

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Tillamook School District 9)
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)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 14-054-045

I. BACKGROUND

On December 23, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parents) of a student (Student) residing in the Tillamook School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District on December 23, 2014, by email.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On December 31, 2014, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On January 12, 2015, the District timely submitted its *Response* to the *Request for Response*, with accompanying documentation. The Parents have not provided a *Reply* in this case. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that onsite interviews of District staff were necessary in this case, and on January 28, 2015, the complaint investigator interviewed the District's Special Education Director, a Special Education Teacher (who is also the Student's Case Manager), a Principal and an Educational Assistant. The complaint investigator reviewed and considered all of the documents received in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from December 23, 2013 to the filing of this complaint on December 23, 2014.

	Allegations	Conclusions
1.	<p><u>Content of IEP</u></p> <p>The complaint alleges the District violated the IDEA by failing to include in the Student's IEP participation by the Student in school activities, including extracurricular and other nonacademic activities like "school concerts" and "Christmas activities".</p>	<p><u>Substantiated in part</u></p> <p>The Department substantiates the allegation that the District failed to include in the Student's IEP the necessary supplementary aids and services that are necessary for this Student to participate in extracurricular activities. Particularly,</p>

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

	<p>Relevant Law: OAR 581-015-2200(1)(d)(B) and 34 CFR 300.320.</p>	<p>because the District noted in its response that this Student would have needed an Educational Assistant (EA) to participate in the winter concert. However, the IEP in question did include the necessary information for Student in the nonparticipation justification statement. See <i>Corrective Action</i>.</p>
<p>2.</p>	<p><u>Least Restrictive Environment/Placement of the Child</u></p> <p>The complaint alleges the District violated the IDEA by refusing to place the Student "in school all day until the last 2 months of the school year, because of a violence problem last year (in kindergarten)." The complaint further alleges that the District has "dismissed" the Student's and Parents' request to "be in school."</p> <p>Relevant Law: OAR 581-015-2250, OAR 581-015-2240 and 34 CFR 300.114, 34 CFR 300.116, and 34 CFR 300.327.</p>	<p><u>Not Substantiated</u></p> <p>Review of the minutes of the December 9, 2014 IEP meeting, as well as the Prior Written Notice (PWN) issued, reveals that District staff explained the rationale of the continued incremental reintroduction of the Student to the general education classroom to the Parent. The District had documented reasons why the Student needed instruction in the placement that was selected. Further, the District had a documented plan for increasing the Student's instructional time and removal from general education peers. Finally, the record showed that District continue to work with Parents to reintegrate Student into the general education environment, based on the Student's needs. The Department does not substantiate the allegations that the District "dismissed" the Student's request to return the school for a full school day, nor does the Department substantiate the allegation that the continued placement in a shortened school day constitutes an inappropriate placement under the circumstances.</p>
<p>(3)</p>	<p><u>Parent Participation – General</u></p> <p>The complaint alleges that the District violated the IDEA by refusing to listen to the Parents and refusing to address the Parents' concerns about the Student's education.</p> <p>Relevant Law: OAR 581-015-2190 and 34 CFR 300.327, 300.501(b).</p>	<p><u>Not Substantiated</u></p> <p>Review of the minutes of the May 27, 2014, October 7, 2014 and December 9, 2014 IEP meetings clearly reveal that the Parents were allowed to fully participate in the meetings. District staff in attendance at all of these IEP meetings clearly listened to the concerns expressed by the Parents at all of the IEP meetings and responded by discussing the Parents concerns. As noted in the discussion concerning the placement issue, above, the Parent (or Parents when both were in attendance) indicated, as part of the IEP team, agreement with the IEP</p>

		team decisions at each of the three IEP meetings. Therefore, the Department does not substantiate the allegation that the District refused to listen to the Parents and refused to address the Parents' concerns about the Student's education.
(4)	<u>Proposed Corrective Action</u> The complaint requests the following corrective action: Place the Student "in school all day by Feb. 1st", and ensure the Student is receiving education." The complaint also states "There should be no reason that [the Student] can't have [the Student's] own aid, if needed."	The requested Corrective Action is not ordered, based upon the Department's findings in this case. Corrective Action is ordered concerning the one allegation that was substantiated in part by the Department as follows. See <i>Corrective Action</i> .

