

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the North Bend School )  
District )  
)  
)  
FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 09-054-021

**I. BACKGROUND**

On June 8, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the North Bend School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on June 9, 2009. The parents had previously provided the District a copy of the five page complaint letter and the accompanying exhibits totaling approximately 190 pages.

On June 11, 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 25, 2009. The District submitted its timely *Response* to the Department and to the parent. The District's *Response* included four pages of narrative explanation and approximately an additional 580 pages of documents requested in the RFR. During on-site interviews, the District provided the Department's investigator with an additional 76 pages of documents. On June 29, 2009, the parents provided the Department and the District a *Reply* to the District's *Response* and submitted 49 pages of additional documents in support of their complaint. Additional email correspondence with the Department's investigator and the District or its counsel and the parents continued through July 13, 2009.

The Department's complaint investigator determined that on-site interviews were required. On June 26, 2009, the Department's investigator interviewed the charter school general education teacher and administrator. On June 29, 2009, the Department's investigator interviewed the following District staff: a special education teacher, an ESD speech and language pathologist, an ESD autism specialist, an educational assistant, and the District's Special Education Director. In addition, on July 6, 2009, the Department's complaint investigator interviewed the student's private clinical psychologist by phone. 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 parents' 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 June 9, 2008 to the filing of this complaint on June 8, 2009.<sup>2</sup>

	<b>Allegations</b>	<b>Conclusions</b>
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b><u>IEP Design, Content &amp; Revision:</u></b></p> <ul style="list-style-type: none"> <li>a. Not obtaining sufficient data to accurately include the student's present level of academic achievement and functional performance in the March 2009 IEP;</li> <li>b. Not including more one-to-one adult assistance time than the 2.25 hours per day included in the February 2008 and March 2009 IEPs, although the IEP team determined that the student needed more adult assistance than 2.25 hours per day; and</li> <li>c. Not revising the student's IEP to address the lack of expected progress toward the written language annual goals in the February 2008 and March 2009 IEPs.</li> </ul>	<p>Substantiated, in part.</p> <ul style="list-style-type: none"> <li>a. The student's March 2009 IEP includes sufficient data to provide an accurate statement of the student's PLAAFP.</li> <li>b. The IEP Team did not achieve consensus on increasing additional aide time over the amount contained in the IEPs. Therefore, the Department does not substantiate this allegation.</li> <li>c. The District did not revise the student's IEP despite evidence that the student was not progressing toward his written language annual goal.</li> </ul>
2.	<p><b><u>IEP Implementation:</u></b></p> <p>Not implementing the special education and related services as described on the student's February 2008 or March 2009 IEPs. Specifically, the parents allege that the District failed to provide the student with:</p> <ul style="list-style-type: none"> <li>A) Written language specially designed instruction of 200 minutes per week;</li> <li>B) Organization specially designed instruction of 150 minutes per week;</li> <li>C) Math specially designed instruction of 150 minutes per week;</li> </ul>	<p>Substantiated, in part, and, stipulated, in part.</p> <ul style="list-style-type: none"> <li>A) Substantiated and stipulated.</li> <li>B) Substantiated and stipulated.</li> <li>C) Substantiated and stipulated.</li> </ul>

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

	<p>D) Access to laptop computer in the general education classroom to generate written work;  E) Sound cancelling headphones to block sensory overload;  F) A camera for "Social Language" practice;  G) A microphone and/or recording device to record written language for later transcription;  H) Social behavior mapping;  I) Five point scale for stress;  J) Data collection to measure progress on the student's annual goals;  K) Progress reports on the student's annual goals in December 2008 until requested and no progress report for the winter term, second trimester of the 2008-2009 school year; and,  L) Meetings between the parents and the general education teacher every six weeks, as identified in the IEP.</p>	<p>D) Substantiated.  E) Substantiated.  F) Substantiated.  G) Substantiated.  H) Not Substantiated.  I) Substantiated.  J) Substantiated.  K) Not Substantiated.  L) Substantiated.</p>
3.	<p><b><u>Student Records/Parent Participation:</u></b></p> <p>Not providing the parents with copies of the student's educational records relating to data collection measuring the student's progress toward his annual goals, although the parents requested those educational records.</p>	<p>Not substantiated.</p> <p>The District provided those records it had available.</p>
4.	<p><b><u>Least Restrictive Environment:</u></b></p> <p>Providing general education instruction in reading in a pullout, small group, specially designed instructional setting when the IEP does not include specially designed instruction for reading.</p>	<p>Not substantiated.</p> <p>The pullout, small group reading instruction provided specially designed instruction in the student's Organizational goal.</p>
	<p><b><u>Requested Corrective Action.</u></b></p> <p>The parents are requesting that the District provide compensatory education for the failure to implement the specially designed instruction in the student's IEP and that the District "participate in the funding of the teacher who will be teaching him privately after this school year [2008-2009]".</p>	<p>See Corrective Action.</p>

### III. FINDINGS OF FACT

#### **Background**

1. The child is currently 12 years old, attends school within the District since kindergarten, and resides in the District. The student is presently eligible for special education under the categories of Autism Spectrum Disorder, Specific Learning Disability (Math and Written Language), and Other Health Impaired. The student has attended a charter school located within and sponsored by the District since kindergarten. He was found eligible for special education services beginning in first grade.

