

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Grants Pass SD 7

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 13-054-002

I. BACKGROUND

On January 23, 2013, the Oregon Department of Education (Department) received a letter of complaint from an advocacy organization (complainant) on behalf of a parent of a student residing in the Grants Pass School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the complaint by the District and also forwarded a copy of the complaint letter 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.¹ On January 28, 2013, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. The District timely submitted its *Response* to the *Request for Response*, with accompanying documentation. On February 26, 2013, the complainant submitted a written *Reply* to the Department. After reassigning this case to a new contract complaint investigator, due to exceptional circumstances, the Department extended the 60-day timeline in this case by seven days. The final order due date was further extended for another seven days to allow for a thorough review of this order as well as the two complaints submitted concurrently by the complainant. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that an on-site investigation would not be necessary in this case. The complaint investigator reviewed and considered all of the documents 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. The complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from January 24, 2012, to the filing of this complaint on January 23, 2013.²

No.	Allegations	Conclusions
(1)	<u>IEP Content</u> The complaint alleges that the District	<u>Not Substantiated</u> The Department concludes that the District has

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153

² OAR 581-015-2030(5)

	<p>violated the IDEA by not including in the student's IEP all specially designed instruction and related services needed to meet the student's special education needs, including but not limited to transition services. In addition, the complaint alleges that the District did not consider the special factors required by the IDEA, including the concerns of the parent.</p> <p>Relevant Law: 34 CFR 300.320 and 300.324; OAR 581-015-2200 and 581-015-2205</p>	<p>included in the student's IEPs appropriate Specially Designed Instruction (SDI) and related services based upon the individual needs of the student. The Department does not sustain this allegation.</p>
(2)	<p><u>Parent Participation</u></p> <p>The complaint alleges that the District violated the IDEA by predetermining the student's services and placement without meaningful parent involvement in these decisions and that the District did not provide the parent with a copy of the IEP.</p> <p>Relevant law: OAR 581-015-2190 and 581-015-2195; 34 CFR 300.322.</p>	<p><u>Not Substantiated</u></p> <p>The Department concludes that the District allowed meaningful participation by the parent in the IEP team meetings. The fact that the parent's requests for additional time for the student in the Transition Program were not met to the degree desired by the parent does not mean that the District did not consider the parent's concerns. Indeed, the District has twice increased the student's time in the Transition Program due to parental concerns. The Department does not sustain this allegation.</p>
(3)	<p><u>Procedural Safeguards</u></p> <p>The complaint alleges that the District violated the IDEA by not giving the complainant timely Prior Written Notice of the decisions to reduce the student's services and hours.</p> <p>Relevant law: OAR 581-015-2310; 34 CFR 300.503.</p>	<p><u>Substantiated, in part</u></p> <p>The Department finds that the PWN issued by the District following the October 10, 2012 IEP meeting does not comply with OAR 581-015-2310(3) because it does not state the refusal of a parental request, and it does not explain the refusal. The Department thus sustains the allegation, in part, concerning the PWN issued following the October 10, 2012 IEP meeting. See corrective action.</p>
(4)	<p><u>Predetermined Placement</u></p> <p>The complaint alleges that the District predetermined the student's placement after the student completed the 12th Grade and received a Certificate of Completion; despite the fact that the student maintained IDEA eligibility.</p>	<p><u>Not Substantiated</u></p> <p>The Department concludes that the initial decision concerning appropriate placement following the student's graduation in June of 2010 may not be investigated by the Department, because the decision occurred more than one year before the filing of the complaint in this case. Additionally, the</p>

