

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego SD

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 15-054-029

**I. BACKGROUND:**

On July 30, 2015, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parent (Parent) of a student (Student) residing in the District. The Parent 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 July 31, 2015.

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. The District asked for and received a 14 day extension due to the unavailability of key District staff during the summer break. 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 July 30, 2014 through July 30, 2015. The Final Order is due October 12, 2015.

On August 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 August 20, 2015. On August 12, 2015, the complaint investigator sent a revised *Request for Response* establishing a due date of September 3, 2015, given the approved extension.

On September 3, 2015, the District submitted a *Response* disputing all of the allegations in the Parent's complaint. In total, the District provided these materials;

- A. District Response Letter;
- B. Emails;
- C. Meeting Notice for 5/25/15;
- D. Prior Written Notice for 5/29/15;
- E. IEP, 5/29/15;
- F. Meeting Minutes for 5/29/15;

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

- G. Student Behavior Records;
- H. Prior Written Notice for 4/3/15 IEP;
- I. Meeting Notice for 4/3/15 IEP meeting;
- J. IEP, 4/3/15;
- K. Meeting Minutes, 4/3/15;
- L. Student Behavior Records;
- M. Meeting Notice for 1/16/15 IEP meeting;
- N. IEP, 1/16/15;
- O. Meeting Minutes for IEP meeting 1/16/15;
- P. Student Behavior Records;
- Q. Written Agreement between Parents and District, 12/10/14;
- R. Meeting Notice for IEP meeting 12/10/14;
- S. IEP, 12/10/14;
- T. 12/10/14 Meeting Minutes;
- U. Prior Written Notice, IEP meeting 12/10/14;
- V. Emails between Parents and District;
- W. Meeting Notice for IEP meeting for 11/25/14;
- X. Written Agreement between Parents and District, 11/25/14;
- Y. IEP, 11/25/14;
- Z. Meeting Notice for 11/24/14 IEP Meeting;
- AA. IEP, 11/25/14;
- BB. Prior Written Notice for 11/25/14 IEP;
- CC. Meeting Minutes from 11/24/14 IEP meeting;
- DD. Student Behavior Records;
- EE. Meeting Notice for 11/3/14 IEP meeting;
- FF. Prior Written Notice from 11/3/14 IEP meeting
- GG. Meeting Minutes from 11/3/14 IEP meeting;
- HH. Emails between Parent and District;
- II. Student behavior Records;
- JJ. Meeting Notice for 9/22/14 IEP Meeting;
- KK. IEP, 11/26/1;
- LL. Student Information Records;
- MM. Previous School Year Records from neighboring District; and,
- NN. District Policies.

In addition, the District submitted the following materials during the interview process:

1. Attendance Report for 2014 – 2015;
2. Sample of Zones program;
3. Recess Rules;
4. Suspension Letters from 2014 – 2015; and,
5. 2014 – 2015 Cumulative File – mostly health and attendance/grade records.

On September 11, 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 to the Allegation on use of the Zones Program;
- B. Copies of Zones material;
- C. Copy of data sheet on Student Response to Zones Program and the amount of time the Student was out of School in April and May;
- D. Emails between District and Parent about Zones Program;
- E. Response Letter to the Allegation on Timed Tests;
- F. Emails between District and Parent about use of Timed Tests;
- G. Response Letter on General Expectations Allegation;
- H. Emails between District and Parent about General Expectations;
- I. Copy of List of 54 Expectations;
- J. Response Letter to the Allegation on EA Training;
- K. Emails between District and Parent about EA Training;
- L. Response Letter to the Allegation on Indoor Recess Accommodation;
- M. Response Letter to some of the Non-Investigable Issues;
- N. Miscellaneous Documents

The Department's complaint investigator determined that on-site interviews were needed. On September 18, 2015, the Department's Investigator interviewed the Parent. On September 21, 2015, the Department's Investigator interviewed the District Special Education Director, the classroom Teacher and EA, the school counselor, case manager, principal, supported Education Specialist, school psychologist, and District Clinical Psychologist. 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.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint.<sup>2</sup> The Department extended this complaint for 14 days due to unavailability of key District staff.<sup>3</sup> 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 Parent'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 on the Discussion in Section IV. This complaint covers the one-year period from July 30, 2014 to the filing of this complaint on July 30, 2015.<sup>4</sup>

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<sup>2</sup> 34 CFR §300.1510(2010)

<sup>3</sup> OAR 581-015-2030 (12) (2010)

<sup>4</sup> See OAR 581-015-2030(5)(2008); 34 CFR §300.153(c)

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><b><u>Prior Written Notice</u></b></p> <p>The Parent alleges that the District violated the IDEA when it did not provide Prior Written Notice regarding the removal of the Student from the educational placement for 31 hours during the months of April and May, 2015.</p> <p>(OAR 581-015-2310 &amp; 34 CFR 300.503)</p>	<p><b><u>Not Substantiated.</u></b></p> <p>The student was not removed from the educational placement. The student was not suspended from school for more than ten consecutive days, nor was there any pattern of removal that constitutes a change in placement. There is evidence that some of these removals were initiated by the student, and others were categorized as interventions rather than disciplinary removals.</p>
2.	<p><b><u>When IEP's Must Be In Effect</u></b></p> <p>The Parent alleges that the District violated the IDEA when it did not provide the services specified on the Student's IEP and agreed to by the team in an IEP meeting held in October, 2014. Specifically, the Parent alleges the District:</p> <ul style="list-style-type: none"> <li>i. Did not use agreed upon interventions such as role playing, and "Zones of Regulation;</li> <li>ii. Did not provide the Student with an alternative indoor recess site the Student could use when outdoor weather was frightening to the Student, i.e., thunderstorms;</li> <li>iii. Continued to hold the Student accountable to 54 general education guidelines, even though the IEP team had specified that accountability for meeting 3—5 general education guidelines was more appropriate for the Student; and,</li> <li>iv. Continued to require the Student to take Timed Tests frequently in violation of the agreement made at</li> </ul>	<p><b><u>Not Substantiated.</u></b></p> <p>There is no evidence that an IEP meeting actually took place in October, 2014. There were IEP meetings on September 22, 2014 and November 3, 2014. The IEP discussed during both of those meetings did not include any of the interventions referenced by the Parent. There was another IEP meeting on November 24, 2014. At that time another IEP was put into place, which was identical to the previous IEP but for the dates being changed. The parents were then asked to keep this IEP in place until December 19, 2014, at which time it would be reviewed. On December 8, the parents were then notified that the next IEP meeting would be on January 15, 2015 and signed a written agreement that the IEP would be unchanged until that time. This meeting actually took</p>

