

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Fern Ridge School  
District 28J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 08-054-033

**I. BACKGROUND**

On September 3, 2008, the Oregon Department of Education (“Department”) received a signed, written complaint from the parent of a child in the Fern Ridge School District 28J alleging violations of the Individuals with Disabilities Education Act (“IDEA”). The parent included 249 pages of documentation with the complaint. The Department sent a copy of the complaint to the Fern Ridge School District on September 4, 2008. The Department must investigate written complaints that allege IDEA violations occurring 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.<sup>1</sup>

On September 29, 2008, the Department sent a *Request for Response* to Fern Ridge School District identifying the specific allegations in the complaint to be investigated. The Request for Response was revised and resent to the District on October 8, 2008. Fern Ridge School District submitted its *Response* of 733 pages to the Department and to the parent on October 14, 2008.

Fern Ridge is the student’s resident district, but in 2005, the IEP team in the Fern Ridge School District determined that the most appropriate placement for the student was a self-contained classroom in a neighboring district. During the time period under investigation, the student was still placed in and attending this out-of-district program. For the purposes of this order, Fern Ridge School District will hereinafter be referred to as the Resident District, and the neighboring district will be referred to as the Attending District.

The Department’s complaint investigator determined that on-site interviews were necessary. On October 16-17, 2008, the investigator interviewed the parent, Autism Consultant A, Autism Consultant B<sup>2</sup>, the Attending District Case Manager, the Attending District Reading Teacher, the Attending District Principal, the Educational Assistant<sup>3</sup> assigned to the student (“EA”), and the Resident District Director of Special Education.

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<sup>1</sup> OAR 581-015-2030(12) (2007)

<sup>2</sup> Both Autism Consultants are employees of the Education Service District. Autism Consultant A is assigned to the Resident District, worked with the student in elementary school, and is currently the consultant to the student’s team. Autism Consultant B is assigned to the Attending District and was the consultant to the student’s IEP team during the period under investigation.

<sup>3</sup> The Educational Assistant is an employee of the Resident District. During the period under investigation, this individual was assigned to support the student in the program in the Attending District.

The District gave 55 additional pages of documentation to the Department’s complaint investigator during the interview process and shared the additional materials with the parent. 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><b><u>Direction and Supervision of Educational Assistants</u></b>            The parent alleges that the Resident District violated IDEA when it did not ensure appropriate supervision of the Educational Assistant (“EA”) assigned to work with the student. Specifically:</p> <p>a.) the parent alleges that when the parent called the Resident District and asked for help in assessing the interaction between the student and the EA, on several different occasions, the Resident District responded inadequately or not at all;</p> <p>b.) the parent alleges that, after the parent met with the Attending District teacher and was told the Attending District would begin rotating assistants to work with the student, the Attending District did not put this plan into effect; and,</p> <p>c.) the parent alleges that the Resident District allowed the Attending District to let the EA make instructional decisions outside of the supervision of the classroom teacher. The parent also alleges that the EA inappropriately rushed the student</p>	<p style="text-align: center;">Substantiated</p> <p>a.) The Department agrees that the Resident District failed to adequately provide support and direction to the EA. The Department also finds that the Resident District failed to respond adequately to the parent’s concerns about the EA’s delivery of IEP service.</p> <p style="text-align: center;">Not substantiated</p> <p>b.) The Department finds that the Attending District did provide the student with access to multiple educational assistants throughout the school day.</p> <p style="text-align: center;">Substantiated in part</p> <p>c.) The Department finds no evidence that the EA was making educational decisions outside the supervision of the classroom teacher or that the EA rushed the student through the academic assignments. However, the Department finds that, in light of the parent’s</p>

	<b>Allegations</b>	<b>Conclusions</b>
	<p>through assignments so that the student did not get the benefit of completing the work in such a way as to gain understanding. The parent further alleges that the Resident District had knowledge of both of these issues because the Resident District special education director was getting copies of the home-school communication journal in which these were discussed many times but that the Resident District chose not to interfere.</p>	<p>apparent and ongoing dissatisfaction with the EA, the Resident District failed to adequately consider that information and take appropriate action.</p>
<p><b>2.</b></p>	<p><b><u>Formation, Implementation, and Revision of IEP for Math</u></b>  The parent alleges that the Resident District violated IDEA when it failed:</p> <p>a.) to include measureable annual goals designed to meet the student’s needs in mathematics;</p> <p>b.) to provide mathematics instruction in accordance with the student’s IEP; and,</p> <p>c.) to revise the student’s IEP despite the student’s lack of progress in achieving annual goals in mathematics.</p>	<p>Not substantiated</p> <p>a.) The Department finds that the student’s 2007 and 2008 IEP goals for mathematics are measurable and specifically tailored to meet the student’s needs in math.</p> <p>Not substantiated</p> <p>b.) The Department finds that the student received mathematics instruction in accordance with the terms of his 2007 and 2008 IEPs.</p> <p>Substantiated</p> <p>c.) The Department agrees that the Resident District violated IDEA by failing to review and revise the student’s mathematics IEP goals despite evidence establishing that the student was not making satisfactory progress towards those goals.</p>

	<b>Allegations</b>	<b>Conclusions</b>
3.	<p><b><u>Formation and Revision of IEP for Reading</u></b></p> <p>The parent alleges that the Resident District violated IDEA when it failed:</p> <p>a.) to include measureable annual goals designed to meet the student's needs in reading; and,</p> <p>b.) to revise the student's IEP despite the student's lack of progress in achieving annual goals in reading.</p>	<p>Not substantiated</p> <p>a.) The Department finds that the student's 2007 and 2008 IEP goals for reading are measurable and specifically tailored to meet the student's needs in reading.</p> <p>Substantiated</p> <p>b.) The Department agrees that the Resident District violated IDEA by failing to review and revise the student's reading IEP goals despite evidence establishing that the student was not making satisfactory progress towards those goals.</p>
4.	<p><b><u>Changes in Services</u></b></p> <p>The parent alleges that the Resident District violated IDEA when it failed:</p> <p>a.) to provide the student's parent with an opportunity to participate in meetings regarding changes to the student's IEP;</p> <p>b.) to provide instruction in Adaptive P.E. and access to an educational assistant for 100% of the school day; and,</p>	<p>Not substantiated</p> <p>a.) The Department finds no evidence that the parent was denied an opportunity to participate in IEP meetings and the decision-making process.</p> <p>Not substantiated</p> <p>b.) The Department finds that because the changes from the 2007 to 2008 IEPs were the result of decisions made at an IEP meeting that all required participants attended, including the parent, the Resident District was no longer obligated to provide the omitted</p>

