Training: [the student] is able to go on the playground for swing and motor skills on playground equipment. [The student] is sometimes able to go into the cafeteria for lunch though this is frequently too over stimulating for [the student] and so [the student] has not attended cafeteria regularly since fall 2007. [The student] needs the help of a 1:1 assistant for safety across settings as [the student] is a risk for running off."
71. The PLAAFP concludes with a statement about the student's behavior. The first sentence of this paragraph reads:
- a) Behavior: in Fall, 2007, [the student] had an increase in behavior of hitting staff and a behavior plan was implemented for [the student]. The plan is attached and includes step by step addressing of exalating (sic)

behaviors and (sic) assessment of antecedents. The complaint investigator did not find this plan attached to the IEP.

72. The team discussed the fact that the student was working in the STAR curriculum and had been for the past several years; and was expected to begin making progress in Level III while continuing in some areas in Level II.
73. There were no proposed goals presented at the meeting, and the case manager stated that the goals would be written from the STAR curriculum.
74. The regular education teacher attended the first part of the April 16, 2007 meeting. Meeting minutes read that this teacher stated that the student had been in the regular education classroom very little time and that the student was very disruptive. The teacher also stated that "at no time would [the student] be able to be meaningfully engaged in activities in [the regular education] room."
75. The team discussed the amount of time for autism consultation, and the parent's attorney questioned the amount of time suggested. Meeting minutes read that "It was explained by the [autism consultant] and the [special education director] that this is the guidelines that [the ESD] uses."
76. The team discussed the placement determination issue. The parent had visited a self-contained classroom in another building the previous day and reported on the visit. The team discussed what it would take to transition the student to this other program.

IEP meeting on April 28, 2008 and lack of meaningful parent participation as evidenced by discrepancy between student eligibility form and prior written notice; Falsification of Records; and, Evaluation Procedure:

77. The District sent a notice for the continuation IEP meeting to be held on April 26, 2008. The meeting notice was dated 11/07/2007.
78. The team met to consider the eligibility issues and to finalize the IEP. The parent, parent's attorney, parent's friend, principal, special education director, autism consultant, case manager, occupational therapist, and speech/language therapist attended. The regular education classroom teacher did not attend, the District did not get a signed agreement with the parent that the teacher did not need to attend.
79. The team began the meeting by discussing the speech/language evaluation completed by the speech/language therapist. During this discussion, the therapist gave information about observing the student in the sensory swing. The therapist stated the opinion that the student was behaving dangerously in the swing and noted that it had been removed. The speech/language therapist explained the results of the evaluation to the team, and told them that the student

did not qualify for the eligibility of Communication Disorder. The team members agreed, and all present signed the eligibility form agreeing that the student did not qualify under this category.

80. For the Communication Disorder eligibility, the team considered the following assessments: speech/language assessment, and assessment necessary to determine the impact of the suspected disability. The team did not consider the physician's report.
81. The team then discussed whether or not the student was eligible as a student with autism spectrum disorder. The autism consultant presented the evaluation report and also discussed the situation with the sensory swing. The autism consultant noted that the swing was high and stiff, and that it was difficult to lower it. The team members agreed that the student was eligible as a student with Autism Spectrum Disorder and all signed the eligibility form.
82. For autism spectrum disorder the team considered a developmental profile, three observations of the student, a direct interaction of the student, a functional communication assessment, the medical statement, the Childhood Autism Rating Scale and the Vineland ABS, and the STAR curriculum profile.
83. The team then considered the issue of whether or not the student was eligible as a student with mental retardation. The case manager explained that mental retardation was being considered as a team has the responsibility to consider all suspected areas of disability and the student had had an eligibility of Developmentally Delayed in Early Childhood Special Education. The case manager presented a statement explaining that the case manager tried to administer a non-verbal measure of intellectual functioning (TONI-3: Test of Non-Verbal Intelligence) but that the student did not pay attention for a long enough period of time to participate adequately. The case manager also administered the DASH-2, but it had not been scored at the time of the meeting.¹³
84. For mental retardation, the team considered the TONI-3 (incomplete), Vineland ABS, Developmental History, medical statement, CARS, Dash-2 (incomplete scoring), the STAR curriculum profile, and the Functional Communication Assessment.
85. The second page of the "Statement of Eligibility for Special Education (Mental Retardation)" was presented to the team for signatures. When the form was presented, all of the boxes next to the criteria statements and the first two determination statements had been checked "YES", signifying that student was eligible under this category. The third determination statement boxes were all checked "is not". The case manager had checked the boxes in this manner, when preparing the form for the meeting.

