BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eagle Point School District No.9	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 09-054-019

I. BACKGROUND

On June 1, 2009, the Oregon Department of Education (Department) received a letter of complaint[1] from the parent of a student residing in the Eagle Point School District No.9 (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 June 1, 2009 and provided the District a copy of the June 1, 2009 complaint letter. The parent provided a copy of the complaint letter to the District.

On June 5, 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 June 19, 2009. On June 12, 2009, the parent contacted the complaint investigator to discuss the RFR. The parent informed the investigator that he had intended to include two additional allegations in the original complaint. These allegations were added and the Request for Response was amended.

At the same time, the District's attorney contacted the complaint investigator and asked for an extension of the investigation time period due to staff unavailability during the summer break. The Department did not grant an extension to the 60-day timeline. However, in order to allow the District additional time to prepare materials related to the two additional allegations, the Department extended the District's Response due date to June 26, 2009. In addition, the parent waived the right to an additional five days for response.

The District submitted its timely *Response* to the Department and to the parent on June 26, 2009. The District's *Response* included a narrative response and 397 pages of documentation: eligibility information; IEPs; progress, behavioral, and discipline reports; ESY data; class schedules and attendance reports; and a list of individuals knowledgeable about the situation. During the interviews, both the parent and the District provided additional documentation to the complaint investigator and each other.

The Department's complaint investigator determined that on-site interviews were required. On July 6-7, 2009, the Department's investigator interviewed the parent, the student, and the student's tutor. On July 6-7, 2009, the Department's investigator interviewed the following District staff: the special education director, two general education teachers, special education case manager, and an ESD special education administrator. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

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

[1] The parent included 140 pages of documentation with the letter requesting the complaint investigation.

extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.[2] This order is timely.

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 in Section III and the Discussion in Section IV. This complaint covers the one year period from June 2, 2008 to the filing of this complaint on June 1, 2009.[3]

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	**Placement of the Child and Parent Participation-General:** The parent alleges that the District violated IDEA when it changed the student's placement from one-to-one tutoring to participation in a classroom group without involving the parent in the decision-making process.	Not Substantiated. The District provided the 1:1 instruction as agreed upon in the mediation session. 1:1 instruction is not dependent upon, nor is it defined by, location. It is rather an instructional delivery system and means that one person provides instruction to one other person.
2.	**Parent Participation—General:** The parent alleges that when the parent requested an IEP meeting the District refused to hold one.	Substantiated. Parent made a specific request to the District that the District conduct a "placement meeting." The District deferred due to mediation, held other meetings to discuss other matters, but never actually held a placement meeting as the parent had requested.
3.	**General Evaluation and Reevaluation Procedures:** The parent alleges that the District violated IDEA when it did not involve the parent in the decision-making process to evaluate the student and find the student eligible as a student with mental retardation.	Not Substantiated. The District, while careless in quoting previous evaluation reports that stated the student had tested as Mildly Mentally Retarded, never actually held an eligibility meeting to consider whether or not the student was eligible for special education

[2] OAR 581-015-2030(12) (2008)
[3] *See* 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

		under the Mental Retardation classification.
4.	**<u>Requirement for Least Restrictive Environment</u>:** The parent alleges that the District violated IDEA when it refused to allow the student to attend general education classes.	Not Substantiated. The District did not deny the student a FAPE when it reduced the student's amount of time in the general educational setting.
5.	**<u>Rights of Inspection and Review of Educational Records</u>:** The parent alleges that the District violated IDEA when it refused to provide the parent with information about what events might have precipitated the student's inappropriate behavior in the classroom.	Substantiated in part. The District sent home many different types of information, made many phone calls to the parent, and held a number of meetings. However, it is clear that the parent never understood what the District was trying to convey about the student's behavior and that the District Failed to adequately explain the information to the parent.
6.	**<u>Extended School Year</u>:** The parent alleges that the District violated IDEA when it refused to provide Extended School Year services.	Not Substantiated. The District adequately considered the student's need for ESY services. The Department is unable to conclude that the IEP Team erred in determining that the student did not need such services.
7.	**<u>Content of IEP</u>:** The parent alleges that the District violated IDEA when it wrote an IEP outlining a program that would limit the student's ability to be involved in and make progress in the general education curriculum.	Not Substantiated. The student's April 2008 and April 2009 IEPs, although not adequately explained to the parent, did not unduly limit the student's ability to make progress in the general education curriculum.
8.	**<u>When IEP's Must Be In Effect:</u>** The parent alleges that the District violated IDEA when it used incorrect data to determine the student's progress in the behavioral program. The student's daily behavior is monitored on a checklist of several behaviors, and the student progresses in the program by reaching specific percentages of positive behavior. The parent alleges that the staff incorrectly	Not Substantiated. Although the District did not ensure that the parent fully understood the information presented, the Department concludes that the District recorded and communicated the behavioral tracking data required by the student's IEP.

	figured the percentages, which had the effect of limiting the student's progress in the program on a daily basis.	