III. FINDINGS OF FACT

Background

1. The Student in this case is presently 6 years old and attended first grade in the District during the current (2014-2015) school year, until the Parent withdrew the Student from school, on January 14, 2015. The District initially determined eligibility for the Student under Section 504 of the Rehabilitation Act, based upon physical or mental impairment of "ADHD" and placed the Student on a Section 504 accommodation plan dated November 7, 2013. District modified that plan on February 24, 2014.
2. Under the 504 accommodation plan, the Student received "medical tutoring" due to behavior issues, beginning February 27, 2014. The District provided documentation of behavior incidents requiring physical restraint or seclusion which occurred on February 19, 2014, and February 25, 2014. The first incident involved the Student hitting and kicking the bus driver and refusing to leave the bus, and the second incident involved an incident in a general education classroom involving "Refusal, throwing books, ripping paper, barricading [Student barricaded self behind desks] in support station, destroying district/personal property, hitting, kicking, scratching, grabbing, turning over tables & furniture, head butting, pushing, screaming, slamming door."

Least Restrictive Environment/Placement of the Child and Parent Participation - General

3. On May 9, 2014, following requisite Parent consent and a Psychoeducational Assessment, the Student's IEP team, including the Parents, determined the Student was eligible for special education under the IDEA, as a student with Emotional Disturbance (ED). The IEP team, including one of the Student's Parents, developed an Individual Education Plan (IEP) dated May 27, 2014.
4. On May 27, 2014, one of the Student's Parents signed a consent for initial provision of special education services.
5. The Student's May 27, 2014 IEP required a placement of "Tutoring 1 hour a day, five days a week on school days." A handwritten note near the box on the form indicating the selection of this placement states it was selected because, it "...best meets [the Student's] needs for [the Student's]

behavior.” The Nonparticipation Justification statement on the IEP states the Student “is removed from the general education setting for 100% of [the Student’s] school day,” and explains the justification for the removal as follows: “[The Student] is earning [the Student’s] way back to the school setting by showing [the Student] can maintain good behavior for 80% of [the Student’s] tutoring time over 2 weeks. [The Student] is receiving specially designed instruction in the tutoring setting for [the Student’s] behavior and academics.”

6. The Service Summary of the Student’s May 27, 2014 IEP provides for Specially Designed Instruction (SDI) for 240 minutes per week in a “tutoring setting” beginning May 27, 2014. The Service Summary lists several “Supplementary Aids/Services; Modifications; Accommodations” including “Social Stories”, “First, Then”, “Play breaks”, “Short assignments”, “Frequent breaks”, “Red Timer”, “Verbal Praise”, “Button/Sticker card to trade for tangible reward”. IEP includes three “Social/Emotional” goals and Short-Term Objectives.
7. The meeting minutes of the May 27, 2014 IEP meeting state the “Team Decisions” as “Implement the IEP dated 5/27/2014 – Team will reconvene 4-6 weeks after school starts in September.” The Parent in attendance at this meeting signed on the page setting forth the team decisions and checked the “Agree” column by the Parent’s signature, as did all District staff in attendance at the meeting.
8. The Parent in attendance at the May 27, 2014 meeting expressed concern that the Student is “being defiant”. No other concerns or objections were noted from the Parent in attendance at the May 27, 2014 IEP meeting.
9. The Prior Written Notice (PWN) associated with the May 27, 2014 IEP meeting is dated May 27, 2014 and includes the statement that “The plan is to meet every 4-6 weeks and review [the Student’s] progress and keep moving [the Student] forward.” The PWN also states that the Student “was made eligible as a student with Emotional Disturbance and the team needed to develop [an] IEP.” The PWN also states that the Student “has made progress in [the Student’s] academics while in tutoring and at this time does not need academic goals.”
10. The IEP team, including one of the Parents, next met on October 7, 2014, to “review tutoring and progress”. At the meeting the Student’s tutor provided details concerning the strategies used during tutoring sessions to keep the Student on task. The meeting minutes of the October 7, 2014 IEP meeting state the “Team Decisions” as “Increase school day to 2 hrs. 9:30-11:30 in behavior classroom/gen.ed. Review in 2 weeks to see if anything needs to be changed. Review placement again in 6 wks.” The Parent in attendance at this meeting signed on the page setting forth the team decisions and checked the “Agree” column by the Parent’s signature, as did all District staff in attendance at the meeting. The Parent in attendance at the October 7, 2014 meeting stated the Parent could transport the Student to and from school and noted that the Student takes medication daily and is going to counseling bi-weekly and the Parent signed a document permitting the Student to meet with the school counselor, also. The Parent also asked if the Student and sibling could spend time together and the meeting minutes state the Student and the Student’s sibling will have recess together No other concerns or objections were noted from the Parent in attendance at the October 7, 2014 IEP meeting.
11. The Student’s October 7, 2014 IEP requires a placement of “Two hour school day – Special Education classroom with limited push in to general education classroom.” A handwritten note near the box on the form indicating the selection of this placement states “This is the first step forward in returning [the Student] to the general education setting.” The Nonparticipation Justification statement on the IEP states the Student “is removed from the general education setting for 72% of [the Student’s] school day”, and explains the justification for the removal as follows: “[The Student] is on a shortened school day. [The Student] requires specially designed instruction for [Student’s]

