

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Redmond School District 2J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-032

I. BACKGROUND

On November 10, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the Redmond School District (District) requesting a special education investigation under OAR 581-015-2030. The parents provided a copy of the complaint to the District.

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. OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010). On November 19, 2010, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated.

On December 8, 2010, the District submitted a narrative *Response* to the *Request for Response*. Also on December 8, 2010, the parents submitted clarification to the two of the allegations in the *Request for Response* to the Department’s contract complaint investigator. These clarifications were also provided to the District, and the Department investigated the allegations as clarified by the parents.

The Department’s contract complaint investigator determined that an on-site investigation would be necessary. On December 15, 2010, the investigator conducted an on-site investigation, and interviewed the District’s Assistive Technology (AT) Specialist, two District nurses, two District psychologists, a District Speech Language Pathologist (SLP), an Assistant Director of Student Services, a special education teacher, a regular education teacher and the District’s Special Education Director. The investigator also interviewed the parents on December 15, 2010, with the parents’ advocate participating by telephone. Following the on-site interviews, the Department’s complaint investigator required additional information to clarify particular timelines but could not obtain the required information until District staff returned from winter break. The Department thus extended the 60-day timeline in this case by 12 days. The Department’s investigator reviewed and considered all of the documents and the narrative responses received from the parties in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153 (2010). 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)

No.	Allegations	Conclusions
(1)	<p><u>Evaluation Timeline</u></p> <p>The complaint alleges that the District failed to complete an assistive technology evaluation within 60 days of consent or provide prior written notice of a refusal. The complaint further alleges that this evaluation was first discussed in October of 2009 but the District did not present an evaluation report to the parents until the student's February 2010 IEP meeting. The parents clarified that their advocate again requested evaluation in June of 2010 and the parents were not given an evaluation report until October of 2010.</p>	<p><u>Substantiated</u></p> <p>Although the Department finds that the District conducted reasonably timely AT evaluations of the student, the Department must conclude that the District committed procedural error by failing to obtain written consent for the current AT evaluation of the student. <i>See Corrective Action.</i></p>
(2)	<p><u>General Evaluation and Reevaluation Procedures</u></p> <p>The complaint alleges that the District failed to assess the student in all areas related to the student's suspected disability. Specifically, the complaint alleges that the District failed to evaluate for a visual tracking disorder.</p>	<p><u>Substantiated.</u></p> <p>The Department substantiates the allegation that the District failed to obtain an evaluation of the child's eye tracking problems that was sufficiently comprehensive to identify all of the student's special education and related service needs. <i>See Corrective Action.</i></p>
(3)	<p><u>Independent Educational Evaluation (IEE)</u></p> <p>The complaint alleges that the District failed to provide an IEE of the student by failing to allow the parents to select an evaluator.</p>	<p><u>Substantiated</u></p> <p>The Department finds that the District failed to provide the parents with a list of criteria for obtaining an IEE. Therefore, the Department substantiates the allegation that the District failed to allow the parents to select an evaluator. <i>See Corrective Action.</i></p>
(5)	<p><u>IEP content</u></p> <p>(a) The complaint alleges that the District failed to provide appropriate assistive technology (AT) from November 9, 2009 to the end of the 2009-10 school year and from the beginning of the 2010-11 school year to the present.</p> <p>(b) The complaint alleges that the District</p>	<p><u>Substantiated, in part</u></p> <p>(a) The Department does not substantiate the allegation that the District failed to provide appropriate AT to the student during these time periods.</p> <p>(b) The Department does not</p>

No.	Allegations	Conclusions
	<p>failed to provide appropriate assessment accommodations for the student and that the assessments did not provide an accurate measure of the student's lack of adequate progress.</p> <p>(c) The complaint alleges that the District failed to provide appropriate services related to the student's vision tracking needs as a result of the failure to assess the student for vision deficits.</p>	<p>substantiate the allegation that the District failed to provide appropriate assessment accommodations for the student.</p> <p>(c) Based on the District's failure to conduct a comprehensive evaluation, the Department substantiates the allegation that the District failed to provide the student with appropriate services.</p>
(6)	<p><u>Parent Participation</u></p> <p>(a) The complaint alleges that the District failed to provide the parents with adequate information about assessments to allow the parents to participate in decisions regarding assessment of the student at IEP team meetings prior to and during June of 2010 and October of 2010.</p> <p>(b) The complaint alleges that the District failed to allow parent participation by abruptly ending the IEP team meeting held in October of 2010.</p>	<p><u>Not Substantiated</u></p> <p>(a) The Department does not substantiate the allegation that the District did not provide adequate information about assessments.</p> <p>(b) The Department does not substantiate the allegation that ending the October 13, 2010 meeting early prevented the parents from participating in decisions concerning the student.</p>
(7)	<p><u>Access to Records</u></p> <p>(a) The complaint alleges that the District failed to provide the parents with a copy of the District's psychologist's IEP meeting notes from the October 2010 IEP meeting.</p> <p>(b) The complaint alleges that the District failed to provide all requested records to an authorized representative of the parents by failing to make all required information available to the student's evaluator.</p>	<p><u>Not Substantiated</u></p> <p>(a) The Department does not substantiate the allegation that the District failed to provide the parents with copies of the meeting notes from the October 13, 2010 IEP Team meeting.</p> <p>(b) The Department does not substantiate the allegation that the District failed to provide all requested records to the independent evaluator.</p>

