

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Reynolds School  
District 7

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 08-054-038

**I. BACKGROUND**

On October 28, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the Reynolds School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030.

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.<sup>1</sup> On November 7, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On November 19, 2008, the District timely submitted a narrative *Response* to the allegations and sent the parents a copy. On November 21, 2008, the District provided to the Department and the parents, by e-mail, the documents requested by the Department in the *Request for Response*. On November 29, 2008, the parents provided a written *Reply* to the District's *Response*.

The Department's complaint investigator reviewed the information submitted by the District and the parents and determined that on-site interviews were needed. On December 8 and 9, 2008, the investigator conducted on-site interviews with the District's staff, including two school psychologists (one of whom is also the District's placement coordinator), an autism specialist, three regular education teachers, an assistive technology technician, two speech language pathologists (SLPs), and a school counselor. The investigator also met with one of the parents on the afternoon of December 8, 2008. 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).

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

No.	Allegations	Conclusions
(1)	<p><u>IEP Implementation:</u></p> <p>The parents allege that the District has failed to implement the student's current IEP, resulting in a denial of FAPE. Specifically, the parents allege:</p> <p>a. that the District is not providing the Specially Designed Instruction and "Supplementary Aids/Services; Modifications; Accommodations" provided in the IEP. The parents allege that the Supplementary Aids/Services; Modifications; Accommodations on the IEP were "not available or not in use." The parents also allege that the District is not providing the "Supports for Personnel" provided in the IEP.</p> <p>b. that the District failed to adequately plan for the student's transition from elementary school to middle school, resulting in failure to implement the student's IEP. The parents also allege that the failure to implement the student's IEP may be related to the District's failure to assign a case manager to oversee implementation of the student's IEP or the failure to distribute the student's IEP to appropriate District staff.</p>	<p>Not Substantiated</p> <p>a. The Department finds that the District has adequately implemented the required SDI in Communication Skills and Study/Organizational Skills; therefore, the Department does not substantiate the parents' allegations regarding the District's failure to provide SDI or supplementary aids and services in the student's primary regular education class. Additionally, the Department does not substantiate the allegation of failure to provide Supports for School Personnel in OT care coordination.</p> <p>Substantiated, in part.</p> <p>b. The Department finds that the District, as part of implementing the student's IEP, adequately planned for the student's transition to middle school. The Department also finds that the District assigned a case manager for the student no later than the second week of the school year and that this did not impact implementation of the student's IEP in the student's primary regular education classroom. Therefore, the</p>

No.	Allegations	Conclusions
		<p>Department does not substantiate the allegation that the District failed to implement the student's IEP in the primary regular education classroom based on its alleged failure to assign a case manager or the alleged failure to provide access to the IEP.</p> <p>Concerning implementation of the student's IEP in band class, the Department finds that the student's band teacher was not aware of the content of the student's IEP until the on-site investigation. Therefore, the Department substantiates the allegations that the District failed to implement the student's IEP in the student's band class, a regular education classroom. The appropriate remedy for this violation will be discussed below, in the discussion concerning the failure to provide FAPE.</p>
(2)	<p><u>IEP Meeting Delay:</u></p> <p>The parents allege that the District has failed to have an IEP meeting despite the parents' October 13, 2008 written request for an IEP meeting.</p>	<p>Not Substantiated</p> <p>The Department finds that the District took reasonable efforts to accommodate a number of competing priorities when scheduling the parents' requested IEP meeting. The Department does not substantiate the allegation that the District unreasonably delayed the IEP meeting upon receipt of a written request for an IEP meeting from the parents.</p>
(3)	<p><u>IEP Team Participants:</u></p>	<p>Not Substantiated</p>

