

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Medford School District        )  
# 549C    )  
  )  
  )

FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 13-054-028

**I. BACKGROUND**

On September 27, 2013, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Medford School District #549C (District). The Student attends a private school (Private School) in the District. The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email and by US mail on September 27, 2013.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On October 7, 2013, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of October 18, 2013.

On October 17, 2013, the District submitted a timely response indicating they disputed some but not all portions of the allegations in the Parent's complaint. On October 24, 2013, the District submitted additional materials. In total, the District submitted the following items:

- A. 2012-2013 and 2013-2014 documentation of the consultation process and District policies and procedures that pertain to provision of special education and related services to parentally placed private school students;
- B. 2012 Service Plan for Student;
- C. 2013 Service Plan for Student;
- D. Team meeting notes and notices for 2012 & 2013;
- E. Documents relating to assistive technology;
- F. AIM process from ODE website;
- G. Evaluation and eligibility reports for Student;
- H. Student contact log and student notes;
- I. Written record from case manager;
- J. Documentation of type and amount of services the Student received during the 2012-2013 and current school year;
- K. List of staff and contact information;
- L. Q & A on serving children with disabilities placed by their parents in private schools- RE: obligation of FAPE under IDEA and Section 504 obligations;

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)  
<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- M. FAQ about June 29, 2010, Dear Colleague Letter (OCR, 5/26/2011)- RE: Section 504, ADA and private school responsibility (See question #1);
- N. Disability Rights from OCR-RE: compliance when receiving federal funds; and,
- O. Federal Education Program Intent to Participate Forms.

The Parent submitted materials for consideration on October 28, 2013, and additional materials during the interviews. In total, the parent submitted the following:

- A. Narrative complaint request letter and form;
- B. Verification of eligibility to use NIMAS Materials;
- C. Various email correspondence;
- D. Private School Screening summary dated 12/11/2012;
- E. Prior Notice of Special Education Action, dated 10/7/2013
- F. Occupational Therapy Evaluation
- G. OHSU Evaluation notes dated 1/4/2012
- H. Re-Evaluation Parent Notification dated 10/9/2013
- I. Student Performance Profile- DIBELS Next, 2013-2014 School year
- J. Student history report
- K. 2011 Student Service Plan
- L. Authorization to use/disclose educational and protected health information form
- M. Notice of team meeting dated 11/19/2009
- N. 2010 Student Service Plan
- O. Progress reports
- P. Special Education meeting notes dated 11/6/2012
- Q. 2013 Student Service Plan
- R. 2013 Evaluation Report
- S. 2009 Service Plan
- T. 2008 Student Service Plan

The Department's complaint investigators determined that on-site interviews were needed. On October 30, 2013 the complaint investigators interviewed staff from the Private School; specifically, the superintendent, the elementary principal, two elementary classroom teachers, and the learning support specialist. On the same day, the complaint investigators interviewed the Parent. On October 31, 2013, the complaint investigators interviewed the District special education director, the previous and current case managers, and a speech/language coordinator. During the interviews, both the Parent and the District submitted additional materials for review. The complaint investigators reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from September 28, 2012 to the filing of this complaint on September 27, 2013<sup>3</sup>.

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<sup>3</sup> This order does include some facts that are relevant to the case and that happened before September 28, 2012.

	<b><u>Allegations</u></b>	<b><u>Conclusions</u></b>
(1)	<p><b><u>Consultation Requirements and Equitable Services for Private School Students:</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it refused to consider special education and related services designed to address Students with Print Impairment Disabilities and the use of Assistive Technology as a type of service to be provided to the Student at the Private School. (OAR 581-015-2480 and 34 CFR 134 &amp;137)</p>	<p><b><u>Not Substantiated</u></b></p> <p>To meet parentally placed private school student requirements under the IDEA, districts must conduct Child Find, determine proportionate share of IDEA funds, and provide equitable services to parentally placed private school students with disabilities who attend private schools in the district. Districts have an obligation to provide these students with the opportunity for equitable participation in the services that the district has determined after consultation to make available to its population of parentally placed private school students.</p>
(2)	<p><b><u>Services Plan:</u></b></p> <p>a. The Parent alleges that the District violated the IDEA by not providing the Student with a Services Plan that describes the specific special education and related services. (OAR 581-015-2460 and 34 CFR 300.137&amp; 138).</p> <p>b. The Parent alleges that the District violated the IDEA by not reviewing and revising the Services Plan in a manner consistent with OAR’s 581-015-2190 through 581-015-2210 and OAR 581-015-2220 (2) (3) and 34 CFR 321-324) &amp; 501 (b &amp; c).</p>	<p><b><u>Not Substantiated</u></b></p> <p>a. The Service Plan in question included a description of the special education and related services that the public agency would provide to the Student in light of its decisions which were made appropriately during the consultation process.</p> <p><b><u>Not Contested</u></b></p> <p>b. The District acknowledged that the Service Plan meeting for the 2012-2013 school year should have been held on or before September 29, 2012 based on District policy. Instead the meeting was held on October 15, 2012. The District noted that it had taken the following corrective action for this matter:</p> <p>“The case manager for the 2012 and 2013 Service Plan received additional training on October 11, 2013 on the timeline requirements in OAR 581-015-2220.”</p>

