

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Salem-Keizer School  
District 24J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-003

**I. BACKGROUND**

On January 27, 2016, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing and attending school in the Salem-Keizer School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on January 27, 2016.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On February 2, 2016, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On February 16, 2016, the District timely provided its narrative *Response* to the *Request for Response* by email, with a hard copy of the District's *Response* and accompanying documentation received on February 17, 2016.

The District provided the following documentation in its *Response*:

1. TERA [Test of Early Reading Ability – 3<sup>rd</sup> Ed.] Record Booklet 1/22/2009
2. WISC [Wechsler Intelligence Scale for children] 4<sup>th</sup> Ed. 1/29/2009
3. Medical Statement or Health Assessment 4/27/2010
4. Middle School – Measurable Annual Goals Progress – 2013-2014 [progress reports dated 1/28/14, 3/17/14, 4/28/14, 6/17/14 & 10/13/14]
5. Evaluation/Reevaluation Plan 2/13/2013
6. Vision Screen Report 2/20/2013
7. Woodcock Johnson III – Score Report documents 4/15/2013
8. Statement of Eligibility for Special Education (Specific Learning Disability 90) 4/19/2013
9. Statement of Eligibility for Special Education (Other Health Impairment 80) 4/19/2013
10. Disability Summary 4/19/2013
11. Functional Behavior Assessment 11/18/2013
12. Notice of Team Meeting dated 10/22/14 for 11/14/14 IEP meeting
13. IEP 11/14/14
14. Behavior Support Plan 11/14/2014
15. Meeting documentation cover sheet & meeting notes 11/14/14
16. Prior Written Notice 11/14/14
17. Daily Medication Administrative Record 2014-2015
18. Middle School Period Attendance Reports 2014-2015
19. Middle School – Measurable Annual Goals Progress – 2014-2015 [progress reports dated 11/25/14, 1/26/15, 3/6/15, 4/27/15 & 6/12/15]
20. Contact Log 9/5/14 - 2/18/15

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<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153

21. Parent letter to Principal authorizing Advocate to speak to student's teachers, other school personnel concerning academics and behavior, authorizes Advocate to observe student in classes 1/21/2015
22. District Behavior Consultation Team Request 2/10/2015
23. Middle School Progress Report 3/5/15
24. Middle School Progress Report 4/24/15
25. Middle School Progress Report 6/10/15
26. Confidential Student Report 9/24 & 9/25/15
27. Student – Parent-School Contract 10/6/2015
28. Notice of Team Meeting dated 10/22/15 for 11/6/15 IEP
29. Email –Middle School Staff 10/27/2015
30. Ticket and explanation 10/27/15
31. Time Out IEP Documentation 11/5/15
32. Functional Behavior Assessment Plan 11/6/2015
33. Behavior Intervention Plan 11/6/2015
34. Prior Written Notice 11/6/15
35. IEP 11/5/16
36. Notice of Team Meeting dated 11/24/15 for 1/13/16 meeting
37. Notice of Team Meeting dated 12/8/15 for 1/13/16 meeting
38. District Behavior Consultation Team Request & Consent for Assessment & Screening 12/8/2015
39. District – Student Contact Log entries from 9/23/15, 10/26/15 and 12/14/15
40. Medical Statement 1/8/2016
41. Email 1/8/16 - District to Parent re meeting on 1/13/16 – notice attached
42. Consent for Evaluation meeting documents 1/13/16
43. Parent/Guardian Consent for Individual Evaluation dated 1/13/16
44. Authorization to use and/or Disclose Educational and Protected Health Information – 1/13/2016
45. Conference Summary and meeting notes 1/13/16
46. Prior Written Notice 1/13/16
47. Emails between parties 1/30/15 through 1/14/16
48. Notice of Team Meeting dated 1/15/16 for 1/28/16 meeting
49. Parent letter to Principal sharing concerns about student and requesting an IEE – 1/20/2016
50. Parent letter to Principal authorizing Advocate to read student's education file, progress reports and discipline records 1/20/2016
51. Principal information documents – 1/26/2016. [Includes Agenda for IEP Addendum meeting on 2/1/16; guidelines for observing/visiting in classrooms; administrative policy re visitors to schools; Student schedules at Middle School 2015-2016 (printed 1/29/16 and 2/1/16); BSP dated 11/14/14; BIP dated 2/1/16]
52. Principal response letter to Parent – 1/26/2016
53. Parent note authorizing Advocate as emergency contact and able to contact staff 1/26/2016
54. IEP Amendment 2/1/16
55. IEP Amendment Meeting Documents 2/1/16
56. Conference Summary 2/1/16
57. Prior Written Notice 2/1/16
58. Behavior Intervention Plan 2/1/2016
59. Advocate packet of information about Student – submitted 2/2/2016
60. Papers dropped off by Advocate 2/2/16
61. Prior Written Notice 2/4/16
62. Notice of Team Meeting dated 2/5/16 for 2/19/16 meeting
63. District – Student form authorizing Advocate as a contact - printed 2/8/2016

- 64. Middle School Attendance reports 9/3/14 to 2/10/16
- 65. Middle School – Grade 8; Progress – Semester 1 Final 2/10/16
- 66. Middle School Period Attendance Profile 2015-2016
- 67. Discipline Information – handwritten notes and District Reports 2015-2016
- 68. Parent letter to Principal exempting student from all state and district testing [undated]
- 69. General Ability Index (GAI): 89 [high end of low average]
- 70. Staff List

The Parent did not provide a written *Reply* in a timely manner in this case, however, the Department’s contract complaint investigator (Complaint Investigator) spoke with the Parent’s Advocate on Wednesday, March 9, 2016 and the Advocate provided additional information in an email on March 11, 2016. This order is timely.