¹³ The District special education coordinator later verified that this test is not used in the District regularly as it has some mistakes from the publisher and cannot be accurately scored.

86. Members of the team are in disagreement about whether or not they found the student eligible as a student with mental retardation. However, all of the school team members checked the agree box next to their signatures.
87. The parent, and the parent's attorney, believes that the school team decided that the student was eligible. They both checked the "disagree box" next to their signatures.
88. On this second page of the eligibility form, there is a hand-written check mark next to the sentence that says that "the team agrees the student does qualify as a student with Mental Retardation." There is also a hand-written check mark next to the sentence that says that "the team agrees that the student does not qualify as a student with Mental Retardation." Underneath this sentence is a hand-written phrase, "Not eligible for special education". At the bottom of the form is another hand-written statement; reading, "See special education action due to incomplete scoring data [student] not eligible for MR at this time. Team will re-evaluate in 3 years."
89. The parent and the parent's attorney stated that these handwritten comments were not added to the form at the meeting. However, neither of them was given a copy of the form when they left the meeting.
90. The District staff members stated that these handwritten comments were added to the form at the meeting. However, the District Coordinator stated that she added the comments to the form when it reached her desk for review, because she noted that the team had used incomplete testing to reach their conclusion.
91. The District sent the parent three Prior Written Notices of Special Education Action after these meetings. They are outlined below:
- a) 4/16/2008: This notice informs the parent that "the team met to review the student's PLAAFP, STAR learning profile, regular education teacher input, draft of IEP services page, special factors page and state-wide assessment; and discussed changing the location of the current placement." This notice also states that the current IEP and eligibility reports are attached to the form, but the complaint investigator was unable to verify this.
 - b) 4/28/2008: This notice informs the parent that the team met and "a deficit in communication skills is related to [the student's] primary disability of autism. The team agreed to drop the Communication Disorders eligibility."
 - c) 5/1/2008: This notice informs the parent that the "team continued IEP meeting from 4/16/2008: reviewed new goals; revised transition plan to new location, completed the Services page of IEP. [The student] was found eligible for Autism and Communication Disorder, not eligible for MR due to incomplete scores."

92. Also at the meeting the case manager presented proposed goals for the student's IEP¹⁴. The parent's attorney questioned the objectives—stating that they appeared to be more goals than objectives. An example of the goals as written is below:

- d) Goal: The student will increase Pre-academic skills by participating in the STAR lessons in Pre-Academics and improving expressive and receptive language skills. Goal: The student will show improvement in 85% of possible areas of Pre-academics section of the STAR. Baseline: [The student] improved in 65% of areas pre-academic areas (sic) measured by STAR Learning Profile last year. (11/17)
- e) Criteria: 85% of areas in pre-academics. 80% /60% of areas measured in rec/exp (sic) language.
- f) Evaluation: STAR curriculum learning profile
- g) Progress Reported to Parents: Written reports or conferences
- h) When Progress will be Reported to Parents: At regular reporting periods.
- i) Measureable Short-Term Objectives:
 - i. Receptive language will increase as evidenced by improvement on at least 80% of areas measured by the STAR curriculum Learning Profile. (Baseline Receptive 13/23 or 56%)
 - ii. Expressive language will increase as evidenced by improvement on at least 60% of areas measured by the STAR curriculum Learning Profile. (Baseline Expressive 7/29 or 24%)

93. The team also discussed the behavior goal and the behavior intervention plan. The parent expressed concern that the goal focused on “hitting, biting and kicking”, even though the parent was only aware of these things occurring 2—3 times during the year. The team also discussed the time for autism consultation, bus transition, transition to new setting, and a more specific sensory diet. The District stated that if the swing could be put up safely, the District would do so.

94. The parent and the parent's attorney asked if the district would implement a “Circle of Friends” program instead of sending an assistant out to the playground with the student. In addition, the parent's attorney pointed that no 1:1 assistant was listed in the IEP as proposed. The District stated that it would add “Trained adult supervision, daily, across settings, provided by the LEA for the period of the IEP” to the Supplementary Services part of the IEP.

