

	Allegations	Conclusions
1.	<p><u>When IEPs Must Be in Effect/IEP Implementation</u></p> <p>The complaint alleges the District violated the IDEA by failing to implement the Student's IEP, as follows:</p> <p>a) by failing to ensure that the Student's special education teacher communicated with the Student's regular education teachers concerning the Student's progress on a regular basis, particularly on February 4, 2014 after a removal from Culinary Arts class;</p> <p>b) by failing to implement the Student's medical protocol concerning the Student's becoming overheated during the 2014 school year; and</p> <p>c) by failing to provide the "high level of supervision" in the regular education setting in accordance with the IEP, and failing to ensure the Student transitioned from and to regular education classes, as required in the Student's IEP. Specifically, when the Student was always sent to the regular classes with only peer tutors on December 4, 2013 and around January 31, 2014.</p> <p>Relevant Law: OAR 581-015-2220 and 34 CFR 300.323 and 300.324.</p>	<p><u>Not Substantiated</u></p> <p>a) There is no record of inadequate communication among the Student's special education teacher and general education teachers. There is evidence that special education teachers communicated with general education teachers in person, via email, and by exchanging messages through instructional assistants and peer tutors who work with Student. The Department does not sustain the allegation that the District failed to ensure regular communication among the special education teacher and the Student's general education teachers concerning the Student's progress.</p> <p>b) There is no evidence of the District's failure to implement the overheating protocol. The Department finds that the District informed all appropriate staff of the Student's overheating protocol, that District staff appropriately looked for signs of overheating in Student, and that the District ensured the availability of ice to cool down the Student during these incidents. The Department does not sustain the allegation that the District failed to implement the Student's overheating protocol.</p> <p>c) There is no indication that the Student experienced difficulty in transitioning physically to and from the general education classes. Once in the classroom, the general education teacher appropriately supervised both the Student and the peer tutor in the delivery of the curriculum as modified by the special education teachers, in consultation with the other teachers. The Department disagrees with the Parents' argument that it is not appropriate for the general education teacher to supervise delivery of the curriculum as modified by the special education teacher, with the assistance of a</p>

		<p>peer tutor in this case. Additionally, while Student was sent out of one class during the alleged time frame at issue, there is no indication that Student did not receive high level of supervision during this time. This allegation is not substantiated.</p>
(2)	<p>Review and Revision of the IEP</p> <p>The complaint alleges the District did not revise the IEP to address a lack of progress toward the prior IEP goals in the June 3, 2014 IEP.</p> <p>Relevant Law: OAR 581-015-2225(1)(b) and 34 CFR 300.324(b)</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the Student's June 3, 2014 IEP did address the Student's lack of progress to the extent possible, and that there is also a potential lack of progress due to the Student's recent behavior issues and general academic avoidance. The Department further finds that the District did not fail to include annual measurable goals in the Student's June 3, 2014 IEP based upon the Student's present levels of performance. Although most of the goals, including the "Functional Math," "Reading," "Written Language," and "Social Skills" goals, as alleged, are identical to the goals in the Student's October 7, 2013 IEP, there is no indication that changes were required because the Student made slow and steady progress towards these goals and had not yet fully achieved the goals and objectives. The present levels statement was also updated on the Student's new IEP. The IEP team put in place a plan to address a lack in progress, and that the plan could not be completed until completion of the Student's FBA. The Department does not sustain the allegation that the District failed to address a lack of progress towards the IEP goals in the June 3, 2014 IEP. The Department also does not sustain the allegation that the District failed to include in the June 3, 2014 IEP goals to address the Student's present levels of performance and to address the Student's progress.</p>
(3)	<p><u>Content Of IEP</u></p> <p>a) The complaint alleges the District violated the IDEA by failing to include in the Student's IEP goals to adequately address the Student's present levels of performance and appropriate goals to address the Student's progress in the June 3, 2014 IEP. The complaint further</p>	<p><u>Substantiated, in part</u></p> <p>a) The IEP did include annual goals to adequately address Student's present levels of performance and appropriate goals to address the Student's progress for the school year. Additionally, See finding (2), above.</p>

<p>alleges that the District simply “cut and pasted” IEP goals from the Student’s October 7, 2013 IEP into the Student’s June 3, 2014 IEP, without addressing the Student’s lack of progress towards the goals;</p> <p>b) The complaint alleges the District violated the IDEA by failing to include in the Student’s June 3, 2014 IEP any reference to the Physical Therapy (PT) goals or objectives despite the fact that Student receives PT services;</p> <p>c) The complaint alleges the District violated the IDEA by failing to include Transition goals in the Student’s June 3, 2014 IEP;</p> <p>d) The complaint alleges the District violated the IDEA by failing to include in the Student’s October 7, 2013 and June 3, 2014 IEPs an adequate statement of the Student’s placement and failing to specify how much of the Student’s day would consist of Specially Designed Instruction (SDI) and failing to specify precisely what SDI would be provided to the Student and ;</p> <p>e) The complaint alleges that District violated the IDEA by failing to include a 1:1 educational assistant for the Student, despite the Parents’ request</p>	<p>b) The Physical Therapist (PT) explained that participation in a modified general education class requires no PT goals, and requires only modification of the general curriculum in the particular PE class, in consultation with the Physical Therapist. Thus, the Student’s June 3, 2014 IEP includes consultation in the related services section of the service summary page. The Department does not sustain the allegation that the District violated the IDEA by failing to include in the Student’s June 3, 2014 IEP any reference to PT goals or objectives as PT was covered via consultation.</p> <p>c) The District did send a transition goal and statement to the Parent for inclusion with the June 3, 2014 IEP, after the original IEP was given to Parent. Additionally, the information related to transition planning and transition assessments was vague in the Student’s IEP. The Department sustains this allegation only with respect to the required transition planning which was not fully covered in the June 3, 2014 IEP. <i>See Corrective Action.</i></p> <p>d) The placement determination for the October 7, 2013 and June 3, 2014 IEPs both state: “Regular education with pullout for specially designed instruction (SDI) in”[sic] . The specially designed instruction (SDI) time and nonparticipation justification may be determined by reviewing the Service Summary on the previous page in the IE.</p> <p>e) The peer tutors are always supervised, in the general education classroom by the general education teacher and in the Middle Learning Center (MLC) by the special</p>
---	---

