

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Gresham-Barlow School )  
District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 09-054-018

**I. BACKGROUND**

On April 22, 2009, the Oregon Department of Education (“Department”) received a letter of complaint from the parent of a student residing in the Gresham-Barlow School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on April 23, 2009 and provided the District a copy of the complaint letter.

On April 27, 2009, the Department sent a *Request for Response* (“RFR”) to the District identifying the specific allegations in the complaint to be investigated and establishing a Response due date of May 11, 2009. The District submitted its timely *Response* to the Department and to the parent on May 8, 2009. The District’s *Response* included seven pages of narrative explanation and an additional 77 exhibits requested in the RFR. On May 7, 2009, the parent submitted 174 pages of documents in support of her complaint. The District reviewed those documents, all of which the District previously had in its possession, during on-site interviews. On May 14, 2009, the District submitted its two-page Amended Response to the RFR along with 9 pages of documents to the Department’s investigator and to the parent. On May 20, 2009, the parent, through an advocate, submitted an additional 34 pages of documents and narrative to the Department’s investigator; the parent also sent a copy to the District.

The Department’s complaint investigator determined that on-site interviews were required. On May 13, 2009, the Department’s investigator interviewed the parent and the parent’s advocate. On May 14, 2009, the Department’s investigator interviewed the following District staff: a school psychologist, two special education teachers (one of whom is the student’s case manager), an assistive technology specialist, an occupational therapist, an assistant principal, and a District Special Education Program Director. In addition, on May 14, 2009, the Department’s complaint investigator interviewed the District’s Education Service District associated special needs nurse. The Department’s complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

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<sup>1</sup> OAR 581-015-2030(12) (2008)

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one year period from April 23, 2008 to the filing of this complaint on April 22, 2009.<sup>2</sup>

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b><u>IEP Implementation:</u></b></p> <p>Not providing the special education and related services described on the student's IEP. Specifically, that the District did not offer:</p> <ul style="list-style-type: none"> <li>a. access to assistive technology</li> <li>b. one-to-one support by an adult assistant</li> <li>c. home tutoring; and,</li> <li>d. the student's Health and Safety protocol</li> </ul>	<p>Substantiated, in part.</p> <p>The Department finds that the District failed to implement the student's Safety Protocol during the period in which the student attended a District school. To the extent that the parent alleges that the District failed to implement other special education and related services included in the student's IEP, the Department does not substantiate the allegation.</p>
2.	<p><b><u>Transfer Students:</u></b></p> <p>Not providing the student services comparable to those included in the student's previous IEP when the student transferred into the District from another Oregon school district.</p>	<p>Substantiated, in part.</p> <p>The Department finds that the District failed to provide the student with any educational program from October 9 to October 29, 2008; therefore, the Department substantiates the allegation as it pertains to that time period. For the time period from October 29, 2008 until April 22, 2009, the Department finds that the District offered the student services comparable to those on the student's previous IEP or services under a new IEP created by a District IEP team.</p>
3.	<p><b><u>Student Records/Parent Participation:</u></b></p> <ul style="list-style-type: none"> <li>a. Not providing the parents with a number of documents requested by the parents, including: <ul style="list-style-type: none"> <li>i. copies of the student's educational</li> </ul> </li> </ul>	<p>Not substantiated</p> <ul style="list-style-type: none"> <li>a. The Department finds that the parent never requested a copy of the student's educational records. Additionally, the Department finds</li> </ul>

