

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of McMinnville School District

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 15-054-022

I. BACKGROUND

On May 18, 2015, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) and grandmother (Grandparent) of a student (Student) residing in the McMinnville School District (District). The Complainants 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.

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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On May 26, 2015, the Department sent a *Revised Request for Response* to the District which included additional allegations and facts which were provided by the Complainants, and identified the specific allegations in the complaint to be investigated and established a new *Response* due date of ten business days from the date of issuance.

On June 2, 2015, the District submitted a *Response* indicating that they disputed all portions of the allegations in the Parent's complaint. The District also provided needed materials during on-site interviews of staff held on June 9, 2015. The District submitted the following items:

- A. Table of Contents;
- B. Narrative Response regarding complaint issues;
- C. Student's cumulative file (including records from a previously attended district);
- D. Health Records and Records from a previously attended Charter School;
- E. Special Education File;
- F. ODE Request for mediation form submitted by District on 5-27-15;
- G. Notice of IEP Team Meeting dated 5-19-15;
- H. "Stand ready" letter to Parent dated 5-14-15;
- I. Prior Notice dated 5-13-15;
- J. Prior Notice dated 5-13-15;
- K. Prior Notice dated 4-29-15;
- L. Notes from the 6th grade classroom teacher detailing strengths and concerns of the Student dated 4-28-2015;
- M. IEP Progress Report dated 4-10-15 and 4-9-15;
- N. Prior Notice dated 2-26-15;
- O. Annual IEP dated 12-3-2014;
- P. Authorization to Use and Disclose Records consent form;
- Q. Special Education placement determination from previously attended Charter District, dated

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(/b)

- 9-3-2014;
- R. Educational Evaluation Report dated 9-3-2014;
 - S. Prior Notice dated 8-28-14;
 - T. Referral for Assessment dated 8-28-14;
 - U. Evaluation Planning forms dated 8-28-14;
 - V. Consent for Evaluation form dated 8-28-14;
 - W. Signed proof of receipt of Procedural Safeguards dated 8-28-14;
 - X. Notice of team meeting dated 8-28-14;
 - Y. Meeting minutes dated 8-28-14;
 - Z. Annual IEP from previously attended district dated 12-4-2013;
 - AA. District IEP dated 9-12-13;
 - BB. IEP meeting notices for a period dated from 2-14-2013 to 2-23-2015;
 - CC. Other referral and evaluation forms and information from 2006 to 2013;
 - DD. Eligibility materials;
 - EE. List of accommodations and adaptations implemented in the 6th grade SLP (Structured Learning Program) classroom;
 - FF. Detailed notes on current reading, writing and math instruction in the 6th grade SLP class;
 - GG. Various materials from Charter school and Charter school district;
 - HH. IEP meeting notes, staff meeting notes, and safety plan meeting notes;
 - II. Medical and health information for Student;
 - JJ. Other agency reports for Student;
 - KK. District policy and materials related to parent participation and notification;
 - LL. District policy and materials for Individual Education Programs (IEPs);
 - MM. Program description;
 - NN. List of staff knowledgeable of the allegations in the complaint;
 - OO. Autism consultation log and emails to and from the Parent and Grandparent

The Parent, Grandparent, and an Advocate submitted materials for consideration via email and during the in-person interviews held June 8, 2015. The Parent's materials submitted for consideration included:

- A. Narrative Complaint
- B. Email from district dated 5-20-15.
- C. Stand ready letter to parent dated 5-14-15;
- D. Safety Plan dated 5-13-15;
- E. Notes of the parent from advocate for the 5-13-15 meeting;
- F. Email from Grandparent to District dated 5-4-15;
- G. Copy of the Student Safety Plan dated 5-1-2015
- H. Prior Notice/ Consent for Evaluation form dated 4-29-15;
- I. Prior Notice dated 2-26-15;
- J. Student's IEP dated 12-3-14;
- K. Special Education Placement Determination form dated 12-3-14;
- L. Email from Grandparent to district dated 5-4-14;

All materials were provided to all parties. The Department determined that on-site interviews were needed. On June 8, 2015, the Department's Legal Specialist interviewed Student, Grandparent, Parent and the Advocate. On June 9, 2015 the Department also interviewed District staff including: the Special Education Director, the Autism Specialist, the Autism Consultant, the Structured Learning Program (SLP) classroom teacher/ Special Education Teacher, the middle school Assistant Principal, and a District Special Education Consultant. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. 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 Complainant's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one-year period from May 18, 2014 to the filing of this complaint on May 18, 2015.