No.	Allegations	Conclusions
	<p>The parents allege that the District has refused to require attendance of a particular regular education teacher at the student's upcoming IEP meeting despite a written request by the parents on October 13, 2008 that this teacher attend the IEP meeting to discuss the student's lack of progress in this particular regular education class.</p>	<p>The band teacher was unable to attend the November 19, 2008 meeting. The band teacher attended the continued IEP meeting on December 1, 2008. Therefore, the Department does not substantiate the allegation that the District refused to require the attendance of a particular regular education teacher at an IEP meeting.</p>
(4)	<p><u>Failure to Provide FAPE:</u></p> <p>The parents allege that the District denied the student an opportunity to advance in a particular regular education class (band) based on the student's lack of progress when the lack of progress is due to the District's failure to provide the education and services provided in the student's IEP.</p>	<p>Substantiated</p> <p>The Department substantiates the allegation that the District failed to provide FAPE by failing to implement the student's IEP in one regular education class. See <i>Corrective Action Plan</i>.</p>

### III. FINDINGS OF FACT

#### Background:

1. The student is presently eleven years old and is in the sixth grade at a District middle school. The student is eligible for special education under communication disorder (CD) and autism spectrum disorder (ASD); the student's initial eligibility under ASD was established on December 4, 2006.
2. The student's April 14, 2008 IEP,<sup>2</sup> completed during the 2007-2008 school year, provides a placement of "Regular classroom with pull out 240 mins per month for speech." This IEP also provides for Specially Designed Instruction (SDI) and includes: (1) "Social Skills" for "180 min – per Month" to be provided in the "SPED Classroom" by the "LEA – SLP;" (2) "Communication Skills" for "60 min – per Month" to be provided "School Wide" by the "LEA – SLP;" and (3)

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<sup>2</sup> A new IEP, finalized on December 8, 2008, is now in effect. Unless otherwise stated, all references are to the student's April 14, 2008 IEP.

“Study/Organizational Skills” for “54 min – per Day” to be provided “School Wide” by the “LEA.” During the on-site investigation, the SLP stated that the communication Skills SDI is to address the student’s articulation goal in his IEP. The student is very high functioning and, as reflected in the student’s report cards and Present Levels of Academic Achievement and Functional Performance (PLAAFP), is at grade level academically. Indeed, except for band, the student is passing all of his classes, receiving six A’s and one B. The student’s disability results in challenges in the areas of “Language/Social Language,” “Social Communication/Pragmatics,” and “Organization” or, in other words, “impairments in communication and social interaction” and “difficulties in the areas of organization, problem solving, pragmatics (social language), and communication.” The PLAAFP also references the student’s “processing speed” which “makes it difficult for [the student] to complete work in a timely manner.”

3. The student’s IEP also provides the following Supplementary Aids/Services; Modifications; Accommodations,” all of which are to be provided in the “Gen Ed Classroom” by the “LEA”: (1) “Adult support for organizational strategies” for “90 minutes per week” to be provided in the “Gen Ed Classroom,” (2) Home School Communication Notebook” for “30 minutes per week,” (3) ”End of day check in with adult” for “5 minutes per day,” (4) “Visual schedule/organizers” for “30 minutes per day,” (5) “Visual strategies for work completion” for “60 mins per week,” (6) “Short, repeated directions” for “30 mins per day,” (7) “Samples of finished products” for “30 mins per week,” (8) Long term planning/break down assignments” for “60 minutes per month,” (9) “Preferential Seating” for “60 minutes per day,” (10) “Teaching Assistant Available” for “90 minutes per day,” (11) “Adult cue to initiate school work” for “15 mins per day,” (12) “raised line paper for writing” for “30 mins a day,” (13) “use of Alpha Smart or technology tools for writing” “when appropriate throughout the day,” (14) “use of calculator for math” “when appropriate throughout the day,” and (15) ”Modified/shorten assignments as needed” “when appropriate throughout the day.”
4. The student’s IEP also provides the following Supports for School Personnel: (1) “consult/Autism spec” for “240 min – per Year” to be provided in the “Gen Ed Classroom” by “Regional,” (2) “Care coordination by SLP” for “30 min – per Month” to be provided in the “Gen Ed Classroom” by the “LEA – SLP,” (3) “Care coordination by OT,” for “60 min – per Year” to be provided “School Wide” by the “LEA – OT,” and (4) “Consultation for Assistive Technology” for “60 min – per Year” to be provided in the “Gen Ed Classroom” by the LEA.

