

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. 13-054-003

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 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 (2010). 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

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153
² OAR 581-015-2030(5)

No.	Allegations	Conclusions
(1)	<p><u>IEP Content</u></p> <p>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.</p> <p>Relevant Law: OAR 581-015-2200 and 581-015-2205; 34 CFR 300.320 and 300.324.</p>	<p><u>Not Substantiated</u></p> <p>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 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 finds that the Specially Designed Instruction and related services provided in the student's IEPs were based upon the individual needs of the student and were developed by the IEP team. 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 following requests made by the parent. 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>Not Substantiated</u></p> <p>The Department finds that the PWN issued by the District following the December 12, 2012 IEP meeting does comply with OAR 581-015-2310(3) because it does state the refusal of the full day of instruction requested by the parent, and the PWN explains why the IEP team made the refusal. The Department does not sustain the allegation.</p>

<p>(4)</p>	<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>Relevant law: OAR 581-015-2250; 34 CFR 300.327</p>	<p><u>Not Substantiated</u></p> <p>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>
<p>(5)</p>	<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: 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 and the Department notes that the IEP was reasonably calculated to provide the student with educational benefit. The Department also finds no support 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.</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 Disability Rights Oregon (DRO) with data that would accurately inform DRO</p>	

	<p>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; and 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 19 years old.
2. The student graduated with an alternative Certificate of Completion in June of 2012.
3. The student continues to receive special education services from the District and participates in the District's Transition Program.
4. The Student is eligible for special education as a student with Visual Impairment and Orthopedic Impairment.
5. The record shows the parent's first request for a full school day was made via email on October 4, 2012.
6. The record shows further requests for a full school day were made by the parent via email in November 2012.

IEP Content

7. The student's IEP in effect one year preceding the filing of the complaint in this case is dated December 12, 2011.
8. The IEP team issued this IEP prior to the student's graduation with a Certificate of Completion.
9. This 2011 IEP includes Present Levels of Academic Achievement and Functional Performance (PLAAFP) stating: "Communication: [The student] is consistently using a switch activated output device, given a verbal and touch cue from staff, 80% of given opportunities. [The student] is using a switch for cause and effect programs on the computer, 60% of the time, with

cues from staff/peers. [The student] has been working on using a speech output device with a pre-programmed sequence of greetings to interact with staff/peers, and needs 100% assistance at this time, after hitting the button the first time [the student] continues to be able to indicate [the student] wants more food by reaching or turning [the student's] head and opening [the student's] mouth. [The student] shows interest in activities such as music, by swinging [the student's] arms and smiling. [The student] will protest objects/activities by pushing them away, and/or turning [the student's] head away and folding [the student's] arms. [The student] continues to have a profound delay in [the student's] communication skills which effect daily routines at school. [The student] also continues to enjoy participating in group time, loves being read to by a peer, and continues to add more varied vocalizations. Vocational: continues to work on this goal area. [The student] is able to pick up and place empty plastic bottles into a container with verbal and physical assistance an average of 5 times before becoming frustrated. [The student] is also able to grasp and release bags (for our dog bone business) and also large envelopes for delivery in the mailroom at the front office. [The student] has enjoyed participating in our classroom dog biscuit business, including using the switch to help mix the dough, and handing bags to staff for counting. Independent Living Skills: [The student] has been making good progress in this goal area as well. [The student] works daily on using [the student's] utensils & cup, and returning it to staff, or setting on [the student's] tray. [The student] is currently able to do this with a verbal cue an average of 60% of the time. [The student] is improving [the student's] ability to feed self with a spoon or fork (with food already on it), and is able to do so an average of 7 bites consecutively. [The student] is working on returning the utensil to [the student's] tray, along with scooping the food, bring it to [the student's] face, an average of 60% of the time. [The student] continues to be able to reach out for a washcloth and bring it to [the student's] face. Overall, we have seen some significant progress in this goal area!"

