

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lincoln County SD)
)
)
)

FINDINGS OF FACT
CONCLUSIONS AND
FINAL ORDER
Case No. 14-054-035

I. BACKGROUND

On October 16, 2014, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) who formerly resided in the Lincoln County School District (District). The Student resided in and attended school in the Lincoln County SD during the 2013-2014 school year. Currently, the Parents live in, and the Student attends school in another state. The Parents 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 on October 17, 2014.

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. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint; or for extenuating circumstances.

On October 27, 2014, 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 November 10, 2014.

On November 3, 2014, the Parents submitted a packet of materials for the Department's investigator to review. In total, the Parents provided these materials:

- A. Progress Reports, dated 6/11/14;
- B. HS Transcript from new district;
- C. Out-of-state IEP, 5/16/2013;
- D. Meeting Notices;
- E. Emails between District and Parents;
- F. Oregon IEP, dated 11/19/2013 and 4/15/2014;
- G. Prior Written Notices;
- H. Meeting Minutes;
- I. Speech/Language Evaluation Report;
- J. Assessment Plan;
- K. Consent for Evaluation;
- L. LCSD Diploma Options document;
- M. Meeting Agendas;
- N. Hearing Impairment Eligibility Statement;
- O. Personal Education Plan Draft;
- P. Out-of-state IEP, 10/6/2014;
- Q. Autism Spectrum Disorder (ASD) Eligibility Statement;
- R. Medical Statement;
- S. ASD Evaluation Report;

- T. Functional Communication Assessment;
- U. Parent Journal.

On November 10, 2014, the District submitted a *Response* indicating they disputed all allegations of the Parent's complaint. In total, the District provided these materials;

- A. District Response Letter;
- B. District School Year Calendar 2013-2014;
- C. Enrollment Materials;
- D. Student's Transcript;
- E. Diploma Options Document;
- F. Cumulative Record Document;
- G. Meeting Minutes;
- H. Consent for Evaluation Document;
- I. Meeting Notes;
- J. Assessment Planning Document;
- K. Prior Written Notices;
- L. Special Education Paperwork Checklists;
- M. Statements of Eligibility for ASD, Hearing Impairment (HI), and Communication Disorder (CD);
- N. Autism Spectrum Disorder (ASD) Evaluation Report;
- O. Functional Communication Assessment;
- P. Medical Statement;
- Q. Consent for Initial Provision of Special Education;
- R. Speech/Language Evaluation Report;
- S. IEP, dated 11/19/2013;
- T. Progress Reports from the 2013-2014 School Year;
- U. Records Request sent to non-Oregon state and Parent Permission for Record's Release;
- V. Out-of-State IEP, dated 5/16/2013;
- W. 2013-2014 Emails between Parents and District;
- X. Pertinent District Policies and Procedures;
- Y. List of Staff Knowledgeable about the Complaint Issues;
- Z. Personal Education Plan Draft;
- AA. 2013-2014 Curriculum Based Measurements;
- BB. 2013-2014 Behavioral Data.

During the interviews, District staff gave the complaint investigator additional materials. These documents were paper copies, and included:

- A. The Student's attendance record for 2013-2014 school year;
- B. A Prior Notice about Consent for Evaluation (dated 10/30/2013);
- C. Revised Oregon IEP (dated 4/23/14);
- D. A sample of speech/language specially designed instruction;
- E. A copy of the District's flow chart outlining process for integrating transfer students into the District's special education program.

The investigator scanned and forwarded these new documents to the Parent via email.

On November 14, 2014, the Department extended the investigation timeline by 21 days due to an unforeseen emergency situation and subsequent exceptional circumstances. This established a new due date of January 5, 2015, for issuance of the Final Order. This order is timely.

The Department's complaint investigator determined that interviews were needed. On December 5, 2014, the Department's complaint investigator interviewed the Parents via Skype technology. On November 11, 2014, the complaint investigator interviewed on site two Special Education Teachers; the District Special Education Director; a High School Counselor; a Regular Education Teacher; a Speech/language Pathologist; a School Psychologist; and an Autism Spectrum Disorder (ASD) Consultant. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' 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 October 16, 2013 to the filing of this complaint on October 16, 2014.