	<p>Relevant law: OAR 581-015-2250; 34 CFR 300.327</p>	<p>Department concludes that the IEP team determined this student's individual needs and addressed those needs through the placement and SDI and related services provided in the student's IEP. The Department concludes that the placement in the student's IEPs in effect during the year preceding the complaint in this case is not a placement which the District predetermined without benefit of an IEP team decision. The Department does not sustain this allegation.</p>
(5)	<p><u>Denial of Free Appropriate Public Education (FAPE)</u></p> <p>The complaint alleges that the District failed to provide a Free Appropriate Public Education to the student during the 2012-2013 school year.</p> <p>Relevant law: OAR 581-015-2040; 34 CFR 300.101</p>	<p><u>Not substantiated</u></p> <p>The Department finds no indication that the District failed to provide FAPE to the student during the 2012-2013 school year because the Department found that the IEP was reasonably calculated to provide the student with educational benefit. The Department further finds no evidence to support the complainant's assertion that the District has engaged in a systemic failure to provide FAPE to transition students, for any reason. The Department does not sustain this allegation.</p>
	<p><u>Proposed Corrective Action</u></p> <p>The complainant requests:</p> <p>Provide the student with compensatory education by providing:</p> <ol style="list-style-type: none"> 1. full days of instruction and individualized SDI and related services for the remainder of the student's eligibility to receive special education and one additional year of the same instruction, SDI, and related services; or 2. \$4000.00 available for the purchase of compensatory education in the form of equipment, instruction, or services from non-District providers during the remainder of each student's eligibility to receive special education and one additional year. <p>Provide the Department and DRO with data that would accurately inform DRO and the Department of the following:</p>	

	<ol style="list-style-type: none"> 1. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15); 2. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15) and attend full days of school; 3. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15) and receive 15 or fewer hours per week of instruction and services. 	
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III. FINDINGS OF FACT

Background

1. The student in this case is presently 21 years old. The student graduated with a Certificate of Completion in June 2010. The student continues to receive special education services from the District and is in the third year of participation in the District's Transition Program. The Student is eligible for special education as a student with Visual Impairment, Orthopedic Impairment and Intellectual Disability.

IEP Content

2. The student's annual IEP in effect one year preceding the filing of the complaint in this case is dated December 1, 2011.
3. This 2011 IEP includes Present Levels of Academic Achievement and Functional Performance (PLAAFP) stating the student "is working in the Transition Program on Tuesdays, Wednesdays and Thursdays and is in [a particular teacher's] classroom on Mondays working on [the student's] life and vocational skills."
4. The 2011 PLAAFP also notes that the student's parent expressed concern that the student's "gross motor skills have declined due to limited time in [the student's] walker/stander; [and the parent] would like to see [the student] working for longer periods of time in [the student's] vocational setting in order to build [the student's] stamina."
5. The 2011 IEP's PLAAFP also includes observations concerning the student's transition program: "[The student] continues to do well in the transition program. [The student] is currently spending two mornings a week at Southern Oregon Aspire. [The student] has been building skills in the area of book recycling and shredding. [The student] seems to really enjoy working with peers in this setting. Recent data shows that [the student] has demonstrated an ability to reach for a textbook when placed in front of [the student]. [The student] is independently tearing pages about 40% of the time. [The student] needs assistance with placing pages in the correct

container. [The student] also enjoys the social setting of breaks and lunch with [the student's] peers. In addition, [the student] spends one day a week on campus in the Transition program reinforcing goals and objectives. [The student] enjoys peers in here as well. [The student] continues working on independent living skills both in the classroom and at work. [The student] works on grasp/release of objects into a specified container (currently full assist 100% of time at work and 80% of the time in classroom). [The student] has daily range of motion in order to increase the use of [the student's] hands, and currently needs both verbal and physical cues in order to use 2 hands for any daily living activities. [The student] is fully participating in assisting with transfers. The consultants from Southern Oregon ESD (Vision, PT, OT), who have worked with [the student] for several years, have been providing activities and adaptations for [the student] to be as productive as possible within the vocational setting. In addition, there have been suggestions given to assist with independent living skills, both at home and in the community."

