

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School
District 24J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 08-054-034

I. BACKGROUND

On September 5, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Salem-Keizer School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2007).

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint, unless exceptional circumstances require an extension.¹ On September 15, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On September 29, 2008, the District timely submitted its *Response* to the allegations and sent the parent a copy. The parent did not reply to the District's *Response*.

The Department's complaint investigator reviewed the information submitted by the District and determined that on-site interviews were needed. On October 24, 2008 (a date delayed until after the student's October 23, 2008 IEP meeting at the District's request), the investigator conducted on-site interviews with the District's staff, including a school counselor, a regular education teacher, a special education teacher, a special education program assistant, and the special education coordinator. The investigator provided the parent an opportunity to meet with the investigator to further discuss the complaint but the parent did not respond. The Department's investigator reviewed and considered all of the documents and interviews.

II. ALLEGATIONS AND CONCLUSIONS

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

¹ OAR 581-015-2030 (12); 34 CFR §300.151-153.

No.	Allegations	Conclusions
I.	<p data-bbox="289 258 654 323"><u>Parental Participation:</u> (May 20, 2008 IEP meeting)</p> <ul style="list-style-type: none"> <li data-bbox="305 394 870 520">a. Not allowing the parent to communicate with an IEP team member through written communication (handwritten notes) <li data-bbox="305 527 821 621">b. Responding to parental written communication without allowing IEP team members to participate <li data-bbox="305 627 846 758">c. Not responding to pre-meeting written communication from the parent requested to be discussed at the meeting. 	<p data-bbox="894 323 1130 354">Not Substantiated</p> <p data-bbox="894 394 1409 1157">a., b., & c. In this case the Department finds that the District did not refuse to allow the parent to communicate through handwritten questions during the May 20, 2008 IEP meeting. The primary reason for the May 14, 2008, May 20, 2008, and June 11, 2008 IEP meetings was to address questions and concerns raised by the parent. The District staff member leading the IEP meeting on May 20, 2008 did indeed attempt to address the parent's written questions during that meeting. To the extent that all of the parent's questions were not addressed at the May 20, 2008 meeting, they were addressed at the June 11, 2008 IEP meeting. Because the parent's concerns were all addressed over the course of the three meetings, the Department does not substantiate the parent's allegations concerning parental participation at the May 20, 2008 IEP meeting.</p>
II.	<p data-bbox="289 1218 654 1283"><u>IEP Team Composition:</u> (May 20, 2008 IEP meeting)</p> <p data-bbox="289 1352 865 1482">Not having a properly constituted IEP team, including a general education teacher, and not having written consent from the parent excusing the member.</p>	<p data-bbox="894 1283 1076 1314">Substantiated</p> <p data-bbox="894 1352 1419 1881">The issue is whether any of the student's regular education teachers attended the May 20, 2008 IEP meeting, and it is clear from reviewing the meeting minutes from the May 20, 2008 IEP meeting that none of the student's regular education teachers attended the meeting. The Department substantiates the allegation that the written consent of the parent was not obtained concerning the failure of any of the student's regular education teachers to attend the May 20, 2008 IEP meeting. Because no changes were made to the student's IEP at the May 20, 2008 IEP meeting and because no</p>