The Department’s Complaint Investigator determined an on-site investigation to be necessary in this case. On March 10, 2016, the Complaint Investigator, in the presence of legal counsel for the District, interviewed a Principal, two School Psychologists, a Regular Education Teacher, a Special Education Teacher/Case Manager, a Program Assistant, a Behavioral Specialist and a Student Services Coordinator. The Complaint Investigator left a voice message for the Parent offering an opportunity to speak with the Complaint Investigator; however, the Advocate informed the Complaint Investigator that the Parent wished for the Advocate to communicate with the Complaint Investigator on their behalf. The Parent’s Advocate spoke with the Complaint Investigator on March 9, 2016 and the Complaint Investigator received an email with the Advocate’s comments on March 11, 2016. The Complaint Investigator reviewed and considered all of the documents received in reaching the Findings of Fact and Conclusions of Law contained in this order.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Complainant’s allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from January 28, 2015, to the filing of this complaint on January 27, 2016.<sup>2</sup>

No	Allegations	Conclusions
1.	<p><b><u>Content of IEP</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to include an accurate statement of the Student’s present levels of academic achievement and functional performance (PLAAFP) in the Student’s current IEP. Specifically, the Complaint alleges that the PLAAFP portion of the IEP:</p> <p>1) does not include how the Student’s</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Department concludes that the Student’s IEP in effect at the time of filing of the Complaint in this case is dated November 5, 2015. While the Advocate asserted that the Complaint is actually based upon a handwritten IEP drafted in January, 2016, no such document was ever provided.</p> <p>The Student’s November 5, 2015 IEP includes</p>

<sup>2</sup> OAR 581-015-2030(5)

	<p>disability affects involvement and progress in the general education curriculum and;</p> <p>2) is copied from previous IEPs.</p> <p>The Complaint further alleges that the Student's current IEP includes academic goals:</p> <ol style="list-style-type: none"> <li>1) that are based on outdated and unreasonable information, including an academic evaluation from 2009, outdated state testing results and a "Smarter Balance Test", and;</li> <li>2) that were written despite the inability to obtain written samples that focus upon grade level performance rather than the Student's current level of functioning and are not measurable .</li> </ol> <p>Relevant Law: OAR 581-015-2200; 34 CFR 300.320.</p>	<p>a statement in the PLAAFP of how the Student's disability affects involvement and progress in the general education curriculum.</p> <p>The November 5, 2015 IEP received by the Department reveals a decidedly different PLAAFP statement than the one in the Student's November 14, 2014 IEP. The PLAAFP in the Student's November 5, 2015 IEP is not copied from previous IEPs.</p> <p>The documentation provided to the Department in this case does not reveal that the District inappropriately relied upon a 2009 evaluation or on outdated state testing results in drafting the IEP goals.</p> <p>The Parent provided no evidence that the academic goals in the Student's IEP were focused upon grade level performance rather than the Student's current level of functioning. The Department's review of the goals in the Student's November 5, 2015 IEP reveals that the goals are indeed measurable. The fact that the Student is not making progress academically or behaviorally does not mean that the goals in the Student's November 5, 2015 IEP are not measurable.</p>
2.	<p><b><u>IEP Team considerations and Special Factors</u></b></p> <p>The Complaint alleges that the District violated the IDEA by providing insufficient Special Education and supplementary aids and services resulting from failure to consider:</p> <ol style="list-style-type: none"> <li>1) the Student's academic, functional or developmental levels and;</li> </ol>	<p><b><u>Not Substantiated</u></b></p> <p>The PLAAFP section of the IEP addresses the Student's academic and functional levels and the IEP provides for Specially Designed Instruction (SDI in Behavior, Written Language, Mathematics and Reading/Language Arts, along with various supplementary aids and services, modifications and accommodations.</p>