<sup>2</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

<ul style="list-style-type: none"> <li>records;</li> <li>ii. District policies and procedures regarding the use of one-to-one assistance;</li> <li>iii. District policies and procedures regarding the use of a tape recorder; and,</li> <li>iv. District policies and procedures regarding the use of assistive technology at home.</li> </ul> <p>b. Not requesting the student's educational records from the student's prior school district within ten days of the student seeking enrollment in the District.</p>	<p>that the District provided the parent with timely access to the District policies and procedures requested by the parent. Therefore, the Department does not substantiate any of the parent's allegations concerning the District's failure to provide specific documents to the parent.</p> <p>b. The Department also finds that the District requested the student's educational records from the student's previous school within ten days of the student seeing enrollment in the District.</p>
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<p>1. <b><u>Requested Corrective Action. The parents are requesting that the District:</u></b></p> <ul style="list-style-type: none"> <li>a. adopt the student's IEP from the previous Oregon school district;</li> <li>b. provide the parent with the requested records and policy and procedures documents;</li> <li>c. implement the student's Health and Safety Protocol;</li> <li>d. provide the student with access to the same assistive technology device that the student utilized at the student's previous school;</li> <li>e. provide the student with home instruction for the remainder of the year or provide the student with a one-to-one adult assistant at school; and,</li> <li>f. provide professional support regarding the cognitive late effects of cancer for District staff who work with the student.</li> </ul>	
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### III. FINDINGS OF FACT

#### **Background**

1. The child is currently 13 years old and resides in the District. The student is presently eligible for special education under the categories of Communication Disorder, Specific Learning Disability, and Other Health Impaired.

2. The most recent comprehensive medical evaluation, dated May 17, 2007, was conducted at a pediatric neuropsychology clinic and was authored by a neuropsychologist. His summary states:

“It is my strongly based opinion that this child needs to be in the public school system so that [the student] can be educated by experts in children who have cognitive and learning difficulties. I continue to believe that [the student] would most effectively flourish in a reduced class size. [The student] is definitely in need of broad spectrum special education services, including speech and language and occupational therapy. It is my hope that [the student] will enter the public school system this coming school year.”

### **2007-2008 School Year**

3. The student was previously enrolled in two other Oregon school districts during the 2007-2008 school year. Two IEPs were written during the 2007-2008 school year. The earlier IEP was created by the student’s prior district and was dated November 5, 2007. The IEP stated that the student was being homeschooled by one of the student’s parents and that the IEP goals were intended to be draft goals subject to adjustment due to the lack of prior contact with the student. This school district also completed the student’s three year re-eligibility on September 27, 2007 and continued the student’s special education eligibility.
4. On May 27, 2008, another Oregon school district completed an IEP (“May 2008 IEP”). The parent did not attend the May 2008 IEP meeting although the parent did attend three meetings between February 2008 and March 2008 where IEP issues were discussed. The May 2008 IEP immediately preceded the student’s enrollment with the District. During the 2007-2008 school year, the student attended school in the previous district for less than a week.
5. The May 2008 IEP listed a starting date of May 27, 2008 for services with placement starting May 28, 2008 and continuing through June 6, 2008. Specially designed instruction included “Reading/Written Language/Math- 30 minutes 5x/week” in the general education/special education classroom. Additional speech and language services for articulation, training and implementation of assistive technology are listed in the amount of 70 minutes per week. Supplementary services included “assistive technology for writing; assistive technology for reading; health protocol; and assistant during school- throughout school day”. The Nonparticipation Justification states that the student “may be removed from regular classroom up to 13% of [the] day.” Placement selected was “Regular classroom (more than 80% regular class)” with “full time assistant.”

### **2008-2009 School Year**

6. The student did not attend any school from the end of the 2007-2008 school year until the parent enrolled the student in the sixth grade at a District middle school on October 9, 2008. The parent provided the District with the May 2008 IEP on

the day the student was enrolled. The parent signed a request and consent to release records from the previous school district on October 9, 2008.