	<b>Allegations</b>	<b>Conclusions</b>
	<p>c.) to provide the student's parent prior written notice regarding changing the student's IEP and services provided under the IEP by:</p> <ul style="list-style-type: none"> <li>i) reducing the amount of time the student had access to an educational assistant; and,</li> <li>ii) failing to enroll the student in an Adaptive P.E. course.</li> </ul>	<p>services.</p> <p>Substantiated</p> <p>c.) The Department agrees that the Resident District failed to provide the parent with prior written notice of the reduction of educational assistant availability and the removal of Adaptive PE between the January 2008 IEP meeting and the implementation of the changes discussed at that meeting.</p>
<b>5.</b>	<p><b><u>Non-Academic Settings</u></b></p> <p>The parent alleges that the Resident District violated IDEA when it denied the student the opportunity to participate in a school music program.</p>	<p>Substantiated</p> <p>The Department agrees that the Resident District inappropriately refused the student an opportunity to participate in band based primarily on scheduling considerations. The District failed to adequately investigate the possibility that the student could participate in the band despite his disability with supplementary aids and services.</p>
<b>6.</b>	<p><b><u>Lack of Accurate Progress Reports</u></b></p> <p>The parent alleges that the Resident District violated IDEA when it awarded the student above average grades in the student's classes in areas where the student was not making meaningful progress.</p>	<p>Not substantiated</p> <p>The Department finds that the student's grades accurately reflected the student's progress in a modified curriculum as measured by modified assessment methods.</p>
<b>7.</b>	<p><b><u>IEP Content</u></b></p> <p>The parent alleges that the Resident District violated IDEA when it:</p> <p>a.) failed to include measurable annual goals for Social Emotional,</p>	<p>Not substantiated</p> <p>a.) The Department finds that because the changes from the 2007 to 2008 IEPs</p>

	<b>Allegations</b>	<b>Conclusions</b>
	<p>Independent Living, and Behavior skills in the student's 2008 IEP; and,</p> <p>b.) removed the Independent Living and Behavior skills sections from the student's 2008 IEP without an IEP team decision and prior written notice to the student's parents.</p>	<p>were the result of decisions made at an IEP meeting that all required participants attended, including the parent, the Resident District was no longer obligated to provide measurable annual goals in those areas. Additionally, the Department finds that the student's 2007 and 2008 IEP goals for Social Emotional skills are measurable and specifically tailored to meet the student's needs in that area.</p> <p>Substantiated</p> <p>b.) The Department agrees that the Resident District failed to provide the parent with prior written notice of the removal of the Independent Living and Behavior skills sections between the January 2008 IEP meeting and the implementation of the changes discussed at that meeting.</p>
<p><b>8. <u>IEP Formation</u></b></p>	<p>The parent alleges that the Resident District violated IDEA with regard to the August 28, 2008 IEP meeting when it failed:</p> <p>a.) to provide the student's parent with a written notice of the IEP meeting sufficiently in advance to ensure an opportunity to one or both of the parents to attend;</p> <p>b.) to notify the student's parent of the purpose, time, location, and attendees of a scheduled IEP meeting; and</p>	<p>Not substantiated</p> <p>a.) The Department finds sufficient evidence to determine that the parent had adequate notice of the August 28, 2008 IEP meeting to ensure parental participation.</p> <p>Not substantiated</p> <p>b.) The Department finds sufficient evidence, including the parent's correspondence with the District and presence at the meeting, to determine that the Resident District notified the</p>

	<b>Allegations</b>	<b>Conclusions</b>
	c.) to invite, at the parent's request, a member of the Oregon Connections Academy, the school in which the student was enrolled, to the student's IEP meeting.	parent of the purpose, time, place, location, and attendees of the meeting.  Not substantiated  c.) The Department finds that the Resident District was under no obligation to invite the requested ORCA staff member because the ORCA employee was not a required member of the IEP team.

### **Issues not Covered under IDEA**

The parent alleges that the Resident District failed to provide a safe learning environment for the student after the student received death threats and other threats of physical harm from a student in the school. The parent is requesting that the Resident District provide private counseling for the student. This is not an issue covered by IDEA; therefore, it is not addressed in this order.

The parent requests that the Resident District provide the following proposed solutions:

- a) private counseling for the student;
- b) one-to-one tutoring and specialized instruction;
- c) restoration of services removed from the IEP;
- d) coordination by Resident District with the program in which the parent has placed the student to provide classes that meet the student's skill level while the Resident District provides specialized instruction; and,
- e) initiation, by the Resident District, of an IEP meeting to finalize details of the revised program.

## **III. FINDINGS OF FACT**

### **Background**

1. The student is currently 14 years old, in the tenth grade, resides in the Resident District, and attends a public virtual charter school. In addition, the student receives specially designed instruction in reading and math from the Resident District high school. The student is eligible for special education as a child with autism.

2. During the 2007-2008 school year, the student was placed in a Resource Room program in the Attending District.
3. The student's prior IEP, written on January 18, 2007, continued in effect at the beginning of the 2007-2008 school year until the January 17, 2008 IEP meeting. The student's placement during this time period was described as "self-contained/resource/regular school" program. The IEP also contained the following services:
  - a. Reading, Math, Written Language and Behavioral specially designed instruction for 45 minutes, five times per week each;
  - b. Related services of speech/language (2 hours per year), Autism (6 hours per year), Motor Breaks (30 minutes per day), and Adaptive PE (30 minutes, five times per week);
  - c. Access to an educational assistant or a shared educational assistants, full-time, school-wide; and,
  - d. Occupational Therapist, two hours per year.
4. The IEP stipulated that the student did not need to be removed from participating with nondisabled students but then stated, "Extent: see cover page of IEP: Individual instruction and smaller groups/less distractions/support self esteem by providing successful environment. 70 percent in Resource Room/Autism."

### **1. Direction and Supervision of Educational Assistants**

5. In late August 2007, just before the school year started, the EA talked with the Resident District Special Education Director about working with this student. The EA told the Director that the parent had expressed some concerns the previous year about the way the EA worked with the student. The Director asked the EA to start sending copies of the home-school journal to the Director every few weeks.
6. The Director noted during the investigation interview that the EA did send copies and that the Director's secretary filed them regularly. However, the Director did not read any of the journal pages until approximately April 2008.
7. On September 5, 2007, the EA wrote in the home-school journal that "Mom had no written response today."
8. On September 6, 2007, the parent wrote back in the journal and asked the EA to tell the parent why the EA had noted the parent's lack of response in the journal.
9. On September 6, 2007, the EA wrote back and said, "The note of no response is for [Resident District Special Education Director] at Fern Ridge

he wants copies of the correspondence about [the student] that has to do with school and asked me to note if you didn't write anything in this journal. It doesn't require any expectations of you at all."

10. On September 14, 2007, the parent sent the Case Manager an email with a list of suggestions for the student's "school problems." On this list, the parent noted that the student felt the EA "always hurts my feelings by using an angry voice." Additionally, the parent noted that the student felt that the EA "orders me about; tells me that I only need two pieces of paper towels; interrupts me; and, asks me questions."
11. On October 4, 2007, Autism Consultant B met with the EA and the Case Manager to review the student's progress over the last year.
12. On October 5, 2007, the parent wrote in the journal: "If [the student] takes this test today and you help with it that cheats the student out of an opportunity to do [the student's] best. Since he asked for more time, I sure wish the school could work with that."
13. On October 30, 2007, the parent wrote in the journal that the student had intended to write a letter to the EA the previous evening to tell the EA that "[the student] was upset about the way you correct [the student]." The parent stated that the student's aim was to "work out a way of correction that doesn't cause [the student] to be worried that the EA is upset with [the student]."
14. That same day, the EA replied in the journal. In the reply the EA noted that the EA had talked with the student and had discussed how the student wanted the EA to correct the student. The EA stated that teachers, when asked, had told the EA that the EA was "very kind and patient."
15. On November 1, 2007, Autism Consultant B met with the EA and made some suggestions about "presenting information visually to increase comprehension." The Consultant also met with the Reading Teacher on the same day to discuss how the Reading class was proceeding.
16. On November 15, 2007, the parent sent an email to the Case Manager. In the email the parent expressed concern that the EA was implying that the student "lied" about what goes on at school. The parent also alleged that the EA spoke to the student "impatiently." The parent asked if the Resident District had provided the EA with any autism training. That same day, the Autism Consultant B met with the Case Manager, and they discussed the parent's concern about training.
17. The Case Manager replied via email and said that the Case Manager would check with the Resident District Special Education Director about some training for the EA. The Case Manager also informed the parent that the

Case Manager had held a “refresher meeting” with all of the educational assistants in the program—reminding them to use such techniques as “positive role modeling, positive talk, and respecting a persons (sic) answer.”