	<p>2) the Student's needs for assistive technology despite recommendations for particular assistive technology (AT) in an evaluation.</p> <p>Relevant Law: OAR 581-015-2205; 34 CFR 300.231; 34 CFR 300.324(a)(1) &amp; (2), (b)(2).</p>	<p>Meeting minutes from the Student's November 5, 2015 IEP Meeting addressed six "special factors", including whether the Student needed AT, and that the IEP Team determined that the Student did not need AT. Consistent with this determination, the November 5, 2015 IEP also states that the Student does not need AT. District staff reported during the on-site interviews that the Parent did not request AT until an IEP Meeting on February 1, 2016, after the filing of the Complaint in this case.</p>
<p>3.</p>	<p><b><u>Manifestation Determination, Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to hold a "Manifestation Determination" when the Student had "excessive suspensions". Specifically, the Complaint alleges that the Student "has had 8 out-of-school suspensions and 10 in-school suspensions".</p> <p>Relevant Law: OAR 581-015-2420; OAR 581-015-2415; 34 CFR 300.530(e); 34 CFR 500.504(a)(3); 34 CFR 300.530; 34 CFR 300.531; 34 CFR 300.532; 34 CFR 300.533.</p>	<p><b><u>Substantiated</u></b></p> <p>The District was required to hold a Manifestation Determination meeting within ten school days of the decision to change the Student's placement based on the Student's behavior. The decision to change the Student's placement was made on December 17, 2015. This change in placement was to be effective upon the Student's return to school from winter break on January 5, 2016. No Manifestation Determination was made during this meeting.</p>
<p>4.</p>	<p><b><u>Placement of the Child, Review and Revision of IEPs, and Parent Participation – General and Additional Parent Participation Requirements for IEP and Placement Meetings</u></b></p> <p>The Complaint alleges that the District violated the IDEA by changing the Student's placement without an IEP Team Meeting. Specifically, the Complaint alleges that two District staff members met with the Parent prior to "Winter Break" to change the Student's schedule to two periods per day due to the Student's behavior and lack of performance.</p> <p>Relevant Law: OAR 581-015-2250; OAR 581-015-2225; OAR 581-015-2190; OAR 581-015-2195; 34 CFR 300.116; 34 CFR 300.327; 34 CFR 300.324; 34 CFR</p>	<p><b><u>Substantiated</u></b></p> <p>The District conceded during the on-site interviews that the District changed the Student's placement by shortening the Student's school day from six periods to two periods based upon the Student's behavior. However, there was no Manifestation Determination made, nor did the District provide a Prior Written Notice (PWN) before changing the Student's educational placement in this case.</p>

	300.500; 34 CFR 300.501; 34 CFR 300.322; 34 CFR 328.	
5.	<p><b><u>Additional Parent Participation for IEP and Placement Meetings</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to provide notice of an IEP Meeting held on January 13, 2016 early enough to ensure that the Parent would have an opportunity to attend and by failing to obtain agreement on the time and place of the IEP Meeting.</p> <p>Relevant Law: OAR 581-015-2195; 34 CFR 300.322; 34 CFR 300.500; 34 CFR 300.327; 34 CFR 300.328; 34 CFR 300.501(c).</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District sent written meeting notices of the January 13, 2016 IEP Meeting to the Parent on November 24, 2015 and again on December 8, 2015. The District also sent an email on January 8, 2016 reminding the Parent of the meeting. Both of the Student's Parents and the Advocate attended the January 13, 2016 IEP Meeting.</p>
6.	<p><b><u>General Evaluation and Reevaluation Procedures</u></b></p> <p>The Complaint alleges that the District violated the IDEA by refusing to conduct "academic testing", despite an Advocate for the Parent advising the District of the need for the academic testing.</p> <p>Relevant Law: OAR 581-015-2105; 34 CFR 300.301; 34 CFR 300.303.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District obtained written parental consent for an evaluation concerning the Student's academics on January 13, 2016. The District is in the process of completing the evaluations, including an evaluation of the Student's "Academics". This evaluation must be completed within sixty school days.</p>
7.	<p><b><u>Extended School Year Services (ESY)</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to provide ESY services to the Student, despite the Student's inability to meet IEP goals.</p> <p>Relevant Law: OAR 581-015-2065; 34 CFR 300.106.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The IEP Team drafting both the November 14, 2014 IEP and the November 5, 2015 IEP considered whether ESY should be provided and concluded it should not. The IEP Team made a specific finding during the November 5, 2015 meeting that the Student had "no regression and/or recoupment of skills." The Parent did not specifically request ESY until the February 1, 2016 IEP meeting, and the District timely responded to that request. The Team agreed to make an ESY determination by April 15, 2016. The fact that the Student is not making progress towards the Student's IEP goals does not necessarily support the provision of ESY services.</p>

### **Proposed Corrective Action**

The Complaint requests the following corrective action:

- a) "Rewrite [the Student's] Statement of present level of academic achievement and functional performance to include present levels based on a current assessment and work samples.
  1. Test for [the Student's] current level of academic functioning with a skills based test.
  2. Have [the Student] work individually with case manager, education assistant, or teacher to obtain work samples.
  3. Provide district level training for teachers in assessing a student's present levels of performance."
- b) "Rewrite [the Student's] IEP goals to be appropriate:
  1. To reflect [the Student's] ability levels.
  2. To include short term objectives.
  3. Goals should be written that are attainable, measurable, and have criterion to show when [the Student] will meet them.
  4. Provide assistive technology to assist [the Student] in achieving [the Student's] goals.
  5. Provide compensatory education due to 3 years of inappropriate goals.
  6. Provide district level training for teachers on IEP development of annual goals and short term objectives."
- c) "Provide:
  1. Grade level texts on tape.
  2. A program for speech to text.
  3. Math services that accommodate [the Student's] math needs.
  4. Laptop or tablet to complete assignments at school and at home.
  5. Provide district level training for teachers on IEP development, writing accommodations and modifications."
- d)
  1. "Hold a manifestation determination meeting to address these issues.
  2. Hold an IEP meeting to determine [the Student's] placement.
  3. Provide for compensatory education.
  4. Provide district level training for teachers on IEP development, manifestation determination, and placement determinations."
- e)
  1. "Send Prior Written Notice document in a reasonable length of time.
  2. Have [the Student] take an independent education evaluation including academic testing."
- f) "Provide:
  1. Compensatory education.
  2. Regression/recoupment evidence and other factors upon which ESY decision was based.
  3. ESY services.
  4. Provide district wide training for teachers on ESY determinations."