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

2. The student's IEP was reviewed by a properly constituted IEP team on February 29, 2008 (2008 IEP). The 2008 IEP was to start services on February 29, 2008 and continue into the next school year until February 28, 2009. The Present Level of Academic Achievement and Functional Performance statement ("present level statement") for this fourth grade student was over three pages in length and described the student in detail. The student was described as having average cognitive abilities, but his learning and other disabilities make it hard for him to perform up to his potential. His grade equivalency in Math was described as 3<sup>rd</sup> grade level and accompanied by a description of what he was able to perform; in Written Language as "ending 2<sup>nd</sup> grade level" with a description of what he was able to write. The present level statement consistently recognized that the student's disabilities impacted his behaviors, which impacted his learning and the learning of others, and that his social cognitive deficits made it difficult for him to achieve social awareness and experience positive social interactions. He has difficulties sequencing and identifying inferences. He has difficulty staying seated, can easily become overwhelmed in the classroom, and "demonstrates ability to stay focused and perform better in a predictable, structured environment. He needs specific, well taught classroom behavioral procedures and expectation" and "needs structure and a familiar routine to assist him to be successful in school." Present level descriptions included, besides those described above, Technology (keyboarding), Organization, School Routines/Problem Solving, Social Cognitive, Speech and Language, Gross Motor, Occupational Therapy and Social Communication. The present level statement described parental concerns including that the parents did not believe that the student was progressing academically or socially, that he needed more one-to-one adult assistance to generalize "social thinking," and that his emotional and mental health was compromised by lack of support in the classroom.
3. The February 2008 IEP present level statement includes results of the Wechsler Individual Achievement Test (Second Edition) (WIAT-II), administered earlier that month, and compared it with a WIAT-II administered in the summer of 2006. The February 2008 WIAT-II showed a Reading Composite Standard Score (SS) of 99 (Compared to a SS of 98 in the summer of 2006); a Math composite (SS) of 76 (Compared to a SS of 81 in the summer of 2006); and a Writing Composite SS of 76 (Compared to a SS of 82 in the summer of 2006). The State Assessment

administered during the 2006-2007 school year reported that he met the Reading standard (scoring 216) but did not meet the Math standard (scoring 195).

4. The student's annual goals in Math, Written Language, Organization, Technology, Problem Solving and "Social Cognitive Cueing and Expected Response" stated that progress would be reported to the parents through "Progress reports and Sp./Gen. teacher conferences every 6 weeks". Only the Communication annual goal was to be reported to the parents through progress reports and a home to school journal.
5. The February 2008 IEP included Specially Designed Instruction (SDI) of Math 150 minutes per week in the resource room; Written Language 200 minutes per week in the resource room; and, Organization<sup>3</sup> 150 minutes per week in the resource room. Additional SDI included "Communication and Social Cognitive" 40 minutes twice per week in the speech room, Problem Solving 10 minutes per week in the speech room and technology 15 minutes per day in the computer lab. The IEP did not include any SDI in the area of Reading.
6. The February 2008 IEP included Supplementary Aids/Services described as consultations with an Occupational Therapist (4 hours per year) and Autism Consultation (8 hours per year). Eighteen Modifications and Accommodations were listed in the IEP. For the purpose of this complaint, the relevant items included Social Behavior Map (daily in general education classroom); 5 Point Scale of Stress (daily in general education classroom); Home/school journal for frustrations (daily in general education classroom); Electronic Production of Work (for written language assignments in the general education classroom); Access to laptop computer, camera, microphone, headphones (final draft written language product in the general and special education classroom); and, adult assistance (2.25 hours per day in the general education classroom).
7. The February 2008 IEP stated that the student needed to be removed from the regular classroom and calculated the amount of removal as 35.95% or 655 minutes per week because the student "is easily stressed in large group, noisy, active environments. He needs small group instruction in a quiet, structured environment to meet his academic and speech language needs." The IEP did not identify the classes from which the student would be removed.
8. During the year, the student participated in the State standardized tests. His Math score was 196 (in the "low"- below 207- category); Reading/Literature score was 220 (meeting the standard); and Writing was scored at 11 (in the very low category).

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<sup>3</sup> The "Organization" SDI is described in the Organization annual goal, and the heading does not accurately describe the intent of the SDI or the goal. The goal is not related to organizing papers or writing in a planner, although some staff inaccurately understood that to be the purpose of the goal. The annual goal describes it as "increasing his organizational skills in core curriculum areas by increasing knowledge and use of basic strategies for determining cause and effect, sequencing, inferenceing (sic), and organizing information during structured learning settings". The parents describe this as "executive functioning". ( P28, James interview, Parent interview)

## **2008-2009 School Year**

9. The student attended the charter school as a fifth grade student during the 2008-2009 school year. The school day began at 8:10 am and ended at 2:25 pm. During the year, the schedule for the provision of SDI time changed not less than four times. In general, after arriving at school, the student started his day with 15 minutes of keyboarding and returned to the general education class for the balance of the morning, from 8:30 am to 11:00 am. While in the general education class from 8:30 am to 10:45 am, the student had an assigned adult assistant for the prescribed 2.25 hours listed in the IEP.
10. The school scheduled recess and lunch back to back between 11 am and 11:50 am. The general education class had three blocks of time in the afternoon with a rotating curriculum on various days during the week. Generally, the student received SDI during the afternoon in the resource or speech rooms, although he did return to the general education class during five of the week's fifteen afternoon blocks. When he returned to the general education class, he did not have an educational assistant assigned although there were periods of time when other adults were in the classroom. Staff reported that his ability to function in the general education classroom in math with an aide was at the 90% or above level, but when he was sitting alone at his desk, it was reduced to a 50-60% level.
11. The District did not keep daily logs of the amount of SDI the student received. Estimates of time, determined through reconstructed staff schedules, provides the best evidence of the amount of SDI actually delivered. Calculating, with precision, the actual amount of SDI delivered presents difficulties. The District admits that all of the SDI required by the IEP was not provided to the student. The parents calculated the amount of SDI not provided as: Math, at least 14 hours; Written Language, at least 34 hours; and, Organization, at least 35 hours. The District calculated the amount of SDI time not provided as<sup>4</sup>: Math, approximately 13.5 hours; Written Language, approximately 36 hours; and, Organization, approximately 34.50 hours.<sup>5</sup> Due to a disputed issue relating to the length of the last period of the day, the District also offered an additional amount of compensatory education of 15 hours in an unspecified area. The District offered the higher amount of compensatory education listed as part of the District's offer of stipulated corrective action.
12. The student was removed from the general education classroom for 45 minutes twice a week for a reading group. The District asserts that 90 minutes toward the "Organizational" SDI was provided in the resource room in this special education reading small group instruction. The parents assert that the student's IEP did not include SDI in reading and that this special education reading group did not

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<sup>4</sup> On April 10, 2009, the District offered the parents compensatory education in two areas: Organization 19.50 hours; Written Language 32 hours. The District offered to provide the compensatory services between June 4 and June 19, 2009. (SD 457)

<sup>5</sup> The amount of compensatory education time listed in the Finding of Fact # 11 occurred after the Department investigator's on-site interviews and the District's recalculation of the deficiency of SDI with the information developed during the interviews.