6. The 2011 IEP also states the following Transition Activities as part of the Transition Program, the IEP team would like to build skills that will help [the student] transition into a job at Aspire or Alternatives to Employment [ATE]. This includes range of motion activities on [the student's] arms and shoulders as part of [the student's] vocational program, to help use arms and hands more effectively. [The student] will continue to have opportunities for recycling, sorting and shredding, along with dismantling books."
7. The Service Summary of the student's December 1, 2011 IEP states that the student is receiving Specially Designed Instruction (SDI) in the areas of "Vocational & community skills" for "1.5 hr per day 4 x week" in the "Transition Program"; and in "Independent Living Skills" for "1.5 hr per day 4 x week" in the "Transition Program."
8. The IEP includes goals in "Transition" ("upon completion of high school the student "will work at Southern Oregon Aspire, attend ATE, and continue to live at home, participating in [the student's] daily care routines to the maximum extent possible, with support and training from local agencies."
9. The 2011 IEP's course of study portion of the Transition statement states that the student "is taking transition classes to work on functional life skills and basic vocational tasks."); "Transition" ("upon instruction, [the student] will learn to recycle text books and shred paper with 50% accuracy"); and "Independent Living Skills" ("Upon instruction, [the student] will increase [the student's] independent living skills as measured by [the student's] ability to grasp & release, use both...hands for tasks, and being able to use a speech output device to get staff's attention, with 80% accuracy").
10. The placement of the student is described as "Partial day placement 100% transition program."
11. The student's current IEP is dated October 10, 2012, with revision dates of December 12, 2012 and January 25, 2013.
12. The October 10, 2012 IEP includes a PLAAFP stating that the student "is working...in the Transition Program on Tuesdays, Wednesdays and Thursdays...and is] in [a particular teacher's] classroom on Mondays working on [the student's] life and vocational skills."
13. The 2012 IEP's PLAAFP also notes that the student's parent expressed concern that the student's "gross motor skills have declined due to limited time in [the student's] walker/stander; [and the parent] would like to see [the student] working for longer periods of time in [the student's] school and vocational settings in order to build [the student's] stamina..."

14. This PLAAFP also includes observations concerning the student's transition program: "[The student] continues to do well in the transition program. [The student] is currently spending two mornings a week at Southern Oregon Aspire. [The student] has been building skills in the area of book recycling and shredding. [The student] seems to really enjoy working with [the student's] peers in this setting. Recent data shows that [the student] has demonstrated an ability to reach for a textbook when placed in front of [the student]. [The student] is independently tearing pages about 40% of the time. [The student] needs assistance with placing pages in the correct container. [The student] also enjoys the social setting of breaks and lunch with [the student's] peers. In addition, [the student] spends one day a week on campus in the Transition program...reinforcing [the student's] goals and objectives. [The student] enjoys peers in here as well. [The student] continues working on [the student's] independent living skills both in the classroom and at work. [The student] works on grasp/release of objects into a specified container (currently full assist 100% of time at work and 80% of the time in classroom). [The student] has daily range of motion in order to increase the use of hands, and currently needs both verbal and physical cues in order to use 2 hands for any daily living activities. [The student] is fully participating in assisting with [the student's] transfers. The consultants from Southern Oregon ESD (Vision, PT, OT), who have worked with [the student] for several years, have been providing activities and adaptations for [the student] to be as productive as possible within the vocational setting. In addition, there have been suggestions given to assist with independent living skills, both at home and in the community."
15. The 2012 IEP's Transition Activities state: As part of the Transition Program, the IEP team would like to build skills that will help [the student] transition into a job at Aspire or Alternatives to Employment [ATE]. This includes range of motion activities on [the student's] arms and shoulders as part of [the student's] vocational program, to help [the student] use arms and hands more effectively. [The student] will continue to have opportunities for recycling, sorting and shredding, along with dismantling books."
16. The October 10, 2012 IEP includes a statement concerning Transition which includes a goal stating that upon completion of high school the student "will work at Southern Oregon Aspire, attend ATE, and continue to live at home, participating in [the student's] daily care routines to the maximum extent possible, with support and training from local agencies."
17. The 2012 IEP's course of study portion of the Transition statement states that the student "is taking transition classes to work on functional life skills and basic vocational tasks."
18. The October 12, 2012 IEP includes goals in "Life Skills" ("Upon instruction, the student] will increase life skills as measured by [the student's] ability to use a speech output device to get staff's attention, identify items/choices, grasp & release, use both hands for tasks, stand in the stander and being able assist with transfers, with 80% accuracy") and "Transition" ("Upon instruction, [the student] will learn to complete vocational tasks including recycling textbooks and shredding paper with 50% accuracy").
19. The Service Summary of the student's October 10, 2012 IEP states that the student is receiving Specially Designed Instruction (SDI) in the areas of "Vocational & community skills" for "1.5 hr per day 4 x week" in the "Transition Program"; and in "Life Skills" for "1.5 hr per day 4 x week" in the "Transition Program."
20. The placement of the student is described as "Partial day placement 100% transition program." The placement page of the October 10, 2012 includes a handwritten statement signed by the parent stating that the parent believes the amount of time for the student's school day is

inadequate to meet the student's needs and that the student is only attending 3 hours 4 days a week at this time.