### **III. FINDINGS OF FACT**

1. The Student in this case is presently thirteen years old and is in the eighth grade in the District. The Student is eligible for Special Education as a student with a Specific Learning Disability (SLD) and Other Health Impairment (OHI) (under "Attention-Deficit, Hyperactive Disorder, Combined" (ADHD)).

2. The Student's IEP in effect at the time of the filing of the Complaint is dated November 5, 2015. The Advocate informed the Investigator that the Complaint was actually based on a handwritten IEP dated sometime in January, 2016; however, no such document was ever provided to the Investigator.
3. The Service Summary provides for Specially Designed Instruction (SDI) in "Behavior" for "45 Min per day", "Written Language" for "45 Min per day", "Mathematics" for "45 Min per day" and "Reading/Language Arts" for "45 Min per day". The placement is described as "Regular Education w/ Special Education push in", and "Placement is in general education with support from the [Learning Resource Center] LRC in areas of need."
4. The Nonparticipation Justification Statement in the Student's IEP says the Student "will need to be removed from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids of services", and the extent of removal from the regular classroom is described as "Student takes at least 10% of [the Student's] day in the LRC." The District developed Behavior Intervention Plans (BIPs) for the Student, and the BIP in effect at the time of the filing of this Complaint is dated November 6, 2015.

### **Content of IEP**

5. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) section of the Student's November 5, 2015 IEP provides, in the box captioned "Describe how student's disability affects involvement and progress in the general education curriculum" as follows: "[The Student] can work on assignments when [the Student] is in the mood to produce work. [The Student] does best with assignments broken down into smaller steps with adult assistance nearby. As long as [the Student] doesn't feel that it is beneath [the Student] to ask for help or [the Student] might get embarrassed then [the Student] will ask for support, otherwise it might result in a behavior issue. The expectation for 8th graders is to sit and maintain focus on an assignment for extended periods of time. Also to complete work with the time frame set by the teacher. [The Student] displays many characteristics of a conduct disorder student according to a psychologist that helped out last year."
6. The Student's previous IEP, dated November 14, 2014, contains a PLAAFP section which appears to be cut off (the paragraph above the State Assessment reports ends mid-sentence), and does not contain a statement of how the Student's disability affects involvement and progress in the general education curriculum. Comparison of the portions of the PLAAFP section that were provided from the November 14, 2014 IEP and the complete PLAAFP statement in the Student's November 5, 2015 IEP reveal significantly different content.
7. The PLAAFP portion of the Student's November 5, 2015 IEP includes a section captioned "Present level of developmental and functional performance (including result of initial or most recent evaluations)". This section states as follows: "Last year [the Student] took the Smarter Balance and scored low in all areas of testing. For [the Student's] reading and written language [the Student] scored 2341 which puts the Student in the 1% for all 7th graders. In Mathematics [the Student] scored 2250 which again is in the 1% of all 7th graders." The Smarter Balance test is a state assessment tool.
8. A PWN dated November 6, 2015, the day after the November 5, 2015 IEP Meeting, states that the District relied upon the Student's "Previous IEP, parent feedback, student feedback, teacher feedback, teacher data warehouse."

9. The previous IEP states that in completing that IEP, the District relied upon "Cognitive and academic test scores, progress reports, teacher and parent input, state reading and writing test scores, and team discussion." The Student's November 14, 2014 IEP includes a list of State Assessments from 2011, 2012, 2013 and 2014.
10. The District provided various assessments of the Student in this case, including: a TERA (Test of Early Reading Ability) and WISC (Wechsler Intelligence Scale for Children), both from January of 2009; a medical Statement from April of 2010; a Woodcock Johnson III evaluation from April of 2013 and a Medical Statement from January 8, 2016.
11. The Student's November 5, 2015 IEP includes goals in Mathematics, Written Language, Reading/Language Arts as well as two behavioral goals.
12. District staff members report that the Student is not making progress academically. Indeed, one regular education teacher who has had the Student in her class all year reported that the Student simply has not completed enough school work during the 2015-2016 school year to even determine whether the Student is making academic progress; and District staff interviewed during the on-site investigation agree that this is the situation across the board for the Student. At the time of the filing of the Complaint, the Student also had not made progress on the Student's behavior goals in the Student's November 5, 2015 IEP.
13. The District held an IEP Meeting on February 1, 2016 (four days after this Complaint was filed), a meeting scheduled following a January 13, 2016 evaluation planning meeting. The District sent a Notice of Team Meeting for the February 1, 2016 IEP Meeting on January 21, 2016, before the filing of the Complaint in this case. At the meeting on February 1, 2016, the IEP Team determined that the Student needed a 1:1 Instructional Assistant (IA) throughout the school day. District staff members report some improvement in the Student's behavior since that time, as indicated by the reduction in disciplinary referrals.