No.	Allegations	Conclusions
	<p>The complaint requests the following corrective action:</p> <ul style="list-style-type: none"> (1) A complete copy of the IEP meeting notes taken by the District's psychologist at the October 2010 IEP meeting; (2) Completion of the student's October 2010 IEP meeting without threats or misleading statements from District staff; (3) Training of District staff, as appropriate; (4) Reimbursement for independent evaluation and visual therapy; (5) Compensatory education specific to vision tracking disabilities; and, (6) Preclude the Special Education Director from participating in future IEP meetings concerning the student. 	<p><u>See Corrective Action, below.</u></p>

III. FINDINGS OF FACT

Background:

1. The student in this case is 10 years old and is in the fifth grade. The student is eligible for special education services from the District, with an eligibility of Communication Disorder
2. The student's current IEP, dated June 2, 2010, states that the student remains eligible for special education services as a student with a Communication Disorder. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) states that during a reevaluation process the previous year, the team had considered whether the student had a learning disability but determined the student ineligible under the Specific Learning Disability category because the student "demonstrated global delays in all cognitive and academic areas which is not characteristic of a student that has a learning disability." The PLAAFP also states that, with regard to reading comprehension, the student, who was in the fourth grade at the time of the June 2, 2010 IEP, was "currently working on level .9 books and has passed two out of three books at this level." The PLAAFP further states, "[The student] started reading .5 level books and is nicely working [the student's] way up. When given 1.0 grade level passages, [the student] is able to answer the questions with an average of 50% accuracy."
3. The "Service Summary" in the student's IEP provides for specially designed instruction (SDI) in: (1) "Speech/language" for 200 minutes monthly in the "speech room;" (2) "Reading" for

150 minutes weekly in the "Regular Ed/ERC;" (3) "Mathematics" for 150 minutes weekly in the "Resource Room;" (4) "Written Language" for 150 minutes weekly in the "Resource Room;" (5) "Reading" for 90 minutes weekly in the "Special Education class;" (6) "Written Language" for 90 minutes weekly in the "Special Education Class;" and (7) "Mathematics" for 90 minutes weekly in the "Special Education Class." The student's IEP also includes Supplementary Aids/Services, Modifications and Accommodations as follows: "Homework should be provided at [the student's] ability level," "Check for understanding," "Reduce amount of written work," "Generalization of reading, writing and math skills," "Voice recognition software can be use for writing," and "Calculator use for math."

4. The Nonparticipation Justification statement in the student's IEP states that the student "will be removed from the general education setting for 26% of [the student's] school week." The student's placement is identified as "General education setting with Special Education support and instruction in the special education classroom and general education classroom."

Evaluation timeline

5. The District's records reflect a telephone conference on October 27, 2009, during which the student's case manager noted the student "is struggling with writing and is having trouble keeping up in the classroom." The notes state that the student's ERC teacher wants an AT evaluation to support the student in writing. The District's records include a referral for an AT evaluation dated October 27, 2009. This referral states that previous attempts to resolve the issue of AT for reading and writing support included "word processor, typing practice, HWT, photocopy of class notes; 1:1 support, dictation, highlight-key info that [the student] needs to copy, rdg at [the student's] ability level." The referral form for the AT evaluation is captioned "Referral For Assistive Technology Evaluation" and dated October 24, 2009. This form indicates that the "Parent has been notified" and that "IEP consideration form or team notes regarding those concerns are attached."
6. During the 2009-2010 school year, the District and staff at the regional ESD determined that the District could form an AT evaluation team instead of relying exclusively on ESD staff or the AT specialist for AT evaluations. The District provided AT training for special education teachers on November 3, 2009. The District AT team members "were allowed to check out AT equipment, try equipment with students, complete ongoing data collection using devices and obtain long term loan on AT equipment/devices." The student's case manager began using AT devices with the student, to evaluate the student's AT needs, by November 17, 2009. The District's AT Specialist provided follow up support to the case manager in December of 2009 and January of 2010.
7. At the student's IEP meeting on February 1, 2010, District staff provided a verbal report of the student's AT use. Specifically, the PLAAFP in that IEP states that the student had recently started using a voice-recognition software program, and that the program helped the student to record thoughts faster. The PLAAFP concludes that the student "will continue to use this software to see if it increases ... writing output and legibility so that writing can become a more independent task." The PLAAFP also noted that the student was generally supported by teachers or peers for writing tasks.
8. The parents did not express additional concerns about AT devices at the February 1, 2010 IEP meeting. The District's report on the status of the ongoing use of AT devices with the student occurred 42 school days after the October 27, 2009 AT referral; the District was on

a school schedule of four days per week during the 2009-10 school year. The District remains engaged in an evaluation of the student's AT needs.