	Allegations	Conclusions
1.	<p><u>IEP Team:</u></p> <p>a. The Parent alleges the District violated the IDEA when it held an Individualized Education Plan (IEP) meeting on November 19, 2013 that did not include a regular education teacher or a District representative qualified to provide or supervise the provision of special education.</p> <p>OAR 581-015-2210 (1) (c) (e) & (4) & 34 CFR 300.321</p>	<p><u>Substantiated in part:</u></p> <p>The School Psychologist is the District representative for the meeting in question here, and could commit the District to the use of any needed available resources and supervises special education instruction and has acted in this role for the District many other times. The District stated one Learning Specialist served in the regular education teacher role for the IEP meeting in question, but another Learning Specialist actually signed off on the IEP meeting form beside the regular education teacher signature line. The Learning Specialist who the District said was the Regular Education Teacher signed the form as the special education teacher. Additionally, there is no indication that the person who signed the IEP in question as the regular education teacher, is licensed to teach regular education courses, nor that she currently teaches any regular education courses. Rather, the record does show she provides special education to the Student. Finally, at the time of this meeting, the Student may have been participating in regular education courses and the Parents desired regular education courses with modifications for Student. Therefore, the Department substantiates this allegation with respect to the need of a regular education teacher at the IEP meeting.</p>

<p>2.</p>	<p><u>Transfer Students & General Evaluation and Reevaluation Procedures:</u></p> <p>a. The Parent alleges the District violated the IDEA when it failed to complete the requirements for a student transferring into the District from another state in a timely manner. Specifically, the District did not:</p> <p>i. Complete the initial evaluation within 60 school days from the date the Parent signed consent to the date of the eligibility meeting;</p> <p>OAR 581-015-2110 (5) (a) & 34 CFR 300.301</p> <p>ii. Provide a free appropriate public education (FAPE) (including services comparable to those described in the Student's IEP from the previous district) until the District developed, adopted and implemented a new IEP.</p> <p>OAR 581-015-2230 (2) & 34 CFR 300.323 (f)</p>	<p><u>Not Substantiated:</u></p> <p>The District adopted the previous state's IEP and implemented it for the Student until a determination was made to evaluate the Student for Oregon eligibility requirements. The District did implement the out-of-state IEP until an evaluation was completed and a subsequent Oregon IEP was adopted. Once the District had obtained consent to evaluate for Communication Disorder (CD) and Autism Spectrum Disorder (ASD), it completed the evaluations and eligibility determinations within the 60 school day timeline.</p>
<p>3.</p>	<p><u>Autism Spectrum Disorder Eligibility:</u></p> <p>a. The Parent alleges the District violated the IDEA when it told the Parent the Student had to be evaluated three different times by qualified school personnel in order to be found eligible as a student with Autism Spectrum Disorder.</p> <p>OAR 581-015-2130 & 34 CFR 300.8 & 34 CFR 300.306</p>	<p><u>Not Substantiated:</u></p> <p>The District first found the Student eligible with a Communication Disorder in November, 2013, and finalized the ASD eligibility on March 7, 2014. The Parents were confused about the length of time it took for the District to complete both evaluation processes. However, there is no evidence to support the allegation that the District told the Parents the Student needed three different evaluations for ASD eligibility. Therefore, the Department does not substantiate this allegation.</p>
<p>4.</p>	<p><u>Content of the IEP:</u></p> <p>a. The Parent alleges the District violated the IDEA when it did not include assistive technology, accommodations and modifications, and supplementary aids and services to support the Student in working towards earning a diploma.</p>	<p><u>Not Substantiated:</u></p> <p>In April the team met twice to discuss modifications to support the Student in class and added accommodations and modifications to the Student's IEP, at that time. This was not done to support the Student in earning a modified diploma, but rather to support the Student in the regular education Health class.</p>

	OAR 581-015-2200 & 34 CFR 300.320	These supports were based on the Student's needs as determined by the IEP team. The Department does not substantiate this allegation.
5.	<p><u>Free Appropriate Public Education (FAPE)- Denial of FAPE</u></p> <p>a. The Parent alleges the District denied the Student a FAPE while the Student was enrolled in District during the 2013-2014 school year.</p> <p>OAR 581-015-2040 & 34 CFR 300.101</p>	<p><u>Not Substantiated:</u></p> <p>Given the fact that the Student received educational benefit, and that the procedural errors were not significant, the Department finds the District did provide FAPE and does not substantiate this allegation.</p>

III. FINDINGS OF FACT:

Background Information:

1. The Student is 15 years old, in the 10th grade, and is currently enrolled in a school district out-of-state. During the 2013-2014 school year, the Student attended school in the Lincoln County School District. The Parents and the Student moved back out-of-state in the summer of 2014.
2. The Student and family moved to the Lincoln County School District during the summer of 2013. At the time, the Student was eligible for special education as a student with three areas of disability as determined by an out-of-state school district: Autism Spectrum Disorder, Auditory Impairment, and Speech Impairment. These eligibilities were established on May 16, 2011 in the other state.
3. The May 16, 2013 out-of-state IEP is 76 pages long and is organized differently than standard Oregon IEPs. The first section of the IEP is a list of "assurances"—a variety of issues the team has considered, and the result of those considerations. For example, the team considered a least restrictive environment (LRE), and various supplementary services that the Student needed to be successful in the LRE. As a result, the team specified the Student's placement as "Self-Contained, Mild/Moderate/Severe, Regular Campus, more than 60% of Day." The out-of-state IEP team noted the Student's IEP would also serve as the Student's Personal Graduation Plan. The team specified on this document that the Student would take benchmark testing on a "modified level". Services to be provided to the Student were described as Alternate Algebra, Alternate English, Alternate Biology and Alternate World Geography I—all provided in the self-contained setting along with Reading, speech/language therapy, tutorials, and auditory impairment consultation. PE was to be provided in the regular education setting.
4. In the May 16, 2013 IEP, the out-of-state team listed specific accommodations and modifications as follows: Note-taking assistance; teach modified (standardized assessment) Essential Knowledge and Skills or reduce number of (other state's standards); modified instruction; behavior management plan; modify test by providing orally on request; checks for understanding; provide hard copies of notes for lectures; alternate assignments; provide

