

## BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego School  
District 7J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-011

### I. BACKGROUND

On April 15, 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 Lake Oswego 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 April 15, 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 April 21, 2016, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On May 12, 2016, the District timely provided its narrative *Response* to the *Request for Response* and accompanying documents. On May 23 and 24, 2016, the Parent provided a *Reply* and accompanying documents, by email

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

1. Report Card Kindergarten 2013-2014
2. I Team Summary 2013-2014
3. Report Card kindergarten 2013-2014
4. Elementary Permanent Record Card grade 1 9/2/14
5. Student Progress Monitoring Graph – DIBELS 6<sup>th</sup> Ed. 2014-2015 Grade 1
6. Email District Student Registration form 9/8/14
7. communication between the parties and among District staff from 9/24/14 – 4/26/16
8. Notes from "I Team Referral" meeting 9/22/15
9. Notice of Special Education Team Meeting 10/9/15
10. Prior Written Notice 10/13/15
11. Meeting Notes 10/13/15
12. Kaufman Test of Educational Achievement 10/20/15
13. Letter from District to Parent 10/22/15
14. Evaluation Report 12/15/15
15. Notice of Special Education Team Meeting 12/18/15
16. 2015-2016 District school year calendar
17. Report Card grade 2 Semester 1 2015-2016
18. Prior Written Notice 1/6/16
19. Meeting Notes 1/6/16
20. Background and Developmental History form 1/8/16
21. Notice of Special Education Team Meeting 1/14/16
22. Autism Spectrum Disorder Evaluation 1/16/16

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

23. Language Evaluation 1/19/16
24. Prior Written Notice 1/19/16
25. Eligibility Statement 1/19/16
26. Eligibility Statement 1/19/16
27. Eligibility Statement 1/19/16
28. Meeting Notes 1/19/16
29. Notes 1/26/16
30. Medical Statement 1/29/16
31. Notice of Special Education Team Meeting 2/2/16
32. Prior Written Notice and Consent for Initial Placement 2/2/16
33. Statement of Eligibility 2/2/16
34. IEP 2/2/16
35. Meeting Notes 2/2/16
36. Behavior Intervention and Safety Plan 2/8/16
37. Notice of Special Education Team Meeting 2/24/16
38. Meeting Notes 3/1/16
39. Prior Written Notice 3/1/16
40. IEP 2/2/16 amendment 3/1/16
41. Prior Written Notice 4/11/16
42. Notice of Special Education Team Meeting 4/27/16
43. Meeting Minutes 5/4/16
44. Prior Written Notice 5/11/16
45. Annual Academic and Functional Goals undated
46. Immunization information
47. Notes re Intervention: Read Well Support, dates served 10/14-3/15

The Parent provided a *Reply* by email on May 23 and 24, 2016 and provided the following documents:

1. Email communication between parties February 17, 2016 to February 26, 2016
2. Executive Numbered Memorandum from Oregon Department of Education #009-2015-2016
3. Senate Bill 553 summary
4. OAR 581-022-1620 Instructional Time
5. Copies of checks, payments for daycare and tutoring made by Parents 1/24/16 – 4/9/16
6. Progress Update for Student at private tutor

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On May 25, 2016, the Complaint Investigator interviewed the Parent by telephone. On May 31, 2016, the Complaint Investigator interviewed the District's Executive Director of Special Services, a Support Education Specialist, a Principal, a Regular Education Teacher, a Special Education Teacher and a Speech Language Pathologist. 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 April 16, 2015, to the filing of this complaint on April 15, 2016.<sup>2</sup>