9. The day before the District filed its *Response* in this case, the parents provided the complaint investigator with a letter clarifying that the allegation concerning the evaluation timeline should be corrected to read that "the advocate re-requested evaluation in June 2010; parents were not given evaluation report until October 2010." The complaint investigator addressed this clarification of the issue with the District during the on-site investigation. It does appear that discussion of the need to continue evaluating the student's AT needs occurred at the June 2, 2010 IEP meeting. The District's AT Specialist provided a written "summary of evaluation" dated October 11, 2010, which concluded that the student should continue using the speech recognition software and that the student should be evaluated to determine if adding text-to-speech technology is appropriate and that the AT evaluation and data-gathering should continue.

General Evaluation and Reevaluation Procedures

10. The parents requested an ophthalmologist evaluation during the student's June 2, 2010 IEP meeting. On June 8, 2010, the Special Education Director wrote the parents, noting that "A full vision evaluation would be a medical evaluation for which the parents would have the responsibility to seek. The district is prepared to have a school nurse complete a vision screening for near/far sight and tracking. The district can assist the family in seeking further vision examinations at the family's expense." On June 10, 2010, the District issued a Prior Written Notice (PWN) of refusal of the request, stating "The district does not provide for a medical examination that is not related to or necessary for eligibility for special education services. The district will, however, provide a full vision screening to be completed on 6/10/2010 by the School nurse, to include near/far sight and tracking." On June 10, 2010, the District nurse provided a full vision screening of the student. The written report of the vision screening of the student states that the results indicated possible vision difficulties and recommended consultation with an eye specialist. The vision screening report also notes that the student had failed the "Eye Tracking" portion of the screening. The District's nurse telephoned the parents and advised that the student may need to see a specialist due to the student's tracking being unusual. During the on-site investigation, on December 15, 2010, the parents provided a copy of a vision evaluation dated July 12, 2010, performed by a Doctor of Optometry (O.D.). The parents also provided a copy of the evaluation to the District on December 15, 2010 during the on-site investigation. The parents had not previously provided this private evaluation to the District.

Independent Educational Evaluation (IEE)

11. During the student's June 2, 2010 IEP meeting, the parents requested an IEE. The meeting notes show that the parents must submit the IEE request in writing. The parents listed three independent evaluators in an e-mail to the District's Special Education Director on June 7, 2010, and requested contact information. The District's Special Education Director responded by e-mail and noted that the District could send the full list of independent evaluators who had done IEEs in the past but noted that not all of these evaluators would be appropriate for the concerns expressed by the parents. The District then provided in the e-mail the names of three additional independent evaluators. The parents clarified in an e-mail (also on June 7, 2010) to another District staff person (the student's case manager) that they were requesting IEEs for both a psychological evaluation and a "visual assessment". The District's case manager responded by e-mail the same day, noting that the District had

not approved an IEE for a visual assessment but would consider it if the parents showed (as suggested by the parents' advocate) that the Department's website stated the District had responsibility for this type of assessment. The parents' e-mail also acknowledged they had received from the District a list of three independent evaluators and requested two more names to consider.

12. The parents selected a particular independent evaluator, who completed a psychological evaluation on July 27, 2010, and provided a copy to the parents and the District on August 6, 2010. The parents were not satisfied with the psychological evaluation provided by the independent evaluator and indicated at a planning meeting on October 13, 2010 that they would not be using the IEE. In a letter received from the parents after the on-site interviews, the parents stated "We asked for an Independent evaluator and got an evaluator that "contracts" with the RSD. It wasn't until after we disputed the [IEE] that [the Special Education Director] said we could have chosen "anyone."

Eligibility

13. The student's Statement of Eligibility dated February 6, 2009 indicates that "[t]he student's language in the area of syntax, morphology, pragmatics, or semantics is significantly discrepant as measured by standardized tests" and that "[t]he disorder is not the result of another disability." The District's *Response* states that, although the parents have communicated to the District that they believe the student has a visual tracking disorder which affects the student's ability to read, evaluation and observation data does not support that conclusion.

IEP Content

14. The parents allege that the District failed to provide appropriate AT from November 9, 2009 to the end of the 2009-10 school year and from the beginning of the 2010-11 school year to the present. On June 8, 2010, the District wrote a letter to the parents stating it "will provide a list of [AT] devices for the parents, once the AT specialist has completed the written recommendations appropriate for [the student's] educational needs. The voice recognition software can be loaded to your home computer. The [AT] Specialist for the ESD will contact you to make arrangements to do so. The program will also be available during ESY and the summer program at Lynch." The parents indicated during the on-site interview that the District did not provide training to the parents for the voice recognition software (referred to as the "Dragon" software). The District's AT Specialist loaded the software on a laptop computer used by the student at both home and at summer school during the summer of 2010.
15. In a letter dated July 6, 2010 from the District to the parents, the Special Education Director noted that after consultation with the AT Specialist, the voice recognition software would be loaded on a laptop computer "that would be available at home and at school." The District chose this option rather than loading the software on both the laptop used at school and on the student's home computer because loading the software on two computers would create "two separate voice recognition files that would not necessarily be the same, therefore there would be less consistency for [the student]." The AT Specialist confirmed this conversation during the on-site investigation. During the summer of 2010, the District attempted to schedule training with the parents on the "Dragon" software, but the District and parents were not able to schedule the training. As noted in paragraphs 3 and 4, above, the District has been employing AT devices to assist the student since November of 2009, and the

District's provision of AT devices and the current evaluation of the student's use of these AT devices continues to date. The District is presently using several AT devices to work with the student, including a "word predictor" software program, a software program that reads text, audiobooks on the student's laptop, and a typing program. During the on-site investigation on December 15, 2010, District staff indicated that the District was about to switch the student to a larger laptop computer because the student is using additional AT devices.