	<u>Allegations:</u>	<u>Conclusions:</u>
I.	<p><u>Review and Revision of IEPs</u></p> <p>a) The Complainants allege that the District violated the IDEA by failing to convene an IEP team meeting after the parent's request on May 1, 2015 and an email request sent by the Grandparent dated May 4, 2015 to discuss the Student's IEP and the Grandparent's concerns related to the Student's safety plan, behavior, and school attendance.</p> <p>b) The Complainants further state that as of January 29, 2015 an IEP meeting has not been convened for the Student in order to create a completed IEP document and that the IEP still does not include the necessary components as outlined in the allegation below.</p> <p>c) The Complainants further state that at a meeting held with the District on May 13, 2015, the Complainants requested an IEP meeting to address the individual Student safety plan, but no IEP meeting was held at that time.</p> <p>OAR 581-015-2225(1)(b) and 34 CFR 300.324</p>	<p><u>Not substantiated</u></p> <p>A team met for the Student on May 13, 2015 to discuss a student safety plan in the hope of the Student returning to school after an incident which made the family feel unsafe for the Student. Next, an IEP meeting was scheduled for May 20, 2015. The Grandparent was unable to attend this IEP meeting, and the District has made several attempts to reschedule the meeting within a reasonable period of time. Finally, the Student's annual IEP is not due until December 3, 2015.</p> <p>While there may have been a misunderstanding about the nature of the safety planning meeting held on May 13, 2015, there is no evidence that the District has failed to attempt to convene IEP meetings appropriately.</p>
II.	<p><u>IEP Content</u></p> <p>a) The Complaints allege the District violated the IDEA when it failed to include in the Student's IEP necessary Special Education services and goals related to social skills, emotional regulation, reciprocal communication, and repetitive behavior and topics.</p> <p>b) The Complainants allege that the Student's IEP is inadequate, because it only provides six hours of autism consultation and autism supports which are received in a thirty</p>	<p><u>Not Substantiated</u></p> <p>The IEP in effect at the time of this case includes all necessary components. The District has limited knowledge of the Student's current needs and is in the process of obtaining consent for updated evaluations. Therefore, the team was not aware of any indication of these needs at the time that the December 2014 annual IEP was drafted. The December 2014 IEP does contain a social emotional goal with short term objectives related to social</p>

<p>minute theater group twice a week.</p> <p>c) The Complainants allege the Student's IEP is not adequate because the IEP goals do not address the Student's behavior, social, and self-regulation skills. Specifically, the behavior impacting learning: awkward social situations, fear avoidance, obsessive/repetitive thoughts, self-stimulating behavior (paper flipping), excessive laughter, wandering off, off topic, no internal regulatory "sensors:" to move forward while experiencing tasks too repetitive, unclear expectations, or unexpected behaviors in class such as people speaking loudly or Student's crying.</p> <p>d) The Complainants allege the Student is subject to punitive punishment for manifestations of the disability including being sent to time out for "going to la la land" and being required to write statements when not engaged in current topics; in lieu of the IEP appropriately addressing these Student needs and necessary positive behavior supports and mechanisms to address the Student's behavioral needs.</p>	<p>communication and reciprocal communication. Finally, there is no evidence that the Student is punished for manifestations of the disability nor that the Student requires behavior related goals or measures on the IEP.</p>
<p>Requested Corrective Action:</p> <p>An IEP meeting to review current goals and services provided to accommodate the Student's current needs and a plan of support to address the Student's fear of returning to school as well as positive behavior supports or discussion of an appropriate program to support and meet the Student's current needs; clear expectations and rules for expected and unexpected behaviors; The Student is a rule follower and will follow rules when they are explained; consistency with adults that interact with the Student; voice control of adults interacting with the Student; staff addressing the Student's autism in relation to how it impacts the Student's learning; and creating goals that incorporate strengths to engage the Student in learning. The IEP goals need to address the Student's needs in areas of behaviors, social, and self-regulation.</p>	<p>No Corrective Action is ordered.</p>

