

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Hillsboro School  
District 1J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 09-054-048

**I. BACKGROUND**

On December 9, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the Hillsboro School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint, unless exceptional circumstances require an extension.<sup>1</sup> On December 17, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. In the *Request for Response* the Department stated that it would extend the 60-day timeline for issuance of a final order in this case by 22 days due to the winter holidays and the difficulty conducting an investigation during that time. The Request for Response requested a *Response* from the District by January 15, 2010. On January 15, 2010 the District timely submitted a narrative *Response* to the allegations along with documents and sent the parents a copy.

The Department’s complaint investigator reviewed the information submitted by the District and the parents and determined that on-site interviews were needed. On February 12, 2010, the investigator interviewed the District’s special education director, a middle school principal, an occupational therapist/assistive technology specialist (OT/AT), a speech language pathologist (SLP), an ESL teacher, a regular education teacher (who also coordinates an after school program for Hillsboro Parks and Recreation), and another regular education teacher of the student. On February 19, 2010, the investigator interviewed the parents. Both the District and parents provided additional documents to the investigator, but the additional documents from the parents were not received until February 22, 2010. The Department’s investigator reviewed and considered all of the documents and interviews.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR 300.151-153. The allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

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<sup>1</sup> OAR 581-015-2030(12) (2010); 34 CFR 300.151-153 (2009).

No.	Allegations	Conclusions
(1)	<p>Parent Participation – General</p> <p>The parents allege that the District denied the parents an opportunity to participate in meetings concerning the student’s IEP.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the District properly provided the parents the opportunity to participate in the IEP Team meetings taking place on February 13, March 9, and April 29, 2009. The Department does not sustain the allegation that the parents were denied an opportunity to participate in meetings concerning the student’s IEP.</p>
(2)	<p>Evaluation and Reevaluation Requirements/ Content of IEP:</p> <p>The parents allege that the District failed to conduct reevaluations requested by the parents to assess the student’s education and related services needs regarding assistive technology, the need for a one-to-one assistant, and the student’s behavior.</p> <p>The parents allege that the IEP does not sufficiently provide for the specific special education and related services and supplementary aids and services, including assistive technology and one-to-one assistance, that the student requires to: (a) advance appropriately toward attaining the student’s annual goals, (b) be involved and progress in the general education curriculum, and (c) be educated with disabled and non disabled peers.</p>	<p><u>Not Substantiated</u></p> <p>The Department does not sustain the allegation that the District failed to conduct evaluations concerning the student’s need for assistive technology or a one-to-one assistant. The Department also does not sustain the allegation that the District violated the IDEA by failing to include access to a laptop or a one-to-one assistant in the student’s IEP.</p> <p>Additionally, The Department does not sustain the allegation that the District inappropriately failed to conduct a reevaluation of the student’s behavior during the February 13, 2009 IEP meeting, nor does the Department sustain the allegation that a FBA and BSP were required in the student’s IEP. The parents have not identified any additional areas of special education and related services that are not in the IEP that should be in the IEP to allow appropriate progress on the student’s IEP goals and in the general education curriculum. Therefore, the Department does not sustain the allegation that the student’s IEP requires more to allow the student to appropriately progress towards the student’s IEP goals and in</p>

No.	Allegations	Conclusions
		the general education curriculum.
(3)	<p data-bbox="293 384 789 415">Content of IEP/Nonacademic Services</p> <p data-bbox="293 451 834 646">The parents allege that the IEP does not sufficiently provide for the specific special education and related services and supplementary aids and services that the student requires to participate in extra curricular and nonacademic activities.</p> <p data-bbox="293 682 862 848">The parents allege that the District failed to provide nonacademic and extracurricular services and activities in a manner that afforded the student an equal opportunity to participate in those activities.</p>	<p data-bbox="898 384 1130 415"><u>Not Substantiated</u></p> <p data-bbox="898 451 1406 1213">The District appropriately and timely responded to the escalation of the student's behavior by scheduling an evaluation planning meeting on November 16, 2009 and obtaining parent consent for a Functional Behavioral Assessment (FBA) and Behavior Support Plan (BSP) on December 10, 2009. The results of the FBA will determine an appropriate BSP and will lead the IEP team to address how the student's disability impacts his behavior and precisely what services are required to allow participation in extra curricular and nonacademic activities by the student. Based on these facts, the Department does not sustain the allegation that the student's IEP should have contained special education and related services to allow the student to participate in extracurricular and nonacademic activities.</p>