	Requested Corrective Action. The parent is requesting that the District: a) Reinstate the one-to-one instructional delivery system; and, b) Restore the student's general education classes.	

III. FINDINGS OF FACT

Background Information:

1. The student is 14 years old and has completed the 7th grade.

2. The student has attended in a self-contained classroom in the same school since mid-year of the fifth grade.

3. The student was found eligible for special education as a student with an Other Health Impairment on April 7, 2008. At the same time, the team revised the student's IEP. The parent did not attend this meeting. No general education teacher was invited to attend the meeting, and no general education teacher was in attendance.

4. At the April 7, 2008 Eligibility/IEP meeting, the team also considered whether or not the student was eligible for special education as a student with a specific learning disability. The team rejected this area of eligibility.

5. The IEP written on April 7, 2008 contains the following elements:
   a. Specially Designed instruction in Functional Math (30 minutes per day), Functional Language Arts (45 minutes per day), Daily Living Skills (30 minutes per day), Social Emotional (60 minutes per day), and Vocational Education (15 minutes per day)—all to be provided in a "special classroom";
   b. Related Services of Transportation to and from school and health services for 30 minutes per year in the special classroom;
   c. Supplementary Services of a planner, calming or time out space, peer support, access to computers, "My Daily Report", positive behavioral supports, pair auditory with visual supports, and augmentative communication—all to be provided in the special class settings and in other school settings;
   d. Removal from participation with non-disabled peers in a "separate class for 4 hr per day in school," noting that "To the extent of the student's disability the educational environment needs to be nondistractive (sic), 1:1 or sm group instruction (PLEP)"; and,
   e. Placement is defined as "Separate class with 2 hrs. amount of participation in appropriate regular education settings."

6. The April 2008 IEP contains an eleven page Present Level of Academic Achievement and Functional Performance Statement. In it, the case manager outlined the student's current daily routine, summarized progress reports, skill levels, programs used to teach the student, behavioral issues and data, and student preferences and parental concerns. In his statement, the case manager describes the student's daily routine as follows:

1	6th gr. Science, Regular Class	Assistant, behavior & academic supports
2	Reading	1:1 with sped teacher
3	PE, Regular Class	Assistant, behavior cue support
4	Music Combo, Regular Class	Assistant, behavior cue support
Lunch	Independent	School Staff visual support
5	Language Arts	1:1 with sped teacher
6	Math	1:1 with sped staff
7	Sped Class Behavior Supports	Staff review daily behavior

7. In the section on consideration of special factors, the team notes that the student needs assistive technology. In the section on behavioral considerations, the case manager noted that the student has behavioral issues and wrote, "The student has a tangible reward system for positive behavior and monitors behavior with 'My Self Report.' The student also has frequent breaks and is assisted to help with social emotional skills and academics."

   The team also noted that the student would take the Scaffold Administration version of Statewide Assessment. In the explanation section of the statewide assessment page, the team noted that the student participates in a special class for 70% of the day and "is with peers during breakfast, lunch, assemblies, MAPS Science, PE and Success Skills."

8. The music teacher noted that the student left the music class after about four weeks due to the fact that the student could not stay focused on the music instruction, and that the student was disruptive to others.

9. Over the course of the 2008-2009 school year, the student was present 115.5 days out of 170 possible student attendance days, approximately 67% of the total school year. In February, the student broke an ankle, had to have surgery, and missed all but two days of the month. The District offered to provide tutoring for the student during the recuperation time, but the parent declined the offer.

10. On April 7, 2009, the IEP team met and wrote a new IEP for the student. Both the parent and the student attended and participated in the meeting. In addition, the team included the PE teacher, the District Special Education Director, and the ESD Supervisor, the private tutor, an observer the parent asked to attend, a representative from an advocacy organization, and the District's attorney.