III. FINDINGS OF FACT

- 1) The Student in this case is 13 years old and resides in the McMinnville School District. The Student is currently enrolled as a home school student, but most recently attended school in the structured learning program (SLP) in a District middle school. The Student also attended a Charter School in a neighboring district for some time during the prior school year.
- 2) The Student is currently eligible for Special Education services under the category of autism spectrum disorder (ASD).
- 3) An Educational Evaluation Report was completed for the Student upon the Student's re-enrollment in the District from the Charter School. This report is dated September 3, 2014. This report highlights the Student's academic strengths and weaknesses and provides instructional recommendations for the Student.
- 4) The Student's 2013 annual IEP was created by the District and dated September 12, 2013. This IEP notes that the Student was in the 5th grade when the IEP was written. It shows that the Parent and the Grandparent attended the IEP meeting and were given a copy of the Procedural Safeguards. This IEP shows that the Student needs related services of Autism Consultation four hours per year; Specially Designed Instruction (SDI) in Social Communication skills, Math, Writing, and Reading; supplementary aids/services and modifications and accommodations of daily transportation; written visual cues and supports daily; and sensory breaks per request. The 2013-2014 IEP also provides supports to school personnel which include communication consultation for three hours yearly and Occupational Therapy (OT) consultation of one hour per year. The Special Factors on this IEP indicate that the Student requires assistive technology services or devices and that the Student has communication needs. The box for behavior that impacts the learning of the Student or others is not checked. This IEP has goals for the Student related to Social Communication skills, Mathematics, and English/ Language Arts. One short term objective for the Social Communication goals deals with reciprocal communication and states that "Student will engage in reciprocal communication with peers and staff throughout the school day."
- 5) The Present Levels of Academic Achievement and Functional Performance on the District's 2013-2014 IEP state that, "...Student is considerate and curious about classmates and instructors....enjoys learning new concepts and creating books." It notes a parent/ guardian concern of, "...Parent is concerned about transition to middle school..."In the communication area it notes that, "Student's communication in general lacks a reciprocal give and take component. Student needs to continue to learn about Student's role as a communication partner and how to engage in conversation." It further states that "...when Student is upset Student leaves group area and spends time in the quiet area. Student is working on calming techniques."
- 6) The Special Education Placement Determination form dated September 12, 2013, shows that the Parent was present and that the team selected a self-contained classroom for the Student's needs because it is a more structured environment with a lower adult to student ratio, smaller group instruction, and a specialize curriculum.

The Student's annual IEP for the 2014-2015 school year is dated December 3, 2014. This IEP notes in the Special Factors box that Student does have communication needs. It does not indicate that the Student has behavior that impacts the learning of Student or others. The Present Levels of Academic Achievement and Functional Performance on this IEP note that Student needs "...almost constant redirection" due to "...difficulty maintaining focus and sustaining attention to a task." The concerns of the parent/guardian note the Grandparent is puzzled about

the Student's reluctance/resistance to coming to school. The notes of the Speech Language Pathologist on this IEP state that, "...Student should continue to work on attending to small group activities and responding to attempts by peers and adults to communicate." The notes from the Physical Education Teacher note that, "...Student is a great kid, never a behavior problem in class...Student seems to enjoy self and never gets into conflicts... is not disruptive in any way....Student will occasionally go to the weight room and ride stationary bikes... Student is not a problem and I really enjoy Student..."