### III. FINDINGS OF FACT

**Background:**

1. The student is presently 15 years old and attends middle school in the District. The student is eligible for special education under disability codes 10 (communication disorder) and 80 (other health impaired).
2. The student's current IEP, adopted on February 13, 2009 and updated through changes in the Service Summary section of the IEP on March 9, 2009 and April 29, 2009, provides for a placement of "regular ed classes with LRC classes." The "Nonparticipation Justification" statement provides for approximately 36% removal from regular education. The Service Summary of the student's IEP provides for specially designed instruction in the following areas: (1) "Language" for "75 min – per Month" to be provided by the SLP, (2) "Reading" for "225 min – per Week" in the special education classroom, (3) "Written Language" for "225 min – per Week" to be provided in the special education classroom, and (4) "Mathematics" for "225 min – per Week" to be provided in the special education classroom. The

Supplementary Aids/Services, Modifications and Accommodations provided in the Service Summary include: (1) "directions repeated/check for understanding" to be provided "for directions and new concepts" school wide, (2) "[e]xtra time to respond & complete assignments" to be provided daily school wide, (3) "reduced or modified assignments" to be provided "as needed" in the "General Ed Classroom," (4) "Seating near instructor" to be provided daily school wide, (5) "allow visual breaks during class" to be provided "2-3 times/week in each class" school wide, (6) Daily communication notebook" to be provided "daily/each class" school wide, and (7) "visual cues" to be provided "daily for enhancing instruction of new concepts and maintaining focus" school wide.

3. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) of the student's current IEP (dated February 13, 2009) states that the student has a "communication disorder and a health impairment due to Neurofibromatosis which causes difficulty with attention, memory, vision and headaches."

#### **Parent Participation - General**

4. At least one of the parents attended all IEP meetings for the student for the year preceding the filing of the complaint in this case. A Spanish language interpreter has been present at each of the IEP Team meetings. Review of the IEP documents and meeting minutes from those meetings show that the parents have actively participated in every IEP meeting.

#### **Evaluation and Reevaluation Requirements and Content of IEP**

5. Concerning AT, the District's OT/AT specialist has worked with the student since April of 2004 when the student was in second grade. Since then, the student has used various dedicated word processing devices, including an "Alpha Smart", a "Neo," and a "DANA". The student's IEP goals adopted on February 13, 2009 include a goal in the area of writing, and this goal includes a short-term objective that the student "will use a dedicated word processor to compose, edit and revise his written work of one paragraph length." The OT/AT specialist completed the most recent evaluation of the student on February 13, 2008, looking at both OT and AT needs. The parents have made no specific request for further AT evaluation, but during the February 13, 2009 IEP meeting, one of the parents requested that the student be provided the use of a laptop computer. The OT/AT specialist was not at this meeting, so the team agreed that use of a laptop computer would be discussed at the upcoming eligibility meeting. On March 3, 2009, the IEP team, including the OT/AT specialist discussed the use of the DANA and computers, with the parent asking that the student use a laptop computer instead of the DANA because there are more speech programs and color on the laptop. The OT/AT specialist discussed the practical advantages of the DANA over a laptop computer, and the team discussed that the student could use a computer in the LRC for reports and the DANA when a portable word processor is needed. The OT/AT specialist opined that the practical disadvantages of a laptop outweighed the advantages for the student. The parent did not voice objection to that opinion. Additionally, the team determined that the student would be shown how to use the Outlook program on computers in the LRC classroom to record the student's homework as a daily planner. Following the March 3, 2009 meeting the District issued a PWN stating that the student's IEP was revised, in part, to "add access to word processor." The District modified the student's IEP effective March 9, 2009 to include in the modifications and accommodations

portion “access to word processor” to be provided “daily for recording assignments/competing written assignments” school wide.