(3)	<p><b><u>Re-evaluations:</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it refused to reevaluate the Student for the need for Assistive Technology as requested by the Parent on October 22, 2012. (OAR 581-015- 2105 (4) (a) (B) and 34 CFR 300.303)</p>	<p><b><u>Not Contested</u></b></p> <p>While the District did not contest this allegation, the allegation as filed would not rise to a violation of the IDEA based on the evaluation in question. As a courtesy, the District did provide additional screening of the parentally placed Private School Student for the requested assistive technology. The screening was completed within 60 days of the request, and the Parent was given a copy of the screening materials upon request.</p> <p>While the District acknowledged that it does not have documentation that the Parent received a copy of the Assistive Technology (AT) screening summary after it was completed in December 2012. The Parent received a copy of the screening summary on September 18, 2013 shortly after asking for it.</p> <p>The District noted that it had taken the following corrective action:          “The case manager received training regarding documenting Parent contacts and providing documentation to families in a timely manner on October 11, 2013.”</p>
(4)	<p><b><u>Failure to Provide Property, Equipment and Supplies:</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it failed to provide the Student with equipment and supplies needed to implement the Student’s Services Plan. (OAR 581-015- 2510 and 34 CFR 300.144)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student’s Service Plan identifies an area of services and the frequency with which those services will be provided, and in what location. No specific equipment or supplies are suggested or named on the Service Plan nor are they expressly required to be named on the Service Plan by law. Legally, the District has the option, but not the requirement, to provide these items to this Student, and accordingly chose not to provide the equipment or supplies nor to write them on the Student’s Service Plan. Therefore, the Department does not substantiate this allegation and orders no corrective action.</p>
<b><u>Proposed Corrective Actions:</u></b>		Not ordered- See corrective action.

The Parent requests:

- 1) That the District facilitate a Service Plan meeting in which AIM (Accessible Instructional Materials) Process is discussed and team determines how to address the Student's print impairment and current academic progress as it relates to this all-encompassing disability;
- 2) That the District provide a new AT (Assistive Technology) evaluation where accurate data can be assessed and determine how technology can be integrated into the Student's IEP/Service Plan to allow the Student to access all curriculum in an audio and digital format.
- 3) That the District discuss and provide supplies needed thru IEP/Service Plan that can accommodate the equipment the Student will need to access NIMAS (National Instructional Materials Accessibility Standards) and NIMAC (National Instructional Materials Center). The Student is currently able to access NIMAS as defined by the Library of Congress regulations (36 CFR 701.6 (b) (1)).
- 4) That the District provide training to staff member (sic) at the Student's Private School thru the Student's Service Plan on AT technology for print impairment and how it relates to the Student's specific AT needs.
- 5) That the District considers discussion points regarding how the Student's speech service is being addressed based on the numerous disabilities that affect the Student's speech impairment.

	<p>This could be addressed at the Service Plan meeting that AIM is discussed. Discussion points in relationship to Curriculum that could be checked out from the District to help address the Student's reading intervention needs and what curriculum is the best with print impaired child.</p> <p>Note: Complaint stated the following:</p> <p>"Please note the proposed solution is to have a Service Plan that addresses and provides the supplies needed so the Student can continue to move forward academically.</p> <p>According to Federal Law 34 CFR 300.137 the equipment and supplies needed to help the Student can be provided by the District and they can also supplement and spend more than the Federal proportionate share of funds as stated in Section 612 (a) (10 (A) (i) (IV) if needed based on the Student's specific Service Plan needs."</p>	
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### III. FINDINGS OF FACT

- 1) The Student is 8 years old and resides in the District. The Student is eligible for special education as a Student with Communication Disorder (CD) and an Other Health Impairment (OHI) as established on May 31, 2011. The Student has never attended classes in the District because the Parents placed the Student in the Private School at the age of 3.

#### **Background Information:**

- 2) The Student attended Kindergarten twice at the Private School (2010-2011 and 2011-2012). The Student finished first grade at the end of the 2012-2013 school year and is now in the second grade.
- 3) When the Student was in Kindergarten the first time, the classroom teacher observed that the Student was struggling with early literacy skills and with the ability to focus and persist in a task; and suggested that the Parents consider an evaluation. The Private School referred the Student to the District on February 11, 2011. On March 7, 2011, the Parent signed consent for evaluation for the District. Because the area of disability under consideration at that time was Other Health Impaired, due to the Student's history, the District asked for a doctor's medical statement. The

District screened the Student and agreed to conduct an evaluation<sup>4</sup>. The team met on May 31, 2011, reviewed the evaluation results and established the eligibilities noted in Fact 1. The District team used a variety of techniques and instruments to evaluate the Student for cognitive skills, speech/language skills, ability to maintain attention; social, emotional and behavioral functioning and academic skills. All of the results were summarized in a Diagnostic Profile presented to the Parents at the meeting on May 31, 2011. The team also considered the information presented in the medical statement from the pediatrician.