behavior and academics.” The Service Summary of the Student’s October 7, 2014 IEP provides for Specially Designed Instruction (SDI) for 240 minutes per week in “Resource/Class Room” beginning October 7, 2014. The Service Summary also lists several “Supplementary Aids/Services; Modifications; Accommodations” including “Social Stories”, “First, Then”, “Play breaks”, “Short assignments”, “Frequent breaks”, “Red Timer”, “Verbal Praise”, “Button/Sticker card to trade for tangible reward”.

12. The Prior Written Notice (PWN) associated with the October 7, 2014 IEP meeting is dated October 7, 2014 and includes the statement that “The team met to discuss [the Student’s] progress in tutoring and decided where to go from here. The team decided [the Student] has been successful enough in tutoring to return to the regular school day on a shortened schedule. [The Student] will attend school from 9:30-11:30 am. [The Student] will start [the Student’s] day in the Support station and be involved in a reading group, attend recess with [the Student’s] general education classroom and receive [the Student’s] math instruction from [the Student’s] general education teacher. [The Student] will be supported by an Educational Assistant when out of the support station. This will be reevaluated every two weeks making adjustments as needed. The team will meet again in six weeks to discuss [the Student’s] progress. Changes were made to [the Student’s] service plan to reflect these changes. The school counselor will now be seeing [the Student] instead of the school psychologist.” The PWN also states that the Student “has met [the Student’s] goal in the tutoring setting and will be given the opportunity to return to the general education setting.” The PWN also states the Student “is not ready for a regular school day. [The Student] needs to start with a smaller amount of time and be successful in that before extending [the Student’s] day.”
13. The IEP team, this time including both Parents, next met on December 9, 2014. The meeting minutes from the December 9, 2014 IEP meeting state the purpose of the meeting is “to review 6 week progress on reduced day.” The “classroom teacher” shared that the Student goes to a reading group upon arrival, goes to recess and then does “a little bit of math.” The minutes report “No explosive behaviors at this time.” One of the Parents in attendance at the December 9, 2014 meeting stated that the Student “talks about wanting to be (at) school full day.” The other Parent in attendance at the December 9, 2014 meeting expressed concern about the Student’s “progress & shortened day.” The minutes then state “Gradual increase in day for success to avoid going backwards” and “[IEP team] Back together 3rd week in February – Two more increments before full day – Work on taking breaks and strategies to be successful.” No other concerns or objections were noted from the Parents at the December 9, 2014 IEP meeting.
14. The meeting minutes of the December 9, 2014 IEP meeting state the “Team Decisions” as “To increase [the Student’s] day to start the morning and stay until 11:30. Meet again in 6 wks to look at increasing day again. Add transportation to the IEP. Start increased day after the winter break.”
15. The Parents signed on the page setting forth the team decisions and checked the “Agree” column by both of the Parents’ signatures, as did all District staff in attendance at the meeting. The Nonparticipation Justification statement on this IEP states the Student “is removed from the general education setting for 47% of [the Student’s] school day”, and explains the justification for the removal as follows: “[The Student] is on a shortened school day. [The Student] requires specially designed instruction for [the Student’s] behavior and academics.”
16. The Prior Written Notice (PWN) associated with the December 9, 2014 IEP meeting is dated December 9, 2014 and includes the statement that “The team met today to discuss [the Student’s] school day. The team said [the Student] is being successful at being in school for two hours a day. The team made the decision to extend [the Student’s] school day starting after Christmas break. [The Student] will also begin sped bus services again which will begin as soon as the bus people can make the arrangements. [The Student’s] school day will change to arriving at the beginning of the school day and going home at 11:30 am. This will be [the Student’s] schedule for 6 weeks and

then the team will come together and discuss [the Student's] progress and what changes will be made next." The PWN also states that the Student "has successfully attend[ed] school for six weeks on a two hour a day schedule" and We talked about the progression of adding time back to [the Student's] day and what that is going to look like if [the Student] is able to handle each extended increment. The next meeting will be the third week of February."