6. The on-site investigation revealed that the student is continuing to use the DANA and, at the end of the school day, uses the Outlook program to send an e-mail detailing that evening’s homework assignment from the room where the student’s last class, math, is taught.
7. Concerning the need for a one-to-one assistant, the parents stated in the complaint and during the on-site interview that in April of 2009 a teacher had attempted to require the student to place his hand on his chest during the pledge of allegiance. The on-site investigation confirmed this incident. As a result of this incident, the District moved the student to another classroom with another teacher. The classroom that the student left had an assistant in the room for all students in the class, but the classroom to which the student moved does not have such an assistant. The student’s IEPs have never required a one-to-one assistant in any of the student’s classes.
8. Concerning behavior, the parent requested a Functional Behavioral Assessment (FBA) during the February 13, 2009 IEP process. The PLAAFP includes a section entitled “Parent concerns,” and this section includes a request for a FBA by the parent. The meeting minutes of the February 13, 2009 meeting do not address this request, other than stating that the “PLEP is reviewed.” The only other mention of behavior is that the parent “Would like positive behavior support to encourage [the student] to use DANA. Mostly to help with spelling.” However, the on-site investigation revealed that at the February 13, 2009 meeting the IEP team did indeed discuss the need for an FBA but concluded that a review of the student’s behavioral incidents at that time (the last semester of the student’s 7<sup>th</sup> grade) revealed only eight incidents, four of which were that the student was tardy to class and four of which were minor behavioral incidents. The recollection of the District staff participants is that the team concluded that a FBA was not necessary without objection by the parent. The Department finds no contrary evidence. During 8<sup>th</sup> grade, the student’s behavioral incidents increased dramatically, so the District arranged an evaluation planning meeting on November 16, 2009 and on December 10, 2009, the parent provided written consent for an FBA and a Behavior Support Plan (BSP).
9. Review of the student’s report cards and progress reports concerning the student’s IEP goals reveal that the student is making progress towards the student’s goals and in the regular curriculum. One of the student’s regular education teachers, who has the student in her classroom two periods each day and is also an IEP team member, confirmed that the student is progressing towards his IEP goals and is appropriately making progress academically. The parents have not identified any areas of special education and related services and supplementary aids and services in which the IEP is lacking. The parents’ primary concern is the District’s response to the student’s behavioral incidents. As discussed above, the behavioral incidents have only recently become of concern and the parents have signed consent to obtain a FBA and an appropriate Behavior Support Plan.

### **Nonacademic Services**

10. The on-site investigation revealed that the parents only concern regarding extra curricular and nonacademic activities relate to the removal of the student from an after school

homework club on December 2, 2009 due to behavior issues. In a letter dated December 2, 2009, a District principal wrote to the parents and advised that the student “is not allowed to attend our homework club or our AmeriCorp member math group after school for the remainder of first semester” and that the student “has had difficulty using the time appropriately for this program.” The letter states that the “decision to remove [the student] from our after school program” is based on: (1) “being in an unsupervised area of the building. [The student] was in our kitchen area without permission instead of being in our after school programs;” (2) the fact that a District staff member has “called home regarding [the student’s] behavior in this program in an attempt to try to change his behavior”; and (3) the fact that the student “continues to leave the room without permission, be a distraction in the room and is constantly being re-directed.” The letter also states that if the student “does need additional math support, he is to attend our morning math session . . . on Tuesday and Thursday mornings. It is our hope [the student] will learn from this experience and be able to attend our after school program for the second semester of this school year.” The District issued a disciplinary referral for the incident in which the student went into the kitchen area (on November 19, 2009), and this incident along with two other incidents within a few days of that date resulted in a one-day suspension of the student.