21. The documents provided by the District in this case include three pages of revisions to the October 10, 2012 IEP, with the revisions dated December 12, 2012. The Service Summary page revised the SDI to "Vocational & community skills" for "1.5 hr per day 4 x week" in the "Transition Program", and "Life Skills" for "2 hr per day 4 x week" in the "Transition Program," an increase of two hours per week of life skills SDI over the previous service summary.
22. The placement determination page continues the placement as "Partial day placement 100% Transition program," but includes a note stating "14 hrs week schedule to meet identified transition services, instruction, & related [illegible]."
23. The placement page also includes a statement noting that the parent disagrees with reduced hours to meet the student's needs and states that the student is "entitled to a full day. 990 hrs per yr."
24. The Prior Written Notice (PWN) dated December 12, 2012 notes the following action: "Service time was increased. More specially designed instruction was needed for student to work toward [the student's] life skills goals. On the IEP held on 10-10-2012 add .5 service time to life skills." The PWN also states that other options considered were "increased school day due to parent request for full-day services", and rejection of that option because "IEP team determined current/proposed service time adequately provides services to address student needs."
25. The documents provided by the District in this case include additional revisions to the October 10, 2012 IEP and December 12, 2012 revision, with the new revisions dated January 25, 2013. These revisions include revised goals in "Life Skills" ("Upon instruction, [the student] will increase [the student's] life skills as measured by [the student's] ability to allow teeth brushing, use both...hands for tasks, being able assist with transfers and stand in the stander or with adult assistance, with 80% accuracy."), "Transition" ("Upon instruction, [the student] will learn to complete vocational tasks including recycling textbooks and shredding paper with 50% accuracy.") and "Functional Communication" ("[The student] will make functional choices from options provided and use a speech output device to gain staff's attention."). The revised Service Summary page changed the SDI to "Vocational & community skills" for "1.5 hr per day 5 x week" in the "Transition Program", and "Life Skills" for "1.5 hr per day 5 x week" in the "Transition Program," and "Functional Communication" for ".5 hr per day 5 x week," an increase to a total time of 17.5 hours per week of life skills SDI, an increase of 3.5 hours per week over the previous SDI in the December 12, 2012 revisions to the IEP summary. The revised placement page states "honor parent request for additional instruct. Time and trans. exper. [the student] will not be attending full days to evaluate increased time result in reasonable improvement in rate of progress towards goals."
26. The Prior Written Notice (PWN) dated January 25, 2013 notes the following action: "On the IEP held on 1/25/13, student will attend school full days. Service time was increased to evaluate if the increased time and experience result in a reasonable improvement in the rate of student progress toward determined goals."
27. This PWN also states "In honor of the parent request for additional instructional time and transition experiences, [the student] will now be attending full days to evaluate if the increased time and experience result in a reasonable improvement in the rate of student progress toward determined goals, objectives, and participation in transition related activities. The period of time

to inform whether or not increased school days and instructional time result in a reasonable improvement in student's rate of progress will be no less than three months."

28. The January 25, 2013 PWN also states "IEP team determined to evaluate increased times and experience to see if there is reasonable improvement in the rate of progress toward determined goals, objectives, and participation in transition related activities."
29. Progress reports issued by the District on January 27, 2012 and June 14, 2012 show that the student was making progress towards the student's IEP goals.

Parent Participation

30. The documents provided by the District in this case reveal the parent's presence and participation in all IEP meetings held within the year preceding the filing of the complaint in this case.
31. These IEP meetings occurred on October 10, 2012, December 1, 2012 and January 25, 2013.
32. The parent also attended and participated in an IEP meeting on December 1, 2011, more than one year preceding the filing of the complaint in this case and outside of the investigation period.