11. The IEP written on April 7, 2009 contains the following elements:
    a. Specially Designed instruction in Functional Math (2 hours and 30 minutes per week), Functional Language Arts (3 hours and 45 minutes per week);, Daily Living Skills (30 minutes per day), Social Emotional (2 hr 30 minutes per week), and Vocational Skills (2 hours and 30 minutes per week); and, Functional Academics-Writing (2 hours and 30 minutes per week) again, all but Vocational Skills to be provided in a "special education setting";

b. Related Services of Transportation to and from school and health services for 15 minutes per year in the special classroom;
c. Supplementary Services of a planner, calming or time out space, computer for report writing, "My Daily Report", positive behavioral supports, pair auditory with visual supports, and a behavioral plan—all to be provided in the special class settings and in other school settings;
d. Removal from participation with non-disabled peers in a "separate class for 3 hr 25 min per day in school," noting that "[t]he student needs support to manage behavior, follow directions and in all academic areas; and, to the extent of the student's disability the educational environment needs to be nondistractive (sic), 1:1 or sm group instruction (PLEP)"; and,
e. Placement is defined as "Separate class with 2 hrs. of participation in appropriate regular education settings with MAPS program, Opportunities to transition into structured MAPS Program."

12. The IEP contains a seven-page Present Level of Academic Achievement and Functional Performance Statement. In it, the case manager summarized progress reports, skill levels, behavioral issues and data, parental concerns, assessment results, and the results of the 2008 eligibility evaluations.

13. In the section on consideration of special factors, the team notes that the student needs assistive technology. In the section on behavioral considerations, the case manager noted that the student has behavioral issues and wrote, "The student has a tangible reward system for positive behavior and monitors behavior with 'My Self Report'. The student also has frequent breaks and is assisted to help with social emotional skills and academic challenges." The team also noted that the student would take the Scaffold Administration version of Statewide Assessment.

14. The school day is five hours and 25 minutes long.

Placement of the Child:

15. In June of 2007, the parent filed a special education complaint with the Department. Both the parent and the District agreed to mediate, and a mediation agreement was signed by both parties on June 18, 2007. As part of the agreement, the parent and the District agreed that the student would receive 1:1 teaching services by a teacher[4] in the special education program for 45 minutes per day in the areas of reading and writing, as per the student's IEP goals, for the 2007-2008 school year.

16. The special education teacher in this program has a small office outside of the actual classroom and down the hall. During the 2007-2008 school year the teacher provided the student the 1:1 instruction in this office.

17. When the 2008-2009 school year started, the student and the teacher again worked in the office on the 1:1 instruction. However, the teacher observed that the student would get up and leave the office during this instruction more frequently than the student would leave the classroom during other periods of instruction. Consequently, the teacher

[4] Both parties agreed that it was the intent that the teacher providing the instruction be the one who teaches the self-contained class in which this student is placed.

decided to move to the classroom for the 1:1 instruction[5]. At times during the year, the teacher and the student worked in the library, at a table in the hallway, and in the classroom.

18. The teacher and the student worked 1:1 on language arts and reading skills during two periods a day over the course of the 2008-2009 school year.

Parent Participation — General:

19. On October 29, 2008, at a service coordination meeting with school staff and other agency staff, the parent requested a "change of placement" meeting.

20. On November 3, 2008, the parent sent a request for mediation to the Department.

21. On November 5, 2008, the District sent the parent a prior written notice of special education action. In the notice, the District notified the parent that the District was "deferring the request for a placement meeting pending completion of the formal mediation process."

22. The mediation was held on December 22, 2008.

23. On February 2, 2009, the District received a notice from a representative of a disability advocacy group, informing the District that the group would represent the student. Along with a request for records, the representative asked that the District convene an IEP meeting as soon as possible.

24. The District sent the representative its standard information packet on the procedure and cost of sending records, and the representative called the District and informed the District that the agency would obtain the records another way. In addition, the representative asked the District not to schedule a meeting until the representative had a chance to review the records**.**

25. The meeting was scheduled for and held on March 17, 2009. The team discussed a variety of items, but no specific decisions were made at the meeting.