#### **IEP Team Considerations and Special Factors**

14. The meeting minutes from the Student's November 5, 2015 IEP meeting state, "We talked about the special factors in which everything was marked no with the exception of behavior." The Student's November 5, 2015 IEP includes a section captioned "Special Factors For IEP Development" and one of the "special factors" is: "Does the student need assistive technology devices or services?" The "No" box under that question is checked.
15. During the on-site interviews, District staff reported that the Parent had not requested Assistive Technology (AT) during the November 5, 2015 IEP meeting and agreed that there was no need for AT when the Team went through the "special factors" list at the meeting.
16. District staff reported that the Parent did not request AT until an IEP Meeting held on February 1, 2016, after the filing of the Complaint in this case, and that the IEP Team agreed to begin the process to determine the need for AT for the Student. This is reflected in the minutes from the February 1, 2016 IEP Meeting.
17. During the on-site interviews, the District reported that, based upon the completed AT determination, the District is recommending the Student be provided with AT, including a laptop computer or keyboarding device and audio books on compact disc.

## **Manifestation Determination, Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

18. The Complaint in this case alleges that the Student has had “excessive suspensions”, specifically, “8 out-of-school suspensions and 10 in-school suspensions.” During the Complaint Investigator’s telephone interview of the Parent’s Advocate, the Advocate asserted that the hours of all in-school suspensions must be added up and counted when determining whether disciplinary removals have totaled ten school days. This position is based upon the belief that school work is not provided during the in-school suspensions. An email sent to the Complaint Investigator by the Advocate states “The district seem to think that the accumulated hours that [the Student] was in in-school suspensions, without work at [the Student’s] functioning level, do not count toward manifestation determination. We contend that it does.”
19. During the on-site interviews, District staff reported that in-school suspensions are used for temporary removals from the classroom during the school day. The District refers to the room where students complete their in-school suspensions as the “pass room”. The pass room is used for all students, not just students who are receiving Special Education services.
20. When a student arrives in the pass room, a request goes out to that student’s teachers for work for the student to complete while in the pass room. Instruction is provided in the pass room. District staffs monitor students in the pass room and if a student has a 1:1 Instructional Assistant (IA), the IA accompanies the student to the pass room. If a student’s lunch period arrives, lunch is served in a particular room but not with peers.
21. The Student has received five in-school suspensions totaling eight days of in-school suspension, during the 2015-2016 school year. The in-school suspensions occurred on September 25, 2015 (a one day in-school suspension on September 25, 2015 for Insubordination – Disobedience/Other), October 6, 2015 (a one day in-school suspension on October 6, 2015 for Insubordination – Disobedience/Other), October 8, 2015 (a two day in-school suspension on October 13 and 14, 2015, for Insubordination- Disobedience/Other), October 14, 2015 (a three day in-school suspension on October 21, 22 and 23, 2015, for Insubordination – Obscene Language/Behavior) and October 20, 2015 (a one day in-school suspension on October 20, 2015, for Insubordination – Obscene Language/Behavior).
22. A review of the Student’s Discipline Profile for the 2015-16 school year indicates that the Student has had two days of out-of-school suspension, the first on October 28, 2015 and the second on November 2, 2015. However, the Student’s Period Student Attendance Profile reflects that the Student was also suspended out-of-school on December 8, 2015 and December 14 through December 17, 2015.

## **Placement of the Child, Review and Revision of IEPs, and Parent Participation – General and Additional Parent Participation Requirements for IEP and Placement Meetings**

23. On December 17, 2015, the Student’s Special Education Teacher/Case Manager, an Assistant Principal and both of the Student’s Parents met to discuss the Student’s behavioral issues. Previous attempts to address the Student’s behavior by providing 1:1 assistance by the Student’s Special Education Teacher/Case manager for two class periods per day as well as modification of the Student’s assignments had not been successful.
24. At this meeting the District proposed a reduction of the Student’s school day to two class periods per day rather than the standard six class periods per day to see if the shorter school day would allow the Student to succeed. The plan was to then add periods to the Student’s day incrementally, to allow the Student to build on the success realized during the shortened school

days. The District indicated in its Response that the participants in this meeting agreed to this reduction in the Student's school day.

25. The December 17, 2015 meeting took place the day before the last school day before the District's Winter Break. School resumed in the District on January 5, 2016. Beginning on that day, the Parent's Advocate brought the Student to school and provided private tutoring to the Student while at the school from approximately 10:30 a.m. to lunch, after which the Student attended the last two periods of the school day, 5th and 6th periods. The Student was only attending class for 116 minutes of a possible 346 minutes per school day, from January 5, 2016 until February 2, 2016. This Complaint was filed on January 27, 2016.
26. During the on-site interviews in this case, the District conceded that it did not provide notice of this meeting, which changed the placement of the Student, did not modify the Student's IEP and did not issue a PWN following this meeting.
27. The participants in the December 17, 2015 meeting also agreed to a follow-up meeting to be held on January 28, 2016.
28. The Parent filed the Complaint in this case on January 27, 2016.
29. The participants in the January 28, 2016 meeting included the Student's Special Education Teacher/Case Manager, the Parent, the Student, the Assistant Principal and the Principal. At the January 28, 2016 meeting, the participants, including the Parent and Student agreed that the Student should return to full school days and that the specific classes to be taken by the Student would be determined at the already scheduled IEP Meeting on February 1, 2016.
30. The District provided a written notice of the January 28, 2016 meeting, but also conceded during the on-site interviews that it did not issue a PWN following the January 28, 2016 meeting, which took place the day after the Parent filed the Complaint in this case.
31. Following the IEP Meeting on February 1, 2016, the IEP Team, including the Parent, agreed to the classes in which the Student would enroll. The IEP Team, including the Parent, also agreed to provide a 1:1 Instructional Assistant (IA) throughout the Student's entire school day. A PWN was issued at this time.