	<p>the October, 2014 IEP meeting. (OAR 581-015-2220; 34 CFR 300.323)</p>	<p>place on January 16, 2015, at which time the IEP was revised. However, the accommodations referenced by the Parent in this Complaint were not added to the IEP at that time, nor is there any evidence to suggest that the Student was ever held accountable for the 54 general guidelines. Ultimately, the District is responsible for complying with the terms contained within the IEP.</p>
<p>3.</p>	<p><b><u>Training of Educational Assistants:</u></b></p> <p>The Parent alleges the District violated the IDEA when it did not provide appropriate training to the Educational Assistant assigned to work with the Student in the general education setting.</p> <p>(OAR 581-037-0025; 34 CFR 300.156(b) (2) (iii))</p>	<p><b>Not Substantiated.</b></p> <p>Because the District did provide training to the EA about the Student, specifically, and about the Student's program, the Department does not substantiate this allegation and orders no Corrective Action.</p>
<p>4.</p>	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The Parent alleges 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; 34 CFR 300.101; 34 CFR 300.201)</p>	<p><b>Not Substantiated.</b></p> <p>While it is evident that the communication between the Parent and the District was not as clear as it could have been, there is no evidence that the student was denied FAPE based upon the allegations in this Complaint.</p>
	<p><b><u>Proposed Corrective Action</u></b></p> <p>The Parent requests that District staff be provided mandatory training on working with children with early childhood trauma and Fetal Alcohol Spectrum Disorder.</p>	<p>No Corrective Action is ordered in this case.</p>

**Issues outside of the Scope of IDEA Complaint Investigations**

The Parent raised several issues that, as described, are not within the scope of IDEA and will not be investigated in this complaint. These allegations relate primarily to the professional conduct of educators. The Parent alleges the District staff knowingly re-traumatized the Student who had been previously diagnosed as having experienced early childhood trauma; did not respond appropriately when the Student engaged in, or threatened, self -injurious behaviors; and used discriminatory language regarding the Student in daily reports, emails, and conversations. These concerns should be addressed to the Oregon Teacher Standards and Practices Commission (TSPC) at 250 Division St., NE, Salem, OR 97301.

Additionally, the allegation involving use of discriminatory language may also be addressed directly through the school district or by contacting the U.S. Department of Education Office for Civil Rights in Seattle, Washington 98174. The allegation regarding the use of physical restraint and seclusion may be addressed to the school district and, subsequently, to ODE using the non-IDEA complaint procedures in OAR 581-021-0570.

**Requested Corrective Action:**

The Parent requests that District staff be provided mandatory training on working with children with early childhood trauma and Fetal Alcohol Spectrum Disorder.

**iii. FINDINGS OF FACT:**

1. The Student is 11 years old, and is eligible for Special Education services as a student with an Other Health Impairment. This eligibility was established on November 29, 2012 in a neighboring school district.
2. The team in the neighboring district wrote an IEP on November 26, 2013. The IEP contained these elements:

IEP Element	Student Specific
Present Level of Academic Achievement and Functional Performance	<ul style="list-style-type: none"><li>• Has learned the important skill of “glass half full” thinking;</li><li>• Is working on understanding the levels of feeling throughout the day, and learning strategies to work through them as they occur;</li><li>• Sharing information orally is a strength;</li><li>• Working towards using class discussion as a high leverage strategy to express opinions and justify them;</li><li>• Showing progress as a reader;</li><li>• Working on place value, addition,</li></ul>

	<ul style="list-style-type: none"> <li>subtraction and multiplication in math;</li> <li>Was assessed in 2012 by local Education Service District. On the Wechsler Intelligence Scale for Children, 4<sup>th</sup> Edition, the Student achieved a Standard Score (SS) of 102 in Working Memory and a SS of 118 in Processing Speed. (SS of 85—115 are considered average range);</li> <li>Woodcock Johnson III Tests of Achievement: Broad Reading – SS of 111, Broad Math – SS of 113 and Broad Written Language SS of 107. Again, SS of 85—115 are average;</li> <li>On the Child Behavior Checklist given in May, 2012, the Student scored in the borderline clinical and clinical range for both internalizing and externalizing behaviors.</li> </ul>
Statewide Assessment	<ul style="list-style-type: none"> <li>The Student will take standard assessments in Reading/Literature and Mathematics with the option to take the tests in an alternative setting.</li> </ul>
Districtwide Assessment	<ul style="list-style-type: none"> <li>No Districtwide Assessment is given at the Student's grade level.</li> </ul>
Goal	<ul style="list-style-type: none"> <li>The Student will continue to develop the ability to remain safe and respectful with peers, accept accountability for actions and follow directions the first time asked in 8 of 10 opportunities as observed by staff.</li> </ul>
Non-participation Justification	<ul style="list-style-type: none"> <li>The Student will be removed from the general education setting for 20 minutes per day for a daily check in and check out process with staff.</li> </ul>
Extended School Year (ESY)	<ul style="list-style-type: none"> <li>The Student does not need ESY.</li> </ul>
Consideration of Special Factors	<ul style="list-style-type: none"> <li>The Student exhibits behaviors that impede self-learning and the learning of others.</li> </ul>
Service Summary – Specially Designed Instruction (SDI)	<ul style="list-style-type: none"> <li>SDI for Behavior – 20 minutes per day at the school site.</li> </ul>
Service Summary – Related Services	<ul style="list-style-type: none"> <li>None Needed</li> </ul>
Service Summary – Supplementary Aids/Services; Modifications and Accommodations	<ul style="list-style-type: none"> <li>Review expectations prior to transitions in and between classroom and and/or activities -- daily for 5 minutes;</li> </ul>

	<ul style="list-style-type: none"> <li>• Preferential seating to provide access to instruction and provide proximity support for attending – 5 minutes per day;</li> <li>• Provide clear expectations for classroom and school behavior – daily for 5 minutes.</li> </ul>
Service Summary – Supports for School Personnel	<ul style="list-style-type: none"> <li>• Consultation in the area of Behavior to Special Education – 15 minutes per month.</li> </ul>
Placement Determination	<ul style="list-style-type: none"> <li>• General Education with pull-out services for SDI in behavior for 20 minutes per day, Selected as Placement.</li> </ul>
Student Behavior Support Plan (BSP)	<ul style="list-style-type: none"> <li>• The BSP attached to the IEP focused on the Student's tendency to blame others or tell lies to avoid accountability. The alternative behavior specified in the BSP was for the Student to role-play and accept correction, help and feedback.</li> </ul>

