

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the District

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FINDINGS OF FACT  
CONCLUSIONS AND  
FINAL ORDER  
Case No. 15-054-014b

I. BACKGROUND

On April 6, 2015, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parents (Parents) of a Student (Student) residing in the District. 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 April 8, 2015. At the same time, the Parents requested in writing that the Department also conduct a Special Education investigation under OAR 581-015-2030 with the Educational Service District (ESD). The Student lives in the District, and receives services from the ESD.

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. Both Districts and the Parents asked for and received a 26 day extension for the purpose of local resolution. The local resolution attempts were not successful, so the complaint investigation was conducted using the new dates, as outlined below. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.<sup>1</sup> Based on the date the Department received the complaint, the relevant period for this complaint is April 6, 2014 through April 6, 2015. The Final Order is due out July 1, 2015.

On May 6, 2015, 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 May 20, 2015.

On May 14, 2015, the District submitted a *Response* disputing all of the allegations in the Parents' complaint. In total, the District provided these materials;

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| 1. | Prior Written Notice Evaluation                    | 1/11/2012  |
| 2. | Prior Written Notice for Initial Provision of SPED | 4/4/2012   |
| 3. | Prior Written Notice for Initial Provision of SPED | 11/12/2013 |
| 4. | Prior Written Notice Evaluation                    | 3/16/2014  |
| 5. | Prior Written Notice                               | 5/13/2014  |
| 6. | Prior Written Notice                               | 8/26/2014  |
| 7. | Meeting Notice for 9/5/2014                        | 8/28/2014  |
| 8. | Prior Written Notice for Initial Provision of SPED | 9/2/2014   |
| 9. | Prior Written Notice                               | 9/5/2014   |

<sup>1</sup> OAR 581-015-2030 (5).

10.	Meeting Notice for 10/8/2014	9/13/2014
11.	Memo from Parents to District	9/29/2014
12.	Meeting Minutes	10/15/2014
13.	Emails from Preschool	10/21/2014
14.	Memo from Parents to District	10/21/2014
15.	Prior Written Notice Evaluation	11/4/2014
16.	Prior Written Notice Evaluation	11/21/2014
17.	Emails from Preschool	1/29/2015
18.	Emails from Preschool	2/5/2015
19.	Emails from Preschool	2/6/2015
20.	Meeting Minutes	2/11/2015
21.	Meeting Minutes	2/11/2015
22.	Meeting Minutes	2/11/2015
23.	Placement Determination	2/17/2015
24.	Meeting Minutes	2/17/2015
25.	Kindergarten Log	2/19/2015
26.	Note from Parents	3/3/2015
27.	Memo from Parents to District	3/3/2015
28.	Memo from Parents to District	3/9/2015
29.	Memo from Parents to District	3/9/2015
30.	Meeting Notice for 3/16/2015	3/11/2015
31.	Placement Determination	3/16/2015
32.	Meeting Minutes	3/16/2015
33.	Meeting Minutes	3/16/2015
34.	Memo from Parents to District	3/16/2015
35.	Evaluation Summary Report	4/1/2015
36.	Student Protocols	4/1/2015
37.	Speech Language Assessment Summary	4/16/2015
38.	Meeting Minutes	4/16/2015
39.	Memo from Parents to District	5/5/2015
40.	List of Knowledgeable Staff	5/14/2015
41.	District Response Letter	5/14/2015
42.	OT Evaluation	5/15/2015
43.	IEP	9/2/2015
44.	Placement Determination	9/2/2015
45.	Speech Language Log	2014-2015
46.	Attendance Log	2014-2015
47.	District Policies	2014-2015
48.	SLP Log	2014-2015

On May 9, 2015, the Parent submitted a packet of materials for the Department's investigator to review. In total, the Parent provided these materials:

- A. Response Letter, 5/10/15;
- B. IEP, 9/5/14;
- C. Request for records to ODE, 3/25/15;
- D. Emails between private Preschool and the District and the ESD;
- E. Placement Determinations, 9/2/14 & 2/17/15;
- F. Log of SPED services withheld, 3/16/15;
- G. Request for a comprehensive evaluation to determine the Student's current level of academic functioning, 3/9/15; and,
- H. Statement by Parent about an incident in the kindergarten classroom, 3/16/15.

After the on-site interview, the Parents emailed additional documents to the complaint investigator. The investigator forwarded these to the District and to the ESD. These materials included:

- 1. A copy of a journal the Parents kept in January and February, 2015; when the Student became unhappy at the private Preschool;
- 2. A statement from an individual tasked with licensing the private Preschool regarding this individual's observation of the Student;
- 3. A copy of the Parent's letter of complaint sent to the ESD on April 26, 2015;
- 4. A copy of a letter of concern the Parents sent to the ESD on 5/18/15;
- 5. A copy of the ESD response to the Parent's complaint, dated 5/16/15;
- 6. Copies of notes sent from the Preschool to the Parents;
- 7. Parent's notes from a November conference with the Preschool; and,
- 8. An updated Evaluation Summary Report, dated, 4/16/15.

Also, after the on-site interviews, the ESD submitted some additional materials for consideration. This packet of materials included the service logs kept by the Special Education Teacher, and a copy of the Student's schedule.

The Department's complaint investigator determined that on-site interviews were needed. On June 10, 2015, the complaint investigator interviewed the District's Superintendent, Kindergarten Teacher, and Paraprofessional. On June 11, 2015, the complaint investigator interviewed the Parents. On June 16, 2015, the complaint investigator interviewed by telephone the private Preschool Board Chair. 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. This order is timely.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The 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 on the Discussion in Section IV. This complaint covers the one-year period from April 6, 2014 to the filing of this complaint on April 6, 2015.