16. During the on-site interview of the parents, they explained that they believe the state assessments show the student is at grade level, while the District's assessments and progress reports reveal that the student is reading and writing at closer to a first grade level. Since the 2007-08 school year, the student has taken the "extended measures standard administration without accommodations." The student's IEPs have provided for the extended assessments in writing, reading, and math because the student is performing below grade level in these areas. During the June 2, 2010 IEP meeting, the parents requested that the student take the "standard state assessment with no accommodations." The District recommended against taking the state assessments with no accommodations but agreed to change the IEP to reflect that change.
17. The state assessments, especially the extended measures assessments, may not reflect the student's grade level as well as daily observation and progress monitoring at the District level. Additionally, the student scored below grade level in the state writing assessment administered during the 2009-10 school year. The Department acknowledges the discrepancy between the District's conclusion that the student is operating well below grade level in mathematics and reading and literature and the state assessment results showing the student meets or exceeds grade levels in those areas, while scoring below grade level in writing. However, as the District noted in its *Response*, "the state assessment is only one of an arsenal of tools used to track a student's progress. The IEP dictates how each student is individually tracked for progress based on his or her individual needs."
18. During an IEP meeting on October 13, 2010, the team discussed in detail the discrepancy between the grade level results of the extended state assessments for the 2009-10 school year and the District's conclusions concerning the student's grade level, based on monitoring of daily class work in particular areas. District staff explained that extended state assessments are not a true indicator of the student's present grade level because the "grade level" of the extended assessment taken by the student while in fourth grade is really below the grade level of the student; additionally, the extended assessment is administered one-to-one and with pencil and paper. The parents did not disagree with the explanation provided by District staff concerning the discrepancy between the state and District assessments of the student's levels.
19. Prior to the delivery of the private vision evaluation report to the District on December 15, 2010, the parents had not indicated precisely what the student's "vision tracking needs" were and had not provided any information demonstrating the efficacy of vision therapy to address the student's perceived vision tracking needs.

Parent Participation

20. During the June 2, 2010 IEP meeting, the team discussed assessment options with the parents, and the parents indicated they want the student to take the standard administration state assessment. District staff did not recommend the standard state assessment, but

decided to honor the parents' request and modified the IEP to provide for standard state assessments, rather than extended state assessments. Additionally, the meeting minutes and an audio recording from the October 13, 2010 IEP meeting reflect that the team discussed "what extended measures are and how to interpret."

21. The parents allege that the District failed to allow parent participation by abruptly ending the IEP team meeting held in October of 2010. The District's *Response* states, "At the time of this meeting, the annual IEP was not due yet, the advocate was disputing the IEE, and the District felt that communication had broken down to a point where the team was not engaging effectively. Thus, the District recommended and requested mediation prior to making any further revisions to the IEP." The parents did not describe any direct impact that the early termination of the October 13, 2010 IEP meeting had on their ability to participate in the IEP planning process.

Access to Records

22. The parents allege that the District failed to provide the parents with a copy of the District's psychologist's IEP meeting notes from the October 13, 2010 IEP meeting. At the beginning of the IEP Team meeting, District staff stated the purpose of the meeting was to review recent evaluations, including a psychological evaluation, an OT evaluation, and an AT evaluation. During the on-site investigation, the District's Special Education Director and a District psychologist, both of whom were present at the meeting, stated that various documents, including the meeting notes that had been taken during the meeting by a District psychologist, were copied and provided to the parents at the end of the meeting. The parents assert they were not provided the meeting notes at that time but received the notes about a week after the October 13, 2010 IEP meeting. Review of an audio recording of the October 13, 2010 IEP meeting is inconclusive concerning whether or not the meeting notes taken by the psychologist were given to the parents at the end of the meeting. Although there is mention that the notes would be provided.
23. At the October 13, 2010 IEP meeting, the parents clarified that the independent evaluator did not have a copy of the June 2, 2010 IEP and did not have a copy of the June 10, 2010 vision screening report from the District's school nurse. The vision IEE lists all documents reviewed by the independent evaluator, and neither the June 2, 2010 IEP nor the vision screening report is listed. The report by the evaluator does indicate that the parents told the evaluator "that the school has recently completed vision testing, determining that [the student] does have medically based visual tracking problem." Further information about the issue was not available to the evaluator, who indicated that any additional information from vision assessment findings should be incorporated to the present evaluation to best understand [the student]." The list of documents reviewed by the evaluator included e-mail messages between the parents and District staff from May 18, 2010 through July 2, 2010. Although at least one e-mail, dated June 7, 2010, mentions a "draft" IEP, it is not clear that the District provided the June 2, 2010 IEP to the independent evaluator. The IEE occurred on July 27, 2010 and was provided to the District and the parents on August 6, 2010. The Department finds no evidence that the independent evaluator requested additional information from the District.