General Evaluation and Reevaluation Procedures:

26. An ESD school psychologist tested the student as part of the April 2008 re-evaluation. In a report dated March 20, 2008, the school psychologist noted that the student had been tested in previous years by in- and out-of-district professionals. The school psychologist noted that in 2003 a district examiner found the student to be in the "borderline range of functioning on the Wechsler Intelligence Scale for Children-III (WISC-III)."[6] The psychologist also noted that in March of 2005, a district examiner again found the student in the "mild mentally handicapped range on the WISC-III," and in October of 2005 a private psychiatrist also "diagnosed the student with Mild Mental Retardation."[7]

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[5] It is not clear whether or not the teacher ever explained the reasons for the physical move, although the parent acknowledges observing the student and the teacher working 1:1 in the classroom early in the school year.
[6] Southern Oregon Education Service District Psychoeducational Report, March, 20, 2008, p. 1.
[7] Southern Oregon Education Service District Psychoeducational Report, March 20, 2008, p. 2.

27. As noted previously, the April 2009 IEP contains a seven page Present Level of Academic Achievement and Functional Performance Statement. In it, the case manager summarized file review notes, including the results of previous evaluations in which evaluators identified the student as having mild mental retardation.

28. The District never considered the eligibility category of Mental Retardation at any eligibility meeting.

Requirement for Least Restrictive Environment:

29. The IEP written on April 7, 2008 contains the following elements:
    a. Removal from participation with non-disabled peers in a "separate class for 4 hr per day in school," noting that "To the extent of the student's disability the educational environment needs to be nondistractive (sic), 1:1 or sm group instruction (PLEP)"; and,

    b. Placement is defined as "[s]eparate class with 2 hrs. amount of participation in appropriate regular education settings."

30. The IEP written on April 7, 2009 contains the following elements:
    a. Removal from participation with non-disabled peers in a "separate class for 3 hr 25 min per day in school" noting that "[t]he student needs support to manage behavior, follow directions and in all academic areas; and, to the extent of the student's disability the educational environment needs to be nondistractive (sic), 1:1 or sm group instruction (PLEP)".

    b. Placement is defined as "Separate class with 2 hrs. of participation in appropriate regular education settings with MAPS program, Opportunities to transition into structured MAPS Program."

31. On May 21, 2008, the student drew a picture of stick figures and a volcano and told the special education teacher that the student was very angry at a staff member and another student and the picture represented the desire to shoot them. As a result, the District referred the student for a thorough Threat Assessment Review. The parent disputed the facts of the situation and eventually, because the tension escalated so greatly between the parent and the school and district staff, the parent withdrew the student for the remainder of the school year.

32. At the start of the 2008-2009 school year, the District convened a meeting to discuss the student's program. Given the manner in which the previous school year had ended, the team wanted to plan carefully for the start of the school year.

33. The team met on August 27, 2008. The meeting did not include a general education teacher. The parent asked that the student be able to start immediately in a general education music class, as per the IEP. School team members took the position that they wanted to see the student demonstrate stabilized and positive behavior in the self-contained classroom before the student attended general education classes. The parent asked that the District give the student a chance to start the year in the general education classes and that the student be removed if the student's behavior was disruptive to the class. The District team prevailed in the discussion and stipulated that after the student "demonstrates pro-social behavior in the self-contained classroom, the

student will go to band class two time per week." The parent also asked that the student be allowed to participate in PE and sports, but the District took the position that sports are an extracurricular activity while PE was part of the self-contained class curriculum.

34. Sometime between the August 27, 2008 meeting and September 17, 2008, the parent visited the school with the student. The parent had a conversation with both the music and the PE teacher during this visit and asked both whether or not the student could attend their classes. Both teachers stated that they would be happy to have the student in class and that the student had done reasonably well the previous year.

35. The team met again on September 17, 2008. This time, the PE teacher and the music teacher attended the meeting. The notes taken at this meeting indicate that the team again discussed a plan by which the student would enter general education classes in a measured manner after demonstrating appropriate behavior in the self contained classroom. However, the notes do not reflect a specific date on which this plan would begin.

36. On October 29, 2008, the team met again. This time the meeting included the school principal and two staff members from the county mental health unit, who were providing skill training to the student. Again, the team discussed the student's integration into general education classes. Meeting notes reflect that the team decided the student would begin attending PE for four days a week instead of three. The team also agreed that the teacher would explore the possibility of the student attending a health class one day per week. The team noted that the student "may attend on days the student is most likely to be successful."

37. In an "Educational Progress Report, January 23rd to March 13th," written on March 17, 2009, the teacher outlined the student's daily schedule. This schedule reflects that the student attends PE/Exercise during 3rd period and Art during 4th period. Another Class Schedule for April 13th to June 9th reflects that the student attends PE/Exercise 2nd period and Art 4th period.

