

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Sutherlin SD 130

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-004

**I. BACKGROUND:**

On February 17, 2016, 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 Sutherlin School District (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 February 19, 2016.

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. 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 February 18, 2015 through February 17, 2016. The Final Order is due out April 15, 2016.

On February 19, 2016, 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 March 7, 2016.

On March 3, 2016, the District submitted a *Response* with materials as listed below. On March 8, 2016, the District submitted a revised *Response* letter clarifying that the District did not dispute the first allegation, but disputed the second and third allegations in the Parent's Complaint. In total, the District provided these materials;

1. Meeting Notice 11/18/2013
2. ESY Progress Report 2013
3. File Review Report 1/15/2014
4. Meeting Notice 1/16/2014
5. ESY Progress Report 1/24/2014
6. Evaluation Plan 1/29/2014
7. Consent for Evaluation 1/29/2014
8. Educational Evaluation Report 2/18/2014

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

9. Meeting Minutes 2/18/2014
10. ASD Eligibility Summary 2/18/2014
11. Prior Written Notice 2/18/2014
12. Educational Evaluation Report 5/9/2014
13. IEP Progress Reports 10/31/2014
14. Progress Report 10/31/2014
15. Woodcock Johnson III Score Report 11/3/2014
16. Meeting Notice 11/5/2014
17. Meeting Minutes 11/12/2014
18. IEP 11/12/2014
19. Prior Written Notice 11/12/2014
20. Consent for Evaluation 12/2/2014
21. Parent Letter of Concern 12/2/2014
22. Executive Functioning Evaluation Report 5/20/2015
23. Meeting Notice 10/23/2015
24. Individualized Education Program (IEP) Progress Reports 10/30/2015
25. Meeting Minutes 11/10/2015
26. IEP 11/10/2015
27. Prior Written Notice 11/10/2015
28. Emails 10/27/15 To 1/20/16
29. Meeting Minutes 1/29/2016
30. Emails 10/27/15 To 2/3/16
31. District Response Letter 3/8/2016
32. List of Individuals Knowledgeable about the Complaint 3/8/2016

The District gave the Complaint Investigator a copy of the Student's transcript, copies of the Speech/Language Therapist's service logs, and second copies of the Student's IEP written on November 12, 2014 and November 10, 2015.<sup>2</sup> In addition, the District gave the Complaint Investigator a copy of notes the Parent had given to the Case Manager about the November 10, 2015 IEP.

On September 11, 2015, the Parent submitted the following materials for the Complaint Investigator to review:

1. Excerpt from Educational Evaluation of same date 5/20/2015
2. Emails 9/16/15 to 10/28/15
3. Parent's Comments on IEP pages of same date 10/30/2015
4. IEP 11/10/2015
5. Meeting Minutes with Parent Comments 1/29/2016
6. Emails 1/10/16 to 2/3/16
7. Emails 2/26/2016
8. Introduction Letter and Picture 3/21/2016

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<sup>2</sup> The copy of this IEP that the District sent to the Investigator and to the parent was not complete. The District has had some difficulty with a new software program. At times, the software program does not print complete copies of the IEP documents. The first copy sent to the Investigator and to the Parent did not contain the page listing the Supplementary Aids and Services.

9. Statement about the Impact of the Allegations on the Student 3/21/2016
10. Timeline 1 3/21/2016
11. Course History and Schedule 3/21/2016
12. Statement about communications with District staff 3/21/2016
13. Timeline 2 3/21/2016
14. Parent Comment on 10/16/15 3/21/2016
15. Cover Page for Notes on Allegations 3/21/2016
16. Parent's Comments on Allegations 3/21/2016
17. Student created Personal Profile 3/21/2016
18. Cover Page for Notes on Executive Functioning 3/21/2016
19. Two Versions of Homework Tracker 3/21/2016
20. Cover Page for Comments about Communications with District 3/21/2016
21. Student and Parent Comments on Confidentiality Issues 3/21/2016