11. The student left school beginning December 15, 2009, before the winter holiday and did not return until January 15, 2010 due to family requirements. Since the student’s return, the student has not attempted to enroll in an after school program.
12. The December 2, 2009 letter from the District to the parents characterizes the after school programs as “*our* homework club and AmeriCorp member math group.” (emphasis added). However, both classes are organized by the City of Hillsboro Parks and Recreation and the teacher is not a District employee, although the classes meet on District school property. The student is enrolled in both a “Homework Zone” class and a “Math Homework Zone” class but has only attended the math homework club, beginning in November of 2009. The attendance records maintained by the Park and Recreation District show that the student attended nine after school sessions in the math homework club, all in November of 2009.

#### **IV. DISCUSSION**

##### **Parent Participation – General**

The parents allege that the District denied the parents an opportunity to participate in meetings concerning the student’s IEP.

OAR 581-015-2190 and 581-015-2195 set forth the requirements concerning parent participation generally and for IEP and placement meetings. These regulations emphasize that the District must ensure the attendance of one or both parents at each IEP meeting. The complaint alleges that the District has denied participation because the District has disregarded the parents’ requests for evaluations, assessments, and accommodations.

The Department finds that the District properly provided the parents the opportunity to participate in all IEP meetings concerning their student. To the extent that the complaint alleges failure to provided requested evaluations or services, those issues will be addressed in other

areas of this Order. The Department does not sustain the allegation that the parents were denied an opportunity to participate in meetings concerning the student's IEP.

### **Evaluation and Reevaluation Requirements and Content of IEP**

The parents allege that the District failed to conduct reevaluations requested by the parents to assess the student's educational and related services needs regarding assistive technology, the need for a one-to-one assistant, and the student's behavior. The parents also allege that the IEP does not sufficiently provide for the specific special education and related services and supplementary aids and services, including assistive technology and one-to-one assistance, that the student requires to: (a) advance appropriately toward attaining the student's annual goals, (b) be involved and progress in the general education curriculum, (c) participate in curricular and nonacademic activities, and (d) be educated with disabled and nondisabled peers.

Because the allegations concerning evaluation requests and the content of the IEP rely on the same set of facts, the Department will discuss these in this section of the Discussion.

Concerning the allegations that the District failed to conduct evaluations concerning AT and failed to include sufficient AT services or accommodations in the student's IEP, the Department finds that there was no specific request for an AT reevaluation. Rather, the parents requested that the student be allowed to use a laptop computer at the February 13, 2009 meeting. The parents have identified no additional AT devices they believe are required for the student. This request, then, addresses whether the student's IEP should require use of a laptop computer. The OT/AT specialist was not in attendance at the February 13, 2009 meeting because no AT issues were on the agenda for the meeting. Once the parent made the request for a laptop computer the District appropriately tabled the discussion until the next meeting already scheduled for March 3, 2009 and notified the OT/AT specialist to attend. During the March 3, 2009 meeting the OT/AT specialist stated that the disadvantages of a laptop computer outweighed the benefits to the student, and the parent did not object to that opinion. Additionally, the student received instruction on using the Outlook program on a computer during the last class period of the day to send homework assignments home. The IEP team appropriately modified the IEP following that meeting to provide for access to a word processor, as previously the use of a word processor had only been indicated in one of the student's goals. The Department does not sustain the allegation that the District failed to conduct an AT reevaluation, nor does the Department sustain the allegation that a laptop computer must be in the student's IEP.

Concerning the allegations that the District did not conduct a reevaluation concerning the need for a one-to-one assistant and failed to include a one-on-one assistant in the IEP, the Department finds that the parents did not request a reevaluation to determine if the student needed a one-on-one assistant. This issue came up when the student was transferred from a classroom that had an assistant assigned to the classroom to another classroom that did not have an assistant. Although the student's IEP includes, in the modifications and accommodations section, repeating directions and checking for understanding, there is no indication that the student requires a one-on-one assistant. The Department does not sustain the allegation that the District failed to conduct a reevaluation concerning the need for a one-to-

one assistant, nor does the Department sustain the allegation that a one-on-one assistant must be in the student's IEP.