place for short breaks for cool down as needed; and, altered forms of materials. The team determined that the Student would take the State of (other state) Assessments of Academic Readiness for the following reasons:

- a. Student has a significant cognitive disability that affects the Student's intellectual potential and is documented as such in the Student's IEP;
 - b. Requires specialized supports to access the grade-level curriculum and environment;
 - c. Requires intensive, individualized instruction in a variety of instructional settings;
 - d. Accesses and participates in the grade-level standards through prerequisite skills; and,
 - e. Demonstrates knowledge and skills through performance tasks.
5. The out-of-state team also agreed that the Student would enter high school in the fall of 2014 "...on the minimum plan to graduate on an IEP." In the Present Level of Academic Achievement and Function Performance, the team noted the Student's skills as follows:
- a. Reads at the 4.5 grade level, approximately 100 words per minute;
 - b. Answers questions on characters and setting when reading independently;
 - c. Generates and writes short sentences;
 - d. Adds and subtracts with regrouping, uses a calculator adequately to answer more complex computational problems;
 - e. Expresses wants and needs, retells stories, relays messages to teachers;
 - f. Demonstrates strength in listening comprehension;
 - g. Follows multi-step oral directions and fluency is within normal limits;
 - h. Most successful in small quiet groups. Is sweet and cooperative; and,
 - i. Has good attendance, is punctual, and completes all tasks, very organized.
6. Further, the team noted the Student needed to work on adapting to new environments, managing frustration in completing tasks, pronouncing multi-syllabic words, writing more complex sentences, telling time, and completing multi-step math problems.
7. The Student attended part of this May 16, 2013 meeting and discussed transition issues with the group. The Student told the team the Student wanted to live independently after high school, and to have a job and earn money. Other than that, the Student could not be more specific about future plans, goals, or job interests. The team agreed that the Student would work towards earning a "Graduation Pursuant to an IEP". In the IEP this is described as "The Student has satisfactorily completed the state's or district's (whichever is greater) required standards through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program as well as the credit requirements under the minimum high school program, including participation in the required assessments."
8. The final 42 pages of the out-of-state May 16, 2013 IEP are goal pages—all of which appear to be related to out-of-state curriculum standards. Each goal defines the Standard, the Goal, the Person Responsible, and at least one objective.

Chronology:

9. On August 20, 2013, the Parents went to the local high school and gave the staff a copy of the Student's IEP from the out-of-state district, dated May 16, 2013. On that same day, the parents signed a request/permission for records from the prior school district. Then, on August 29, 2013, the parents met with the local High School Principal, a Special Education Teacher from the local high school, and a Special Education Teacher from another high

school in the District.¹ This team reviewed the Student's IEP from out-of-state and decided to place the Student in the self-contained program at the largest high school in the District.

10. The Student started school at the District high school on September 4, 2013 and was placed in a self-contained program at the high school. This program serves students with disabilities whose IEP placement is defined as "60% or more of the day in a special or separate class, i.e., life skills class, behavioral support class. The Student's school day in this program started at 8:22 a.m. and ended at 2:30 p.m. The Student took classes in Daily Living Skills, Functional Reading, Functional Math, and Functional Writing. All classes were part of the self-contained program. The Student also received Speech/Language services in oral, motor, and articulation skills, and expressive language one time per week for 30 minutes from the Speech/Language Therapist.
11. On September 27, 2013, the School Psychologist reviewed the Student's out-of-state IEP and completed a District form called the "Assessment Planning Document". In this document, the School Psychologist recorded pertinent information about the Student in the areas of Health, Vision, Hearing, Social/Emotional Status, General Intelligence, Academic Performance, Communication and Motor Abilities. The School Psychologist noted the team needed a medical statement to rule out other physical or sensory factors, and current levels of speech and language development.
12. On October 30, 2013, the Speech/Language Therapist prepared a Consent for Evaluation form for a Communication Disorder evaluation and presented it to one of the Parents who signed it. In the consent form, the Speech/Language Therapist noted the Student had an educational eligibility of Autism Spectrum Disorder that would "be looked at in the near future."
13. The Speech/Language Therapist evaluated the Student in early November, 2013, and completed an evaluation report on November 14, 2013. In the report the therapist noted that as a result of the testing, the Student continued to qualify as a student with a communication disorder.
14. The IEP team met on November 19, 2013. The team reviewed the Speech/Language Evaluation and agreed that the Student was eligible for special education as a student with a Communication Disorder. The team also reviewed information about the Student's hearing impairment from the out-of-state eligibility and IEP documents. Prior to the meeting, a District Hearing Specialist had reviewed the out-of state paperwork for the Student for eligibility in this area, and had informed the District staff that the Student would not meet Oregon eligibility criteria as a student with a Hearing Impairment. This determination was due to the fact that the Student's medical and health assessments from 2010 and 2011 noted that there was no evidence that Student ever met Oregon's requirements for tone average loss, or a sensory-neural conductive loss that is determined to be not treatable. The group reviewed paperwork that included an April 26, 2011 medical statement, a January 11, 2011 audiology assessment, a February 5, 2010 speech/language assessment, and a May 10, 2010 educational achievement assessment.² The team discussed evaluating the Student for eligibility as a student with Autism Spectrum Disorder, and one of the Parents signed consent for this evaluation.