18. On the same day, the EA wrote in the journal that the Case Manager would “take care of any issues you have concerns about.”
19. On December 12, 2007, the parent asked some questions in an email about how the student was working in the reading class. The Reading Teacher wrote back and replied that sometimes the student would simply ask for the teacher or the EA to “just tell [him] what to write.” However, the teacher stated that the teacher often asked the EA to work with other students or leave the classroom so that the student would interact more with the teacher and become more independent in work skills.
20. On December 13, 2007, Autism Consultant B observed the EA working with the student and then met with the EA afterwards. Autism Consultant B gave the EA some suggestions about giving the student more time to process new information, using four praises to one corrective feedback comment, and how to teach various rules.
21. On March 3, 2008, the parent again wrote in the journal that the student had reported that the EA was being too “bossy.” The EA wrote a long reply and explained how the EA had discussed this concern with the student. The EA also speculated that the student seemed to be more concerned about the EA’s voice when there were lots of changes in the student’s program. The parent replied two days later agreeing with that premise and noting that the student was very sensitive to the changes in family members’ voices as well.
22. In late April 2008, the student experienced some significant difficulties with another student in the Attending District Autism classroom. As a result, Autism Consultant B developed a problem-solving worksheet for staff to use with the student. The consultant sent an email on May 1, 2008 to the parent and the other members of the student’s IEP team to introduce the concept of the problem-solving sheet. In that email, the consultant said, “I observed [the student] during lunch and I also worked with [the student] on a writing assignment and am concerned about the amount of assistance the [EA] is giving [the student] (in my opinion too much) which does not accurately reflect what [the student] is actually capable/not capable of. I have observed this for some time and am concerned that [the student’s] work is not always a reflection of [the student]. This is perhaps leading you to believe [the student] is doing better than [the student] actually is. I’d like to suggest that we have a meeting to discuss [the student’s] needs given [the student’s] significant characteristics of Autism Spectrum Disorder.”

23. On May 5, 2008, the Resident District Special Education Director sent an email to the team and asked them to check their calendars to set a meeting for the team.
24. On May 6, 2008, Autism Consultant B sent an email to the Resident District Special Education Director and the Attending District Special Education Director. In the email, Autism Consultant B said, "I asked for this meeting for a couple of reasons: 1. I wanted to support the Case Manager and staff and take the heat from them. Teaching [the student] needs to be put back into the hands of the teaching staff ...I'd like support from both of you to clarify the [EA's] role, as assistant, to [the parent]. My opinion is that the [EA] writes TOO much info[rmation] in the notebook (which [the parent] requests) and helps [the student] TOO much (which [the parent] requests). [The parent] is going to find a rude awakening about what [the student] is truly capable of unless we start telling [the parent]. [The parent] might even feel he regressed in the next placement."
25. On May 7, 2008, the District sent the parent notice of a meeting to be held on May 8, 2008.
26. On May 8, 2008, the team met. Autism Consultant B prepared an agenda and a list of concerns about the student's educational needs. The agenda outlined the roles of all members of the team. It described the EA's role as follows: "Implement the written instructional, curricular and adapt plans as needed; take data; communicate all relevant observations, insights or information to teacher, and communicate with [the parent] as needed as directed by teacher, etc."
27. On May 30, 2008, the parent sent an email to the Case Manager and to the Resident District Special Education Director, stating that the parent had decided to withdraw the student from the Attending District program for the remainder of the school year. The parent's stated reason was "due to the amount of stress [the student] has been experiencing while at school."
28. The educational assistants assigned to work with the student had worked with the student since the beginning of the 2006-2007 school year, and was reassigned to this student for the 2007-2008 school year.
29. There were two additional educational assistants assigned to the Attending District program in which the student was placed. Additionally, the Reading Teacher had an educational assistant in that classroom. All of these individuals knew the student and had had contact with the student in those settings. The two program educational assistants also supervised the student at lunch.

30. After the parent sent the Attending District Case Manager the email on September 14, 2008 expressing concerns about the EA, the Case Manager and the parent met<sup>4</sup>. They discussed the possibility of cross-training other assistants to work with the student. The Case Manager told the parent that the Case Manager would work to put such a plan into effect.
31. The parent interpreted this to mean that different educational assistants would be scheduled to work with the student at different times of the day. However, the Case Manager interpreted this to mean that the educational assistants assigned to the program, and the educational assistant in the Reading classroom would continue to provide assistance to the student as needed in those settings.
32. No formal cross training or rotation program was ever implemented.
33. While the student was in this program, the Resident District provided the Attending District with a six-hour per day EA, who was primarily assigned to work with this student.
34. The EA duties included supporting the student in Reading, Science and Written Language classes, providing direct instruction in math, and supporting the student with homework completion in the study hall.
35. The assistant was also charged with writing a daily home-school journal to the parent.
36. The Case Manager gave the EA a math book to use with the student after using the curriculum-based assessment to place the student in this particular math program. The materials are designed such that the EA read a script to the student for each lesson and then worked with the student on the problems for that particular lesson.
37. The Attending District Case Manager provided general supervision to the EA; however, each classroom teacher also gave the EA specific directions about how the teacher wanted the EA to support the student in that particular classroom.
38. In May 2008, after Autism Consultant B raised the issue that the EA might be providing too much support to the student, the IEP team met to discuss this and other issues.
39. The Resident District Special Education Director knew throughout the year that the parent had concerns about the EA but did not formally intervene until the May 8, 2008 meeting. The Director made multiple visits to the classroom

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<sup>4</sup> Neither individual remembered the date of the meeting.

and observed the EA working with the student but concluded that the EA was working appropriately with the student.

## **2. Formation, Implementation, and Revision of IEP for Math**

40. In the Present Level of Academic Achievement and Functional Performance statement of the student's January 2007 IEP<sup>5</sup>, the student's mathematics skills are identified as: "[The student is currently working (sic) on connecting Math concepts level E, lesson 89. [The student] is working independently with an aid (sic). [The student is able to add and subtract fractions and struggles with dividing three digit numbers by single digit.]"
41. The student's goals for mathematics in the January 2007 IEP are as follows:
- Mathematics 1: "[The student] will increase the ability to collect, organize, display, interpret and analyze facts, figures and other data to as measured by (State Scoring Guide, teacher survey, performance assessment, etc.). The criteria are 80 percent accuracy, and the evaluation procedures are described as teacher observation and daily work."
  - Mathematics 2: "[The student] will increase the ability to select and apply mathematical operations in a variety of contexts to 7<sup>th</sup> grade level as measure by State Scoring Guide, teacher survey, performance assessment, etc. The criteria are 80 percent accuracy, and evaluation procedures are listed as teacher observation (sic) and daily work."
  - The Services section of the IEP outlined that the student would receive specially designed instruction in math for 45 minutes five times per week in the work site.<sup>6</sup>
42. As described above, the student worked daily with the EA in a programmed math book.
43. On June 13, 2007, the Attending District sent the parent the IEP progress report for the end of the school year. For the Mathematics 1 goal the Case Manager wrote that the student was making satisfactory progress, completed work, but struggles as the student would prefer not to do math. For the Mathematics 2 goal, the Case Manager wrote that the student was making satisfactory progress toward the goal.
44. On November 29, 2007, the Attending District sent the parent the IEP progress report for the end of the first trimester of the 2007-2008 school year. For the Mathematics 1 goal the Case Manager wrote that the student was making satisfactory progress; that the struggle with math continues but that the student was completing assignments. For the Mathematics 2 goal, the Case Manager wrote that the student was making satisfactory progress toward the goal.