- 4) At the same time, the Parents discussed the Student with their pediatrician. The Parent was concerned that the Student might have some characteristics common to children on the Autism Spectrum. The pediatrician suggested that the Parents take the Student to the Oregon Health and Science University's Child Development Clinic (CDC) in Eugene for an evaluation. Accordingly the Parents arranged the evaluation and the Student was evaluated there twice. The first set of evaluations occurred on July 29, 2011, July 31, 2011, and August 9, 2011. The Student was then 6 years old. At that time, the Student was evaluated by a pediatrician, a speech/language therapist, and a psychologist. The interdisciplinary team noted a consensus diagnosis of Anxiety Disorder Not Otherwise Specified and Attention Deficit Hyperactivity Disorder. The speech/language therapist also noted a diagnosis of an expressive language disorder and that the Student was at-risk for dyslexia/reading disability.
- 5) The CDC team recommended a variety of resource materials to the Parents and suggested the Parents discuss the evaluation results with the school team. They also suggested:
  - a) continuing the speech therapy;
  - b) beginning some occupational therapy for fine motor and sensory hypersensitivities;
  - c) social skills counseling;
  - d) Cognitive Behavioral Therapy; and,
  - e) Consideration of a medication trial; and individual tutoring using a systematic, structured language approach.
- 6) Both of the teams (District and CDC) noted that the Student's reading skills were borderline to low average and in the case of some phonological skills, the Student scored in the impaired range. Additionally, the teams noted the Student showed features of high anxiety and inattentive/distractible behavior. The Student's overall cognitive abilities were described as being in the low average range; but the Student demonstrated average thinking skills and showed particular strength in concept formation and spatial relations.
- 7) The Student's first Service Plan was written on May 31, 2011, and contained the following:

<u>Goals</u>	<u>Criteria/Evaluation</u>	<u>Progress Notes</u>
<p><b><u>Grammar Syntax:</u></b></p> <p><i>The Student will use age appropriate grammar (syntax) at the sentence level.<sup>5</sup></i></p>		

<sup>4</sup> The District's practice for students who are referred from private schools (parentally placed) is to conduct a screening before completing a full evaluation. The District uses this process as they often have no records of the student's progress in the general education curriculum.

<sup>5</sup> The team included short-term objectives for this goal, but they are not reproduced here for brevity.

<b><u>Behavior:</u></b> <i>The Student will follow familiar three step routines with fewer than 1 adult prompt.</i>		
<b><u>Reading:</u></b> <i>The Student will read a list of consonant/vowel/consonant (cvc) words with 90% accuracy.</i>		
<b><u>Type of Special Education Services</u></b>	<b><u>Frequency</u></b>	<b><u>Location of Service</u></b>
<i>Communication</i>	<i>30 minutes week (sic)</i>	<i>Special education setting</i>
<i>Study Skills</i>		<i>General education setting</i>
<i>Reading</i>		<i>General education setting</i>
<b><u>Accommodations and Modifications</u></b>	<b><u>Frequency</u></b>	<b><u>Location of Service</u></b>
<i>Frequent adult assistance</i>	<i>During instructional activities</i>	<i>General Education Setting</i>
<i>Testing at time most beneficial to Student</i>	<i>When testing</i>	<i>General Education Setting</i>
<i>Visual with auditory directions</i>	<i>With novel directions</i>	<i>General Education Setting</i>
<i>Frequent checks for understanding</i>	<i>When presenting new information</i>	<i>General Education Setting</i>
<i>Simplify directions</i>	<i>When giving directions</i>	<i>General Education Setting</i>
<b><u>Supports to Personnel</u></b>	<b><u>Frequency</u></b>	<b><u>Location of Services</u></b>
<i>Specialist Consultation</i>	<i>1 hour a year</i>	<i>Regular Education</i>

- 8) The Parents took the Student to a local, private Occupational Therapy practice, and the staff evaluated the Student on November 5, 12, and 19, 2011. The therapist observed and evaluated the student in the areas of fine/gross motor skills, self-care skills, visual tracking and sensory processing. The therapist concluded that the Student exhibited fair to poor attention to activities and quick pacing. The Student struggled with both gross and fine motor skills and required supervision in self-care skills. Finally, the therapist described the Student as having tactile, auditory, and gustatory sensitivities. The therapist provided recommendations and suggestions for both home and clinic programs. Since that evaluation, the Student has received occupational therapy in these areas as much as the Parents insurance will allow. The Parents also provide out of school speech/language therapy under the same conditions.
- 9) The Student was re-evaluated by staff at CDC on January 10, 2012. As a result of this review and evaluation, the pediatrician recommended a trial of medication for ADHD, and suggested cognitive behavioral therapy. The family had already begun the therapy and was again waiting for insurance to cover continued sessions. The pediatrician also found the Student eligible for the

use of National Instructional Materials Accessibility Standard (NIMAS) materials and completed the necessary paperwork. The Parents did try the medication trial, but found the Student exhibited a significantly flattened affect and discontinued the medication with the physician's approval.