properly address the Organizational annual goal. A transcript of the March 2009 IEP meeting supports the parents' assertion, although the District asserts that the goals for the reading group matched the student's Organizational goals of reading materials, locating main ideas and inferences, and sequencing events.<sup>6</sup>

13. On December 12, 2008, the parent emailed District staff a request for accumulated data on the student's annual goals and confirmed her earlier verbal request to review data on the goals. The parent also requested to review a copy of the home/school journal related to the Communication annual goal. On January 29, 2009, the attorney for the parents made a written request to the District for the student's educational records, including the educational aide's journal. The letter also requested an IEP team meeting. The District sent the student's educational records, which were received by the attorney on February 11, 2009. No home/school journal entries were included because journal entries were not being maintained.
14. On February 13, 2009, the IEP team met from 1:30 pm to 5:00 pm to revise the 2008 IEP. Twelve people, including two attorneys, attended in person and a thirteenth person attended by phone. The meeting was tape recorded. The team did not reach consensus on the IEP. While the parents and some staff members supported increasing the amount of educational assistant time, the District representative denied the request with the intent of taking observations before the reconvened meeting scheduled the next month. The District representative also stated that additional aide time could not be included in the student's IEP without checking with the District superintendent due to fiscal issues. The District representative acknowledged during on-site interviews that she should not have made this statement, that it was a mistake, and that she had authority at the meeting to include additional aide time.
15. A District representative observed the student during instructional sessions, including one art class, one math class, one science class, gym and a small group instructional setting, and four recess sessions between February 17 and March 16, 2009. The staff member concluded that she did not believe that the student exhibited behaviors necessitating additional aide time over the 2.25 hours contained in the 2008 IEP or proposed for the 2009 IEP. While there were days that he was "more needy" than others, she believed that increased aide time would make the student more dependent on the aide, would stigmatize him with the other children, and would not foster the need for him to become more independent. She expressed her opinion at the continued IEP meeting held on March 5, 2009. Charter school staff observed the student on almost a daily basis in recess and at lunch. While there were a small number of incidents on the playground involving the student, staff consensus was that the student did not have major behavioral issues at lunch or recess and that there were a number of students with significantly more problematic behaviors than the student who is the subject of this complaint. Other IEP team participants stated that students

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<sup>6</sup> Partial transcript from the March 2009 IEP meeting: Staff #1: ...Two days a week is he pulled in reading group, and that's not for Organization, that's for reading.... Parent: What I'm heading toward here is that I don't think he belongs in a typical LD (learning disabled) reading group. Staff #2: You're right. Staff #1: Yeah, you're right. Staff #2: That's why it hasn't worked out. (P 82)

with the type of needs of this student would benefit from aide time on the playground, offering immediate interventions when conflicts arose.

16. On March 5, 2009, the IEP team, along with their respective counsel, met to finalize the student's IEP. More than ten people attended. Consensus was not reached on the specifics of the IEP, including the parents' request for increased educational assistant time.
17. The March 5, 2009 IEP (March 2009 IEP) contained a present level statement of more than 4 pages of single spaced narrative. It also included the results of three recent standardized testing instruments. In December 2008, the student participated in a "Key Math" assessment. While there was some variance in the subtests, the overall Math standard score (SS) was 85 (3.7 grade equivalent). In January 2009, the student completed a Wechsler Individual Achievement Test-Second Edition (WIAT-II) through a private consultant. The student's Reading Composite SS was 90 (25<sup>th</sup> percentile); his Math Composite SS was 87 (19<sup>th</sup> percentile); his Writing Composite SS was 78 (7<sup>th</sup> percentile); and his Oral Language Composite SS was 98 (45<sup>th</sup> percentile). The District administered a Woodcock-Johnson III Normative Update Tests of Achievement (Form C) ("W-J III brief") in February 2009. This was described as a brief battery assessment. The present level statement recites the Brief Reading SS of 96, grade equivalency (GE) of 5.4, Brief Math SS of 91 (GE 5.0), Math Calculations Skills SS of 85 (GE 4.7), Brief Writing SS of 74 (GE 2.6) and Written Expression SS of 98 (GE 5.9).<sup>7</sup>
18. The March 2009 IEP provided for the following amount of SDI: Social Communication, 45 minutes 2 times per week in the speech/general education class; Math, 120 minutes per week in the resource room; Written Language, 150 minutes per week in the resource room; Organizational/School Routines, 30 minutes per week in the general education classroom; and Study Skills, 60 minutes per week in the resource room. Most of the Modifications/Accommodations were carried over from the February 2008 IEP, including adult assistance of 2.25 hours per day in the general education room. The Nonparticipation Justification states that the student will be removed for speech, math, written language, study skills and keyboarding for a total of 510 minutes (26%) per week. Placements considered were regular education with special education services provided in the regular education setting, which was rejected, and regular education with pullout services, which was selected.
19. Written Language Annual Goals:
  - a) The March 2009 IEP annual goal (AG) in Written Language states that student will produce written documents that "express supported ideas and content

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<sup>7</sup> While not reported in the present level statement, District records reflect additional scoring from the W-J III brief. The student's Broad Reading SS was 102 (no percentile given; grade equivalency (GE) of 6.6); his Broad Math SS was 90 (no percentile given; grade equivalency (GE) of 4.9); his Broad Written Language SS was 80 (no percentile given; grade equivalency (GE) of 3.5). The assessment ranges from a highest SS in Academic Fluency of 105 (no percentile given; grade equivalency (GE) of 7.1) to a lowest SS in Spelling of 63 (no percentile given; grade equivalency (GE) of 2.0). The W-J III brief showed only the Broad Written Language results with a greater than 1.50 standard deviation (calculated as -1.76 SD).

appropriate to audience and purpose.” The four short term objectives (STO) address: 1) writing conventions with a score of 3 (based on the state scoring guide) with adult assistance 80% of the time or 40% independently; 2) with a prompt, writing a 2-4 paragraph piece with an introduction, supporting details and conclusion using the same criteria to measure as the convention STO; 3) editing, after instruction in a 4<sup>th</sup> grade revision guide, accurately with adult assistance 85% of errors 80% of the time and independently 75% or errors 80% of the time; 4) with assistive technology tools, the student will create a story with a beginning, middle and end, recognizing his audience and is composed of 5-7 word sentences for at least 80% of the story.