### **IEP Implementation – SDI and Modifications/Accommodations**

5. In their *Reply*, the parents do not dispute the delivery of SDI in Social Skills as provided in the IEP. The on-site investigation revealed that the student attends a social communication group (with one other autistic student) with one of the District’s SLPs for 45 minutes each week. Concerning SDI in Communication Skills, as noted above, this SDI was included in the student’s IEP to assist the student with

progress on his articulation goal. The on-site investigation revealed that the student has met the articulation goal (related to properly articulating the “th” sound). A progress report in the student’s IEP dated June of 2008 and concerning the student’s articulation goal states that the student “has met his articulation goal.” The PLAAFP in the IEP references substantial progress toward the articulation goal (which pre-dated the April 14, 2008 IEP). During provision of the Social Skills SDI, the SLP checks in on the student’s articulation and, if required, reminds the student concerning his articulation but does not otherwise provide direct instruction on articulation as it is no longer necessary.

6. Concerning SDI in Study/Organization Skills, this instruction is provided in the student’s regular education classroom. The student, as a sixth grade student in the middle school, receives instruction primarily in one regular education classroom. Electives such as band and physical education are also provided out of the regular classroom. For a period beginning the first full week of the 2008-2009 school year and ending on October 29, 2008, eight weeks, the student received instruction in math in another regular education teacher’s classroom. The student’s primary regular education teacher and an educational assistant (EA) in the classroom provide instruction in Study/Organizational Skills during the regular class. This includes assisting the student with keeping the student’s planner organized, including ensuring that the student is aware of any homework assignments when he leaves the classroom at the end of the day. The EA checks in with the student at the end of the day for this purpose. The regular education teacher and the EA also assist in keeping the student on track during delivery of the regular instruction in the classroom both verbally and with written directions.

7. Concerning Supplementary Aids/Services; Modifications; Accommodations:

(a) The District provides “Adult support for organizational strategies” in the regular classroom which overlaps with the SDI in this area. As noted above, in the regular classroom the student receives adult support for organizational strategies from the regular education teacher as well as the EA. Additionally, the regular education teacher and the EA break down the assignments for the student to help in the completion of the assignments.

(b) The District provides a “Home School Communication Notebook” in the regular classroom by providing a planner for the student as noted above. The planner is organized in a manner that allows notes to be written by the staff and the parents. District staff report that the parents have not taken advantage of the opportunity to communicate by notes in the planner. During the on-site investigation, one of the parents confirmed they had not used the planner in this method partly because they believe there is not adequate room to write notes on the planner and partly because of the parents’ perception that something separate from the planner issued to all students at the middle school is required.

(c) In their *Reply*, the parents state they do not dispute the provision of “End of day check in with adult.”

(d) The District provides “Visual schedule/organizers” in the regular education classroom. The regular education teacher and the EA provide written, broken down or shortened sheets showing the tasks to be completed in the regular classroom and also provide similar information concerning any homework from the regular classroom.

(e) In their *Reply*, the parents state they do not dispute the provision of “Visual strategies for work completion.”

(f) In their *Reply*, the parents state they do not dispute the provision of “Short, repeated directions.”

(g) In their *Reply*, the parents also state that they do not dispute the provision of “Samples of finished products.”

(h) The District provides “Long term planning/breakdown assignments” in the regular classroom. The regular education teacher shortens assignments for the student while still requiring the student to demonstrate a grasp of the concept being taught. The student’s report card for the first quarter of the 2008-2009 school year reflects the adapted assignments in Language Arts and in Reading.

(i) In their *Reply*, the parents state they do not dispute the provision of “Preferential Seating.”

(j) In their *Reply*, the parents state they do not dispute the provision of “Teaching Assistant Available.”

(k) In their *Reply*, the parents state they do not dispute the provision of “Adult cue to initiate school work.”