The Complaint Investigator determined that on-site interviews were needed. On March 28, 2016, the Complaint Investigator interviewed the Parent. On the same day, the Investigator interviewed the High School Principal and the Speech/Language Therapist.<sup>3</sup> On March 29, 2016, the Complaint Investigator interviewed the District Special Education Director, a General Education Teacher, the previous District Special Education Director, two District Case Managers,<sup>4</sup> and the Education Service District (ESD) Autism Specialist.<sup>5</sup> 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>6</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 February 18, 2015 to the filing of this Complaint on February 17, 2016.<sup>7</sup>

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<sup>3</sup> The speech/language therapist is employed by the local Education Service District (ESD), and provides services to the District as part of a contract the District has with the ESD.

<sup>4</sup> The Student's Case Manager during the 2014-2015 school year is denoted as Case Manager 1, and the Student's Case Manager during the 2015-2016 school year is denoted as Case Manager 2.

<sup>5</sup> This person is also an employee of the ESD. This person did not begin providing services to the District until January, 2016.

<sup>6</sup> 34 CFR §300.1510(2010)

<sup>7</sup> See OAR 581-015-2030(5)(2008); 34 CFR §300.153(c)

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><b><u>General Evaluation and Reevaluation Procedures:</u></b></p> <p>The Parent alleges that the District violated the IDEA when it did not complete a re-evaluation within 60 school days from the date the Parent provided written consent. The Parent signed the consent for evaluation on December 2, 2014 and the evaluation report was completed on May 20, 2015.</p> <p>(OAR 581-015-2110; 34 CFR 300.304 &amp; 305)</p>	<p><b><u>Not Disputed.</u></b></p> <p>The District does not dispute this allegation.</p>
2.	<p><b><u>Content of IEP:</u></b></p> <p>The Parent alleges that the District violated the IDEA when it refused to include measureable goals, and statements of special education, related services, and supplementary aids and services specific to the Student's needs in Executive Functioning. The Parent requested an evaluation of the Student's Executive Functioning Skills to inform the Student's school and transition program. The IEP Team agreed, but did not consider the results of the evaluation or include any evaluation information on the IEP developed on November 10, 2015.</p> <p>(OAR 581-015-2200; 34 CFR 300.320 &amp; 324)</p>	<p><b><u>Substantiated in Part.</u></b></p> <p>The District obtained the Behavior Rating Inventory of Executive Function (BRIEF) assessment of the Student's executive functioning skills and the assessment revealed the need for skill development in several areas. This assessment information was not included within the Present Level of Academic Achievement and Functional Performance (PLAAFP), so there is no direct linkage of student performance to relevant educational goals. However, two annual goals – one in Written Language utilizing a graphic organizer and one in Organization/Study Skills focusing on planning skills to complete assignments and special projects – were included in the IEP, addressing two areas of need.</p>
3.	<p><b><u>When IEPs Must Be In Effect:</u></b></p> <p>The Parent alleges that the District violated the IDEA when it did not provide special education and related services to the Student in accordance with the IEP.</p>	<p><b><u>Substantiated.</u></b></p> <p>There is no clear evidence in the record that the Student received SDI in Written Language or Organization/Study skills. The Service</p>

<p>Specifically, the Parent alleges that Specially Designed Instruction (SDI) has not been implemented.</p> <p>(OAR 581-015-2220 &amp; CFR 300.323 &amp; 324)</p>	<p>Summary Log indicates that much of the time that was supposed to be used for SDI was used for other purposes.</p>
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**Requested Corrective Action:**

The Parent requests the following actions be implemented as resolutions to the Complaint:

1. Study Skills Class: With instruction, oversight, and guidance from the Case Manager, the Student will be responsible for completing the Homework Tracker during Study Skills each school day;
2. Every school day, the Student's Case Manager will verify that the Student has collected the homework from each class and that it is listed on the Homework Tracker;
3. Every school day, the Student's Case Manager will verify that the Student understands how to complete each piece of his homework;
4. Every school day, the Student's Case Manager will utilize the Homework Tracker to teach the Student to gather, verify, plan, organize, execute, and manager the workload including the school, homework, and projects;
5. Every school day, the Student's Case Manager will engage the Student in thinking about, planning for, organizing, executing, and managing the workload including strategies for time utilization and management. The Case Manager will "teach, not tell";
6. The Student will be responsible for bringing the Homework Tracker to and from school each school day;
7. The Student's Case Manager will oversee daily completion of the Homework Tracker. If the Case Manager does not oversee every aspect of daily interaction with the Student regarding the Homework Tracker, the Parent will be informed on a daily basis and allowed to communicate with the teacher/aide assisting the Student;
8. The Case Manager will communicate with the Parent via email any information that is not articulated on the Homework Tracker such as circumstances where the Student may complete a classroom final in a different classroom.
9. The Parent will provide oversight and assistance, when necessary, to help the Student implement the Case Manager's plans regarding homework and project completion at home. The Parent will communicate with the Case Manager via email any difficulty encountered following instruction for completing school work, homework, or projects according to the Homework Tracker. The Case Manager will communicate confirmation via email;
10. Should the Student continue to struggle to complete school work, homework, or one or more projects according to the Homework Tracker, the Parent and the Case Manager will convene with one or more solutions, by email or in person, no

- more than two days following discovery of the initial challenge;
11. If the Parent and the Case Manager are unable to resolve the Student's difficulty after two attempts, the Parent will contact the Director of Special Services for assistance;
  12. The Director of Special Services will act in a leadership position to assist the Parent and the Case Manager in resolving the Student's difficulty. The Director of Special Services will assign responsibilities and deadlines to the Case Manager and/or the Parent to ensure timely response to the Student's need;
  13. Regarding the Student's continued participation in Beginning Guitar, the Student will be allowed to substitute a class in which the Student is more successful and already experienced, such as Woods or Office Assistant, or another solution that is mutually agreeable;
  14. The District will complete and submit to the Parent the Student's aptitude testing no later than March 4, 2016.

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

The Parent alleges that there has been a "lack of communication, follow-through, and resolution" regarding additional struggles that the Student has had, including difficulties in the Student's Beginning Guitar class. These issues may be addressed by filing a complaint with the District and utilizing the District's complaint procedures. (OAR 581-015-2030)

**III. FINDINGS OF FACT:**

1. The Student is nineteen years old and is eligible for Special Education services as a student with an Autism Spectrum Disorder. This eligibility was most recently established on February 18, 2014. The Student is a senior in the District High School and is on a plan to graduate with an Alternative Certificate at the conclusion of the 2015-16 school year.
2. On November 12, 2014, the IEP Team rewrote the Student's IEP. The major elements of the IEP are charted below:

<b><u>IEP Element</u></b>	<b><u>Student Specific</u></b>
Present Level of Academic Achievement and Functional Performance	<ul style="list-style-type: none"> <li>• Is friendly, has a positive attitude, has good reading, memorization and vocabulary skills;</li> <li>• In Communication, Student is working on skills such as compromise, negotiation, perception of other and choices;</li> <li>• Reading – 11/3/14, score 7.2 grade equivalency (GE) on Woodcock Johnson Test of Achievement (WJ);</li> </ul>