7. The District requested records from the previous Oregon school district on October 15, 2009. Prior to October 24, 2008, the District received a copy of the May 2008 IEP by fax and received a large box of additional records from the previous district.
8. Practice at this District middle school is to convene an IEP meeting for a student who is on an IEP before allowing the student to attend school. District practice for students not on IEPs is to admit the student the day after enrollment.
9. On October 15, 2008, the District provided written notice to the parent of an IEP meeting scheduled for October 24, 2008. IEP meetings at this middle school are scheduled for one hour sessions.
10. On October 24, 2009, the IEP team, totaling ten District/ESD representatives and the parent and her advocate, met to review the May 2008 IEP. A District school psychologist had reviewed the voluminous educational and medical records prior to the meeting. District representatives suggested the student attend school one to two periods per day to provide for a gradual entry back to school. The parent expressed concern that all elements of the IEP, including assistive technology (utilizing a specifically identified voice recognition software program), one-to-one instructional assistant, and the student's health protocol<sup>3</sup>, needed to be in place before the student's return to school. Meeting notes reflect that the team agreed that placement would be with a home tutor in a public building, such as the local library, for five hours per week. An interlineated placement page, using the prior district's IEP placement page, reflects the change in placement. The District initiated and approved the tutoring request on October 24, 2008 and authorized tutoring from October 29, 2008 through November 29, 2008. Another IEP meeting was scheduled for November 4, 2008.
11. On October 28, 2008, the District issued a prior written notice to the parent. In the notice, the District refused the parent's request for the specifically identified voice recognition software program and the parent's request that the aide assigned to the student be a licensed teacher. The notice stated that "the team is utilizing the most current student IEP to deliver services" and that the team will monitor the student's needs and make adaptations using current school data. It also states that the most current IEP includes "assistant during school." The current IEP does not require a licensed teacher.
12. The IEP team met on November 4, 2008 in an effort to revise the IEP's annual goals. The District had written a draft IEP on its forms, but the IEP was not finalized during the meeting. The team agreed that home tutoring would continue

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<sup>3</sup> The health protocol is a document dated January 29, 2007 entitled "Individualized Safety Plan" referring specifically to the student. It addresses what happens if the student "states [the student] is feeling 'dizzy.'" There is no reference to a one to one educational assistant in the procedure. It does state that the student should "sit down where [the student] is,... or walk with adult assistance, when the adult determines that it is safe, to the Health Room where [the student] may lie/sit down."

until finalization of the IEP. Another meeting was scheduled for November 10, 2008. No tutoring sessions had been completed as of this date although the tutor had called the parent on four different days and left messages for the parent to return the call.

13. On November 10, 2008, the IEP team met and finalized the student's IEP. The parent requested permission to tape record the meeting, which was granted subject to District research on the right to refuse requests for tape recording. The District representatives of the IEP team finalized the IEP goals and included specially designed instruction delivered in the general education classroom in reading (45 minutes/day); written language (60 minutes/week); mathematics (60 minutes/week); and, communication skills (180 minutes/month). Eleven supplemental aids/services, modifications and accommodations were included in the IEP. Relevant to the complaint were accommodations of "access to educational assistant- 6.5 hours per day"; "portable AT tools, e.g. voice recognition- 30 minutes/day"; and "Safety Procedure- 10 minutes/day". The parent member of the IEP team was not in complete agreement with the IEP.
14. The IEP's Nonparticipation Justification section stated that the student needed to be removed from participating with non-disabled peers for "855 minutes per week of specially designed instruction in reading, writing math and language skill"... "in order to make progress on developing academic and language skills that [the student] needs in order to make progress in general education".<sup>4</sup>
15. At the November 10, 2008 meeting, the District requested a medical statement and/or a signed release to discuss with the student's doctor the student's needs for a one-to-one assistant, but the parent refused the request. Another meeting was scheduled for December 5, 2008. No tutoring sessions had been completed although a session was scheduled that afternoon. The parent cancelled the session shortly after the IEP meeting concluded.
16. Between November 10 and December 5, 2008, a number of tutoring sessions were scheduled but only one session was completed on December 4, 2009.
17. The IEP team met on December 5, 2008. The agenda included continuing to revise the IEP and finalizing the student's placement. The District's AT specialist presented her findings resulting from a file review. The District prepared a revised IEP, dated December 5, 2008, with a modified/reduced day schedule. Services were modified to accommodate the proposed reduced day at school, anticipated to be one period before lunch, lunch time, and one period after lunch. A one-to-one educational assistant was to be provided during this phase-in period. The placement selected was regular classroom for partial day. The parent did not agree with the beginning date or the phase-in plan. The Occupational Therapist met with the parent and advocate on the same day to explain a proposed "sensory evaluation" anticipated to be completed after obtaining consent from the parent. The parent did not sign consent for the OT evaluation at the meeting.