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><b><u>Prior Written Notice (PWN) &amp; Suspension:</u></b></p> <p>a. The Parents allege that the District violated the IDEA when it did not provide the Parents Prior Written Notice that the District had suspended the Student from the Special Education placement without following appropriate procedures for suspending a student.</p> <p>OAR 581-015-2310 &amp; 34 CFR 300.503, and, OAR 581-015-2405 &amp; 34 CFR 300.530</p>	<p><b><u>Substantiated:</u></b></p> <p>In conclusion, the District did not follow procedures for suspending students without disabilities, and did not follow procedures for specifying the length of the suspension. This left the Student out of school without any guidelines as to how the Student could return to school in order to receive a free appropriate public education. Therefore, the Department substantiates the allegation and orders Corrective Action.</p>
2.	<p><b><u>When IEP's Must Be In Effect:</u></b></p> <p>a. The Parents allege that the District violated the IDEA when it did not provide the services specified on the Student's IEP from September of 2014 until the student's suspension in 2015. Specifically, the Parents allege that the District did not provide a tutor or classroom assistant for the Student as per the Student's IEP in effect at this time.</p> <p>b. The Parents allege that the District violated the IDEA when it removed the Student from the Special Education placement in both the kindergarten and Preschool and did not provide any further education or services to the Student in any setting.</p> <p>OAR 581-015-2220 &amp; CFR 300.323</p>	<p><b><u>Substantiated in Part:</u></b></p> <p>In conclusion, the District did not violate the IDEA by not providing a tutor or assistant to the Student. The IEP does not specify that the Student will receive additional support in the classroom and the District did provide additional, adult support to the Student. Further, the Parents alleged that the District did not provide any additional education or services to the Student in any setting after the Student was suspended from the Preschool. The record verifies that the Student did receive both General Education and Special Education services in the kindergarten setting and 1 to 1 with the Special Education Teacher. The Parents chose to withdraw the Student completely from school on May 5, 2015. The student was not provided the full amount of specially designed instruction as indicated on the Student's IEP. The Department substantiates part b of this allegation and orders Corrective Action.</p>
3.	<p><b><u>IEP Content:</u></b></p> <p>The Parents allege that the District violated the IDEA when it did not address the Student's behavioral needs in the IEP or create a behavior plan for the Student to address the Student's needs which resulted in</p>	<p><b><u>Substantiated:</u></b></p> <p>The District did not meet its responsibility to consider whether the Student's behavior was impeding the Student's or others learning in the classroom, even after the Student was</p>

	<p>the Student's removal from school on February 5, 2015.</p> <p>OAR 581-015-2205 (3) (a) &amp; 34 CFR 300.324 (a) (2) (i)</p>	<p>suspended for "inappropriate behavior". Instead, the District focused on alternative placements and never really addressed the Student's need for a behavior intervention plan or the use of positive behavioral interventions and supports. For these reasons, the Department substantiates the allegation and orders Corrective Action.</p>
<p>4.</p>	<p><b><u>Free Appropriate Public Education (FAPE) and Age Ranges:</u></b></p> <p>a. The Parents allege that the District violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.</p> <p>OAR 581-015-2040 &amp; 34 CFR 300.101 &amp; CFR 300.201</p>	<p><b><u>Substantiated:</u></b></p> <p>The District did not provide enough supervision and monitoring to guarantee that the Student received services as outlined on the IEP, or to protect the Student's due process rights in the area of discipline. For these reasons, the Department substantiates this allegation and finds that in total the District did not provide the Student with FAPE. The Department orders Corrective Action.</p>

**Issues outside of the scope of the IDEA:**

The Parents also allege that the District discriminated against the Student due to issues of ethnicity. This allegation falls under the purview of the Office of Civil Rights. You may contact Winston Cornwall at the Oregon Department of Education or the US Department of Education's Office of Civil Rights in Seattle, Washington, regarding any Civil Rights or discrimination issues. Complaints about teachers or staff may be filed with the Oregon Teacher Standards and Practices Commission (TSPC).

**III. FINDINGS OF FACT:**

**General Information Pertinent to the Complaint:**

- A. Through Resolution Services, the ESD provides all Special Education services to the District. This includes case management, evaluation, and direct services to Students in the District who are eligible for Special Education.
- B. The District employs no licensed Special Education staff.
- C. For many years, there has been a private Preschool in the District community. Head Start money, grants, and tuition paid by the parents fund the Preschool. A Board of Directors governs the Preschool. All members of the Board must be parents of children attending the Preschool; with the exception of a Business Manager, who may not be a parent of a Preschool child. The District provides in-kind support to the Preschool (room, utilities, etc.)

- D. The ESD employs a Director of Early Education/Parent Advocacy, who coordinates the Head Start and Oregon Pre-Kindergarten programs in the ESD service area. This individual provides guidance to the District private Preschool.
- E. During the time under investigation, the private Preschool employed two individuals. The first is a person with previous preschool teaching experience. The second was a person who had no previous preschool teaching experience. At the beginning of the 2014-2015 school year, the individual with previous experience was the Teacher for the Preschool, and the other person worked as an Assistant to the Teacher for a limited amount of time each day.
- F. In January 2015, the Teacher in the Preschool resigned and left the program after the first two weeks of the month. The Preschool Board of Directors appointed the Assistant to the position of Teacher, and asked the ESD Director of Early Education to mentor this person.
- G. Students in the District attend school four days per week.