38. Attendance records printed out by the District office for the school year list the student's classes for most of the year under the name of the self-contained class, and only towards the spring of 2009 is the name of the PE or Art class actually listed on the student's attendance records.

39. Neither District administrative staff nor the teacher was able to clearly outline how much time the student spent in general education classes during the one year period under investigation.

40. Asked about the program and placement, student stated the following, "The other kids in the class are not like me, I learn much more faster than them, the other kids have much more difficulty than me."

Rights of Inspection and Review of Educational Records:

41. At the start of the 2008-2009 school year the District implemented a system under which the teacher sent home daily and weekly behavioral information about the student's performance in the classroom. The information was presented in the form of a notebook

in which the teacher or an assistant wrote notes to the parent[8]. Additionally, the teacher sent home a weekly tracking sheet on which the teacher indicated the student's performance in following directions, completing work, staying in an assigned area, being respectful of adults, and refraining from verbal and physical aggression. In addition, the staff rated the student each period on a green/red chart—stickers in the green area indicated cooperative, appropriate classroom behavior and stickers in the red area indicated more negative behavior.

42. In addition, the teacher prepared lengthy educational progress reports at least three times during the school year and sent IEP goal progress reports at each grading time. In the fall, the parent and the teacher made an agreement to talk on the phone weekly, and this happened a few times.

43. On November 17, 2008, in a meeting with District staff and county mental health staff, the parent asked the District to provide "specific information regarding the triggers of the student's appropriate or inappropriate behavior at school."

Extended School Year:

44. The District took data on the student's progress on the goals in the areas of daily living skills, language arts, functional math, social skills, social/emotional skills, and vocational skills at the end of the 2007-2008 school year. The District then took data on the student's performance in these same goal areas at the start of the 2008-2009 school year, before the start of the winter break, at the end of the winter break, and before and after the spring break.

45. The IEP team met on May 18, 2009 to review this data and ascertain whether or not the student was eligible for Extended School Year services. The data is outlined in the chart below.

Goal Area	Spring 2008	Fall 2008	Pre Winter Break 2008	Post Winter Break 2008	Pre Spring Break 2009	Post Spring Break 2009
Daily Living	39	73	73	67	67	73
Language Arts	76	76	76	76	76	76
Functional Math	84	91	91	65	65	59
Social Skills	75	86	86	93	93	86
Social Emotional	20	79	79	75	75	80
Vocational	0	3	3	7	7	3.5

46. At the May 18, 2009 meeting, the team reviewed the data and concluded that the student was not eligible for Extended School Year services.

[8] Neither the parent nor District staff had a copy of this notebook, so the investigator was unable to judge how much information was provided in this format.

Content of IEP

47. Both IEPs that were in effect during the time period under investigation contained a provision that the student would attend general education classes for a specified period of time. The IEP written in April 2008 specified that the student would spend two hours per day in general education settings. The IEP written in April 2009 specified the student would spend two hours of participation in appropriate regular education settings with the MAPS program.

48. The parent asked several times that the District consider placing the student in general education classes.

49. Attendance records are not clear as to exactly how many class periods the student spent in the general education setting over the course of the school year.

When IEP's Must Be in Effect

50. The District sent home two different data tracking sheets with the student for the parent to review. The first tracking sheet tracked a specific set of behaviors and was sent home at the end of the week. Those behaviors tracked included the student's performance in following directions, completing work, staying in an assigned area, being respectful of adults, and refraining from verbal and physical aggression. This information was sent home weekly and the student's behavior was presented on a percentage basis. This data sheet was instituted at the suggestion of the ESD supervisor.

51. The second tracking sheet reflected the student's behavior on a red/green chart kept in the classroom. Every time the student was observed behaving appropriately or every time the student completed an activity or behaved positively in some fashion, staff would put a sticker in the green column on a large behavior chart. In contrast, every time the student was inappropriate in the classroom, staff would put a sticker in the red section of the chart. At the end of the day, all of the stickers were tallied, and the day was classified as either green or red based on which color was awarded more often that day. This information was sent home to the parent, and the report was simply that the day had been a green (good) day or a red (bad) day.

52. No member of the staff ever explained to the parents that the two tracking sheets reflected different behaviors. The parent assumed that the percentages reported on a daily basis should align with the description of the day being red or green.