- 10) At the time the pediatrician established the student's eligibility for NIMAS materials, the Student was in the second half of the second Kindergarten year. The Parents reported that they decided to enroll the Student in an on-line school. The Student attended the on-line program during the spring of 2012. The on-line school established an IEP for the Student which was in force during the time the Student attended the school. After the Student returned to the Private School, the District did not request and did not receive a copy of the IEP.
- 11) The District consults annually with the private schools located in its attendance area. For the past few years, as a result of this consultation, the only direct service the District has provided to private school students has been speech/language services. For students who are parentally placed in private school by their parents, and who are eligible for special education because they have another area of disability other than Communication Disorder, the District uses a consultation model. Every year the District sends a packet to each private school outlining the special education and related services available for parentally placed private school parents. The memo includes the following documents and offers the private school administrator an opportunity to discuss the program with the District special education director:
  - a) Written Affirmation of Consultation with Private School (to be signed and returned);
  - b) Consultation Information for Private Schools;
  - c) Request for Student Testing form;
  - d) Authorization to Use and/or Disclose Educational and Protected Health Information form;
  - e) Parent Consent for Educational Screening form; and,
  - f) Child Find Statement in Spanish and English.
- 12) On October 3, 2012, the District sent this packet to the Private School. On October 22, 2012, the Private School Assistant Superintendent signed and returned the Written Affirmation of Consultation with the Private School to the District.
- 13) On October 18, 2013, the District sent the same packet to the Private School, and the Private School Interim Superintendent signed and returned it to the District On October 25, 2013.
- 14) The District charges all services, except evaluations, to the proportionate amount of the LEA's total subgrant. The case manager's time to develop the Service Plans and to conduct the Service Plan meetings are included in the charges to the subgrant funds.

### **2012-2013 School Year**

- 15) On September 20, 2012, the Parents took the Student for an evaluation of the Student's auditory processing skills. The clinical audiologist concluded that the Student had an auditory processing disorder; noting that the Student exhibits a *"triad of symptoms that often cluster: poor hearing in noise, dyslexia, and poor expressive language skills. Children with this cluster of symptoms typically show a Decoding form of auditory processing difficulty."* The audiologist suggested some strategies to:
  - a) Improve the listening environment (FM system);
  - b) Provide focused auditory training (computer-based interactive focused-listening training);

- c) Encourage the use of listening strategies; and,
- d) Background reading for the Parents (The Sound of Hope by Lois Heymann).

16) On October 15, 2012, the District met with the Parent and presented a new Service Plan for the 2012-2013 school year. This Service Plan contained a different description of services to be provided to the Student<sup>6</sup>.

<b>Type of Special Education Services</b>	<b>Frequency</b>	<b>Location of Services</b>
<i>Consultation for Reading</i>	<i>30 minutes /year</i>	<i>Regular Education Setting</i>
<i>Speech and Language</i>	<i>30 minutes a week</i>	<i>Regular Education Setting</i>
<i>Consultation for Behavior</i>	<i>30 minutes /year</i>	<i>Regular Education Setting</i>

17) At this meeting, the Parent asked the District if the District could provide the FM system for the Student. It was reported that the District told the Parent that the District could not place such equipment in the Private School.

18) On October 21, 2012, the Parent asked the District to conduct an evaluation to determine whether or not the Student was eligible for Assistive Technology. The Parent completed the District's "Assistive Technology Screening Form". On this form the Parent wrote that the task the Student needed to accomplish was to *"successfully integrate Assistive Technology (AT) into the Student's daily academics....to replace or remove some of the current practices that are tasking.....alleviate current stress to increase mental endurance"*. The Parent noted that the Student was currently performing at the Kindergarten level in reading, language arts, math and spelling<sup>7</sup>. The Parent reported that the Student could do no academic tasks that involved reading or writing independently.

19) On the Student Contact Log, the case manager did not report receiving the completed screening form.

20) On December 5, 2012, the Parent emailed the District case manager and asked what was happening with the AT Evaluation the Parents had requested in October. The case manager replied the same day and informed the Parent that at a meeting of the Assistive Technology team, the group decided they needed additional information before making a decision. In the email, the case manager suggested that the Private School modify the Student's pencil/paper tasks using shortened assignments and fill in the blank work. In addition, the case manager asked to come to the Private School to observe the Student during a Language Arts class.

21) The District case manager observed the Student in Language Arts class on December 11, 2012 per the request of the Parent. During the observation, the students were in small groups working on a variety of tasks. The Student was in the second group reading with 4 other students. The classroom teacher reported that the Student began work in this group by holding the reading book upside down for a period of time. Finally, the Student appeared to realize this and turned the book right side up. In the observation report the case manager reported that the Student *"did not maintain consistent focus.....was fidgety in the seat and struggled to read aloud"*.