¹ The District has four high schools, located geographically around the District. In order to provide more comprehensive services to students with multiple needs, the District has located a program at the largest high school in the District.

² The Hearing Specialist had reviewed these same documents.

15. Team members at the November 19, 2013 IEP meeting included the High School Counselor who attended the first part of the meeting to present information on diploma options for students in the District. The Speech/Language Therapist attended, as did a School Psychologist, Autism Consultant, and two Learning Specialists.³ The Principal and the Teacher for Deaf and Hard of Hearing were invited to the meeting but did not attend. The School Psychologist was the District representative for the meeting, and is qualified to supervise the provision of special education services per District. The District reported that one Learning Specialist was acting in the regular education teacher position at the meeting, because she taught the Student Reading, Writing, and Math. However, the IEP dated November 19, 2013 has this particular Learning Specialist's name signed and printed above special education teacher/provider instead of above the regular education teacher space. Another Learning Specialist in the District signed the IEP above the regular education teacher signature line. The Student had no regular education classes at the time of the meeting and the IEP called for all instruction in a special education setting.

16. The team also wrote a new IEP for the Student at the November 19, 2013 meeting. The following chart is a description of the decisions reflected in the November 19, 2013 IEP:

Consideration of Special Factors:	<ul style="list-style-type: none"> • Student needs assistive technology devices and services; • Student has communication needs; and, • Student is not deaf, hard of hearing or blind or visually impaired.
PLAAFP: Present Levels of Academic Achievement and Functional Performance	<ul style="list-style-type: none"> • Student works hard, has done a great job with the transition to LCSD and the self-contained program; • Parents want the Student to get a diploma, not a certificate; • Student is not eligible in Oregon as a student with a Hearing Impairment—although 5/16/2013 IEP noted the need for an updated Audiology assessment; • Student has a mild sensory-neural hearing loss; • Student qualifies for special education as a student with a Communication Disorder in the areas of phonology and syntax; • Student reads about 4.5 grade level, does math with one and two digits; and, • Student needs repeated instructions, small increments of learning.
District and Statewide Assessments:	<ul style="list-style-type: none"> • Student will not take State or District assessments as they are not given at the 9th grade level.
Goals:	<ul style="list-style-type: none"> • Expressive Language; • Speech; • Social Communication; • Math; • Writing; and, • Reading;
SDI: Specially Designed Instruction	<ul style="list-style-type: none"> • Math: 60 minutes weekly SPED class;

³ One of the Learning Specialists has dual licensure as a special education teacher and a general education teacher in Physical Education.

	<ul style="list-style-type: none"> • Reading: 120 minutes weekly SPED class; • Written Language: 60 minutes weekly SPED class; • Social Skills: 45 minutes weekly SPED class; and, • Speech/Language: 90 minutes monthly SPED class.
Related Services:	<ul style="list-style-type: none"> • Transportation
Supplementary Aids/Services, Modifications, Accommodations:	<ul style="list-style-type: none"> • School setting: Visual schedule; • Teaching mode: Visual prompts; • Support tools: Modified worksheets; • Instructional materials: modified curriculum; • Teaching mode: Check for comprehension; • Teaching Mode: Repeated review; • Assignments shortened to demonstrate mastery of material; • Instructional materials: Copy of class notes; • Instructional materials; and, • Extra time for completion.
Supports for School Personnel:	<ul style="list-style-type: none"> • None needed.
Non-Participation Justification:	<ul style="list-style-type: none"> • Student will receive specially designed instruction in the areas of Math, Reading, Writing, and Social Skills. The Student will be removed from the regular education setting for over 90% of the day. The Student would benefit from small group, specialized instruction to meet educational needs.
ESY: Extended School Year:	<ul style="list-style-type: none"> • None needed.
Placement Determination:	<ul style="list-style-type: none"> • Special or separate class more than 60% of the school day.