- b) The February 2008 IEP annual goal in Written Language states that the student will produce written documents “expressing coherent ideas/thoughts, utilize basic acceptable mechanics (conventions) and organizational strategies at an ending 3rd grade level measured by standardized tests, work samples and teacher observation.” The four STOs are: 1) given a prompt, writing three complete 5-7 word sentences that maintain the topic on 4 out of 5 assignments; 2) writing a story/paragraph with introduction, three supporting detail sentences and a conclusion on 4 out of 5 occasions; 3) when writing, using correct conventions and “readability of product” with 80% accuracy; and 4) editing his own work for conventions, spacing and fluidity on 4 out of 5 opportunities.
- c) The February 2007 IEP annual goal in Written Language states the student will increase his ability to demonstrate knowledge grammar, conventions and handwriting to the 3<sup>rd</sup> grade level by December 2007, measured by standardized tests, work samples and teacher observation. The four STOs address: 1) given a prompt, writing 3 complete 5-7 word sentences that maintain the topic on 4 out of 5 occasions; 2) when writing sentences or stories using ending punctuation with 80% accuracy; 3) when writing sentences using proper capitalization with 80% accuracy; 4) increasing keyboarding finger placement to 70% accuracy (this STO was separated into a separate annual goal in “Technology” in later IEPs).

20. The District reported progress on the February 2008 Written Language Goal to the parents in June of 2008 as “Satisfactory.” The District stated that [the student] puts forth effort in the resource room with writing, He is an emerging writer. He is not yet consistent on capitalization and punctuation.” On December 12, 2008 the parent emailed the special education teacher asking why she had not received the end of term progress report on the student’s annual goals. In a document dated December 5, 2008, the District reported progress to the parent on the Written Language goal. The progress report identifies that the student had met the first STO of writing 3 sentences and that the student was working toward, and almost met, the objecting concerning writing a story/paragraph with an introduction, middle, and conclusion. The student continued to work on the other two STOs. The teacher stated that the student “is working toward his writing goal. He is making adequate progress. Will be working on handwriting skills to improve readability.” While no formal progress report was issued at the end of the second trimester, the District asserts that the annual goals were also reported to the parents and discussed at length at the IEP meetings of February and March 2009 and were included in the student’s March 2009 IEP present level statement. The progress report issued in June 2009 at the end of the school year

reported that the student: required adult guidance to edit his work, was working on two paragraph stories without conclusions, had corrected his work with adult assistance but independently had not met the goal, and used technology to support success on three out of four stories with 5-7 word sentences. Written Language work samples provided by the District to the Department's investigator were all dated after March 10, 2009. The work samples demonstrated the student's handwriting was extremely difficult to read although the samples were apparently able to be graded by District staff using the state rubric for writing. One sample, which the highest score of all the samples, was dictated to the teacher, rather than having the student write the sample.

21. On March 19, 2009, the District issued a prior written notice to the parents refusing the parent's request for increased instructional aide time. The District stated that the student "needs independent time during his school day to practice his skills in a general education classroom, at lunch and recess breaks".
22. On April 27, 2009, the parents wrote the District stating that they "do not agree that this IEP meets his needs."
23. In late April and early May, 2009, the student completed statewide standardized assessments. In Reading/Literature he nearly met the benchmark, scoring 215 (meeting the benchmark is set at a score of 218). In Math, he did not meet the benchmark, scoring 203 (meeting the benchmark is set at a score of 218). In Science, he met the benchmark with a score of 226 (Meeting the benchmark is set at a score of 225).
24. On June 8, 2009, the parents filed the present complaint. On June 19, 2009, the parents wrote the District rejecting the March 2009 IEP and placement for the reasons identified in the pending complaint and notifying the District that they would be privately educating him, beginning with the 2009-2010 school year, with a one-on-one private teacher. The parents further clarified their requested relief was to receive compensation for the District's past failure to deliver the specially designed instruction, and that the District participate in funding the private instruction contemplated for the 2009-2010 school year. The parents did not provide firm figures relating to the provision of the services anticipated for the upcoming year. The District responded to the parents' June 19, 2009 letter shortly thereafter (the exact date is unclear) that it understood the parents' request for the 2009-2010 school year to be a request for a change in placement, requiring an IEP meeting, which would be scheduled, most likely, in late August.
25. On June 29, 2009, the parents provided the Department's investigator (with a copy to the District on July 2, 2009) with a prospective curriculum and supporting letters from a special education teacher, a private clinical psychologist, and a private speech and language pathologist.
26. February 2008 IEP Accommodations: Access to laptop computer in the general education classroom to generate written work. The general education room had one computer available for the teacher. The student was not provided access to

a laptop in the general education classroom. The staff reported that if the student was the only one with access to a laptop that it would create a classroom issue.

27. February 2008 IEP Accommodations: Sound cancelling headphones to block sensory overload. This accommodation was present in the February 2008 IEP, but not included in the March 2009 IEP. Staff reported that the student neither requested, nor were there situations suggesting or requiring the use of such headphones. Staff reported that having the student as the only student with headphones would have created a situation posing a potential classroom issue.
28. February 2008 IEP Accommodations: A camera for “Social Language” practice. The purpose of the camera was to record facial expressions for later review and provide instruction to the student on reading other’s expressions. The District represented that a camera would have been available upon request, but neither the student nor any of his teachers, general education or special education teachers, requested a camera.
29. February 2008 IEP Accommodations: A microphone and/or recording device to record written language for later transcription. The District represented that a recording device would have been available upon request, but neither the student nor any of his teachers, general education or special education teachers, requested a recording device.
30. February 2008 IEP Accommodations: Social behavior mapping. This technique was described as a visual way to document and work through the student’s behaviors and other children’s behaviors. It is a methodology to address problem behaviors and change those behaviors into appropriate behaviors through the use of structured and consistent techniques to analyze behaviors, natural consequences and outcomes. Certain staff members, who understood the accommodation and were familiar with its use, shared the technique with other staff members at the beginning of the year. It was used minimally and sporadically by staff serving the student during the year.
31. February 2008 IEP Accommodations: Five point scale for stress. This accommodation addressed the student’s self description of his stress level. Staff in the general education setting used a red, yellow, green class-wide behavior prompt card system when students became off task. The behavior card system, and an associated system using post-it notes, did not address the same intention as the five point scale for stress. Staff did use a two point system with the student- “Is it a big problem or is it a small problem?”, which was reported to be effective. Staff reported that they did not see stress levels rising to a level suggesting high stress levels during the school year which would have necessitated use of a five point scale for stress.
32. February 2008 IEP Progress Monitoring and Reporting: Data collection to measure progress on the student’s annual goals. The related service providers, including the speech and language pathologist, autism consultation and occupational therapist provided documentation of their direct service and/or consultation time, with some data collection supporting those service providers

required to provide progress reports. The keyboarding annual goal was tracked using words per minute data consistently through the school year. Until the March 2009 IEP meeting, staff collected little, if any, data for the other annual goals during the 2008-2009 school year, other than issuing the progress reports (to the extent that progress contained data). In an email to the District staff, the parent reported that three of 115 pages of work samples related to the 2008-2009 school year. After March 2009, the District retained more work samples and recorded more data on the student's annual goals.

