

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Forest Grove School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-035

I. BACKGROUND

On September 24, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Forest Grove School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 concerning allegations against the District. The Department confirmed receipt of this complaint on September 24, 2009, and provided a copy of the complaint letter to the District.

On October 2, 2009, the Department issued a *Request for Response* (RFR) identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of October 12, 2009. The District submitted a timely *Response* to the Department’s complaint investigator. The District’s *Response* included a narrative response and several hundred pages of supporting documentation. The parent timely submitted additional documents in support of the complaint directly to the Department’s complaint investigator on October 13, 2009.

The Department’s complaint investigator determined that on-site interviews were necessary to resolve the issues in this complaint. On October 26 and October 30, the Department’s complaint investigator interviewed the student’s parents with the assistance of an interpreter. On November 12, 2009, the Department’s complaint investigator interviewed several District staff, including: the special education director, the special education coordinator, the case manager (special education teacher), a middle school speech pathologist, a physical therapist, an occupational therapist, an adaptive PE teacher, a receptionist, an assistive technology specialist, and a school nurse. The Department’s complaint investigator also reviewed and considered all pertinent documents 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 violations of the Individuals with Disabilities Education Act (the IDEA) that occurred within the twelve months prior to the Department’s receipt of the complaint and must issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parents agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.¹ The timeline for the issuance of a final order in this case was extended by 14 days due to exceptional circumstances.

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

¹ OAR 581-015-2030(12) (2008)

Discussion in Section IV. This investigation covers the one-year period from September 25, 2008 to the filing of this complaint on September 24, 2009.²

Allegations	Conclusions
<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
<p>1. <u>Parent Participation.</u></p> <p>The parent alleges that the District did not provide her with the opportunity to fully participate in meetings held to develop IEPs for her child. Specifically, the parent alleges that:</p> <ul style="list-style-type: none"> a. District staff brought a completed IEP, developed without the parent's participation, to IEP meetings held in March, May, and June of 2009, and none of the changes she requested were made to the IEP; b. District staff agreed at these IEP meetings that they would make the changes she requested but did not; c. The District did not provide her child with an art class although she identified this as a particular concern for enhancing her child's education; and, d. District staff told her not to speak at the meetings. 	<p>Not Substantiated.</p> <p>The Department concludes that the District provided the parent the opportunity to fully participate in meetings held to develop IEPs for her child. Specifically, the Department found:</p> <ul style="list-style-type: none"> a. District staff brought draft IEPs to meetings as a tool to facilitate discussion; the parent's input was sought and considered, and changes requested by the parent were made to the IEPs; b. District staff agreed to make changes requested by the parent and made the changes she requested; c. The District provided the student with an art class; and, d. District staff sought and considered input from the parent at the meetings.
<p>2. <u>Content of IEP.</u></p> <p>The parent alleges that the IEPs the District has developed for her child do not provide for all of the services her child requires. Specifically, the parent alleges that:</p> <ul style="list-style-type: none"> a. District staff reduced her child's speech-language services from 30 minutes per week to 30 minutes per month based on the case-load carried by the speech pathologist and not on her child's need for services; 	<p>Not Substantiated.</p> <p>The Department concludes that the IEPs the District developed for the student provide for all the services the student's IEP team determined to be necessary. Specifically:</p> <ul style="list-style-type: none"> a. The student's IEP team changed the model for delivering the student's speech-language services when the student transitioned to the high school based on the student's identified needs as determined through student-specific data;

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

<ul style="list-style-type: none"> b. District staff did not develop or implement services to assist her child in using the assistive technology communication device, including services designed to assist her child to use the device at school and at home; c. District staff did not develop or implement an appropriate plan to transition her child from middle school to high school or ensure that the services her child required were in place at the start of the school year; d. The District has not described her child's need for an adult assistant at school and on the bus or fully provided for this related service her child requires; e. The District has not fully provided for the medical needs of her child including ensuring adequate training for staff is described by her child's IEP; f. The District has not provided for the communication needs of her child, whose native language is Spanish; and, g. The transition services the District is providing her child focus on community services, rather than the educational services the student needs. 	<ul style="list-style-type: none"> b. The District developed and implemented an appropriate plan to assist the student in using the Dynavox system it provided for the student at school, which was compatible with the Dynavox system the student had at home; c. The District developed and implemented an appropriate plan to transition the student from middle school to high school and ensure that the services required were in place; d. The IEPs the District developed for the student describe the need for adult assistance within the services it describes. The IEP does not provide for a full time 1:1 adult assistant; e. The District developed medical protocols for the student, with the District's school nurse providing training to all staff assisting the student; f. The District provides communication services to the student in both Spanish and English as appropriate; and, g. The District agreed at IEP meetings held with the parent in June 2008 and March 2009 to remove community-based transition services from the student's IEP and has focused the student's transition services on educational and academic goals and objectives.
<p>3. <u>IEP Implementation:</u></p> <p>The parent alleges that the District has not fully provided special education and related services in accordance with her child's IEP. Specifically, the parent alleges that:</p> <ul style="list-style-type: none"> a. District staff have not consistently used the daily communication notebook her child's IEP describes and have not 	<p>Not Substantiated.</p> <p>The Department concludes that the District has provided the special education and related services required by the student's IEP. Specifically:</p> <ul style="list-style-type: none"> a. The student's IEP provides for a home-to-school communication notebook that is used by the case manager to

<p>provided her with a Spanish translation that she can read;</p> <p>b. The District has not consistently documented her child's fluid intake, use of medicine, brushing of teeth, or use of bathroom as required by her child's IEP protocols; and,</p> <p>c. District staff has not provided an accommodation of a larger font for homework and pictures in color.</p>	<p>respond to questions from the parent;</p> <p>b. The District documents the services required by the student's protocols; the IEP does not require staff to send a daily report to the parent documenting these items; and,</p> <p>c. The District has made computers available to the student with assistive software that utilizes a large font and provides color pictures.</p>
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III. FINDINGS OF FACT