	<p>for a 1:1 educational assistant; and by providing “peer tutor[s]” for the Student; and by inappropriately including in the Student’s IEP the use of the Student’s compulsion to pick up trash on school grounds as a “reward,” without the consent of the Parents.</p> <p>f) The complaint alleges the District did not provide assistive technology (AT) to the Student on the 2013 or 2014 IEPs, despite a documented need for AT.</p> <p>Relevant Law: OAR 581-015-2200 and 34 CFR 300.320.</p>	<p>education teacher and other Educational Assistants (EA)s. In the Middle Learning Center (MLC), in addition to the special education teacher, an EA is also assigned to work with the Student. The Department therefore concludes that the use of a peer tutor with Student during some times is not a violation of the IDEA under the circumstances of this case.</p> <p>However, there is one instance of a meeting with Parents held on November 15, 2013 when Parents requested a 1:1 and District denied the 1:1 but no record of Prior Written Notice (PWN) was sent for that time. Correction Action is ordered only for this violation concerning the PWN.</p> <p>Concerning the use of the Student’s compulsion to pick up trash as a reward without the consent of the Parents, the Department notes there is no IDEA requirement associated with IEP content that requires parent express consent for rewards systems. Additionally, when the IEP team discussed the matter during the June 3, 2014 IEP meeting, the Parent agreed with the work experience plan that included “cleanup activities” and work with the custodian. The Department concludes that the District did not utilize the Student’s compulsion to pick up trash without the consent of the Parents. This allegation is not substantiated.</p> <p>f) The Department concludes that all three of the Student’s IEPs in this case included AT in the Supplementary Aids/Services: Modifications/Accommodations portion of the service summaries on all three IEPs. The Department does not sustain the allegation that the District did not provide AT to the Student on the 2013 or 2014 IEPs.</p>
(4)	<p><u>Parent Participation – General</u></p> <p>The complaint alleges that the District violated the IDEA by inappropriately using the Student’s compulsion to pick up trash on school grounds as a “reward,” without the consent of the</p>	<p><u>Not Substantiated</u></p> <p>The Parents participated with both the 2013 and 2014 IEP team meetings. As noted above, the IEP team discussed the Student working with the custodian and on cleanup activities as Transition items for the Student. Thus, the</p>

	<p>Parents.</p> <p>Relevant Law: OAR 581-015-2190 and 34 CFR 300.500, 300.327, 300.501(b); and 34 CFR 300.323.</p>	<p>Department does not sustain this allegation.</p>
	<p><u>Proposed Corrective Action:</u></p> <p>The complaint requests the following corrective action: “a new evaluation” or reimbursement by the District to the Coos Bay School District for the new evaluation being completed by the Coos Bay School District, “pay the cost of both the assistive technology and the cost of a qualified ESD trainer to teach that technology to [the Student],” reimbursement by the District to the Parents for the cost of transportation to the Student’s new school, and “pay the expense of sending [the Student] to the Coos Bay School District.”</p>	<p>The requested Corrective Action is not ordered, based upon the Department’s findings in this case. Corrective Action is ordered concerning the allegations sustained by the Department as follows. <i>See Corrective Action.</i></p>

III. FINDINGS OF FACT

Background

1. The Student in this case is presently 17 years old and is in the eleventh grade. The Student attended school at the District’s high school during the 2012-2013 (9th grade) and 2013-2014 (10th grade) school years. The Student, through an inter-district transfer made on September 15, 2014 and approved by the District on September 17, 2014,³ began attending the Coos Bay School District at the beginning of the current school year (2014-2015). The Student is presently attending school in the Coos Bay School District. The District reports that the Student did not attend school in the District during the 2014-2015 school year and that prior to the inter-district transfer request the Student appeared on a list of home-schooled Students. The Inter-District Transfer Request form was submitted to the Department, and it is signed by the receiving district and dated September 17, 2014.
2. The District provided three IEPs to the Department with its *Response*, dated September 19, 2013, October 7, 2013 and June 3, 2014, all of which were in effect at some time during the year preceding the filing of the complaint in this case on October 3, 2014. All three IEPs indicate the Student is eligible for special education under the categories of Other Health Impairment (OHI) and Communication Disorder (CD).”

³ Pursuant to OAR 581-021-0019(3)(d), responsibility for a Free Appropriate Public Education was transferred to the nonresident/receiving district ,upon approval by the District of the Inter-district Transfer Agreement.

3. The September 19, 2013 IEP, in effect only until October 7, 2013 and thus in effect only four days within the one year period preceding the filing of the complaint in this case on October 3, 2014 (i.e. in effect from October 3, 2013 to October 6, 2013), indicates the Student will not graduate with a regular diploma but with an "alternate document * * * Modified/Extended/Certificate." The Student's selected placement is stated as, "Regular education with pullout for specially designed instruction * * *," with additional statements concerning the selected placement in all three of the Student's IEPs in effect during the one year period preceding the filing of the complaint in this case on October 3, 2014 (September 19, 2013, October 7, 2013, and June 3, 2014).
4. The Student's school day for the 2013-2014 school year included three periods in a self-contained special education classroom (the Middle Learning Center (MLC)), one period receiving Specially Designed Instruction in an adaptive physical education class (weightlifting, based upon the recommendation of the Student's pediatrician, according to the Physical Therapist who worked with the Student), and three periods in general education classes. The Department notes that during the on-site interviews, District staff clarified that the Student's SDI is all functional academics, and as indicated in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) sections of the Student's September 19, 2013; October 7, 2013; and June 3, 2014 IEPs, the Student is operating mostly at a second to fourth grade level.

When IEPs Must Be in Effect/IEP Implementation

5. The District has a "peer tutor" program in place for students in the District. This program allows general education students who are interested in working with special education students to apply to become a peer tutor at school. The special education teacher interviews all students who apply and those selected are provided individual training by the special education teacher. The students commit to one period each school day, and are assigned to a particular special education student to work with. If the special education student is in the Middle Learning Center (MLC) during the period the peer tutor is available, then the general education student works with the special education student in the MLC; and if the special education student is in a general education class during the period the peer tutor is available, then the peer tutor accompanies the special education student to and from the general education classroom, works with the student during the general education class, and is supervised by the general education teacher while working with the student. The special education teacher and the general education teachers reported during the on-site interviews that special education students, generally, and the Student in this case, specifically, often work better with peer tutors than with adult EAs, as the special education students relate better with the peer tutors.
6. The Physical Therapist trained an adult EA to work with the Student during the Student's adaptive PE weightlifting class, and the Physical Therapist observed the weightlifting class every six weeks and a Licensed Physical Therapy Assistant (LPTA) observed the weightlifting class every two weeks.
7. The Student's October 7, 2013 and June 3, 2014 IEPs note in the placement portion that "Special education staff consults with teacher on regular basis" and further states "provide high level of supervision in gen ed setting." The placement selected in both IEPs is regular education with pull out for specially designed instruction. The June 3, 2014 IEP has an additional handwritten note that says Student "needs SDI due to low grade level achievement" in the nonparticipation justification statement portion of the IEP. This handwritten note similarly appears on the October 7, 2013 IEP.
8. The service summary portion of the October 7, 2013 and June 3, 2014 IEPs also state that as a support to school personnel, there will be consultation to teaching staff for thirty minutes each grading period.