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<sup>4</sup> The service summary of the IEP does not total 855 minutes per week of specially designed instruction.

18. On December 10, 2008, the District sent a prior written notice to the parent refusing the parent's requested specific assistive technology software, the parent's request for a licensed teacher to serve as the student's educational assistant, and the refusal of the parent's request for an independent educational evaluation (IEE) for assistive technology. The District refused the IEE on the basis that the file review by the AT specialist did not constitute an evaluation justifying the parent's request for an IEE. The District also sent the parent and the advocate an email addressing District policies regarding assistive technology devices including the use of particular software, installing District owned/licensed software on personal computers, and the use of personal software while at school.
19. On January 5, 2009, the District sent the parent a letter stating that the District "offers a free, appropriate public education to the student."
20. On January 6, 2009, the District sent the parent a notice of an IEP meeting scheduled for February 13, 2009, which was rescheduled for February 17, 2009 and later rescheduled for March 3, 2009.
21. On January 16, 2009, the District sent the parent a prior notice and request for consent for evaluation to obtain a physical therapy and occupational therapy evaluation "in the areas of occupational therapy and assistive technology." The parent signed the consent on January 29, 2009.
22. Between January 23 and February 4, 2009, the student attended school on the modified two class periods and lunch schedule for eight consecutive school days. The student returned to school and attended on the same modified schedule for five consecutive days beginning February 23 and ending February 27, 2009. The student did not attend school between February 27, 2009 and April 22, 2009, the date that the parent filed the present complaint.
23. On February 27, 2009, while in close proximity to the student's educational assistant, the student walked into a metal door jamb vertically positioned between double doors, striking the forehead. The District later investigated the incident and believed that the student had not been injured. The District's belief was based on the educational assistant's questions and responses with the student, the student's attendance and performance in the next class period, and a review of a videotape<sup>5</sup> of the incident.
24. On March 3, 2009, the IEP team met and reviewed the student's progress based on the student's attendance at the school for thirteen days. Various areas were discussed including the student's participation in the two classes the student had been attending. District team members no longer believed that the student required a one-to-one assistant. The parent member of the team disagreed. The

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<sup>5</sup> The video tape was not retained by the District for the parent to review and was not retained for the Department's investigator to review.

District sent the parent a prior written notice denying the student a one-to-one assistant.

25. On March 17, 2009, the District sent the parent a letter stating that the District “offers a free, appropriate public education to the student.”
26. On March 19, 2009, the District sent a notice for an IEP meeting for March 31, 2009. The meeting was cancelled by the parent and rescheduled for April 21, 2009.
27. On March 31, 2009, the parent requested, via email, a change of placement from the middle school to home tutoring. On April 2, 2009, the District sent the parent a prior written notice refusing the requested change of placement until an IEP team meeting could be scheduled and proposed that the placement could be considered by the full IEP team.
28. On April 2, 2009, the District sent the parent and her advocate its policies relating to the standards to provide one-to-one adult assistance to students with disabilities.
29. On April 21, 2009, the IEP team met to consider the parent’s request for a one-to-one educational assistant following receipt of a reauthorized safety protocol from the student’s physician. The protocol was the same protocol discussed at the October 24, 2008 IEP meeting, but it was reauthorized by the student’s physician on March 9, 2009. Prior to the reauthorization by the physician of the safety protocol, the District did not review, revise, or implement a safety protocol. The staff member responsible for reviewing, designing, and implementing the safety protocol was not aware that the student had ever returned to school for any length of time. The parent was unwilling to sign authorizations for release of medical information so the staff member could speak with the physician. The District did not implement the “Health Protocol” (as it was referred to in the previous district’s May 2008 IEP), or the “Safety Procedure” described in each of the District’s IEPs. The parent signed a consent for an OT evaluation consisting of a Sensory Profile by the parent and by the student (with assistance in completing it by the OT) and an observation in the educational setting.<sup>6</sup>