1. The student is attending 10th grade at a District high school. The student has cerebral palsy that affects motor skills and educational performance in a number of ways and requires the use of a wheelchair. The student's parents are Spanish-speaking, and the student is considered bi-lingual with the primary language being Spanish. The student's speech, however, is described as unintelligible to people who do not know the student well. On November 26, 2007, a District eligibility team determined that the student remained eligible for special education as a child with multiple disabilities, including identified disabilities in the areas of communication, vision, orthopedic impairment, and mental retardation.
2. The District kept minutes of the November 26, 2007 meeting, noting that the purpose of the meeting was to review evaluations of the student and determine the continued eligibility for special education services. The parent attended the meeting and participated with the assistance of an interpreter. The reports reviewed at the meeting were orally translated for the parent, and the District provided the parent with copies of all documents translated into Spanish. The student's vision needs were reviewed, font sizes were discussed, and the team, with the parent's agreement, decided to drop an eyeglass protocol from the student's program. The parent initiated discussion about a large calculator for the student's use. District staff stopped the discussion and the minutes indicate that staff redirected the parent because the topic was not on the agenda for the meeting. There was no dispute about the student's eligibility, the establishment of which was the purpose of the meeting.
3. On January 16, 2008, the District provided the student's parents with written notice of a March 17, 2008 meeting to develop or review an IEP for the student. District staff scheduled this meeting in order to transition the student from the middle school program the student was attending to the high school program which the student would be beginning in September 2008. The notice stated that several of the student's middle school service providers were invited to the meeting and that several staff from the high school program were also required participants at the meeting. The District provided for the student's new high school case manager to spend 1.5 days at the middle school observing the student.

4. The District had several recent evaluations of the student to consider when revising the student's IEP; they included a November 2007 physical therapy evaluation, an October 2007 occupational therapy evaluation, an October 2007 vision evaluation, a May 2006 assistive technology evaluation, and several older evaluations. The assistive technology evaluation referenced the recommendation of the vision specialist that the student's font size be set at 20 point. The team also had a September 2007 assistive technology planning guide/evaluation completed by an augmentative communication specialist and recommending use of a Dynavox augmentative communication system that could be mounted to the student's wheelchair. The student also had a Dynavox device at home provided for by private insurance.
5. The District held the scheduled March 17, 2008 meeting and kept minutes of the meeting. The parent was at the meeting along with an interpreter and several District staff. The team discussed the student's progress, the student's participation in regular classes and functional skills classes, and the student's participation in a community program. The parent expressed her concern that her child's program should focus on more academics versus the community and life skills services. The parent expressed that her child is fragile and that she would like the student to be removed from the community programs. The team discussed this issue, and the team decided to wait until after the student's scheduled May 29, 2008 doctor visit to determine community placement. The team also discussed the student's vision and the observation that the student was moving from an auditory to a visual learner using pictures combined with print.
6. On March 17, 2008, the IEP team developed a statement of the student's present levels of academic achievement and functional performance. The statement noted that the student continued to participate in an adaptive PE class integrated into the general PE program, participating in most activities alongside same age peers without disabilities. The statement also indicated that the student was enrolled in an art class, was able to participate in the class with assistance, and was able to participate in various in-class activities with modifications and accommodations. The statement reported several of the student's strengths, including the use of a power wheelchair to get around the school with minimal cuing, the student gets to classes on own (with an assistant following), understands routines, and was identifying letters and numbers and putting them together to form words. In the area of academic, developmental, and functional needs, there were statements describing the student's performance related to reading, math, gross motor, speech and language/communication, occupational therapy, feeding team, adaptive PE, community program, and vision.
7. The March 17, 2008 IEP provided for the student to receive specially designed instruction in several areas, including: adapted PE, speech/language, language arts, mathematics, community, and reading. The IEP provided that services for the specially designed instruction in several areas would change at the end of the 2007-08 school year. District staff report that these changes reflected both a change in the student's special education program and changes associated with the student's transition to the high school. For example, the adapted PE service changed from "1 block every day" at the "gym and pool" to "180 min per week" at the "FGHS/PU/Pool." The IEP also provided for transportation and occupational therapy services for the student as related services, several supplementary aids and services, modifications and accommodations, and services to provide support for school personnel, including physical therapy consult services, adaptive physical education consult services, feeding team consult services,

vision consult services, assistive technology consult services, and speech/language consultation.