33. February 2008 IEP Progress Monitoring and Reporting: No progress reports on the student's annual goals in December 2008 until requested and no progress report for the winter term, second trimester of the 2008-2009 school year. The District provided progress reports on the student's annual goals dated December 5, 2008, although the parent sent an email to District staff on December 12, 2008 reporting that she had not received progress reports. No identified "progress reports" on each annual goal were generated at the end of the second trimester, however, two extended IEP meetings occurred in the February and March 2009 time frame, which included discussion of the student's annual goals and revision of the student's present levels. In addition, there were extensive email communication from the parent, which was often responded to by District staff, but not on always a consistent basis.
34. The February 2008 IEP required progress reporting on 6 week intervals. The intent of the 6 week meetings between the special and general education teachers and a parent was to informally discuss progress information outside the formal IEP team meetings. One, or possibly two, informal meetings between the parent, general and special education teachers to discuss progress toward annual goals occurred before the winter break in December 2008. The District asserts that the two IEP meetings in February and March 2009 fulfill this IEP specified requirement. After the March 2009 IEP meeting, no further meetings occurred, although the District did extend an invitation to have the meetings. By then the parents had decided to pursue options other than returning the student to the school and declined the invitations.

## **IV. DISCUSSION**

### **1) IEP Design, Content & Revision:**

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>8</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>9</sup> A school district meets its obligation to provide FAPE for an eligible child by complying with the

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<sup>8</sup>OAR 581-015-2040; 34 CFR § 300.341.

<sup>9</sup> See 20 USC § 1402(8).

procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.<sup>10</sup>

A written IEP must be in effect for each eligible child at the beginning of each school year.<sup>11</sup> School districts must implement the services, modifications, and accommodations identified on each student's IEP.<sup>12</sup> School districts must serve resident children with disabilities attending charter schools sponsored by the District in the same manner as the school district services children with disabilities in its other schools.<sup>13</sup>

### **A) March 2009 Present Level Statement**

The parents allege that the District did not obtain sufficient data to accurately include the student's present level of academic achievement and functional performance in the March 2009 IEP.

An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.<sup>14</sup> The March 2009 IEP present level statement is a lengthy narrative that also contains the results of specific instruments administered to the student. While the privately obtained WIAT-II provides more in depth information than the W-J III (Brief Battery), these standardized instruments provide objective evidence of where the student stood academically by standard scores, percentile comparison to peers and, at times, by grade equivalency.

The present level statement is not only related to academic achievement but also functional performance. The assessment in these areas is more difficult to assess and more susceptible to subjective teacher observations. It is evident that much of the data included in the present level statement was obtained during the February and March 2009 time period. The fact that the information is recent does not negate the validity of the present level statement. The present level statement should be timely or it would not reflect the student's "present" level. The fair reading of the student's March 2009 IEP present level statement would provide an objective reader/teacher with the present description, or baseline, of the student's strengths and weaknesses and his current level of academic achievement and functional performance. Therefore, the Department does not substantiate this allegation.

### **B) Adult Assistance**

The parents allege that the District did not include more one-to-one adult assistance time than the 2.25 hours per day included in the February 2008 and March 2009 IEPs although the IEP team determined that the student needed more adult assistance than 2.25 hours per day.

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<sup>10</sup> See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

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

<sup>12</sup> OAR 581-015-2220(1)(b).

<sup>13</sup> OAR 581-015-2075.

<sup>14</sup> OAR 581-015-2200(1).

OSEP's long-standing position is that the IEP team decision-making process is premised on a collaborative, consensus-based model:

"The IEP team should work toward consensus, but the public agency has ultimate authority to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based on a majority "vote". If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing."<sup>15</sup>

This discussion specifically relates to IEPs and the provision of FAPE. Clearly, some members of the team identified that the student "needs," and would benefit academically and socially from, more than 2.25 hours aide time. Other members of the team disagreed, suggesting that too much dependence on, or increased time with, an aide would be detrimental to the student's progress. The District performed a number of observations between February and March 2009 which it offers in support of the decision that the student did not need additional assistant time. While the observations were not in the most representative settings to assess the student's needs, and the observer could be claimed to be biased in favor of denying additional fiscal resources, as the transcript of the February 2009 meeting suggests, this issue was not resolved solely on the observations. In the absence of consensus, the District made a determination to deny additional adult assistance and gave the parents prior written notice of that decision.

There is ample evidence that the student benefits from adult assistance in a general education setting, which is the reason that the IEP team provided for the assistance while in the general education classroom. The parents suggest that there is a need for assistance on the playground at recess and during lunch. Staff reported intervening on a few occasions to address social interactions on the playground, but the student was not reported to be one of the students in the school exhibiting major behavioral problems.

However, staff identified how much more the student is able to focus when he was with an aide (50-60% to 90%+). Staff also reported that they modified curriculum when the student was in the general education classroom without an aide. Other consultants supported more adult assistance time for the student so he could have more immediate interventions rather than retrospective, post-event discussion.

The Department does not substantiate this allegation on the basis that there was not consensus by the IEP team on the necessity of increasing aide time. While the student would likely benefit from additional aide time, there is not persuasive evidence that he needed additional aide time. The applicable portion of the definition of FAPE is implementing an IEP "reasonably calculated to enable a child to receive educational

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<sup>15</sup> 34 CFR Part 300, Appendix A, Questions and Answers, Question 9 (1999).

benefits.”<sup>16</sup> Given the legitimate concerns of some IEP Team members, the Department does not find persuasive evidence that the amount of aid time included in the District’s IEP is not reasonably calculated to enable the student to receive educational benefits.