No	Allegations	Conclusions
1.	<p><b><u>Free Appropriate Public Education (FAPE) and Placement of the Child</u></b></p> <p>The Complaint alleges the District violated the IDEA by denying FAPE to the Student by the placement of the Student on shortened school days from January 14, 2016 to April 4, 2016.</p> <p>OAR 581-015-2040, OAR 581-015-2250; 34 CFR 300.101, 34 CFR 300.116, 300.327</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Department finds that the efforts of the District and the Parent were reasonably calculated to enable the Student to receive educational benefit. Although the Student remains below grade level in most academic areas, the Department does not find this is attributable to the decision made by the District and the Parent to provide shortened school days.</p>
2.	<p><b><u>Parent Participation – General</u></b></p> <p>The Complaint alleges that the District violated the IDEA by changing “IEP members and protocols * * * multiple times since November 2015”, resulting in an inability of the Parents to meaningfully participate in the Student’s IEP planning.</p> <p>OAR 581-015-2190; 34 CFR 300.500, 300.327, 300.501(b)</p>	<p><b><u>Not Substantiated</u></b></p> <p>Each member of the Student’s IEP Team plays a specific role and has information that is important to communicate to the Parent. There is no legal requirement that parents have only one point of contact when discussing Special Education concerns.</p>
3.	<p><b><u>When IEPs Must Be in Effect (IEP Implementation)</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to implement the Student’s IEP. Specifically, the Complaint alleges that the District found the Student “eligible for Speech Pathology assistance from the Speech Pathologist in predictability and sequencing”, but the Student has not received these services.</p> <p>OAR 581-015-2220; 34 CFR 300.323, 300.324.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student’s IEP, dated February 2, 2016 and amended on March 2, 2016, does not contain goals, objectives or related services specifically related to predictability and sequencing. Although the Student scored below average in predictability and sequencing in a Language Evaluation reviewed on January 19, 2016, the eligibility team, including the Parent, determined the Student to not be eligible for Special Education under the disability category of Communication Disorder.</p>

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

<p>4.</p>	<p><b><u>Requirement for Least Restrictive Environment (LRE)</u></b></p> <p>The Complaint alleges that the District violated the IDEA by a placement of the Student that is not the Least Restrictive Environment (LRE). Specifically, the Complaint alleges “[n]o music or art is offered in the general education classroom” for the Student.</p> <p>OAD 581-015-2240; 34 CFR 300.114.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District began inclusion of the Student with particular activities in the regular education classroom as soon as the Student demonstrated the ability to do so. The Student began full school days in the Special Education classroom on April 4, 2016 and the Student began attending Music beginning the week of May 2, 2016, and now attends both Music and P.E. twice a week and Library once a week, with the Student’s nondisabled peers.</p>
<p>5.</p>	<p><b><u>Extended School Year Services (ESY), Parent Participation – General</u></b></p> <p>The Complaint alleges that the District violated the IDEA by recently determining that the Student is not eligible for ESY services. The Complaint further alleges that the Student has fallen behind academically due to shortened school days and that the Student needs extra time to catch up. The Complaint further alleges that the Parents did not participate in the ESY decision.</p> <p>OAD 581-015-2065, OAD 581-015-2190; 34 CFR 300.106, 34 CFR 300.500, 300.327, 300.501(b).</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District discussed ESY with the Parent twice, and when the District learned that the Parent did not agree with the ESY determination, the District timely held an IEP Team Meeting during which the IEP Team, after hearing the concerns of the Parents, determined that the Student was not eligible for ESY.</p>

**Proposed Corrective Action**

The Complaint requests the following corrective action:

- “1. Improve safety protocols and communication between front desk administrators and extended care aides, especially for siblings who attend the same school. Provide additional training to teachers for after school protocols.
2. Compensatory services, to include Extended School Year in the form of continued tutoring ([the Student] currently attends Kumon and Sylvan Learning Centers) and social opportunities/summer daycare to interact with both disabled and non-disabled peers.
3. Include parents in all decisions regarding IEP.
4. Provide Speech Pathologist services and opportunities for music and art.
5. Provide Extended School Year so that [the Student] can catch up and Compensation for outside tutoring during the shortened school days (approximately \$1200 from 1/16 until 4/16).”