- 7) The IEP dated December 3, 2014 includes measurable annual goals related to Reading/written Language, Math skills, and social emotional. The social emotional goal states that, "Student will respond appropriately to communication initiation from peers and adults with moderate cues." The measurable short term objectives for the social/emotional goal state that: "given choices, the Student will identify appropriate responses to a variety of social communication exchanges in structured therapy and classroom activities with 60% accuracy; the Student will answer questions in a structured group setting when it is the Student's turn following one prompt to inform the Student that it is the Student's turn in 3 of 4 opportunities; The Student will demonstrate understanding of expectations in structured group setting by responding to teacher-directed questions appropriately in 3 of 4 opportunities following moderate cues."
- 8) The Service Summary for the December 3, 2014 IEP shows that the Student receives Specially Designed Instruction in Communication-social, Math, Reading, and Written Language. The Student also receives Supplementary Aids/Services; Modifications and Accommodations which include: access to computers, checks for understanding, gain attention before giving directions throughout the day, modified grading scale, modify curriculum to skill level, redirect to task two times per class period, and use math manipulatives or visuals. This IEP also includes support for school personnel of an Autism consultation six hours per year and a Communication consultation one hour per year.
- 9) The Placement determination dated December 3, 2014 shows that the placement of self-contained classroom was selected to best meet the Student's needs. This placement will offer small group instruction. The Grandparent signed this placement determination form.
- 10) A Prior Notice of Special Education action dated February 26, 2015 states that "the team met to review present levels of performance, to update the IEP for the upcoming year. The team agreed that an Occupational Therapy (OT) evaluation would be appropriate at this time, to determine if the Student is eligible for OT services. The Student's Grandmother signed permission to conduct the OT screening. The form further states that the Student did receive OT from the District prior to the 5th grade year, but the Student transferred to a Charter School in another district during 5th grade, and that the district did not provide OT services.
- 11) IEP Progress notes dated January 23, 2015 state that, "the Student has made growth and improvements since September... however, due to high level of distractibility and significant difficulty with sustaining attention to tasks, the Student is making quite slow progress in the areas of reading comprehension..." The note indicated that the Student was making sufficient progress toward the Reading Comprehension goal. However, the progress notes indicate the Student is not making progress for the Written Language goals.
- 12) The IEP progress report dated April 10, 2015 states that "...Student had high level of distractibility and significant difficulty sustaining attention to tasks, The Student had great difficulty keeping up with reading group. Therefore, instruction was modified to provide the Student with additional practice at the Student's grade level and individual pace... The Student is showing some improvement in identifying the main idea at that beginning level..." The mark for each goal was

SP- Sufficient Progress.