8. The supplementary aids and services, modifications, and accommodations documented in the student's March 17, 2008 IEP included a computer with assistive software, home/school notebook (described as to/from school), modified homework (described as grade-level tasks sent home), color materials when available, bathroom protocol once per day or as needed, written communication protocol, a safe eating protocol, and enlarged printed materials in bold 36 point font.
9. The March 17, 2008 IEP provided for 30 minutes per month of specially designed instruction in speech/language and provided for 5 hours per year of speech/language consultation services as a support for personnel. This was a change from the services the student received through the March 21, 2007 IEP, which provided for 45 minutes per week of speech language services. The parent asserts that the child needed more services not less.
10. The speech pathologist participated at the March 2008 meeting and describes the change in the speech/language services as reflecting a change in the service delivery model. The new model relies on five hours per year of consultation services for staff concerning the student's communication needs and services throughout the year related to the student's communication device and augmentative communication services. The speech pathologist's recommendation for these services was based on the student's individual needs and a change in circumstances whereby the student would use the augmentative communication device full time at the high school. This recommendation is also supported by the augmentative communication specialist and assistive technology evaluations. The speech pathologist meets with the student for 30 minutes each month and provides instruction concerning use of the augmentative communication device along with training for staff; the educational assistants working with the student then provide opportunities for practice. The augmentative communication device supports both Spanish and English, and the educational assistant primarily assigned to work with the student for the 2008-09 school year was bi-lingual. The case manager also stated that the change in service model for speech/language and the change to a consultation approach and support for the augmentative communication services as appropriate for the needs of the student.
11. The student's March 17, 2008 IEP included goals and objectives related to the student's educational needs. The team also made a placement determination on March 17, 2008. The form the team used included typed descriptions of two placement options: "Regular classroom w/IA, pull-out as needed for speech, OT, & PT, and support from an IA" and "Regular classroom for math and PE. Pull-out for small-groups, the community program, pullout for Speech, and PT, and support from an IE." The form also had handwritten notes documenting the team's decision at the meeting. The team rejected placement in the regular classroom with education assistant support because it did not meet the student's educational and physical needs. The second typed placement option was crossed off, with handwritten notes showing the team considered and selected a third option not on the original draft: "All special ed. w/the option for electives 1 blk every other day." The team wrote that it selected this option, indicating that "Sped classes best meet [the student's] needs at this time." The parent, and several District staff, signed the placement form indicating they participated in making the decision.

12. The parent reports that the March 17, 2008 meeting actually only lasted about ten minutes and that the team did not accomplish anything. The parent asserts that the interpreter the District provided for the March 17, 2008 IEP was ineffective, that the parent could not understand anything the interpreter was saying, and that the District ended up reconvening the meeting on May 19, 2008 and writing the child's IEP at that time. The parent agrees that the District sent her a Spanish translation of the written IEP following the May meeting but asserts the change she requested with respect to not having her child participate in community outings was not there.
13. District staff agree that they brought a draft IEP to the March 17, 2008 meeting but report that the services in the draft were open for discussion and parent input. The record also shows that changes were made to the IEP at the meeting. District staff report it is their practice to come prepared to the student's IEP meetings with a draft to use as a tool to facilitate discussion of the student's needs and services; however, the final IEP and the student's placement were determined at the meeting. For example, staff point out that the student's transition services were changed from the draft IEP, and the student did not go out in the community as written in the original draft. Both changes resulted from the parent's input at the meeting and her expressed concern that the community outings were hard on the student's health. District staff agree with the parent that the student's March 17, 2008 IEP was completed May 19, 2008. Minutes taken during the IEP meetings also corroborate that the March 17, 2008 IEP was completed at the May 19, 2008 meeting. The notes show that the team discussed the student's need for an educational assistant, with District staff describing the classes the student would attend, that the student would be part of a group receiving instruction, and the availability of educational assistant support in those classes.
14. At the request of the student's parents, the District held a meeting on September 4, 2008 to address the parents' concerns. The parents had received their translated copy of the student's IEP and noted that the date for the IEP was incorrect. The parents contended that the whole IEP was incorrect and that agreed upon changes were not made. The team agreed that the case manager would correct the date on the IEP. The team reviewed the notes from the IEP meeting, reviewed the current IEP service summary page, reviewed the services and dates, and noted that "community" was terminated per parent request. The team reviewed the services the student was receiving and discussed the training the District provided to staff assigned to work with the student. The team also looked at the student's schedule and compared how it matched the student's IEP. No changes were made to the IEP at this meeting.
15. At the start of the 2008-2009 school year, the parent attended the first day of school to meet her child's assistant, make sure her child was safe, and ensure that the assistant knew her child needed help with asthma medication. The parent was very concerned about this, and when staff told her she could not meet with her child's educational assistant, she decided to take her child home. The case manager followed the parent outside and said the staff really needed for her child to stay and that the staff had planned on providing training on all of the protocols and services that day. The case manager did not speak Spanish, but the assistant did and was able to speak with the parent. The special education director and the school nurse also came out and spoke with the parent, and she tried to explain her concerns to them. The parent felt that the staff did not understand her concerns, particularly with the assistant who had not received training and could not tell the parent when the training would take place. The parent understood that the training was supposed to take place that same day.

16. The parent was not comfortable with the training taking place the first day of school. Her experience at the middle school was that the staff arranged for her to bring her child in before the first day of school, observe the training, and ensure that the supports her child needed were in place for the first day of school. The parent contrasts this with her experience at the high school where, when school started, the staff made her feel overprotective. The parent explained to staff that her child has several medical issues and is not yet independent. The parent is very concerned about her child's health and wants to ensure that medications are administered on time and correctly. She feels that the staff do not take these matters seriously or understand that it is important to her. The parent also did not understand why school staff will not let her attend school with her child or why they will not let the parent eat with the student.
17. The District reports that staff have met with the parents two to three times each month to address their concerns and provide for parent input into the student's program, with many of these meetings consisting of informal discussions between the parents and case manager, special education director, and other staff, assisted by the bi-lingual receptionist at the District office. The receptionist greets the parents when they come into the District offices and helps translate written materials for them. The receptionist also translates notes staff receive from the parents – typically within an hour – assists the parents with communication by telephone, and helps with information such as medication changes for the student. The special education director responds to regular requests for information from the parents and has a substantial file of letters and notes he has received and responded to. The special education director describes the communication with the parents as dysfunctional, with the parents moving from subject to subject during meetings and expressing distrust of District staff.
18. The parent asserts that when she pointed out the mistake on the IEP concerning the change to her child's community services, the staff smirked at her and said it was just a mistake and they would fix it. The parent describes this as a very serious issue to her; she is concerned for her child's health and reports that the student gets sick very easily and that she feels that District staff do not take the matter seriously.
19. The parents contend that they did not understand that their child would not have a specific personal assistant in the new placement at the high school. The parents assert that their child was in almost all regular education classes at the middle school, including general education math, history, science and PE classes, with educational assistant support and modifications and accommodations to support the placement in these classes. The parents assert that their child was never isolated at the middle school the way the student is at the high school, where the student spends most of the school day in a self-contained special education class. The parent agrees that the community services were dropped at her request, due to her concerns about the student's health. The parent disagrees with the decision to reject assigning an individual personal assistant for her child and the decision to place the student primarily in special education classes. The parents do agree, however, that the District had one primary educational assistant assigned to work with their child for most of the school year, although that individual left for personal reasons before the school year ended.
20. On the first day of school for the 2008-09 school year, the student's case manager coordinated training of the various specialists providing services to the student at the high school. The District also arranged for a staff member familiar with the student's needs, who worked with the student at the middle school, to be available on a daily basis at the student's new high school placement for the first two weeks of the school year.