<sup>6</sup> The District told the investigators that there were two reasons for changing the format of the Service Plans. First, the District's legal counsel advised the District that the sections of the OAR's that are most relevant to the plans for parentally placed private school students are those which define timelines and evaluation procedures. Secondly, the District explained that costs for speech/language services had significantly increased, and therefore the District decided to minimize the amount of time it took the case manager to write the Service Plan.

<sup>7</sup> At this time the student was in the 1<sup>st</sup> grade, after spending two years in Kindergarten.

- 22) The case manager met again with the AT Team on February 6, 2013, and concluded that although the Student appeared “squirrelly” the reading program seemed to be “working fine as it was”—using a small group instruction model. The team suggested books on tape, a curriculum with CD’s and the use of trackers or overlays.
- 23) A copy of this observation report was first given to the Parent on September 18, 2013, after the Parent asked for the report at a meeting held on September 17, 2013. The record does not indicate when the Parent first asked for a copy of this report. In its Response, the District stated that the AT evaluation was completed by December 5, 2013.
- 24) On September 17, 2013, the District met with the Parent and the Private School team and presented the Service Plan for the 2013-2014 school year. The new Service Plan was very similar to the previous year’s.

Type of Special Education Services	Frequency	Location of Services
<i>Communication</i>	<i>30 minutes a week</i>	<i>SPED Setting</i>
<i>Consultation</i>	<i>1 hour per year</i>	<i>SPED Setting</i>

- 25) For the last several years, the District has contracted with a private corporation, Presence Learning, to provide on-line speech and language services to students in the District. The student sits in a small classroom with an aide in attendance for safety reasons and to operate the technology as the student completes the speech/language lessons working with a therapist who is on-line in real time. The District started this practice after it was unable to hire enough speech/language therapists locally. After a student is identified in the Private School as needing speech/language services, the District notifies Presence Learning. A coordinator, headquartered in New York, assigns the therapist after a session schedule is established with the Private School staff. Students from the Private School used to go to the District for these on-line sessions. However, after parents at the Private School expressed concern about having to transport students, the District and the Private School agreed to locate the equipment in the Private School. At the start of the 2013-2014 school year, the Private School staff had difficulty finding an aide to supervise the sessions, and so services were delayed for several weeks.
- 26) The case manager represented the District at the Service Plan meeting. The Parent, the elementary principal from the Private School, the Student’s classroom teacher, and the Private School Learning Support Specialist were in attendance. At the time this Service Plan meeting was held, the schedule for services had not been established and so Presence Learning had not assigned a specific therapist to the Student; and thus, a speech/language coordinator attended the meeting via telephone.
- 27) When the September 17, 2013 meeting started, the case manager handed out a single sheet of paper printed on both sides. One side was the Service Plan for the Student, and the other side was a Service Plan meeting agenda. The agenda listed the speech/language coordinator as the Facilitator of the meeting, and the District case manager as the Recorder. The Agenda listed the following items as Discussion Items with time limits, and forms and data to accompany each item:

Discussion Items	Time	Forms/Data
<i>Introductions and Purpose of</i>	<i>3</i>	<i>Sign Service Plan participant</i>

<i>Meeting</i>		<i>page. Written Agreement, if needed</i>
<i>Parent/Student Rights (Procedural Safeguards Notice)</i>	2	<i>Annually or Requested</i>
<i>Present Level of Performance/Concerns</i>	10	<i>Assessment Information AT Consideration Form PLAAFP (Present Level of Academic Achievement and Functional Performance)</i>
<i>Develop/Revise Service Plan</i>	10	<i>State and District Assessments Annual Goals Service Summary</i>
<i>Additional Forms, as needed</i>		<i>Consent for Initial Provision of SPED SPED Action Permission to Obtain/Release Info</i>

- 28) At the beginning of the meeting (9/17/2013), the Parent asked immediately about the Student's goals. The speech/language coordinator replied that there were no goals on a Service Plan for a student placed by parents in a private school. The Parent asked if the speech/language coordinator had the Student's goals and progress reports from the 2012-2013 school year. As the meeting progressed, the case manager pointed out the communication and consultation services which would be provided over the course of the school year. The team also discussed the effect of the auditory processing disorder and how speech/language therapy might attend to the Student's needs in this area. When the speech/language coordinator mentioned the use of written language, the Parent noted that the Student cannot read. The coordinator suggested that the therapist might use pictures and symbols instead. The Parent asked again about the provision of AT to help the Student. The team noted that the Student currently could only identify 3 words correctly of 80 on a DiBELS 2<sup>nd</sup> grade list. The team also discussed the use of Accessible Instructional Materials (AIM) as suggested by the pediatrician at CDC. It was reported that the case manager told the Parent that the provision of AIM materials is the responsibility of the general education component and therefore is the responsibility of the Private School. When the Parent reported not having received a copy of the AT Evaluation Report, the case manager told the Parent the report would be sent the next day, and accordingly, the District did send the form on the next day.
- 29) Finally, at this Service Plan meeting, the team did not discuss some of the forms noted on the agenda provided to the Parent. No substantive assessment information was provided, nor was the AT consideration form completed.
- 30) The District no longer gathers or sends goal progress reports to parents of students in the Private School. The Private School integrates the information on the Service Plan on the Learning Support Plan it writes for each student who either is eligible for special education or who is struggling in the general education curriculum.
- 31) From September 28, 2012 through September 27, 2013, the Student received nine hours of speech/language services over 18 sessions. The sessions started on October 23, 2012, and