**Background Information:**

1. The Student is 6 years old, and is eligible for Special Education services as a student with a Communication Disorder (CD). Previously, the Student had a secondary eligibility of Developmental Delay, while in Early Childhood Special Education (ECSE). This eligibility was established on March 12, 2014.
2. On April 15, 2014, the Student turned age 6 and was no longer eligible for Early Childhood Special Education. The Parents, ECSE staff and both the ESD and the District staff members met in an IEP meeting on May 13, 2014. The team decided to retain the CD eligibility, and discussed elements of a school-age IEP. The team also decided that the Student would start the 2014-2015 school year placed in General Education in the kindergarten classroom in the District. The team did not complete any IEP paperwork at this meeting.
3. On May 13, 2014, the ESD sent the Parents a Prior Notice of Special Education Action (PWN) stating that the team had met that day and decided the Student's placement in the school-age program would include removal from the General Education classroom for 8% of the day for Specially Designed Instruction (SDI) in Reading, Writing, Math and Language. In this PWN, the Case Manager noted that all of the goals from the Student's Individual Family Service Plan (ISFP) would transition to the IEP.
4. In late August, 2014, the Parents informed the District that they did not want to sign any Special Education paperwork until they knew exactly what the Student's service, placement and program would be. The IEP team met on September 2, 2014. The team wrote an IEP for the Student, and the Parents signed permission for Initial Placement in Special Education on September 2, 2014.
5. The IEP contained these provisions:

<b>Consideration of Special Factors:</b>	Student has communication needs;
<b>PLAAFP: Present Levels of Academic Achievement and Functional Performance</b>	Student is able to connect with people, and wants to do well. Student has a good sense of humor; As reported by the Assessment, Evaluation, and

	<p>Programming SYSTEM (AEPS) Level 2, the Student has demonstrated growth during the 2012-2013 and 2013-2014 school years in Fine Motor, Gross Motor, Adaptive, Cognitive, Social Communication and Social Skills;</p> <p>Student can identify colors, 1/6 geometric shapes, 3/26 letters, 1/10 numbers, and is able to follow two-step instruction and instructions given in a group;</p> <p>Student learns well when given visual models, time to process information and cues/prompts from a teacher;</p> <p>Student responds to positive reinforcement;</p> <p>Student does not respond rapidly, needs time to process/answer a question; and,</p> <p>Student scored SS 78 on receptive language on the Test of Early Language Development and SS 66 in expressive language in the same test.</p>
<b>District and Statewide Assessments:</b>	None given at kindergarten level.
<b>Goals:<sup>2</sup></b>	Expressive Communication; Receptive Communication; Math; Writing; and, Reading.
<b>SDI: Specially Designed Instruction</b>	Math: 30 minutes weekly SPED and Regular Ed; Reading: 60 minutes weekly SPED and Regular Ed; Writing: 60 minutes weekly SPED class and Regular Ed; and, Speech/Language: 30 weekly SPED class.
<b>Related Services:</b>	None needed at this time
<b>Supplementary Aids/Services, Modifications, Accommodations:</b>	Wait time to process information; Positive Reinforcement (verbal/visual); Visual Models/Multisensory; Peer tutor, and; Choral Responses/Direct Instruction
<b>Supports for School Personnel:</b>	Consultation with staff by Special Education department
<b>Non-Participation Justification:</b>	Student will be removed from the general education setting for 90 minutes per week (8%) for Specially Designed Instruction in reading, writing, math and speech/language services, as the Student needs individualized instruction at appropriate level in a small group or 1 to 1 setting.
<b>ESY: Extended School Year:</b>	None needed.
<b>Placement Determination:</b>	Partial day, with 80% or more in the regular education setting with removal for Specially Designed Instruction to include speech/language and academics (reading, writing, and math)

<sup>2</sup> The team wrote that progress on the IEP goals and objectives would be reported "on the same schedule as grades".

6. After two days on this schedule in the General Education classroom, the District called the Parents and asked them to attend another IEP meeting. At that meeting, the District Kindergarten Teacher reported to the team that the Student was struggling to participate in the General Education setting. The Kindergarten Teacher reported that the Student's language was difficult to understand, the Student was constantly in motion, and that the Student had difficulty using the bathroom independently. After consideration, the team decided to place the Student back in the private Preschool for 4 hours per day, and to continue the 8% pull-out for Specially Designed Instruction in Speech/Language, Reading, Writing, and Math for a total of 2.5 hours per week.
7. On September 5, 2014, the ESD sent the Parents a PWN notifying them of the change in placement. The Student began attending the private Preschool immediately. The ESD Special Education Teacher arranged a schedule in which the Teacher would work 1 to 1 with the Student on Monday, Tuesday and Wednesday each week for 30 minutes. The Student would then return home until it was time to begin class at the private Preschool (11:30 - 3:30, daily). At the direction of and under the supervision of the ESD Speech/Language Pathologist (SLP) the Speech/Language Assistant (SLPA) worked with the Student one day per week for a total of 30 minutes. Sometimes, the SLPA worked 1 to 1 with the Student, and sometimes the SLPA worked with the Student in the preschool group (total 7 Students).
8. On September 10, 2014, during the private Preschool Board Meeting, a member of the Board suggested that the Board Chair talk to the Superintendent of the District about the District contributing \$2,000.00 more for "the special ed (sic) Student that they have placed in the Preschool as it takes a full-time person to aide." The Board member does not refer to the Student by name.
9. On September 23, 2014, the ESD Special Education Teacher, and the Speech/Language Pathologist met with the private Preschool Teacher and Preschool Assistant. The ESD staff provided information about the Student and reviewed the IEP with the two Preschool staff.
10. On September 29, 2014, the Parents sent a memo to the ESD Speech/Language Pathologist, who was the Student's Case Manager. In this memo, copied also to the ESD Special Education Teacher and the private Preschool Teacher, the Parents stated:

"Effective today, our Student's IEP will consist of Preschool and Speech Therapy. We feel for the time being that it is best for our Student to spend as much time as possible with peers in class."
- The ESD staff did not send the Parents a PWN indicating what action the ESD would take in response to this request. There is also nothing in the record to indicate that the ESD suggested or held an IEP meeting with the Parents to discuss this request for the suspension of Specially Designed Instruction in Reading, Math and Writing.
11. Again, an unidentified person at the October 1, 2014 private Preschool Board Meeting suggested that the Board Chair talk to the District Superintendent about an additional \$2,000.00 for the "special ed" Student. The Board member does not refer to the Student by name.
12. On September 30, 2014, the Case Manager sent the Parents a meeting notice for an IEP meeting to be held on October 8, 2014. The meeting was actually held on October 15, 2014. The Parent, the ESD Case Manager, the District Superintendent, the District Kindergarten Teacher, the District Paraprofessional, the ESD Special Education Teacher, and the private

Preschool Teacher all attended the meeting. The Parents expressed two concerns: first, that pull-out instruction for Specially Designed Instruction in academic goals would remove the Student from socialization opportunities; and, second, that using any electronic devices might induce a seizure in the Student. After a discussion, during which the private Preschool Teacher reported that the Student was having positive interaction with peers on the playground, the team decided to continue the SDI (Math, Reading, and Writing) three days per week from 10 a.m. to 10:30 am. The team agreed that the IEP was appropriate and that the meeting held on this date could serve as the yearly review.

13. On October 21, 2014, the Chair of the private Preschool Board of Directors wrote an email to the District Superintendent, and included the ESD Early Childhood Director in the email. The Board Chair asked for a meeting with the District Superintendent and with the ESD Early Childhood Director to discuss the questions the Preschool Board members had about the Student. The three individuals met some time after this email (date unknown), and the Preschool Board Chair asked for \$3,000.00 to help support the Student. During interviews, all three individuals stated that it was their understanding that this money would be used to increase the amount of time the Preschool Assistant was in the classroom; but that the Preschool Assistant would not be specifically assigned to support the Student.
14. On November 4, 2014, the Case Manager requested permission from the Parents for an evaluation of the Student's small motor skills. The Parents signed permission for this evaluation on November 6, 2014.
15. At the private Preschool Board Meeting on November 5, 2014, the Board Chair made a motion to include the Student in the TS Gold<sup>3</sup> formative assessment system and suggested that the Preschool pay for this. The Board seconded and approved the motion, all in favor. In the minutes of this private Preschool Meeting, the Student is mentioned by name in this discussion.
16. On December 2, 2014, at the request of the ESD Occupational Therapist (OT), the Parent completed the Sensory Processing Measure – Preschool, as part of the OT evaluation. The Parent noted that the Student hates fire alarms, and that only family members touch the Student's face.
17. On December 3, 2014, at the private Preschool Board Meeting, the Secretary noted in the Board minutes that the District Superintendent had approved \$3,000.00 for the Special Education Student. The Student was not mentioned by name in these minutes.
18. When the Preschool resumed in January, 2015, the experienced Preschool Teacher resigned, and the Preschool Board moved the Assistant to the teacher position. For several days at the beginning of school in January 2015, both teachers were in the classroom for transition services. The Student was present on January 5—8; but absent on January 12—15. The Student then attended for seven school days in a row, January 20—29, 2015. The Student attended school from February 3—5, 2015, in the Preschool program.
19. The private Preschool held another Board Meeting on January 7, 2015. In the minutes of this meeting, the Board Secretary notes that the Preschool Business Manager will submit an invoice to the District in the amount of \$3,000.00 which the Superintendent of the District approved. The Student is not mentioned by name in the minutes of this meeting.

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<sup>3</sup> Oregon adopted TS Gold as the state's formative assessment to be used in programs receiving Oregon Head Start Prekindergarten funding.