17. During the November 19, 2013 IEP meeting, the team discussed diploma options. The District believes that the choice of a diploma for any given student is part of the regular education curriculum. However, for students eligible for special education on active IEPs the District is committed to including the IEP team as part of the diploma decision-making process. During this IEP team meeting, the Parents expressed the point of view that they wanted their Student to earn at least a modified diploma, but they would also accept an extended diploma. They were opposed to any student earning any kind of certificate in lieu of a diploma. At the time of the meeting, the group did not finalize any diploma choice or planning. Also, during this meeting the Parent signed a Consent for Initial Placement in Special Education.

18. The team considered whether or not the Student would attend any classes in the regular education setting during the November 19, 2013 IEP meeting. Specifically, the group considered a 9th grade Health class as an option for regular education setting, but they did not make a final decision.

19. In January 2014, the Autism Consultant conducted the ASD evaluation. The Consultant conducted a Developmental Profile interview with the Parents; Reviewed the Student's file; Interviewed the Learning Specialist and two classroom assistants; and reviewed checklists they had each completed; completed a Behavior Rating Scale and observed the Student in three settings: special education classroom during a community activity, in the reading

classroom in a small group, and directly during the administration of the Autism Diagnostic Observation Schedule. From this, the Autism Consultant wrote the ASD Evaluation Report. In this report the Consultant outlined and compared the Student's early developmental profile with a current developmental profile and discussed areas of educational impact.

20. The Speech/Language Therapist observed the Student in the self-contained classroom and in individual speech sessions and also reviewed a Functional Communication Checklist completed by one of the teaching assistants. In addition, the Therapist reviewed a Pragmatics Profile of the Clinical Evaluation of Language Fundamentals (4) also completed by another teaching assistant. The Therapist then wrote a report on the Student's Functional Communication Skills and noted that the Student "demonstrates moderately impaired Social-communication Skills with adults, but significantly impaired skills with peers".
21. The IEP team met on February 27, 2014 to consider the results of the ASD evaluation. All team members agreed the Student met the criteria and was eligible as a student with ASD. However, the team did not have a current medical statement to review in order to rule out any physical factors that might account for the Student's difficulties. The Parents told District staff they had scheduled an appointment with their physician for March 14, 2014 and would bring the medical statement after that appointment. Consequently, the team reported they did not complete eligibility paperwork at that time. On March 6, 2014, the Parents called the Learning Specialist and informed the District they had gotten an earlier appointment with the doctor and now had a completed medical statement. The Parents brought the medical statement to the high school on March 7, 2014, and the Parents, learning specialist, and Autism Consultant all signed the eligibility statement on March 17, 2014. This evaluation was completed 59 school days after the Parent signed the consent form for an ASD evaluation.
22. The first semester ended on January 24, 2014. On January 28, 2014, with seven other students from the self-contained classroom and a teaching assistant, the Student began attending a 9th grade Health class. In preparation for this, the regular education Health Teacher received a copy of the Student's IEP services page and IEP goal pages. The Regular Education Teacher worked in conjunction with the Teaching Assistant to modify the assignments for the Student. Specifically, the Regular Education Teacher shortened assignments, minimized the subtleties in assignment completion, and focused on basic concepts. The Teacher also allowed additional time for the Student to complete assignments, and modified the grading system. At the end of the semester, the Student earned a grade of "B" and a half credit for the class.
23. On April 15, 2014, the Parents met with the Learning Specialist, School Counselor and School Psychologist to discuss the diploma options at an IEP meeting. The IEP meeting notes dated April 15, 2014 indicate that discussion focused primarily on diploma type and accommodations and modifications in Health (regular education) class. The Parents also expressed their concerns that the Student's curriculum was not modified as it had been in their former state, and that the Student was not attending enough regular education classes with modifications. The Counselor and the School Psychologist explained the differences in the Oregon diploma options, and again the Parents declined to choose one of the options. The discussion segued into the Student's current regular education Health class and the Parents stated they felt the Regular Education Teacher was not modifying the curriculum enough for the Student. They also expressed disappointment that the Health Teacher was not at the meeting. The Learning Specialist explained the Health Teacher had not been invited as the District staff understood the Parents wanted to discuss the diploma issue at this meeting. The notes show that one District staff member agreed that it appeared some of the accommodations and modifications in the IEP had not been clearly outlined for the

Health Teacher. The staff told the Parents they would organize another meeting with the Health Teacher to define clearly the necessary accommodations and modifications the Student needed in the class, although the notes further state that the Health Teacher had modified the standard level by giving student less homework to complete, fewer test questions, and alternative grading scale. Finally, the notes indicate the Parent was unhappy that the Health Teacher was not at the meeting, but the District stated that the Regular Education Teacher was not invited to the meeting as they were not aware the purpose of that meeting was to review the IEP, but rather the District thought the team was meeting to discuss the modified diploma and answer other Parent questions that did not require teacher input. The meeting notes only indicate the Meeting Title as: IEP Meeting. The meeting notes end by showing school staff will meet with Health Teacher to discuss accommodations and modifications on April 22, 2014 at 11:10 am. The parents are not noted as attendees at this meeting on the IEP meeting notes.