#### **Additional Parent Participation for IEP and Placement Meetings**

32. The District provided written notice on November 24, 2015 and again on December 8, 2015 of an evaluation planning meeting scheduled for January 13, 2016. District also sent an email to the Parent on January 8, 2016, reminding the Parent of the upcoming January 13, 2016 meeting. Additionally, both of the Student's Parents and the Advocate for the Parents attended and participated in the meeting on January 13, 2016.

#### **General Evaluation and Reevaluation Procedures**

33. At the January 13, 2016 IEP Meeting the IEP Team, including both of the Student's Parents and the Advocate, discussed the issue of whether additional assessments were needed. The signed "Parent/Guardian Consent for Individual Evaluation" states that the evaluation will include "Academics". In an email to the Complaint Investigator on March 11, 2016, the Advocate stated that she requested the Student's academic skills be assessed with a "basic skills test".

## Extended School Year Services (ESY)

34. The Student's November 14, 2014 IEP (in effect until the Student's November 5, 2015 IEP) states at the bottom of the Service Summary section, that ESY services will not be provided. The minutes of the November 14, 2014 IEP meeting state that "The Service summary pages were reviewed."
35. Similarly, the Student's November 5, 2015 IEP also states at the bottom of the Service Summary section that "Current data shows NO regression and/or recoupment of skills." (emphasis in original).
36. There is no indication on either the November 14, 2014 or November 5, 2015 IEP that the Parent requested ESY services during these IEP meetings. The Advocate reported that her work with the Student began in December of 2015 and that she first attended one of the Student's IEP Meetings on January 13, 2016, a meeting to determine if the District would complete any additional evaluations of the Student.
37. The minutes of the January 13, 2016 evaluation planning meeting do not indicate that the Parent or the Advocate made a request for ESY at that time. After the filing of the Complaint in this case, the IEP Team, including the Parent and Advocate, addressed ESY during an IEP Meeting on February 1, 2016, and the IEP Team determined that ESY "Will be determined by April 15th [, 2016]."
38. In its *Response* in this case, the District stated that in order to complete an ESY determination, the District "will collect data on the Student's specific goal areas prior to the District's Spring Break (March 21-25[, 2016]) and afterward in order to determine if the Student exhibits substantial regression on the Student's specific goals in the area of Reading, Writing, Math, or Behavior. The IEP Team will review the data and determine if the Student is unable to recoup previously acquired skills on [the Student's] annual IEP goals within an appropriate amount of time post break." During on-site interviews in this case, the District reported that this is still the plan and that ESY will be addressed by April 15, 2016.

## IV. DISCUSSION

### Content of IEP

A. The Complaint alleges that the District violated the IDEA by failing to include an accurate statement of the Student's PLAAFP in the Student's IEP. Specifically, the Complaint alleges that the PLAAFP portion of the IEP:

(1) does not include how the Student's disability affects involvement and progress in the general education curriculum and; (2) is copied from previous IEPs.

OAR 581-015-2200 states, in part:

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

(a) 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

Despite the Advocate's assertion that the Complaint is based upon a handwritten IEP provided to the Parent in January of 2016, the Department concludes that the Student's IEP in effect at the time of

filing of the Complaint in this case is dated November 5, 2015. This IEP includes a statement in the PLAAFP of how the Student's disability affects involvement and progress in the general education curriculum. The PLAAFP language in this IEP differs significantly from the PLAAFP language in the previous IEP. There is no evidence that the statement of the impact of the Student's disability on involvement and progress in the general education curriculum is deficient.

The Department does not substantiate this portion of the allegation.

B. The Complaint further alleges that the Student's current IEP includes academic goals:

(1) that are based on outdated and unreasonable information, including an academic evaluation from 2009, outdated state testing results and a "Smarter Balance Test", and; (2) that were written despite the inability to obtain written samples that focus upon grade level performance rather than the Student's current level of functioning and are not measurable. OAR 581-015-2200; 34 CFR 300.320.

The documentation provided to the Department in this case does not reveal that the District inappropriately relied upon a 2009 evaluation or on outdated state testing results in drafting the IEP goals. A PWN dated November 6, 2015, the day after the November 5, 2015 IEP Meeting, states that the District relied upon the Student's "Previous IEP, parent feedback, student feedback, teacher feedback, teacher data warehouse." The state testing results listed in the Student's November 14, 2014 IEP (the previous IEP) are not significantly outdated, and show the history of the Student's results on various state assessments.

The District also provided to the Department various assessments, including medical statements, concerning the Student from 2009, 2010, 2013 and 2016. The Department's review of the Student's IEP and related documents does not reveal that the District inappropriately relied upon any outdated assessments, including the "Smarter Balance" assessment, which the Student took in 2014.

The Department does not substantiate this portion of the allegation.

C. The Parent also alleges that the goals in the Student's IEP were written despite the inability to obtain written samples that focus upon grade level performance rather than the Student's current level of functioning and are not measurable.