9. All of the Student's general education teachers provided modified instruction to the Student in the general education classes, and often consulted with the special education teacher, rather informally, concerning specific tasks. For example, in Culinary Arts class, the regular education teacher modified the Student's cooking tasks to not include the use of knives but to include gathering of certain ingredients during cooking assignments, all of which are group assignments for all students. The teacher reported that during a particular class on or about February 3, 2014, the Student would not follow instructions and presented a safety hazard because of the Student's desire to touch pots being heated on stovetops, so the peer tutor took the Student back to the MLC. The peer tutor reported to the special education teacher that the Student had been talking out of turn and not listening to the teacher, requiring them to return to the MLC on one other occasion. The Student continued to participate in the Culinary Arts class after those incidents, as usual. The special education teacher closely followed the Student's grading entries made by the Student's general education teachers, on the District's online grading system in order to ensure that Student is making progress.
10. The District ensured that all District staff working with the Student, as well as the Student's peer tutors, were aware of the Student's overheating protocol, based upon the Student's "inefficient body temperature regulation." The Student's general education teachers, educational assistants (EAs), special education teacher, and peer tutors were all told to observe the Student carefully for signs of overheating, including lethargy and a flushed face, and to ask the Student if the Student was overheated as needed. On several occasions, District staff obtained an ice pack to help the Student cool down, even if the Student did not believe it necessary. Ice packs or ice and bags were kept in various locations, including the MLC and near the gym. District staff reported that the Student would regularly either obtain the ice packs or ask for them, also. The special education teacher reports that the ice packs were kept in a refrigerator in the classroom, within view of the teacher, and that on one occasion the Student opened the refrigerator to access an ice pack due to overheating. At this time, the Student picked up a container with blueberries belonging to the EA and on another occasion the Student picked at the ice in the refrigerator. The refrigerator in the MLC classroom was in plain sight of the teacher and EA, so they were able to quickly redirect Student on these occasions. The special education teacher reports that the Student then obtained the ice packs on those occasions.
11. The Principal at the District's high school reports that the thermostat in the MLC did require replacement at one point in time, but that issue and the associated repair occurred during the 2012-2013 school year, more than one year preceding the filing of the complaint in this case (October 3, 2014), and that the thermostat has not again required repair. The special education teacher and EA report that the temperature in the MLC would warm up on very warm days, due to the room's west-facing windows, but that the thermostat was never set above 75, and that they would keep a close eye on the Student at those times. In their *Reply* in this case, the Parents state that the District apparently did not repair the thermostat in the MLC, pointing to the fact that on March 13, 2014 the Parent believed the temperature in the MLC to be "around 80" degrees. The *Reply* further states that "the District was persistently unable to properly address [the Student's] overheating/medical protocol." However, there is no evidence in the record of a broken thermostat during the times under investigation.
12. The placement pages in all three of the Student's IEPs (September 19, 2013, October 7, 2013 and June 3, 2014) state, under "Modifications/Supplementary Aids & Services Considered", include the following statement: "Provide high level of supervision in general ed. Setting." District provided supervision to the Student in the MLC, where the special education teacher, EAs, and a peer tutor were present. An EA accompanied the Student to the Student's weightlifting class and delivered the instruction designed by the District's Physical Therapist and LPTA, with regular consultation and

modification by the Physical Therapist or LPTA. The EA then accompanied the Student back to the MLC. An EA also attended science labs with Student, but these labs occurred only occasionally for the Student. Peer tutors accompanied the Student to the Student's general education classes, except in the event of the absence of the peer tutor, and then an EA would attend the general education class with the Student. The general education teachers modified the instruction provided to the Student in the general education classroom and supervised the Student's participation in the classroom and supervised the peer tutors and EAs when in the classroom. The peer tutors or EA then accompanied the Student back to the MLC. The District provided SDI to the Student in the MLC.

Review and Revision of the IEP and Content of IEP

13. On June 3, 2014, the Student's IEP team met and, according to the meeting minutes, discussed the Student's "special factors and present levels" and that the Student "frequently refuses to go to classes & following the schedule. Student tends to sleep during parts of the day." The meeting minutes reveal a request by the Parents for a 1:1 assistant for the Student in general education classes and with "on task behavior when in sp. Ed. Class." The meeting minutes state, in a section entitled "Decision/Plan of Action," "Develop work experience plan that includes scheduled cleanup activities & work w/ custodian. Referral to Behavior Specialist by District. PT – Functional Skills focus. Determined [the Student] will work towards a certificate for graduation class. Placement – general education/special education combination. District refuses Parents' request for 1:1 Assistant. [The Student] will have access to staff & peer support." The Prior Written Notice (PWN) states that the District refused the request for a 1:1 EA because "Addition of 1:1 support person is more restrictive accommodation than [the Student] needs at this time." The PWN also states, in the section entitled "Any other factors considered by the team:" "IEP goals, schedule and routines were updated and modified to include more of [the Student's] preferred activities and routines. District will consult with behavior specialist to determine possible supports and functions of [the Student's] behaviors. Parent will discuss possible referral to neuro-psychologist with [the Student's] Dr." At the June 3, 2014 meeting, the IEP team, including the Parents, discussed that the IEP team intended to complete a referral for a functional behavior assessment in coordination with a regional ESD behavior consultant, to be completed in the fall due to the fact that the school year ended on June 10, 2014.
14. The District provided progress reports on five of the Student's annual IEP goals, with progress entries dated June 10, 2014 on each goal sheet. The "Functional Math" goal provides that the Student "will use multiple strategies to demonstrate understanding of functional math skills in a variety of settings 85% of the time as measured by teacher observation and or data collection." The Short-Term Objectives are that the Student will "add five coins together with (sic) and write the amount 4 out of 5 opportunities * * *;" "will solve one step/multiple step word problems involving money and measurement with 80% accuracy 1st trimester and 85% accuracy by 3rd trimester;" and "will measure out various ingredients using cooking utensils 4 out of 5 opportunities as measured by data collections." The progress entry on this goal ("Functional Math") states that the Student "does not consistently work on [the Student's] math. [The Student] works less than 50% of the time. When [the Student], does choose to work, [the Student] can add 5 coins together in 3/5 opportunities."
15. The June 3, 2014 IEP goal for "Reading" provides that the Student "will read and comprehend 95% out of 350 sight words as measured by informal assessments and/or teacher observations," with "95% accuracy". The Short-Term Objective is that the Student "will comprehend what [the Student] has read by indicating the meaning of the word by pointing to the correct definition with 90% accuracy 1st trimester, 93% 2nd trimester and 95% 3rd trimester." The progress entry on this goal dated June 10th states the Student "can read and comprehend 70% of sight words when [the Student] participates. [The Student] prefers to read science & history words @ this time."