Procedural Safeguards

33. The PWN issued on October 12, 2012, concerning an October 12, 2012 IEP meeting describes the action taken at the meeting as "An annual IEP team meeting was held on 10/12/12 to discuss [student's] progress and to develop goals for the coming IEP year." The PWN also states that "Current IEP reflects team meeting, 10/12/12."
34. The Prior Written Notice (PWN) dated December 12, 2012 notes the following action: "Service time was increased. More specially designed instruction was needed for student to work toward [the student's] life skills goals. On the IEP held on 10-10-2012 add .5 service time to life skills." The PWN also states that other options considered were "increased school day due to parent request for full-day services," and rejection of that option because "IEP team determined current/proposed service time adequately provides services to address student needs."
35. The Prior Written Notice (PWN) dated January 25, 2013 notes the following action: "On the IEP held on 1/25/13, student will attend school full days. Service time was increased to evaluate if the increased time and experience result in a reasonable improvement in the rate of student progress toward determined goals." The PWN also states "In honor of the parent request for additional instructional time and transition experiences, [the student] will now be attending full days to evaluate if the increased time and experience result in a reasonable improvement in the rate of student progress toward determined goals, objectives, and participation in transition related activities. The period of time to inform whether or not increased school days and instructional time result in a reasonable improvement in student's rate of progress will be no less than three months." The PWN also states "IEP team determined to evaluate increased times and experience to see if there is reasonable improvement in the rate of progress toward determined goals, objectives, and participation in transition related activities."

Predetermined Placement

36. The student graduated with a Certificate of Completion in June 2010, and the next school year began in September 2010.
37. The student continues to receive special education services from the District and is in the third year of participation in the District's Transition Program.
38. The placement determinations beginning with the student's December 1, 2011 IEP are set forth in the factual findings above.

Denial of FAPE

39. The Department summarized the IEPs and revisions thereto in place during the 2012-2013 school year above. These IEPs and revisions are dated December 1, 2011, October 10, 2012, December 12, 2012 and January 25, 2013.

IV. DISCUSSION

IEP Content

The complaint alleges that the District violated the IDEA by not including in the student's IEP all specially designed instruction and related services needed to meet the student's special education needs, including but not limited to transition services. In addition, the complaint alleges that the District did not consider the special factors required by the IDEA, including the concerns of the parent. In its *Response*, the District argues that the parent only expressed concerns concerning the failure of the District to provide more time for the student in the Transition Program, without specifying dissatisfaction with the services being provided to the student. In its *Reply* to the District, the complainant argues that the District has "mischaracterized the parent's objections and concerns" as only a dispute about hours," and then argues that one of the parent's "consistent complaints about the hours of services provided was that the District continually insisted that it could support previous and even expanded IEP goals with only a fraction of the hours that had been required to do so before [the student] became a transition student." The complainant further argued that "another objection to the hours of services and instruction being provided to [the student] was based on [the parent's] belief that [the student's] previously (before the conclusion of [the student's] 12th grade year) slow progress toward greater independence was further reduced or even reversed by a drastic reduction of the hours of service that [the student] received under the IEP's that followed [the student's] 12th grade year. The 10/10/12 revisions noted by the District as substantive responses to [the parent's] consistent objections were minor and insignificant when considered in the context of reducing [the student's] program by more than 50% following the 12th grade year."

The requirements for IEP content under the IDEA and Oregon Administrative Rule are set forth in 34 CFR 300.320 and 300.324, and OAR 581-015-2200 and 581-015-2105. Specifically, the IDEA requires each IEP to include a statement of special education and related services and supplementary aids and services, based upon peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to: advance appropriately toward attaining annual goals; to be involved in and make progress in the general education curriculum as applicable and to participate in extracurricular and other nonacademic activities; and to

be educated and participate with other children with disabilities and nondisabled children.³ Both the type and amount of services that a district is required to provide will depend on the child's identified needs. An IEP is not defective merely because it fails to include special education services requested by parents if those services are not necessary for the child to receive a Free Appropriate Public Education (FAPE).⁴

The difficulties with the complainant's arguments in this case are two-fold. First, the complainant is in essence focusing upon an event that occurred shortly after the student graduated with an alternative Certificate of Completion in June of 2010, which occurred significantly more than one year preceding the filing of the complaint in this case. The Department may not consider the actions taken by the District more than one year before the complaint in this case for IDEA investigations.⁵