- 13) The progress notes from April 10, 2015 further indicate that the Student did not make sufficient progress for the Reading/written Language goal related to details and examples in a text.
- 14) A Prior Written Notice/ consent for evaluation dated April 29, 2015 indicates the Student is due for the three year re-evaluation and the team agrees that updated assessments are needed to reflect current levels of performance and to comply with current eligibility requirements. The form further states, "...there is no current record of cognitive abilities" and "the team agrees that more information is needed to reflect Student's present functioning." The evaluations/ procedures/ assessments and tests noted on the consent form include: Woodcock-Johnson Cognitive Abilities test, Vineland Adaptive Behavior Scales, Conner's Rating Scale, Clinical Evaluation of Language Fundamentals, Childhood Autism Rating Scale, Social Emotional Evaluation, and Woodcock Johnson test of Achievement. The parent did not sign this form.
- 15) A Prior Notice dated May 13, 2015 states that, "the team met to create a safety plan for the Student. The team reviewed the safety plan. Grandparent declined to proceed with plan. The team reviewed reasons to conduct a formal evaluation. Grandparent declined to sign consent to evaluation at this time. Team will check with psychologist to confirm which IQ testing instrument is recommended. The idea of having the Student attend partial day, perhaps a half day was discussed. The Grandparent stated she would not send the Student back to school, will consider what to do next. The Student has not attended school for more than ten days. The team stated that the school is ready, willing, and able to provide services."
- 16) The record shows the Student completed the WJ III Normative Update Tests of Achievement on September 2, 2014.
- 17) The Student's last three year evaluation was completed in February of 2013. The Student assessment list dated January 8, 2013 shows the Student was assessed using the Social Responsiveness Scale and Autism Rate Scale (ASRS) at this time.
- 18) On May 4, 2015 the Grandparent sent an email to the District formally requesting an IEP team meeting. This correspondence notes that the Grandparent thought the safety plan was unclear and that the Grandparent would like to revisit the plan with the IEP team.
- 19) The District reported that they began trying to schedule the IEP meeting and a safety planning meeting immediately after this request, as the Student had been out of school for some time due to the Grandparent's safety concerns. The District reported they thought the Grandparent wanted both a safety planning meeting and an IEP meeting. District emails show that the dates available for the IEP meeting were May 8, May 12, and May 13. Further District email notes the family does not want the Student to return to school until after the IEP meeting and when the Student has a safety plan.
- 20) The IEP Meeting Notices in the Student's file contain one Evaluation Planning Meeting Notice for a meeting dated March 10, 2015 and one IEP Team meeting notice for the meeting dated December 3, 2014 along with some meeting notices from 2013 and one for September of 2014.
- 21) A meeting was scheduled for May 13, 2015 to discuss the safety plan and an IEP team meeting was scheduled for May 20, 2015. The notes for the May 13, 2015 meeting indicate that Grandparent, Assistant Principal, Special Education Coordinator, Special Education Teacher, Advocate, and the Autism Consultant all attended this meeting. The notes from District for the May 13, 2015 meeting indicate that topics discussed included: discussion about evaluation plan,

questions about testing plan, explanation of testing instruments, discussion of which IQ test would be used to evaluate Student, Grandparent requested forms with her name (not Parent's), Special Education Coordinator and Assistant Principal discussed a safety plan, the Grandparent asked about a one-to-one, discussion of Special Education trained staff, discussion of Functional Behavioral Assessment (FBA) for Student, request for cognitive testing from District, inquiry into other programs, discussion of partial day, discussion of check-in/check-out, and additional school supports for Student until the end of the school year. The District notes indicate the Grandparent declined the safety plan and declined to sign the permission to evaluate Student. The Parent notes for the May 13, 2015 meeting indicate topics the Grandparent, Parent and Advocate wanted to address which included: testing and assessments, non-standard ASD evaluations, release of information, IEP goals including academic, behavioral, and social emotional; supports and services; timeline; requests of copies of all Special Education paperwork from District; and the safety plan for this year and next school year.

- 22) A Prior Notice of Special Education Action dated May 13, 2015 indicates the "...team met to create a safety plan designed for the Student. The team reviewed the safety plan. The Grandparent declined to proceed with the plan. The team reviewed reasons to conduct a formal evaluation. The Grandparent declined to sign consent for evaluation at this time...The Grandparent stated she would not send the Student back to school but would consider what to do next. The Student has been out of school for more than ten days. The team stated the District is ready willing and able to provide services." The District also drafted a "stand ready" letter indicating their wiliness to implement the Student's IEP should the Student return to school. This letter is dated May 14, 2014.
- 23) District email records indicate the District spoke to the Grandparent on the phone on May 18 to share the IEP meeting date and time of May 20 at 3:00 pm. The email indicates the Grandparent wanted the Parent to also attend the meeting and would check with the Parent and call back. This email also records that the Grandparent asked for a copy of the Permission to Evaluate to be sent to the home again, so they could sign and return it. The District indicates in this message that they would have the consent form ready for signature at the IEP meeting.
- 24) An email message from the Grandparent to the District sent on May 19, 2015 at 7:12 pm indicates that the Grandparent cannot attend the meeting and would like to reschedule. The District responded to this message by confirming the cancellation and indicating further dates would be sent soon.
- 25) Two emails were sent from the District attempting to reschedule the cancelled May 20th IEP meeting. These emails are dated May 29, 2015 and June 2, 2015. Both messages were sent to the Grandmother.
- 26) Both the District and the Parent reported that this IEP team meeting has yet to be rescheduled and the consent for evaluation forms have not been signed and returned to the District. The Grandparent stated that she believed she was waiting for an updated consent for evaluation form to be sent. The District did not believe an amended consent form was to be sent. Both parties agreed that updated information and IEP discussion is needed for the Student.