20. On January 29, 2015, the Preschool Board Chair sent another email to the District Superintendent, asking for a meeting with the Superintendent. In this email, the Board Chair stated that the Student is becoming uncontrollable in the classroom and that the new Teacher is not equipped or educated enough to know what to do to resolve the issues. After receiving this email, the Superintendent called the ESD Special Education Teacher and asked if the Special Education Teacher would meet with the Preschool Teacher to provide some support.
21. On February 2, 2015, the Special Education Teacher met with the Preschool Teacher and discussed beginning the process of completing a Functional Behavior Assessment (FBA).
22. On February 4, 2015, the private Preschool Board met again. The Business Manager of the Preschool records all Board Meetings. During this particular meeting, under the agenda item of "Teacher Input", the Preschool Teacher began discussing the Student (by name), and the difficulties the Student was having in the classroom. The Board Chair, Business Manager, the ESD Early Childhood Director, and two other parent board members attended this meeting. The Board Chair told the group that the Chair had contacted the District Superintendent, who agreed to look for more resources. The group discussed the Student's behavior, and several Parents commented that their children were becoming frightened of the Student. Although the ESD Early Childhood Director informed the Board that they should contact the Special Education Teacher and Case Manager, the Director did not stop the discussion of confidential information that the Preschool Teacher shared with the group. The group reached the conclusion that the Board Chair should inform the District Superintendent that an IEP meeting needed to be arranged.
23. The next morning, February 5, 2015, the Board Chair of the Preschool received a text message from another parent of a child in the Preschool. This parent told the Board Chair that the parent had witnessed the Student pushing other Students down, and that the parent would withdraw her child if the Board Chair did not "do something about this". Consequently, the Board Chair sent an email to the District Superintendent, and requested that the Student be "removed from the Preschool effective February 9, 2015 because of safety concerns for the other children and be in effect until a meeting has occurred and a plan be put in place on how to proceed forward." No one from the Preschool contacted the Special Education Teacher or Case Manager and shared this information. Additionally, no one from the Preschool called the Parents to give them this information.
24. The District Superintendent replied on February 6, 2015. In this email the District Superintendent suggested a meeting that day, and asked if the Board Chair had notified the Parents that the Student was not allowed back in the Preschool. The Board Chair responded by email and informed the District Superintendent that the ESD staff had said to have the District Superintendent communicate with the Parents. After receiving this email, the District Superintendent sent an email to the Parents informing them that the Student would not be allowed back to the Preschool until an IEP meeting could be arranged and held. Unfortunately, the District Superintendent sent the email to the wrong email address. When the District Superintendent did not get a response from the Parents, the Superintendent called the Parents. The District Superintendent also informed the Case Manager, who called the Parents to arrange an IEP meeting. The District Superintendent did not believe this was a suspension and therefore, did not complete any suspension paperwork.
25. The ESD Case Manager arranged an IEP meeting for February 11, 2015, and sent the Parents a meeting notice. Both Parents attended this meeting, as did the District Superintendent, Case Manager, Special Education Teacher and the District Kindergarten Teacher. At this meeting, the Parents expressed concern that their Student had been unduly punished by being removed from the Preschool. The Parents asked for an apology from the

Preschool Board, and told the team that there had been no behavioral issues until the change in Preschool Teacher. The team considered placing the Student back in the kindergarten classroom for half days, with an assistant. The Parents asked for time to consider this placement and the team scheduled another meeting for February 17, 2015.

26. The same team met again on February 17, 2015. In addition, the Parents brought an Advocate to the meeting. The District Paraprofessional, the ESD SLP Assistant and the ESD Co-Superintendent attended the meeting. In the meeting, the Special Education Teacher stated that the Student was not difficult to teach, and the Parents discussed the tape of the Preschool Board Meeting and their concern that the discussion had violated their Student's Civil Rights. The team agreed to place the Student back in the kindergarten class under a part-time schedule. The Student would work with the Special Education Teacher from 10:00 am—10:30 a.m. Monday, Tuesday, and Wednesday; would be in the kindergarten class 10:30 a.m.—11:00 a.m.; and would participate in lunch and recess from 11:00 a.m. – 11:50 a.m. with the kindergarten class. The Parent agreed to attend the lunch and recess time to help supervise the Student. The Student would return to the kindergarten class with the Paraprofessional from 11:50 a.m. – 1:10 p.m. each day and would attend the Music class with the kindergarten students from 1:10 p.m. – 1:30 p.m., each day. The Student would return home between 1:30 p.m. – 1:45 p.m. each day. The IEP team agreed to try this schedule but did not finalize it as a placement decision. No changes were made to the IEP, and neither the ESD nor the District sent the Parents a PWN confirming this decision.
27. On February 20, 2015 the Case Manager called the Parents to discuss the new placement. The Parents reported that the first day (February 19, 2015) had gone well. The Parents asked the Case Manager about arranging some additional testing/evaluation for the Student. They discussed various types of evaluations, but did not reach any firm conclusion. The Case Manager talked with the Parents again on February 23, 2015. On that day, the Parents told the Case Manager that a Parent had gone to the kindergarten in response to a call from the school because the Student was having difficulty. The Parents and the Case Manager agreed to a placement meeting on March 4, 2015. The next day, February 24, 2015, the District Superintendent called the Case Manager to say that the Parents had decided not to send the Student to school today or the next day because they felt that the Student was not ready and they wanted to think about what to do next. The Case Manager called the Parents to inform them that the Special Education services outlined on the IEP were always available and that the Student was welcome to come to the school to meet with the SLP Assistant and the Special Education Teacher for services.
28. On March 3, the SLP worked with the Student for 45 minutes on fine motor and sound symbol relationships. The SLP Assistant worked with the Student on April 7th, and the 14th, for 45 minutes each time on various language skills. On March 9, 2015, the Parents sent a letter to the IEP team members and requested that the Special Education staff (SLP Assistant and Special Education Teacher) provide services to the Student in the home setting until such time as a new IEP could be written and put into place.
29. On March 11, 2015, the Case Manager sent the Parents a meeting notice for an IEP meeting to be held on March 16, 2015. The Parents informed the ESD that they had invited three individuals to attend the meeting; one person from Family Network,<sup>4</sup> one person from FACT,<sup>5</sup> and a family friend/advocate who attended a previous IEP meeting. The meeting was held on

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<sup>4</sup> Family Network is an organization located in Eastern Oregon that serves families of children with disabilities. "We encourage and equip families of children with disabilities to actively engage and embrace community; creating acceptance and inclusion for all." [http://roccosfamilynetwork.org/?page\\_id=6701](http://roccosfamilynetwork.org/?page_id=6701)

<sup>5</sup> FACT is a family leadership organization based in Oregon for individuals with disabilities and their families. <http://factoregon.org/>