No.	Allegations	Conclusions
		<p>services were refused by the District, the Department finds that staff training is sufficient to remedy this violation. <i>See Corrective Action Plan.</i></p>
III.	<p><u>IEP Design/Content:</u></p> <ol style="list-style-type: none"> <li data-bbox="337 548 854 674">1. Not including a current present level of academic achievement and functional performance (PLAAFP) statement in the student's IEP <li data-bbox="337 951 813 1014">2. Not including measurable annual goals in the student's IEP <li data-bbox="337 1352 865 1415">3. Not appropriately considering extended school year (ESY) services 	<p>Not Substantiated</p> <ol style="list-style-type: none"> <li data-bbox="898 548 1419 842">1. The Department finds that the PLAAFP statement in the student's October 25, 2007 IEP is based on current academic information and is based upon the most recent evaluations of the student, reported on May 29, 2007. The Department does not substantiate the allegation that the PLAAFP is not current. <p>Substantiated</p> <ol style="list-style-type: none"> <li data-bbox="898 951 1382 1245">2. The Department finds that three of the four goals (the behavioral, study skills, and written language) are not measurable as required by OAR 581-015-2200(3). The Department thus substantiates the parent's allegation concerning the measurability of these three goals. <i>See Corrective Action Plan.</i> <p>Not Substantiated</p> <ol style="list-style-type: none"> <li data-bbox="898 1352 1419 1881">3. The Department finds that the District appropriately considered the absence of regression by the student at the October 25, 2007 IEP meeting in deciding not to provide ESY services at that time. At the student's June 11, 2008 IEP meeting, when the parent's attorney asked if ESY should be looked at for the student, the District appropriately considered the student's significant attendance problem and the fact that the student had recently improved his attendance, resulting in academic improvement. The Department does not substantiate the allegation that the District failed to

No.	Allegations	Conclusions
	<p>4. Not including an annual goal for study skills although such a goal was necessary to meet the student's needs resulting from the student's disability and enable the child to be involved in and make progress in the general education curriculum.</p> <p>5. Not adequately describing the student's use of and access to computers to meet the student's needs resulting from the student's disability and enable the child to be involved in and make progress in the general education curriculum</p> <p>6. Not including specially designed instruction, including the provision of counseling services, to address the student's behaviors.</p>	<p>appropriately consider ESY.</p> <p>Not Substantiated</p> <p>4. As discussed above, the October 25, 2007 IEP clearly includes a study skills goal, and this goal is the only goal deemed sufficiently measurable in the discussion above. The Department does not substantiate this allegation.</p> <p>Not Substantiated</p> <p>5. The Department finds that, although the student's IEP provides for minimal use of a computer for essays as an accommodation, the District's policy that all students may use computers as part of the general education curriculum for writing essays addresses the concern of the parent (as expressed in the written complaint) that the student's use of computers for essays not be limited to 30 minutes per year. The Department does not substantiate the allegation that the student's use of computers, as an IEP accommodation or supplementary aid, is not adequately described.</p> <p>Not Substantiated</p> <p>6. The Department finds that the student's IEP does include specially designed instruction in the behavioral area. Concerning the provision of counseling, the student and all students at his school are offered counseling services, and this student has received counseling from his assigned counselor as well as from a counselor to whom the school's counselor referred the student. The Department does not substantiate the allegation that the student's IEP does not include specially designed instruction concerning behavior, nor does the Department sustain the allegation that the District</p>

No.	Allegations	Conclusions
		should provide for counseling in the student's IEP.
IV.	<p><u>IEP Implementation:</u></p> <p>a. Not implementing the Modifications/Supplementary Aid of a planner/organizer</p> <p>b. Providing counseling services without obtaining parental informed consent and not including counseling services in the IEP.</p>	<p>Not Substantiated</p> <p>a. Concerning the use of a planner/organizer, the Department finds that the District did implement this provision of the IEP. The Department does not substantiate the allegation that the District failed to implement the use of a planner/organizer.</p> <p>Not Substantiated</p> <p>b. Concerning the provision of counseling services, the Department finds that the District is not required to obtain consent before making a counselor available to all students as part of the general educational program, including the student in this case. The Department also finds that the District did not need to include counseling services in the IEP before making counseling available to the student.</p>
V.	<p><u>Evaluation:</u></p> <p>In June of 2008, conducting an evaluation of the student without obtaining informed consent from the parent.</p>	<p>Not substantiated</p> <p>The Department finds that the District did not conduct an evaluation. Rather, the school counselor met with the student in his capacity as a counselor, and a counselor at a crisis center also met with the student in the same capacity. The Department does not substantiate the allegation that the District conducted an evaluation.</p>