95. The parent agreed to sign the IEP although the parent felt the goals were inadequate.

¹⁴ The complaint investigator was given two copies of the IEP by the District. One of these copies contains three goals, and the other contains a fourth goal in speech/language. The parent also submitted a copy of the IEP. It does not contain the speech/language goal. The investigator was unable to establish with District staff which of these copies is the official IEP.

Content of IEP dated April 16, 2008 and finalized on April 28, 2008:

96. The IEP as written has the following:

- a) The PLAAFP is basically as described in facts 68—72; however, some additional information has been added to describe the student's progress on previous IEP goals. Specific skills are outlined for Functional Routines, Pre-Math Skills, Pre-Reading Skills, and Pre-Writing Skills. Additional information is added about the behavior goal.
- b) Goals: There is a goal for spontaneous language, which has one objective on functional routines and one objective on play and social interactions. The second goal is on pre-academic skills, with one objective for receptive language and one objective for expressive language. The final goal is for use of a Behavior Intervention plan. The goal is, "[The student] will not hit, kick or attempt to hit or kick staff. Baseline: In a 5 month period of time, [the student] has kicked staff one time and attempted to hit staff one time." This goal has one objective which states that the student will request sensory items when needed for calming, and one objective which states that the student will refrain from running away from the teacher.
- c) Methods of Measurement are basically attached to the STAR Curriculum profile.
- d) The Behavior Intervention plan was not attached to the IEP document.
- e) The Supplementary Services page of the IEP identifies the following:
 - iii. Trained adult supervision, daily, across settings, provided by the LEA for the period of the IEP"; and,
 - iv. Bus assistant if necessary, daily, across settings, provided by the LEA for the period of the IEP".
 - v. Curriculum progress reports weekly and every 6 weeks, school to home, for the period of the IEP, provided by the LEA.
- f) Under Supports for School Personnel; "Autism consultation for 3 hours per year in the self-contained classroom for the period of the IEP, provided by the LEA".

IV. DISCUSSION

1. Prior Written Notice

The parent alleged that the District violated the provision in IDEA that a district must provide the parent prior written notice when it "proposes to initiate change, or refuses 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." Specifically, the parent alleges that the District did not provide prior written notice when it changed the student's placement; when the student no longer participated with peers at recess;

when the District refused to include the provision of a swing for vestibular stimulation on the IEP; and, when the District refused to increase the hours of autism consultation.

Prior written notice must be given after a decision is made and a reasonable time before the decision is implemented. Districts must provide prior written notice of changes made at an IEP meeting, whether or not a parent is in attendance, if the change would be considered a change in the provision of a free appropriate public education to the child. Typically, this would involve a substantial change such as when an area of service is added or discontinued. Minor changes to an IEP are not considered a change in the provision of FAPE to the student.

Prior Written Notice (change of placement)

Here, the District and the parent agreed that the student's placement would be a self-contained classroom. The actual location was a cubicle in the second of three resource rooms that were connected to one another. Other students also worked in this room with educational assistants. When the team made this decision, it also considered placement in the regular classroom with some resource room time and resource room with some time in the regular classroom. However, it did not delineate exactly how much time would be spent in either setting. Members of the team noted in interviews that even though the student did not directly interact with peers; the peers were present in the classroom when the student was working there. When the student began to have some behavioral difficulties that bothered other students—noise-making, etc, the case manager discussed the placement with the principal; and without much input from other members of the team—including the parent--decided to move the student into the third classroom completely away from all other peers.

At issue here is whether or not the change in physical location was, in fact, a change of placement. The Office of Special Education Programs (OSEP) addressed this question in the "Letter to Fisher", 21 IDELR 992, July 6, 1994. The Tennessee Department asked OSEP to answer the following questions: "Exactly what is the definition of change of educational placement? Is it the physical location (classroom, building, etc.) of the education and services or is it the education program that is stated in the IEP?" OSEP answered this question and said, "It is these three components--the education program set out in the student's IEP, the option on the continuum in which the student's IEP is to be implemented, and school or facility selected to implement the student's IEP--that comprise a placement decision under Part B."¹⁵ Additionally, OSEP noted that the effect of the change in location on the following factors must be considered when the team anticipates a change in location: A. whether the educational program set out in the child's IEP has been revised; B. whether the child will be able to be educated with nondisabled children to the same extent; C. whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and D. whether the new placement option is the same option on the continuum of alternative placements. If the answer to any of these is yes, the District must provide the parent with prior written notice.