### III. FINDINGS OF FACT

1. The Student in this case is presently seven years old and is in the 2nd grade in the District. The Student is eligible for Special Education as a student with Other Health Impairment (OHI) (under "ADHD" (Attention-Deficit, Hyperactive Disorder) (ADHD))
2. The Student's IEP Team determined the Student's initial eligibility under OHI on February 2, 2016. The Student's IEP in effect at the time of the filing of the Complaint is dated February 2, 2016 and was amended on March 1, 2016. Prior to the amendment of the Student's IEP on March 1, 2016 the Student's IEP provided a placement of "Regular class with specially designed instruction in the areas of math, writing, problem solving, and emotional regulation." The Placement Determination states "Step up plan to include home instructor to deliver services at home school (review progress at 2 weeks), next step is to add Learning Support Center support (review progress at 2 weeks), then add gen. ed program with support (time to be determined)."

#### FAPE and Placement of the Child

3. On September 22, 2015 the District made a "Referral to Special Education Evaluation, following an "I-Team" meeting in which it was noted that the Student "continues to have social-emotional and behavioral challenges that prohibit [the Student] being able to access the curriculum. [The Student] continues to struggle in the classroom to work independently and without constant redirection and help. [The Student] appears to be unable to manage the frustrations of [the Student's] academic day and struggles with behavioral and emotional regulation." The referral further states that the Student "is below grade level in all academic areas."
4. On October 13, 2015, the District held a "Special Education Team Meeting", and on that date the Parent signed a consent to evaluate the Student in "Academic Achievement", "Attention/Behavior", "Autism Scales", "Cognitive Assessments", "Communication", "Medical Statement" and "Observation of Student". The Parent crossed off on the form and did not consent to evaluation in the area of "Personality/Social Emotional". On January 6, 2016, the District and Parent met to discuss Special Education eligibility. At that time, the Eligibility Team determined that it needed further information and scheduled another eligibility meeting for January 19, 2016.
5. On January 19, 2016, the Eligibility Team, including the Parents, met to determine eligibility for Special Education. The Eligibility Team considered eligibility under Communication Disorder, Autism Spectrum Disorder and Specific Learning Disability and determined that the Student is not eligible for Special Education services under any of the eligibility categories considered. The Meeting Minutes refer to a medical statement that stated "possible ADHD". The Eligibility Team determined that the Student could potentially be eligible under Other Health Impairment (OHI), pending more information from the Student's doctor and agreed to reconvene following a medical appointment regarding a possible ADHD diagnosis.
6. The January 19, 2016 Eligibility Meeting occurred following suspension of the Student on January 14 and 15, 2016, based upon the Student "running from staff". Based upon the "safety concern due to [the Student's] emotional regulation", District staff suggested the Student be placed in home instruction for five hours per week, "from a safety standpoint", with a "step up plan" that would allow the Student to work on "re-entry plan into the building. Will not have to be running in the buildings. Content should be at grade level, but slower pace." (Minutes from January 19, 2016 meeting) The Parent stated he/she wanted the Student to receive home instruction and would take the Student back to a doctor. The Prior Written Notice (PWN) issued on January 19, 2016, states that the OHI would be considered when the Eligibility Team reconvenes. The PWN also states that "due to safety concerns and previous suspension, [the Student] will receive home instruction with a step up plan (increase time in school at increments)."