24. The Parents met with the Health Teacher, Principal, Teaching Assistant, Learning Specialist and School Psychologist again on April 22, 2014. At this meeting, the group discussed very specific accommodations and modifications to be instituted in the Health class to support the Student. The next day, on April 23, 2014 the IEP team met to revise the November 19, 2013 IEP. Specifically, the team added 160 minutes per year of consultation from the Autism Consultant and eight additional supplementary aids/services; modifications and accommodations to include:

- a. Teaching mode: Read directions, grade level materials and tests aloud;
- b. Teaching mode: Reteach/preteach content;
- c. School setting: Preferential seating: Please check for the Student's comfort to be at the front of the class;
- d. Person available to write responses if needed;
- e. Alternative test format and content;
- f. Alternative Grading scale based on modified level;
- g. Electronic text; and,
- h. Franklin Speller.

25. At this April 23, 2014 meeting, the Parents again discussed their concerns that the Student was not taking enough regular education classes in order to earn a diploma. District staff reminded the Parents that the meeting had not been scheduled to discuss diploma options.

26. District staff reported to Parent on the Student's progress on IEP goals and objectives on June 11, 2014. In Expressive Language, as of June 11, 2014, the Student was 90% fluent for tasks involving describing pictures, and was also able and willing to answer questions out loud in the classroom. The Student was successful in making an oral presentation to the Health class. The Student's production of consonant blends increase to 90% over the course of the school year. In Social Communication, the Student was able to ask for adult help in most situations, and was able to ease frustration when given calming time. The Student improved skills in relation to time, calendar, and money units. On the June 11, 2014 progress report the team noted the Student was assessed in reading at the 7th grade level with 99 words correct per minutes, and with reading comprehension skills at 80% correct at the 5th grade level. Finally, the Learning Specialist noted the Student took a leadership role daily in the classroom community meeting.

27. The Parent filed the complaint on October 16, 2014.

IV. DISCUSSION

I. IEP Team:

The Parent alleges the District violated the IDEA when it held an IEP meeting on November 19, 2013 that did not include a regular education teacher or a District representative qualified to provide or supervise the provision of special education.

Under OAR 581-015-2210 (1) (c) (e) and (4) ; and 34 CFR 300.321 the district must ensure that each IEP team has one or both parents, the child, if appropriate, and at least one regular education teacher if the child is or may be participating in the regular education environment. In addition, the team must include at least one special education teacher, an individual who can interpret instructional implications of evaluations and a representative of the district who is authorized to commit district resources and ensure that the services defined in the IEP will be provided.

In practice, it is not unusual for the district special education director to assign the district representative role to school administrators. Further, when the principal or assistant principal is not available to attend an IEP meeting, it is not unusual for that person to delegate the district representative responsibilities to a school counselor, School Psychologist, or special education teacher.

During the interview, both the School Psychologist and the Special Education Director verified that the School Psychologist often is assigned this responsibility when a school administrator cannot attend the meeting. District also noted the School Psychologist is their expert for this IEP process.

Therefore, the Department does not substantiate this portion of the allegation.

However, there is no evidence that a Regular Education Teacher was in attendance at the meeting. The District said a Learning Specialist met this role at the IEP team meeting held November 19, 2013, but there is no evidence in the record that she teaches a regular education course nor that she is a licensed regular education teacher. Furthermore, there were two Learning Specialists at the meeting, and the Learning Specialist the District stated was the regular education teacher signed the meeting participants page on the special education teacher signature line, which further indicates this specialist was a special educator rather than a regular education teacher. While the Student was not attending any regular education classes at the time of the November 19, 2013 meeting, the rule does not limit the Regular Education Teacher's presence at IEP meetings to only those children currently taking regular education courses. Rather, the rule states that if a child *may be* participating in the regular education environment at least one regular education teacher should be in attendance at the meeting, to review, revise and develop an IEP and determine supplementary aids and services, program modifications, and supports for school personnel as appropriate and to help suggest any necessary positive behavior interventions and supports or other strategies for the child.⁴ Here, the Parent clearly wanted the Student in a regular education environment. Additionally, the Student was enrolled in a regular education Health class in the spring semester, just months after the November meeting.

The Department therefore substantiates this portion of the allegation with respect to the participation of a regular education teacher at IEP team meetings. See Corrective Action.