March 16, 2015. The ESD Special Education Director, the District Superintendent, the District Kindergarten Teacher, the ESD Special Education Teacher, the ESD Case Manager, and the Parents attended the meeting in addition to the individuals invited by the Parents. The team discussed the major parts of an IEP; the process of evaluating a child with a disability; and five placement options. The options were: 1) PE, Music, Social Time with Special Education services; 2) In kindergarten part time with additional training for staff; 3) Full Day Kindergarten; 4) Home placement with services; and, 5) Withdrawal from school. The team decided to create a placement in which the Student participated in PE, lunch and socialization with the kindergarten class; and also decided to incorporate evaluation time into the schedule. The Parents signed permission for a re-evaluation to include: Academic testing, and a complete Speech and Language evaluation as well as observations of the Student. The Parents also informed the District that their pediatrician had arranged for the Student to be evaluated at a diagnostic clinic for children with disabilities; but that this could not occur until fall, 2015.

30. The SLP and the Special Education Teacher evaluated the Student from April 1 - April 16, 2015. The team met on April 15 and April 20 to consider the results of the evaluation and to discuss placement. On April 20, 2015, the team decided to place the Student in the Title I program at the elementary school for a partial day with Special Education services provided.
31. On May 7, 2015, because of a separate conflict, the Parents withdrew the Student completely from the District.
32. The Student attended 109 of a possible 134 days during the 2014-2015 school year.<sup>6</sup> The District registered the Student as in attendance each day the Student was present at the Preschool. The Student's last day of attendance was April 30, 2015.
33. The Student's IEP, as written on September 2, 2014, outlines the provision of Specially Designed Instruction (SDI) in four areas. The IEP team agreed that the Student needed 60 minutes per week each in Reading and Writing; and 30 minutes per week each of Math and Speech Language SDI. The ESD Speech/Language Pathology Assistant (SLPA) kept a log of the instruction the SLPA provided to the Student over the course of the year. Accounting for the times when the Student was absent, or when the Parents requested the Student not be provided Speech/Language SDI, the Student should have received 1440 minutes of SDI in Speech and Language Skills during the time the Student attended school in the 2014-2015 school year. The Student actually received 1500 minutes of SDI in Speech and Language skills.
34. During the time the Student attended the private Preschool, the ESD Special Education Teacher provided Specially Designed Instruction to the Student in Reading, Writing, and Math. The teacher met the Student in the morning before the Preschool class convened, three days per week for a total of 30 minutes each of the three days. When the Student returned to the kindergarten class in February, 2015, the Special Education Teacher continued this schedule to provide Specially Designed Instruction in Reading, Writing and Math. During the interviews, staff stated that during the time the Student attended the private Preschool, the Student received some of the SDI in Reading, Writing and Math as part of the Preschool curriculum. There are no records of how much SDI was provided in the Preschool setting, and there are no records of the Preschool curriculum. The Special Education Teacher kept a log of the work the Teacher did with the Student during the 1 to 1 instructional time for the three days each week. As per the amount of SDI the team specified in the IEP, the Student should have received 68 hours of Specially Designed Instruction in Reading, Writing and Math over the

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<sup>6</sup> The 2014-2015 school calendar year was 154 days for students grades K - 8. However, the Student's Parents withdrew the Student a month before the end of the school year, thus the Student was eligible to attend for 134 days.

course of the school year.<sup>7</sup> According to the Special Education Teacher's service log, the Student received 22 hours of Specially Designed Instruction during the 109 days the Student attended school in 2014-2015.

35. The IEP team also decided that the Special Education staff should provide 30 minutes per year of support to the General Education staff. This service was provided during the 2014-2015 school year. However, when the IEP team wrote the Student's IEP on September 2, 2014, the IEP team did not agree to provide additional supervision in the form of a paraprofessional to the Student. Even though the Student's placement changed several times over the course of the year, the IEP team did not change any of the amounts of SDI or Supports for School Personnel.
36. The District's policy JGDA/JGEA, Discipline of Disabled Students mandates that when a student with a disability is suspended for misbehavior the District must inform parents immediately and schedule an IEP meeting. If the suspension is for longer than 10 days, the District must schedule an IEP meeting to conduct a Manifestation Determination hearing to consider whether or not the student's misbehavior is related to the student's disability.

#### IV. DISCUSSION

##### **Prior Written Notice & Suspension:**

The Parents allege that the District violated the IDEA when it did not provide the Parents Prior Written Notice that the District had suspended the Student from the Special Education placement without following appropriate procedures for suspending a student.

Under OAR 581-015-2310 a school district must give parents prior written notice when the district intends to initiate or change or refuses to initiate or change the identification, evaluation or educational placement of a student, or if the district proposes to initiate or refuse to provide a free appropriate public education to the student. As per OAR 581-015-2405, a school district may "remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative education setting, another setting or suspension for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement."

School districts are to give appropriate notice about suspension to students without disabilities when they provide written notice of the District's intention to suspend and the reasons for the intended suspension. Further, the district must provide the student an opportunity to appear at an informal hearing in front of the principal, assistant principal, superintendent, or superintendent's designee and challenge the reason for the intended suspension or otherwise explain the student's actions.<sup>8</sup>

Additionally, under OAR 581-021-0065, these procedures for suspension may be postponed in emergency situations relating to health and safety - in other words, those circumstances where there is a serious risk that substantial harm will occur if the suspension is not immediate. Once the risk of immediate harm is contained, a school district must notify the parents and the student and of the reason to suspend and the rights the student has in this circumstance. School districts must specify the number of days of suspension.

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<sup>7</sup> The Student attended school for 109 days during the 2014-2015 school year.