ended on May 28, 2013. From October 15, 2012 through September 19, 2013, the District provided 4.1 hours of consultation on behalf of the Student. Not all of this was delivered to staff at the Private School. The case manager spent two of these hours arranging for an observation of the Student and meeting with the AT team to discuss the question of the Student's need for AT.

### **District Policies, Procedures and Guidelines Regarding Parentally Placed Private School Students**

32) In the District Special Education Procedures Manual, published on August 16, 2013, there is a section on Parentally Placed Private School Students (PPPSS). This manual provides guidelines for District special education staff. Several guidelines in the PPPSS section are relevant to the issues in the complaint. Specifically, the manual provides guidelines on the Service Plan. They are:

- a) *The plan includes three components—the type, amount and location of special education services to be provided;*
- b) *The Private School Service Plan is developed annually, in consultation with parents and representatives of the private school, and is to follow the same timelines and notice requirements as an IEP; and,*
- c) *The District does not provide equipment or supplies for private school students except for purposes of evaluating a student's needs.*

33) In the District, the policies and administrative rules are in the Instruction Section of the Policy Manual. Specifically, they are I.GBAI Special Education; and I.GBAI-Administrative Rule (AR) Special Education.

34) Section 7. Service Plans of I.GBAI-AR outlines the Administrative Rules for the Service Plans.

- a) If a student with a disability is enrolled by a parent in a private school the district offers a services plan.
- b) The district ensures that the services plan describes the specific special education and related services the district will provide to the student in light of the services that have been determined through the consultation process.
- c) The district convenes individual meetings to develop, review and revise the services plan consistent with procedures for IEP team membership, parent participation and IEP content, to the extent appropriate.
- d) The district ensures that a representative of the private school attends each meeting. If the representative cannot attend, the district will use other methods to ensure participation by the private school, including individual or conference telephone calls.

35) Section 8. Property, Equipment and Supplies of I.GBAI-AR outlines the Administrative Rules for the use of Property, Equipment and Supplies at a Private School.

- a) The district keeps title to and exercises continuing administrative control of all property, equipment and supplies that the district acquires with IDEA funds for the benefit of private school students with disabilities.
- b) The district may place equipment and supplies in a private school for a period of time needed to implement the Service Plan of a private school student with disabilities or for Child Find purposes.
- c) The district ensures that the equipment and supplies placed in a private school:
  - i) Are used only for implementation of special education activities; and

- ii) Can be removed from the private school without remodeling the private school facility.
- d) The district removes equipment and supplies from a private school if:
  - i) The equipment and supplies are no longer needed for special education activities, programs or services; or
  - ii) The district determines removal is necessary to avoid unauthorized use of the equipment and supplies.
- e) The district does not use IDEA funds for repairs, minor remodeling or construction of private school facilities.

#### IV. DISCUSSION

##### 1. Consultations Requirements and Equitable Services for Private School Students

The Parent alleges that the District violated the IDEA when it refused to consider special education and related services designed to address Students with Print Impairment Disabilities and the use of Assistive Technology as a type of service to be provided to the Student at the Private School, in accordance with OAR 581-015-2480 and 34 CFR 134 & 137. The two main items at issue in this allegation are consultation requirements for parentally placed private school students located within public school districts and the equitable service requirements for these students.

Before discussing these issues, it is important to note that students who are unilaterally placed by parents in a private school do not have an individual right to special education and related services under the IDEA<sup>8</sup>. However, districts must conduct Child Find, determine proportionate share of IDEA funds, and provide equitable services to parentally placed private school students who attend private schools located within the district without regard to where the child resides.<sup>9</sup> Districts have an obligation to provide parentally placed private school students with disabilities the opportunity for equitable participation in the services that the district has determined after consultation to make available to its population of parentally placed private school children with disabilities.<sup>10</sup>

The IDEA states that a timely and meaningful consultation must occur between a local education agency (LEA), private school representatives, and representatives of parents of parentally-placed private school students during the design and development of special education and related services for parentally placed private school children.<sup>11</sup> In the course of consultation, the parties must determine how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of: the types of services, including direct services and alternative service mechanisms; how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and how and when those decisions will be made.<sup>12</sup> When timely and meaningful consultation, as required by 34 CFR 300.134 has occurred, the District must obtain a written affirmation signed by the representatives of participating private schools<sup>13</sup>. The affirmation should include a statement that the consultation has occurred and continued throughout the school year.<sup>14</sup> All

<sup>8</sup> *Letter to Hobson*, 33 IDELR 64 (OSERS 2000) and *Memorandum to Chief State Sch. Officers*, 34 IDELR 263 (OSEP 2000).