(l) The District has “raised line paper for writing” in the student’s regular classroom available for use as needed. However, the student’s regular education teacher observed that the student has not shown a need for the raised line paper in that the student’s writing does not go out of the lines.

(m) The District recently provided the use of an “Alpha Smart,” a portable computerized writing tool, for the student’s use in the regular classroom. The District’s assistive technology technician worked with the student on November 17, 2008 and showed the student how to use the Alpha Smart. The assistive technician also provided a slanted clipboard to assist the student in methodically working through assignments. The IEP provides for the use of the Alpha Smart or technology tools “when appropriate.” The regular education teacher reported adequate progress by the student in writing prior to provision of the Alpha Smart.

(n) In their *Reply*, the parents state they do not dispute the provision of “use of calculator for math.”

(o) As noted above, the District provided shortened assignments to the student in the regular classroom.

8. Concerning Supports for School Personnel:

(a) The District provided the required consultation with the autism specialist. The autism specialist observed the student in the classroom and consulted with the SLP and the regular education teacher. The autism specialist also provided training for sixth grade teachers and has separately consulted with the student's regular education teacher.

(b) The student's current SLP consulted with the student's regular education teacher and the EA in the regular classroom.

(c) Due to unavailability (a temporary leave of absence) of the District's Occupational Therapist (OT), the Department cannot determine whether the "care coordination by OT" occurred. The PLAAFP states that in the area of "Fine Motor/Sensory Processing" the student benefits from the use of raised line paper and identifies no other areas of concern. The District's assistive technology technician and regular education teacher confirmed the availability of raised line paper in the regular classroom.

(d) The District's assistive technology technician, although fully aware of the student's IEP and having reviewed the student's IEP early on in the current school year, was unaware of the requirement of support for school personnel of "consultation for Assistive Technology." The assistive technology technician did, however, consult with the SLP and the regular education teacher in the course of determining that a new Alpha Smart would be provided.

**IEP Implementation – Transition to Middle School**

9. While the student still attended elementary school during the 2007-2008 school year, the District took several actions to help the student transition from elementary to middle school. These included:

(a) assuring that the SLP/case manager for the middle school, who retired at the end of the 2007-2008 school year, was present at the April 14, 2008 IEP meeting to discuss the student's transition to middle school,

(b) a transition presentation with the student by the elementary school's autism specialist on May 14, 2008,

(c) a field trip by the student (and other then fifth grade students) to the middle school on May 20, 2008,

(d) on June 20, 2008, a meeting among the elementary school's SLP, a middle school learning specialist, the middle school SLP (now retired), and the elementary school's resource teacher, and

(e) transfer of the student's file to the middle school's new SLP prior to the first day of the 2008-2009 school year.

10. The District's middle school SLP began working with the District at the beginning of the current school year. The SLP was aware of the student and the student's IEP at the beginning of the school year and sent a letter to the parents the first or second week of school advising that the SLP was new at the middle school. Shortly after that, about two weeks after the beginning of the current school year, the SLP became the student's case manager.
11. The District distributed the student's IEP or made the IEP available to the student's regular education teacher at the beginning of the year. All IEPs are available to staff through the District's computer network. The regular education teacher received a copy of the student's IEP at the beginning of the school year and met with two of the District's learning specialists at that time. At the beginning of the current school year, the District did not specifically advise the student's band teacher of the student's IEP nor did the District provide a copy of the IEP to the student's band teacher. The band teacher, who also taught the student at the elementary school during the 2007-2008 school year, also did not receive a copy of the IEP during the 2007-2008 school year. During the 2007-2008 school year, the band teacher was told only that the student had Asperger Syndrome. The band teacher was not aware of the contents of the student's IEP and had not seen the IEP before the on-site investigation in this case.