7. On February 1, 2016, the District convened an Eligibility Meeting and determined that the Student was eligible for Special Education under OHI, based upon a medical statement diagnosing ADHD. The IEP Team then completed an IEP for the Student, with a placement of "Regular class with specially designed instruction in the areas of math, writing, problem solving and emotional regulation." The placement page further indicates: "Step up plan to include home instructor to deliver services at home school (review progress at 2 weeks), next step is to add Learning Support Center support (review progress at 2 weeks), then add gen. ed program with support (time to be determined)."
8. On February 2, 2016, the Parent sent an email proposing that the tutor providing home instruction provide tutoring at the Student's elementary school instead, and that Student have lunch with peers from the Student's former 2nd grade regular education classroom. On February 3, 2016, the Parent sent an email concerning transferring the Student and the Student's sibling to another elementary school, with the Student enrolling in a Special Education classroom at that school. The District responded by email that that change in placement could not be accomplished without an IEP Team Meeting.
9. The District then changed the location of tutoring to the Student's elementary school, beginning February 8, 2016. The District made this change at the request of the Parent and as a first step in returning the Student to full day instruction. By this time, the District had conducted a Functional Behavioral Assessment of the Student and created a Behavior Intervention & Safety Plan.
10. On February 17, 2016, the Education Support Specialist informed the Principal that the Parent would like the Student to be in the DELTA (Daily Educational Learning Tools for Achievement) classroom. The District maintains a DELTA classroom for kindergarten to 2nd grade at an elementary school that is not the home school for the Student, and maintains a DELTA classroom for grades 3-5 at the Student's home elementary school. On February 22, 2016, the Parent requested a classroom visit to the DELTA classroom, and District staff scheduled both a classroom visit to the DELTA classroom at the Student's home elementary school and an IEP Meeting for March 1, 2016.
11. On March 1, 2016, the IEP Team met and agreed upon a placement into the DELTA classroom at the Student's home elementary school, although the Student had not yet completed 2nd grade and the particular classroom usually only accepted students in grades 3-5. Specifically, the IEP as amended on March 1, 2016 included a placement of "Special class w/ support for social/emotional behavior needs." The placement page further indicates, after stating that the foregoing placement is "Selected as the least restrictive environment to address comprehensive IEP": "Step up schedule".
12. The PWN issued on March 1, 2016 stated "Placement of special class with support for social/behavioral/emotional support selected as the least restrictive environment to address comprehensive IEP", and noted "Step up plan for special class (starting at 2 hrs). Time to be increased based on [the Student's] progress in the transition with supports in place per IEP team. Plan is to ramp up to full day." The PWN also states "Service Summary: Added Behavior Support Plan and Step up Plan (for time in school). Added Behavior consult of 2 hr/year for personnel. Change of nonparticipation Justification: Opportunities for [Student] to participate in regular classes when deemed appropriate by the IEP team. Will be receiving staff support when in general education setting/classes. In special class for support in emotional regulation and problem-solving with additional specially designed instruction for math and written language."
13. The Student began attending the DELTA special classroom on March 2, 2016. Initially, the Student's school schedule began with a shortened school day, from 9:00 a.m. to 11:00 a.m. from

March 2, 2016 to March 4, 2016. From March 7, 2016 to March 18, 2016 the Student's school day increased to 9:00 a.m. to 12:15 p.m. Following spring break (from March 18, 2016 to March 25, 2016) the Student's school day increased to 9:00 a.m. to 1:15 p.m. from March 28, 2016 to March 31, 2016. On April 4, 2016, the Student's school days increased to full days.

14. The special classroom attended by the Student since March 2, 2016 ranges from seven to eleven students with one teacher and four Educational Assistants in the classroom.
15. During the on-site interviews, the Student's Regular Education Teacher from the beginning of the 2015-2016 school year to January 13, 2016 stated that the Student began 2nd grade below grade level in Math and approaching grade level in Reading (which includes Writing and Language Arts). This is confirmed by the Present Levels of Academic Achievement and Functional Performance (PLAAFP) set forth in the Student's IEP.
16. The Student's Special Education Teacher from March 2, 2016 to the present reported that the Student, although a very challenging student who has had difficulty adjusting to more structured environment with set expectations, is making growth. This Special Education Teacher also reports that the Student continues to need Specially Designed Instruction (SDI) and remains below grade level in Math and Written Language but is making progress when focused. The Student's behavior remains inconsistent, and exhibits some defiance and a disrespectful tone of voice at times, but with the supports and a "built in motor break" District staff can get the Student to do school work.
17. The Parent stated that the Student is still behind academically and attributes this to the period of shortened school days from January 19, 2016 to April 4, 2016, during which time the Student gained access to the curriculum by a 1:1 tutor in home and at school and by participation in reduced school days in the special class which began on March 2, 2016. The Parent also stated that the Student began private tutoring in 2014 with a private tutor and that since February of 2016 the Student has received tutoring for two hours per week with two private tutor services. The Parent also reported that the Student is still behind academically, according to one of the Student's private tutor services.