IV. DISCUSSION

1. & 2. Placement of the Child and Parent Participation – General

The parent alleged that the District violated IDEA when it changed the student's placement from a one-to-one tutoring situation to participation in a classroom group without involving the parent in the decision-making process. Additionally, the parent alleged that the District violated IDEA by refusing to hold an IEP meeting after the parent requested one.

Under OAR 581-015-2190(1) the District must provide parents an opportunity to be involved in the decision-making process whenever major decisions are being made about the student's education. Major decisions include those about identification, evaluation, the IEP, placement,

and the provision of a free and appropriate public education. OAR 581-015-2250(1)(a) specifies that the parent must be involved in the placement decision.

In this case, the first issue is not about placement but about an instructional delivery system. In June of 2007, the District and the parent agreed in mediation that instruction in reading and written language would be delivered to the student one-to-one by the special education teacher. This, by definition, means that the student and the teacher sit down together, just the two of them, and work on reading and writing skills. Originally, the teacher taught the student in a small office removed from the classroom. However, when the 2008-2009 school year started, the teacher observed that the student's attention wandered more in that private setting than when the student was in the actual classroom. The teacher moved the setting to various other places in the building but continued to work only with that student during that time. One-to-one instruction is not dependent upon location; but rather, a teacher can teach a student a skill in any location given the appropriate materials. Therefore, the decision to change the location of instruction did not constitute a change of educational placement under IDEA and did not require parental participation. Given that the District maintained the one-to-one instructional delivery system, the Department finds that the District did not violate IDEA and, consequently, does not substantiate the parent's allegation.

With regard to the second issue, the parent reasonably asked the District, on October 29, 2008, to hold a meeting to reconsider the student's placement. The Department's determination that the parent's request was reasonable is based on the discrepancy between the April 2008 Nonparticipation Justification Statement and placement page and the educational placement actually being offered to the student by the District. Shortly after the request, the parent requested mediation, and, after the mediation, the parent enlisted the help of an advocacy agency. As a result of these two things, the District held several meetings with the parent. However, none of these meetings were organized to meet the parent's request to reconsider placement. The District provided notice to the parent that it was delaying the placement meeting pending mediation but never followed up to say that it was either denying or granting the request for a placement meeting.

Under OAR 581-015-2310, school districts are required to provide prior written notice to parents when the district refuses to change the education placement of a student. In this case, the parent made a reasonable request to reconsider the student's educational placement; therefore, the District was required to either hold the requested meeting or provide prior written notice to the parent detailing the reasoning behind its refusal to reconsider the student's placement. Therefore, the Department substantiates the parent's allegation that the District failed to hold a placement meeting despite a reasonable request by the parent to discuss the student's placement. *See Corrective Action.*

3. General Evaluation and Reevaluation Procedures

The parent alleges that the District violated IDEA when it did not involve the parent in the decision-making process to evaluate the student and find the student eligible for special education as a student with mental retardation. OAR 581-015-2110 and -2120 outline the procedures for evaluation and reevaluation of students suspected of having an educational disability. Specifically, these administrative rules mandate that parents must give permission and must be involved in the decision-making process after the evaluation or reevaluation is complete.

In this case, the student has been evaluated a number of times by a number of educational, medical, and psychological/psychiatric personnel. Two different evaluators in 2005 noted in written reports that the student's cognitive skills tested in the range of Mild Mental Retardation. In a report written in 2008, an ESD school psychologist included this information in a reevaluation report. In addition, the case manager included the information in the April 2009 Present Level of Academic Achievement and Functional Performance Report. The parent was very surprised to read this information and concluded that the District had held a meeting, or made a decision, and not included the parent. In fact, the District never held an eligibility meeting to consider Mild Mental Retardation as a possible eligibility category, and the student is not and never has been eligible for IDEA under the classification of Mental Retardation; therefore, the Department does not substantiate this allegation.

4. Requirement for Least Restrictive Environment

The parent alleged that the District violated IDEA when it refused to allow the student to attend general education classes. OAR 581-015-2240 outlines two very important tenets of special education law and practice. First of all, school districts must ensure that "to the maximum extent appropriate," students with disabilities are educated with students who do not have disabilities. Secondly, districts remove students from general education settings only when "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

The case of *Sacramento City Unified School District v Rachel H.*, 14 F.3d 1398 (9th Cir. 1994) clarified this concept, and the *Rachel H.* four-factor test gives school districts a process for making placement decisions. District teams must consider these factors each time they make a placement decision by reviewing at least two placements and considering the factors as they play out in each setting.