10. The 2011 IEP also notes that "... [the student's] communication, motor and daily living skills impede [the student's] participation in the general education curriculum due to a high need for assistance for all activities. [The student] also needs frequent breaks where [the student] can lay [sic] down to help relieve pain."
11. The 2011 IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) statement also notes that the student's parent expressed concern "over what [the student's] transition program and hours are going to look like," and the it states "We are going to reconvene before the school year is over to discuss what next school year will look like."
12. The service summary of the student's December 12, 2011 IEP provides for Specially Designed Instruction (SDI) in the areas of "Communication" for "2 hrs per day" in "all school settings"; "Daily Living Skills" for 2 hrs per day" in the "Special Ed Setting"; and "Vocational Activities" for "1 hr per day" in the "Special Ed Setting."
13. The service summary of the December 2011 IEP also provides for SDI in "Transition" for "6 hrs per week" in the "Transition Program" beginning June 8, 2012 and ending on December 12, 2012.
14. On the December 2011 IEP, the placement of the student is described as "Separate class with 10% amount of participation in appropriate regular education settings." The placement determination also states that "This placement will remain until June 2012."
15. The PWN issued following the December 12, 2011 IEP meeting describes the action taken as "The IEP team met to review and update [the student's] Individualized Educational Program, and to also re-evaluate [the student's] continued eligibility for special education services."

16. A Service Summary updated on May 7, 2012 states that beginning June 9, 2012 through December 12 2012, the student will receive SDI in the areas of "Communication" for "2 hrs per week" in the "Transition Program," "Daily Living Skills" for "4 hrs per week" in the "Transition Program," and "Vocational Activities" for "3 hrs per week" in the "Transition Program."
17. The PWN issued on May 7, 2012 describes the following action: "The IEP team met to make some updates to [the student's] IEP paperwork and to discuss [the student's] schedule for next school year." The PWN also states that on the services page "the transition goal was broken into the 3 current goal areas," that on the transition page the IEP team added that the student will continue to live at home and assist with [the student's] care" and that on the placement page "'partial day placement' was removed, so it just reads '100% transition program.'"
18. A PWN issued on October 2, 2012 describes the action taken as "updates" as follows: "On Services pg., physical therapy was built into Supplemental Services," along with additions to add objectives to the goals.
19. The student's current IEP is dated December 12, 2012, with a revision date of January 23, 2013.
20. The December 12, 2012 IEP includes a PLAAFP stating that the student "is a 18 year-old Transitional student attending Grants Pass High School Life Skills classroom. [The student] has been receiving special education since Feb. of 1997. [The student] has a diagnosis of Spastic Quadriplegia Cerebral Palsey, Cortical blindness, seizure disorder, and scoliosis. In Dec. of 2004, [the student] had a Harrington Rod placed along [the student's] spine so [the student] can sit straight. [The student's] limited range of motion in [the student's] hamstrings is significant; this was alleviated during the spring of 2010, when [the student] had [] hamstring release surgery. Because of [the student's] extremely tight muscles, stretching activities have been mostly eliminated at this time, but [the student] does enjoy some brief massage and therapy brushing."
21. The December 2012 PLAAFP also notes that the student's parent "expressed concern over the hours that [the student] attends school. [The parent] would like [the student] to attend school full day."
22. Meeting notes from the December 12, 2012 IEP meeting reflect that the parent's interpretation of a new state law was that the student is entitled to full school days.³
23. The meeting notes also reveal that the IEP team members were asked if "there were additional skills and needs the IEP team should consider" for the student, and no additional concerns or needs were identified for the student.
24. The December 12, 2012 IEP includes a statement concerning Transition which includes a goal stating that "One year after leaving high school, [the student] will continue to live at home and assist with [the student's] care, and will be participating in the ATE (Alternatives To Employment) program, with support and training from local agencies." This transition goal also notes, under "course of study" that the student "is working on daily living skills, communication and vocational skills. In the 2012-2013 school year, [the student] will be taking transition classes to continue working on these skills."