16. The "Written Language" goal in the June 3, 2014 IEP states that the Student "will increase functional writing skills by writing 3 complete sentences with 85% accuracy out of 4 opportunities using both hand writing and word processing as measured by writing samples." The Short-Term Objectives are that the Student "will develop complete sentences verbally to staff with 80% accuracy 1st trimester and 85% accuracy by 3rd trimester;" Student "will develop complete sentences using a word processor with 80% accuracy 1st trimester and 85% accuracy 3rd trimester;" and Student "will legibly type a list, note, or a letter from what was written and created with staff with 80% accuracy 1st trimester and 85% accuracy 3rd trimester." The progress entry on this goal ("Written Language") dated June 10th states the Student "does not like to write & has yet to complete 3 sentences. [The Student] requires prompting to stay on task."
17. The June 3, 2014 "Social Skills" goal provides that "Given instruction and practice, [the Student] will demonstrate and use 4 steps in the problem solving process 4 out of 5 times as measured by teacher observation." The Short-Term Objectives are that the Student "will name the problem with 80% accuracy as measured by teacher observation;" "will find/state the problem with 80% accuracy as measured by teacher observation;" "will fix the problem with 80% accuracy as measured by teacher observation;" and "will follow through with solution with 80% accuracy as measured by teacher observation." The progress entry on this goal ("Social Skills") also dated June 10th; states the Student "can demonstrate problem solving & use the 4 steps in 3 out of 5 times."
18. The final IEP goal from June 3, 2014 for which a progress report is provided for the Student, notes Student's progress by stating that: "...semantic (word meaning) and pragmatic skill to include higher level vocabulary definition; categorization skills; figurative language; responding appropriately in a timely manner and initiate, maintain and close conversations using questions while retelling a story, personal event and/or participate in unstructured conversation with peers and adults in social and vocational situations."
19. The Short-Term Objectives include "will verbally demonstrate semantic skills in the areas of: a) understand/use/define words (functional/survival vocabulary)" and "will improve conversation skills with both peers and adults: a) take appropriate turns." The progress entries are related to the two objectives and are dated December 3, 2013, March 5, 2014 and June 11, 2014. The June 11, 2014 progress entries state the Student "understands and defines a variety of functional and survival vocabulary with 75% accuracy. [The Student] really enjoys geography and science vocabulary. [The Student] demonstrates higher level categorization skills with 73% accuracy. This trimester we did not review idioms and/or multiple syllabic words. [The Student] still needs to work on being able to ask questions particularly in social and vocational situations;" and that the Student "does take turns appropriately with from 25% correct to 80% accuracy depending on the day. [The Student] has improved in [the Student's] ability to take a turn in a conversation verbally within an appropriate response time. Depending on the topic [the Student] uses speaking and listening skills with 75% accuracy (verbal and visual cues). [The Student] needs to continue work on [the Student's] ability to end a conversation. [The Student] was able to identify his emotions on the 1-5 scale when asked. [The Student] has made so much improvement in [the Student's] response time! Have a great summer! Sincerely * * * Speech Pathologist."
20. The Present Levels of Academic Achievement and Functional Performance (PLAAFP, or "present levels") in the Student's June 3, 2014 IEP does include one handwritten paragraph with new information related to the Student, which differs from what was found in the October 7, 2013 IEP. This handwritten note indicated that Student moves around room and with activities in health. It states that, "Student attends class with peer tutor. Class is going well. Would like to see more participation. Sits in middle back row around mature students. Student has fallen asleep a few times in class." The June 3, 2014 IEP present levels section also added new information concerning

speech and language progress that occurred with Student since October of 2013. The two PLAAFP statements further differ in that the 2014 IEP states "...Student receives 40 minutes three times a month of Speech and language therapy," whereas, the October 2013 IEP states "...Student receives speech language therapy thirty minutes a week..." this difference is attributed to increased speech and language skills manifest in Student. Additionally, the present levels in the June 3, 2014 IEP also include a new statement concerning the Student's recent behavior issues, including the Student's "increasingly wanting to pick up trash at any opportunity" a desire to touch other people, the issues concerning the Student's recent leaving general education classes during the 3rd trimester of the 2013-2014 school year to return to the MLC to sleep, and the Student's"... avoidance of all academic work." The PLAAFP then states it is "important to look at a behavioral assessment/plan at this time to set some boundaries and help [the Student] focus at school. The PLAAFP in the Student's June 3, 2014 IEP also added information about the Student's health class stating that it "is going well," but that more participation is desired and that the Student has fallen asleep a few times in class. The Student's June 3, 2014 IEP also includes a new, separate sheet concerning the Student's PLAAFP in the area of Physical Therapy, stating that the Student's participation in the weightlifting program "has been inconsistent which does not lend itself to improvements in neuromuscular function resulting in poorer motor control and therefore increased safety concerns."

21. The June 3, 2014 IEP includes new information related to Student in the Preferences, Needs, and Interests as a result of age-appropriate Transition assessments portion of the IEP. The June 3, 2014 IEP states that Student completed the Conover assessment with an adult to look at the MECA Interest Indicator. This portion further states Student had difficulty with this task, but that "...we will continue to encourage Student to continue with Conover to explore more areas of Transition."

Content of IEP

22. During the on-site interviews, the Physical Therapist discussed his recommendation for Student based on the PLAAFP of Student, that the Student return to a modified PE classroom at the beginning of the next (2014-2015) school year. Thus no goals were developed as previously were developed for the Student's weightlifting program, an adaptive PE class for which the Physical Therapist developed Student's 2013 IEP goals. The Physical Therapist explained that when the Student participates in a modified PE class, as recommended, no IEP goals are generally developed, but the Physical Therapist observes a student in the general education PE class to then assist with the development of modifications to address the student's unique needs for that general education classroom. The Physical Therapist did note that the "Modified PE" listed in the Service Summary of the Student's June 3, 2014 IEP should not have been placed in the SDI section, because participation in a general education class involves modifications and not SDI.
23. The Student's June 3, 2014 IEP includes a sheet concerning the Student's Transition which refers to "Appropriate, measurable post-secondary goals based upon age-appropriate Transition assessments related to training education, employment, and, where appropriate independent living skills." This portion states that "After graduation, Student will live at home and participate to the maximum extent possible in daily routines and environment through the use of communicating skills." The "Course of study" portion of the Student's June 3, 2014 IEP lists "Transition," "Social skills/community," "Math," and "English." The Transition sheet also states the Student's anticipated graduation is in 2016 "with alternate document * * * certificate." The June 3, 2014 IEP includes only vague transition planning that is nonspecific related to agency participation, course of study, and student interests. It does include postsecondary goals. .
24. The October 7, 2013 IEP includes the following information related to Student's Transition. "After graduation, Student will live at home and participate to the maximum extent possible in daily

routines and environment through communication technique. The course of study listed on this document is cooking, shopping, and community outings. Further, the Student's October 7, 2013 IEP did include a separate Transition goal of "transition (pre vocational)" which stated, "Given pre-direction and rule review, [the Student] will perform assigned tasks with supervision (accept feedback, follow directions) in 4 out of 5 trials as measured by teacher observation. The Short-Term Objectives on the Transition goal sheet included "will stay in assigned work area with supervision 80% of the time," "will maintain work area in good order with 80% accuracy," "will ask for clarification/assistance when needed with 80% accuracy," and "will complete task without disrupting others with 80% accuracy."