The case manager keeps a log naming each individual trained to work with the student in any given area. Each staff member signs the log confirming they received the training as indicated. For example, a laminated copy of the student's feeding protocol is carried on a lanyard by an aide assisting the student, and the names and signatures of all staff trained on the student's feeding protocol is on the back.

21. The case manager has training manuals for all of her staff and has put together a specific training manual for the student. Staff are trained and supervised by the case manager, ensuring that each of the modifications and accommodations the student requires are in place, such as increased font sizes and, when available, pictures in color. The case manager maintains a medication log for the student and staff, trained by and under the direction of the school nurse, implements the protocols and documents the administration of medication. The case manager notes that her staff have experience working with many higher-needs students with multiple protocols and describes the student as capable of self-advocacy. Although no individual aide is assigned to work with the student full time, the special education classroom in which the student spends the majority of the day has several instructional assistants present at all times. Additionally, an instructional assistant accompanies the student at those times when the student is not in the special education classroom.
22. On the first day of school, the physical therapist provided training for three of the primary staff who work with the student in safely transitioning the student to a standing position and back to the wheelchair. The physical therapist also provided training to the staff regarding the student's bathroom protocol. The physical therapist provided training for all other staff during scheduled observations over the first two weeks of the school year and maintains a list of all staff trained to follow the student's protocols. The physical therapist also schedules additional observations during the school year as well as trainings for new staff as required.
23. The case manager uses a home-to-school communication notebook that is kept in the student's backpack and goes back and forth from home to school every day. The case manager uses the home-to-school notebook to provide for communication with the parent and for responding to notes and questions the parent writes. She has notes from the parent interpreted for her and responds within 24 hours. The case manager writes her response and has the response translated to Spanish and interpreted back for her to ensure it is correct. The case manager then signs the response and sends it home with the student. The parent contends that the home-to-school communication notebook should provide a daily report of her child's activities at school, particularly reporting on the times medication was administered, fluid intake, when the student went to the bathroom, and other pertinent information concerning implementation of the protocols.
24. The school nurse ensures the provision of appropriate services to the student by developing, reviewing, and revising the student's medical protocols as needed. She receives information from the student's parents and receives letters from the student's doctor concerning the student's needs. The nurse reports that the parent misunderstands the doctor's written instructions and provides constantly-changing, confusing information about her child's medical needs. The nurse relies on written instructions from the student's doctor. The nurse wrote a seizure protocol for the student in response to parent concerns, although the student does not have a medical diagnosis of a seizure disorder and staff have not observed the student having a seizure at school. The nurse sent the seizure protocol to all of the student's teachers but determined that it did not require any specific training from her. The nurse also wrote a protocol for the

student's hemorrhoid condition pursuant to physician's instructions and provided training for staff on having the student stand for 10 minutes each hour and administering a prescription medicated cream (ointment) if the student had a bowel movement at school. The protocol includes a log to use in documenting use of the student's ointment, but the nurse reported that they have not used the ointment because student has not had a bowel movement at school.

25. The school nurse also wrote an asthma action plan for the student, as she does for many students with asthma. The nurse received an inhaler from the parent for the student to use as necessary and sent a form to the student's doctor to obtain details concerning its use. The inhaler is kept in the student's backpack for immediate access, and the nurse provided training on its use to most of the special education staff. The nurse generates a form with instructions for administration of each medication, and a log is provided to note the date, time, amount, and administrator of the medication. The nurse also noted that the student's asthma is not severe or life-threatening and asserts that the student's asthma does not require constant supervision or supervision on the bus. The student did not require use of the inhaler at school at all during the 2008-09 school year.
26. The bus driver is responsible for ensuring the student's safety on the bus and has received training on correctly bringing the student's wheelchair onto the bus, locking the wheelchair safely in place, and assisting the student in safely exiting the bus. The case manager also views the student as capable of riding the bus independently with transfer assistance provided by the driver. The case manager does not view the student as medically fragile or requiring an adult assistant for medical needs.
27. The parent disagrees with the nurse's assessment of her child's asthma condition and contends that her child should always have a trained assistant who will recognize the signs of the student's asthma and can properly administer the asthma medication. She is particularly concerned that her child rides the bus without an assistant trained to administer the asthma medication. The parent also wanted to know who would assist her child with toileting and applying the ointment for hemorrhoids; the parent also wanted to be present the first time the District implemented the toileting routine. The nurse did not tell her who was assigned to assist her child, and District staff told her she could not be there. The parent reports that she was there every time her child was taken to the bathroom in elementary and middle school, and District staff never provided any written policy explaining why she could not continue doing so at the high school level. The parent also relates an incident when she was at the school and requested to see her child's medication log; staff were unable to provide her with the information she requested.
28. The occupational therapist is part of the team that developed the student's feeding protocol. The occupational therapist provided training and demonstration to one primary and two backup staff on how to safely assist the student in this area, demonstrating safe mechanical soft methods, appropriate thickened liquids, and performing the Heimlich maneuver with the student. Among other things, the feeding protocol requires that the student brush teeth after eating to ensure that no food remains in the mouth. The occupational therapist maintains a list of all staff that have received the required training to assist the student with feeding. The occupational therapist also reported that the District contracts an outside speech therapist with swallowing expertise to provide training and assistance to the feeding team, the school nurse, and other staff. The occupational therapist scheduled three observations during the school year to ensure

that the correct feeding team protocol was implemented; the occupational therapist also provides additional training when there are staff changes or changes to the protocol, performs additional training and observations in response to parent concerns.