17. On January 14, 2015, the Parents removed the Student from school. On January 20, 2015, the District wrote a letter to the Parents acknowledging the withdrawal of the Student and stating the District "stands ready to provide special education and related services if you choose to have the services."

Content of IEP

18. One of the Parents called the District on December 17, 2014 and spoke with an Educational Assistant (EA) concerning whether the Student "would be able to come back and go on the field trip to carol with the other first graders around the community." The EA placed the Parent on hold and spoke with the Student's Special Education Teacher/Case Manager who told the EA to "inform the [Parent] that since it was outside of [the Student's] regular school day [the Student] would not be able to attend." The Parent "then asked if [the EA] could check to see if [the Student] would be allowed to come back on Friday and participate in the holiday program. [The EA] followed up with [the Student's Special Education Teacher/Case Manager] and the school secretary and it was a consensus that [the Student] had not been here for any of the rehearsals or practices in the previous two weeks; therefore, [the Student] could attend the performance with [the Student's] Parents, but would not be standing in front on the risers. [The Parent] asked [the EA] to give the Special Education Teacher/Case Manager and Principal a message that [the Parent] was going to the School Board right now to complain."
19. During the on-site investigation the Special Education Teacher/Case Manager confirmed the accuracy of the EA's statement concerning the call received on December 17, 2014.
20. In its Response, the District stated the following:

"Prior to the concert the Parent had called the school and asked about having [the Parent's] child participate in the school concert. [The Parent] was told that the child had not practiced the songs and did not know the songs. [The Special Education Director] was called by the Case Manager regarding this issue. [The Special Education Director's] response to the case manager was that the Student should be allowed to participate in the concert and we would have an EA with [the Student]. [The Student] may not know the songs but [the Student] could still participate. Neither the case manager nor [the Special Education Director] heard back from the Parent, although the Parent had said [the Parent] would call the District office and the board. [The Special Education Director] had assumed [the Parent] would call and [the Special Education Director] could talk to [the Parent] then or the case manager would talk to [the Parent] when [the Parent] picked [the Student] up from school. [The Special Education Director] had forgotten that the plan had just changed and [the Student] was going to be start riding the bus again. There was a lack of communication at this busy time of the year.

[The Special Education Director] did check with the Principal and Case Manager and they assured me that the Student had been in attendance on field trips both in kindergarten and this school year. [The Student] participated in a field trip to the pumpkin patch in October.

[The Special Education Director] will make sure the staff knows that even if a student is on a shortened day they should be given the opportunity to participate in special activities offered by the school and field trips.”

21. Also on December 17, 2014, the Special Education Director spoke to the Special Education Teacher/Case Manager and advised the teacher that the District would allow the Student to participate in the holiday concert on the afternoon of December 19, 2014.
22. The Special Education Director expected the Parent to call the District office, but then did not receive a call from the Parent. The Special Education Director also thought that the Special Education Teacher/Case Manager could tell the Parent that the Student could attend the concert when the Parent came to pick up the Student from school on December 18, 2014, but the Director reported they had forgotten that the District had recently agreed to transport the Student by bus at the December 9, 2014 IEP meeting, so the opportunity to speak with the Parent did not arise as anticipated.
23. The District did not call the Parent back about either the caroling activity on December 17, 2014 or the holiday concert on December 19, 2014.
24. The caroling activity took place on the afternoon of December 17, 2014, and the Student did not participate. Neither the Special Education Director nor the Special Education Teacher/Case Manager recalled the discussion about the caroling activity by other first-graders on the afternoon of December 17, 2014. The holiday concert took place the following Friday afternoon, on December 19, 2014. The Student and the Parents attended the concert, but the Student did not participate.
25. The Special Education Director is unaware of any written District policies concerning participation in extracurricular and other nonacademic activities, but understands that the District’s unwritten “policy” is to include students attending shortened school days in extracurricular and other nonacademic activities, whether the student is a general education or special education student.
26. Additionally, the Student’s Service Summary pages dated May 27, 2014, October 7, 2014 and the December 9, 2014 did not include any mention of extracurricular or nonacademic activities, other than in the pre-printed language in the “Nonparticipation Justification” statement on the IEP form. The percentages of nonparticipation and the explanations in these Service Summary pages do not otherwise mention extracurricular or nonacademic activities, as set forth in findings #2, 5 and 7, above.