IV. DISCUSSION

1. Review and Revision of IEPs

The Complainants' issues in this area are that: the District violated the IDEA by failing to convene an IEP team meeting after the Parent's request on May 1, 2015 and an email request sent by the Grandparent dated May 4, 2015 to discuss the Student's IEP and the Grandparent's concerns related to the Student's safety plan, behavior, and school attendance. The Complainants further state that an IEP meeting has not been convened for the Student in order to create a completed IEP document and that the IEP still does not include the necessary components as outlined in the allegation below. The Complainants also state that at a meeting held with the District on May 13, 2015, the Complainants requested an IEP meeting to address the individual Student safety plan, but no IEP meeting was held at that time. The relevant rule for this allegation is found at OAR 581-0150-2225(1)(b). This rule requires that IEP teams meet to revise the IEP, as appropriate, to address: any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate; the results of any reevaluation conducted under OAR 581-015-2105; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters.

In this case, the District did schedule two meetings with the Grandparent to address the Grandparent's concerns and the needs of the Student. The first meeting was scheduled for May 13, 2015 and all parties agree the purpose of this meeting was to discuss the Student's safety plan after an episode that occurred in the Science Technology Engineering and Mathematics (STEM) classroom when the Student wandered away from the rest of the class and direct adult supervision. The meeting notes for this meeting indicate that the Special Education Coordinator, the Special Education Teacher, the Assistant Principal, Advocate, Grandparent, and the Autism Consultant all attended this meeting. The meeting discussed a number of items related to the Student and the Student's IEP, but it was not formally deemed an IEP team meeting. The notes reflect the District stated that the purpose of this meeting was to "continue with assessment plan and conduct safety plan." The Grandmother's email clearly requested an IEP team meeting, so it was reasonable for her to assume this meeting was an IEP team meeting. Particularly in light of the items which were discussed. However, the District understood the meeting to be a safety plan meeting and was concurrently scheduling a formal IEP meeting for May 20, 2015, just one week later, to address the Grandparent's and team's concerns for the Student. As an IEP meeting was scheduled per the Grandparent's request in a timely manner, this portion of the allegation is not substantiated.

As for the second portion of this allegation, the annual IEP for this Student was created on December 3, 2014. As such, a new annual IEP will not be due for the Student until December 3, 2015.³ Therefore, the second portion of this allegation is not substantiated.

As for the third portion of this allegation, there was some confusion about the May 13, 2015 meeting. The District believed the meeting was a mere safety planning meeting, which can be conducted for any student and is not regulated under the IDEA. Whereas the Grandparent and family thought this meeting was an actual IEP meeting as regulated by the IDEA. Regardless of this difference in understanding, the District did schedule a formal IEP meeting for May 20, 2015 which was one week after the safety planning meeting in order to have the full team discuss the family's concerns and the Student's needs. However, the Grandparent cancelled this meeting and did not reply to subsequent correspondence to reschedule the meeting. This portion of the allegation is also not substantiated.

This allegation in its entirety is not substantiated.

³ See OAR 581-015-2225(1)

2. IEP Content

The complaint next alleges that the District violated the IDEA when it: failed to include in the Student's IEP necessary Special Education services and goals related to social skills, emotional regulation, reciprocal communication, and repetitive behavior and topics. The complaint alleges that the Student's IEP is inadequate, because it only provides six hours of autism consultation and autism supports which are received in a thirty minute theater group twice a week. The complaint alleges the Student's IEP is not adequate because the IEP goals do not address the Student's behavior, social, and self-regulation skills. Specifically, the behavior impacting learning: awkward social situations, fear avoidance, obsessive/repetitive thoughts, self-stimulating behavior (paper flipping), excessive laughter, wandering off, off topic, no internal regulatory :sensors: to move forward while experiencing tasks too repetitive, unclear expectations, or unexpected behaviors in class such as people speaking loudly or Student's crying. Finally, the Complainant alleges that the Student is subject to punitive punishment for manifestations of the disability including being sent to time out for "going to la la land" and being required to write statements when not engaged in current topics; in lieu of the IEP appropriately addressing these Student needs and necessary positive behavior supports and mechanisms to address the Student's behavioral needs.