29. The adaptive PE teacher serves the student at the high school and also provided services to the student in middle school. At the middle school the adaptive PE teacher went into the general education PE class that the student participated in for 50 minutes each day and provided direct training and supervision for the general education PE teacher and the education assistant working with the student. She also provided services every Friday for the student through a separate adaptive PE program in a pool with other eligible students. When the student went to high school, the adaptive PE program for the student changed to a separate program 90 minutes each day Monday through Thursday, with Fridays at a pool. The adaptive PE teacher is the student's PE teacher in the high school program. The high school adaptive PE class is available to general education students as an elective class with approximately ten general education students participating as peer tutors. Participation in the separate adaptive PE class was based on an individual determination considering the student's needs and determined by the IEP team.
30. The student missed a significant amount of school due to health issues and was dropped from enrollment multiple times due to consecutive absences. The parent agrees that her child has missed a lot of school but asserts that the absences were due to medical needs. The parents requested the District provide home tutoring services for the student due to the lack of attendance. On January 22, 2009, the District held an IEP team meeting with the parents, reviewed the student's academic, functional, and physical needs and the doctor's reports of illnesses, and determined that a home instruction placement was not the least restrictive environment for the student. The District provided the parents with prior written notice of its refusal to change the student's placement to home instruction.
31. The District held a meeting on March 16, 2009 and developed a new IEP for the student. The student's parents participated in the meeting, along with a family friend, an interpreter, and several District staff. The meeting minutes note that the team reviewed the student's use of a Dynavox. The parent expressed that she would like the student's device at home to match the one at school. District staff at the meeting noted that the devices could be linked or synced so that the information is the same. The team also discussed the student's lack of progress in using the Dynavox, with District staff asserting that the student was unable to make much progress because of absences. Staff indicated that, when the student came back, the student would have lunch with typical peers to practice using the device. The team also discussed transition services and work experience for the student. The parent expressed that it was important to her that the student stay on campus and stay inside the building. The team agreed to look at other options for transition services for high school. The team also discussed placement of the student at the high school. The parents reported at the meeting that their child had an upcoming appointment to discuss possible surgery and inquired about the District providing a home tutor. The minutes state that District staff agreed to have the IEP translated prior to the next meeting, with a review after spring break, and that the IEP was for a full day, five day per week program.
32. The student's March 16, 2009 IEP included substantially similar services to those described in the student's March 2008 IEP, providing for specially designed instruction in several areas including 30 minutes per month of speech/language services. As in the

previous IEP, the March 16, 2009 IEP included 5 hours per year of speech/language consultation services as a support for staff. The March 16, 2009 IEP continued the transportation and occupational therapy related services and continued the supplementary aides and services, modifications, and accommodations provided by the March 2008 IEP. Among other things, these services continued to include a computer with assistive software, a home/school notebook, safe eating protocol, color materials when available, bathroom protocol, and enlarged printed material at 18-24.

33. The parent agrees with the District that the team did not hold a meeting in May 2009. The parent asserts that the IEP was not completed at the March 2009 meeting because she had to leave early to care for her child, who was sick, and could only stay for about an hour. The parent expected the District to schedule another meeting to finish her child's IEP, but it never happened. The parent reports that the District then scheduled a June meeting in response to her request for a meeting to finish her child's IEP. District staff disagree, pointing to the completed IEP and the notes from the March meeting showing that changes were made to the IEP as a result of parent input and that the student's placement was determined. District staff report that the June 2009 meeting was planned at the March 2009 meeting and was necessary in order to determine the student's eligibility for extended school year services.
34. The parents continued to request that the District provide home tutoring services for their child, and the District agreed to provide one hour each day of tutoring at the District's offices. The parents felt that this was not consistent with the direction of their child's doctor, who directed that the student stay home from school. The parent is very concerned about this issue, as the treatment was intended to help her child avoid surgery for hemorrhoids. The parent reports that she cooperated with the District and provided transportation for the student to receive the tutoring at the District offices, except one day when the student was too sick to attend. The parent did not think the location was appropriate because the bathroom was not equipped for the student.
35. The parents also removed the student from school for approximately 5-6 weeks to travel to Mexico for a second opinion on treatment of the student's hemorrhoid condition. The parents reported that after they returned and spoke with their child's local doctor, the doctor collaborated with the doctor in Mexico and had them keep the student home to continue treatment. The treatment involved having the student stand for 10 minutes each hour and applying medicine as directed. The parents continued to keep the student home in accordance with the instructions from the doctor. The parents were also very upset when they received contact from the District's truancy officer and a fine for truancy. They contacted the District concerning this and were told it was a mistake and that the staff would take care of it. The parent reported that the doctor did not give permission for her child to return to school until May 13, 2009. The parent contends that staff did not take the matter seriously and never provided the home tutoring services she requested for her child.
36. The team next held a meeting on June 11, 2009. Both of the student's parents attended this meeting, along with several District staff. The District had prepared a written agenda for the meeting and kept minutes. The agenda for the meeting stated that the team planned to review present level and goal information related to occupational therapy, physical therapy, and adaptive physical education and determine if the student needed extended school year services. The District provided the parents with a translated copy of the student's IEP and arranged for an interpreter for the meeting. The team discussed the student's progress and present levels of performance, particularly noting