⁴ OAR 581-015-2210(1)(c) and (4).

II. Transfer Students & General Evaluation and Reevaluation Procedures:

The Parent alleges the District violated the IDEA when it failed to complete the transfer process requirements for a student transferring into the District from another state, in a timely manner. Specifically, the District did not: complete the initial evaluation within 60 school days from the date the Parent signed consent to the date of the eligibility meeting; and provide a free appropriate public education (including services comparable to those described in the Student's IEP from the previous district) until the District developed, adopted and implemented a new IEP.

OAR 581-015-2230 outlines the responsibilities a district has when an eligible out-of-state student moves into an Oregon school district. First, the Oregon district must provide a free and appropriate public education with services comparable to those described in the Student's current IEP. Then, the Oregon district must decide if an evaluation is needed to determine Oregon eligibility, and if so, must conduct that evaluation following the precepts outlined in OAR 581-015-2110 for an initial evaluation. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility pursuant to OAR 581-015-2130(5)(a). OAR 581-015-2230 does not specify a specific timeline for this transfer process, other than the timelines given in the administrative rules for initial evaluations, which should be used as applicable.

In this case, the Student entered the District with three areas of eligibility which were established out-of-state, and a very lengthy, standards-based IEP. The District promptly requested the out-of-state educational records on August 20, 2013 upon the Student's enrollment. The Student's neighborhood school in the District did not offer the type of placement described in the out-of-state existing IEP; rather, on the District's continuum of services that placement option was located at a different high school. The neighborhood school organized an initial meeting with the Parents, but it was not defined as an IEP meeting. Although the Parents believe they signed a Consent for Evaluation for Special Education at that time, no such document could be produced during the investigation to substantiate that this meeting triggered the beginning of the evaluation period.

The District did not obtain consent to evaluate for communication disorder (CD) until October 30, 2013, approximately two months after the Student started school in the District, because the District had adopted the prior CD eligibility and implemented the existing IEP. The Prior Notice for Evaluation/Consent for Evaluation Form dated October 30, 2013 states that the Student moved into the District with a CD eligibility that is "Due to be re-evaluated. Previous testing is over three years old. We need to obtain Student's current levels of speech and language skills." The form also states that. "Student has also had an educational eligibility of Autism Spectrum Disorder. This area will also be looked at in the near future." The Parent signed and dated this form.

The investigation revealed that the District provided FAPE to Student along with comparable services and placement as described in the out-of-state IEP until it could complete Oregon eligibility and create an Oregon IEP. The Oregon IEP is also dated November 19, 2013 and the District states that it was implemented on November 19, 2013. Until this date, the Student received instruction in the Life Skills program and in the resource classroom settings, which was comparable to the placement required by the governing out-of-state IEP. Student received specially designed instruction in all subject areas pursuant to the former state's IEP. Finally, the District made accommodations for the Student's communication needs, visual preferences, hearing difficulty, learning style, and processing ability similar to those identified in the out-of-state IEP.

The Student's primary eligibility in the former state was Autism Spectrum Disorder, and the District obtained the Consent to Evaluate for autism on November 19, 2013. While this seems like a significant delay in the evaluation, the rule does not state precisely when evaluations should occur if determined necessary, nor when a new IEP should be developed if determined appropriate for out-of-state transfer students.⁵ The District did commence the Communications Disorder evaluations and eligibly more promptly than the autism evaluations, and District began the second eligibility determination (for autism) after parental consent was obtained. While it is a better practice to commence these evaluations more promptly for new out-of-state students if an evaluation is determined necessary, in order to meet the current needs of a student in an Oregon school, the District did provide evidence of following the basic procedural requirements in this regard.

Once the District had obtained consent to evaluate for Communication Disorder and Autism Spectrum Disorder, it completed the evaluations and eligibility determinations within the 60 school day timeline for each respective signed consent form. It did not conduct a full evaluation on the Student's eligibility for a Hearing Impairment (HI), as noted above, choosing instead to review old data from the previous district and state, and noting that the Student would not have met Oregon criteria for this disability eligibility under IDEA. As the rule above notes, the initial evaluation must only be conducted if determined necessary, so District was within their right to not evaluate for HI eligibility in Oregon.

This allegation is not substantiated.

III. Autism Spectrum Disorder Eligibility:

The Parent alleges that the District violated the IDEA when it told the Parent that the Student had to be evaluated three different times by qualified school personnel in order to be found eligible as a student with Autism Spectrum Disorder.

Under OAR 581-015-2130 & 34 CFR 300.8 and 34 CFR 300.306 a district is mandated to gather at least five and possibly six types of information for the team to consider in deciding whether or not a student is eligible for special education as a student with Autism Spectrum Disorder. These include a developmental profile; three observations; a communication assessment; a medical statement; and, a behavior rating tool. If necessary, the team must also conduct any other additional assessments necessary to determine the impact of the suspected disability on a student's educational performance.