<sup>8</sup> OAR 581-021-0065

In the case of a student with a disability, once the student has been suspended for longer than ten school days, either because of a pattern of behavior or for consecutive days of suspension, the district must hold a Manifestation Determination hearing to determine whether or not the student's behavior is related to the student's area of disability. If the behavior is related to the disability, as determined by the IEP team, the district must conduct a Functional Behavioral Assessment, and return the student to the original placement unless the IEP team agrees to a change in placement as a way to modify the student's program and behavior intervention plan.

In this case, the District did not follow the procedures outlined in OAR 581-021-0065. The District did not inform the Parents immediately about the suspension, did not provide written notice about the reasons for the suspension, and did not give the Parents and Student an opportunity to appear at an informal hearing. The Parents were not given the opportunity to meet with the District Superintendent, any of the Special Education staff from the ESD, or any private Preschool staff to discuss the reasons the Student was being removed from the Preschool. The District did not specify the length of the suspension. Even when the IEP team met on February 11, 2015 and again on February 17, 2015, it did not discuss the reasons for the suspension or behavioral issues.

In conclusion, the District did not follow procedures for suspending students with disabilities, and did not follow procedures for specifying the length of the suspension. This left the Student out of school without any guidelines as to how the Student could return to school in order to receive a free appropriate public education.

Therefore, the Department substantiates the allegation and orders Corrective Action.

**When IEP's Must Be In Effect:**

The Parents allege that the District violated the IDEA when it did not provide the services specified on the Student's IEP from September of 2014 until the Student's suspension in 2015. Specifically, the Parents allege the District did not provide a tutor or classroom assistant for the Student as per the Student's IEP in effect at this time. The Parents also allege that the District violated the IDEA when it removed the Student from the Special Education placement in both the kindergarten and the Preschool and did not provide any further education or services to the Student in any setting.

Under OAR 581-015-2220 a district meets its obligation to a student when the district has an IEP in effect at the beginning of the school year and when it provides Special Education and related services to the student in accordance with the IEP. The district must review the IEP at least once annually and can amend or modify the IEP between the annual meetings.

Throughout the school year, the team discussed various ways to support the Student. While the Student attended the private Preschool, the District gave the Preschool \$3,000.00 to increase the amount of time the Preschool Assistant was in the classroom. After the Student returned to the kindergarten class, a District Paraprofessional supported the Student during various times of the Student's partial day. However, the IEP team never specified on the IEP that the Student would have additional adult support during the school day.

The Student attended the Preschool from September 5, 2014 to February 5, 2015. After the IEP team met to consider various placement options on February 17, 2015, the Student returned to the kindergarten classroom for a partial day schedule. The Student worked with the Special Education Teacher in the morning before participating in the kindergarten classroom. The record indicates that the Student received 22 hours of Specially Designed Instruction over the course of the year, 46 hours less than the amount specified on the Student's IEP.

In conclusion, the District did not violate the IDEA by not providing a tutor or assistant to the Student. In fact, the IEP does not specify that the Student will receive additional support in the classroom, though the District did provide additional adult support in the classroom. Further, the Parents alleged that the District did not provide any additional education or services to the Student in any setting after the Student was suspended from the Preschool. The record verifies that the Student did receive both General Education and Special Education services in the kindergarten setting and 1 to 1 with the Special Education Teacher. The Parents chose to withdraw the Student completely from school on May 5, 2015. The Student was not provided the amount of specially designed instruction as specified in the IEP, so, the Department substantiates part b of this allegation and orders Corrective Action.

### **IEP Content:**

The Parents allege that the District violated the IDEA when it did not address the Student's behavioral needs in the IEP or create a behavior plan for the Student to address the Student's needs which resulted in the Student's removal from school on February 5, 2015.

Under OAR 581-015-2205(3)(a) a school district must consider some special factors when developing a student's IEP. One of these factors is whether or not a student's behavior "impedes the child's learning or that of others". If the team believes that the student's behavior is an impediment to him or herself or to others in the classroom, the IEP team is obligated to "consider the use of positive behavioral interventions and supports and other strategies to address the behavior."

The IDEA provides that if the public agency did not conduct a functional behavioral assessment and implement a behavior intervention plan for the child before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan to address that behavior.

In this case, the IEP team decided on September 2, 2014, when it wrote the Student's first school-age IEP, that the Student did not exhibit any behaviors that impeded anyone's learning in the classroom. Staff at the private Preschool were concerned about the Student's behavior on October 21, 2014, when it asked the District Superintendent for \$3,000.00 to increase the amount of time the Assistant could be in the classroom. However, no one on the ESD staff, the District staff, or the Preschool staff suggested holding an IEP meeting to consider the behavioral issue. The ESD Special Education Teacher met with the Preschool Teacher on February 5, 2015 and suggested a procedure to begin gathering data about the Student's behavior in the classroom. However, the Student was suspended the next day, and the behavioral data collection process never occurred. Even after the de facto suspension, the IEP team only focused on considering alternative placements for the Student and did not collect behavioral data or create a behavior intervention plan for any of the placements.

The District did not meet its responsibility to consider whether the Student's behavior was impeding the Student's or others learning in the classroom, even after the Student was suspended for "inappropriate behavior". Instead, the District focused on alternative placements and never really addressed the Student's need for a behavior intervention plan or the use of positive behavioral interventions and supports.

For these reasons, the Department substantiates the allegation and orders Corrective Action.

**Free Appropriate Public Education (FAPE) and Age Ranges:**

The Parents allege that the ESD violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.