3. The Student's Parents are divorced but share parenting responsibilities. After one Parent moved from the neighboring school district to the District, the Parents decided to transfer the Student to the District at the end of the third grade year (2013-2014).
4. On August 28, 2014, the Parent emailed the District and informed the school counselor that the Student was enrolling in the District. The Parent mentioned that the Student had an IEP from the previous school, and asked the District not to implement the IEP until the Parent and school staff could meet. On September 8, 2014, the school psychologist<sup>5</sup>, reviewed the IEP and file and emailed some basic information to the classroom Teacher and school counselor.
5. On September 8, 2014, the Parent called the school asking when an IEP meeting would be scheduled. On September 10, 2014, the school learning specialist, assigned to be the Student's case manager, sent the Parent a notice for an IEP meeting to be held on September 22, 2014.
6. From September 8, 2014 to September 22, 2014, when the IEP Team met, members of the Team emailed each other, sometimes several times a day, about the Student. The Team members shared information with one another, focused on the difficulties the Student was having in the general education setting. Team members noted that the Student was having difficulty in the general education setting such as refusing to follow directions, non-compliance, complaining of physical discomfort and being overly physical with other students. The school counselor suggested that the team use a tracking sheet to identify specific times of the day or subject matters when the Student was having the most

<sup>5</sup> Employed by the District from September 2014 through March 2015. Another school psychologist finished the year at the school after the first one left.

difficulty. The counselor also suggested the Student participate with other peers in a "Lunch Bunch" facilitated by the counselor.

7. On September 19, 2014, the classroom Teacher emailed the rest of the IEP Team and expressed numerous concerns about the Student and the Student's effect on the general education classroom. The Teacher stated: "Can we discuss placement? It is a part of the IEP. If behavior mod truly won't work with the Student, then what is there? I understand the Student's disabilities are severe and that they have a huge impact on actions and reactions." Further, the Teacher commented, "This type of kid requires a very intensive behavior plan (that may be futile). How much are my other 26 students expected to sacrifice for this Student's benefit? In just 13 short days, the Student has already burned bridges with kids and staff."
8. The school principal replied to the classroom teacher's email and to the other members of the IEP Team. The principal suggested that the team collect more information at the upcoming IEP meeting, consider whether the IEP needed adjustment, implement the Behavior Support Plan and determine if staff needed to use the school safety plan.
9. The team met on September 22, 2014. The case manager, classroom teacher, principal, school psychologist and both parents attended the meeting. The classroom Teacher shared with the team that the Student was not completing homework, had an "attitude" in class and that the Student complained of not liking the school. The Parents shared some of the Student's history and discussed the Reactive Attachment Disorder. The Parents also noted that when the Student is involved in making decisions, such as about IEP goals, the Student is more invested in the process. The parents suggested a "homework club" after school which the parents would help supervise and at which other students could join their child and get help with homework. The Principal told the Parents that this could be worked out. The Team reviewed the November 26, 2013 IEP, and made no changes to the IEP, as the annual review was scheduled for November, 2014. The Team made no changes to the November 26, 2014 IEP. The Parent noted that the previous school had used a chart with the Student to indicate where the Student was at any moment in time in terms of being settled and ready to learn. The Parent noted that "1" indicated settled and ready to learn; but that if the Student was rated as "3", it was hard to help the Student calm down and get ready to learn. The Parents shared some information about the Student's early life, and the Principal talked about a few physical altercations with other Students.
10. The District sent the Parents a Prior Written Notice (PWN) summarizing the decisions made at the September 22, 2014 IEP meeting. The Team noted that it had accepted the IEP from the previous district and had decided not to make any changes in it, as the annual review date was approaching (11/26/14). The Team decided this would give additional time to observe and assess the Student to see what strategies were appropriate. On October 21, 2014, the Parent emailed the case manager and asked for another IEP meeting. Subsequently, the Parent emailed again on October 27, 2014, and asked that during the IEP meeting, the Team work to establish 3—5 appropriate

behavioral goals, discuss data collection on the goals and consider the behavior plan that had been written with the November 26, 2013 IEP.

11. The IEP Team met again on November 3, 2014. Both Parents attended the meeting, and the Student's aunt, a school counselor, also attended as an advocate for the Student. The Case Manager attended, as did the school psychologist, District Clinical Psychologist, Principal, classroom teacher, school counselor, District Supported Education Specialist and the Student's math teacher<sup>6</sup>. The Team reviewed the Student's behavior at school during September and October, 2014. The Parent expressed concern again that the list of expectations was too large and designed for the general population, and was not based on the Student's IEP goals. The School Psychologist had revised the Behavior Support Plan and suggested two goals: 1) Take responsibilities for actions/behavior; and, 2) Increase positive peer interactions. The Team agreed that these two goals were appropriate, and they discussed a number of other strategies to use. The Parents agreed to sign a release so that the District Clinical Psychologist could communicate with the Student's private specialists.
12. The Team wrote a PWN summarizing the IEP meeting and sent it on November 3, 2014. The team noted that the purpose of the meeting was to review the draft IEP. The team also noted that a social skills goal would be rewritten and presented at the next IEP meeting.
13. On November 3, 2014, the Principal sent an email to all Team members, including the parents, and reported the Student was having significant difficulties engaging negatively with peers during recess times. On November 5, 2014, the Principal wrote to the team again, and suggested they designate an Educational Assistant (EA) to provide support to the Student during recess. The Principal had discussed this with the Student, and the Student reportedly liked the idea.
14. The IEP Team met again on November 24, 2014 to continue discussion about the IEP. All of the Team members who attended the November 3, 2014 IEP meeting attended this second meeting. The Team discussed some of the disruptive behaviors the Student exhibited in class; such as noise making, stabbing pencils, tearing paper, pushing others in line. The Team also considered the Student's difficulty in maintaining a regulated emotional state in the classroom. The District Clinical Psychologist suggested that the Team use a Program called "Zones of Regulation"<sup>7</sup>; although the Parents said it had been

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<sup>6</sup> The students at this school are grouped for math instruction by academic achievement levels, so this Student has a different Teacher for math than for all the other subjects.