III. FINDINGS OF FACT

Background

1. The student is presently sixteen years and is in the tenth grade at a District high school, where he also attended the ninth grade. The student is eligible for special education under the classifications: Other Health Impaired (OHI) and Emotional Disturbance (ED).
2. The student's October 25, 2007 IEP, the Nonparticipation Justification statement provides that the extent of the removal is "2 of 7" class periods and explains that the student "receives support for his IEP goals in a self-contained setting; served in a resource room environment for 21-60% of the student's instructional day." This IEP also provides specially designed instruction in the following areas: (a) "Behavioral," 30 minutes each day; (b) "Study Skills," 30 minutes each day; (c) "Reading," 20 minutes each day; and, (d) "Written Language," 20 minutes each day. All of the foregoing are provided in "EGC/Reg. Ed" (EGC is the "Emotional Growth Center"). The IEP also provides the following Supplementary Aids/Services; Modifications; Accommodations: (a) "Use of computer for essays," 30 minutes per year; (b) "Extended time on assignments-prearranged," 60 minutes each year; and, (c) "Use of planner/organizer", 30 minutes per month. Again, all of the foregoing are provided in "EGC/Reg. Ed." The IEP also provides for supports for school personnel in the areas of "behavior support plan," "Assist with classwork," and "consult with Reg. Ed. Teacher." The student's October 24, 2007 IEP also includes annual goals in the following areas: "Behavioral," "Study Skills," "Written Language," and "Reading." The student's placement is stated "Regular class with 21-60% resource room (or special class)."
3. During the first semester of the ninth grade, the student attended one period of "Social Skill" and one period of "Study Skills." During the second semester of ninth grade, the student attended one period of "Social Skill" and one period of "Academic Support."

I. Parental Participation (May 20, 2008 IEP meeting)

4. The student's annual review IEP meeting took place on October 25, 2007, and the student's current IEP at the time of the filing of the complaint in this matter is dated October 25, 2007. The IEP team met on May 14, 2008 because the parent had several questions concerning the student's IEP and wanted to review the student's progress and grades. During the May 14, 2008 meeting the team discussed several of the parent's questions and concerns. Because of the length of the meeting, the District scheduled another team meeting for May 20, 2008. Just before the beginning of the May 20, 2008 IEP meeting, the parent provided a list of ten questions to an IEP team member (the member who led the meeting). This team member did not make copies of the list of questions for the other IEP team members but did begin to address the questions once the meeting began. Due to the ebb and flow of the discussion during the meeting, not all of the parent's questions were fully discussed. Additionally, some of the questions could not be conclusively answered without checking student records not present at the IEP meeting (e.g. whether the student was suspended or expelled at his previous school?). Team members other than the person leading the meeting were fully aware that the parent had provided a list of questions, and much of the discussion during the May 20, 2008 meeting concerned those questions. The District scheduled and held another IEP meeting on June 11, 2008, in part, to complete the discussion of the parent's written (and some non-written) questions.

II. IEP Team Composition (May 20, 2008 IEP meeting)

5. At the outset of the May 20, 2008 meeting (a continuation of the May 14, 2008 meeting), after the District staff member leading the meeting provided academic information in writing from two of the student's regular education teachers, the parent expressed concerns that these teachers were not present. District staff offered to reschedule the meeting to allow those teachers to be present, but the parent decided to proceed with the meeting. Review of the meeting minutes from the May 20, 2008 IEP meeting reveals that no regular education teacher attended the meeting.