OAR 581-015-2200(1)(b) states, in part, that an IEP must include "A statement of measurable annual goals." The Department's review of the goals in the Student's IEP reveals that the goals are indeed measurable. Each goal states the task the Student is to accomplish and the percentage of successful accomplishment of the task required to meet the goal. The fact that the Student is not making progress academically or behaviorally, while concerning, does not mean that the goals in the Student's November 5, 2015 IEP are not measurable.

The Department does not substantiate this portion of the allegation.

### **IEP Team Considerations and Special Factors**

The Complaint alleges that the District violated the IDEA by providing insufficient Special Education and supplementary aids and services resulting from failure to consider: (1) the Student's academic, functional or developmental levels and (2) the Student's needs for assistive technology despite recommendations for particular assistive technology in an evaluation.

OAR 581-015-2205(a)(d) provides, in part, that in developing, reviewing and revising the child's IEP, the IEP Team must consider the academic, developmental, and functional needs of the child.

A review of the Student's IEP reveals that the PLAAFP section addresses the Student's academic and functional levels and that the IEP provides for SDI in Behavior, Written Language, Mathematics and Reading/Language Arts, along with various supplementary aids and services, modifications and accommodations. This IEP also includes goals in Mathematics, Written Language, Reading/Language Arts and two behavior goals. Additionally, the placement in the November 5, 2015 IEP is "Regular Education w/ Special Education push in" and that "Placement is in general education with support from the LRC in areas of need", specifically, LRC support in the areas of Reading and Written Language.

The Department does not substantiate this portion of the allegation.

The Parent also alleges that the IEP Team failed to consider the Student's needs for AT. OAR 581-015-2205(2)(b) provides that the IEP Team must consider, "Whether the child needs assistive technology devices and services."

Meeting minutes from the Student's November 5, 2015 IEP addressed six "special factors", including whether the Student needed AT. At that time, the IEP Team determined that the Student did not need AT, as reflected in the IEP. District staff reported during the on-site interviews that the Parent did not request AT until an IEP Meeting on February 1, 2016, after the filing of this Complaint. District staff also reported that as a result of this request, an AT Determination has been made and a laptop or keyboarding device and audio books on CD will be provided to the Student.

The Department does not substantiate this portion of the allegation.

**Manifestation Determination, Disciplinary Removals of More than 10 School Days (Pattern or Consecutive).**

The Complaint alleges that the District violated the IDEA by failing to hold a Manifestation Determination when the Student had "excessive suspensions." Specifically, the Complaint alleges that the Student "has had 8 out-of-school suspensions and 10 in-school suspensions" However, there are only two days of out-of-school suspension reflected in the Student's Discipline Profile. During the telephone interview of the Advocate on March 9, 2016, and in the Advocate's March 11, 2016 email to the Complaint Investigator, the Advocate stated that in-school suspensions of the Student must be counted towards disciplinary removals for purposes of determining whether disciplinary removals have reached ten days because school work is not provided during in-school suspensions.

OAR 581-015-2415(1) provides, in part:

(1) A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:

\* \* \* \* \*

(b) The child will be removed for more than 10 cumulative days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).

OAR 581-015-2400(3) defines "Disciplinary Removal", in part, as follows:

"Disciplinary removal" means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:

\* \* \* \* \*

(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with children without disabilities to the extent they would in their current placement.

OAR 581-015-2400(3)(c) is consistent with federal commentary on the applicable federal regulation, 34 CFR 300.530. See *Analysis of Comments and Changes*, IDEA Regulations, 2006, Federal Register Vol. 71, No. 146, page 46715.

The Department found that during periods of in-school suspension, the District indeed did provide access to the general curriculum, as modified for this particular Student. The Student also had access to Special Education and related services as described in the Student's IEP and continued to participate with children without disabilities to the extent the Student would in the Student's current placement. The District provided the Student's school work to the Student during in-school suspensions, and the Student's 1:1 Instructional Assistant continued to work with the Student. The fact that lunch for all students in the in-school suspension setting, whether or not disabled, is held in a room separate from peers not serving an in-school suspension does not change this conclusion.

However, that does not end the analysis. OAR 581-015-2415(3) provides:

**Manifestation Determination.** Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420.

During the on-site interviews, legal counsel and the Student Services Coordinator for the District conceded that the District changed the Student's placement by shortening the Student's school day from six periods to two periods per day based upon the Student's behavior, following a meeting on December 17, 2015. The District implemented the change in placement following Winter Break, beginning on January 5, 2016 and ending February 2, 2016, following revision of the Student's IEP on February 1, 2016. The Student received out-of-school suspensions totaling seven days prior to the change in placement. Since the change in placement, the Student had been removed from school for four periods each day as of the date this Complaint was filed, for a total of sixty-four periods. Including the previous seven days of out-of-school suspension, the Student had been removed from school for 17.67 days at the time this Complaint was filed; however, no Manifestation Determination ever occurred.

The District was required to hold a Manifestation Determination within ten school days of the decision to change the Student's placement based on the Student's behavior. The decision to change the Student's placement was made on December 17, 2015. Therefore, the Manifestation Determination needed to occur no later than January 15, 2016 (the District's school days since December 17, 2015 were December 18, 2015, January 4-8, and 11-14, 2016).

The Department substantiates this allegation.

The District also reports that "the IEP Team agreed at the February 1, 2016 meeting to provide adult assistance to assist the Student during transitions, classroom instruction, and less structured periods during the school day. The IEP Team also received signed consent from the Parent to pursue Behavior Consultation services from one of the District's School Psychologists who support students across the District with a variety of behavioral needs.