25. In its *Response* in this case, the District stated that a clerical error resulted in the failure to include the Transition goals with the June 3, 2014 IEP packet sent to the Parents. The District provided what it identified as the Transition goal sheet for the Student's June 3, 2014 IEP separately. This goal is dated June 3, 2014, but is otherwise identical to the Transition goal sheet included in the Student's October 7, 2013 IEP. It is not clear, however, that other hard copies of the Student's June 3, 2014 IEP existed and included the Transition goal as no copies of such documents were provided en total during the investigation.
26. The Student's selected "Placement Option Considered" is stated as "Regular education with pullout for specially designed instruction in" [with no further information in that sentence] in both the Student's October 7, 2013 and June 3, 2014 IEPs. The selected placement also includes the following statements: "Benefits." "Specially designed instruction to meet individual needs," "Specially designed instruction to meet individual needs specified in IEP," "Small group instruction for all specially designed instruction and related services." "Modifications/Supplementary Aids & Services Considered." "Provide quiet work space to minimize distractions," "Special education staff consults with teacher on regular basis," Provide high level of supervision in general ed. Setting." The placement section in the June 3, 2014 IEP also states "Best provides small group & individualized instruction to meet [the Student's] needs." Similarly, the placement section in the June 3, 2014 IEP also states: "Best provides small group SDI to meet [the Student's academic & social needs."
27. The Nonparticipation Justification statement in the Student's October 7, 2013 IEP states that removal from participating with nondisabled students is required, and the "amount/extent of the removal" is described as: "[The Student] requires SDI in Math, Reading, Written Language." The "explanation justifying the removal" is stated as follows: "[The Student] needs SDI due to low grade level achievement." On the same page of the October 7, 2013 IEP, the "service summary" sets forth the amount and location of SDI for the Student. The Nonparticipation Justification statement in the Student's June 3, 2014 IEP states that removal from participating with nondisabled students is required, and the "amount/extent of the removal" is described as: "[The Student] needs to be removed for functional academics, social skills/Transition & speech." The "explanation justifying the removal" is stated as follows: "[The Student] requires SDI due to low grade level achievement." On the same page of the June 3, 2014 IEP, the "service summary" sets forth the amount and location of SDI for the Student.
28. On November 15, 2013, a meeting to discuss some concerns of the Parents occurred. The meeting minutes state that the Parents asked why the Student has a peer tutor instead of a 1:1 assistant, and that District staff explained "the roll of a peer tutor and that [the Student] having a 1:1 would be very restrictive." The meeting minutes, in the "Decision/Plan of Action" portion, state "There was not a plan of action for this meeting. Parents concerns were addressed." There is no evidence that a Prior Written Notice was sent at this time.

29. On June 3, 2014, the Student's IEP team met and, according to the meeting minutes, discussed the Student's "special factors and present levels" and that the Student "frequently refuses to go to classes & following the schedule...tends to sleep during parts of the day." meeting minutes reveal a request by the Parents for a 1:1 assistant for the Student in general education classes and with "on task behavior when in sp. Ed. Class." The meeting minutes state, in a section entitled "Decision/Plan of Action," "Develop work experience plan that includes scheduled cleanup activities & work w/ custodian. Referral to Behavior Specialist by District. PT – Functional Skills focus. Determined [the Student] will work towards a certificate for graduation class. Placement – general education/special education combination. District refuses Parents' request for 1:1 Assistant. [The Student] will have access to staff & peer support." The PWN issued by the District states that the District refused the request for a 1:1 EA because "Addition of 1:1 support person is more restrictive accommodation than [the Student] needs at this time." The PWN also states, in the section entitled "Any other factors considered by the team." "IEP goals, schedule and routines were updated and modified to include more of [the Student's] preferred activities and routines. District will consult with behavior specialist to determine possible supports and functions of [the Student's] behaviors. Parent will discuss possible referral to neuro-psychologist with [the Student's] Dr."
30. At the June 3, 2014 meeting, the IEP team, including the Parents, discussed that the IEP team intended to complete a referral for a functional behavior assessment in coordination with a regional ESD behavior consultant, to be completed in the fall due to the fact that the school year ended on June 10, 2014.
31. Concerning the Student's "compulsion" to pick up trash, the June 3, 2014 meeting minutes indicate that the "Decision/Plan of Action" include the following: Develop work experience plan that includes scheduled cleanup activities & work w/ custodian." The Parent present at the meeting checked that they agreed with this plan.
32. The Parents did indicate to District earlier, in a communication log entry dated January 23, 2014, that "Picking [up trash] is something we always battle here too. When we are out doing family chores, [the Student] will tend to pick and stop working. We try to stress to [the Student] that [the Student] can pick on [the Student's] time (free time) but during chore time [the Student] needs to not pick and stay on track."
33. The Student's September 19, 2013; October 7, 2013; and June 3, 2014 IEPs all include in the Service Summary page the following Supplementary Aids/Services: Modifications/Accommodations: "Calculator for math problems," "Access to a word processor for written assignments." During the on-site interviews in this case, the Student's special education teacher and EA stated that there are computers, I-pads, and a "smart board" which Student could access. The smart board is a computer with a projection device that is interactive and which is used frequently in the MLC. The special education teacher and an EA stated that the Student uses the word processor on the computer, because the Student's handwriting is slow and often not legible, although District staff still have the Student practice handwriting.

Parent Participation - General

34. In the Parents' *Reply* in this case, the Parents state they "were always against the trash pick-up, but we allowed [the Student] to recycle because Student enjoyed getting out of the classroom;" and that when the Student "started being stubborn at school and stopped doing work in class because [the Student] couldn't do recycle and trash pick-up, we discussed the situation with [the Student] at home and [the Student] compromised by promising to cooperate in class if [the Student] could just do recycle with [the Student's] classmates." Concerning the Student's "compulsion" to pick up trash, the June 3, 2014, meeting minutes indicate that a Parent did attend the meeting and participated.

As noted above, the Parents did indicate earlier, in a communication log entry shared with the school and dated January 23, 2014, that "Picking [up trash] is something we always battle here too. When we are out doing family chores, [the Student] will tend to pick and stop working. We try to stress to [the Student] that [the Student] can pick on [the Student's] time (free time) but during chore time [the Student] needs to not pick and stay on track."

IV. DISCUSSION

Issues Outside the scope of the Investigation

The Department did not investigate allegations in the complaint concerning matters occurring more than one year before the filing of the complaint in this case on October 3, 2014, and matters involving teachers' professionalism, licensure or ethics as those matters fall outside the scope of OAR 581-015-2030. Additionally, as Student received an inter-district transfer to another district on September 17, 2014, the District is not responsible for IDEA provisions after this date. See OAR 581-021-0019. The Department also notes it did not investigate the allegation concerning the evaluations completed following a written consent by the Parents on August 27, 2013 (more than one year preceding the filing of the complaint in this case). Thus, the related corrective action requested in the complaint, of payment by the District in this case the cost of evaluations to be performed by the Student's receiving district of the inter-district transfer, will not be discussed.

1. When IEPs Must Be in Effect/IEP Implementation

The complaint alleges the District violated the IDEA by failing to implement the Student's IEPs, in several respects, discussed below. Concerning implementation of IEPs, OAR 581-015-2220(1)(b) provides that "School districts must provide special education and related services to a child with a disability in accordance with an IEP."

(a) Communication between special education teacher and regular education teachers

The complaint alleges that the District failed to ensure that the Student's special education teacher communicated with the Student's regular education teachers concerning the Student's progress on a regular basis, particularly on February 4, 2014 after Student was removed from Culinary Arts class.

After the IEP is written and an appropriate placement determined, the district is obligated to provide the student with the special education and related services as listed in the IEP. See 34 CFR 300.323 (c).