IV. DISCUSSION

1. Evaluation timeline

The complaint alleges that the District failed to complete an assistive technology evaluation within 60 days of consent or provide prior written notice of a refusal. The complaint specifically alleges that this evaluation was first discussed in October 2009 but the District did not present an evaluation report to the parents until the student's February 2010 IEP meeting. The parents clarified that their advocate again requested evaluation in June 2010 and the parents were not given an evaluation report until October of 2010.

OAR 581-015-2110 provides, in part:

"General Evaluation and Reevaluation Procedures
(2)(b) Before conducting any evaluation or reevaluation, the public agency must obtain informed written consent for evaluation in accordance with OAR 581-015-2090 and 581-015-2095."

Additionally, OAR 581-015-2055 provides, in part:

"Assistive Technology
(1) School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services."

Finally, OAR 581-015-2110(5) provides, in part: "A reevaluation must be completed within 60 school days from written parent consent."

As noted above, the specific allegations in this case concerning the AT evaluation timelines, as modified by the parents, are that the District failed to complete AT evaluations within 60 days of parental consent. However, the District's records do not include a written consent for the AT evaluations. Rather, the student record includes a form captioned "Referral For Assistive Technology Evaluation" and dated October 27, 2009. This form indicates that the "Parent has been notified" and that the "IEP consideration form or team notes regarding those concerns are attached." The notes attached to this form are from the student's February 1, 2010 IEP meeting. Since October 27, 2009 – the date of the student's initial AT referral – to the present, the District has pursued the use of various AT devices with the student and has conducted ongoing AT evaluation.

In reviewing the applicable regulations cited above, the Department first concludes that the trigger of the 60-day timeline, "written parent consent", never occurred in this case. Thus, the Department cannot sustain the precise allegation that the AT evaluations did not occur within 60 days since the timeline never began to run. The Department notes that, based upon the District's 4-day school weeks during the 2009-10 school year, the time between the AT evaluation referral on October 27, 2009 and the verbal AT evaluation report on February 1, 2010 was substantially less than the allowed 60 school days. Additionally, the time between the discussion of continuing the AT evaluation at the June 2, 2010 IEP meeting and the written AT evaluation summary provided on October 12, 2010 was also substantially less than 60 school days. However, the foregoing does not end the analysis because the question remains whether

the District violated the IDEA by evaluating the student's AT needs in November 2009 and June 2010 without first obtaining written parental consent. The Department finds that the District failed to obtain necessary parental consent prior to evaluating the student's AT needs.

The District's position, as reflected in a response to the complaint investigator's follow-up question on this issue, is that the District does not require parental consent for AT evaluations because the AT evaluation does not involve cognitive or personality testing and thus does not require permission. However, OAR 581-015-2000(10) provides that "Evaluation" means "procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs." It is clear that an AT evaluation results in a determination of the nature and extent of related services, modifications, and accommodations that a student needs. Thus, the regulations concerning evaluations and parent consent apply. The ongoing AT evaluation is still proceeding with the use of various AT devices by the student and continued gathering of data on the educational benefits of using AT devices with the student. The Department concludes that the District committed procedural error by failing to obtain written consent for the ongoing AT evaluation of the student in this case despite the fact that it has been clear, since at least February 1, 2010, that the parents agree that an AT evaluation should occur. The District's AT referral form dated October 27, 2009 is supported by notes from the student's February 1, 2010 IEP meeting, a meeting that occurred several months after the date of the referral.

Although OAR 581-015-2055(1), cited above, creates an obligation for the District to "ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services," it does not authorize District to evaluate students' AT needs without parental consent. The exceptions to the written consent requirement, set forth in OAR 581-015-2095, include an exception for the "screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation." However, in this case, the AT evaluation was intended to determine the nature and extent of the student's special education needs. Therefore the Department concludes that the AT evaluations conducted by the District constituted evaluations under the IDEA and Oregon law and that the District should have obtained parental consent prior to initiating the evaluations.

Therefore the Department substantiates the allegation that the District must obtain consent for the ongoing AT evaluation and provide the parent with a written evaluation report concerning the current AT evaluation when it is complete. *See Corrective Action.*

2. General Evaluation and Reevaluation Procedures

The complaint alleges that the District failed to assess the student in all areas related to the student's suspected disability. Specifically, the complaint alleges that the District failed to evaluate for a visual tracking disorder.

In this case, the parents requested an ophthalmological evaluation of the student, and the District issued a PWN of refusal on June 10, 2010. The District did, however, provide a vision screening of the student by a District nurse on June 10, 2010. The vision screening report revealed "possible vision difficulties," noted that the student failed the "eye tracking" portion of the screening, and recommended consultation with an eye specialist.

OAR 581-015-2105(4) provides that a reevaluation of a child with a disability must occur if the "public agency determines that the educational or related services needs" of the child warrant a

reevaluation or “[i]f the child’s parents or teacher requests a reevaluation.” Additionally, OAR 581-015-2110(4)(d) provides that school districts must ensure that “the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” OAR 581-015-2110(4)(d) provides that school district evaluations must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” Finally, OAR 581-015-2000(10) provides that “‘Evaluation’ means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.”