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<sup>5</sup> This IEP was in effect until the January 17, 2008

<sup>6</sup> The Case Manager noted that "work site" was intended to describe the self-contained classroom setting.

45. The IEP team met and re-wrote the student's IEP on January 17, 2008. In the Present Level of Academic Achievement and Functional Performance statement the student's math skills are identified as: "[The student is struggling with Math ...moves slower since [the student] is in level E of Connecting Math concept. (sic) [The student] is at level 89. Areas of problems are setting up story problems, perimeter and area, and solving for x when using multiplication, division and fractions."
46. The student's goals for math in the January 2008 IEP are as follows:
- Mathematics: "[The student] will increase ability to design, use and communicate a variety of mathematical strategies to solve problems to 7<sup>th</sup> grade level as measured by State Scoring Guide, teacher survey, performance assessment, etc. The criteria are 80 percent accuracy, and the evaluation procedures are described as teacher observation and daily work."
  - The Services section of the IEP outlined that the student would receive specially designed instruction in math for 45 minutes five times per week in the Resource Room.
47. As described above, the student continued to work daily with the EA in the same programmed math book.
48. On March 13, 2008, the Attending District sent the parent the IEP progress report for the end of the second trimester of the 2007-2008 school year. For the Mathematics goal the Case Manager wrote that the student was making satisfactory progress but that the student had "made little progress since IEP."
49. The Attending District did not send the parent a progress report at the end of the 2007-2008 school year.
50. The Case Manager did not do any additional assessment of the student's math skills during the period of time under investigation.

### **3. Formation and Revision of IEP for Reading:**

51. In the Present Level of Academic Achievement and Functional Performance statement of the student's January 2007 IEP,<sup>7</sup> the student's reading skills are identified as: "[The student] is currently reading 5<sup>th</sup> grade material. [The student] does a good job reading orally for the group. [The student] has great difficulty with comprehension and answering questions independently.....Participation in a general 7<sup>th</sup> grade reading class would be unsuccessful for [the student] as [the student] needs a lot of guidance and

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<sup>7</sup> In effect until the January 17, 2008 IEP meeting.

encouragement, and [the student's] comprehension skills are not near the 7<sup>th</sup> grade level. ”

52. The student's goals for reading in the January 2007 IEP are as follows:

- a. English: “[The student] will increase comprehension of a variety of printed materials to 80 percent accuracy as measured by (running record, IRI, anecdotal data, observation, performance assessment, etc.). The criteria are 80 percent accuracy, and the evaluation procedures are described as teacher observation and daily work.”
- b. The Services section of the IEP outlined that the student would receive specially designed instruction in reading for 45 minutes five times per week in the general education classroom.<sup>8</sup>

53. In the reading class, the student worked in small groups, reading novels and answering comprehension questions. The teacher took data with timed reading samples, comprehension worksheets, and one-minute timed reading samples to measure the student's ability to decode.

54. On June 13, 2007, the Attending District sent the parent the IEP progress report for the end of the school year. For the reading goal the Reading Teacher wrote that the student was making satisfactory progress and that the student had increased ability to comprehend school work in all subjects.

55. On November 29, 2007, the Attending District sent the parent the IEP progress report for the end of the first trimester of the 2007-2008 school year. For the reading goal, the Reading Teacher wrote that the student was making satisfactory progress in reading but that “the student appears to be only maintaining in this area.”

56. The IEP team met and re-wrote the student's IEP on January 17, 2008. In the Present Level of Academic Achievement and Functional Performance statement, the student's reading skills are identified as: “[The student] decodes very well...reads an average of 135 correct words per minute at the 8<sup>th</sup> grade level. [The student's] overall comprehension lies at about the 5<sup>th</sup> grade level. However, a comprehension score is difficult to establish as [the student] has many splinter skills.”

57. The student's goals for reading in this IEP are as follows:

- a. English 2: “[The student] will increase comprehension of a variety of printed materials to 6<sup>th</sup> grade level as measured by running record, IRI, anecdotal data, observation, performance assessment, etc.) The criteria

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<sup>8</sup> The student's actual placement for reading was in a 7<sup>th</sup> grade Resource Room. Students are placed in the Resource Room depending on their grade level and not their reading level. Later in the 2007-2008 school year the student was moved to a 6<sup>th</sup> grade reading class to accommodate a change in the student's schedule.

are 80 percent accuracy, and the evaluation procedures are described as teacher observation and daily work.”

- b. The Services section of the IEP outlined that the student would receive specially designed instruction in reading for 45 minutes five times per week in the Resource Room.
58. The student continued to work on reading novels and doing comprehension activities as described above.
59. On March 13, 2007, the Attending District sent the parent the IEP progress report for the end of the second trimester of the 2007-2008 school year. For the reading goal, the Reading Teacher wrote that the student was making satisfactory progress but that the student “is maintaining comprehension little gain since IEP meeting.”
60. The Attending District did not send the parent a progress report at the end of the 2007-2008 school year.
61. The Reading Teacher did not do any additional assessment (such as an IRI) of the student’s reading skills during the period of time under investigation.
62. At the meeting on May 8, 2008, the parent asked the Resident District for updated academic information. In June 2008, the Resident District Special Education Director<sup>9</sup> administered the Woodcock Johnson Third Edition Tests of Achievement (WJ III ACH), Form B, to the student. The results were scored using the student’s chronological age. The student achieved the following scores (standard scores):
- |                           |    |
|---------------------------|----|
| a. Broad Reading          | 90 |
| b. Broad Math             | 83 |
| c. Broad Written Language | 96 |
| d. Calculation            | 89 |
| e. Applied Problems       | 90 |
| f. Math Fluency           | 75 |
63. In December of 2004, the student had been given the same test by a different examiner. The results on this test were scored using the student’s grade level of 5.3. The student achieved the following scores (standard scores):
- |                           |    |
|---------------------------|----|
| a. Broad Reading          | 89 |
| b. Broad Math             | 87 |
| c. Broad Written Language | 96 |
| d. Calculation            | 96 |
| e. Applied Problems       | 82 |
| f. Math Fluency           | 90 |

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<sup>9</sup> The Resident District Special Education Director is a school psychologist.

64. After the June 2008 evaluation, the parent asked the Resident District to arrange an Independent Educational Evaluation because the parent did not believe the scores and the interpretation given by the Resident District Special Education Director. The student was tested by a psychologist at a private agency. This psychologist used selected tests from the Woodcock Johnson Third Edition Tests of Achievement, Form A; the Test of Written Language; and the Gray Oral Reading Test (GORT). The student achieved the following scores (standard scores):

a. Calculation	84
b. Applied Problems	79
c. Math Fluency	73
d. Reading Rate	5
e. Reading Accuracy	6
f. Reading Fluency	3
g. Reading Comprehension	5

65. The psychologist added the following paragraph of explanation about the reading test results: “[The student] received an overall composite of 64 where 100 is considered average. This score is below the first percentile, meaning that 99 percent of students this age are scoring higher than he did today. These test scores indicate that [the student’s] reading is significantly delayed. Scores are lower than those obtained on the Woodcock, perhaps because of the format of the testing. The GORT places significant, but age appropriate demands on a student’s reading, with expectations that the student can read accurately and rapidly, while still comprehending the meaning of the passage. On the Woodcock, only the fluency tests are timed, while on the GORT-4, the reading of every paragraph is timed. This test may resemble classroom expectations for reading at the high school level, where students read and respond to questions, and is helpful in understanding what that might be like for [the student].”