### **District Policies**

30. District policies reflect that staff should determine if newly enrolled students have special needs and/or whether they are presently on an IEP. Staff is supposed to promptly call the prior district to learn more information about the student. District staff should hold a meeting within a week of enrollment. If a student is not placed in a program, staff is instructed to arrange for tutoring five hours per week until appropriate records are received.

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<sup>6</sup> District staff reported that the parent’s profile has been completed, however, since the student has not returned to school, the student’s portion of the profile and the observation has not been completed.

## IV. DISCUSSION

### **1. In-State Transfer Students on IEPs, Implementation of the May 2008 IEP, Change of Placement and Prior Written Notice**

Under the IDEA, school districts must develop and implement, for each eligible child, an IEP that is designed to ensure that the child receives a free, appropriate public education (“FAPE”).<sup>7</sup>

FAPE is defined as “special education and related services” that: are provided at public expense; meet state standards; include an appropriate preschool, elementary, or secondary education; and are provided in conformity with an IEP.<sup>8</sup> A school district meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.<sup>9</sup>

A written IEP must be in effect for each eligible child at the beginning of each school year.<sup>10</sup> School districts must implement the services, modifications, and accommodations identified on each student’s IEP.<sup>11</sup>

When a student changes residence from one Oregon school district to another, the receiving school district must offer the student FAPE by offering services comparable to those included in the previous IEP until the student’s IEP team either adopts the previous IEP or creates and implements a new IEP.<sup>12</sup> When the student enrolled in the District on October 9, 2008, the District was given a copy of the student’s previous IEP. At that point, the District was obligated, within a reasonable amount of time, to create and implement a new IEP or to implement an educational program that provided the student with specially designed instruction, modifications and accommodations, and a placement comparable to those contained in the May 2008 IEP.

In this case, the District received the student’s May 2008 IEP on October 9, 2008, upon the student’s initial enrollment in the District. From October 9 until October 29, the District offered the student no educational services pursuant to a local policy delaying the attendance of transfer students on IEPs until after an IEP meeting can be held. On October 24, at an IEP team meeting attended by District staff and the parent, the team agreed that, until a new IEP could be adopted, the District would provide the student with one-to-one tutoring at the public library. On November 10, 2008, the IEP team created and adopted a new IEP.

Regarding the District’s obligation to provide the student with comparable services, the Department finds that the IEP team meeting on October 24, 2008, at which the IEP team agreed to an interim educational program of one-to-one tutoring, did not result in the creation or adoption of a new IEP. Instead, the Department finds that a new IEP

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<sup>7</sup>OAR 581-015-2040; 34 CFR § 300.341.

<sup>8</sup> See 20 USC § 1402(8).

<sup>9</sup> See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

<sup>10</sup> OAR 581-015-2220(1)(a).

<sup>11</sup> OAR 581-015-2220(1)(b).

<sup>12</sup> OAR 581-015-2230.

was not adopted until the November 10, 2008 IEP team meeting. It was reviewed and revised on December 5, 2008. Therefore, beginning November 10, 2008, the District was required to implement the new IEP and no longer obligated to provide the student with services comparable to those on the student's prior IEP.

Based on this conclusion, the Department finds that the District was obligated to provide the student with services comparable to those included on the May 2008 IEP from the time of the student's enrollment, on October 9, 2008, in the District to November 10, 2008, the date on which the IEP team adopted a new IEP. The District failed to completely satisfy this obligation.

From October 9 until October 29, 2008, the date when one-to-one tutoring was scheduled to begin, the District did not offer an educational program to the student. The Department is aware that, under some circumstance, a district may face difficulties and delays in implementing services comparable to those on the prior IEP or creating a new IEP. However, the Department concludes that here, because the District had actual notice of the student's IDEA eligibility on October 9, 2008, it was unreasonable to delay the initial offer of any educational services to the student until October 29.