III. IEP Design/Content

6. The student's October 24, 2007 IEP contains a Present Level of Academic Achievement and Functional Performance (PLAAFP) statement. This PLAAFP is based on the most current evaluation information available to District staff. An evaluation of the student occurred on May 29, 2007, when the student was in eighth grade. The student's three-year re-evaluation is due May 29, 2010.
7. The student's October 25, 2007 IEP contains annual goals in four areas:
 - a.) "Behavioral" – The goal states that the student "will comply with school and classroom procedures and expectations as required, for successful academic and behavioral outcomes."
 - b.) "Study Skills" – The goal states, "Given specialized instruction and opportunity to practice, [the student] will meet the following objectives:
 1. Concentrate and finish assignments in the time given during class.
 2. Utilize organizational techniques for tracking and completing work in timely manner.
 3. Turn in homework and complete assignments.
 4. Advocate for self to get missed assignments from teachers."
 - c.) "Written Language" – The goal states that the student "will communicate supported ideas across the subject areas, including relevant examples, facts, anecdotes, and details appropriate to the audience and purpose that that engage reader interest."
 - d.) "Reading" – The goal states that the student "will demonstrate literal comprehension of a variety of reading material by answering of questions during and after reading."

The criteria for measuring the student's progress toward all of the foregoing goals is identified as "with 80% accuracy," and the evaluation procedures for all of the goals states "observation with data". The District provided progress reports on all of the goals, but these progress reports uniformly, for each reporting period, state only, "Progressing toward goal/objective" for all of the student's goals. During the on-site investigation, the District was unable to provide underlying data concerning monitoring and reporting on the student's progress.

8. During the October 25, 2007 IEP meeting, the team generally reviewed the student's service summary, including Extended School Year (ESY) services. Nothing in the student's

PLAAFP indicated a need for ESY services, and the parent did not request ESY at that time. The ESY issue arose at a team meeting on June 11, 2008, when the parent's attorney asked whether the team should look at ESY. District staff responded that the team had considered eligibility for ESY previously and that the student did not qualify because he was not showing regression. District staff also noted that the student's attendance had been a significant problem during the school year but had improved recently and that the student does better the more he is at school, so the student's attendance impacts his academic progress.

9. The student's October 25, 2007 IEP includes a study skills goal, as noted in paragraph 7 of this section.
10. The student's October 25, 2007 IEP includes, in the Supplementary Aids/Services; Modifications; Accommodations field in the Service Summary: "Use of computer for essays," 30 minutes per year. During the on-site investigation, District staff confirmed that computers are available in the "freshman room" for the student (and all students) when writing essays. The student's ninth-grade English teacher confirmed that the student had used a computer for English assignments on several occasions.
11. The student's October 25, 2007 IEP includes specially designed instruction of "Behavioral" for 30 minutes each day provided in "EGC/Reg. Ed". Based on the parent's written complaint, it appears the parent is concerned with the absence of specially designed instruction and counseling services to address the student's "'depressed affect', his acting out behaviors, his inability to stay focused and concentrate, and his statement on his IEP's Personal Profile page that he dreams of being 'under a pile of dirt – six feet down.'" The student's behavior, as related to the PLAAFP statement in his IEP, is addressed in the specially designed instruction and in the annual goal relating to behavioral issues. The student's October 25, 2007 IEP also includes a detailed "Behavior Support Plan." The District offers counseling services to all students and assigned a particular counselor to the student at the beginning of ninth grade; this counselor remains available to the student. The student has consulted with the counselor on several occasions during ninth grade.

IV. IEP Implementation

12. All students at the student's high school are given an opportunity to use a planner. The student's IEP provides, in the "Supplementary Aids/Services; Modifications; Accommodations" section, for the "Use of planner/organizer" 30 minutes each month in the "EGC/Reg. Ed". The District provided training to the student on the use of a "planner/organizer" in the EGC classroom (for use in all of his special and regular classrooms). However, the student said that he did not want to use a planner/organizer. The District then explored other options, including the use of assignment tracking sheets/folders kept and used in the student's regular education classes, such as English and Math.
13. Following a safety-related campus concern at the end of September 2007, the student asked to talk to his counselor. At the student's October 25, 2007 IEP meeting, the counselor, an IEP team member, discussed that the student had been meeting with a staff member at a crisis center and had been meeting with the student's high school counselor also.