Secondly, the Department's review of the IEPs in effect during the year preceding the complaint in this case reveals that the District developed reasonable, individual goals in light of the student's disabilities and the IEPs met State and Federal content requirements noted above. The parent has not requested, and the complainant has not identified, any specific additional goals for inclusion in the student's IEP, nor is there any evidence of additional transition services being requested or necessary for the student. Rather, despite the complainant's insistence to the contrary, the focus expressed by the parent has been upon a request for increased time in the program for the student and for a generic number of instructional hours to be provided to the student rather than increased instructional time based on the individual student's IEP or needs. The parent's concern noted in the PLAAFP of the relevant IEPs, that the student's "gross motor skills have declined due to limited time in [the student's] walker/stander; [and the parent] would like to see [the student] working for longer periods of time in [the student's] vocational setting in order to build [the student's] stamina," were addressed when the District increased the student's time in the Transition Program in the last two IEP meetings (on December 10, 2012 and January 25, 2013). Nothing in the documents provided in this case support a conclusion that the level of services beginning with the IEP in effect one year preceding the complaint in this case is not adequate to allow the student to progress towards the student's goals set forth in the IEPs. Nor was any evidence presented to indicate what specific IDEA content requirements were missing from the IEPs. Indeed, the District has modified both the substance of the student's goals during the last two IEP meetings, as well as the time in the Transition Program. Additionally, the progress reports issued by the District in this case (on January 27, 2012 and June 14, 2012) show that the student is making progress towards the student's IEP goals. The complainant asserts that the District's decision to again increase the student's time in the Transition Program from 14 to 17.5 hours each week, a decision made at the January 25, 2013 IEP meeting just two days after the complaint in this case, is not a decision that was made in good faith because the District has suggested "that the services will again be reduced if the change does not produce sufficient increases in [the student's] rate of progress towards goals." However, the Department accepts at face value the District's rationale for the recent increase in the student's time in the Transition Program. The District's documentation clearly shows that the increase in hours is a decision that was made due to the insistence of the parent, and the District will continue to monitor the student's progress to determine whether this additional increase in the student's time in the Transition Program results in a significant increase in the student's rate of progress towards the student's IEP goals.

³ 34 CFR 300.320(a)(4)

⁴ *Winkelman v. Parma City Sch. Dist.*, 299, 51 IDELR 172 (SEA IL 2008) and *City of Chicago Sch. Dist.* 299, 521 IDELR 172 (SEA IL 2008).

⁵ See OAR 581-015-2030(5)

The Department concludes that the District has included in the student's IEPs appropriate Specially Designed Instruction (SDI) and related services based upon the individual needs and IEP goals of the student. The Department does not sustain this allegation.

Parent Participation

The complaint alleges that the District violated the IDEA by predetermining the student's services and placement without meaningful parent involvement in these decisions and that the District did not provide the parent with a copy of the IEP. In its *Response*, the District argues that the parent attended and participated in the student's IEP meetings, and offered an explanation concerning the discussion of increased hours for the student in email correspondence among District staff. In its *Reply*, the complainant argues that the District did not offer meaningful participation because the parent believed the District "could not and was not obligated to provide more than a small fraction of the services and instruction that [the student] had received prior to the conclusion of [the student's] 12th grade school year."

The documents provided by the District in this case reveal the parent's presence and participation in all IEP meetings held within the year preceding the filing of the complaint in this case. These IEP meetings occurred on October 10, 2012; December 1, 2012; and January 25, 2013.

The complainant's argument made in its *Reply* to the District, again, focuses on a decision made shortly after the student's graduation with a Certificate of Completion in June 2010, a decision made significantly more than one year before the complaint in this case. The Department is thus left with the question of whether the parent was allowed meaningful participation at the student's IEP meetings as a member of the student's IEP team.

The parent participation requirements at issue here are found at OAR 581-015-2190, OAR 581-015-2195, and 34 CFR 300.322. Districts should consider the parents' suggestions and, to the extent appropriate, incorporate them into the IEP.⁶ When parents are allowed to participate in the IEP formulation process and the IEP team considers the parents suggestions, and the team incorporates some of the parental suggestions into the IEP, then the parents are afforded an opportunity to participate even if the district does not agree to provide the specific programming or placement advocated for by the parents.⁷ "Consideration" is not the same as "acquiescence" under the IDEA. The IDEA does not require districts "simply to accede to parents' demands without considering any suitable alternatives."⁸ The US Department of Education's Office of Special Education Programs has observed that it is the district that is ultimately responsible for ensuring that a student is offered an appropriate program. Thus if all IEP team members do not agree, it is up to the district to determine appropriate services.⁹

As concluded in the discussion of the previous allegation, the Department finds that the SDI and related services provided in the student's IEPs were based upon the individual needs of the student. The Department also concludes that the District allowed meaningful participation by the parent in the IEP team meetings. The fact that the parent's requests for additional time for the student in the Transition Program were not met to the degree desired by the parent does not mean that the District did not consider the parent's concerns. Indeed, the District has twice increased the student's time in the Transition Program. The Department does not sustain this allegation.