#### **Parent Participation - General**

18. The Parents allege that the Support Education Specialist, Executive Director of Special Services, and the person in charge of the DELTA programs in the District, were not involved in the original planning for the Student, and that the Parents went from dealing with an Autism Specialist to a new set of members. The Parent also reported the changes in District staff working with the Parents to be confusing.
19. The District notes in its *Response* in this case that particular District staff were added to the process either due to IDEA requirements of participation or due to the issues under discussion. At one time, the Parent asked that less District staff be involved in meetings concerning the Student but later requested all team members attend meetings. The Department's review of the documentation of the Eligibility and IEP Meetings, on January 6, 2016, January 19, 2016, February 2, 2016 and March 1, 2016, reveals that all of these meetings included the participants required under the applicable regulations.

#### **When IEPs Must Be in Effect (IEP Implementation)**

20. A District Speech-Language Pathologist (SLP) completed a Language Evaluation, reviewed on January 19, 2016. This evaluation revealed a sequencing score of 85 and a predicting score of 79, with 85-115 the average range of standard scores. At an Eligibility Meeting on January 19,

2016, the IEP Team determined that the Student was not eligible for Special Education under the Communication Disorder category.

21. The Student's February 2, 2016 IEP includes as a related Service "Speech/Language Pathology/Therapy" of "120 minute(s) per month" with the anticipated location of "Special Education" to begin February 2, 2016, with the provider to be "LEA" (Local Educational Agency) and the SLP responsible for monitoring the provision of the related service. The Nonparticipation Justification statement in the February 2, 2016 IEP also mentions "120 minutes per month of related services time for Speech Pathology/Language Therapy". The IEP does not contain goals, objectives or related services specifically related to predictability and sequencing.

#### **Requirement for Least Restrictive Environment (LEA)**

22. The placements since the Student's initial eligibility for Special Education are described in Findings 2-14, above. The Student exhibited difficulty engaging with the instruction being offered by the tutor providing home instruction after January 19, 2016, prior to the initial eligibility determination on February 2, 2016; and this difficulty continued after the initial eligibility determination and the change of the tutoring location to the Student's home elementary school.
23. After the Student's placement in a Special Education classroom on March 1, 2016, the Student's step up plan called for the Student to progress from shortened school days in the Special Education classroom beginning March 2, 2016, to full school days in the Special Education classroom on April 4, 2016. The District began including the Student in Music beginning the week of May 2, 2016. During on-site interviews, District staff stated that the Student is now attending Music and P.E. twice each week with a regular education classroom, and attends Library once a week.
24. The Special Education Teacher reported that most students in the Special Education classroom do not do "specials" right away after beginning in the class, to give District staff in the Special Education classroom an opportunity to get to know the students; and the Student in this case did not go to full school days until April 4, 2016. The Special Education Teacher also reported that the goal is to help each student regulate their emotions and work on executive functioning and to get a student back in regular education as soon as possible.

#### **Extended School Year Services (ESY), Parent Participation - General**

25. The Student's IEP states that the issue of ESY services is to "be determined by 4/15/16". During the on-site interview, the Student's Special Education Teacher reported that IEP tracking data concerning each student's IEP goals and objectives is obtained daily for each student in the Special Education classroom. To make the ESY determination, the data before and after a break are compared to see if there is regression or if a long time is needed for recoupment to regain what had been learned. In this case, the Special Education Teacher reviewed the data the week after the Student's return to school following the March 18, 2016 to March 25, 2016 Spring Break.
26. On March 31, 2016, the Special Education Teacher reported to the Parents that the data revealed that the Student did not regress and actually did better following Spring Break and thus the data did not support a determination that ESY is needed. Additionally, the Special Education Teacher again shared the ESY data with the Parents on April 8, 2016, during a Parent-Teacher Conference. The District was unaware that the Parents disagreed with the ESY determination until this Complaint was filed.
27. On April 27, 2016, the District provided notice of a meeting to be held on May 11, 2016 to review the ESY issue. The PWN issued on May 11, 2016 states: "The IEP team met today to review ESY