### **C) IEP Revision**

The parents allege that the District did not revise the student’s IEP to address the lack of expected progress toward the written language annual goals in the February 2008 and March 2009 IEPs.

A District must annually review a student’s IEP at least every 365 days to determine whether the annual goals are being achieved. A District must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum.<sup>17</sup>

In this case, while the District held IEP meetings annually, the Written Language goal has remained substantially unchanged since February 2007. In essence, the student was expected to write three 5-7 words sentences with correct conventions 80% of the time. This annual goal was essentially repeated for three years without evidence of progress or educational benefit or an adequate accounting of why the student’s progress on this goal was slower than expected.

In the summer of 2006, the WIAT-II standardized test in Written Language was scored with a standard score (SS) of 82, SS of 76 in January 2008 and SS of 78 in January 2009. This consistently administered comprehensive test confirmed that the student’s written language standard scores have not demonstrated progress over three years. While multiple assessments of the student with the same instrument over time provides the best comparison of change over time, the March 2009 IEP team, over objection of the parent team members, reduced the amount of Written Language specially designed instruction from 200 minutes included in the February 2008 IEP to 150 minutes per week in the March 2009 IEP.<sup>18</sup>

Substantial evidence exists that the student was not progressing in his Written Language annual goal and was not progressing in the general education written language curriculum. The Department determines that, at the March 2009 IEP meeting, the District should have revised the student’s IEP to address the student’s lack of progress in Written Language. Instead, the District reduced the amount of SDI in Written Language by 25%. Therefore, the Department substantiates this allegation. See Corrective Action.

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<sup>16</sup> *Rowley, supra.*

<sup>17</sup> OAR 581-015-2225 (1).

<sup>18</sup> The Department notes that the District does not dispute that it did not provide the amount of SDI required by the February 2008 IEP. The District agrees that it did not provide approximately 36 hours of Written Language SDI- more than 10 weeks of SDI at a rate of 200 minutes per week- more than 25% of the SDI required over a 37 week school year.

## **2) IEP Implementation:**

The parents allege that the District did not implement the special education and related services as described on the student's February 2008 or March 2009 IEPs. A District is required to have an IEP in effect at the beginning of each school year and provide the special education and related services in accordance with the student's IEP.<sup>19</sup>

### **D) Written language specially designed instruction (SDI) of 200 minutes per week.**

The District admits that it did not provide 200 minutes per week of Written Language SDI. The parents calculate the amount of SDI not provided pursuant to the IEP is not less than 34 hours while the District calculates the amount as 36 hours. Evidence to identify with exact precision is not available to the Department. Regardless of the precise amount of SDI that was not provided, the deficiency constitutes a substantial departure from the student's IEP. Therefore, the Department substantiates this allegation. See Corrective Action.

### **E) Organization specially designed instruction of 150 minutes per week.**

The District admits that it did not provide 200 minutes per week of Organization SDI. The parents calculate the amount of SDI not provided pursuant to the IEP is not less than 35 hours while the District calculates the amount as 34.5 hours. Evidence to identify with exact precision is not available to the Department. Regardless of the precise amount of SDI that was not provided, the deficiency constitutes a substantial departure from the student's IEP. Therefore, the Department substantiates this allegation. See Corrective action

### **F) Math specially designed instruction of 150 minutes per week.**

The District admits that it did not provide 200 minutes per week of Math SDI. The parents calculate the amount of SDI not provided pursuant to the IEP is not less than 14 hours while the District calculates the amount as 13.5 hours. Evidence to identify with exact precision is not available to the Department. Regardless of the precise amount of SDI that was not provided, the deficiency constitutes a substantial departure from the student's IEP. Therefore, the Department substantiates this allegation. See Corrective action

### **G) Access to laptop computer in the general education classroom to generate written work.**

In the general education classroom, there was only one computer, which was not available to any student. A trial effort to use an Alphasmart began in the February to March 2009 time frame. Analysis of the efficiency of use of this assistive technology was to have been prepared and shared by May 15, 2009. While there is little evidence that the student used a laptop in any setting, the District states that a laptop was available to the student in the pull-out setting of the resource room.

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<sup>19</sup> OAR 581-015-2200 (1).

Based on the admitted evidence that the laptop computer was not available in the general education classroom, the Department substantiates this allegation.

**H) Sound cancelling headphones to block sensory overload.**

The District correctly points out that this accommodation was included in the February 2008 IEP but not included in the March 2009 IEP. The District also states that neither the student nor staff asked for use of this accommodation. There is no evidence that the headphones were needed, but there is also no evidence that the headphones were available. Based on the lack of evidence that the headphones were available to the student, the Department substantiates this allegation for the time period in which the student's February 2008 IEP was in effect.

**I) A camera for "Social Language" practice.**

The camera was intended to provide documentation of facial expressions to review at a later time by the student with an adult to teach the student the subtle cues imparted in body language and facial expression during social interaction. The Department does not preempt the IEP team's decision to include this device as an accommodation in the IEP or on the utility of the camera for its stated purpose. The District states that neither the student nor staff asked for use of this accommodation. The test of whether the IEP accommodation was implemented is not dependent upon whether the student asked for the accommodation, unless that prerequisite is clearly identified in the IEP, or whether the general education staff asked to use the camera. There is no evidence that it was even attempted to be used. The Department can only presume that the accommodation was included in the IEP for some special educational or related purpose; however, in this case, the camera was never used. Therefore, the Department substantiates this allegation.

**J) A microphone and/or recording device to record written language for later transcription.**

The District asserts that the microphone and recording device were available from the District's technology specialist but were never requested by the student or the staff. The Department incorporates its discussion regarding the use and availability of supplementary aids in (F) above and substantiates this allegation.

**K) Social behavior mapping.**

The District/ESD speech and language pathologist (SLP), who has worked for a number of years with the student, was familiar with the "social behavior mapping" process and incorporated the process into her specially designed instruction with the student. She introduced the process to the staff members directly working with the student, including the general education and resource room teachers and the educational assistant. The SLP used the process as the need arose during the year, but the other service providers used other techniques to try and teach the student social cognitive skills. While the process was not used to the extent desired by the parents, or as consistently across all settings as the parents would have desired, the Department does not find that

the District failed to implement this accommodation. On that basis, the Department does not substantiate this allegation.