### **IEP Meeting Delay**

12. On October 13, 2008, the parents wrote a letter to the District requesting an IEP meeting. The District received this letter, postmarked October 14, 2008, on October 16, 2008. After consulting with all those who would be in attendance, including the student's parents and grandparents, the District determined that December 2, 2008 would be the earliest date on which all could attend. Upon learning of the October 28, 2008 filing of the complaint in this case, the District agreed to reschedule the meeting, with some team members to be replaced by other District staff, to November 12, 2008. After scheduling of this meeting, one of the parents requested that the meeting be held on a different date. The District then scheduled and held an IEP meeting on November 19, 2008. A continued IEP meeting occurred on December 1, 2008 and a final IEP meeting occurred on December 8, 2008.

### **IEP Team Participants**

13. On October 13, 2008, the parents wrote a letter to the District requesting an IEP meeting. The District received this letter, postmarked October 14, 2008, on October 16, 2008. In this letter, the parents also requested attendance of the band teacher at the upcoming IEP meeting. In an e-mail message on October 21, 2008 from District staff to the parents, District staff mentioned that the band teacher was not available on the afternoons the parents were available due to a class taught by the band teacher. Additionally, the band teacher was on temporary leave from the afternoon of October 17, 2008 until December 1, 2008. The band teacher was willing to attend the November 19, 2008 IEP team meeting, but a private matter prevented the teacher from attending. The band teacher attended the student's December 1, 2008 IEP meeting.

### **Failure to Provide FAPE**

14. In their *Reply*, the parents withdrew the allegation regarding the student's math class. Concerning band, the District failed to implement the IEP in any respect in this class. The band teacher was not aware of the contents of the IEP, and no other District staff discussed with the band teacher how to implement the student's IEP in band class. The band teacher is aware of at least two occasions when the student left the room to obtain his instrument<sup>3</sup> and/or music book during the current school year, and the band teacher is unaware whether the student returned. On other occasions, the band teacher reported that, upon leaving the classroom, the student would go to the orchestra room, and the orchestra teacher reported that the student had disrupted that class. The student is not passing band, receiving a grade of "N" (no pass) on his first quarter report card. The student's band class is graded on:

(a) A written assignment. In this case return of the "handbook slip" signed by the student's parent (5% of grade). The student did not return the signed handbook slip.

(b) Practice cards (30% of grade). The student did not return practice cards during the first quarter of the current school year. The student is required to return three practice cards each nine-week period.

(c) Playing tests, three times per nine-week period (30% of grade). The band teacher reported that the student would not agree to playing tests.

(d) Participation (35% of grade). The band teacher reported that a student would score 100% on participation if the student arrived to class daily with their instrument and book.

The parents stated in their *Reply* that the student has taken private lessons for years and excels in his private lessons. During the on-site investigation, the parents alleged that the student is not participating in the playing test because no one is showing the student how to do it. The parents also reported that the student often leaves the band

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<sup>3</sup> The student is in the percussion section at band, and according to the band teacher has played orchestral bells, snare drum, bass drum, chimes and crash cymbals.

class and there is no one to assist him with getting to band class with his instrument and music book. The parents also reported they have never seen a practice card from the band class.

## IV. DISCUSSION

### IEP Implementation

The parents allege that the District has failed to implement the SDI, modifications/ accommodations and supports for personnel required by the student's IEP. The parents further allege that the District failed to adequately plan for the student's transition to middle school, did not assign a case manager to oversee implementation of the student's IEP, and failed to distribute the student's IEP to appropriate District staff.

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives FAPE.<sup>4</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>5</sup> An IEP must be in effect for each eligible child at the beginning of each school year.

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) be educated and participate with other children with disabilities and non-disabled children.<sup>6</sup>

In addition, school districts must identify appropriate special education and related services on each student's IEP<sup>7</sup> and provide them.<sup>8</sup> Furthermore, school districts must: (a) ensure that 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>9</sup>

### SDI

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4 *Board of Educ. V. Rowley*, 458 U.S. 176, 192 S.Ct. 3034 (1982).