#### **4. Changes in Services:**

66. The January 18, 2007 IEP<sup>10</sup> lists Adaptive PE for 30 minutes five times per week, access to an EA or Shared EA (sic) full-time school wide, and Occupational Therapy services for two hours per year as services to be provided to the student.

67. The January 17, 2008 IEP lists no adaptive PE services, no Occupational Therapy services, and states that the student will be provided with access to an educational assistant or shared educational assistant for 70 percent of the day.

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<sup>10</sup> In effect until the January 17, 2008, IEP meeting.

68. During the period under investigation, the IEP team met in January and May of 2008.<sup>11</sup> The parent acknowledged attending the meetings and contributing to the discussion at the meetings. However, the parent alleged that some parts of the student's plan were not brought up at the January IEP; therefore, the parent could not participate in a discussion about them. The parent stated that the topics left off of the discussion were adaptive PE and the amount of time for an educational assistant to support the student.
69. There were no minutes taken at the meeting and no written agenda for the meeting.
70. Other members of the IEP team stated that they remembered discussing these topics at the IEP meeting.
71. Following the January 17, 2008 IEP meeting, the Attending District Case Manager did not send a Prior Written Notice of Special Education Action to the parent about the fact that Adaptive PE and Occupational Therapy were taken off the IEP and that access to an EA was decreased from 100 percent of the day to 70 percent of the day.
72. On September 13, 2007, the parent asked in the journal whether or not the student would be taking PE. The EA wrote in the home-school journal that the student "will not be having PE this year, because [the student] has reading during the PE period and taking PE with the other classes would be very stressful."
73. In mid-October 2007, the student's social studies class began studying about slavery. The parent expressed concern that the student would not understand some of the more negative aspects of the issue and requested that the student's schedule be changed. The student withdrew from social studies and began a 7<sup>th</sup> grade science class instead. Consequently, the student was occasionally able to attend the Adaptive PE class taught by the Case Manager.
74. In late February 2008, the parent decided to have the student take swimming lessons. The parent picked the student up early from school on Mondays, Wednesdays, and Fridays for swimming lessons.
75. On March 18, 2008, the EA wrote in the journal that the goal was for the student to be in PE at least once and hopefully both Tuesday and Thursday.

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<sup>11</sup> The May, 2008, meeting centered on discussion about the EA's responsibility, the student's academic progress and plans for the student's 9<sup>th</sup> grade year. The team did not make any changes to the IEP at this time.

76. The investigator was not able to discern the exact amount of time the student attended Adaptive PE over the course of the year; no attendance records were taken.
77. The EA stated that the only times the EA was not with the student were during lunch period and during the EA's scheduled break times. However, the EA, Case Manager, and Reading Teacher all stated that other educational assistants were present during these times and available to the student.

## **5. Non-Academic Settings:**

78. At the beginning of the 2008-2009 school year, the parent informed the EA that the student was evidencing some musical talent and a considerable interest in music and asked the school to see if the student could participate in the school band program.
79. The parent sent this message via the home-school communication journal, and the EA replied that the Case Manager would investigate the possibility.
80. At this particular middle school, students are offered a choice of band, choir, or PE as electives. However, students are also required to take a certain amount of PE. For students at the 8<sup>th</sup> grade level during the 2007-2008 school year, band was available only for the first two trimesters of the year.
81. The Case Manager stated that the parent requested science as an elective, and that the student also needed a study hall to keep up with academic work.
82. Both IEP's in effect during the time period investigated note that the student will spend 70 percent of the day in the Resource Room, but neither IEP denotes where the student will spend the other 30 percent of the day.
83. The investigator was not able to establish whether or not the Case Manager ever told the parent directly that a band class was not possible given the student's schedule.

## **6. Lack of Accurate Progress Reports:**

84. On October 22, 2007, the parent asked the EA to get clarification from the Reading Teacher about an assignment of summarizing chapters in a novel. The Reading Teacher wrote back the next day and explained the purpose of the assignment and gave some strategies the parent could use to help the student. The parent and the Reading Teacher also exchanged email messages about this topic at the same time.

85. On December 17, 2007, the Case Manager sent an email to the members of the student's IEP team informing them that the team needed to hold an IEP meeting for the student in January 2008. In this email the Case Manager stated, "[the parent] would like all of [the student's] teachers to slow their curriculum down to meet [the student's] needs."
86. In a journal entry written on December 17, 2007, the parent again expressed concern that the student still had a "reading comprehension problem." The parent stated that [the parent] had asked the Case Manager for help in addressing this issue. The EA wrote back the same day and noted that "the [Case Manager] has made arrangements for [the student] to be graded only on what [the student] can do."
87. The parent replied to this email on December 18, 2007 and stated, "[The student] should not only be graded on what [the student] can do! I've asked the Case Manager for more support to help him meet the challenges. Not less! Can either you or [Case Manager] explain what this means?"
88. That same day, the EA replied in the journal that being graded on what he can do or grasp actually added support for the student. The EA gave a long explanation about a science unit on genetics that the science class was studying and noted that the student was successful in understanding concepts such as genes and chromosomes even though these are things the student could not physically see or touch.
89. On December 12, 2007, the parent sent an email to the Case Manager asking why the student received a grade of "C" in reading. The parent stated, "The only reason [the student] would get a "C" in any class is because [the student] does not fully understand the assignments or ...does not have the support necessary to successfully complete assignments. So, we need a plan here."
90. The Reading Teacher replied by email and noted that the student was being challenged and meeting the challenge and that a "C" is an average grade. The reading teacher noted that sometimes the student would simply ask for the teacher or the EA to "just tell [the student] what to write." However, the teacher stated that the teacher often asked the EA to work with other students or leave the classroom so that the student would interact more with the teacher and become more independent in work skills.
91. Both the Case Manager and the Reading Teacher stated that they had never discussed with the parent the fact that the curriculum and the assignments in all classes were modified for the student and that the grades the student received reflected the student's performance on the modified expectations.

92. On the November 29, 2007 report card, the student received a grade of "A" in RS Writing 7, a grade of "A" in Science 7, grades of "P" (Passing) in three Structured Learning classes, and a grade of "C" in RS Reading 7.
93. On the March 12, 2008 report card, the student received a grade of "A" in RS Writing 7, a grade of "A" in Science 7, grades of "P" (Passing) in two Structured Learning classes, a grade of "A" in Structured Learning PE, and a grade of "A" in RS Reading 7.
94. On the June 12, 2008 report card, the student received a grade of "A" in RS Writing 7, a grade of "A" in Science 7, grades of "P" (Passing) in two Structured Learning classes, a grade of "A" in Structured Learning PE, and a grade of "C" in RS Reading 7.