<sup>7</sup> The Zones is a systematic, cognitive behavior approach used to teach self-regulation by categorizing all the different ways we feel and states of alertness we experience into four concrete zones. The Zones curriculum provides strategies to teach students to become more aware of, and independent in controlling their emotions and impulses, managing their sensory needs, and improving their ability to problem solve conflicts. The Red Zone is used to describe extremely heightened states of alertness and intense emotions. A person may be elated or experiencing anger, rage, explosive behavior, devastation, or terror when in the Red Zone.

The Yellow Zone is also used to describe a heightened state of alertness and elevated emotions; however, one has some control when they are in the Yellow Zone. A person may be experiencing stress, frustration, anxiety, excitement, silliness, the wiggles, or nervousness when in the Yellow Zone.

The Green Zone is used to describe a calm state of alertness. A person may be described as happy, focused, content, or ready to learn when in the Green Zone. This is the zone where optimal learning occurs.

tried before and did not work. Although the Team had discussed goals and strategies, they did not make any written changes to the November 26, 2013 IEP, but did extend the date of the IEP to November 25, 2014.

15. Also at this November 24, 2014 IEP meeting, the District Team members suggested that the Team should consider a different placement for the Student. District team members offered two alternative placements for the Parents to consider. The first placement was a Special classroom with behavior support integrated into the classroom, and with mainstreaming opportunities dependent on the Student's behavior. The second option was placement in a therapeutic special classroom outside of the District. The Parents and the Student's aunt expressed surprise that the District members of the team suggested these options as placements for the Student. The Parents noted that the Team had not really implemented the BSP or role-playing strategies. They also noted that another change would be very traumatic for the Student and that they felt this would be a "step backwards". The Parents did agree to visit a behavior class in the District at another elementary school. Even though the Team had discussed Role Playing and using the Zones of Regulation program, neither was recorded on the November 26, 2013 IEP and no new pages were added to the IEP. However, the case manager wrote a Prior Written Notice and stated that the Team "reviewed two new goals, Thinking Skills for Emotional Regulation and Executive Functioning". In addition, the case manager wrote that the Team decided to increase the Specially Designed Instruction in Classroom Behavior to 30 minutes per day; and SDI in Thinking Skills to 240 minutes per week. Finally, the case manager noted that when the Parents expressed surprise about the suggested placement change, the classroom Teacher responded that the suggestions "was a result of interventions which included change in their expectations."
16. On November 25, 2014, the Case Manager called the Parent and asked if the Parent would agree to continue the IEP as written until December 19, 2014. The Parent agreed and on November 30, 2014, signed a Written Agreement that an IEP meeting was not necessary to make this decision.
17. On December 1, 2014, the Student's private clinical psychologist emailed the IEP team and offered to consult with the Team about strategies to help the Student be successful in the classroom.
18. On December 2, 2014, the Parent sent an email to the IEP Team stating that the Parents had been very surprised by the District's suggestion of a placement change. However, the Parent said they would visit the in-district behavioral classroom. They also requested that:
  - a. The District solicit input from the Student's private therapists;
  - b. The District arrange for the District Supported Education Specialist and the District Clinical Psychologist observe the Student at recess and in the classroom;

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The Blue Zone is used to describe low states of alertness and down feelings, such as when one feels sad, tired, sick, or bored. <http://zonesofregulation.com/>

- c. The District arrange for an outside Educational Advocate to visit the school and assess the Student's schedule and service minutes and to support the team in streamlining the Student's daily process to support the Student and to decrease the burden on the school staff;
- d. The District make key staff familiar with Zones of Regulation and the Kelso's Choice Wheel, if the staff chooses to use these programs;
- e. The District continue working with the case manager (daily check-ins), and the school counselor (Lunch Bunch). The District provide information on the EA supporting the Student at recess;
- f. The District continue to provide written communication focusing on improvements, positive behavioral and academic growth and progress toward goals; and,
- g. The District provide information on ESY, listed on the agenda of the previous IEP meeting, but not discussed at the meeting.

19. The District's Supported Education Specialist responded on the same day to the Parents and the Team. In the response, the Specialist informed the parent that:

- a. The Parents were welcome to invite the private therapists to IEP meeting;
- b. Staff had conducted observations in general education classrooms already, and would continue to do so;
- c. The District was unclear how an outside Advocate could help the Team with the service time on the IEP;
- d. Decision-making methodology will be implemented when placement is determined;
- e. The staff would continue to implement the Behavior Support Plan. The individual about whom the Parents asked is an EA who does the morning check-in with the Student, but does not support the Student at recess;
- f. The District would continue to communicate by email, but the "communication does not pertain to goals in the draft IEP"; and,
- g. The Team has not yet completed the discussion of ESY, Non-participation Justification and Placement of the IEP Process.

20. On December 8, 2014, the District notified the Parents that the next IEP meeting would be held on January 16, 2015 and that the District Special Education Director would attend. The Parents replied that the Student's aunt would also attend. On December 10, 2014, the case manager again asked the Parent to sign a written agreement stipulating that the November 26, 2013 IEP would remain unchanged and active until January 30, 2015. The Parent did so.

21. In December the District reported progress on the IEP goal from the November 26, 2013 IEP. The District stated:

- a. "December 2014. The Student has transitioned well to the school and we are glad the Student is here. After implementing a recess behavior plan, the Student continues to work on physically being safe with peers and is accomplishing 80% of the time during unstructured times. When the Student gets in an altercation with a peer or peers, first impulse is to be disrespectful, but once cooled off, the Student

generally will apologize for behavior. When the Student is confronted with redirection from a Teacher or staff, the Student struggles to accept accountability for own action. Again, if given a chance to calm down, the Student responds more appropriately. Many times during the day, the Student follows directions. The Student had 11 unsafe or disrespectful behaviors during the trimester that required the Student to speak with the Principal.”

22. On January 5, 2015, the Parent sent an email message to the IEP Team. In the message the Parent informed the Team that the Student had just started on a new medication several days previously. The Parent asked the Team to communicate any restlessness, sleepiness, headaches, etc., and any positive changes in the Student’s outlook. The Student’s psychiatrist also emailed the District Clinical Psychologist on January 7, 2015, and said the Parents and the medical team were looking for increased self-regulation and less feeling overwhelmed by emotion. For the next two weeks, District staff sent the Parents very positive messages about the Student’s performance at school.

23. On January 14, 2015, the Clinical Psychologist wrote to the Psychiatrist and noted that in the last day or so, the Student’s behavior had started to escalate. The Psychiatrist replied that an increase in the medication dosage was therefore indicated.