V. Evaluation

14. The District did not conduct an evaluation of the student in June 2008. The student did counsel with a staff member of a crisis center, as noted in paragraph 13 of this section.

IV. DISCUSSION

I. Parental Participation (May 20, 2008 IEP meeting)

The parent alleges that she was not allowed to communicate through written communication (handwritten notes), that the District failed to allow IEP team members to participate in discussing the parent's written questions, and that the District failed to respond to the parent's written questions.

Parental participation in the IEP process, including the parent's ability to invite additional IEP team members, is an important component of the IDEA. OAR 581-015-2211(1)(g)(A) requires school districts to ensure that the IEP team includes individuals with "knowledge or special expertise regarding the child" who are invited by the parent. As team members, such individuals must be allowed an opportunity to participate in IEP team decision making. However, in this case the Department finds that the District did not refuse to allow the parent to communicate with the parent's invited team member through handwritten notes during the May 20, 2008 IEP meeting.

With regard to the parent's allegations that the District unduly limited the IEP meeting discussion and failed to respond to the parent's written requests, OAR 581-015-2190 provides, in part:

"Parent Participation - General

(1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child."

The primary reason for the May 14, 2008, May 20, 2008, and June 11, 2008 IEP meetings was to address questions and concerns raised by the parent. The District staff member leading the IEP meeting on May 20, 2008 did attempt to address the parent's written questions during that meeting. To the extent that all of the parent's questions were not addressed at the May 20, 2008 meeting, they were addressed at the June 11, 2008 IEP meeting. The Department does not substantiate the parent's allegations concerning parental participation at the May 20, 2008 IEP meeting.

II. IEP Team Composition (May 20, 2008 IEP meeting)

The parent alleges that the District failed to provide a properly constituted IEP team at the May 20, 2008 IEP meeting. Specifically, the parent alleges that no regular education teacher was present and that the parent did not consent in writing to the absence of a regular education teacher.

OAR 581-015-2211 provides, in part:

"IEP Team

(1) School districts must ensure that the IEP Team for each child with a disability includes the following participants:

(c) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, consistent with section (4) of this rule;

(3) IEP team attendance:

(a) A member of the IEP team described in subsection (1)(c) through (1)(f) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(b) A member of the IEP team described in subsection (1)(c) through (1)(f) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

(A) The parent and school district consent in writing to the excusal; and

(B) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

(4) The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:

(a) Supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and

(b) Appropriate positive behavioral interventions and supports, and other strategies for the child."

In this case, it is clear that the parent verbally agreed to allow the May 20, 2008 IEP meeting to go forward without the presence of two members of the team, particular regular education teachers from whom written academic information had been provided for the meeting. However, under the foregoing regulation, that is not the issue. The issue is whether any of the student's regular education teachers attended the May 20, 2008 IEP meeting, and it is clear from reviewing the meeting minutes from the May 20, 2008 IEP meeting that none of the student's regular education teachers attended that meeting. The Department substantiates the allegation that the written consent of the parent was not obtained concerning the failure of any of the student's regular education teachers to attend the May 20, 2008 IEP meeting. Because no changes were made to the student's IEP at the May 20, 2008 IEP meeting and because no services were refused by the District, the Department finds that staff training is sufficient to remedy this violation. See *Corrective Action Plan*.

III. IEP Design/Content

The parent alleges that the student's current IEP (dated October 25, 2007) is deficient in several respects:

1. Current PLAAFP

First, the parent alleges that the IEP does not include a current PLAAFP statement. OAR 581-015-2200(1)(a) states that an IEP must include a statement of the student's "present level of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum." The Department finds that the PLAAFP statement in the student's October 25, 2007 IEP is based on current academic information and is based upon the most recent evaluations of the student, reported on May 29, 2007. The Department does not substantiate the allegation that the PLAAFP is not current.