## **Placement of the Child, Review and Revision of IEPs, and Parent Participation – General and Additional Parent Participation Requirements for IEP and Placement Meetings.**

The Complaint alleges that the District violated the IDEA by changing the Student's placement without an IEP Team Meeting. Specifically, the Complaint alleges that two District staff members met with the Parent prior to "Winter Break" to change the Student's schedule to two periods per day due to the Student's behavior and lack of performance.

OAR 581-015-2190 provides that school districts must provide parents written notice of meetings concerning the educational placement of a student. OAR 581-015-2310(2) also provides that school districts must provide a PWN to the parents of a student before a district proposes to initiate or change the educational placement of the student.

The District conceded during the on-site interviews that the District changed the Student's placement by shortening the Student's school day from six periods to two periods based upon the Student's behavior, following a procedurally improper meeting on December 17, 2015. The District failed to provide written notice of the December 17, 2015 meeting and failed to provide a PWN before changing the Student's educational placement in this case.

The Department substantiates this allegation.

### **Additional Parent Participation for IEP and Placement Meetings**

The Complaint alleges that the District violated the IDEA by failing to provide notice of an IEP Meeting held on January 13, 2016 early enough to ensure that the Parent would have an opportunity to attend and by failing to obtain agreement on the time and place of the IEP meeting.

OAR 581-015-2190(2) provides that school districts must provide parents written notice of IEP meetings sufficiently in advance to ensure that one or both parents will have an opportunity to attend. OAR 581-015-2195(1)(b) provides that school districts must take steps to ensure one or both parents of a student are present at each IEP meeting, including scheduling the meeting at a mutually agreed on time and place.

The District sent written meeting notices of the January 13, 2016 IEP meeting to the Parent on November 24, 2015 and again on December 8, 2015. The District also sent an email on January 8, 2016 reminding the Parent of the meeting. Both of the Student's Parents and the Advocate attended the January 13, 2016 IEP meeting.

The Department does not substantiate this allegation.

### **General Evaluation and Reevaluation Procedures**

The Complaint alleges that the District violated the IDEA by refusing to conduct "academic testing", despite the fact that an Advocate for the Parent advised the District of the need for the academic testing.

OAR 581-015-2105 and 581-015-2110 set forth the requirements and procedures of reevaluation of a student. Generally, these OARs provide that a parent must consent in writing to the reevaluation of a student, and provides that a reevaluation must be completed within sixty school days from written parent consent to the date of the meeting to consider a student's educational needs.

In this case, the District obtained written parental consent for an evaluation concerning the Student's academics on January 13, 2016. The District is in the process of completing the evaluations,

including an evaluation of the Student's "Academics", and this is well within the evaluation timeline provided in the OARs.

The Department does not substantiate this allegation.

**Extended School Year Services (ESY)**

The Complaint alleges the District violated the IDEA by failing to provide ESY services to the Student, despite the Student's inability to meet IEP goals.

OAR 581-015-2065(2) provides that ESY "must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child." OAR 581-015-2065(4) states that "The purpose of [ESY] is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors."

The documentation submitted by the parties in this case reveals that the IEP Teams drafting both the Student's November 14, 2014 IEP (in effect until November 5, 2015) and November 5, 2015 IEP (in effect at the time of the filing of the Complaint in this case, until February 1, 2016) considered whether ESY should be provided and concluded it should not. The IEP Team determined that the Student had no regression/recoupment of skills. The Parent did not specifically request ESY until the February 1, 2016 IEP meeting, and the District timely responded to that request and the Team agreed to make an ESY determination by April 15, 2016. No more is required of the District. The fact that the Student is not making progress towards the Student's IEP goals does not necessarily support the provision of ESY services.

The Department does not substantiate this allegation.

**CORRECTIVE ACTION<sup>3</sup>**  
*In the Matter of Salem-Keizer School District*  
 Case No. 16-054-003

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

No.	Action Required	Submissions <sup>4</sup>	Due Date
1.	With assistance from ODE for material development, provide professional development regarding:  a. Discipline procedures, including manifestation determination, for students with	<b>1. Submissions for Professional Development:</b>  Confirm training date(s) and names/positions of staff who will participate in the training.	<b>April 25, 2016</b>

<sup>3</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)).

<sup>4</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

	<p>disabilities, inclusive of the material contained in Executive Numbered Memo 009-2015-16: Reduced School Days.</p> <p>b. IEP development, review, and revision and related placement decisions, with emphasis on those associated with disciplinary removals.</p> <p>c. Parent participation and procedural safeguard requirements, timelines, and documentation, especially for IEP meetings, change of placement decisions, and manifestation determination procedures.</p> <p>d. Review school suspension/expulsion/reduced school day data for students with disabilities for the 2015-16 school year, for the school attended by the student in this complaint. Design action plan to address any current issues.</p> <p><b>Required Participants:</b> All District special education administrators and the special education staff at the school attended by the student in this complaint, including related service staff.</p>	<p>Submit evidence of completed training of agenda and participant sign-in sheets (a, b, c). Submit action plan for addressing any current issues (d).</p>	<p><b>June 15, 2016</b></p>
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Dated this 24th Day of March, 2016

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

Mailing Date: March 28, 2016