IV. DISCUSSION

1. Content of IEP

The complaint alleges the District violated the IDEA by failing to include in the Student’s IEP participation by the Student in school activities, including extracurricular and other nonacademic activities like “school concerts” and “Christmas activities”.

OAR 581-015-2200(1)(d)(B) provides:

- (1) The individualized education program (IEP) must include:

* * * * *

- (d) 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:

* * * * *

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities * * * [.]

A child's IEP team must therefore ensure that each IEP addresses the supplementary aids and services that are appropriate and necessary for the child to participate in extracurricular and nonacademic settings if they are needed based on the Student's needs.² Even if a student is unable to participate in general education courses for academics, he or she may be able to participate in nonacademic activities with nondisabled peers.³ While IDEA does not require districts to provide nonacademic services and extracurricular activities to students with disabilities, districts are required to take the steps necessary to afford students an equal opportunity to participate in these activities.⁴ Finally, in some circumstances, an IEP team may choose to include specific extracurricular activities in a student's IEP at which point they become a necessary component of the student's education.⁵

The IDEA also requires each IEP to include an explanation of the extent, if any, to which a child will not participate with nondisabled children in the regular education class and in other activities which include participation in extracurricular and nonacademic activities.⁶ This is often referred to as the Nonparticipation Justification portion of the IEP.

The Department finds that in this case, the Student's IEPs in effect during the one year period preceding the filing of the complaint did not specifically address the Student's supplementary aids and services that were necessary for the Student's participation in extracurricular and other nonacademic activities. The statement on the District's IEP form in question does include the word "extracurricular" in the nonparticipation justification box; however, there is no information related to any needed supplementary aids or services for the Student to participate in extracurricular or nonacademic events." Although, a number of supplementary aids/services, modifications, and accommodations are listed on the May 27, 2014 IEP's Service Summary page to be provided to Student starting October 7, 2014 "throughout the school day." These included social stories, first then, play breaks, short assignments, frequent breaks, red timer, verbal praise, and button/sticker to trade for tangible reward. Additionally, none of the IEPs in effect during this time address the Student's participation in extracurricular and other nonacademic activities or any needed supplementary aids and services for such participation. Also none of the record indicates why these components were not necessary for this Student in the relevant IEPs. Finally Student's IEPs and Service Summary pages do not reflect the District's reported unwritten "policy" to allow students with reduced school days to participate in extracurricular and other nonacademic activities.

This is problematic in this case, because the Special Education Director reported they had properly advised other District staff that the District would allow the Student to participate in the holiday

² 34 CFR 300.117 and *Independent Sch. Dist. No. 12, Centennial v. Minnesota Dep't of Educ.*, 55 IDELR 140 (Minn. 2010).

³ *Liscio v. Woodland Hills Sch. Dist.*, 16 IDELR 861 (W.D. Pa. 1989) *aff'd*, 902 F. 2d 1561.

⁴ 34 CFR 300.107 and OAR 581-015-2070

⁵ *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990).

⁶ 34 CFR 300.320(a)(5)

concert on December 19, 2014 and that the District would provide an Educational Assistant (EA) to assist the Student during the concert, despite the fact that the Student's school day ended before the afternoon rehearsals for the holiday concert. This admission indicates District acknowledged the Student needed supplementary aids or services to participate in the extracurricular activity. However, this was not noted on the IEP as required. Also, the District did not then communicate this critical information, concerning the Student's ability to attend and participate in the holiday concert, to the Student's Parents. As such, the Student did not get to participate in the concert. Additionally, the District did not communicate to the Parents that the Student could participate in the caroling activity on the afternoon of December 17, 2014. Failing to notify the Parent of the child's ability to participate in these nonacademic activities after initially rejecting the Parent's request for the Student to participate, paired with an IEP and Placement that required a shortened day but which did not address any after school activities, did not give the Student the opportunity to participate.

The Department therefore substantiates the allegation in that the District failed to include in the Student's IEP that the Student needed supplementary aids or services to participate in extracurricular and other nonacademic activities. The Department finds that the appropriate remedy is to provide training to special education District staff concerning the inclusion in the IEPs of any impacted special education students the extent to which an individual student will participate in extracurricular and other nonacademic activities and what supplementary aids and services are necessary on the IEP in order for them to do so. See *Corrective Action*.