⁶ *Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (2004).

⁷ *Fuhrman v. East Hanover Bd. Of Educ.*, 19 IDELR 1065.

⁸ *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132.

⁹ *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

Procedural Safeguards

The complaint alleges that the District violated the IDEA by not giving the complainant timely Prior Written Notice of the decisions to reduce the student's services and hours. In its *Response*, the District acknowledges that some of the PWNs issued by the District failed to document the denial of a request made by the parent. The Department concludes that the allegation that the District did not provide PWN of the decisions to reduce the student's services and hours, fairly encompasses the failure to document and reject the parent's requests for full school days made by the parent, which is required by State and Federal law.

OAR 581-015-2310(3) provides that a PWN must include a description of the action proposed or refused by the school district and an explanation of why the district proposes or refuses to take the action. Additionally, 34 CFR 300.503(b) specifies that a PWN must state why a refusal was made.

The PWN issued on October 12, 2012, concerning an October 10, 2012 IEP meeting describes the action taken at the meeting as "An annual IEP team meeting was held on 10/12/12 to discuss [student's] progress and to develop goals for the coming IEP year." The PWN also states that "Current IEP reflects team meeting, 10/12/12." The record does not include a PWN that states the refusal to provide 990 hours of instruction to the student per the parent's request at this time, nor the explanation as to why this refusal was made. The Prior Notice of Special Education Action dated 10/12/2012 only lists the other options considered as "not updating student's IEP" and it states the reason those options were rejected was: "annual meeting required by law." The other factors considered by the team listed on the 10/12/2012 PWN are: "Current IEP reflects team meeting, 10/12/12."¹⁰ The concerns of the parent listed on the Present Levels of Academic Achievement and Functional Performance (PLAAFP) from the 10/10/2012 IEP are lengthy and notably state that: "parent has expressed concern because motor skills have declined due to student's limited time in walker/stander; parent has also said that [parent] would like to see student working for longer periods of time in her school and vocational settings in order to build stamina...parent is concerned that student's transition needs are not adequately being met due to reduced time at school." However, these concerns are not reflected in the Prior Written Notice issued for the IEP meeting, and the rejection of a full school day and additional transition services were not accounted for in the written notice.

The PWN issued following the IEP meeting on December 12, 2012, appropriately describes the rejection of the parent's request for full day participation by the student. The PWN issued on January 25, 2013 also appropriately describes the decision to honor the parent's request for full day participation by the student.

The Department finds that the PWN issued by the District following the October 10, 2012 IEP meeting does not comply with OAR 581-015-2310(3), because it does not state the refusal of a parent request and does not explain the refusal. The Department thus sustains the allegation, in part, as concerns the PWN issued following the October 10, 2012 IEP meeting. The question then becomes what, if any, corrective action should be required in this case. The District demonstrated that it is aware of its responsibilities concerning the content of PWNs under OAR 581-015-2310, as is demonstrated by the issuance of the two subsequent PWNs following the December 12, 2012 and January 25, 2013 IEP meetings which comply with the requirements of OAR 581-015-2310(3). The

¹⁰ Note that the date listed on the IEP itself is 10/10/2012 (listed as the annual IEP meeting date and on the signature page for IEP team members and on each page of the IEP) itself but the PWN refers to the meeting as being held on 10/12/2012.

Department thus concludes that minimal corrective action is appropriate in this case. See corrective action.

Predetermined Placement

The complaint alleges that the District predetermined the student's placement after the student completed the 12th Grade and received a Certificate of Completion; despite the fact that the student maintained IDEA eligibility. In its *Response*, the District argues that this allegation "precedes the statute of limitations for complaint investigation of this allegation." In its *Reply*, the complainant argues, in essence, that although the initial determination to reduce services to the student occurred more than one year before the complaint in this case, the reduction of hours to the student after graduation in June of 2010 has continued. The complainant asserts that "the District has adopted a policy and practice of substantially reducing the programs that it offered to most or all cognitively impaired transition age students."

OAR 581-015-2250(1)(a) requires that placement be determined by the IEP team. Districts need not acquiesce to a parent's preference and place the student in what the parent alone considers the "better"¹¹ placement.