data \* \* \*. ESY data was presented and reviewed with [P]arents. The data was presented for annual goals and objectives prior to Spring Break and post Spring Break. ESY data did not show any significant regression or need of recoupment time for [the Student] to maintain what [the Student] has learned. Amendment was done on IEP to reflect that [the Student] does not experience regression or prolonged recoupment time, therefore [the Student] does not require ESY services at this time.” In its *Response*, the District observes that the Parent still disagreed with the ESY determination, after the Director of Special Services explained the difference between “ESY services, Summer School and Compensatory Education services.”

#### IV. DISCUSSION

##### Free Appropriate Public Education (FAPE) and Placement of the Child

The Complaint alleges the District violated the IDEA by denying FAPE to the Student by the placement of the Student on shortened school days from January 14, 2016 to April 4, 2016.

OAR 581-015-2040 requires Districts to provide “Special Education and related services to all school-age children with disabilities”. FAPE requires that a school district meet the procedural requirements of the IDEA and that a student’s IEP must be developed and reasonably calculated to enable the student to receive educational benefit.<sup>3</sup>

The District did not violate the IDEA when it placed the Student on shortened school days during the time period beginning January 19, 2016 and ending April 4, 2016. The initial decision on January 19, 2016 to place the Student, then a regular education student, on shortened school days is not related to the IDEA. Once the Student became eligible for Special Education on February 2, 2016, the IEP Team, including the Parent, adopted a placement of regular education, but included a step up plan continuing home instruction with the plan to return the Student to the regular education classroom as the Student demonstrated success in accessing the curriculum through individual tutoring.

The District then almost immediately changed the location of the tutoring to the Student’s home elementary school, consistent with the step up plan and the goal to return the Student to regular education; and adopted a Behavioral Safety Plan for the Student. However, even with 1:1 provision of instruction, the Student experienced difficulty engaging with the tutor to access the curriculum. The Parent then requested placement of the Student into a Special Education classroom and on March 1, 2016, the IEP Team, including the Parent, placed the Student into the Special Education classroom, again with a step up plan that began with two hours of school for the Student on March 2, 2016, increased to three hours and fifteen minutes on March 7, 2016, increased to four hours and fifteen minutes on March 28, 2016, and increased to full school days on April 4, 2016.

Although the Student remains below grade level in most academic areas, the Department does not find this is attributable to the decision made by the District and the Parent to provide shortened school days. The Student began the 2015-2016 school year below grade level and the Student’s disruptive and unsafe behavior during the school year prevented the Student from significantly accessing the curriculum in the regular education classroom. Despite the Parent’s assertion that the Student “fell behind” academically during shortened school days, there is no documentation to support that assertion.

The Department does not substantiate this allegation.

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<sup>3</sup> *Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)

## **Parent Participation – General**

The Complaint alleges that the District violated the IDEA by changing “IEP members and protocols \* \* \* multiple times since November 2015”, resulting in an inability of the Parents to meaningfully participate in the Student’s IEP planning.

OAR 581-015-2190(1) provides: “School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.”

The Parents allege that confusion resulted from the necessity of dealing with several different District staff during the process of addressing the Student’s eligibility and IEP. However, there is no indication that the District made changes in the District staff involved in the process for any reason other than ensuring that District staff members with specific knowledge of the Student’s issues were included in this process. The IDEA is not violated based simply because the Parents communicate with different District staff depending upon the issue being addressed.

The Department does not substantiate this allegation.