**L) Five point scale for stress.**

The intent of this scale was to provide a gauge for the student to be self aware of his stress level. The SLP was aware of the methodology and objective and introduced it to staff members working with the student. Staff members chose to use a two point scale (“Big problem/ little problem”) with the student, which they found more effective. The District staff also used behavior management methodologies in an effort to maintain and proactively reduce the student’s stress. The Department acknowledges that the IEP team included this methodology in the IEP, and the District did not fully implement this accommodation, and on that basis substantiates this allegation. However, the Department does not order specific corrective action with regard to this allegation.

**M) Data collection to measure progress on the student’s annual goals.**

The District correctly states that the student’s annual goals provide for a number of alternative and cumulative methods of collecting data, including teacher observations, probes, standardized tests, and daily work samples. However, all of the samples and data provided to the Department, except for the SLP provided log, begin in March 2009, after the March 2009 IEP was designed. The District points to the December 2008 progress report, but this progress report lacks data related to the annual goals. The present level statement contained in the March 2009 IEP contains the best compilation of data on the student’s annual goals, but much of it was generated immediately before the February 2009 meeting and supplemented between the February and March 2009 meetings. The school year between September 2008 and February 2009 is lacking substantial data on most of the annual goals related to Math, Organization and Written Language. Therefore, the Department substantiates this allegation.

**N) Progress reports on the student’s annual goals in December 2008 until requested and no progress report for the winter term, second trimester of the 2008-2009 school year.**

The District did provide a progress report dated December 5, 2008 although there is evidence that it was not provided until requested by the parent and was pre-dated a week before the parent’s request. This disputed issue aside, the District did produce a progress report on the student’s annual goals in December 2008. The school’s second trimester ended in March 2009, when the IEP team was meeting and designing the student’s March 2009 IEP, which included the student’s present level statement and formation of the next year’s annual goals. While the Department does not suggest that this is the best method of notifying parents of the student’s progress toward his annual goals, it is a method of reporting progress. The District did provide progress reports on the annual goals in June 2009 at the end of the third trimester. Therefore, the Department does not substantiate this allegation.

**O) Meetings between the parents and the general education teacher every six weeks, as identified in the IEP.**

Six of the seven annual goals identify that there will be informal meetings between a parent and the special and general education teachers to discuss progress toward the student's annual goals. While the District seeks to satisfy this IEP component with the formal, and sometimes contentious, IEP meetings, that type of meeting was not what was intended by this provision. While there may have been one, or possibly two, meetings with the parent and *both* the general and special education teachers to informally go over the student's progress, over the school year there should have been at least six meetings. These meetings did not occur; therefore, the Department substantiates this allegation.

### **3) Student Records/Parent Participation:**

The parents allege that the District did not provide the parents with copies of the student's educational records relating to data collection measuring the student's progress toward annual goals although the parents requested those educational records. A parent, an eligible student, or a representative granted authorization in writing may inspect and review the educational records of the student. The District must make those records available within a reasonable time and without unnecessary delay, but in no case more than 45 days, or before an IEP meeting, due process hearing, or any resolution session related to a due process hearing.<sup>20</sup>

Not later than December 12, 2008 the parents requested the data related to progress towards annual goals. The parent requested copies of the home/school journals related to the Communication annual goal. The District was not maintaining home school journals during the 2008-2009 school year. The parents' attorney requested all of the student's educational records on January 29, 2009 and received the records on February 11, 2009. The IEP meeting was set for February 13, 2009.

The District responded to the parents' attorney's request for records before the IEP team meeting. However, the District did not have home/school journals or data on most of the student's annual goals to provide to the parent or the attorney. The District could not provide that which it did not have and provided all of the educational records in its possession to the parents and their representative in a timely fashion. The Department does not substantiate this allegation on the basis that the District provided what it had – it didn't have substantial data on many annual goals nor was it maintaining a home/school journal on the Communication annual goal to provide to the parents.

### **4) Least Restrictive Environment**

The parents allege that the District provided general education instruction in reading in a pullout, small group, specially designed instructional setting when the IEP does not include specially designed instruction for reading. Districts must ensure that, to the maximum extent appropriate, students with disabilities are educated with children who do not have a disability.<sup>21</sup>

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<sup>20</sup> OAR 581-021-0270.

<sup>21</sup> OAR 581-015-2240.

The student's IEP does not include specially designed instruction in reading. The "Organizational" annual goal addresses organizing skills in core curriculum areas using strategies of cause and effect, sequencing, drawing an inference, and organizing information during "structured learning settings." The District asserts that the small group setting reading group addressed the "organizational" annual goal and provided specially designed instruction in "Organization" through the use of the reading material used by the small group. If this delivery method was inappropriate with respect to the student's organization goals, the parents presented no evidence that they shared those concerns with the District prior to the March 2009 IEP meeting. A transcript of the March 2009 IEP meeting indicates that the District responded to the parents' concerns regarding the delivery of SDI for the organization goal by agreeing the delivery of services in the learning disabled reading group was unsuccessful and changing the location in which those services were delivered. Therefore, the Department does not substantiate this allegation.

## **5) Corrective Action Discussion and Conclusion**

The parents are requesting corrective action including compensatory education services for the services that the District failed to provide under the February 2008 IEP and future financial contribution by the District for the student's proposed 2009-2010 school year programs. However, the parents have made clear that they do not want to receive services from the District, but will retain private providers to obtain those services.

A free and appropriate public education (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>22</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>23</sup>

In this case, the Department finds that the District denied the student FAPE by failing to provide services in conformity with the student's IEP from February 29, 2008 to March 9, 2009 and by failing to provide an IEP reasonably calculated to enable the child to receive educational benefit in Written Language. In order to address the District's failure to provide the services, modification, accommodations, progress monitoring, and supplementary aids described in the February 29, 2009 IEP, the Department orders the District to provide compensatory educational services as described in the table below.

The District's failure to revise the student's IEP with respect to Written Language requires prospective corrective action. However, developing a prospective action plan is complicated by the parents' decision to educate the student at home. Under Oregon law, school districts have a different obligation to students who are home schooled than to students who are enrolled in district school or charter schools within the state.