¹⁵ 21 IDELR 992, July 6, 1994

The Department substantiates the parent's allegation, because it finds that the change of location significantly diminished the student's opportunities to interact with peers. As a result of the change of location, the child spent all of the time with the educational assistant. Additionally, the District case manager made the decision unilaterally, and did not convene a team meeting until after the change in location had been made. The District did not try any other strategies to manage the student's behavior to minimize its effect on other students in the Resource Room; but instead, removed this student from all contact with peers.

Prior Written Notice (discontinued participation in recess with peers)

When the District team wrote the student's IEP in April of 2007, it did not define how much the student would or would not participate with nondisabled peers in general education classes, extracurricular activities, and nonacademic activities. The student attended school for only a partial day in the morning, due to global health issues, and during the school year under investigation, students in the same grade did not receive a morning recess. Apparently, the District did not discuss this with the parent until an IEP meeting held in April, 2008. The student had apparently participated in recess the previous year during first grade with one or two nondisabled peers; and so the parent assumed the practice would continue in second grade. The Department substantiates the parent's allegation, finding that the District should have given the parent prior written notice that the student would only go to recess with the assistant.

Prior Written Notice (failure to include swing as part of sensory diet in IEP)

The student had been using a swing for vestibular stimulation since beginning elementary school. During the second grade year, the principal made a unilateral decision to remove the swing from the classroom because the principal believed the swing to be dangerous to the student and others. Although the District staff stated that it made some attempts to relocate the swing in another spot; this was never done, and the student was not able to use the swing for the bulk of the school year. The Occupational Therapist disagreed with this action, and noted in the interview that the swing was as necessary to this particular student "as air is to the rest of us". Given this, the parent specifically requested that the swing be listed separately on the IEP rather than as part of the "sensory diet". The District refused and did not provide prior written notice as to why, and therefore, the Department substantiates this allegation.

Prior Written Notice (District's refusal to increase the hours of autism consult from three to five hours on the April 26, 2008 IEP)

Here, the Department does not substantiate the parent's allegation, as this was not refusal to, but a clerical error. Team meeting minutes clearly state that the District agreed to provide five hours of autism consultation; and all District team members agreed that this was so in the interviews. However, when the case manager completed

the paperwork, the amount of time for autism consultation was not changed from three hours to five hours.

2. Implementation of IEP

The parent alleged that the District failed to appropriately implement the student's IEP when it inadequately supervised educational assistants; did not issue progress reports as scheduled; and, did not establish a Present Level of Academic Achievement and Functional Performance when it amended the student's IEP on November 13, 2007.

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives a free appropriate public education (FAPE).¹⁶ A school district meets its obligation to provide FAPE by complying with the procedural requirements of the IDEA; and providing the student with an IEP that is "reasonably calculated to enable [the student] to receive educational benefit."¹⁷ An IEP must be in effect for each eligible child at the beginning of each school year.⁷

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.¹⁸

In addition, school districts must provide the special education and related services listed on the IEP.¹⁹ Furthermore, school districts must ensure that: (a) the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation, and (b) inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.²⁰

Under IDEA 2004, the District and the parent may agree to make changes to the IEP between the annual meetings, without a meeting of the full team. In this circumstance, the District must make sure that all team members are informed of the amendment, and that the parent gets a copy of the revised copy of the IEP if the parent requests one.

¹⁶ *Board of Educ. v. Rowley*, 458 U.S. 176,192 S.Ct. 3034, 72 L.Ed. (1982)

¹⁷ OAR 581-015-2220.

¹⁸ OAR 581-015-2200 (1)(d).

¹⁹ OAR 581-015-2220.

²⁰ OAR 581-015-2220.

Implementation of IEP (inadequate supervision of educational assistants)

The educational assistants in this case were charged with providing the student's primary instruction on a day-to-day basis. When the year started, there was one primary assistant, but as the year went on, others rotated in and out so that eventually there were three assistants working with the student. The assistants received training in the program the District uses with the student, and some also received training in behavior management. The assistant responsibilities included taking data on the program (STAR) the District was implementing.