With respect to this portion of the allegation, the Student's October 7, 2013 and June 3, 2014 IEPs state that "Special education staff consults with teacher on regular basis."

The Department finds that the special education teacher did indeed communicate with the Student's regular education teachers on a regular basis concerning the modifications being made by the general education teachers to the general education curriculum. This includes the culinary teacher. Additionally, the special education teacher closely monitored grading entries made by the Student's general education teachers on the District's online grading system. Concerning the incident that occurred in the Student's Culinary Arts class on or about February 3, 2014, the Department finds that the special education teacher communicated with the peer tutor in the classroom at the time and the general education teacher determined the Student needed to leave the classroom due to immediate safety concerns. The Student continued to attend and participate in the Culinary Arts

class after this incident and the culinary teacher continued to interact with the special education teacher. There is no evidence of inadequate communication among the Student's special education teacher and general education teachers. The fact that the Student's peer tutor reported to the special education teacher that the Student was not listening to the general education teacher, though leaving out the fact that the Student did not follow safety instructions, does not demonstrate an absence of regular communication concerning the Student's participation in a general education classroom. The Department does not sustain the allegation that the District failed to ensure regular communication among the special education teacher and the Student's general education teachers concerning the Student's progress.

(b) Implementation of medical protocol concerning overheating

The complaint alleges that the District failed to implement the Student's medical protocol concerning the Student's becoming overheated during the 2013-2014 school year.

The District did have a protocol concerning the Student's overheating issue, and the District informed those working with the Student, including all general education teachers, EAs, and peer tutors. In their *Reply* in this case, the Parents state that the District did not repair the thermostat in the MLC, pointing to the fact that on a particular day the Parent believed the temperature in the MLC to be "around 80" degrees. The Parents further state the District is "persistently unable to properly address the Student's overheating/medical protocol." However, the Parents point to no instances of the District's failure to implement the overheating protocol. The Department finds that the District informed all appropriate staff of the Student's overheating protocol, that District staff appropriately looked for signs of overheating and that the District ensured the availability of ice to cool down the Student during these incidents. The Department does not sustain the allegation that the District failed to implement the Student's overheating protocol.

(c) Failure to provide "high level of supervision" in general education setting

The complaint alleges that the District failed to provide the "high level of supervision" in the regular education setting in accordance with the IEP, and failed to ensure the Student transitioned from and to regular education classes, as required in the Student's IEP, specifically, when the Student was always sent to the regular education classes with only peer tutors.

A district must implement a student's IEP with all required components.⁴

The Student's IEPs dated September 19, 2013, October 7, 2013 and June 3, 2014, all state, concerning modifications and supplementary aids and services, the following: "Provide high level of supervision in general ed. setting." There is no required 1:1 aide assigned to Student in any of the IEPs. In their *Reply* in this case, the Parents argue that allowing supervision of the Student by the general education teachers in the regular education classrooms places "undue responsibility for [the Student's] special education needs on a general education teacher that has 30 other students to teach and no special education training." While this is a compelling argument, it is also noteworthy that the Student is assigned to peer tutors who can provide high level supervision to Student when a 1:1 aide is not available.

A meeting was held on November 15, 2013, to discuss some concerns of the Parents including the desire of Parents for a 1:1 aide. The meeting minutes state that the Parents asked why the Student has a peer tutor instead of a 1:1 assistant, and that District staff explained "the roll of a peer tutor

⁴ 20 USC 1414 (d)(2)(A)

and that [the Student] having a 1:1 would be very restrictive.” The meeting minutes, in the “Decision/Plan of Action” portion, state “There was not a plan of action for this meeting. Parents concerns were addressed.” However, there is no evidence that a Prior Written Notice was sent at this time to explain why the District refused to initiate or change the Student’s provision of FAPE, specifically the Parent’s proposal regarding a 1:1 aide.

The Department notes that peer tutors accompanied the Student to and from all general education classes and supervised the Student very closely in each instance. There is no indication that the Student experienced difficulty in transitioning physically to and from the general education classes in this way. There was no record of missed classes or excessive tardies due to disruptions during transition between classes. Once in the classroom, the general education teacher appropriately supervised both the Student and the peer tutor in the delivery of the curriculum as modified by the general education teachers, in consultation with the special education teacher. The Department therefore disagrees with the statement that it is not appropriate for the general education teacher to supervise delivery of the curriculum as modified by the special education teacher, with the assistance of a peer tutor.

The Department does not sustain the allegation that the District failed to provide the “high level of supervision” in the regular education setting in accordance with the IEP, and that the District failed to ensure the Student transitioned from and to regular education classes, as required in the Student’s IEP. However, corrective action is required to address the lack of Prior Written Notice that was required when District refused to provide a 1:1 aide to Student. See Corrective Action Chart.

2. Review and Revision of the IEP

Review and Revision of the IEP and 3(a) Content of IEP

The complaint alleges that the District did not revise the IEP to address a lack of progress toward the prior IEP goals in the June 3, 2014 IEP. The complaint also alleges that the District violated the IDEA by failing to include in the Student’s IEP goals to adequately address the Student’s present levels of performance and appropriate goals to address the Student’s progress in the June 3, 2014 IEP. The complaint further alleges that the District simply “cut and pasted” IEP goals from the Student’s October 7, 2013 IEP into the Student’s June 3, 2014 IEP, without addressing the Student’s lack of progress towards the goals.

The parties in this case addressed allegation (2) and (3)(a) together, concerning review and revision of the Student’s June 3, 2014 IEP and the content of that IEP. Because both allegations address the Student’s June 3, 2014 IEP and the alleged failure to appropriately revise the IEP concerning the Student’s progress toward the goals. The Department also addresses these claims together.

OAR 581-015-2225, concerning review and revision of IEPs, provides that school district’s must review a student’s IEP at least once every 365 days and revise the IEP to address any lack of expected progress toward a student’s annual goals and in the general education curriculum if appropriate . OAR 581-015-2200, concerning the content of IEPs, provides that a student’s IEP must include a statement of the student’s present levels of academic achievement and functional performance (PLAAFP) and must include measurable annual goals. Annual goals are statements that describe what a child can reasonably be expected to accomplish within a 12-month period in

the child's special education program.⁵ An IEP team need not draft goals in a manner that a parent finds optimal, as long as the goals are objectively measurable.⁶ Additionally, IEPs must include Present Levels of Academic Achievement and Functional Performance (PLAAFP) which are essential to develop a baseline for measuring student progress in the IEP.⁷

In this case, the District developed the Student's IEPs on: September 19, 2013, October 7, 2013, and June 3, 2014. Review of the documentation concerning the June 3, 2014 IEP meeting indicate that the IEP team discussed the Student's present levels during the June 3, 2014 IEP meeting, and that the PLAAFP in the Student's June 3, 2014 IEP added information not in the Student's previous October 7, 2013 IEP. It is also clear that the Student's goals and objectives had not been met at the time, and that the Student was making progress towards the goals. More importantly, the IEP team determined that the Student had recently presented behavior issues including a refusal to attend general education classes and the Student's desire to sleep rather than attend class. The IEP team determined that it would make a referral to the regional Educational Service District (ESD) to complete a Functional Behavior Assessment (FBA) to address the recent increase in the Student's behavior. Because the meeting occurred on June 3, 2014 and the school year ended on June 10, 2014, the District intended to obtain the FBA at the beginning of the 2014-2015 school year.