<sup>9</sup> *Memorandum to Chief State Sch. Officers*, 43 IDELR 224 (OSEP 2005).

<sup>10</sup> *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, 111 LRP 32532 (OSERS 4/1/11).

<sup>11</sup> 34 CFR 300.134 and OAR 581-015-2480

<sup>12</sup> 34 CFR 300.134(d).

<sup>13</sup> 34 CFR 300.135(a)

<sup>14</sup> *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schs.*, 111 LRP 32532 (OSERS 4/1/811).

parties should work together to properly develop an effective timeline for consultation.<sup>15</sup> Also, the ODE Sample Form for Private School Consultation/ Special Education and Related Services for Parentally Placed Private School Students, shows required areas for discussion points and actions for the following items: Child Find process, available IDEA funds, consultation process, decisions and providing services ( including what services, how and where, by whom, and service delivery mechanism), decisions about services when funds are insufficient to serve all identified students, resolving differences between district and private school officials, and other topics.

Here, the District provided documentation of the consultation process for both the 2012 and 2013 school years. The 2012 materials for consultation were dated October 3, 2012. These documents include: written affirmation of consultation with private schools, consultation information for private schools, request for student testing, authorization to use and disclose educational and protected health information form, parental consent for screening form, and a Child Find statement in English and Spanish. The District's 2012 Written Affirmation of Consultation with Private School clearly states the consultation occurred and further stated that the consultation process will operate throughout the year to ensure that students identified through the Child Find process can meaningfully participate in special education and related services. All of the other necessary consultation components are listed on the affirmation of consultation and related documentation submitted by the District. Additionally, the affirmation form is signed and dated by the printed representative of the Private School. The 2013 affirmation form is also signed and dated by a representative of the Private School and contains all of the aforementioned required information.

There is no requirement in the state or federal consultation requirements to consider specially designed instruction for parentally placed private school students who have one very specific form of disability or area of weakness, nor is there a requirement to discuss a particular form or related services needed by one specific student during the District's required general Consultation process. As such, there is no legal basis for the Parents' request for the District to specifically consider special education and related services designed only to address Students with Print Impairment Disabilities and the use of Assistive Technology as a type of service to be provided to the Student at the private school. The District has the ability during the consultation process, to determine both the proportionate share of IDEA funds to be allocated toward its parentally placed private school students and how, when, where, and by whom special education and related services will be provided to all of the students, including the types of services and service delivery mechanisms.<sup>16</sup> Accordingly, this District noted that it would provide Speech Language Services not to exceed thirty minutes each week for an eligible child and that all other concerns for eligible children would be addressed through a consultation model.

Next we turn our discussion to the equitable services portion of this allegation. Parentally placed private school students whose parents do not dispute the school district's proposed program, do not have an individual right to receive special education and related services<sup>17</sup>. A District has the authority to determine what services it will provide for which students.<sup>18</sup> Districts are not required to serve all private school students with disabilities, and they are not required to provide a full range of services to those students who they do elect to serve<sup>19</sup>. The IDEA states that parentally placed private school students with disabilities may receive different amounts of services than children with disabilities in public schools.<sup>20</sup> Districts must provide these students with the opportunity for equitable participation

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<sup>15</sup> *Id.*

<sup>16</sup> 34 CFR 300.134

<sup>17</sup> 34 CFR 300.137(a)

<sup>18</sup> 34 CFR 300.137(b)

<sup>19</sup> 34 CFR 300.137 (a)

<sup>20</sup> 34 CFR 300.138(a)(2) see also *Fowler v. Unified Sch. Dist.* No. 259, 26 (IDELR 1301)(10<sup>th</sup> Cir. 1997)

in the services funded by the IDEA that the district has determined to make available to its parentally placed private school children with disabilities.<sup>21</sup> Districts providing equitable services must do so in accordance with a Service Plan. The Service Plan must describe the special education and related services that will be provided to a parentally placed private school student with disabilities designated to receive services.<sup>22</sup> A Service Plan must meet the IEP content requirements, to the extent appropriate, with respect to the services provided.<sup>23</sup>

The Service Plan for this Student dated October 15, 2012 indicates what services were offered to the Student in relation to the services the District determined to provide to the Student. As noted above, the District determined during its consultation process to provide speech language services to parentally placed private school students, in addition to consultations as needed for students with other needs in order to meet its equitable service requirements.