## **7. IEP Content**

95. In the Present Level of Academic Achievement and Functional Performance statement of the student's January 2008 IEP, the Case Manager described the student's behavior as follows: "When [the student] stays positive, [the student] does a very good job following directions and completing work. If [the student] perceives [the student] has done something wrong, made a mistake or is just not perfect enough, [the student] dialogues a lot of negative talk that is very difficult to break into or change the subject. If you tell [the student] to stop or try to refocus [the student] during one of these episodes, [the student] will go into a lot of apologizing and a cycle of self-chastisement. When this happens, it is best to have [the student] physically move, talk about something unrelated to what upset [the student] and then refocus [the student] after [the student] is able to change the subject. [The student] is very compliant when [the student] understands what is required. [The student] desires to do well and to please adults."
96. The January 2008 IEP includes two Social Emotional Goals. The first goal states that the student will "demonstrate appropriate play skills, peer relations, cooperative learning, and assertiveness with 80 percent frequency as measured by obseration (sic)." Criteria are 80 percent accuracy, and evaluation procedures are listed as teacher observation and daily work.
97. The second Social Emotional Goal states that the student "will identify and manage feelings (i.e. anger, anxiety, stress, frustration) on a daily basis with 75 percent frequency as measured by obseration (sic)." Criteria are 75 percent accuracy, and evaluation procedures are listed as teacher observation and daily work.
98. Additionally, the January 2008 IEP states that the student will receive Behavioral/Social Emotional specially designed instruction for 45 minutes five times per week throughout school settings.

99. The student's January 2007 IEP contained goals in Independent Living and Behavior. The Independent Living goal focused on the student being able to transition from one setting to another in the school community, and the Behavior goal focused on the student being able to ask for help appropriately in the classroom and to work in a group setting. The Case Manager, EA, and Reading Teacher all stated that they believed the student had met these goals and that the new focus on identifying and managing feelings and demonstrating appropriate peer skills, etc. were appropriate new goals. There was no data to review as to how the student had met the January 2007 IEP goals.
100. The parent stated that the parent did not remember discussing the old and new goals at the 2008 IEP meeting.
101. The Resident District did not send a Prior Written Notice of Special Education Action to the parent regarding the change in the goals.

#### **8. IEP Formation:**

102. On June 13, 2008, the Resident District sent the parent a meeting notice for an IEP meeting to be held on August 25, 2008. The Resident District High School Special Education Teacher, Autism Consultant A, and the Resident District Special Education Director were all invited to the meeting. The meeting notice specifically stated that the purpose of the meeting was to develop an IEP for the student, and date, time, and location were given.
103. On August 7, 2008, the Resident District sent the parent a meeting notice for an IEP meeting to be held on August 25, 2008. The Resident District High School Special Education Teacher, Autism Consultant A, a District educational assistant, and the Resident District Special Education Director were invited to the meeting. The meeting notice specifically stated that the purpose of the meeting was to develop an IEP for the student, and date, time and location were given.
104. On August 19, 2008, the parent sent the Resident District Special Education Director an email informing the Director that the parent had enrolled the student in a public virtual charter school and asking the Director to include the charter school's special education director in the meeting notices and communications.
105. On August 21, 2008, the parent emailed the Resident District Director asking about enrolling the student in some classes at the Resident District high school. The parent also asked if the IEP meeting was still on schedule for August 28, 2008. The Resident District Director replied confirming the date and time.

106. On August 25, 2008, the Resident District High School Special Education Teacher sent the parent and the Resident District Director an email. The teacher confirmed that the IEP meeting was scheduled for August 28, 2008 at 3:00 p.m. at the Resident District high school.
107. On August 27, 2008 at 4:17 p.m., the parent sent an email to the High School Special Education Teacher, the Resident District Director, Autism Consultant A, and the charter school's special education director with instructions on how to call the District office via a conference call for the IEP meeting.
108. The IEP meeting was held on August 28, 2008.
109. The Resident District did not send a meeting notice changing the meeting date from August 25, 2008 to August 28, 2008.

#### **IV. DISCUSSION**

##### **1. Direction and Supervision of Educational Assistants**

The parent alleges that the Resident District violated IDEA when it did not ensure appropriate supervision of the educational assistant assigned to work with the student. Specifically, the parent alleges that when the parent called the Resident District and asked for help in assessing the interaction between the student and the assistant on several different occasions, the Resident District responded inadequately or not at all. Additionally, the parent alleges that after the parent met with the Attending District teacher and was told the Attending District would begin rotating assistants to work with the student, the Attending District did not put this plan into effect. The parent also alleges that the Resident District allowed the Attending District to let the EA make instructional decisions outside of the supervision of the classroom teacher. The parent also alleges that the EA inappropriately rushed the student through assignments so that the student did not get the benefit of completing the work in such a way as to gain understanding. The parent further alleges that the Resident District had knowledge of these issues because the Resident District Special Education Director was receiving, at the Director's request, copies of the home-school communication journal in which they were frequently discussed, but the Resident District chose not to interfere.

OAR 581-037-0015 prescribes school district's obligations concerning the assignment, direction, and supervision of EA. Under these provisions, educational assistants may do tasks that supplement a student's basic instruction, provide clerical support to teaching staff, and assume duties of student supervision and control in a variety of settings in the school environment. When an assistant is assigned to "instruction-

related activities,” that assistant must work under the direction of the teacher in that instructional setting.<sup>12</sup>

In this situation the parent is alleging that not only did the EA overstep boundaries but that the EA also interacted in a negative manner with the student causing the student stress in the learning environment. The parent also alleges that the Attending District Special Education Teacher allowed the EA to make educational decisions about the student’s academic instruction. Finally, the parent alleges that the Resident District knew or should have known about the parent’s dissatisfaction and took little or no action to address parental concerns.

This EA had been working for two years with the student. The record documents that the student has a difficulty perceiving the behavior of other’s as well as the student’s own personal behavior in relation to others. The student complained off and on to the parent and to the EA that the assistant spoke rudely and did other things that bothered the student. It is impossible, without observing the interactions between the student and the EA, to validate whether or not the EA behaved in a critical manner with the student. However, it is not really the validation that is important here. What is important is that the parent repeatedly sent messages asking for assistance with the interactions between the student and the EA, and the Resident and Attending Districts staff made very little effort to reply to or take action to correct the situation. It wasn’t until a new autism consultant began asking pointed questions very late in the year that the IEP team met to consider the situation. Further, the parent believed that the Resident District Special Education Director was reading the home-school journal on a regular basis though the Director was actually not doing so.

Similarly, after a meeting, the parent believed that the Attending District Case Manager would put a plan into place to rotate various educational assistants through the student’s schedule on a daily basis so that the student would have less interaction with the original EA. The Case Manager knew that the student was interacting with other assistants at other times of the day and in other settings, but the Case Manager did not communicate this clearly to the parent. The parent reasonably expected that things would be different after the meeting, and she became more frustrated with the situation when they clearly were not. The Case Manager did not ensure that the exact pattern of how, when, and where the assistants worked with the student was made clear to the parent.

Finally, when the student began in the program at the beginning of grade six, the Case Manager set the program up so that the student worked in a self-paced, teacher-directed math program with the EA. This continued over the next three years. The EA worked daily with the student on math, and there is little evidence that the teacher took even minimal opportunities to work with the student except to occasionally verify that the instruction was being accurately provided. In addition, the Case Manager utilized no other types of assessment with the student during this time period to make sure that the self-directed program was still viable for the student. It was not possible in this

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<sup>12</sup> OAR 581-037-0015(2)

investigation to determine whether or not the EA inappropriately “rushed the student through assignments” as alleged. That would be best established by direct observation over a period of time. However, the fact that the EA had total responsibility for this instruction—using the book—raises the question as to how much involvement and supervision the Case Manager provided to the situation.