³ See ORS 329.451

25. This goal page also notes, under "Agency Participation", that the student "has a Community Living Case Management (CLCM) case manager and receives approximately 174 hrs of respite provider hours per month."
26. The December 12, 2012 IEP includes goals in "daily living skills" ("[The student] will increase [the student's] daily living skills, as measured by [the student's] ability to use a cup, utensils, brushing teeth and washing face and hands."); "daily communication skills" ("[The student] will increase use of daily communication skills within varied school settings."); and "vocational and leisure skills" ("[The student] will increase vocational and leisure skills, as measured by the ability to grasp and release items into a container and selecting items to exchange with an intended purpose.").
27. The Service Summary of the student's December 12, 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 5 x week" in the "Transition Program"; and in "Life Skills" for "1.5 hr per day 5 x week" in the "Transition Program", and in "Life Skills" for "2 hr per day 5x week" in the "Transition Program."
28. The placement of the student determined at the December 12, 2012 IEP is described as "Partial day placement 100% transition program" and states "17.5 hrs week schedule to meet identified transition services, instruction and related services."
29. The PWN issued following the December 12, 2012 IEP meeting describes the action as "Service time was increased. More specially designed instruction was needed for student to work toward [the student's] life skills goals." The PWN also notes that updates were made on the "Placement Determination page and Service Summary page, 3.5 hrs per day/17.5 hrs. per week schedule to meet identified transition services, instruction and related services."
30. The documents provided by the District in this case include five pages of revisions to the December 12, 2012 IEP, with the revisions dated January 23, 2013.
31. The PWN issued following the January 23, 2013 IEP meeting describes the action taken as "On the IEP held on 1/23/13, 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."
32. A Service Summary page included with the January 23, 2013 documents is dated December 12, 2012 and is the same as the Service Summary included with the December 12 2012 IEP.
33. The placement determination page included with the January 23, 2013 revisions describes the placement as "honor parent request for additional instruct. time and trans. exper., [the student] will now be attending full days to evaluate if increased time result in reasonable improvement in rate of progress toward goals."
34. Progress reports issued by the District on January 27, 2012 show that the student is making progress towards the student's IEP goals.

Parent Participation

35. 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 December 12, 2012 and January 23, 2013.
36. The parent also attended and participated in an IEP meeting on December 12, 2011, which is more than one year preceding the filing of the complaint in this case, so not subject to this IDEA investigation.⁴

Procedural Safeguards

37. All PWNs were addressed to the parent in this case.
38. The PWNs issued on January 9, 2012, April 25, 2012 and April 26, 2012 were issued to correct errors in the December 11, 2011 IEP.
39. A PWN issued on October 2, 2012 describes the action taken as "updates" as follows: "On Services pg., physical therapy was built into [the student's] Supplemental Services", along with additions to add objectives to the goals.
40. The PWN issued on May 7, 2012 describes the following action: "The IEP team met to make some updates to [the student's] IEP paperwork and to discuss [the student's] schedule for next school year." The PWN also states that on the services page "the transition goal was broken into the 3 current goal areas," that on the transition page the IEP team added that the student will continue to live at home and assist with [the student's] care" and that on the placement page "'partial day placement' was removed, so it just reads '100% transition program.'"
41. The PWN issued following the December 12, 2012 IEP meeting describes the action as "Service time was increased. More specially designed instruction was needed for student to work toward [the student's] life skills goals." The PWN also notes that updates were made on the "Placement Determination page and Service Summary page, 3.5 hrs per day/17.5 hrs. per week schedule to meet identified transition services, instruction and related services. "The December 12, 2012 PWN further notes that increased school day was considered and rejected by the IEP team, because "the current service time adequately addresses student needs."
42. The PWN issued following the January 23, 2013 IEP meeting describes the action taken as "On the IEP held on 1/23/13, 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."