	<ul style="list-style-type: none"> <li>• Writing -- 11/3/14, scored 6.4 GE n WJ;</li> <li>• Math – 11/3/14, scored 6.1 GE on WJ;</li> <li>• Independently uses sensory filters to manage sensitivities to stimuli; and,</li> <li>• Involved in high school Partner’s Club.</li> </ul>
Parent Concerns	<ul style="list-style-type: none"> <li>• Transition, would like Student to be given a test addressing executive functioning concerns;</li> <li>• Budgeting, life skills, etc.</li> </ul>
Statewide Assessment	<ul style="list-style-type: none"> <li>• The Student will take standard assessments in Language Arts and Mathematics with the accommodation of having the tests chunked up into smaller testing periods, with extended amount of time to complete test.</li> </ul>
Districtwide Assessment	<ul style="list-style-type: none"> <li>• No Districtwide Assessment is given at the Student’s grade level.</li> </ul>
Transition Planning	<ul style="list-style-type: none"> <li>• Student will take some college or community outreach courses after graduation; will work in a grocery store after graduation; will live independently or in a supported living situation after graduation.</li> </ul>
Graduation Options	<ul style="list-style-type: none"> <li>• Projected graduation on 6/3/2018 with an Alternate Certificate.</li> </ul>
Goals	<ul style="list-style-type: none"> <li>• The Student will increase written expression score on a standardized test to 6.8 GE by 11/2015;</li> <li>• The Student will increase independent money management skills;</li> <li>• The student will increase ability to be more independent in the community domain;</li> <li>• The Student will accept and generate compromise solutions to conflicts when working cooperatively with others.</li> </ul>
Non-participation Justification	<ul style="list-style-type: none"> <li>• The Student will be removed from the general education setting for 440 minutes per week to work on communication, math, and reading/language arts and living skills.</li> </ul>
Extended School Year (ESY)	<ul style="list-style-type: none"> <li>• The Student does need ESY.</li> </ul>
Consideration of Special Factors	<ul style="list-style-type: none"> <li>• The Student has communication needs</li> </ul>
Service Summary – Specially Designed Instruction (SDI)	<ul style="list-style-type: none"> <li>• SDI for Communication – 100 minutes per month in SPED classroom;</li> </ul>

	<ul style="list-style-type: none"> <li>• Functional Life Skills – 220 minutes per week at the school site;</li> <li>• Math – 110 minutes per week in the SPED classroom;</li> <li>• Written Language – 110 minutes per week in the SPED classroom.</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>• None needed</li> </ul>
Service Summary -- Supports for School Personnel	<ul style="list-style-type: none"> <li>• Consultation to staff by Special Education staff -- 30 minutes per month.</li> </ul>
Placement Determination	<ul style="list-style-type: none"> <li>• Special Education for 440 minutes per week to work on writing, math, social skills, and living skills—in two class periods per day. Will be in general education for all other classes as well as work training.</li> </ul>

3. During the November 12, 2014 IEP Meeting, the IEP Team determined that the Student would be in Special Education for 440 minutes per week (220 minutes in the Special Education Room, 220 minutes school wide), and that this would occur during two class periods per day. In addition, the Student was to receive 100 minutes per month of SDI in Communication, which would be provided in the Special Education Room.
4. However, the Student's schedule for the second semester of the 2014-15 school year indicates that the Student was enrolled in two general education classes and five Special Education classes. Two of the Special Education classes are listed as "Work Exp (854)", which occurred outside the Special Education Room but are listed as Special Education classes in the District High School 2014-2015 Educational Planning Guide.
5. On December 2, 2014, the Parent signed a consent form giving the District permission to assess the Student in Executive Functioning Skills using the Behavior Rating Inventory of Executive Function (BRIEF). The Parent made this request because the Parent had concerns about the Student's executive functioning skills. This assessment was completed on May 20, 2015. The High School Principal gave the Parent a copy of the BRIEF summary report on August 12, 2015.
6. The BRIEF questionnaire was given to the Parent, a General Education Teacher and Case Manager 1, and scored by a School Psychologist from the ESD. In the report written on May 20, 2015, the School Psychologist describes it as a test that "measures the Student's ability to inhibit thoughts and impulses, shift or change activities and thoughts, control emotions, start new tasks, recall information and use that information to complete work, plan, organize materials, and monitor behavior." The scores of two

indexes (Behavior Regulation and Metacognitive) are coalesced to provide a Global Executive Composite. Scores above 65 are considered Clinically Significant and indicate the student has substantial challenges with the tasks being measured.<sup>8</sup> The Student scored as follows:

<u>Composite Scale</u>	<u>Parent Form T Score<sup>9</sup></u>	<u>General Education Teacher T Score</u>	<u>Case Manager 1 T Score</u>
<u>Global Executive Composite:</u> Summary score that incorporates all eight clinical scales	78*	76*	95*
<u>Behavior Regulation Index:</u> Represents a child's ability to shift cognitive set and modulate emotions and behavior via appropriate inhibitory control. Behavior regulation enables the metacognitive process to successfully guide active, systematic problem solving, and more generally, supports appropriate self-regulation.	65	77*	88*
Inhibit	69*	61	67*
Shift	76*	101*	122*
Emotional Control	50	69*	76*
<u>Metacognitive Index:</u> Represents the child's ability to initiate, plan, organize, and sustain future-oriented problem solving in working memory; the ability to cognitively self-manage tasks and reflect the child's ability to monitor his or her performance.	81*	70*	91*
Initiate	79*	76*	96*
Working Memory	90*	73*	87*
Plan/Organize	81*	66*	81*
Organization of Materials	72*	44	90*
Monitor	65	68*	79*

<sup>8</sup> Clinically Significant T scores for this Student are denoted by an asterisk.

<sup>9</sup> T Scores are defined in the BRIEF Summary as follows: "T Scores are a standard score with an average score of 50 and a standard deviation of 10."

7. In previous school years, Case Manager 1 had chosen and registered classes for the Student with some consultation from the Parent and Student about electives. On August 24, 2015, the Parent and Student visited the High School to inquire about the Student's class schedule for the 2015-2016 school year. The Principal told them that no classes had yet been scheduled for the Student, and gave them a copy of the list of available classes and asked them to choose classes for the Student. They chose an elective class for every class period, believing that Case Manager 2 would add the Special Education classes and work any possible electives around the Special Education class schedule.
8. However, after reviewing the Student's file, Case Manager 2 placed the Student in six general education elective classes, and one Special Education class for Study Skills in the Resource Room. The Educational Placement Discussion and Decisions portion of the Student's IEP states the following: "[The Student] will be in special education for 440 minutes per week to work on writing, math, social skills and living skills. [The Student] will do this within two class periods each day. [The Student] will be in regular education for all other classes as well as work training." There was no Prior Written Notice provided regarding this change in placement, nor did an IEP Team Meeting take place.
9. On September 9, 2015, the Parent emailed Case Manager 2 and reviewed some of the conclusions in the BRIEF summary report. The Parent asked if the Student, Parent and Case Manager 2 could meet to discuss a plan to help the Student in all of the Student's general education classes. Case Manager 2 replied and suggested several meeting times, however Case Manager 2 and the Parent were ultimately unable to find a mutually acceptable meeting time.
10. On September 19, 2015, the Parent emailed the Special Education Director and asked to meet with the Special Education Director to discuss the BRIEF summary report. The Director and the Parent met on October 16, 2015. The Parent reported that they did not discuss the BRIEF summary, but instead discussed some community based supports for the Student. The Director agrees that community supports constituted the bulk of the conversation in the meeting.
11. The IEP Team met on November 10, 2015 to review and rewrite the Student's IEP. Although the IEP Team added a goal for Executive Functioning to the IEP, nothing in the Conference Summary reflects any discussion or consideration of the BRIEF Summary Report. While the Parent's concerns are not listed in the section provided for this in the IEP, many parental concerns were incorporated into the IEP.
12. The major elements of this IEP are charted below:

<b><u>IEP Element</u></b>	<b><u>Student Specific</u></b>
Present Level of Academic Achievement and Functional Performance	<ul style="list-style-type: none"> <li>• Works hard to communicate appropriately and effectively with general education students, teachers and staff;</li> <li>• Is perceptive, and is interested in furthering independence skills;</li> <li>• In Communication, Student is recognizing the need for adjustments in length and type of conversations in different settings;</li> </ul>