24. The IEP Team met again on January 16, 2015, and at this meeting they formally revised the Student’s IEP. Both Parents, the Student’s aunt, and most of the previous IEP Team members attended the meeting. The District Special Education Director, the math Teacher and the Supported Education Specialist were absent. Team members agreed that the new medication was having a positive effect on the Student. The Team discussed all sections of the IEP and changed the elements in the chart below:

IEP Element	Student Specific
Present Level of Academic Achievement and Functional Performance	<ul style="list-style-type: none"> <li>• The Student wants to do well and be liked by peers;</li> <li>• The Student is intelligent, makes friends easily, and enjoys writing;</li> <li>• The Student took Statewide Assessment tests during the 2013 – 2014 school year and achieved 204 in Reading (not yet met), and 201 in Math (not yet met);</li> <li>• The Student improved on the in Oral Reading Fluency Test from a score of 109 in September, 2014 to a score of 157 in January, 2015;</li> <li>• In Math, the Student was making progress on math facts, but has started to give up on timed fact tests;</li> <li>• The Student’s disability affects involvement and progress by inhibiting the Student’s effectiveness with interpersonal relationships, focus and attention and thoughtful problem-solving. This often manifests as defiance, disorganization, and physical alterations with peers; and,</li> </ul>

	<ul style="list-style-type: none"> <li>Behavioral data sheets indicate the Student is meeting behavioral expectations at least 5 of 9 opportunities, or 55% of the school day.</li> </ul>
Goal	<ul style="list-style-type: none"> <li>Given individualized instruction in social thinking and problem solving strategies/coping skills, the Student will manage reaction to academic expectation and frustrations in pro-social ways that do not disrupt self or others learning 80% of the time, as measured by a data sheet and Teacher observations;</li> <li>Given individualized instruction in executive functioning and problem solving skills, the Student will increase ability to utilize problem solving skills to manage problematic situation 75% of the time. (Currently 20%) This goal will be measured by three specific criteria;</li> <li>Given individualized instruction in social thinking and problem solving strategies/coping skills, the Student will increase independent use of self-regulation strategies to manage reactions (to academic demands and upsets) in pro-social ways that do not disrupt the classroom 85% of the time with (1 adult cue) (Currently 20% of the time); 8 of 10 opportunities as measured by Teacher observation and data.</li> </ul>
Non-participation Justification	<ul style="list-style-type: none"> <li>The Student will be removed from the general education curriculum for 200 minutes per week for explicit instruction in the areas of classroom and thinking skills.</li> </ul>
Service Summary – Specially Designed Instruction (SDI)	<ul style="list-style-type: none"> <li>SDI for Behavior – 20 minutes per day in regular and special education;</li> <li>SDI for Thinking Skills (Emotional Regulation &amp; Executive Functioning) – 20 minutes per day in regular and special education.</li> </ul>
Service Summary – Supplementary Aids/Services; Modifications and Accommodations	<ul style="list-style-type: none"> <li>Review expectations prior to transitions in and between classroom and and/or activities – daily for 5 minutes;</li> <li>Preferential seating to provide access to instruction and provide proximity support for attending – daily;</li> <li>Provide clear expectations for classroom and school behavior – daily;</li> <li>Give test to Student either alone or in a small group – option to be offered to Student;</li> <li>Reinforce positive behavior – daily;</li> <li>Break large assignments into smaller tasks with separate due dates for each – when large projects</li> </ul>

	<p>are given;</p> <ul style="list-style-type: none"> <li>• Home/School communication – daily;</li> <li>• Praise Student in presence of peers so others observe Student in a positive light; and,</li> <li>• Check out to make sure Student leaves school with proper materials.</li> </ul>
Service Summary – Supports for School Personnel	<ul style="list-style-type: none"> <li>• Consultation by Clinical Psychologist – 60 minutes per year.</li> </ul>
Placement Determination	<ul style="list-style-type: none"> <li>• Regular class with learning center support for specially designed instruction in social and classroom skills.</li> </ul>

25. On January 23, 2015, the classroom Teacher sent the Parent, via email, another copy of the list of 54 classroom expectations. The Parent replied on January 27, 2015, asking the Teacher why the Team was still using these expectations to measure the Student's behavior, when the Team had established three goals in the new IEP. The Teacher replied the same day and reiterated that these were "expected behaviors for any given routine during the school day". On February 2, 2015, the Teacher sent a sample of the new behavior data sheet to the Parent. The Student's three goals are written at the top of the sheet, and a five column chart is printed below. The first column lists the activity, Homeroom, Math, etc., and the second column lists the activity weight for each<sup>8</sup>. Then there is a column for each of the goals. The Teacher recorded whether or not the student met each goal during each activity. The chart was emailed to the Parent at the close of each school day as a Google document, and the Teacher included some narrative in the email.

26. On February 3, 2015, the District hired an EA to supervise the Student at Recess and support the Student during class time. The Principal met with the EA and explained the job to the EA and provided specific information about the Student. During the interview, the EA told the Department's investigator that the Principal provided information on:

- a. The student's goals;
- b. Specific techniques to use with the Student, such as redirection, observation and positive reinforcement;
- c. Focusing on the Student's "challenges" and "successes";
- d. Taking data on whether or not the Student met the goals during each activity across the school day;
- e. How to help the Student problem-solve issues at Recess;
- f. How to help the Student manage personal reactions to stress and frustration;
- g. How to offer the Student choices and reminders, and,
- h. The Student's area of disability<sup>9</sup>.

<sup>8</sup> The Team determined this by calculating what percentage of time of the whole day the activity constituted. So, Homeroom was 23% of the day, and Lunch was 8% of the day.

<sup>9</sup> The EA has worked for the District as a substitute EA in some of the District's behavioral classrooms.