2. Measurability of annual goals

The parent next alleges that the annual goals in the student's IEP are not measurable.

OAR 581-015-2200 provides, in part:

"Content of IEP

(1) The individualized education program (IEP) must include:

(b) A statement of measurable annual goals, including academic and functional goals...designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability.

(c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided[.]"

The Department has reviewed the four annual goals included in the student's October 25, 2007 IEP. The Department first concludes that the goals are related to the student's PLAAFP statement in that the goals address the areas of behavior, study skills, written language, and reading. However, the Department also concludes that the goals in the behavioral, written language and reading areas are defined in such broad terms that they simply are not measurable.

For example, the behavioral goal states only that the student will "comply with school and classroom procedures and expectations as required, for successful academic and behavioral outcomes." The criterion for this goal is "with 80% accuracy" and the evaluation procedures are "observation with data." It is not clear from reviewing this goal precisely what it means. It appears to suggest that the student must meet classroom

expectations sufficiently to allow success academically and behaviorally. It is not clear how this would be measured. Although the amount of progress (“with 80% accuracy”) is included, it is not clear over what time period of the school year it is anticipated the student will so progress as required by the regulation.

The student’s written language goal is slightly more precise but is still too broad to be a reliable indicator of progress towards the goal. This goal is that the student will “communicate supported ideas across the subject areas, including relevant examples, facts, anecdotes, and details appropriate to the audience and purpose that engage reader interest.” It is not clear from reading this goal precisely what context the communication of supported ideas is to occur. Additionally, the lack of specificity in this goal results in an inability to reliably measure the student’s progress towards the goal.

The student’s reading goal indicates that the student “will demonstrate literal comprehension of a variety of reading material by answering of questions during and after reading.” This goal is a bit more precise than the previous goal discussed. However, this goal also suffers from a failure to provide meaningful criteria for the District to measure how the student in progressing.

The final, study skills goal is different than the other three goals discussed, in that it consists only of relatively specific objectives. However, the objectives are more susceptible to measurement because the objectives concern clearly identified tasks that the PLAAFP indicates the student required support with, such as finishing assignments during class and turning in homework.

The Department finds that three of the four goals (behavioral, study skills, and written language) are not measurable as required by OAR 581-015-2200(3). The Department thus substantiates the parent’s allegation concerning the measurability of these three goals.

The Department also notes that the progress reports provided for all of the student’s goals are particularly unhelpful; they uniformly report only that the student is “progressing toward goal/objective.” The Department suspects that the progress was so reported precisely because the goals are not sufficiently measurable.

The Department understands that the student’s annual review IEP meeting took place on October 23, 2008 and that the goals are in the process of being modified. Therefore, the appropriate remedy in this case is for the District to review the student’s current goals (whether in a new IEP or in the October 25, 2007 IEP) and re-write any goals that are not measurable to ensure that the new goals conform to the requirements of IDEA. *See Corrective Action Plan.*

3. ESY services

The parent alleges that the District did not appropriately consider ESY services.

The Department finds that the District considered the issue of ESY services at the student’s October 25, 2007 IEP meeting and again (following the parent’s specific raising of the issue) at the student’s June 11, 2008 IEP meeting. The Department finds that the District appropriately considered the absence of regression by the student at the October 25, 2007 IEP meeting in deciding not to provide ESY services at that time. The parent did not request ESY services at the October 25, 2007 IEP meeting. At the student’s June 11, 2008 IEP meeting, when the parent’s attorney asked if ESY should be looked at for the student, the District appropriately considered the student’s significant attendance problem and the fact that the student had recently improved his attendance, resulting in academic improvement. The Department does not substantiate the allegation that the District failed to appropriately consider ESY.