	<ul style="list-style-type: none"> <li>• Reading – 10/20/2015, scored 8.9 grade equivalency (GE) on Woodcock Johnson Test of Achievement (WJ);</li> <li>• Writing – 10/20/15, scored 5.9 GE on WJ;</li> <li>• Math – 10/20/15, scored 5.5 GE on WJ;</li> <li>• Student is very polite and well-liked by peers and by staff, but does not have an identified friend at the high school at this time;</li> <li>• Has a strong interest in personal growth and in video games systems and other technologies;</li> <li>• Is interested in acting and the arts and has performed in plays several times in recent years, and continues to be involved in the high school Partner's Club; and,</li> <li>• Independently uses sensory filters to manage sensitivities to stimuli.</li> </ul>
Parent Concerns	<ul style="list-style-type: none"> <li>• Incorporated into IEP.<sup>10</sup></li> </ul>
Statewide Assessment	<ul style="list-style-type: none"> <li>• No Statewide Assessment is given at the Student's grade level.</li> </ul>
Districtwide Assessment	<ul style="list-style-type: none"> <li>• No Districtwide Assessment is given at the Student's grade level.</li> </ul>
Transition Planning	<ul style="list-style-type: none"> <li>• Student has taken part of a vocational aptitude survey and interest assessment but has not completed it.</li> </ul>
Measurable Post-Secondary Goals	<ul style="list-style-type: none"> <li>• Learn executive functioning skills;</li> <li>• Complete vocational aptitude survey;</li> <li>• Live in independent or supported living situation after graduation; and,</li> <li>• Tour local community college and learn to ride public transportation.</li> </ul>
Graduation Options	<ul style="list-style-type: none"> <li>• Projected graduation on 6/5/2016 with an Alternate Certificate.</li> </ul>
Goals: Written Language	<ul style="list-style-type: none"> <li>• The Student will increase written expression score on a standardized test to 6.4 GE by 11/16;</li> </ul>
Organizational/Study Skills <sup>11</sup>	

<sup>10</sup> The Parent did give Case Manager 2 a notated copy of the draft IEP with some suggestions for information to be added to the IEP. The Case Manager added everything the Parent suggested except a statement about access to an iPad to learn backwards planning via YouTube courses and Graphic Organizers in the Section about whether or not the Student needs Assistive Technology. This notated document did not contain any specific Parent Concerns.

Speech/Language Therapy	<ul style="list-style-type: none"> <li>• The Student will learn the architecture of backwards and forwards planning as it relates to assignments and special projects including sandwich day<sup>12</sup> in order to increase executive planning skills; and,</li> <li>• The Student will demonstrate social skills with 80% success as measured by therapy data in inviting conversational partner's input, ask questions or make comments that pertain to a group topic, and identify four different categories of topics used to initiate conversations.</li> </ul>
Non-participation Justification	<ul style="list-style-type: none"> <li>• The Student will be removed from the general education setting for 245 minutes per week to work on communication, math, and goals.</li> </ul>
Extended School Year (ESY)	<ul style="list-style-type: none"> <li>• The Student does not require ESY.</li> </ul>
Consideration of Special Factors	<ul style="list-style-type: none"> <li>• The Student has communication needs</li> </ul>
Service Summary – Specially Designed Instruction (SDI)	<ul style="list-style-type: none"> <li>• SDI for Communication – 100 minutes per month in SPED classroom;</li> <li>• Organizational – 22/Study Skills -- 196 minutes per week in SPED classroom;</li> <li>• Written Language.</li> </ul>
Service Summary -- Related Services	<ul style="list-style-type: none"> <li>• Transportation</li> </ul>
Service Summary -- Supplementary Aids/Services; Modifications and Accommodations <sup>13</sup>	<ul style="list-style-type: none"> <li>• Schedule changes warning in advance;</li> <li>• Written and visual instructions;</li> <li>• Extra time for completion;</li> <li>• Word processor on longer assignments; and,</li> <li>• Accommodations for test setting.</li> </ul>
Service Summary -- Supports for School Personnel	<ul style="list-style-type: none"> <li>• Consultation to staff by Special Education staff -- 30 minutes per month.</li> </ul>
Placement Determination	<ul style="list-style-type: none"> <li>• 80% or more of the day in regular classroom.</li> </ul>