Based on the foregoing, the Department finds that the Student's June 3, 2014 IEP did address the Student's lack of progress to the extent possible, and that the lack of progress also could have resulted from the Student's recent behavior issues and avoidance of academic work. The IEP team could not create goals concerning the Student's behavior issues and concomitant lack of progress until completion of a FBA and an evaluation planning meeting.

The Department further finds that the District did not fail to include goals in the Student's June 3, 2014 IEP based upon the Student's present levels of performance. Although most of the goals, including the "Functional Math," "Reading," "Written Language," and "Social Skills" goals, as alleged, are identical to the goals in the Student's October 7, 2013 IEP, there is no indication that changes were required because the Student made progress towards these goals and had not yet achieved the goals and objectives. The Department finds that the District's *Response* in this case on these issues is appropriately read to assert that the lack of progress on the part of the Student occurred as a result of the Student's recent behavior issues and that the IEP team put in place a plan to address this, and that the plan could not be completed until completion of the FBA.

To the extent that the District's *Response* agrees that the Student's present levels were not updated, the Department finds that the documentation presented in this case demonstrates that the Student's present levels were indeed updated and relevant new information was added about the Student with respect to Health Class, Speech/ Language needs, and Occupational Therapy (OT).

The Department does not sustain the allegation that the District failed to address a lack of progress towards the IEP goals in the June 3, 2014 IEP. The Department also does not sustain the allegation that the District failed to include in the June 3, 2014 IEP goals to address the Student's present levels of performance and to address the Student's progress.

⁵ See *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

⁶ *Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011)

⁷ *Chase v. Mesa County Valley Sch. Dist. No. 51*, 53 IDELR 72 (D. Colo. 2009).

3. IEP Content

(a) Content of overall IEP, see above for analysis of this allegation

(b) Absence of PT goals

The complaint alleges the District violated the IDEA by failing to include in the Student's June 3, 2014 IEP any references to the PT goals or objectives despite the fact that the Student receives PT services.

The Student's June 3, 2014 IEP does not include a PT goal, although the Student's previous, October 7, 2013 IEP did include a PT goal. The October 7, 2013 IEP included one goal that Student can stand on one leg and swing the other (pendulum) for four cycles without hand support. There are also short term objectives related to exercise and movement. Although included in the October 7, 2013 IEP, the date on this actual goal page is September 19, 2013. The June 3, 2014 IEP does not include these goals, and instead it includes a PT consultation as a support for personnel (PE staff and MLC staff). The June 3, 2014 IEP also includes an OT consult for Student 30 minutes per month as a related service.

The Department finds that the Student's June 3, 2014 IEP appropriately did not include a PT goal. The Physical Therapist working with the Student provided an update to the Student's PLAAFP concerning the Student's progress with PT for the June 3, 2014 IEP. Because the Student's participation in the adaptive PE (weightlifting) class had become inconsistent, the Physical Therapist concluded and recommended that the Student be placed in a modified PE class during the then upcoming 2014-2015 school year. The Physical Therapist explained that participation in a modified general education class requires no PT goals, and requires only modification of the general curriculum in the particular PE class, in consultation with the Physical Therapist. Thus, the Student's June 3, 2014 IEP includes consultation in the related services section of the service summary page. The Department does not sustain the allegation that the District violated the IDEA by failing to include in the Student's June 3, 2014 IEP any reference to PT goals or objectives instead noting that PT was accounted for in different ways based on Student's current needs.

(c) Absence of Transition goals⁸

The complaint alleges that the District violated the IDEA by failing to include Transition goals in the Student's June 3, 2014 IEP⁹.

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP must include: appropriate measurable postsecondary goals based upon age-appropriate Transition assessments related to training, education, employment, and, if appropriate, independent living skills; and the Transition services (including courses of study) needed to assist the child in reaching those goals.¹⁰ The Transition plan must be tailored to reflect the particular skills and interests of the student.¹¹

With its *Response* in this case, the District provided a Transition goal sheet dated June 3, 2014, which the District acknowledged had not been included with the Student's IEP packet sent to the

⁸ Note this language is based on parent's filed narrative complaint.

⁹ *Id.*

¹⁰ 34 CFR 300.320 (b).

¹¹ *K.C. v. Mansfield Independent School District*, 52 IDELR 103 (N.D. Tex. 2009),

Parents, due to what was reported as a clerical error. This Transition goal for Student which was submitted during this investigation states that, "Given pre-direction and rule review, Student will perform assign tasks with supervision (accept feedback and follow directions) in 4 out of 5 trials as measured by teacher observation." Although the District claims it did develop both a Transition statement and a Transition goal for inclusion with the Student's IEP packet, the District clearly failed to provide this to the Parents and to include these materials with the actual IEP. It is not clear that other hard copies of the June 3, 2014 IEP ever included the Transition goal. Additionally, The October 7, 2013 IEP only notes Parent preferences for the postsecondary goals. The only indication of Transition assessments on the June 3, 2014 IEP is a notation that states administration of the Conover assessment. It is not clear which of Student's skills and interests are used in relation to the Transition planning for either of these documents and their respective goals. The Department therefore sustains this allegation, but only with respect to the IDEA's transition planning requirements.

The District should receive training concerning procedures to avoid Transition planning and IEP content issues in the future. See *Corrective Action*.

(d) Placement and Nonparticipation Justification Statements

The complaint alleges that the District violated the IDEA by failing to include in the Student's October 7, 2013 and June [3], 2014 IEPs an adequate statement of the Student's placement and failing to specify how much of the Student's day would consist of SDI and failing to specify precisely what SDI would be provided to the Student.

OAR 581-015-2200(1)(f) states that the IEP must include "An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule." Section (1)(d) requires "A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child * * *." As with all considerations of the IEP team, the decision to remove the child from the general education environment should center on the individual needs of the child.¹² An IEP satisfies this requirement if it indicates the percentage of time a student will spend in the general education classroom with nondisabled peers.¹³ Districts should ensure that parents of a child with a disability are members of any group that makes decisions regarding the educational placement of their child. See 34 CFR 300.501 (c)(1). The District's *Response* in this case states that the District "agrees it did not provide an adequate statement of the Student's placement and the nonparticipation justification does not detail what amount/extent of removal that the Student would not participate in general education settings." However, the District's *Response* then states: "The District disputes the allegation it violated the IDEA in both IEPs dated October 7, 2013 and June 3, 2014 by failing to specify how much of the Student's SDI would be provided. The service summary page on both IEPs state the areas of specially designed instruction (SDI) which the Student would receive and the anticipated amount/frequency and location of the SDI."

The Department agrees that the Nonparticipation Justification statements in both the Student's October 7, 2013 and June 3, 2014 IEPs, rather than stating the amount/extent of the removal as

¹² See *Columbus County (NC) Schs.*, 49 IDELR 51 (OCR 2007); and *Board of Educ. of New York City*, 48 IDELR 58 (SEA NY 2007).