5 OAR 581-015-2220.

6 OAR 581-015-2200(1)(d)

7 OAR 581-015-2200(1)

8 OAR 581-015-2220

9 OAR 581-015-2220

The parents no longer claim failure to provide SDI in Social Skills. Concerning SDI in Communication Skills, the Department finds that the District has adequately implemented the required SDI in Communication Skills included in the IEP to address the student's articulation goal. The IEP, written in April of 2008, is somewhat outdated in the SDI section in that it does not reflect the student's success on the articulation goal. A progress report dated June of 2008, reports that the student has met his articulation goal. The SLP who works with the student this school year in delivery of the Social Skills SDI continues to pay attention to the student's articulation and occasionally reminds the student of proper articulation but does not otherwise provide direct instruction on articulation because it is no longer necessary in light of the student's meeting the related goal. Therefore, the Department does not substantiate the allegation that the District is not providing the required SDI in Communication Skills.

Concerning SDI in Study/Organizational Skills, the Department finds that the District has implemented the required SDI. Both the regular education teacher and the EA work with the student during class providing written, broken-down or shortened sheets showing the tasks to be completed in the regular classroom. The regular education teacher and EA also work with the student to assure the student's planner reflects any homework assignments and the EA specifically checks in with the student at the end of the day for this purpose. The Department does not substantiate the allegation that the District is not providing the required SDI in Study/Organizational Skills.

#### *Modifications and Accommodations<sup>10</sup>*

As set forth in the Findings of Fact above, the Department finds that the District has implemented the modifications and accommodations of "Adult support for organizational strategies." Concerning the provision of a "Home School Communication Notebook," the Department finds that the student's planner, although also provided to regular education students, meets that requirement. Concerning the provision of "Visual schedule/organizers," the Department finds that the regular education teacher and EA provide this during the regular education class.

Concerning the provision of "Long term planning/break down assignments," the Department finds that the regular education teacher is implementing this requirement of the IEP. There is no indication that the regular education students are following a different curriculum than this student, so the regular long term planning suffices for this student as well. Additionally, it is clear that the regular education teacher is breaking down the student's assignments while assuring that the student understands the concepts required to progress in the regular curriculum.

Concerning the provision of "raised line paper for writing," the Department finds the District has complied with this requirement of the IEP by having raised line paper available in the classroom. The fact that the student does not need to use the raised line paper to complete his work in an acceptable fashion is a sign of accomplishment by the District in implementing this provision of the IEP. Concerning the provision of "use

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<sup>10</sup> The following discussion addresses only implementation of the modifications and accommodations in the student's primary regular classroom. The Department will discuss implementation of the student's IEP in another regular education class, the student's band class, below.

of Alpha Smart or technology tools for writing,” although the District did not provide an Alpha Smart until mid-November, the Department finds that the failure to provide the Alpha Smart earlier, as was indicated on the IEP, did not impact the student’s ability to progress in the regular curriculum.

#### *Supports for School Personnel*

The Department finds that the District provided the Supports for School Personnel required in the areas of autism, speech, and assistive technology, by providing consultation among appropriate District staff in these areas. The Department does not substantiate the allegation concerning failure to provide the Supports for Personnel in the areas of autism, speech, and AT.

The Department is unable to determine at this time if the District will satisfy the requirement of an hour of OT “care coordination” at the middle school because the timeframe in which the District must satisfy that obligation has not yet expired; therefore, the Department does not substantiate the allegation that the District failed to provide Supports for School Personnel in OT care coordination.

#### *Transition to Middle School*

The Department finds that the District, as part of implementing the student’s IEP, adequately planned for the student’s transition to middle school as evidence by the activities taken by District staff at the student’s elementary school and the coordination with District staff at the student’s middle school near the end of the 2007-2008 school year.

The Department also finds that the District assigned a case manager for the student no later than the second week of the school year and that this did not impact implementation of the student’s IEP in the student’s primary regular education classroom because two of the District’s learning specialists made sure that the student’s primary teacher knew of and had access to the student’s IEP. These learning specialists also met with the primary regular education teacher. The Department thus does not substantiate the allegation that the District failed to implement the student’s IEP in the primary regular education classroom based on alleged failure to assign a case manager or the alleged failure to provide access to the IEP.