27. The Principal then asked the EA to observe the Student over the next day or so. The Principal also sent the EA to observe an elementary behavior classroom. In addition, the Principal equipped the EA with a walkie-talkie so that the EA could contact other staff for help at any time during the school day.
28. On February 5, 2015, the Parent sent an email to the Teacher and reported that the Student was extremely worried about coming to school that day. The Student told the Parent that there had been an adult following the Student around the school for the last several days, taking notes and staring at the Student. The Student had decided this was someone coming to move the Student out of the adoptive home and to a foster home. In the email, the Parent asked if this was an EA assigned to work with the Student, and if so, why the Student had not been introduced to the EA. The Principal replied immediately and told the Parent that this was the new EA, but the Principal did not want to introduce this person to the Student until the Principal was sure the EA could work with the Student.
29. The Principal introduced the Student to the EA the next day and explained the EA would be available whenever and wherever the Student needed help. The Principal wrote to the Parent on February 6, 2015, that the meeting had gone well, and that the Student seemed comfortable with the EA. The Parent wrote back and said that the Student was feeling embarrassed about the attention the EA was giving the Student in the classroom. The Principal replied and said that he had instructed the EA to work with all students in the classroom, so as to minimize the attention given to the Student.
30. On February 22, 2015, the Parent wrote to the Teacher and asked why the Student was still being required to take Timed Fact Tests in Math class. The Parent noted that the IEP Team had discussed how stressful this was for the Student. The Teacher forwarded the email to the rest of the Team, and the Supported Education specialist replied and suggested adding "No Timed Tests" to the accommodations on the IEP. The math Teacher replied to the School Team on February 23, 2015, and stated that math fact fluency timed tests are a standard for fourth grade. The Math Teacher observed in the email that the Student was frustrated in the Timed Tests when caught cheating, but that the Student often asks when the next Timed Test would happen.
31. On February 24, 2015, the Parent wrote an email to the Teacher and asked if the Teacher would give an explanation if the total times the Student met each goal was less than 100%. The Parent also noted that when the Student was removed from one of the activities for behavioral reasons, that activity percentage should be subtracted from the total. Throughout February and March 2015, the Teacher sent home emails with the data sheet and with narrative descriptions of the Student's behavior.
32. The district sent out IEP goal progress reports in March, 2015<sup>10</sup>. About the first goal, the case manager wrote that the Student had achieved success 89.3% of the time on the objective of accepting Teacher information or directives without disrupting the class. The Student achieved success 79.9% of the time on the second objective of the Student

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<sup>10</sup> Specific date the report was sent is not recorded in the record.

managing upsets without verbal or physical aggression. Finally, on the objective of transitioning between activities in a safe way without trying to be first, the Student achieved success 90.8% of the time. On the second goal the case manager noted the Student had met the standard of the first three objectives 80% of the time. These objectives focus on recognizing expected and unexpected behaviors, self-rating the Student's own behavior, and, identifying how the Student felt in a pro-social way in either real or role playing situations. On the third goal, the case manager noted the Student was able to come up with possible solutions in real or roleplaying problem situations.

33. Throughout March, until spring vacation, the Teacher sent out the daily behavior data collection sheet with narratives to the Parents. The Parents, the Teacher and the Principal continued to communicate via email, with the Parent often expressing dissatisfaction with the Student's program at school. During one of the email exchanges, the Parent reminded the Teacher that the Student was very afraid of thunderstorms; and stated the opinion that the Student had not followed directions during recess because of this. The Teacher replied that the Teacher's perception was that the Student didn't follow directions at recess because the Student wanted to play with a specific friend in another area of the recess yard.

34. On April 3, 2015, the District Clinical Psychologist sent an email to the Student's private Psychiatrist. The District Clinical Psychologist noted that the Student's behavior was deteriorating and the relationship between the Parents and Staff was very low. The Psychiatrist wrote back that due to weight gain, the Psychiatrist had discontinued the new medication the Student had started in January.

35. As agreed upon in January, 2015, the IEP team met again on April 3, 2015. Everyone except the math Teacher and the District Special Education Director attended the meeting; the new School Psychologist was present also. The Parents reported to the Team that the Student did not like coming to school anymore and that the Parents felt the EA was more disruptive than helpful to the Student. The Clinical Psychologist shared some information with the Team about traits that students with Fetal Alcohol Syndrome often exhibit. As a result of the meeting, the Team made the following changes to the Student's IEP:

IEP Element	Student Specific
Goal	<ul style="list-style-type: none"> <li>• Team made some minor adjustments in the objectives, but the goals remained the same.</li> </ul>
Non-participation Justification	<ul style="list-style-type: none"> <li>• The Student will be removed from the general education curriculum for 360 minutes per week for explicit instruction in the areas of classroom and thinking skills.</li> </ul>
Service Summary – Specially Designed Instruction (SDI)	<ul style="list-style-type: none"> <li>• SDI for Behavior – 40 minutes per day in regular and special education;</li> <li>• SDI for Thinking Skills (Emotional Regulation &amp; Executive Functioning – 50 minutes per day in regular and special education.</li> </ul>

Service Summary -- Supplementary Aids/Services; Modifications and Accommodations	<ul style="list-style-type: none"> <li>• Team added a Behavior Support Plan to be implemented daily.</li> </ul>
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36. On April 10, 2015, the new school psychologist wrote to the Parents and informed them the School psychologist had met twice with the Student. The School Psychologist explained the Zones of Regulation program that the School Psychologist was teaching to the Student. The School Psychologist also noted that the EA was participating in the "Lunch Bunch" with the school counselor and the Student, and that this seemed to be improving the relationship between the EA and the Student.
37. During April and May, 2015, the School Psychologist continued to work with the Student on the Zones of Regulation. The School Psychologist taught the EA how to use the system to help the Student get settled and ready to learn, and the EA took data on the Student's response to and success with the program.
38. The Team continued to send the Parents data and narrative about the Student's success in meeting goals during the April and May, 2015. Sometimes the Team sent the behavior data sheet as described in Fact 34. Sometimes, the Team sent an email with narrative describing the Student's day. Often, the Team would note that the Student met all three goals as part of the narrative; but would not specifically report the percentage the Student met the goals in each activity. Sometimes the Team included the data collection information on the three goals as part of the narrative and did separate the data for each activity. However, in total, the District sent the data collection sheets, as per Fact 34, on 22 days between February 2, 2015 and April 2, 2015. During this time period, the Student met Goal #1 an average of 81.64%; met Goal #2 an average of 74.68%; and, met Goal #3 an average of 93.59 %.
39. On May 7, 2015, the Parent sent the Team members an email with a link to an article about working with Fetal Alcohol Syndrome students<sup>11</sup>. On the same day, the District Clinical Psychiatrist presented on this topic to the entire elementary school. On May 11, 2015, the case manager sent the Parent a notice for an IEP team meeting to be held on May 29, 2015.