In this case, the District denied the requested ophthalmological evaluation based upon the District’s conclusion, as reflected in a PWN dated June 10, 2010, that the requested examination is a “medical examination” that is “not related to or necessary for eligibility for special education services.” The PWN issued by the District also states that the student “is eligible for special education services under the eligibility of Communication Disorder which does not require a medical evaluation.” However, the District’s view of the requested evaluation is too narrow. The District’s vision screening evaluation conducted on June 10, 2010, revealed that the student had failed the “eye tracking” portion of the vision screening and that the “results indicate possible vision difficulties.” The evaluator recommended consultation with an eye specialist. As noted above, OAR 581-015-2110(4) requires school districts to ensure assessment in all areas related to a suspected disability and to identify all of the student’s special education and related service needs. Although the District is correct that the requested examination is not necessarily related to the child’s current eligibility category (Communication Disorder), the purpose of an evaluation in suspected areas of disability is to determine if other factors may be interfering with the student’s ability to access his or her education. Without a full assessment of the student’s vision issues, specifically the tracking issue, the District cannot determine whether this vision-related problem, clearly revealed by the District’s vision screening, is the root cause of the student’s identified disability or is otherwise impacting the student’s ability to access the general education curriculum.

The District’s conclusion that a medical examination must be related to eligibility for special education services assumes that the requested evaluation will not identify additional impediment to the student’s education or cast doubt on the student’s current eligibility classification. However, without a full evaluation of the student’s vision issues, the District cannot say that this particular student’s vision tracking problem is not impacting the student’s ability to access education nor can the District say that the student may not have other vision-related issues. Thus, under OAR 581-015-2110(4)(d) and (e), the District was required to ensure that the child’s vision-related needs were more thoroughly assessed. Therefore, the Department substantiates the allegation that the District failed to obtain an evaluation of the child’s eye tracking problems.

The parents have requested that the District reimburse them for a private visual evaluation of the student that occurred on July 12, 2010, after the District’s refusal of an ophthalmological examination. Under OAR 581-015-2305(7), now that the parents have shared the private evaluation with the District the District must consider the private evaluation obtained by the parents “if it meets the district’s criteria”. However, it is not clear that the written report of the student’s visual evaluation, performed by an “O.D.”, a Doctor of Optometry or optometric physician, would meet the District’s criteria. Also, the vision assessment was not performed by an ophthalmologist, and the parents had previously requested, and the District refused, an ophthalmological examination. Thus, the appropriate remedy in this case is that the District

convene the student's IEP team to consider whether the private evaluation obtained by the parents meets the District's criteria for an appropriate vision-related evaluation of the student.

If the team determines that the evaluation does not meet District criteria, the District must obtain an appropriate visual evaluation at the District's expense. If the team determines that the evaluation does meet District criteria, the District must reimburse the parents for the private evaluation, and must conduct an evaluation planning meeting to consider the private evaluation. See *Corrective Action*.

3. Independent Educational Evaluation

The complaint alleges that the District failed to provide an IEE of the student by failing to allow the parents to select an evaluator. This allegation concerns the psychological evaluation obtained from an independent evaluator. When a parent requests an IEE, the school district "must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations." OAR 581-015-2305(2).

The Department finds that the District clearly violated the requirements of OAR 581-015-2305 concerning IEE procedures. Specifically, the District failed to provide the parents with a list of criteria applicable to independent educational evaluations. Though the District provided ample names of independent evaluators that presumably fit District criteria to the parents, the District failed to inform the parents that they were free to pick any evaluator who satisfied the criteria and impermissibly restricted the parents' right to an IEE. Therefore, the Department substantiates the allegation that the District denied the parents their right to an IEE by an evaluator of their choosing by failing to inform the parents that they could select any evaluator that satisfied District criteria.

4. Eligibility

The complaint alleges that the District failed to consider all relevant information in making the student's eligibility determination, including a determination that the student's syntax, morphology, pragmatic or semantic disorder is not the result of another disability. OAR 581-015-2120(4) states, "For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs." Additionally, OAR 581-015-2135(2)(d)(C) states, "For a child to be eligible with a syntax, morphology, pragmatic or semantic disorder, the disorder is not the result of another disability."

As discussed above, the District erred by failing to further evaluate the student's vision needs following the District vision screening and parental requests for a vision evaluation. Therefore, the District's conclusion that the student's communication-related disability is not the result of another disability was not based on all relevant information concerning the student's needs. In short, the Department finds that, given the information available to the District concerning the student's vision needs as far back as June 2010, the District could not have reasonably concluded that the student's eligibility under the category of Communication Disorder was not the result of another disability. Therefore, the Department substantiates the allegation that the District failed to consider all relevant information in determining the student's eligibility.

5(a). IEP Content – Assistive Technology Services

The complaint alleges that the District failed to provide appropriate assistive technology (AT) from November 9, 2009 to the end of the 2009-10 school year and from the beginning of the 2010-11 school year to the present. OAR 581-015-2055 requires school districts to “ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.”

In this case, the Department finds that the District has provided AT devices and services, including voice recognition software, to the student since at least November 2009. The District has undertaken multiple AT evaluations of the student in the last three years, and continues to assess the appropriateness of specific AT devices and services for the student. Therefore, the Department does not substantiate the allegation that the District failed to provide appropriate AT to the student during these time periods.