Here, the Parents believed they had been told that the Student needed to be evaluated three different times for eligibility as a student with autism. When the Student arrived in Oregon from out-of-state, ASD was the Student's primary disability. The District first found the Student eligible with a Communication Disorder in November, 2013, and the District finalized the ASD eligibility for the Student on March 7, 2014. The Parents were confused about the length of time it took for the District to complete all of this, understandably, as the process was not streamlined. The consent for autism evaluation was signed on November 19, 2013. The team signed eligibility on March 7, 2014, meeting procedural requirements.

There is no evidence to support the allegation that the District told the Parents that the Student needed three different evaluations, nor that three different evaluations were conducted as a requirement for an initial Oregon autism eligibility.

Therefore, the Department does not substantiate this allegation.

⁵ See OAR 581-015-2230

IV. Content of the IEP

The Parent alleges the District violated the IDEA when it did not include assistive technology, accommodations and modifications, and supplementary aids and services to support the Student in working towards earning a diploma.

Under OAR 581-015-2200 and 34 CFR 300.320, a district must construct and implement an IEP that enables the child to be involved in, and make progress in, the regular education curriculum. Other Administrative Rules and state laws outside of IDEA define and clarify the specific types of diplomas offered in Oregon school districts. There is no jurisdiction for this order to examine rules and laws outside of IDEA, with respect to student diploma type. Nor is there an IEP content requirement that correlates to student diploma type. Rather, IDEA requires that IEP Content include supplementary aids or services and program modifications that will be provided for a child to advance appropriately toward annual goals and to be involved in regular education curriculum and to participate in extracurricular and other nonacademic activities.⁶

At the start of the second semester, the Student began taking a regular education Health class. In April the team met twice to discuss modifications to support the Student in this class, and added accommodations, and modifications to the Student's IEP. This was not done solely to support the Student in earning a modified diploma, but rather to support the Student in the regular education Health class in accordance with IDEA. The record shows Student was advancing appropriately toward annual goals and was involved in the regular education curriculum.

The Department does not substantiate this allegation.

V. Free Appropriate Public Education (FAPE):

The Parent alleges that the District denied the Student a Free Appropriate Public Education while the Student was enrolled in District during the 2013-2014 school year.

The legal requirement regarding free appropriate public education (FAPE) can be found in OAR 581-015-2040 and 34 CFR 300.101. School districts must provide special education and related services to all resident school-aged children with disabilities. In determining whether a District has denied Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.⁷ While harmless procedural errors do not constitute a denial of FAPE,⁸ "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."⁹ The IDEA requires school districts to provide a "basic floor of opportunity" to disabled students, consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit" to the child with the disability.¹⁰ A student's IEP need not address every medical diagnosis that a student receives or every condition that he or she has. Instead the IEP must address the unique special education and related service needs that arise from a student's qualifying disabilities.¹¹

Here, the District did place the Student immediately into a program that replicated the type and amount of instruction the Student had received in the other state, and by all accounts, the

⁶ OAR 581-015-2200(1)(d)

⁷ Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (U.S. 1982)

⁸ L.M v Capistrano Unified Sch. Dist., 556 F3d 900, 910 (9th Cir. 2008)

⁹ Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, 317 F.3d 1072, 1079 (9th Cir. Ariz. 2003)

¹⁰ Rowley, 458 U.S. at 200

¹¹ North St. Paul- Maplewood Indep. Sch. Dist. #622, 110 LRP 40253 (SEA MN 06/07/10).

Student thrived in the program. The Student was able to take a regular education Health class and eventually, the class was modified so that the Student was able to be successful and earn a B grade, as well as a half credit. The Student passed all District classes listed on the Academic Record dated August 19, 2014. The Student improved Speech/language skills, Social Communication skills, Math, Reading and Reading Comprehension skills over the course of the school year thus showing progress toward IEP goals.

Given the fact that the Student received educational benefit despite the one procedural error at the IEP meeting in question, the Department finds the District did provide FAPE to the Student and does not substantiate this allegation.

CORRECTIVE ACTION¹²

In the Matter of Lincoln County School District
Case No. 14-054-035

	Action Required	Submissions ¹³	Due Date
1.	Prepare training materials for all District staff responsible for conducting IEP meetings on team meeting requirements, particularly with respect to the attendance of regular education teachers, as well as required participants for all IEP meetings.	Provide roster of potential attendees, scheduled date of training, and copies of training materials to ODE for approval via email to raeann.ray@state.or.us and jan.burgoyne@state.or.us	February 2, 2015
2.	Conduct training for all appropriate District staff.	Produce a signed copy of attendance sheet and agenda of training to ODE via the email address provided above	March 27, 2015

Dated: this 2nd Day of January 2015



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

Mailing Date: January 2, 2015

¹² The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

¹³ Corrective action plans 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