2. Least Restrictive Environment/Placement of the Child

The complaint alleges the District violated the IDEA by refusing to place the Student "in school all day until the last 2 months of the school year, because of a violence problem last year (in kindergarten)." The complaint further alleges that the District has "dismissed" the Student's and Parents' request to "be in school."

The issue in this allegation is thus whether the District refused to place the Student in school all day until the last two months of the year, despite the Parents' request the Student be in school for a full school day. For purposes of the analysis in this case, the essence of both OAR 581-015-2240 Requirement for Least Restrictive Environment (LRE) and OAR 581-015-2250, Placement of the Child, is that a child with a disability must be educated with children who do not have a disability, to the maximum extent appropriate. In these areas, the IDEA requires that students with disabilities receive their education in the regular education environment to the maximum extent appropriate or to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from student's nondisabled peers and community.⁷ Separate schooling or other removal of children with disabilities from the regular education environment should occur only if the nature or severity of the disability is such that education of a child in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁸ The IDEA also requires districts to make available a continuum of education placements that include "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions."⁹ A homebound instruction placement or medical tutoring may be necessary for some students to receive a Free Appropriate Public Education (FAPE).¹⁰ Homebound placements are not appropriate

⁷ 34 CFR 300.114 through 300.120

⁸ 34 CFR 300.114(a)(2)

⁹ 34 CFR 300.115(b)(1)

¹⁰ *Tindell v. Evansville- Vanderburgh Sch. Corp.*, 57 IDELR 71 (S.D. Ind. 2011) [homebound placement appropriate for student with such severe anxiety the he was unable to attend class outside of home] and *Georgetown Indep. Sch. Dist.*, 45 IDELR 116 (SEA TX 2005)[student with severe aplastic anemia required a homebound placement due to his immune-suppressed condition and high risk of infection at school].

for students with disabilities whose needs can be met in a less restrictive setting.¹¹ The decision of whether to place a student with a disability on homebound instruction is made by the IEP team.¹² Nothing in the IDEA requires a district to provide a full day of instruction to a homebound student, or to provide the same amount of special education instruction to the student as they would receive while attending school.¹³ However, if this sort of placement is appropriate, the amount of homebound instruction must be based on the student's unique needs.¹⁴ Finally, it is important to note the LRE requirements apply across the board to extracurricular activities and nonacademic services.¹⁵

The Student's IEP dated May 27, 2014 shows Student has Specially Designed Instruction only for social/emotional needs 240 minutes per week in a resource room. This IEP states that "Student wants to learn but behavior gets in the way" and that "Student is friendly with other students." It goes on to note that "...Student has made much progress in academics and behavior since the beginning of March..." The section labelled "Plan for school year 2014-2015" states: Student will start in medical tutoring for the first 4-6 weeks of the school year. After Student shows Student can remain on task and Student's behavior is successful, Student will then be allowed back in school into the regular day...Student will start in the behavior room and earn Student's way out into the classroom..." The May 27, 2014 IEP also states in the Present Levels section that, "Student has progressed and can stay on task 60-80% of the time..." The Placement Determination form dated May 26, 2014 states that the team selected a placement of tutoring one hour a day five days a week on school days which was selected because it "...best meets Student's needs for behavior" and it further shows the placement of general education classroom with support was considered but rejected by the team because it was "over stimulating with too many distractions." The goals for this IEP are social and emotional in nature and require Student to "...recognize Students emotional state and self-calm with 80% accuracy in 4 of 5 trials" and to "demonstrate on task behavior by May 2015 for 15 minutes as measured in 4 out of 5 trials" and to "demonstrate safe and appropriate behavior 80% of the time."