The team should first address the benefits of each setting. Specifically, the team must determine whether the more restrictive setting provide significantly more benefits than the general education setting with supplemental aids and services. The second question addresses the social/emotional and non-academic needs of the student. The team must determine what benefits the student will receive from the interaction with non-disabled peers in the general education setting and what the harmful effects will be.

The third factor to be considered is what the effect of the student with the disability will be on the general education students and on the general education teacher. And, finally, the fourth factor addresses whether or not placing the student with the disability in a general education classroom would be prohibitively expensive.

The first three factors of *Rachel H.* are very important to review in this case. Here, the team stated in the IEP that the student would attend general education classes and settings for a specified period of time each day. However, after the student drew a picture in the spring of 2008 and stated it was a threat to others, the team focused primarily on the student's behavior. The notes from two meetings involving the parents and the District, held on August 27 and September 17, 2008, indicate that the discussion centered on the student's behavior and the effect of those behaviors on the general educational students and general educational teachers. However, the Department is unable to conclude that the decision to remove the student from the general education setting did not result from due consideration of the *Rachel H.* factors. Specifically, the Department is unable to conclude that the decision to remove the student from all general education classes was not based, at least in part, on consideration of the benefits

and harmful effects of placing the student in a general or more restrictive educational setting. For these reasons, the Department does not substantiate the parent's allegation that the District failed to place the student in the least restrictive environment.[9]

5. & 8. Rights of Inspection and Review of Educational Records and When IEP's Must Be In Effect

The parent alleges that the District violated IDEA when it refused to provide the parent with information about what events might have precipitated the student's inappropriate behavior in the classroom. In addition, the parent alleges that the District did not provide the appropriate special education and related services when it incorrectly figured the percentages on the student's daily/weekly behavior charts—thus limiting the student's progress in the program on a daily basis. These issues are combined here for discussion because they had a cumulative effect of confusing the parent about the student's behavior and progress in the program.

OAR 581-021-0270(3) stipulates that not only must the district provide records, but that it must "respond to the reasonable requests for explanations and interpretations of the records." It is this requirement that districts provide explanation that is at the heart of this allegation. The District actually provided the parent with a great deal of information and records. Staff sent home results of two different behavior tracking systems to the parent, but no one ever explained to the parent that the tracking systems were not related. Many times, the data on one tracking sheet contradicted the data on the other. District staff also sent home a substantial amount of written information in Progress Reports and a communication notebook. The teacher called the parent, and the special education director met with the parent multiple times. The present level of performance statements in the IEP's in effect during this time period were eleven and seven pages long. Additionally, the District held many meetings with the parent over the course of the year.

The issue here is not that the District did not provide information; the problem is that the District did not explain or interpret the information in a way that the parent could understand. The data tracking systems presented differing information, the written documents were long and very educationally technical, and the effect of all of this communication was to leave the parent in the difficult position of being given large amounts of information and very little explanation. The District was sincere in its attempt to communicate issues to the parent, but sent too much with too little explanation; therefore, the Department substantiates the parent's allegation with respect to the District's failure to provide explanations of the behavioral data provided following the parental request on November 17, 2008. *See Corrective Action.*

Consistent with the above discussion, the Department does not substantiate the allegation that the District did not provide the appropriate special education and related services when it incorrectly figured the percentages on the student's daily/weekly behavior charts. The Department is unable to conclude that the District deviated from the behavioral tracking procedures detailed in the student's April 2009 IEP in completing the behavioral tracking sheets and compiling the data collected through that process. The Department believes that the parent's allegation resulted from the District's failure to adequately explain to the parent the details of the behavioral tracking procedures rather than the result of the District's failure to adhere to the student's IEP. Therefore the Department does not substantiate this allegation as

[9] Although the Department does not substantiate this allegation, the Department is concerned by the District's lack of documentation of the decision to make changes to the student's placement as it was documented on the April 2008 and April 2009 IEPs and placement pages.

it pertains to the District's failure to properly implement the behavioral tracking procedures from the student's April 2009 IEP.

6. Extended School Year

The parent alleged that the District violated IDEA when it refused to provide Extended School Year services to the student. OAR 581-015-2065 outlines the procedures and rationale for providing Extended School Year (ESY) services to students with disabilities. In essence, ESY is provided when a student loses too much skill over the course of a break and then takes too long to recoup the skill after returning to school. Other factors may also be considered.