### **When IEPs Must Be in Effect (IEP Implementation)**

The Complaint alleges that the District violated the IDEA by failing to implement the Student’s IEP. Specifically, the Complaint alleges that the District found the Student “eligible for Speech Pathology assistance from the Speech Pathologist in predictability and sequencing”, but the Student has not received these services.

OAR 581-015-2220(1)(b) provides: “School districts must provide special education and related services to a child with a disability in accordance with an IEP.”

The Student’s IEP does not contain goals, objectives or related services specifically related to predictability and sequencing. Although the Student scored below average in predictability and sequencing in a Language Evaluation reviewed on January 19, 2016, the Eligibility Team, including the Parents, determined that the Student was not eligible for Special Education under the disability category of Communication Disorder. There is no requirement in the Student’s IEP that the Student receive assistance from the Speech Pathologist in predictability and sequencing.

The Department does not substantiate this allegation.

### **Requirement for Least Restrictive Environment (LRE)**

The Complaint alleges that the District violated the IDEA by not placing the Student in the Least Restrictive Environment (LRE). Specifically, the Complaint alleges “[n]o music or art is offered in the general education classroom” for the Student.

OAR 581-015-2240(1) provides: “School districts must ensure that: To the maximum extent appropriate, children with disabilities, \* \* \* are educated with children who do not have a disability.”

The District began inclusion of the Student in particular activities with the regular education classroom as soon as the Student’s behavior permitted. The Student began full school days in the Special Education classroom on April 4, 2016 and began attending Music beginning the week of May 2, 2016. The Student now attends both Music and P.E. twice a week and Library once a week, with the

Student's former regular education classmates. The Student is educated with non-disabled peers to the maximum extent possible.

The Department does not substantiate this allegation.

### **Extended School Year Services (ESY), Parent Participation – General**

The Complaint alleges that the District violated the IDEA by determining that the Student was not eligible for ESY services. The Complaint further alleges that the Student has fallen behind academically due to shortened school days and that the Student needs extra time to catch up. The Complaint also states that the Parents did not participate in the ESY decision.

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."

On March 31, 2016, after Spring Break, the Student's Special Education Teacher shared with both of the Student's Parents data demonstrating that the Student experienced no regression over Spring Break. The Special Education Teacher again shared this information with the Parent on April 8, 2016 at a Parent-Teacher Conference. When the District learned that the Parent disagreed with the ESY determination upon filing of the Complaint in this case, the District scheduled an IEP Meeting for May 11, 2016 and again discussed the data reviewed in support of the ESY determination. The IEP Team determined that ESY is not necessary for this Student.

The Department does not substantiate this allegation.

### **Additional Findings**

The Department found one area of concern while investigating this matter. The District failed to complete the Student's evaluation within sixty school days from the date of the Parent's consent. The Parent did not consent to extend the timeline for the evaluation under OAR 581-015-2110(5)(a) and did not fail to provide the Student for the evaluation, nor was the Student a transfer student.

**CORRECTIVE ACTION<sup>4</sup>**  
*In the Matter of Lake Oswego School District*  
 Case No. 16-054-011

	<b>Action Required</b>	<b>Submissions<sup>5</sup></b>	<b>Due Date</b>
1.	<p><b><u>General Evaluation and Re-evaluation Procedures</u></b></p> <p>The District will provide professional development training, with approval of presentation materials by ODE, to all special education staff that are responsible for managing/completing evaluations and re-evaluations. ODE County Contact staff will assist with this training. Materials will also include appropriate content from the District's procedural manual related to evaluation and re-evaluation requirements and timelines.</p>	<p>1.) Agenda will be previewed for approval by ODE.</p> <p>2.) District will provide sign-in sheet(s) indicating all District staff who participated and their positions.</p>	<p><b>September 9, 2016</b></p> <p><b>September 30, 2016</b></p>

Dated this 7th Day of June, 2016



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

Mailing Date: June 7, 2016

<sup>4</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>5</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.