Occasionally, the case manager, the autism consultant and the occupational therapist observed the assistants working with the student. What did not happen was the data collection. The case manager noted that the team would do data collection "at least once per month". Given the style of the curriculum, Discrete Trial Training and Pivotal Response Training, once per month was not sufficient. This program is designed to collect data every time someone works with the student.

An IEP can be considered to be implemented when all portions of the IEP are implemented appropriately. By its very nature and design, that includes measurement of the instruction. Here the Department finds that the IEP was not implemented because the case manager did not insure that the assistants were taking data as they should; and so the Department substantiates the parent's allegation.

Implementation of IEP (failure to issue progress reports as appropriate)

In its letter of response to this complaint, the District stated that it does not dispute this fact. The District noted that the "IEP has progress noted but district does not have documentation that parent was provided with progress reports specific to IEP".

Implementation of IEP (failure to establish a present level of performance when the District amended the IEP on 11/13/2007)

The District amended the IEP to include a Behavior Intervention Plan after the parent requested that one be added to the IEP. The parent requested this in early October, and the meeting to do so was held finally on November 13, 2007. Neither the case manager nor the general education teacher attended the meeting by decision of the principal. The autism consultant and the District special education coordinator did attend. Nothing in OAR 581-015-2225 (2) (a) (b), (3) (a), which outlines the amendments to IEP's, mandates that the District must revise the Present Level of Academic Achievement and Functional Performance (PLAAFP) when it works with the parent to amend the IEP. However, goals were added and a Behavior Intervention Plan was developed to reflect the student's current behavior difficulties, therefore, the rationale for doing so must be documented in the PLAAFP. Given the fact that there was no PLAAFP attached to the IEP, it would have been hard to add to it. Thus, the error is compounded by the fact that there was no statement to start with. The Department substantiates the parent's allegation.

3. IEP Meeting on April 16, 2008 and Parent Participation:

Meaningful parent participation is a basic premise of IDEA and parents are considered equal participants in IEP meetings. Districts are required to take whatever action is necessary to ensure that the parent understands the proceedings at a meeting.²¹ With respect to a draft IEP, the U.S. Office of Special Education Programs (OSEP) encourages the district staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of the full discussion of the child's needs. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to provide the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP.

Here the District structured the IEP team to provide substantial parent input opportunities. While the parent reported feeling rushed and reports requesting explanations, the District reported it followed the agenda set for the meeting. In the ensuing team discussions the District and the parent did not confirm understandings of the decisions made. The District did not provide prior written notice of its agreement or refusal to provide the accommodations, supports, supplementary aids, and services reportedly discussed. IEP documents did not reflect the reported discussions. The Department finds that the District erred by not discussing the required content, including measurable goals. The District also erred by not providing prior written notice of its decisions.

4. IEP meeting on April 28, 2008 and lack of meaningful parent participation as evidenced by discrepancy between student eligibility form and prior written notice; Falsification of Records; and, Evaluation Procedure:

Under IDEA and OAR, the District has specific responsibilities and actions that must be taken in order to appropriately determine the need for an evaluation, conduct the evaluation, interpret the data from evaluations, and determine eligibility.²² The Department's investigation found that the District did not conduct evaluation planning, review existing information or determine additional evaluation data, obtain written informed parental consent for reevaluation that it subsequently identified in its response, or complete the evaluation measures described.

Here, the District did not accurately complete the eligibility determination procedures, including, with the parent as part of the team, the review and documentation of evaluation measures specified for each eligibility category under consideration, and the

²¹ 581-015-2190 (3)

²² OAR 581-015-2100 Responsibility for Evaluation and Eligibility Determination; OAR 581-015-2105 Evaluation and Reevaluation Requirements; OAR 581-015-2110 General Evaluation and Reevaluation Procedures; OAR 581-015-2115 Evaluation Planning; 581-015-2120 Determination of Eligibility; OAR 581-015-2135 Communication Disorder; and OAR 581-015-2155 Mental Retardation.

conclusions regarding the results of the measures. The prior written notice provided did not accurately reflect the District actions. Each IEP team meeting must offer an opportunity for parent participation.²³ The Department substantiates the lack of meaningful parent participation as required in the evaluation and eligibility processes. The Department substantiates the allegation that evaluations and determinations of eligibility determination were based on incomplete information.