Here, the District did an excellent job of taking data before and after every break over the course of the 2008-2009 school year. When the student returned to school from the winter break, the student scored a 65 % in math skills as opposed to the score of 91% the student had achieved before the break. This score of 65% actually dropped to 59% by the time the student was tested at the end of the school year. In all other areas, the data shows that the student held steady and consistently improved over the course of the year. The student's declining math scores warranted consideration by the student's IEP Team. However, the Department is unable to determine that the student's slippage in math was the result of regression and recoupment concerns, and the Department does not substantiate the parent's allegation that the district improperly denied the student access to ESY services.

Nonetheless, the Department concludes that the student's declining performance in math warranted review by the IEP Team. Based on this conclusion, the Department encourages the student's IEP Team to reconvene to discuss the student's needs with regard to math and, if necessary, to consider strategies, including ESY services, for addressing those needs.

7. Content of IEP

The parent alleges that the District violated IDEA when it wrote an IEP outlining a program that would limit the student's ability to be involved in and make progress in the general education curriculum. As discussed above in allegations 5 and 8, the Department is unable to conclude that the April 2008 or April 2009 IEP denied the student an opportunity to make progress in the general educational curriculum or resulted in an unduly restrictive placement for the student. Therefore, the Department does not substantiate this allegation.[10]

V. CORRECTIVE ACTION[11]

In the Matter of Eagle Point School District #9
Case No. 09-054-019

Corrective action requires the District to hold a placement meeting. OAR 581-015-2250, titled 'Placement of the Child,' requires that placement decisions be made in conformity with the Least Restrictive Environment provisions of OAR 581-015-2240 to -2255 and be based on a current

[10] The Department reiterates its concern that the District's failure to properly memorialize the decision to remove the student from the general education setting and failure to properly document the student's actual participation in the general education setting contributed to the parent's concerns that form the basis of this complaint.

[11] The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

IEP. Prior to conducting a placement meeting, the District shall hold an IEP meeting for the student to review and, if necessary, revise[12] the IEP in effect for the 2009-2010 school year.

The IEP team will address the student's present Levels of Academic Achievement and Functional Performance; consider the student's participation in nonacademic and extracurricular services and activities; determine the reason(s) for and extent of any removal from regular education classes; and describe the student's need for educational assistant support to access regular education and the general curriculum. The IEP team will include a regular education teacher.[13] The Department will provide, or reimburse the District for the use of, a neutral facilitator for the placement meeting and the preceding IEP meeting[14] if the parent and the District agree to the use of a neutral facilitator.

#	Action Required	Submissions[15]	Due Date
1.	Placement meeting: The District shall hold a placement meeting and determine placement in accordance with OAR 581-015-2240 through OAR 581-015-2255 and the discussion above. The District placement meeting may be held immediately following the IEP meeting, if mutually agreeable to the parent and the District.	The District shall submit to the Department and the parent a copy of: the placement meeting notice, placement determination page resulting from the meeting; meeting notes or minutes; and any prior written notices (including prior written notice of any proposal or refusal to change placement) resulting from the meeting.	**September 11, 2009**
2.	Progress Reporting & Communication System Within five school days following each of the first two District reporting periods, the District shall hold a progress reporting meeting with the parent to discuss and explain progress information. In conjunction with the second progress reporting meeting, the District will develop a written plan, including a calendar, to share progress reports timely with the	Following each meeting, submit to the Department and the parent, copies of the progress information and a written explanation of progress. Submit the plan for ODE review and approval.	**November 13, 2009 & February 5, 2010** **February 5, 2010**

[12] In accordance with OAR 581-015-2200, OAR 581-015-2205,and OAR 581-015-2225.
[13] Consistent with OAR 581-015-2210(4), the regular education teacher will also assist the IEP team with the determination of supplementary aids and services, program modifications, positive behavioral interventions for the child, and supports for school personnel.
[14] To request a neutral facilitator for these activities, contact Steve Woodcock, Mediation Coordinator, telephone (503) 947-5797 or e-mail steve.woodcock@state.or.us .
[15] The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred.. OAR 581-015-2030 (13). The Department requires timely completion. 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).

	parent during the second semester of the 2009-2010 school year. *The Department will provide, or reimburse the District for the use of, a neutral facilitator for the progress reporting meetings if the parent and the District agree to the use of a neutral facilitator for these meetings.*		

Dated: July 31, 2009

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

Mailing Date: July 31, 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.