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<sup>22</sup> See 20 USC § 1402(8).

<sup>23</sup> See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

The Department believes that the appropriate prospective remedy, described in the table below, to the District's failure to provide an IEP reasonably calculated to provide benefit in Written Language is to develop a new IEP that addresses the student's failure to maintain adequate progress. This corrective action is described in the table below.

In the event that the student does not reenroll in a District school or a charter school within the state, the District will not be required to provide the prospective corrective action described in number 2 below. However, if the student is registered with the ESD as a home schooled student for the upcoming academic year, the District would be required to notify the parents that the District stands ready to serve the student upon enrollment with the District and to offer the parents an IEP meeting to determine if FAPE could be offered in conjunction with home school. The remaining corrective action items must be implemented by the District regardless of whether the student is home schooled or enrolled in a District school or charter school.

### **CORRECTIVE ACTION<sup>24</sup>**

*In the Matter of North Bend School District*  
Case No. 09-054-021

<b>Action Required</b>	<b>Submissions<sup>25</sup></b>	<b>Due Date</b>
<p><b><u>1. IEP Implementation</u></b></p> <p><b>a. Compensatory Education Services:</b></p> <p>(i) The District shall provide 86 hours of compensatory education services for the student in the areas of:</p> <ul style="list-style-type: none"> <li>• Written Language – 36 hours</li> <li>• Math – 14 hours</li> <li>• Organizational Skills – 36 hours</li> </ul> <p>(ii) After consultation with the parent and student, the District shall submit a plan for the provision of compensatory education services to the Department with a copy to the parent. The plan shall identify how the services will be provided, the schedule for services (including when services begin), and the contact person for the District for</p>	<p>Submit to the Department:</p> <p><b>a.</b> A plan for the provision of compensatory education services to the Department with a copy to the parents.</p> <p>Quarterly reports, including copies of service logs, to the Department and the parents on the progress of the compensatory education.</p> <p>Notice to the Department, copied to the parents, once the District has completed the delivery of the compensatory educational services.</p>	<p><b>September 7, 2009</b></p> <p><b>According to the reporting dates established in the plan</b></p> <p><b>Within 10 days of completing delivery of the compensatory education service plan</b></p>

<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.

oversight of these services. If the parent and District agree, the Department will reimburse the District for the use of a neutral facilitator for a meeting. For more information, contact Steve Woodcock at 503-947-5797.

(iii) If the student is enrolled in a public or private school, the services must be provided outside the regular school day. The District shall reasonably accommodate parent and student preferences for scheduling these services.

(iv) The District shall provide transportation as necessary for the student to access these services.

(v) The District does not have to provide make-up sessions for sessions scheduled but missed due to student absence. The District shall provide make-up sessions for services scheduled but cancelled due to provider illness or unavailability.

(vi) The District shall maintain a log of services provided, identifying date, type of service, provider, and amount of time.

(vii) According to a schedule developed as part of the compensatory education plan, the District shall provide quarterly reports, including copies of service logs, to the Department and the parents on the progress of the compensatory education.

(viii) The District and parent may agree in writing to modify any of the provisions (i) through (vii).

(ix) The District shall submit any written agreement to modify the provisions of this compensatory education plan within a week of the agreement.

<p>(x) Compensatory services shall be provided by qualified staff.</p> <p>(xi) The District will notify the Department and the parent in writing when compensatory services are completed</p> <p><b>b. Training:</b> The District shall provide training to district special education staff and administrators responsible for charter school accountability and to charter school staff relating to IEP procedures, content, and implementation, including:</p> <ul style="list-style-type: none"> <li>A) Development, review, and revision of IEP content;</li> <li>B) When IEPs must be in effect including, but not limited to, ensuring the implementation of students' IEPs as written, including on site at the charter school;</li> <li>C) District procedures for ensuring that IEPs are implemented as written; and</li> <li>D) Progress reporting on IEP goals.</li> </ul> <p>The District shall confer with ODE staff on developing the content for this training.</p>	<p><b>b.</b> The District shall submit a plan for the training that includes the proposed content for each area of training, when and how the information will be presented, and the presenter(s).</p> <p>The District shall complete the training according to plan. Submit evidence of completed training; materials; agenda; and sign-in sheets (name, position, date, assignment location).</p>	<p><b>September 7, 2009</b></p> <p><b>October 7, 2009</b></p>
<p><b><u>2. IEP Content</u></b></p> <p><b>a. IEP Revision:</b> In the event that the student enrolls in a District school or in-state charter school during the 2009: (i) the District must reconvene the IEP Team in accordance with all applicable OARs within seven school days of enrollment; develop an appropriate IEP; and determine placement.</p> <p>As part of required IEP content, the IEP team must include consideration of:</p> <ul style="list-style-type: none"> <li>A) All assistive technology specified</li> </ul>	<p>Submit to the Department:</p> <p><b>a.</b> Evidence of enrollment; copies of all IEP team meeting notices; completed IEP documents; any associated minutes or notes; any prior written notices resulting from the meeting; any placement determination determined in conformity with requirements of LRE and based on reviewed/revised IEP</p>	<p><b>Within 15 school days of the student's enrollment in a District school or in-state charter school</b></p>

<p>on the February 29, 2008, IEP;</p> <p>B) Source of written data for progress reports and dates written progress reports will be provided to the parents;</p> <p>C) Supplementary aids and services, modifications and accommodations, and supports for personnel to specifically enable the student to participate and progress in general education.</p> <p>As part of required IEP content, the IEP team must identify the extent to which the student will be removed from regular education classes, identifying which classes are affected, and providing the justification for removal.</p> <p>(ii) the District must monitor the implementation of this student's IEP and provide written assurances to the Department and the parent throughout the 2009-2010 school year.</p> <p>(iii) the District must monitor the provision of IEP progress reports in accordance with the revised IEP.</p>	<p>Monthly assurance statements to the Department, copied to the parent, that the IEP has been implemented as written.</p> <p>Copies of the progress reports to the Department, along with an assurance that the report was provided to the parent.</p>	<p><b>On the first of every month from October 2009 through June 2010</b></p> <p><b>On the dates identified in the IEP progress report schedule</b></p>
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Dated: August 7, 2009

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

Mailing Date: August 7, 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.