⁴ See OAR 581-015-2030(5)

Predetermined Placement

43. The student graduated with a Certificate of Completion in June 2012.
44. The student continues to receive special education services from the District.
45. The placement determinations beginning with the student's December 12, 2011 IEP (the IEP in place on January 23, 2012, one year preceding the filing of the complaint in this case), are set forth in the factual findings above.

Denial of FAPE

46. The Department summarized the IEPs and revisions thereto in place during the 2012-2013 school year above.
47. These IEPs and revisions are dated October 2, 2012, December 12, 2012 and January 23, 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 argued that the parent agreed during the December 12, 2012 IEP meeting that all areas of service and concerns for the student were being addressed and only expressed concerns regarding the perceived failure of the District to provide more time for the student in the Transition Program, based upon the parent's interpretation of a new State law, ORS 329.451,⁵ which the parent stated required full school days for the student. In its *Reply to the District*, the complainant argued that the District mischaracterized the parent's position "as satisfaction with [the student's] IEP and program. Similarly, although [the parent] stated that the student was entitled to a full day program by ORS 329.451 on many occasions, [the parent] never stated that [the parent] was satisfied with the program or that [the parent] believed it was adequately preparing [the student] for post-secondary life."

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.⁶ The IDEA

⁵ Note that the Oregon Department of Education is running a separate and concurrent investigation for the proposed violation of State law ORS 329.451 which is outside the scope of the Individuals with Disabilities Education Act (IDEA) and subsequently, the jurisdiction of OAR 581-015-2030.

⁶ 34 CFR 300.320(a)(4)

also requires when developing an IEP, that the concerns of the parents for enhancing the education of the child; the strengths of the student; and the academic, developmental, and functional needs of the student must be considered by the IEP team.⁷ Both the type and amount of services that a district is required to provide for a student will depend on the student'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).⁸

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 for the student in light of the student's disabilities. The parent has not requested, and the complainant has not identified, any specific additional goals to be included in the student's IEP which would be necessary for the student. At the December 12, 2012 IEP meeting the parent requested increased time for the student to full days based solely upon the parent's interpretation of the new State law, ORS 329.451. The parent provided no additional rationale, based on the student's IEP or goals or otherwise, for the requested increase in the student's time in the District's program. 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. Indeed, the District has increased the student's hours in the Transition Program twice, on December 12, 2012 and again on January 23, 2013 to ensure that progress is being made toward the IEP goals.

The complainant asserts that the District's decision to again increase the student's time in the Transition Program to full days, a decision made at the January 13, 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 as no evidence was presented to the contrary. The District's documentation clearly shows that the increase in hours is a decision that was made based upon the insistence of the parent, and the District will continue to monitor the student's progress to determine whether an 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 IEP goals.

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 of the student. The Department does not sustain this allegation.

Parent Participation

The question in this allegation is whether the parent was allowed meaningful participation at the student's IEP meetings as a member of the student's IEP team. 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 that copies of IEPs were provided to the parent. In its *Reply* to the District's response, the complainant argues that the District did not offer meaningful participation to the parent, because the parent believed the District "could not and was not obligated to provide more

⁷ See 34 CFR 300.324

⁸ *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).

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." However, no evidence was offered to support this claim.

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.⁹ 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.¹⁰ "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."¹¹ 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.¹²

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 2, 2012, December 12, 2012 and January 23, 2013.

As concluded in the discussion of the IEP Content allegation above, the Department finds that the SDI and related services provided in the student's IEPs were based upon the individual needs of the student and the decision of the IEP team. The Department also concludes that the District allowed participation by the parent in the IEP team meetings as reflected by their attendance at the meetings and the meeting notes submitted by the District. 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 pursuant to parental concerns. The Department does not sustain this allegation.

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 the request made by the parent. The Department concludes that the allegation made, 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 request for full school days made at the December 12, 2012 IEP meeting.