Additionally, the Department finds that the educational program agreed to at the October 24, 2008 IEP team meeting, one-to-one tutoring for five hours per week at the public library, is comparable to the educational program outlined in the student's May 2008 IEP.

Comments to the federal regulations regarding the District's obligation to transfer students indicate that the education program offered to the student through the tutoring arrangement constituted services comparable to those on the student's May 2008 IEP. The pertinent Comment states:

"We do not believe it is necessary to define "comparable services" in these regulations because the Department interprets "comparable" to have the plain meaning of the word, which is "similar" or "equivalent." Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), "comparable" services means services that are "similar" or "equivalent" to those that were described in the child's IEP from the previous public agency, as determined by the child's newly designated IEP Team in the new public agency."<sup>13</sup>

Although the District's offer of one-to-one tutoring appears to be a significant departure from the educational program in the May 2008 IEP, the Department concludes that the individualized attention afforded by tutoring allowed the District to provide services comparable to those included in the May 2008 IEP via the five hour per week one-to-one tutoring arrangement. Additionally, the Department notes that the IEP team, including the parent, determined that the tutoring arrangement was sufficiently similar to the services on the May 2008 IEP. Therefore, the Department finds that the District provided the student with a free, appropriate public education from October 29, 2009,

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<sup>13</sup> 71 Fed. Reg. 46540, 46681 (August 14, 2006).

the date on which the tutoring arrangement was scheduled to begin, until November 10, 2008, when the IEP team created and adopted a new IEP for the student.

In summary, the Department finds that the District did not offer the student FAPE<sup>14</sup> to the extent that the District failed to provide the student an educational program from October 9 until October 29, 2008. The Department also finds that from October 29, 2008 until the filing of the complaint on April 22, 2009, the District offered the student services comparable to those in the May 2008 IEP or had in effect an IEP designed for the student by a District IEP team. Consequently, the Department substantiates the parent's allegation, to the extent that it alleges, that the District violated IDEA when it did not provide the student with services comparable to those on the prior IEP or implement a new IEP prior to October 29, 2008. See Corrective Action.

The parent also alleges that the District failed to provide a number of services listed on the student's IEP. Specifically, the parent alleges that the District did not provide the student with access to assistive technology, one-to-one support by an adult assistance, home tutoring, or a Health and Safety Protocol. The Department substantiates this allegation in part. Consistent with the discussion above, the Department finds that the District was not required to provide the student with the services detailed on the May 2008 IEP because the applicable rules grant districts the option of providing services comparable to those on the prior IEP or to create a new IEP.

Also discussed above, the Department has concluded that the District provided the student with no services from the student's enrollment until October 29, 2008 and provided services comparable to those on the student's May 2008 IEP from October 29 until November 10, 2008. Therefore, the Department limited its investigation of whether or not the District implemented the student's IEP to the time period following the IEP team's creation of a new IEP on November 10, 2008.

The IEP created at the November 10, 2008 IEP team meeting was in effect until the team reviewed and revised it on December 5, 2008. In that timeframe, the student attended one tutoring session. Because of the student's lack of attendance during this time period, the Department is unable to determine whether the District offered the student the services included in the November 10, 2008 IEP. To the extent that the parents allege that the District failed to implement the November 10 IEP, the Department does not substantiate this allegation.

The revised IEP, created on December 5, 2008, was in effect from that date until the filing of the complaint in this case. During that timeframe, the student attended approximately 13 days of school. The Department finds that the December 5 IEP did not include home tutoring and that the removal of the service was the result of a procedurally compliant IEP team meeting. The Department also finds that, on those days that the student attended school during the relevant timeframe, the District

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<sup>14</sup> The Department has some concerns regarding the District's policy of excluding IDEA-eligible transfer students from attending school until the District has convened an IEP team meeting. In some cases, where the exclusion of the student coincides with the time period necessary for a district to obtain student records from a previous district, the District's policy would likely result in the delivery of services to the student within a reasonable amount of time. However, in cases like this one, the District's policy can result in an unreasonable delay in the initiation of services.

provided the student with access to assistive technology and a one-to-one assistant consistent with the IEP. With regard to these services, the Department does not substantiate the parent's allegation.