<sup>11</sup> Case Manager 2 noted that "organizational and study skills" was the only choice in the drop-down menu that was reasonably close to describing the category of Executive Functioning Skills.

<sup>12</sup> On "Sandwich Day," the Student prepares sandwiches for the class.

<sup>13</sup> See Footnote 3. On the copy of the IEP that was sent to the Parent on February 21, 2016, and that was later submitted to the Department's Investigator by both the Parent and the District, no supplementary aids/services, modifications or accommodations were listed on the service summary page of the IEP. Apparently, this was a result of a problem in the District's special education software. During interviews with the District staff, Case Manger 2 reprinted the IEP and these services were included on the Service Summary page. The Parent believes that because these elements of the IEP were not printed out on the copy the Parent received after the IEP meeting, or on the copies submitted for the complaint investigation, they should be considered missing.

13. After the November 10, 2015 IEP was completed, the Speech/Language Specialist met with the Student weekly and provided an average of 20 minutes per week of Specially Designed Instruction in Communication and Social Skills. Sometimes, the Specialist worked one-to-one with the Student, and sometimes the Student participated in small group activities.
14. It is not clear from the record where and when the Student received Specially Designed Instruction in Written Language and Organization/Study Skills. The Student did meet daily with Case Manager 2 or an Instructional Assistant (IA) during the Study Skills period at the end of the day. Most of this time the Student was completing a Homework Tracker to organize assignments.
15. The Parent filed the Complaint on February 17, 2016.

#### **IV. DISCUSSION**

##### **1. General Evaluation and Re-evaluation Procedures:**

The Parent alleges that the District violated the IDEA when it did not complete a re-evaluation within sixty school days from the date the Parent provided written consent. The Parent signed consent for evaluation on December 2, 2014 and the evaluation report was completed on May 20, 2015. (OAR 581-015-2110; 34 CFR 300.304 & 305)

The District does not dispute this allegation and makes the following statement:

"This is correct and the district does not dispute this allegation. The parent requested an assessment be done to determine the executive functioning deficits the student had. There was some confusion as to what assessment could be used to evaluate executive functioning as well as finding someone who was qualified to administer it. We ultimately needed to go outside the district and ask a school psychologist to administer the BRIEF Assessment. The corrective action will be to consult with the ESD and Autism Specialist when there is evaluation request that is not within our ability to do and have it done within the 60 day window."

The District does not dispute this allegation.

##### **2. Content of IEP:**

The Parent alleges that the District violated the IDEA when the District refused to include measureable goals, and statements of Special Education, related services, and supplementary aids and services specific to the Student's needs in Executive Functioning. The Parent requested an evaluation of the Student's Executive Functioning Skills to inform the Student's school and transition program. The evaluation was completed, but the IEP Team did not include this information in the PLAAFP section of the IEP. (OAR 581-015-2200; 34 CFR 300.320 & 324)

A District meets its responsibility to the student when it designs an IEP in a meeting with parents that is “reasonably calculated to confer benefit”<sup>14</sup> and when it contains:

- a) A statement of the child’s present levels of academic achievement and functional performance;
- b) A statement of measurable annual goals, including academic and functional goals;
- c) A description of how the child’s progress toward meeting the annual goals will be measured.
- d) A statement of how the child will advance appropriately toward attaining the annual goals;
- e) A statement of the specific special education and related services and supplementary aids and services;
- f) A statement of program modifications or supports for school personnel that will be provided for the child;
- g) A statement of any accommodations necessary to allow the student to participate in state and district wide assessments; and,
- h) For an age appropriate child, a statement of measurable post-secondary goals and an outline of transition services needed to assist the child in achieving those goals.<sup>15</sup>

Annual goals must be based on the student’s current level of mastery of a particular skill and are measureable when they describe:

- a) a specific behavior that can be observed,
- b) the assistance and circumstances that will affect the performance of the behavior;
- c) a rate or time measurement that must be demonstrated in order to insure mastery.

In this case, the IEP written on November 10, 2015 contained two goals, a goal for “Organizational and Study Skills” and goals for “Written Language” and “Speech Language Therapy.” However, the results of the BRIEF Summary were not included in the PLAAFP section of the IEP, despite the fact that there are clinically significant deficits included in this summary.

There is also a lack of consistency within the IEP between the “Educational Placement Discussion and Decisions” page and the “Service Summary” page. The “Educational Placement Discussion and Decisions” page indicates that the Student will be in special education for 440 minutes per week, while the “Service Summary” page indicates that the Student will receive 220 minutes of SDI in the special education classroom and 220 minutes of SDI “school wide”. The Student ended up being in a more restrictive learning environment than the IEP required during the spring semester of the 2014-15 school year (in the special education room for approximately 735 minutes per week) and in a less restrictive learning environment than required by the IEP during the fall

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<sup>14</sup> Board of Educ. v. Rowley, 458 U.S. 176 (1982)

<sup>15</sup> OAR 581-015-2200

semester of the 2015-16 school year (in the special education room for approximately 245 minutes per week).

The Department substantiates this allegation in part.

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

The Parent alleges that the District violated the IDEA when it did not provide Special Education and related services to the Student in accordance with the IEP. Specifically, the Parent alleges that SDI has not been implemented. (OAR 581-015-2220 & CFR 300.323 & 324)

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.<sup>16</sup>

In this case, the Student's IEP mandated SDI in the areas of Communication, Written Language, and Organizational/Study Skills. The District provided SDI to the Student in Communication Skills in the Special Education classroom on a one-to-one basis and small group instruction conducted by the Speech/Language Therapist weekly. However, there is no evidence in the service log received from the District that the Student received SDI in Written Language or Organization/Study Skills. Therefore, the Student's IEP was not being implemented as written.

The Department substantiates this allegation.

**V. CORRECTIVE ACTION<sup>17</sup>**

*In the Matter of Sutherlin School District  
Case No. 16-054-004*

No.	Action Required	Submissions <sup>18</sup>	Due Date
1.	Convene an IEP meeting to discuss the Student's	Submit to ODE and the Parent, a copy of the entire	<b>May 9, 2016</b>

<sup>16</sup> OAR 581-015-2220

<sup>17</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>18</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: [raeannray@state.or.us](mailto:raeannray@state.or.us); fax number (503) 378-5156.

	performance on the BRIEF and determine if any changes need to be made to the current IEP, including the PLAAPF and annual goals.	IEP, including any revisions; and notices to Parents associated with the IEP (including; invitation to IEP Meeting, prior written notice).	
2.	In consultation with ODE, provide professional development to Special Education staff, including related services providers, at the school Student currently attends, on 1) evaluation timelines, 2) including evaluation information within an IEP with a direct link to annual goals, 3) provision of SDI and 4) consistency between placement determination and LRE statement, with the development of the services matrix and SDI.	Submit plan to ODE including positions designated to receive training, date, time, and proposed agenda.  Submit evidence of completed training, including agenda, sign-in sheet, materials, and evaluation.	<b>May 16, 2016</b>  <b>August 31, 2016</b>

Dated: this 15th Day of April, 2016



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

Mailing Date: April 15, 2016

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.