OAR 581-015-2310(3) provides that a PWN must include a description of the actions 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(2) specifies that PWN must state a refusal for an action regarding a placement or the provision of FAPE, and why the refusal was made.

⁹ *Deal v. Hamilton County Bd. Of Educ.*, 42 IDELR 109 (2004).

¹⁰ *Fuhrman v. East Hanover Bd. Of Educ.*, 19 IDELR 1065.

¹¹ *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132.

¹² *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

The PWN issued on October 2, 2012, following the October 2, 2012 IEP meeting, shows that the meeting was called per the request of the parent, in order to address the IEP goals. The PWN notes that the team considered "not updating these [IEP goals] pages, and the rejection due to "they are needed in order to accurately reflect student's needs and accommodations." The record does not reflect that the parent had requested a full-day of services at this time so no detailed account for this request and its subsequent rejection was warranted on the October 2, 2012 PWN.

The PWN issued on December 12, 2012 correctly describes the consideration and rejection of the parent's request for full-day services and notes that the IEP team determined the current/proposed service time adequately provides services to address student's needs.

The PWN issued on January 23, 2013 appropriately describes the decision to honor the parent's request for full day participation by the student and notes the consideration and rejection of updating the service times because the IEP team determined to evaluate if the increased times and experiences would show reasonable progress toward the determined goals, activities, and participation in transition related activities.

Therefore, the Department finds that all of the PWNs issued by the District following the IEP meetings in question comply with OAR 581-015-2310. The Department does not sustain the allegation.

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 "The level of appropriate services for [the student] was determined in the IEP meetings, and the resulting schedule was appropriately inclusive of all services in support of desired transition outcomes." In its *Reply*, the complainant asserts that the District has "adopted a policy and practice of substantially reducing the program offered to most transition age students in the District."

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" placement.¹³

The Department concludes, as noted in the discussion of the first and second allegations, above, that the IEP team, which included the parent, 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.

Denial of FAPE

The complaint alleges that the District failed to provide a Free Appropriate Public Education 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

¹³ 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).

primary basis of the complaint is state law, ORS 329.451,¹⁴ and the Department is not investigating the allegation of a violation of ORS 329.451 in this IDEA complaint investigation.¹⁵) In its *Reply* to the District's response, the complainant argued 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 support 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 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."¹⁶ 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 300.324.¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰ Nor does the IDEA quantify the precise amount of instructional hours that every child must receive each school year. To the contrary, the IDEA highlights the importance of a varied and individualized instructional program based upon the individual needs of a student. Finally, Districts are not required to maximize a student's educational performance in order to provide a student with FAPE under the IDEA.²¹ Instead, the IDEA looks to the ability of a student to receive educational benefit from the instructional program.

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 record shows that the student was able to receive educational benefit from the IEP and to make progress toward the goals in place during the 2012-2013 school year. The Department finds no support 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.

¹⁴ ORS 329.451 (concerning a requirement of 990 hours of instructional time for all students unless an IEP team determines otherwise).

¹⁵ Note the Department is separately investigating the allegation of a violation of ORS 329.451 in a non-IDEA state complaint investigation.

¹⁶ OAR 581-015-2000(34)

¹⁷ 34 CFR 300.17

¹⁸ *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

¹⁹ *Id.*

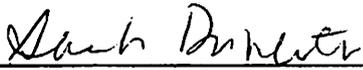
²⁰ *M.N. and H.N. ex rel. J.N. v. New York City Dep't of Educ., Region 9* (Dist. 2) , 110 LRP 20287 (S.D.N.Y 3/25/10).

²¹ *J.L. v. Mercer Island School District*, 55 IDELR 164 *W.D. Wash. 2010).

CORRECTIVE ACTION²²
In the Matter of Grants Pass School District
Case No. 13-054-003

The Department does not order any Corrective Action resulting from this investigation.

Dated this 3rd Day of April 2013



Sarah Drinkwater
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.

²² 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)).