The Department concludes, as noted in the discussion of the first allegation, above, that the initial decision concerning appropriate placement following the student's graduation in June of 2010 may not be investigated by the Department, because the decision occurred more than one year before the complaint in this case. Additionally, also consistent with the discussion of the first and second allegations, above, the Department concludes that the IEP team determined this student's individual needs and addressed those needs through the placement and SDI and related services provided in the student's IEP. The Department notes the parent participated in all IEP meetings and placement discussions as evidenced by the record. The Department concludes that the placement in the student's IEPs in effect during the year preceding the complaint in this case is not a placement which the District predetermined without benefit of an IEP team decision. The Department does not sustain this allegation.

Denial of FAPE

The complaint alleges that the District failed to provide a Free Appropriate Public Education (FAPE) to the student during the 2012-2013 school year. In its *Response*, the District argues that the allegations of the complaint "are of no substance related to Special Education identification, provision of services, procedural safeguards, nor any other components of FAPE." The District further argues that the primary basis of the complaint is ORS 329.451 (concerning a requirement of 990 hours of instruction unless an IEP team determines otherwise), and the Department is not investigating the allegation of a violation of ORS 329.451 in this complaint investigation (the Department is separately investigating the allegation of a violation of ORS 329.451 in a non-IDEA investigation).¹² In its *Reply*, the complainant argues that the District is engaged in a "system-wide failure to provide FAPE to transition students as a calculated strategy to reduce costs." However, no evidence was provided to validate this claim.

OAR 581-015-2040 provides that Districts must provide "special education and related services to all school-age children with disabilities," and defines "school age children" as "children who have not yet

¹¹ *Z.W. v. Smith*, 47 IDELR 4 (4th Cir. 2006) and *Bradley v. Ark. Dep't of Educ.*, 106 LRP 21288, 443 F. 3d 965 (8th Cir. 2006).

¹² Note a separate ODE investigation is running concurrently with this IDEA complaint for alleged violations of state law ORS 329.451.

reached 21 years of age on or before September 1 of the current school year.” Special education is defined as “specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability.”¹³ Additionally, FAPE is broadly defined in the 2006 Part B regulations as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency; include an appropriate preschool, elementary school, or secondary school education in the state involved; and are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.¹⁴ The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student.¹⁵ The Supreme Court has developed a two part test to determine the appropriateness of an educational program: 1) the procedural requirements of the IDEA must be met; and 2) the IEP must be developed and reasonably calculated to enable the child to receive educational benefits.¹⁶ The IDEA does not include a minimum number of service hours and a district satisfies its FAPE obligations so long as it offers a program that allows a student to make educational progress.¹⁷ Districts are not required to maximize a student’s educational performance to provide a FAPE.¹⁸

In this case, based on the discussion of the first, second and fourth allegations, above, the Department finds no indication that the District failed to provide FAPE to the student during the 2012-2013 school year. The Department finds no support or evidence for the complainant’s assertion that the District has engaged in a systemic failure to provide FAPE to transition students, for any reason. The Department does not sustain this allegation.

¹³ OAR 581-015-2000(34)

¹⁴ 34 CFR 300.17

¹⁵ *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

¹⁶ *Id.*

¹⁷ *M.N. and H.N. ex rel. J.N. v. New York City Dep’t of Educ., Region 9* (Dist. 2), 110 LRP 20287 (S.D.N.Y 3/25/10).

¹⁸ *J.L. v. Mercer Island School District*, 55 IDELR 164 *W.D. Wash. 2010).

CORRECTIVE ACTION¹⁹
In the Matter of Grants Pass School District
 Case No. 13-054-002

The Department orders the following Corrective Action resulting from this investigation:

No.	Action Required	Submissions ²⁰	Due Date
(1)	Prior Written Notice is one of the Procedural Safeguards under the IDEA and OARs. The District's adopted Special Education Policies and implementing Administrative Regulations (AR) correctly state the Prior Written Notice requirements.	Distribute the enclosed PWN information by e-mail to staff members who may be responsible for completing PWN. Include the following ODE staff members in the e-mail distribution. raeann.ray@state.or.us ; jan.burgoyne@state.or.us .	April 19, 2013

Dated this 3rd Day of 2013



 Sarah Drinkwater
 Interim Assistant Superintendent
 Office of Student Learning & Partnerships

Mailing Date: April 3, 2013

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.

¹⁹ 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)).

²⁰ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.