<sup>11</sup> ACES Too High: ACEs are adverse childhood experiences that harm children's developing brains so profoundly that the effects show up decades later; they cause much of chronic disease, most mental illness, and are at the root of most violence. "ACEs" comes from the CDC-Kaiser Adverse Childhood Experiences Study, a groundbreaking public health study that discovered that childhood trauma leads to the adult onset of chronic diseases, depression and other mental illness, violence and being a victim of violence. The ACE Study has published about 70 research papers since 1998. Hundreds of additional research papers based on the ACE Study have also been published. The 10 ACEs the researchers measured: — Physical, sexual and verbal abuse.— Physical and emotional neglect.— A family member who is: 1. depressed or diagnosed with other mental illness; 2. addicted to alcohol or another substance; 3. in prison; 4. Witnessing a mother being abused; 5. Losing a parent to separation, divorce or other reason. Of course, there are many other types of childhood trauma — such as witnessing a sibling being abused, witnessing violence outside the home, witnessing a father being abused by a mother, being bullied by a classmate or Teacher— but only 10 types were measured. They provide a useful marker for the severity of trauma experienced. Other types of trauma may have a similar impact.  
<http://acesstoohigh.com/aces-101/>

40. The IEP Team met on May 29, 2015. The District Special Education Director attended the meeting; as did the Parents, case manager, Principal, classroom Teacher and school psychologist. The school psychologist started the meeting by explaining how the School Psychologist was teaching the Student and the "Lunch Bunch" group the Zones of Regulation program. The School Psychologist shared data on the Student's progress with the Zones of Regulation program. During the time period of May 14, 2015 to May 28, 2015, the Student accepted a Blue Zone card and consequently achieved a Blue Zone 66% of the time. During this time period, the Student accepted and maintained a Green Zone 100% of the time. When in the Yellow Zone, the Student accepted a Yellow Zone card 55% of the time, and was able to regulate back to a Green Zone 45% of the time. However, when in the Red Zone, in six opportunities, the Student was never able to accept the Red Zone card, and could not regulate to the Green Zone.
41. The Team discussed various ways to rework the Zones program, and whether or not a different program might be more appropriate. The Parents informed the Team that the Student would not return to the school for the 2014 – 2015 school year. The Special Education Director informed the Parents that they would have to ask for a release from the District, which the District would grant, and then another District would have to accept the Student. The Team reviewed the IEP goals and made no changes to them. The School Psychologist suggested doubling the amount of time for SDI. The Team agreed and set the SDI at 100 minutes per week for Thinking Skills and 80 minutes per week for Classroom Skills. The Team agree to add an accommodation of a quiet place to problem solve and re-engage. The Team also reviewed placement options for the Student for the 2015 – 2016 school year. The Parents were not in favor of any change in placement that included a self-contained or behavioral classroom with therapeutic focus. At the end of the discussion, the Special Education Director stated that if the Team could not reach consensus on a placement, the Director would decide. The Team could not reach consensus, so the Director determined that the placement for the Student for the 2015 - 2016 school year would be in the special classroom with support for behavior. The Parents noted that it had been a very difficult year for their child, who now feels like the "bad kid".

**Specific Facts about the amount of time the Student was out of the General Education setting.**

42. At the last IEP meeting held on May 29, 2015, the School Psychologist expressed the concern that the Student was spending too much time out of the classroom for behavioral/disciplinary reasons. The School Psychologist presented a chart with data showing that from April 1, 2015 through May 22, 2015, the Student was out of the general education setting for 1,895 minutes or 31.5 instructional hours. This amount of time reflects a variety of reasons the Student was out of the classroom. Early in the school year, the Principal asked the school secretary to track reasons why students were being sent out of the classroom. The Principal wanted to gather data to discern whether or not the school needed more staff to assist students with behavioral issues. The Principal and the secretary established five categories to sort why students were sent out of class. The

categories were: 1. Student goes to office to self-calm; 2. Intervention (student asks Teacher permission to go to office for problem-solving; 3. Disciplinary Discussion (Discussion with principal to problem solve a situation that might have become a discipline issue); 4. Conduct (Student is in the Red Zone and unable to return to a Green Zone); 5. Suspension (disciplinary removals from class).

43. The District provided the data from the secretary who tracked the reasons the Student was sent to the office during this time period (April 1 – May 22) The District also provided copies of the suspension letters sent to the Parents. Some of the data is contradictory. For example, there are at least two occasions when the secretary recorded the out of class time as Intervention or Conduct, but in actuality the Student was suspended for half the day. On another occasion, the Student is recorded as having an Administrative Absence for half a day, on the official attendance record, when the school lists it as an Intervention. Also, for this date, there is no official suspension letter sent to the Parents. After reviewing all data provided, the Department Investigator found the Student was out of class for a total of 29.5 hours during this time period<sup>12</sup>. This does not include the 3.5 days the Student was officially suspended out of school, for a total of 22.75 hours<sup>13</sup>. Added together this is a total of 52.25 hours of instructional time the Student was out of the general education setting. None of the time the Student was in the office for Conduct, Discipline, or Suspension was identified as an official In-School Suspension.
44. During the time period of April 1, 2015 to May 20, 2015, the Student was suspended from school for disciplinary reasons for a total of 3.5 days. Including earlier suspensions in the school year, the total number of days the Student was suspended during the 2014 -2015 school year was six days.

#### **IV. DISCUSSION**

##### **Prior Written Notice**

The Parent alleges that the District violated the IDEA when it did not provide Prior Written Notice regarding the removal of the Student from the educational placement for 31 hours during the months of April and May, 2015.

A District, per 34 CFR 300.503 and OAR 581-015-2310, must give Prior Written Notice to the parent of a student within a reasonable amount of time before the district proposes to initiate or change, refuses to initiate or change the student's identification, evaluation or education placement. The district must also give prior written notice before it proposes to initiate or change the provision of a free appropriate public education for the student. The prior written notice must be given after a decision is made and a reasonable time before the decision is implemented. The prior written notice must include a description of the action the district is proposing or refusing to take, as well as an explanation of why the district is proposing or refusing this specific action. The notice must describe what other options the IEP team

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<sup>12</sup> Self-Calming, 2.25 hours; Intervention, 12 hours; Conduct, 12.5 hours; Discipline, 2 hours; and, Suspension, .5 hours.

<sup>13</sup> The school day is 6.5 hours long.

considered and why the district rejected those options; as well as an explanation of all documents considered as the district made the decision. Finally, the notice must outline any other factors relevant to the proposed or refused action.