#### *IEP Implementation in band class*

Concerning implementation of the student’s IEP in the student’s band class, the Department finds that the student’s band teacher was not aware of the content of the student’s IEP until the on-site investigation in this case. The ramifications of this finding are that the Department substantiates the allegations that the District failed to implement the student’s IEP in the student’s band class, a regular education classroom. The Department also finds that the District failed to ensure that the IEP was accessible to the band teacher and failed to inform the band teacher 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. The appropriate remedy for this violation will be discussed below in the discussion concerning the failure to provide FAPE.

### **IEP Meeting Delay**

The parents allege that the District unreasonably delayed holding an IEP meeting after a written request for an IEP meeting dated October 13, 2008. The Department finds that the District did not unreasonably delay holding an IEP meeting following receipt, on October 16, 2008, of the parents' written request for an IEP meeting. The District initially consulted with those who would be in attendance at the meeting, and, by October 21, 2008, the District scheduled an IEP meeting for December 2, 2008. The District received no request from the parents stating that the December 2, 2008 date was not an acceptable date for the IEP meeting. After receipt of the parents' complaint in this case, filed on October 28, 2008, in which the parents expressed a concern about delay in the District holding the upcoming IEP meeting, the District scheduled an expedited IEP meeting date of November 12, 2008. When advised by the parents that this date would not work, the District rescheduled the IEP meeting for November 19, 2008. An IEP meeting took place on November 19, 2008, and this meeting continued again on December 1, 2008 and again on December 8, 2008. The IEP team finalized the student's new IEP at the third meeting. The Department does not substantiate the allegation that the District unreasonably delayed the IEP meeting upon receipt of a written request for an IEP meeting from the parents.

### **IEP Team Participants**

The parents allege that the District refused to require attendance of a particular regular education teacher (the band teacher) at an upcoming meeting scheduled for December 2, 2008 when the parents filed the complaint in this case on October 28, 2008.

Districts must ensure that the IEP team includes "Other individuals, including related services personnel as appropriate, invited by: The parent, whom the parent determines to have knowledge or special expertise regarding the child."<sup>11</sup>

There was some mention that the band teacher was unable to attend the meetings because the teacher taught an afternoon class. However, the band teacher was unavailable to attend the meetings because the teacher was on temporary leave from the afternoon of October 17, 2008 to December 1, 2008. The band teacher learned of the request that he attend the rescheduled IEP meeting on November 19, 2008 but was unable to attend that meeting during temporary leave. The band teacher attended the continued IEP meeting on December 1, 2008. Based on the foregoing, the Department does not substantiate the allegation that the District refused to require the attendance of a particular regular education teacher at an IEP meeting.

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11OAR 581-015-2210(1)(g)

## Failure to Provide FAPE

The parents allege that the District denied the student an opportunity to advance in a particular regular education class (band) based on the student's lack of progress when the lack of progress was due to the District's failure to provide the education and services listed on the student's IEP.

Concerning band, the Department finds that the District failed to implement the IEP in any respect. The band teacher was not aware of the contents of the IEP, and no other District staff discussed with the band teacher how to implement the student's IEP. The band teacher is aware of at least two occasions when the student left the room to obtain his instrument and/or music book during the current school year, and the band teacher is unaware whether the student returned. On other occasions, the band teacher reported that, upon leaving the classroom, the student would go to the orchestra room; the orchestra teacher reported that the student had disrupted that class. The student is not passing band, receiving a grade of "N" (no pass) on his first quarter report card. The student's band class is graded on:

(a) A written assignment. In this case, return of the "handbook slip" signed by the student's parent (5% of grade). The student did not return the signed handbook slip.

(b) Practice cards (30% of grade). The student did not return practice cards during the first quarter of the current school year. The student is required to return three practice cards each nine-week period.

(c) Playing tests, three times per nine-week period (30% of grade). The band teacher reported that the student would not agree to playing tests.

(d) Participation (35% of grade). The band teacher reported that a student would score 100% on participation if the student arrived to class daily with their instrument and book. In their *Reply* the parents noted that there is a disconnect between the student's abilities demonstrated in private lessons and his lack of progress in the band class.