Regarding the parent allegation that documents were falsified, a complaint investigation is an informal process, not a judicial process, and does not include witnesses, sworn statements, the ability to cross-examine witnesses, or other aspects of a due process hearing in which the “credibility” of witnesses might be a factor. The appropriate mechanism for dealing with issues of professional behavior is through the district’s own complaint processes or the Oregon Teacher Standards and Practices Commission (TSPC).

5. Content of IEP dated April 16, 2008 and finalized on April 28, 2008:

Under the state complaint procedures the Department must address each allegation in the complaint and the reasons for the Department’s final decision.²⁴ The parent alleged that the IEP developed did not contain required content. The Department substantiates this allegation, and finds that the District erred in not ensuring that the IEP documents included all of the required content²⁵, including:

- a. a statement of measurable annual goals and, for students with disabilities who take alternate assessments aligned to alternate achievement standards,
- b. a description of short-term objectives; a statement of the child’s present levels of academic achievement and functional performance;
- c. a statement of the specific special education and related services and supplementary aids services to be provided to the child;
- d. an explanation of the extent, if any to which the child will not participate with non-disabled children;
- e. a description of the supports to be provided to the child, or on behalf of the child,
- f. a statement of the program modifications or supports for school personnel that will be provided for the child;
- g. a description of how and when the child’s progress toward meeting the annual goals will be measured and reported to parents;
- h. and, for a child whose behavior impedes the child’s learning or that of others, the use of positive behavioral interventions and supports.

The Department does not find that the failure to include a one-to-one assistant was a failure to address the required content of the IEP. However, the IEP documents must accurately reflect the discussion and decisions of the IEP team. If the District refused to provide a one-to-one assistant in response to a request, it should have provided a prior written notice of that refusal.

²³ OAR 581-015-2190 and OAR 581-015-2195.

²⁴ OAR 581-015-2030(12)

²⁵ OAR 581-015-2200 *Content of IEP*; OAR 581-015-2205 IEP Team Considerations and Special Factors

#	Action Required	Submissions ²⁷	Due Date
	<p>Department's existing materials as part of its training materials. These include, but are not limited to The Oregon Standard IEP, SPR&I file review and corrective action documents.</p> <p>IEP: In accordance with the requirements of IEP Team Notice, hold an IEP team meeting to, at a minimum:</p> <ul style="list-style-type: none"> • Review and revise, as necessary, the student's IEP to ensure that information required by the Oregon Standard IEP is current and addresses the student's educational needs; • Address the student's behavioral issues and determine the need to develop/revise a Behavior Intervention Plan (BIP). <p>If the Evaluation/Eligibility team (see below) determines the need for, and conducts, additional assessment procedures, the District will reconvene the IEP team to address the results of these assessments under OAR 581-015-2225.</p> <p>Evaluation/Eligibility: Reconvene the eligibility determination team, as required by OAR 581-015-</p>	<p>Submit to the Department, the IEP team notice, completed IEP documents, any minutes or notes, and any prior written notices that result from this meeting.</p> <p>Evaluation/Eligibility Submit to the Department all documents associated with reconvening the eligibility determination team, including the team notice, any minutes or notes, any prior written notices that result, and copies of all eligibility determination statements, whether or not the team found the student eligible.</p> <p>If the team determines that additional evaluation</p>	<p>October 20, 2008</p> <p>October 24, 2008</p> <p>October 30, 2008</p>

²⁸ Ordered staff development requirements parallel the information provided through the Department's monitoring system (Systems Performance Review and Improvement-SPR&I) to all Oregon school districts annually.

²⁹ OAR 581-015-2100 through 581-015-2125; OAR 581-015-2130, OAR 581-015-2135; OAR 581-015-2155.

#	Action Required	Submissions ²⁷	Due Date
	2120 to review the existing student evaluation data, and revise if necessary, the eligibility determination. If the eligibility team, including the parent, determines that not all evaluation criteria needed for the determination have been met, the District will develop and implement an assessment plan to gather these data. ²⁹	data are needed, submit a copy of the evaluation planning information and a copy of any prior notice and consent.	

Dated: October 13, 2008

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

Mailing Date: October 13, 2008

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