In this case, the Student was removed from the general education setting for a total of 52.25 hours during the months of April and May, 2015. For 22.75 of these hours, the Student was suspended out of school. For 29.5 of these hours, the Student was in the school office for self-calming, intervention, conduct, discipline or suspension. It is impossible to know specifically how much of this time was spent for each purpose. None of this was related to any specific behavior plan that was in effect during the time period. Although the School Psychologist was teaching the Student about the Zones of Regulation, there is nothing in the record to verify that the time in the school office was a bona fide element of the Zones program. At the same time, none of this time was identified as an In School Suspension. When the Student was suspended out of school, the District sent home a formal suspension notice to that effect. During the same time period of April and May, 2015, the Student was receiving SDI for 7.5 hours per week in Behavior and Thinking Skills.

The question here is whether or not the amount of time constituted a change of placement, and if so, did the District send the Parents prior written notice. Not counting the out of school suspension time, the 29.5 hours the Student was out of the general education classroom amounted to an average of 3.6 hours per week.

While this certainly wasn't ideal, it doesn't rise to the level of a change in placement.

This allegation is not substantiated.

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

The Parent alleges that the District violated the IDEA when it did not provide the services specified on the Student's IEP and agreed to by the team in an IEP meeting held in October, 2014. Specifically, the Parent alleges the District did not:

- i. Use agreed upon interventions such as role playing, and "Zones of Regulation;
- ii. Did not provide the Student with an alternative indoor recess site the Student could use when outdoor weather was frightening to the Student, i.e., thunderstorms;
- iii. Continued to hold the Student accountable to 54 general education guidelines, even though the IEP team had specified that accountability for meeting 3—5 general education guidelines was more appropriate for the Student; and,
- iv. Continued to require the Student to take Timed Tests frequently in violation of the agreement made at the October, 2014 IEP meeting.

Under OAR 581-015-2220 and 34 CFR 300.323, a District meets its responsibility to a student with a disability when the district has an IEP in place for the student at the beginning of the school year; and when the district provides the special education and related services to the student in accordance with the IEP.

In this case, several factors are relevant when considering the allegation. First of all, the Student moved in to the District at the beginning of the school year. The Parent wrote to the school in August and asked that the team not implement the previous district's IEP until the IEP team could meet at the new school. However, when the team actually met, the team decided not to change the IEP at all, in light of the fact that the annual review date was only two months away. The Team verified this decision in a PWN sent to the Parents after the September 22, 2015 IEP meeting. The next important factor to consider is that in October the Parents requested that the District discontinue the only SDI specified in the Student's IEP. The Parents and the District worked out a system to provide the SDI in the Learning Center, but this was never noted on a PWN. Also in October, the District implemented a behavior data checklist, not based on the Student's IEP goals; and again did not send a PWN to the Parents. At the second IEP meeting, the District Clinical Psychologist suggested that the Team implement the Zones of Regulation program with the Student. However, the Team again decided to only extend the dates of the IEP, but not to revise it until later in November.

After the IEP team met on November 24, 2014, the case manager sent the Parents a PWN that noted the team proposed to increase the amount of SDI provided to the Student. The Case Manager also wrote that the Team reviewed goals in Thinking Skills for Emotional regulation and Executive Functioning. However, the Zones program was not added to the student's IEP at this time. Even though the school counselor provided some instruction on "feelings" in preparation for the Zones program; it was not formally started until April when a new school psychologist was employed at the school.

Similarly, the issue of the Student's phobia was minimally discussed at an early IEP meeting, but the accommodation was not written into the IEP when it was finally revised on January 16, 2015. The Parents, the Principal, classroom Teacher all discussed the issues of the 54 expectations frequently in emails and at meeting from October, 2014 to February. In fact, the list of expectations was used as a behavior data collection and assessment system from mid-October to February. Again, in several meetings during that time, and multiple emails, various team members expressed concern that the expectations were not based on IEP goals and were too numerous.

The issue of Timed Tests in Math was discussed briefly at one IEP meeting, and in several email communications. The Supported Education Specialist suggested that it become an accommodation in the IEP, but no action was ever taken on that suggestion.

This allegation is not substantiated.

#### **Training of Educational Assistants:**

The Parent alleges the District violated the IDEA when it did not provide appropriate training to the Educational Assistant assigned to work with the Student in the general education setting.

Under OAR 581-037-0025, a district that employs educational assistants in any capacity shall provide or arrange for suitable training to prepare them to perform such functions as they may be assigned.

Here, the Parent had a very specific expectation in mind as training for the EA. The Parent is knowledgeable about and committed to the "Trauma Informed Approaches" point of view for working with students who have endured early life traumas. The Parent wanted the IEP Team, all school staff, and the EA to receive training in "Trauma Informed Approaches".

However, a district is not obligated to use a specific methodology. When the District hired the EA, it hired an individual who had worked previously in a classroom focused on students with behavioral needs. In addition, the Principal, School Psychologist, and other staff members provided training to the EA about the Student specifically, and about The Zones Program.

This allegation is not substantiated.

### **Free Appropriate Public Education (FAPE)**

The Parent alleges 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.

Under the IDEA, school district must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a free appropriate public education (FAPE).<sup>14</sup>

FAPE is defined as "special education and related services" that are provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and are provided in conformity with an IEP.<sup>15</sup> Special education means specially designed instruction ...to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Specially designed instruction means adapting as appropriate to the needs of an eligible child, the content, methodology or delivery of instruction.<sup>16</sup> A school district or program meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.<sup>17</sup>

The question in this case is whether or not the Prior Written Notice violation discussed above or the partial violation of IEP implementation are serious enough to result in a denial of FAPE. In summary, the Student was out of the general education classroom for more than 43% of the week, for 8 weeks of the school year in April and May, 2015.<sup>18</sup> However, as noted earlier, it is impossible to tell specifically what was occurring during much of this time. There is

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<sup>14</sup> 34 CFR §300.341

<sup>15</sup> See 20 USC § 1402(8).

<sup>16</sup> 34 CFR § 300.39(a)(1)(2)

<sup>17</sup> See *Hendrick Hudson Cent. Sch. Distr. V. Rowley*, 458 US 176, EHLR 553:656 (1982)

<sup>18</sup> 7.5 hours per week of SDI – as per the IEP; and 6.5 hours per week either suspended out of school or in the office.

evidence that during at least some of this time, the student was engaged in self-regulating activities, therefore it is impossible to conclude that a change of placement occurred.

This allegation is not substantiated.

### V. CORRECTIVE ACTION<sup>19</sup>

*In the Matter of Lake Oswego School District*  
Case No. 15-054-029

There are no substantiated allegations in this complaint; therefore, no Corrective Action is ordered.

Dated: this 12th Day of October, 2015



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

**APPEAL RIGHTS:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

Mailing Date: October 12, 2015

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<sup>19</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)).