5(b). IEP Content – Assessment Accommodations

The complaint alleges that the District failed to provide appropriate assessment accommodations for the student and that the statewide assessments administered to the student did not provide an accurate measure of the student's lack of progress. Specifically, the parents allege that the provision of the extended assessment to the student concealed the student's lack of progress. This allegation relates to state assessments administered to the student within one year preceding the filing of the complaint in this case.

Under OAR 581-015-2200(g), a student's IEP must include a “statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment.” The District administered the Oregon Extended Assessments in reading, mathematics, and writing, to the student during the 2009-10 school year. Oregon's Extended Assessments are alternate assessments designed specifically for students with the most significant cognitive disabilities. The decision to administer Oregon's Extended Assessment (the alternate assessment) can only be made by the student's IEP team--including the parent. Because Extended Assessments are based on alternate achievement standards with content that is reduced in depth, breadth, and complexity, test results from these assessments are not comparable to results achieved on the state's general assessment, in spite of the similarity in performance category names: Does not meet, nearly meets, meets, and exceeds.

The fact that the student scored at grade level on portions of the state assessments, which is higher than the grade levels identified by District performance measures, was discussed with the parents at multiple IEP meetings in 2009 and 2010. The parents have failed to demonstrate that use of extended assessment with the student during the 2009-10 school year was inappropriate or that the District provided misinformation to the parents regarding the different scoring systems. Therefore, the Department does not substantiate the allegation that the District failed to provide appropriate assessment accommodations.¹

¹ The Department notes that, at the insistence of the parents and against District staff's recommendation, the student will take the regular state assessments this school year. The results will inform the IEP team concerning appropriate state assessment accommodations in the future.

5(c). IEP Content – Services Related to Student’s Vision Tracking Needs

The complaint alleges that the District failed to provide appropriate services related to the student’s vision tracking needs as a result of the failure to assess the student for vision deficits. Under OAR 581-015-2200(g), a student’s IEP must include a “statement of the specific special education and related services and supplementary aids and services” necessary to allow the student to “be involved and progress in the general education curriculum.” The Department finds that, because the District failed to conduct an evaluation that was sufficiently comprehensive to identify all of the child’s special education and related services needs, the District was unable to determine appropriate services for the student.

Given the absence of information available about the student’s vision needs, the Department is unable to determine whether the student’s IEP contained all services necessary to allow the student to progress in the general educational curriculum. Therefore the Department is unable to determine if student’s IEP adequately addresses the student’s vision deficits. Nonetheless, the Department substantiates this allegation because the District is responsible for the lack of relevant information about the student’s vision deficits.

The parents have requested reimbursement for vision tracking therapy. Again, given the absence of evaluation data concerning the student’s vision needs, the Department is unable to determine the appropriateness of the parent’s vision tracking therapy. Therefore, the issue of reimbursement for services cannot be resolved currently.

Pursuant to this order, the District is required to complete a comprehensive evaluation of the student that includes a full evaluation of the student’s vision needs. Once that evaluation is complete, the student’s IEP Team must meet to determine how those needs can be met. If, following that evaluation, the team determines that the vision tracking therapy services were appropriate, the District must reimburse the parent for those services. If the team determines that the vision therapy services were inappropriate, the team must determine what, if any, services the student should receive in compensation for the District’s failure to address the student’s vision needs from the start of the 2010-11 school year to the filing of this complaint .
See Corrective Action.

6(a). Parent Participation – Assessment Information

The parents allege that the District failed to provide the parents with adequate information about assessments to allow the parents to participate in assessment decisions prior to and during June 2010 and October 2010. Under OAR 581-015-2190(1), school districts “must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.”

In this case, the student has been participating in extended assessment since the 2007-08 school year. Regarding the upcoming 2010-11 testing, the IEP team did discuss assessment options during the student’s June 2, 2010 IEP meeting, a meeting at which District staff accommodated the parents’ request that the student take the regular state assessments. Additionally, the team discussed the extended measure assessments during the October 13, 2010 IEP meeting. Although the 2010-11 state assessments have not been completed, the Department determines that the District provided the parent sufficient information to participate

in assessment decisions and notes that the District has allowed the parents' request to have the student participate in regular state assessment this school year.

To the extent that the parents allege that the District failed to provide adequate information concerning assessment options prior to the 2009-10 assessment, the parents have failed to demonstrate that they lacked sufficient information to participate in the decision-making process. Therefore, the Department does not substantiate the allegation that the District did not provide adequate information about assessments from November 11, 2009 to the filing of this complaint.

6(b). Parent Participation – October 2010 IEP Meeting

The parents allege that the District failed to allow parent participation by abruptly ending an IEP Team meeting in October of 2010. Under OAR 581-015-2190(1), school districts “must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.”

During the IEP meeting held on October 13, 2010, the conversation between District staff and the parents became adversarial. The Department acknowledges that the IEP meeting process can become emotionally trying, especially when the participants cannot agree on the issues being discussed. After reviewing the audio of the October 13, 2010 IEP meeting, the Department observes that the meeting was difficult for all involved and that the meeting discussion became adversarial at times. However, the Department does not find that the decision by District staff to end the meeting after more than an hour constitutes a violation of the parents' right to participate in the IEP process.