that the student was making progress with the Co-Writer and using other computer programs. The parent expressed that she would prefer for her child to write in all capital letters because the student gets frustrated when writing in lowercase. The parent also expressed that she would like for her child to have a signature but not worry about letter case. The team agreed to drop the lower case goal and keep the upper case goal. The parent also expressed that she wanted to focus more on having her child use the computer and suggested adding a goal to use a computer for every class and every assignment. District staff responded that the student has access to a computer in every class and accesses a computer for assignments currently. The case manager noted that computer use could be written into academic goals and asked the parent if she wanted academic goals removed from the IEP if they do not use the computer. The parent indicated she did, and the team reviewed and agreed to remove two reading goals from the student's IEP and added new reading goals related to computer skills.

37. The June 11, 2009 team discussed the student's physical therapy services, reviewing the student's performance, goals, strengths, and access of school environment with a wheelchair. The parent asked about the District's plan for providing her child with ten minutes of standing each hour. The student's case manager explained how this worked – with help of assistants in each class. The team also reviewed the student's present levels of performance and goals with regard to adaptive physical education before discussing the student's need for extended school year services. The District determined the student ineligible for ESY services during the summer based on evaluations of the student's regression/recoupment earlier in the spring. The parent disagreed with this determination, pointing out that her child had received ESY services every previous summer.
38. The parent asserts that many of her concerns were not addressed at the meeting, and that every time she brought up her concerns District staff responded that they would discuss her concerns later or in a different meeting. The parent contends that District staff do not follow up on her concerns and have not scheduled meetings to address her concerns with respect to the student's safety, transportation, and wheelchair mobility. The parent also has concerns about the student transitioning back to school and not knowing who would be assigned to assist the student.
39. The District revised the student's March 16, 2009 IEP to reflect the changes agreed upon at the June 11, 2009 meeting. Specifically, the objectives related to the student's reading goals were revised to reflect use of a computer, and the signature objective for the student's transition services was revised to reflect use of upper case letters, with a goal toward a consistent signature with decreasing size. The assistive technology specialist participated at the June 2009 IEP meeting and agreed with the parent's suggestions concerning dropping the lower case letter objective for the student and focusing on a functional signature and reducing the size of the signature, as well as using increased font sizes on written work, enlarging pictures, and using colored pictures paired with words. The assistive technology specialist reported that these changes were agreed upon at the IEP meeting and are reflected in the student's program. The student uses a computer for much of the work with the font size set correctly for the student, and pictures in color are provided within the software as available.
40. The case manager advises and assists the student with scheduling of courses. At the end of the student's 9th grade year, she assisted the student in completing and submitting the 10th grade forecast that is turned in to the general high school counselors responsible for creating course schedules for the 9th grade students returning to 10th

grade in the fall. She had already gone through the class options in the course guide with the student, reviewing the IEP goals and objectives and the various elective options, and turned in the student's course forecast indicating the student's preferences and interests before the June 2009 meeting, noting the student's preference for an art class. The counselors take this information from all students in a similar manner, with each student identifying their desired electives in order of preference. The case manager explained that every student is not guaranteed their first preference each semester but are generally able to get the courses they want.

41. The case manager reported that the student did not get the preferred art elective in the spring of 2009 but did get the "Basic Design" art class in the fall of the 2009-2010 school year and is currently enrolled in that course. The student's current schedule (fall 2009-2010 school year) includes the regular education art class called "Basic Design." The case manager reports that the student participates in this regular education art class, that she has personally assisted the student in this class, that the student is doing well, and that the student has a portfolio at school where work is kept.
42. The District followed the same routine at the beginning of the 2009-2010 school year as the previous school year, scheduling and providing training the first day of school, follow-up training within the first two weeks, and scheduling additional training and observations through the school year.
43. The student's father went to school for fall parent-teacher conferences and went to the Basic Design class to meet with the teacher. It seemed to him that the teacher did not know who his child was or why he was there to see the child. The teacher asked if his child was the one who came in the wheelchair and then asked if his child could read or if he read with his child. The student's father reported just listening and questions whether his child participates in this art class at all. The parents are also concerned that their child has not brought any artwork home for them to see.

IV. DISCUSSION

Parent Participation³

Parental participation is an important part of the IEP team process. Parents have been members of their children's IEP teams for the entire history of IDEA. In the 1997 IDEA, parents moved to the top of the list of IEP team members as part of a broader move to strengthen the parent role in special education processes. School personnel typically bring expertise about curriculum, instruction, and assessment to special education decision-making. However, parents have extensive knowledge of their children's characteristics, experiences, and needs and thus have substantial knowledge to contribute to educational decisions. Parent participation is a fundamental principle of IDEA.

Appendix A to the federal IDEA regulations (1999) described the intended level of participation:

"The parents of a child with a disability are expected to be *equal participants along with school personnel*, in developing, reviewing, and revising the IEP for their child. This is an *active role* in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2)

³ See generally OAR 581-015-2190.

participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As previously noted in the introduction to section II of this Appendix, Part B specifically provides that parents of children with disabilities—

1. Have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of FAPE to the child (including IEP meetings)⁴;
2. Be part of the groups that determine what additional data are needed as part of an evaluation of their child, and determine their child's eligibility and educational placement⁵;
3. Have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEPs[.]”⁶

The IDEA requires more than an opportunity for parents to attend and speak at IEP meetings; it requires a good faith exchange of ideas. If this exchange does not lead the team to consensus, the school district must still ensure that the child receives FAPE. As recently as December 2008, in discussing regulations that went into effect on December 31, 2008, OSEP stated, “We agree with the commenters that parents should be equal partners in the educational decision-making process for their child...”⁷

The parent alleges that the District did not provide her with the opportunity to fully participate in meetings held to develop IEPs for her child. The parent specifically alleges that the District brought a completed IEP to meetings, and did not make any of her requested changes to it after agreeing at the meetings that they would. The parent alleges that staff did not consider her desire to have her child in an art class, a particular concern she has for enhancing her child's education. The parent also alleges that District staff told her not to speak at meetings.