This Student's 2012 Service Plan notes that the Student will receive thirty minutes per year of reading consultation located in the regular education setting. It further states that the Student will receive speech and language services thirty minutes a week in the special education setting. Finally, it notes the Student will receive consultation for behavior thirty minutes a year in a regular education setting.

The Service Plan dated September 17, 2013 notes the Student will receive thirty minutes a week of communication services in a special education setting. It also says the Student will receive one hour per year of consultation in a special education setting.

These services are based on the individual needs of the Student and the district's consultation process. The Student has been given an opportunity to equitably participate in the services the District has decided to make available to parentally placed private school students.

This allegation is not substantiated.

## **2. Service Plan**

The Parent alleges that the District violated the IDEA by not providing the Student with a Service Plan that describes the specific special education and related services in accordance with OAR 581-015-2460 and 34 CFR 300.137& 138.

As noted above, both the 2012 and 2013 Service Plans include a description of services offered to the child, the duration, frequency, and amount of services are also described in the Service Plans, along with the location of services which were offered by the district.

Accordingly, based on the citations and analysis discussed above, this allegation is not substantiated.

## **3. Reevaluations**

The Parent alleges that the District violated the IDEA when it refused to reevaluate the Student for the need for Assistive Technology as requested by the Parent on October 22, 2012. (OAR 581-015- 2105 (4) (a) (B) and 34 CFR 300.303)

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<sup>21</sup> *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schs.*, 111 LRP 32532 (OSERS 04/01/11).

<sup>22</sup> 34 CFR 300.138(b).

<sup>23</sup> OAR 581-015-2460 (2)

The Parent requested that the District investigate and consider whether or not the student could use Assistive Technology to help the Student make progress on goals and in the general education curriculum during the October 15, 2012 Service Plan meeting. Strictly speaking this was not a required IDEA evaluation or reevaluation to determine whether or not the Student was eligible for special education, rather it was a screening, performed as a courtesy to the Parent. The Parent also asked about applications or software for a parentally purchased iPad that the Student might use in the classroom. The Parent completed the District's provided AT screening form and returned it to the District on October 22, 2012. The AT screening was completed in December of 2012 and the District subsequently provided suggestions to the Parent and classroom teacher in an email dated December 5, 2012. In this case, the District suggested a process for this evaluation, and carried it out within 60 days of when Parent first made the request.

The record is not clear as to when the Parent first asked for a copy of the report from this screening. When the Parent asked for a copy of the report during the September 17, 2013 Service Plan meeting, one was then provided just after the meeting.

The District did not contest the second part of the allegation. The District acknowledged that it does not have documentation that the Parent received a copy of the Assistive Technology (AT) screening summary promptly after it was completed in December 2012. The record shows that the Parent received a copy of the screening summary on September 18, 2013. Again it is unclear as to when the Parent first asked for a copy of the screening summary. The District did note that it had already taken the following corrective action: "The case manager received training regarding documenting parent contacts and providing documentation to families in a timely manner on October 11, 2013."

#### **4. Failure to Provide Property, Equipment and Supplies**

The Parent alleges that the District violated the IDEA when it failed to provide the Student with equipment and supplies needed to implement the Student's Services Plan in accordance with OAR 581-015-2510 and 34 CFR 300.144.

The IDEA states requirements for Districts in relation to property, equipment, and supplies. The IDEA states that "districts may place equipment and supplies in a private school for a period of time needed..."<sup>24</sup> However, this is a permissive not prescriptive requirement. There is no express requirement that districts must provide equipment or supplies to a private school.

Here, the Student's Service Plan identifies an area of services and the frequency with which those services will be provided and in what location. No equipment and supplies are suggested or needed based on the Service Plan. Therefore, the Department does not substantiate this allegation and orders no corrective action.

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<sup>24</sup> See OAR 581-015-2510 (2) and 34 CFR 300.144(b).

**CORRECTIVE ACTION<sup>25</sup>**

*In the Matter of Medford School District # 549C  
Case No. 13-054-028*

Actions	Submissions	Due By
<p>(1) As stated within the Final Order, the District provided training to the Case Manager prior to the date of this final order. In addition, the District must ensure that special education administrators and any staff who are, or may be, assigned to assist with parentally placed private school students, their parents, and their schools view the attached PowerPoint Training from the U.S. Department of Education. Viewing may be done as a group, or individually, at district discretion.</p> <p><a href="http://therightidea.tadnet.org/assets/2338">http://therightidea.tadnet.org/assets/2338</a></p>	<p>A signed, dated log, including name and position, of those who viewed the PowerPoint. Please send a copy of this document to:</p> <p>Rae Ann Ray Oregon Department of Education, Student Services Unit 255 Capitol Street NE Salem, OR 97310-0203 <a href="mailto:RayAnn.Ray@state.or.us">RayAnn.Ray@state.or.us</a></p>	<p>January 10, 2014</p>

Dated: November 26, 2013



Sarah Drinkwater, PHD  
Assistant Superintendent  
Office of Learning/Student Services

Mailing Date: November 26, 2013

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<sup>25</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).