Concerning the allegations that the District did not conduct a reevaluation concerning the student's behavior and failed to include the requirement of a FBA or BSP in the student's IEP, the Department first finds that the District appropriately determined, during the February 13, 2009 IEP meeting, that the evaluation was not required. The IEP team, including one of the parents, discussed this issue at the February 13, 2009 IEP meeting and after that discussion the team members present did not believe an FBA was required. The Department also finds that when the student's behavior became a problem during the student's 8<sup>th</sup> grade, the District timely held an evaluation planning meeting on November 16, 2009 and the parent signed a consent form authorizing the District to conduct an FBA and BSP on December 10, 2009. The Department does not sustain the allegation that the District inappropriately failed to conduct a reevaluation of the student's behavior during the February 13, 2009 IEP meeting, nor does the Department sustain the allegation that an FBA and BSP were required in the student's IEP. The District is now appropriately addressing the student's behavior, through consent to a FBA and BSP, following escalation of the student's behavior during the 2009-10 school year.

The remaining allegations concerning the content of the student's IEP are that the IEP does not sufficiently provide the special education and related services the student requires to advance appropriately toward the student's goals and to advance appropriately in the general education curriculum with nondisabled peers.<sup>2</sup> Concerning those allegations, the Department finds that the student's report cards and progress reports, as confirmed during the on-site interviews, demonstrate that the student is making appropriate progress towards the student's IEP goals and in the general education curriculum. The parents have not identified any areas of special education and related services that are not in the IEP that should be in the IEP to allow appropriate progress on the student's IEP goals and in the general education curriculum. The Department does not sustain the allegation that the student's IEP requires additional special education and related services to allow the student to appropriately progress towards the student's IEP goals and in the general education curriculum.

### **Content of IEP (extracurricular and nonacademic activities) and Nonacademic Services**

The complaint alleges that the student's IEP does not contain sufficient special education or related services to allow the student to participate in extra curricular and nonacademic activities and that the District failed to provide nonacademic and extracurricular services and activities in a manner that would afford the student an equal opportunity to participate in those services.

During the on-site interview, one of the parents indicated that the only concern regarding extra curricular and nonacademic activities relate to the removal of the student from an after school homework club on December 2, 2009 due to behavior issues.

The parents have not identified any special education or related services that would help the student to equally participate in extra curricular and nonacademic activities, other than services (a FBA and BSP) to address the student's behavior issues. As discussed above, the Department has found that the IEP team, including the parents, appropriately determined during

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<sup>2</sup> The issue of the content of the IEP concerning extra curricular and nonacademic activities will be addressed in the final section of the Discussion.

the February 13, 2009 IEP meeting that the student's behavior at that time did not require a FBA or BSP. The student's removal from the after school program occurred on December 2, 2009, after the recent escalation in the student's behavior. There are several issues concerning whether the District was required or able (due to confidentiality concerns) to notify the after school program of the existence or details of the student's IEP. This after school program is organized by the City of Hillsboro and taught, in this instance, by a non-school employee – but is taught on District school property. However, the Department need not reach those issues because this incident occurred within days of the escalation of the student's behavior, and the District has appropriately and timely responded to the escalation of the student's behavior by scheduling an evaluation planning meeting on November 16, 2009 and obtaining parent consent for a FBA and BSP on December 10, 2009. The results of the FBA will determine an appropriate BSP and will lead the IEP team to address how the student's disability impacts his behavior and precisely what services are required to allow participation in extra curricular and nonacademic activities by the student. Based on the foregoing circumstances, the Department does not sustain the allegation that the student's IEP should have contained special education and related services to allow the student to participate in extra curricular and nonacademic activities.

## **V. CORRECTIVE ACTION<sup>3</sup>**

*In the Matter of Hillsboro SD 1J*  
Case No. 09-054-048

No Corrective Action is ordered in this case.

Dated: March 1, 2010

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

Mailing Date: March 1, 2010

**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.

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<sup>3</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).