However, the District did not implement the student's Safety Procedures during this timeframe. The Safety Procedures, included in the May 2008 IEP as the Health Protocol, was incorporated by reference into both of the IEPs created by the District IEP team. Nonetheless, the District did not implement the procedures during any of the 13 days that the student attended school while being provided services under the December 5, 2008 IEP. To the extent that the parent alleges that the District did not implement the student's Safety Procedures after the adoption of a District IEP, the Department substantiates the allegation. See Corrective Action.

## **2. Student Records/Parental Participation:**

### **A. Student Educational Records and District Policies**

The parent alleges that the District did not provide a number of documents requested by the parents, including: copies of the student's educational records; district policies and procedures regarding the use of one-to-one assistance; district policies and procedures regarding the use of a tape recorder in IEP team meetings; and, district policies and procedures regarding the use of assistive technology at home.

School districts must give parents of children with disabilities an opportunity to examine all student educational records.<sup>15</sup> Educational records may be reviewed by a parent or other authorized representative upon request. The District must comply within a reasonable time and without unnecessary delay and before any meeting regarding an IEP, due process hearing, or resolution session. If requested, the District must give the parent a copy of the records and may charge a fee for a copy of the records unless an imposition of a fee effectively prevents a parent from exercising the right to inspect and review the records.<sup>16</sup>

In this case, the District had no record of the parent requesting a review of the student's records. The parent was unable to provide any evidence that the records were requested. The Department does not substantiate this but notes that the parent or an authorized representative may review the student's educational records pursuant to the applicable regulations.

The Department also does not substantiate the allegation that the District violated IDEA by not providing the parent with the District's policies regarding the use on one-to-one assistants. The Department finds that the District did provide the parent with the requested information. The policy regarding one-to-one adult assistance was provided to the parent and her advocate on April 2, 2009.

The parent also alleges that the District erred by not providing the parent with a copy of its policy concerning the tape recording of IEP team meetings. At the time of the

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<sup>15</sup> OAR 581-015-2300.

<sup>16</sup> OAR 581-021-0270; 581-021-0280.

November 10, 2008 IEP team meeting, the District had not adopted a policy regarding the recording of IEP meetings. Nonetheless, the District informed the parent at the meeting that the parent would be allowed to tape record. In early December 2008, the District created a written policy regarding tape recording IEP meetings and verbally informed the parent of the policy. The parent received a copy of the policy in the District's Response to the RFR. The Department does not substantiate this allegation.

With regard to the allegation that the District did not provide the parent with a copy of its policies regarding assistive technology, the Department finds that the District informed the parent of the policies by email on December 10, 2008. The District provided the documents, application, and agreement required for loaning assistive technology equipment to the parent at the April 21, 2009 meeting. The Department does not substantiate this allegation.

### B. Requesting Student Records from a Previous School District

The parent alleges that the District did not request the student's educational records from the student's prior school district within ten days of the student seeking enrollment in the District. Within ten days of a student seeking enrollment in or services from a school or ESD, the new school district must request from the former educational agency all of the student's educational records.<sup>17</sup> The former educational agency must transfer all of the student's records to the new school within ten days after receiving the request.<sup>18</sup> In this case, the parent enrolled the student and signed the release for records on October 9, 2008. The District requested the records on October 15, 2008, within ten days of enrollment. Therefore, the Department does not substantiate this allegation.