The parents actively participated in the October 13, 2010 IEP meeting, and it is anticipated that the parents will continue to be active participants in future IEP meetings. The October 2010 IEP meeting was not the student's annual IEP meeting, and no changes were made to the student's educational plan as a result of that meeting. Based on these circumstances, the Department determines that the District could have reasonably concluded that no further consensus was possible and that continuing the meeting would be unproductive. Therefore, the Department does not substantiate the allegation that ending the October 13, 2010 meeting early violated the participation rights of the parents.

7(a). Access to Records – Meeting Notes from October 13, 2010 IEP Meeting

The complaint alleges that the District failed to provide the parents with a copy of the District's psychologist's IEP meeting notes from the October 13, 2010 IEP meeting. Pursuant to OAR 581-015-2300, school districts “must give parents of children with disabilities an opportunity to examine all student education records.”

In this case, District staff insist that the meeting notes taken by a District psychologist were copied and provided to the parents before the parents left the October 13, 2010 IEP meeting. The parents assert that they did not receive a copy of the meeting notes until about a week after the meeting. Regardless of precisely when the meeting notes were provided, the Department finds that the District acted reasonably in providing the meeting notes to the parents. Under the IDEA and Oregon law, school districts are not required to record or share IEP meeting notes unless those notes constitute educational records. In this case, it is unclear whether the meeting notes were educational records; nonetheless, the Department finds that the notes were

provided within a reasonable time after the meeting. Therefore, the Department cannot substantiate the allegation that the meeting notes from the October 13, 2010 IEP meeting were not provided.

7(b). Access to Records – Records to Independent Evaluator

The complaint alleges that the District failed to provide all requested records to an authorized representative of the parents by failing to make all required information available to the student's evaluator. Pursuant to OAR 581-015-2300, school districts "must give parents of children with disabilities an opportunity to examine all student education records." A school district's duty to provide access to student educational records extends to authorized representatives of the parents. In this case, the parents sought to share the records with an individual who was to evaluate the student's vision needs.

The vision IEE, performed on July 27, 2010, includes a list of records reviewed by the independent evaluator. District staff believed all requested records were provided to the independent evaluator, but the evaluator's list does not include the student's June 2010 IEP or the June 2010 vision screening. However, it is clear that the evaluator was aware of the vision screening, and it is likely that the e-mail records received by the evaluator mentioned the June 2, 2010 IEP meeting. The Department finds no evidence that the parents or independent evaluator requested additional information from the District. Under these circumstances, the Department finds that the failure to release all records to the evaluator was an inadvertent error and that the District's failure to provide all of the documents did not impact the independent evaluator's ability to complete the vision evaluation. Therefore, the Department does not substantiate the allegation that the District failed to provide all requested records to the independent evaluator.

	<p>b) 1. If the IEP Team determines that the parents' vision evaluation satisfies District criteria for an IEE, the District shall reimburse the parents for the expense of that evaluation.</p> <p>b) 2. If the IEP Team determines that the parent's vision evaluation did not satisfy the District criteria for an IEE, the District shall conduct an evaluation of the student sufficient to determine the student's eligibility for special education and the extent to which the student requires special education and related services.</p> <p>c) Once the IEP Team determines that it has sufficient information to determine the student's eligibility for special education and the extent to which the student requires special education and related services, including services related to the student's vision tracking needs, the District shall convene an IEP Team meeting to develop a revised IEP for the student based on current evaluations of the student's needs. The District shall provide services to the student consistent with the revised IEP.</p> <p>d) Additionally, if the IEP Team determines that the vision therapy previously provided by the parents was appropriate, the District shall reimburse the parent the expenses incurred as a result of that therapy.</p> <p>e) If the IEP Team determines that the vision therapy previously provided by the parent was inappropriate, the District shall develop a plan of service, if necessary, to compensate the student for the vision services that were not offered from the start of the 2010-11 school year to the issuance of this final order.</p>	<p>b) 1. Submit to ODE: evidence that the District reimbursed the parents for the expenses of the parent's vision evaluation <u>or</u></p> <p>b) 2. Evidence that the District conducted an evaluation of the student sufficient to determine the student's eligibility for special education and the extent to which the student requires special education and related services, including the relevant evaluation reports.</p> <p>c) Submit to ODE: notice of the meeting to review and revise the student's IEP, a revised copy of the student's IEP, meeting minutes, and any Prior Written Notices generated as a result of the meeting.</p> <p>d) Submit to ODE: evidence that the District reimbursed the parents for the expenses of the parent's vision therapy</p> <p>OR</p> <p>e) 1. A plan of service, if necessary, to compensate the student for the vision services that were not offered from the start of the 2010-11 school year to the issuance of this final order.</p> <p>e) 2. Submit to ODE, if necessary: a signed assurance</p>	<p>May 31, 2011</p> <p>April 10, 2011 if existing information is used; OR June 30, 2011 if new evaluation is conducted</p> <p>June 30, 2011</p> <p>January 21, 2012</p>
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		from the District and the parent that the compensatory education services detailed in the plan have been provided to the student.	
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Dated: January 21, 2011

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

Mailing date: January 21, 2011

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.