The Department concludes that the student is not progressing in band class due to the failure of the District to implement the student's IEP in that class. The question then becomes whether the District has denied FAPE by failing to implement the student's IEP in band class. The Department concludes that the requirement of FAPE includes elective regular education classes and finds that the District failed to provide FAPE in this case but only as concerns the student's band class. The lack of assistance and lack of progress in the band class is in stark contrast to the assistance provided to the student and the stellar progress made by the student in all other regular education classes. The Department thus substantiates the allegation that the District failed to provide FAPE to this student by failing to implement the student's IEP in band class.

## V. CORRECTIVE ACTION<sup>12</sup>

*In the Matter of Reynolds SD 7*  
Case No. 08-054-038

#	Action Required	Submissions <sup>13</sup>	Due Date
1a	<p><u>Policy and Procedure Review</u></p> <p>The District must review, and, if necessary, revise its procedures for:</p> <p>(A) Informing each regular education teacher, special education teacher, and other service 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;</p> <p>(B) Ensuring that this information has been provided as required by OAR 581-015-2220; and</p> <p>(C) Ensuring the implementation of students' IEPs as written.</p>	<p>Submit to ODE a copy of the district procedures for (A) – (C), including revisions, if necessary, and any related training materials provided to District staff.</p>	<p><b>January 29, 2009</b></p>
1b	<p><u>Training</u></p> <p>The District must provide training regarding the procedures mentioned in (1a) above and/ or distribute this information to all district staff, contractors, and administrators who are, or who may be, responsible for ensuring IEPs are implemented.</p>	<p>Submit to ODE the materials presented or distributed and a distribution list or a signed attendance roster.</p>	<p><b>February 9, 2009</b></p>

<sup>12</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>13</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

<p>2</p>	<p><u>IEP Meeting/revision</u></p> <p>The District will hold an IEP team meeting to review and, if necessary, revise the IEP including, but not limited to, the specially designed instruction, accommodations, modifications, supplementary aids, services, and supports to personnel. At a minimum the IEP team will address what special education and related services are required for the student to participate, and make progress in, the student's band class.</p> <p>District staff will periodically check and report implementation of the revised IEP.</p>	<p>Submit to ODE a copy of IEP meeting notice and verification of responses; any meeting agenda or minutes; a copy of any written communication among District staff concerning appropriate special education services, including any written information prepared for the IEP meeting by non-attending members; a complete copy of the revised IEP; any written agreements to excuse IEP members; and any prior written notices resulting from the meeting.</p> <p>Submit a written statement of the IEP implementation status to ODE, with a copy to the parents.</p>	<p><b>January 29, 2009</b></p> <p><b>March 16, 2009 &amp; May 7, 2009</b></p>
<p>3</p>	<p><u>Compensatory education</u></p> <p>The District must, in consultation with the parents, develop and implement a plan for providing educational services substantially equivalent to those that the student missed as a result of the District's failure to implement the student's IEP in band class. The plan should aim to provide the student with the knowledge and skill that the student likely would have attained had the District timely implemented the IEP in band class, utilizing</p>	<p>A copy of the proposed education service plan, agreed upon by the District and parents, a list of services to be provided, and a schedule for provision of the compensatory educational services. If the District is unable to reach an agreement with the parents</p>	<p><b>January 29, 2009</b></p>

	<p>compensatory educational opportunities, additional support in band class, extracurricular opportunities in band, and/or other activities intended to compensate the student for missed opportunities in band.</p> <p>The District must complete delivery of the compensatory education services by December 17, 2009.</p>	<p>regarding compensatory educational opportunities by January 29, 2008, the Department will develop an education plan for District implementation no later than February 13, 2009.</p> <p>The District must notify the Department and the parents in writing upon completion of the compensatory education services.</p>	<p><b>Not later than December 17, 2009</b></p>
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Dated: December 19, 2008

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

Mailing Date: December 19, 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.