4. Study skills goal

The parent alleges that the student's October 25, 2007 IEP does not include an annual goal for study skills. However, as discussed above, the October 25, 2007 IEP clearly includes a study skills goal, and this goal is the only goal deemed sufficiently measurable in the discussion above. The Department does not substantiate this allegation.

5. Use of and access to computers

The parent alleges that the student's October 25, 2007 IEP does not accurately describe the student's use of and access to computers.

The Department finds that although the student's IEP provides for minimal use of a computer for essays as an accommodation, the District's policy that all students, as part of the general education curriculum, may use computers for writing essays addresses the concern of the parent (as expressed in the written complaint) that the student's use of computers for essays not be limited to 30 minutes per year. The Department does not substantiate the allegation that the student's use of computers, as an IEP accommodation or supplementary aid, is not adequately described.

6. Behaviors and counseling

The parent alleges that the student's October 25, 2007 IEP does not include specially designed instruction to address the student's behaviors, including the provision of counseling services. The Department finds that the student's IEP does include specially designed instruction in the behavioral area. Specifically, the IEP provides for 30 minutes per day of specially designed instruction in the Behavioral domain.

Concerning the provision of counseling services, the student and all students at his school was offered counseling services through the general education program, and the student received counseling from his assigned counselor as well as from a counselor to whom the school's counselor referred the student. The Department does not substantiate the allegation that the student's IEP does not include specially designed instruction concerning behavior, nor does the Department substantiate the allegation that the District should provide counseling in the student's IEP.

IV. IEP Implementation

The parent alleges that the District did not implement the use of a planner/organizer. The parent also alleges that the District provided counseling services without obtaining parental informed consent and without including counseling in the IEP.

Concerning the use of a planner/organizer, the Department finds that the District did implement this provision of the IEP. First, the student received training in the use of a planner/organizer that he would take to all of his classes. Although the student refuses to use a planner/organizer, the District provided methods of tracking the student's assignments in the student's general education classes. This is adequate implementation of the IEP provision concerning the use of a planner/organizer. The Department does not substantiate the allegation that the District failed to implement the use of a planner/organizer.

Concerning the provision of counseling services, the Department finds that the District is not required to obtain consent before making a counselor available to all students, including the

student in this case. The Department also finds that the District did not need to include counseling services in the IEP before making counseling available to the student.

V. Evaluation

The parent alleges that in June of 2008 the District conducted an evaluation of the student without obtaining informed consent from the parent.

The Department finds that the District did not conduct an evaluation as defined in OAR 581-015-2105. Rather, the school counselor met with the student in his capacity as a counselor, and a counselor at a crisis center also met with the student in the same capacity. The Department does not substantiate the allegation that the District conducted an evaluation without parental consent.

V. CORRECTIVE ACTION²

In the Matter of Salem-Keizer SD 24J
Case No. 08-054-034

#	Action Required	Submissions ³	Due Date
(1)	<p><u>Training:</u> The District will provide information and training to appropriate staff, including regular education teachers, who may participate in IEP meetings regarding IEP Team attendance requirements and developing annual goals. At a minimum, the training and information will address:</p> <ul style="list-style-type: none"> a. How and when a required member may be excused from the IEP team meeting; b. When a written consent for excusal of a team member is required; c. When a team member may be required to provide written input into the development of the IEP; d. The use of the written agreement form; and e. Developing measurable annual goals. 	For Department review, a copy of the agenda, training materials, when presented, and an attendance roster must be provided to the Department.	November 28, 2008

² 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).

³ 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; fax number (503) 378-5156

(2)	The IEP team, including the parent, will review and, if necessary, revise the student's most recent IEP ⁴ to ensure that goals are measurable.	For Department review, a copy of the measurable annual goals as they appear in the current IEP.	November 28, 2008
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Dated: October 30, 2008

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

Mailing Date: October 30, 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.

⁴ The student's IEP team met to review and revise the student's annual IEP on October 24, 2008.