The difference between a draft IEP and a predetermined program hinges on whether a school district approaches an IEP meeting with an open mind. A district can prepare a draft IEP so long as it is willing to consider the parent's concerns and make changes to the program as appropriate. Here, the District developed the draft as a tool to facilitate discussion regarding the student's services and placement. The fact that the District considered and made changes to the student's IEP in several areas (large case handwriting; computer use for academic goals; no community outings) showed that it was willing to consider the parent's thoughts on the student's program. The case manager sought to enroll the student in the student's preferred elective art class, submitting the preference with the forecast, and the student did in fact get the art elective as sought (Basic Design) in the fall 2009-2010 schedule and is currently enrolled in the class. The parents are concerned that their child is not an actual participant in the class, as the teacher did not seem to know who their child was and their child has not brought any work home. The student's schedule, however, reflects enrollment in the class, and the case manager describes the student's participation.

⁴ OAR 581-015-2190.

⁵ OAR 581-015-2115.

⁶ OAR 581-015-2195; OAR 581-015-2205; OAR 581-015-2210.

⁷ 73 Fed. Reg. 73018 (2008) (Analysis of Comments & Changes for 34 CFR § 300.512).

The District has regularly convened meetings at parent's request to address her concerns, and staff meet with the parent informally to address her concerns, in each case providing for an interpreter to assist the parent in fully participating. It is true that staff have required the parent to keep to the agenda for meetings; however, the District has responded to the parent's requests and, when at an impasse, provided the parents with prior written notice concerning its refusal to change the student's program or placement. The Department concludes that requiring a parent to speak to the subject matter of a meeting and refusing to discuss other matters not within the scope of the meeting does not exclude the parent from participating in the meeting as an equal partner. The Department does not substantiate the allegation that the District did not provide the parent with the opportunity to fully participate in meetings held to develop IEPs for her child.

Content of IEP

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives a free appropriate public education (FAPE). A school district meets its obligation to provide FAPE by complying with the procedural requirements of the IDEA and providing the student with an IEP that is "reasonably calculated to enable [the student] to receive educational benefit."⁸ An IEP must be in effect for each eligible child at the beginning of each school year.⁹

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.¹⁰

In addition, school districts must provide the special education and related services listed on the IEP.¹¹ In furtherance of these requirements, school districts must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation. School districts must also inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.¹²

The parent alleged that the IEPs the District developed for her child do not provide for all of the services her child requires. The parent made several specific allegations, including: District staff reduced the student's speech/language services from 30 minutes per week to 30 minutes per month, not basing the services upon her child's individual needs; District staff did not develop or implement services to assist her child in using the Dynavox assistive communication device at school and at home; District staff did not develop or implement an appropriate plan to transition her child from middle school to high school; the District has not described her child's need for an adult assistant at school and on the bus; the District has not provided adequate training for staff to ensure her child's medical needs are met; the District has not provided for the Spanish

⁸ *Board of Educ. v. Rowley*, 458 U.S. 176,192 S.Ct. 3034, 72 L.Ed. (1982).

⁹ OAR 581-015-2220.

¹⁰ OAR 581-015-2200(d).

¹¹ OAR 581-015-2220.

¹² OAR 581-015-2220.

language communication needs of her child; and, the transition services the District developed focus on community services rather than the educational services the student needs.

The District agrees that speech services of 45 minutes per week were listed on the student's March 21, 2007 IEP and the change to 30 minutes per month was made on the student's March 17, 2008 IEP. The District characterizes the change as a change in the service delivery model recommended by the speech pathologist, shifting emphasis to the use of augmentative communication and the Dynavox and providing more services through consultation and support services for instructional staff.

The District evaluated the student's communication, augmentative communication, and assistive communication needs; the augmentative communication specialist recommended use of the Dynavox, and the speech pathologist also recommending developing and implementing a communication model for the student with the use of assistive technology. The Department concludes that the change in speech services was based on student-specific data and that the change was discussed and adopted through the IEP meeting process. The speech pathologist implemented the assistive technology services by providing direct instruction to the student during a 30-minute session each month, supervising the educational assistants working with the student by providing opportunities for the student to practice what the student had learned. The District also selected a device compatible with the one the student uses at home and that can be synced with the device used at home. The Department concludes that the services the District developed and implemented to assist the student in using the assistive technology device were reasonably calculated to provide educational benefit.

The District scheduled a transition IEP meeting and provided for participation by middle school staff working with the student and high school staff from the program where the District anticipated the student would receive services in the following academic year. The District provided for classroom observations of the student by the case manager and provided for a visit by the student to the high school program. The District also provided for a staff member from the middle school knowledgeable about the student's program and needs to be available to support the high school staff on a daily basis for the first two weeks of the school year. Specialists assigned to various roles, including the school nurse, the physical therapist, the occupational therapist, and the case manager, each provided training to staff on the respective protocols they supervised, ensuring correct implementation of these protocols and the safety of the student. The Department concludes that the District developed and implemented an appropriate plan to transition the student from the middle school to the high school and that the services that the student required were in place when the student began in the new program.

The student's needs concerning adult assistance are described in the student's IEP in relation to the services the student receives; each specific service or protocol describes the adult assistance that the student requires as a component of the service or protocol. The adult assistance is provided by any of the instructional assistants assigned to the student's self-contained special education class. The IEP itself does not provide for a full-time 1:1 adult assistant specifically assigned to the student, which is the service that the parents are seeking for their child, particularly on the bus. The IEP does, however, describe the student's need for "adult assistance" in these various areas.