¹³ *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008) (holding that an IEP was appropriate because it stated that a child would spend 74 percent of each school day in a general education classroom); and *Knox Cmty. Sch. Corp.*, 50 IDELR 265 (SEA IN 2008).

required by law, simply re-state why the Student needs to be removed from participating with nondisabled students in the regular classroom. Specifically, the October 7, 2013 IEP Nonparticipation Justification statement states in the "amount/extent of the removal" section: "[The Student] requires SDI in Math, Reading, Written Language." The document further states that "Student needs SDI due to low grade level achievement." The June 3, 2014 IEP Nonparticipation Justification statement states in the "amount/extent of the removal" section: "[The Student] needs to be removed for functional academics, social skills/Transition & speech." The document further reads "Student requires SDI due to low grade level achievement. Therefore, the June 3, 2014 IEP does explain the amount and extent of removal (for the courses impacted) and provides a reason to justify the removal.

Therefore, the Department does not find that the IEPs do not meet their requirements with respect to the Nonparticipation Justification portion of the documents.

Concerning the placement statements in the October 7, 2013 and June 3, 2014 IEPs, both placement statements are incomplete, in that they state: "Regular education with pullout for specially designed instruction in"[sic]. The placement statements are incomplete in that they appear to be about to state in what areas SDI will be provided, but then are left blank. The Department concludes that the placement statements in the October 7, 2013 and June 3, 2014 IEPs are on their face incomplete. Although the areas of SDI may be determined by reviewing the Service Summary on the previous page in the IEP, the placement statements themselves are incomplete. While this may be a slight omission, parent participation is required for placement determinations under the IDEA, and the fact that this integral information is left blank on the placement page, would indicate that Parents are not afforded the opportunity to participate with respect to placement decisions related to which regular education courses the Student would receive pull-out services in. As the section is blank, it appears the Student could be pulled out of all classes at any time, or likewise no classes, based upon discretion of the District. The Department sustains this portion of the allegation.

Finally, the Department concludes that the IEPs do specify precisely what SDI would be provided to the Student. This information is found on the service summary page on each IEP.

The Department sustains the allegation only in respect to the blank portion of the Student's placement pages.

The Department concludes that the District should receive training on completing the Special Education Placement Determination Form. *See Corrective Action.*

(e) Refusal of 1:1 EA, use of peer tutors and use of Student's compulsion to pick up trash as a reward without consent of the Parents.

The complaint alleges that the District violated the IDEA by failing to include a 1:1 educational assistant for the Student, despite the Parents' request for a 1:1 EA; and by providing "peer tutors" for the Student and by inappropriately including in the Student's IEP the use of the Student's compulsion to pick up trash on school grounds as a "reward," without the consent of the Parents.

The Department finds that the record does not show a reason why peer tutors could not be used to accompany the Student to most of the Student's general education classes. In their *Reply*, the Parents argue that these Students are not able to provide the "high level of supervision" mentioned in the Student's October 7, 2013 and June 3, 2014 IEPs; and that adult EAs should accompany the Student to all of general education classes. However, the IEPs do not call for an adult 1:1 aide for Student. The District's peer tutor program, as described in the findings made above, is not on its

face an inappropriate way to provide 1:1 assistance during the Student's general education and transition period between classes. The peer tutors are always supervised, in the general education classroom by the general education teacher and in the MLC by the special education teacher and other EAs. In the MLC, in addition to the special education teacher, an EA is also assigned to the Student. The Department concludes that the failure to include a 1:1 EA for the Student, instead of a peer tutor is not a violation of the IDEA under the circumstances of this case.

Concerning the use of the Student's compulsion to pick up trash as a reward without the consent of the Parents, the Department concludes that the communication log note from the Parent dated January 23, 2014 cannot reasonably be construed as a request that the Student not pick up trash. Additionally, when the IEP team, discussed the matter during the June 3, 2014 IEP meeting, the Parent agreed with the work experience plan that included cleanup activities and work with the custodian. Finally, there is no provision in the IDEA that requires parent consent in order for students to pick up trash. The Department concludes that the District did not use the Student's compulsion to pick up trash without the consent of the Parents nor did District violate the IDEA in this respect.

Accordingly, the Department does not sustain the allegations.

(f) Assistive Technology (AT) not provided on Student's IEPs

The complaint alleges the District did not provide AT to the Student on the 2013 or 2014 IEPs, despite a documented need for AT.

The Student's September 19, 2013, October 7, 2013 and June 3, 2014 IEPs all include AT, including a calculator and access to a word processor. The Student used the computer to type in the MLC, and the special education teacher used the smart board. The Department concludes that all three of the Student's IEPs in this case included AT in the Supplementary Aids/Services: Modifications/Accommodations portion of the service summaries on all three IEPs. The Department does not sustain the allegation that the District did not provide AT to the Student on the 2013 or 2014 IEPs.

4. Parent Participation

The complaint alleges that the District violated the IDEA by inappropriately using the Student's compulsion to pick up trash on school grounds as a reward without the consent of the Parents.

The Department's findings on allegation 3(e), above, include a finding that the District did not use the Student's compulsion to pick up trash on school grounds without the consent of the Parents. Thus, the Department does not sustain this allegation. Additionally, the records show that a Parent was present at and participated in each IEP meeting under investigation during the relevant time frame.

This allegation is not substantiated.

CORRECTIVE ACTION¹⁴
In the Matter of North Bend School District
 Case No. 14-054-033

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

No.	Action Required	Submissions ¹⁵	Due Date
(1)	<p><u>Staff Training- Transition</u></p> <p>The District will schedule a webinar with Sally Simich, ODE Transition Specialist, to provide training on developing an appropriate Transition plan to any administrators, staff, and related services personnel, including ESD and contractors, who may participate in IEP meetings for secondary students.</p>	<p>Determine and schedule a date for a training webinar, and submit an e-mail to ODE, including the list of participants/positions to be trained. Submit proposed date of webinar and list of trainees to ODE by January 19, 2015.</p> <p>Upon completion of the webinar, submit a signed and dated list of participants to ODE. Submit date of completion of webinar and signed dated list to ODE by March 2, 2015</p> <p>When submitting documentation by e-mail, please Include the following ODE staff members in the e-mail distribution.</p> <p>raeann.ray@state.or.us; jan.burgoyne@state.or.us.</p>	<p>January 19, 2015.</p> <p>March 2, 2015</p>
(2)	<p><u>Staff Training- Prior Written Notice</u></p> <p>The District will present to all staff who work with special education students training on Prior Written Notice requirements via email or in person.</p>	<p>Copy of training materials, roster of staff in attendance or receipt, and date of training administration should be submitted to ODE via email.</p> <p>When submitting documentation by e-mail, please Include the following ODE staff members in the e-mail</p>	<p>March 30, 2015</p>

¹⁴ 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)).

¹⁵ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

		distribution. <u>raeann.ray@state.or.us;</u> <u>ian.burgoyne@state.or.us.</u>	
--	--	---	--

Dated this 2nd Day of December, 2014



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Learning/Student Services

Mailing Date: December 2, 2014