Pursuant to OAR 581-015-2040 & 34 CFR 300.101 & CFR 300.201, school districts and other educational entities acting on behalf of local school districts must provide Special Education and related services to all resident school-age children who are eligible for Special Education. Under the law, a district provides FAPE when it writes and implements an IEP for an eligible child in the designated placement. In addition, a district provides FAPE when, as part of this process, it provides the student with the student's Procedural Safeguards, and protects the student's privacy rights.

In this case, the District chose a Special Education placement for the Student in a private Preschool setting. The ESD contracts with the District to provide case management, Specially Designed Instruction and other services to all students in the District who are eligible for Special Education. This contract in no way alleviates the District's responsibility to ensure that a District student receives FAPE in whatever setting the IEP team chooses. Here, the District did not provide enough supervision and monitoring to guarantee that the Student received services as outlined in the IEP, or protect the Student's due process rights in the area of discipline.

For these reasons, the Department substantiates this allegation and finds that in total the District did not provide the Student with FAPE. The Department orders Corrective Action.

**CORRECTIVE ACTION<sup>9</sup>**

*In the Matter of the District*  
Case No. 15-054-014b

	<b>Action Required</b>	<b>Submissions</b>	<b>Due Dates</b>
1.	<p><b><u>Prior Written Notice (PWN) &amp; Suspension:</u></b></p> <p>a. The Parents allege that the District violated the IDEA when it did not provide the Parents Prior Written Notice that the District had suspended the Student from the Special Education placement without following appropriate procedures for suspending a student.</p>	<p>Professional development training to relevant District staff, inclusive of District Superintendent and Kindergarten Teacher on all requirements for Prior Written Notice found in 34 CFR 300.503. Training may be conducted in-person, or via WebEx. This training will be provided by the County Contact for Wheeler</p>	<p>Patrick Kelly<sup>10</sup></p>

<sup>9</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015- 2030(17) & (18)). 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156

<sup>10</sup> Patrick Kelly, County Contact for Wheeler Co., [Patrick.kelly@ode.state.or.us](mailto:Patrick.kelly@ode.state.or.us) or 503-947-5655

	<p>OAR 581-015-2310 &amp; 34 CFR 300.503, and,  OAR 581-015-2405 &amp; 34 CFR 300.530</p>	<p>County, and can be completed in conjunction with training of ESD special education staff.</p> <p>Submit template of training materials and items, developed in conjunction with the County Contact, to ODE for approval to: Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; (503) 947-5722; e-mail- <a href="mailto:raeann.ray@state.or.us">raeann.ray@state.or.us</a>; fax number (503) 378-5156.</p> <p>Submit training roster which indicates all in attendance and their position and an agenda from the training indicating time, date, and manner of training to ODE via the means listed above.</p>	<p>September 15, 2015</p> <p>October 9, 2015</p>
<p>2.</p>	<p><b><u>When IEP's Must Be In Effect:</u></b></p> <p>a. The Parents allege that the District violated the IDEA when it did not provide the services specified on the Student's IEP from September of 2014 until the student's suspension in 2015. Specifically, the Parents allege that the District did not provide a tutor or classroom assistant for the Student as per the Student's IEP in effect at this time.</p> <p>b. The Parents allege that the District violated the IDEA when it removed the Student from the Special Education placement in both the kindergarten and Preschool and did not provide any further education or services to the Student in any setting.</p> <p>OAR 581-015-2220 &amp; CFR 300.323</p>	<p>The District will provide compensatory services to the Student as follows:</p> <ul style="list-style-type: none"> <li>▪ 12 hours of Reading SDI</li> <li>▪ 12 hours of Writing SDI</li> <li>▪ 8 hours of Math SDI</li> </ul> <p>The log of service hours provided will be submitted after completion of this Corrective Action to: Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; (503) 947-5722; e-mail- <a href="mailto:raeann.ray@state.or.us">raeann.ray@state.or.us</a>; fax number (503) 378-5156.</p>	<p>March 1, 2016</p>
<p>3.</p>	<p><b><u>IEP Content:</u></b></p> <p>The Parents allege that the District violated the IDEA when it did not address the Student's behavioral needs in the IEP or create a behavior</p>	<p>Professional development training specific to the IEP requirements of Consideration of Special Factors, as well as the Disciplinary</p>	<p>Patrick Kelly</p>

	<p>plan for the Student to address the Student's needs which resulted in the Student's removal from school on February 5, 2015.</p> <p>OAR 581-015-2205 (3) (a) &amp; 34 CFR 300.324 (a) (2) (i)</p>	<p>Removal requirements under OAR 581-015-2405 and OAR 581-015-2410. Training may be conducted in-person, or via WebEx. This training will be provided by the County Contact for Wheeler County.</p> <p>Submit template of training materials and items, developed in conjunction with the County Contact, to ODE for approval to: Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; (503) 947-5722; e-mail- <a href="mailto:raeann.ray@state.or.us">raeann.ray@state.or.us</a>; fax number (503) 378-5156.</p> <p>Submit training roster which indicates all in attendance and their position and an agenda from the training indicating time, date, and manner of training to ODE via the means listed above.</p>	<p>September 15, 2015</p> <p>October 9, 2015</p>
4.	<p><b><u>Free Appropriate Public Education (FAPE) and Age Ranges:</u></b></p> <p>a. The Parents allege that the District violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.</p> <p>OAR 581-015-2040 &amp; 34 CFR 300.101 &amp; CFR 300.201</p>	<p>See Corrective Action required under #2 above.</p>	

Dated: this 1st Day of July, 2015

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

Mailing Date: July 1, 2015