The issue concerning the student's safety on the bus is difficult, as the parents are clearly concerned that their child may have an asthma episode, seizure, bathroom need, or other medical issue on the bus, and there is no adult there trained to assist the student. The school nurse, however, has developed specific protocols for the student's needs based on the written

instructions she has received from the student's doctors. The school nurse contends that the student does not require an adult assistant on the bus because the medical needs described by the student's doctor are not life threatening. The District also contends that the student's services and needs for adult assistance were discussed and developed through the IEP meeting process and that the parents did not voice a concern about this during the IEP meetings. The Department concludes here that the District, after considering parental input on the issue, may reasonably rely on the assessment by the school nurse concerning whether the student requires an adult assistant to ensure the student's safety on the bus. The Department does not substantiate the allegation that the District has not described the student's need for adult assistance in the student's program.

As discussed above, the District provided training from each specialist (nurse, physical therapist, occupational therapist, etc.) to staff working with the student. The training took place on the first day of each school year for primary staff, and follow-up training and observations were held to ensure that staff assigned to work with the student were properly trained. The case manager maintains a log describing the training each staff member has received, and each staff member signs the log verifying they received the training. Part of the issue for the parent here is that the services her child receives each day are not directly reported to her in the home-school communication notebook, so she cannot verify that the student stood for 10 minutes each hour, had the required fluid intake, used the bathroom, received medication on time, etc. The fact that each of these activities is not directly reported to the parent each day does not mean, however, that staff are not appropriately trained and supervised to ensure the student's needs are taken care of. The Department concludes that the District has provided for adequate training for staff assigned to implement the student's IEP.

The District has provided bi-lingual educational assistants to work with the student, and the augmentative communication device the District is using with the student supports communication in both Spanish and English. The Department finds that the District provides appropriate communication services in response to the student's particular needs as a non-native English speaker.

The transition services described by the student's IEP were changed at the request of the parent to discontinue community-based services and instead focus more on educational services. The student's IEP provides for specially designed instruction in academic and educational areas (such as math, reading, and language arts), services in adaptive PE and augmentative communication, and goals related to transition services (such as having a signature block). The transition services were developed by the student's IEP team following evaluations of the student's transition needs. The transition plan takes into consideration the student's needs and preferences and the preference expressed by the parent that the student not participate in community outings. The Department concludes that the District based the student's transition services on student-specific data, with the student's transition services developed through the IEP meeting process, and does not substantiate this allegation.

IEP Implementation

School districts must provide the special education and related services listed on each child's IEP and must make a good faith effort to assist the child to achieve the goals and short-term objectives listed in the IEP. Additionally, school districts must timely reconvene IEP teams to review and revise a child's IEP to address any lack of expected progress toward the annual

goals.¹³

The parent alleged that the District has not fully provided the special education and related services that the student's IEP describes. Specifically, the parent alleged that: District staff have not consistently used the daily communication notebook her child's IEP describes and have not provided her with a Spanish translation she can read; the District has not consistently documented her child's fluid intake, use of medicine, brushing of teeth, or use of the bathroom as required by her child's IEP protocols; and, District staff have not provided a large font for the student's homework or pictures in color.

The parent and District do not have the same view of the use of the home-to-school communication notebook described in the student's IEP. The parent views the notebook as a daily report to her concerning the activities her child has engaged in and documenting for the parent that staff have correctly followed the student's daily routine. This is a very important matter for the parent, who feels that staff do not view her child's needs (especially medical) as serious and does not trust that staff will consistently implement the IEP. The case manager and the District view the home-to-school notebook as a tool to facilitate communication with the parent, providing a means for asking questions and for the case manager to provide written responses. The Department's review of the student's IEPs and related meeting minutes indicates only that the District obligated itself to provide a home-to-school notebook for communication with the parent on an "as-needed" basis, with no specific requirement concerning the content of the notebook, or that the notebook constituted a daily log of the student's IEP implementation. Although there may be specific instances where the District did not provide readable translations, the Department notes that it was the routine practice of the case manager to provide Spanish translations, and the District consistently makes interpretation and translation services available to the parents. The Department does not find substantial evidence that the District has failed to implement the home-to-school notebook where the notebook is in the student's backpack and is used by the case manager to respond, in the parent's native language, to questions asked by the parent.

As discussed above, while the parent asserts that the home-to-school notebook should provide her with documentation concerning following each of the student's protocols, including data such as fluid intake, use of medicine, brushing of teeth, or use of the bathroom, the District does not use the notebook for this purpose. The case manager has, however, ensured that training and supervision of her staff occurs for each protocol, maintaining a log of each staff person trained in each area and using a log as required by each protocol. Likewise, the school nurse has developed protocols following the written instructions from the student's doctor, has provide training and supervision for staff responsible for implementing the protocols, and has created a log documenting the administration of medications to the student. The Department does not find substantial evidence that the District has failed to follow these protocols or that the District has failed to provide adequate training for staff to provide for the medical needs of the student.

Much of the student's work is completed on a computer, and an increased font size is provided to accommodate the student's vision needs. Color pictures are also provided to the student through the software programs the student utilizes. Therefore, the Department does not substantiate the allegation that the District has not implemented the accommodations described by the student's IEP requiring the use of a large font and color pictures.

¹³ OAR 581-015-2225.

V. CORRECTIVE ACTION

In the Matter of Oregon Department of Education and Forest Grove School District
Case No. 09-054-035

The Department does not order any corrective action as a result of this investigation.

Dated: December 4, 2009

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

Mailing Date: December 4, 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.