After implementing this IEP with success, the team met again to review Student's needs based on the recent levels of progress. A note on the annual IEP document dated October 7, 2014 states that "... team met to discuss Student's tutoring and behavior and decided where the educational needs are at this time. The team has decided to bring Student back into the regular school day for a limited amount of time and begin to see if [Student] can be successful in this setting. Student will attend school for two hours a day for a trail (sic) period of 4-6 weeks, re-evaluating by checking in with Student's program. Team will meet again in six weeks." The placement determination form dated October 7, 2014 says the placement selected for Student is two hour school day, special education classroom with limited push in to general education classroom. This form notes that placement was selected because it is the 'first step forward- in returning Student to general education setting...." The only other option that was considered at this time was one hour of tutoring per day which was rejected because "Student met tutoring goal and can now return to regular school setting..." there is no discussion of a regular education classroom or full school day being discussed for the Student at this time. The team meeting notes dated October 7, 2014 indicate Student is successful in tutoring. Further, notes from October 1, 2014 state that Student has retained academic skills Student had in May 2014 and that with 1:1 instruction and assistance, Student was able to complete most tasks presented including worksheets... Student responded well

¹¹ *Lourdes (OR) Pub. Charter Sch.*, 57 IDELR 53 (OCR 2011) and *Brado v. Weast*, 53 IDELR 316 (D. Md. 2010)

¹² See *Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak*, 53 IDELR 269 (OSERS 2009)

¹³ *Renton Sch. Dist.*, 111 LRP 72136 (SEA WA 2011); *Independent Sch. Dist. of Boise No. 1*, 35 IDELR 147 (SEA ID 2001).

¹⁴ *Torrance Unified Sch. Dist.*, 111 LRP 19380 (SEA CA 2011) .

¹⁵ 34CFR 300.117

to verbal reminders and visual reminders to stay on task..." The Prior Written Notice dated October 7, 2014 states other options considered included returning Student to regular school day, but this was rejected because "Student is not ready for regular school day. Student needs to start with a smaller amount of time and be successful in that before returning..."

Documents from District show the Student had a history of outbreaks in the District prior to these restrictive placements, which resulted in kicking, hitting, punching, and biting others including staff who had to go to minor emergency. The police had been called on the Student when Student was in kindergarten due to Student's punching, kicking, biting, and throwing objects in the classroom. Student has also had many issues with getting off the bus (refusing to do so) which resulted in restraints, removing seat belt when told to keep it on, and Student has hit other students (including a high school student) on the bus.

Here, the Student has unique needs that the IEP team felt required a more restrictive placement than the general education classroom. Accordingly, the team met to review the Student's needs, updated the IEP, and determined a placement for Student based upon the IEP and Student's needs. The team met again several times, to review Student progress and accordingly determined a less restrictive placement was necessary. The notes all indicate Student made progress academically and with IEP goals during this time.

The Department therefore does not substantiate this allegation.

3. Parent Participation - General

The complaint alleges that the District violated the IDEA by refusing to listen to the Parents and refusing to address the Parents' concerns about the Student's education.

This allegation implicates parent participation under OAR 581-015-2190. This rule provides that school districts "must provide one or both parents with an opportunity to participate in meetings with respect to the * * * IEP and educational placement of the child * * *."

In this case, review of the minutes of the May 27, 2014, October 7, 2014 and December 9, 2014 IEP meetings clearly reveal that the Parents were allowed to fully participate in the meeting. District staff in attendance at all of these IEP meetings clearly listened to the concerns expressed by the Parents at all of the IEP meetings and responded by discussing the Parents concerns. As noted in the discussion concerning the placement issue, above, the Parent (or Parents, when both were in attendance) indicated, as part of the IEP team, agreement with the IEP team decisions at each of the three IEP meetings. The IDEA does not require more. The Department does not substantiate the allegation that the District refused to listen to the Parents and refused to address the Parents' concerns about the Student's education.

CORRECTIVE ACTION¹⁶
In the Matter of Tillamook School District
 Case No. 14-054-045

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

No.	Action Required	Submissions ¹⁷	Due Date
(1)	<p><u>Staff Training - Supplementary aids and Services, as needed, for Extracurricular Participation</u></p> <p>The District will schedule and provide training to appropriate special education District staff concerning the inclusion in the IEPs of impacted special education students, the extent to which an individual student will participate in extracurricular and other nonacademic activities; and ensuring the necessary supplementary aids and services that are needed for individual student participation in extracurricular events is included with IEPs in accordance with IDEA's IEP Content requirements</p>	<p>Copy of relevant training materials for approval by ODE staff via email to Rae Ann Ray via the address below.</p> <p>A copy of the training agenda, and training materials as well as the roster of staff in attendance should be submitted to ODE via email to the addresses noted below.</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>March 31, 2015</p> <p>May 8, 2015</p>

Dated this 20th Day of February, 2015



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

Mailing Date: February 20, 2015

¹⁶ 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)).

¹⁷ 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.