Because the Case Manager maintained a low profile on these issues and did not bring them to the Resident District’s attention in a more timely fashion, the Resident District did not have the opportunity to respond. Although the EA was directly supervised in her instructional capacity by employees of the Attending District, the responsibility for providing a free appropriate public education (“FAPE”) and adhering to the guidelines issues under IDEA remained with the Resident District. As such, the Department concluded that the Resident District should have made more effort to supervise the interdistrict placement and the provision of services by the educational assistants who routinely worked with this student. Therefore, the Department substantiates this allegation insofar as it relates to the Resident District’s failure to adequately monitor educational assistants by not responding in a timely and appropriate manner to the parent’s requests for additional oversight of the EA.

## **2. & 3. Formation, Implementation, and Revision of IEP for Math and Reading**

The parent alleges that the Resident District violated IDEA when it failed to include measureable annual goals designed to meet the student’s needs in mathematics and reading, to provide mathematics instruction in accordance with the student’s IEP, and to revise the student’s IEP goals in math and reading despite the student’s lack of progress in achieving annual goals in those areas. Although these allegations were listed separately in the Request for Response and investigated individually, the facts and rules at issue are analogous; therefore, they are discussed together in this section.

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives FAPE.<sup>13</sup> 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.”<sup>14</sup> An IEP must be in effect for each eligible child at the beginning of each school year.<sup>7</sup>

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.<sup>15</sup>

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<sup>13</sup> *Board of Educ. v. Rowley*, 458 U.S. 176,192 S.Ct. 3034 (1982).

<sup>14</sup> OAR 581-015-2220.

<sup>15</sup> OAR 581-015-2200 (1)(d).

In addition, school districts must identify appropriate special education and related services on each student's IEP<sup>16</sup> and provide them.<sup>17</sup> 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.<sup>18</sup>

In this situation, the parent alleges that the goals for math and reading are not measurable, that the District did not provide math instruction as outlined in the IEP, and that the District should have revised the math and reading goals when the student was not making progress in those domains.

The goals reflect state standards in math and reading, and address the student's needs as described in the PLAAFP. Therefore, the Department finds the parent's allegation that the District failed to include measurable annual goals designed to meet the student's needs in mathematics and reading is unsubstantiated.

Additionally, the evidence indicates that the student did get the amount of specially designed mathematics instruction stipulated on the IEP. The use of the term "work site" to indicate the self-contained classroom as the location where math services were provided may have caused some confusion for the parent. Despite this potentially misleading choice of words, the Department finds that services were provided as detailed in the IEP and that the allegation that the District failed to provide mathematics instruction in accordance with the student's IEP is unsubstantiated.

Although the December 2004 and June and August 2008 assessment results indicate that the student is learning at the rate expected for all students, the student's classroom performance is not reflective of these results. That is, the PLAAFP and Progress Reports, as well as interviews with parent and staff, indicate the student is not making sufficient progress toward reaching his goals as demonstrated through class assignments and tests. This scenario is not uncommon with students with disabilities. OAR 581-015-2200 (1)(b)(A) states that goals must be designed to "enable the child to be involved in and make progress in the general education curriculum." Therefore, the Department does substantiate the allegations that the District failed to revise the student's IEP goals in math and reading despite the student's lack of progress in achieving annual goals in those areas.

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<sup>16</sup> OAR 581-015-2200(1).

<sup>17</sup> OAR 581-015-2220.

<sup>18</sup> OAR 581-015-2220.

#### **4. Changes in Services**

The parent alleges that the Resident District violated IDEA when it failed to provide the student's parent with an opportunity to participate in meetings regarding changes to the student's IEP, to provide instruction in Adaptive P.E. and access to an educational assistant for 100% of the school day, and to provide the student's parent prior written notice concerning changes to the student's IEP and services provided under the IEP with regard to the student's access to an educational assistant and enrollment in an Adaptive PE course.

The legal principals at work here come from two different sections of the IDEA. First, under OAR 581-015-2190, school districts must provide parents the opportunity to fully participate in the identification, evaluation, and development of the IEP and determination of the educational placement to meet the student's needs. Districts do this by giving parents notice of meetings sufficiently in advance for the parents to arrange to attend, by letting the parent know the purpose, time, place and attendees invited to the meeting, and by informing parents that they may invite others to the meeting. A district must take steps to ensure that the parents understand what is happening at the meeting.

Here the parent alleges that because certain topics were not discussed at the meeting, the parent did not have the opportunity to fully participate. There are no copies of agendas or written notes from the meeting and no prior written notices. After almost ten months, those who attended the meeting cannot say for sure how much or what exactly was discussed. What is verifiable is that two items that were on the January 2007 IEP were not included on the January 2008 IEP, and one item from the 2007 IEP was changed considerably. However, these facts are insufficient to substantiate the parent's claim that she was denied a meaningful opportunity to participate in meetings regarding IEP modifications.

Because of the changes made to the 2008 IEP, the parent reasonably believed that, after January 17, 2008, the student did not receive Adaptive PE and that the student's access to an Educational Assistant was reduced by 30 percent. In fact, the student did attend some Adaptive PE classes after this IEP was written (although the investigation was unable to ascertain how much), and the student did have access to an educational assistant all throughout the school day. Nonetheless, the parent has failed to present any evidence to refute the IEP team members who stated that these issues were discussed at the January 2008 IEP meeting and that the mother was present at that meeting. Because the evidence indicates that changes reflected in the 2008 IEP were the result of a deliberative process that included all required members of the IEP team, the Department finds this allegation – that the District's apparent withdrawal of those service was a violation of IDEA – unsubstantiated.

The final part of this allegation is that the District did not provide Prior Written Notice of Special Education Action when it removed Adaptive PE and Occupational Therapy from the 2008 IEP and changed the student's daily access to the educational assistants.

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 FAPE to the student.<sup>19</sup>

Because the IEP, as written, indicated that three major services had been removed or changed from the student's IEP, the District erred when it did not provide the parent Prior Written Notices of Special Education Action. Therefore, the Department substantiates this allegation, insofar as it relates to the District's failure to provide prior written notices, and orders corrective action.<sup>20</sup>

## **5. Non-Academic Settings**

The parent alleges that the Resident District violated IDEA when it refused to allow the student the opportunity to participate in a school music program. Under OAR 581-015-2255, a District is obligated to insure that students with disabilities have opportunities to participate with nondisabled students in non-academic and extracurricular activities with such supplementary aids and services as the IEP team determines necessary to support the student in these activities.

Here, the parent asked very early in the year if the student could have an opportunity to participate in a band activity. This is a small middle school with limited ability to provide such non-academic activities. Understandably, scheduling to meet all of a student's needs is difficult in such a situation. However, team members did little to investigate how the student could participate in band and decided unilaterally that the student needed to stay in the classes in which the student was originally scheduled.

Students with disabilities need time and experiences with students without disabilities in order to have an opportunity to model and learn social skills. The student in this case has minimally developed social skills with peers but appears to have musical talent.<sup>21</sup>

The Department was unable to determine during the course this investigation whether or not the student would have been successful in the elective band course. However, the Department finds that the student was denied the opportunity to participate in the program with or without supplementary aids and services. Moreover, there is no evidence that the District adequately investigated whether or not the student could have participated in the band program despite the limitations posed by the student's disability. As a result, the Department finds this claim substantiated.