The requirements for IEP Content can be found in OAR 581-015-2200 which states that an IEP must include: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; 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 to advance appropriately toward attaining the annual goals; to be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and children without disabilities, the projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications; an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities; a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments of student achievement that are needed for the child to participate in the assessment:

The IEP in effect during the scope of this investigation is the IEP dated December 3, 2014. This IEP includes all necessary components as outlined above. Additionally, this IEP includes a goal related to social/ emotional needs and an autism consultation for school personnel. The December 2014 IEP also provides the Student with the following modifications and accommodations: checks for understanding all day, gain Student's attention before giving directions all day, modified grading scale on daily assignments, redirection to task two times per class period, and modifications to curriculum for skill level. Also noteworthy here is the fact that the SLP classroom in the middle school contains a low student to teacher ratio. The SLP classroom has one full time Special Education Teacher and two adult aides at all times, with a class size reported to be of around 13 students. Each of these items

from the current IEP and placement may speak to the Student's individual needs for Special Education services.

Next, the District claims that they were not aware of each of the Student's needs that are articulated in the complaint during the December 2014 IEP meeting. The notes for this IEP meeting dated December 3, 2014 support the District's claim, as the areas of need specified in the complaint were not noted in the record of the December 3, 2014 IEP meeting. The meeting notes do indicate that the Parent expressed concerns of "Student is adamant about not coming to school. The Parent is not sure why Student does not want to come...." To which the Autism Specialist explained that, "...it may be something small that happened that the Student is not processing." There is no other indication of familial concerns noted for the meeting, though there is a note that "Grandmother is considering home schooling half day or sending Student to a Christian academy."

Additionally, the District has expressed a need for more recent evaluation materials and data on the Student's needs in order to complete a revised IEP. However, the record shows that the District has not been able to obtain a signed consent for evaluation form, in order to complete more recent evaluations related to the Student's needs. This further confirms that the District is not aware of any needs for Student in the areas mentioned in this complaint, which are not currently spoken to by the IEP in effect at this time.

Finally, the portion of this allegation related to discipline for areas of suspected disability is also not substantiated. The Student was required to write a paper with classroom expectations, along with other students in the SLP classroom, not as a punitive measure for the Student alone. Also, the Student is allowed to go to one of several rooms to "cool off" as needed as a form of self-regulation throughout the school day. This is in accordance with the Student's needs and is not a punitive measure, but rather a way for Student to regulate feelings and emotions. There is no evidence in the record that the Student is punished for disability-related behaviors. To the contrary, the record shows that the Student is well liked by all peers and school staff and notes from the General Education Teacher from the December 3, 2014 IEP actually state that, "...Student is never a behavior problem in class... the Student never gets into conflicts... the Student is not a problem and I really enjoy the Student..." The Behavior Special Factor box is not checked on any of the recent IEPs, and there is no evidence or data in the record to indicate a Functional Behavior Assessment (FBA) is needed for this Student as there seem to be few behavior problems other than one isolated incident involving the Student hitting another student who was crying, due to Student's adverse reaction to crying. There is no evidence in the record that the District was aware of this reaction to crying prior to the episode in question.

Finally, the District was able to demonstrate that positive behavioral supports are utilized in the SLP classroom and at the middle school for all students, including the Student in this case.

This allegation is not substantiated.

V. CORRECTIVE ACTION⁴
In the Matter of McMinnville School District
Case No. 15-054-022

The Department does not order any Corrective Action resulting from this investigation.

Dated: this 23rd Day of June 2015



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

Mailing Date: June 23, 2015

⁴ 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)).