### 3. Compulsory Attendance:

Though not a violation of IDEA, the Department is concerned by the student's lack of regular school attendance during the time period investigated. "Ensuring equality of opportunity [and] full participation" for individuals with disabilities are two of the basic elements of the United States Congress' efforts to improve educational results for children with disabilities.<sup>19</sup> These strategies are borne out in IDEA's requirements that students with disabilities be educated in the least restrictive environment, that students not be excluded from the classroom due to behaviors related to their disability, and other provision that ensure that students with disabilities spend as much time as possible in a general educational setting.

Oregon law requires that individuals between the age of 7 and 18 who have not yet completed the twelfth grade are "required to attend regularly a public full-time school of the school district in which the child resides."<sup>20</sup> Irregular attendance is defined as "[e]ight unexcused one-half day absences in any four-week period during which the school is in session."<sup>21</sup> The attendance requirements provide exemptions for students

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<sup>17</sup> OAR 581-021-025(1), (2).

<sup>18</sup> *Id.*

<sup>19</sup> 20 U.S.C. §1400(c)(1).

<sup>20</sup> ORS 339.010.

<sup>21</sup> ORS 339.065.

who: attend private or parochial schools, have demonstrated graduate equivalency, have earned a diploma, are taught full-time by a private teacher, are home schooled, or are exempted by other law.<sup>22</sup> Under Oregon law, parents are responsible for ensuring that their children comply with state attendance laws.

The attendance policies and procedures issued by the District conform to the requirements of state law.<sup>23</sup> The procedures indicate that, in instances where a student is not in regular attendance, the District shall provide notice to a student’s parent of the student’s irregular attendance and require the student to regularly attend for the remainder of the school year; the District is also required to provide a copy of the notice to the District superintendent. The superintendent will again contact the parents and, if warranted, issue a citation to the parents. Additionally, parents of a child who fails to comply with attendance laws may be subject to penalties under ORS § 163.577(1)(c).

In this case, the student missed 91 school days in the District between October 29, 2008, the date on which the District began offering one-to-one tutoring, and April 22, 2009, the date on which parent filed the complaint that forms the basis of this complaint. Despite the substantial number of school days missed by the student, the District never implemented its adopted procedures. In the interest of ensuring that the student has access to the free and appropriate public education offered under IDEA, the Department urges the parent and the District to exercise all options at their disposal to guarantee that the student is in full-time attendance in a District educational program.

## V. CORRECTIVE ACTION<sup>24</sup>

*In the Matter of Gresham-Barlow School District*  
Case No. 09-054-018

Action Required	Submissions <sup>25</sup>	Due Date
Consistent with this Final Order, the District shall review, and revise as appropriate, its policies and internal processes for developing and implementing health and safety protocols and identifying students who may require a health and safety	Submit to the Department: <ol style="list-style-type: none"> <li>1. A copy of the original documents reviewed and any revisions, if any.</li> <li>2. A brief cover letter describing the District’s review process.</li> </ol>	<b>August 31, 2009</b>

<sup>22</sup> ORS 339.030.

<sup>23</sup> Gresham-Barlow School Board, *Compulsory Attendance*, Document Code JEA, <http://policy.osba.org/gbsd/J/JEA%20G1.pdf> (last updated May 2, 2002); Gresham-Barlow School Board, *Compulsory Attendance Notices and Citations*, Document Code JEA-AR, <http://policy.osba.org/gbsd/J/JEA%20R%20G1.pdf> (last updated May 2, 2002).

<sup>24</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>25</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>protocol. Include a review of any information provided to parents of students with disabilities in conjunction with this review.</p>		
<p>Consistent with this Final Order, the District shall review, and revise as appropriate, its policies and internal processes for promptly initiating the provision of FAPE for newly enrolled students who are on IEPs at the time of enrollment in the District. Include a review of any information provided to parents of students with disabilities in conjunction with this review.</p>	<p>Submit to the Department:</p> <ol style="list-style-type: none"> <li>3. A copy of the original documents reviewed and any revisions, if any.</li> <li>4. A brief cover letter describing the District's review process.</li> </ol>	<p><b>August 31, 2009</b></p>

Dated: June 17, 2009

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

Mailing Date: June 17, 2009

**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.