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<sup>19</sup> OAR 581-015-2310

<sup>20</sup> Although not addressed in an allegation considered in this order, the Department's investigation also found that the District failed to provide special education services consistent with the January 2008 IEP. Specifically, the District continued to provide instruction in Adaptive PE and 100% access to educational assistants despite removing or reducing those services in the January 2008 IEP.

<sup>21</sup> The parent noted, and others agreed, that while the student did not read music at the time, the student could play pieces "by ear." In other words the student could listen to a piece and reproduce it. The lack of music reading skills was another reason given why the student could not participate in band.

## **6. Lack of Accurate Progress Reports**

The parent alleges that the Resident District violated IDEA when it awarded the student above average grades in the student's classes in areas where the student was not making meaningful progress. At issue here is modification of curriculum, standards, and grades. In this allegation, the parent is not referring to the progress reporting that is mandated by OAR 581-015-2200(1)(c). Under that section, districts are required to include in the IEP a description of how and when the parent will receive reports on the progress the student is making on the IEP annual goals.

Here, the parent believed that the grades the student received on the trimester report card were given based on the standards used to measure the progress of non-disabled students at the school. When the parent compared the grades—most of which were "A"s or "Passes"—the parent could not reconcile the student's obvious lack of skills in some areas with the consistently high marks. A concrete example is that the student, although in 8<sup>th</sup> grade, was taking a seventh grade Science class and getting an "A".

The problem here is that the staff never provided the parent with the information that the curriculum, performance expectations, and grading standards were all being modified for this student. In one case, the teacher told the parent that the student was being graded on "what [the student] can do."

In combination with the information that the curriculum and grading standards were modified, it is clear to the Department that the progress being reported to the parent via the student's report cards was an accurate representation of the student's progress in the modified curriculum. Therefore, the Department does not substantiate this allegation.

## **7. IEP Content**

The parent alleges that the Resident District violated IDEA when it failed to include measurable annual goals for Social Emotional, Independent Living, and Behavior skills in the student's 2008 IEP and when it removed the Independent Living and Behavior skill sections from the student's 2008 IEP without an IEP team decision and prior written notice to the student's parents.

Similar to the issue of the reading and math goals, goals in the behavioral, social, and emotional skill development areas must be measurable. These goals often are written to help meet a student's needs that arise from the student's disability so that the student can participate in and make progress in the general education curriculum. In this case specifically, the student's autism spectrum disorder characteristics interfered with the student's ability to transition smoothly in the school setting, make and maintain appropriate peer relations, and participate in groups.

The goals as written are measurable, and the student was provided with coaching and other kinds of instruction to develop these skills. Again, the difficulty here appears to be that the team did not fully discuss with the parent the fact that the student had learned to transition from one setting to another in the school setting. It was thus appropriate for the team to discontinue this goal and to rewrite another that focused on a different social skill. The Department does not substantiate the parent's allegation that the District failed to provide measurable annual goals regarding Social Emotional, Independent Living, and Behavior skills. However, the Department does substantiate the allegation that, prior to implementing the changes to those skill sections of the IEP, the District should have provided prior written notice of the changes to the parent.

## **8. IEP Formation**

The parent alleges that the Resident District violated IDEA with regard to the August 28, 2008 IEP meeting when it failed to provide the student's parent with a written notice of the meeting sufficiently in advance to ensure an opportunity to one or both of the parents to attend; when it failed to notify the student's parent of the purpose, time, location, and attendees of a scheduled IEP meeting; and finally, when it did not invite, at the parent's request, a member of the Oregon Connections Academy ("ORCA"), the school in which the student was enrolled, to the student's IEP meeting.

Here, the District sent two notices to the parent well in advance about an IEP meeting scheduled for August 25, 2008. Unfortunately, when the meeting date was changed to the 28<sup>th</sup> of August, the District neglected to send another written notice. However, because the parent and a representative of the ORCA were in attendance at the August 28th meeting, the Department finds the parent's claim unsubstantiated to the extent that she alleged that she had insufficient notice of the meeting. Furthermore, there is no evidence suggesting that the parent was denied an opportunity to meaningfully participate in that meeting.

The Department also does not substantiate the parent's claim that the District violated IDEA when it failed to invite, at the parent's request, a staff member from ORCA. OAR 581-015-2210(1) describes the required members of an IEP team. According to that rule, the District is responsible for ensuring the participation of those required members in IEP team decisions. The Department finds that the individual whose attendance the parent requested was not a required member of the IEP team.<sup>22</sup> Therefore, the parent had the right to invite the ORCA staff member, but the District was not required to do so. Because the District was not obligated to invite the ORCA employee, the Department does not substantiate this allegation.

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<sup>22</sup> Each IEP team must have at least one regular education teacher if the student is, or may be, participating in regular education. OAR 581-015-2210(c). Had it been appropriate to do so in the situation, the District could have invited an ORCA regular education teacher to participate in the meeting.

## CORRECTIVE ACTION<sup>23</sup>

*In the Matter of Fern Ridge School District 28J*  
Case No. 08-054-033

#	Action Required	Submissions <sup>24</sup>	Due Date
(1)	<p><u>Training:</u></p> <p>The District will provide training to appropriate special education staff, case managers, and administrators concerning:</p> <p>a. the review and revision of the IEP<sup>25</sup> to address any lack of expected progress toward the annual goals and the results of any reevaluation;</p> <p>b. the provision of prior written notice;<sup>26</sup> and</p> <p>c. the steps the district takes to afford children with disabilities an equal opportunity for participation in nonacademic and extracurricular activities.<sup>27</sup></p>	<p>Evidence of completed training, including:</p> <p>1. Agenda including date, time, and location;</p> <p>2. Copy of presentation materials and presenter(s); and</p> <p>3. Attendance roster with printed names, positions, and signatures of those attending.</p>	<b>December 19, 2008</b>
(2)	<p><u>Review and Revision of IEP</u></p> <p>The IEP team, including the parent, will review and consider revision of the IEP, including specially designed instruction in reading, mathematics, and nonacademic services.<sup>28</sup></p>	<p>A. The District shall submit to the Department and copy to the parent, a copy of the meeting notice, meeting notes or</p>	<b>November 24, 2008</b>

<sup>23</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>24</sup> Initial Verification: The Department will review the submitted documents. Corrective action 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) 947-5752, Ext. 2311; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156

<sup>25</sup> §300.324 Development, review, and revision of IEP; OAR 581-015-2200 Content of IEP and OAR 581-015-2225 Review and Revision of IEPs

<sup>26</sup> §300.503 Prior written notice; OAR 581-015-2310 Prior Written Notice

<sup>27</sup> §300.107 Nonacademic services; OAR 581-015-2070 Nonacademic Services

<sup>28</sup> If the IEP review is not an annual review "...the parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to makes these changes, and instead may develop a written document to amend or modify the child's current IEP." OAR 581-015-2225

		<p>minutes if any, and a complete copy of the IEP and any prior written notices resulting from the meeting; <b>or</b></p> <p>B. If the District and parent agree to revise the IEP without a full IEP team meeting, submit to the Department and copy to the parent, a copy of the written agreement to amend or modify the IEP without an IEP Team meeting, a full copy of the resulting IEP with any amendments or modifications incorporated.</p>	
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Dated: October 28, 2008

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

Mailing Date: October 28, 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.

