

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Redmond SD

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-012

**I. BACKGROUND**

On April 18, 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 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 April 18, 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 April 19, 2015 through April 18, 2016. The Final Order is due June 17, 2016.

On April 22, 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 May 6, 2016.

On May 6, 2016, the District submitted a *Response* with materials as listed below. In total, the District provided these materials;

1. District Response Letter 5/6/2016
2. Student Attendance Records 2014-2015 & 2015-2016 School Years to Date
3. Contact Log, 2/2/15 through 3/7/16
4. Discipline Documents, 12/16/14 through 3/31/16
5. BIP for Swimming 2/23/16
6. BIP 11/2/15 & 2/19/16
7. BIP for School Arrival 10/14/16
8. Individual Safety Plan 11/2/16
9. Invitation to Work with Dr. Feeney 12/3/15
10. BIP & Crisis Plan 10/1/15
11. Summary of Behavior Planning Meeting 9/28/15
12. BIP 2/25/16
13. Information Parent shared with District about other services the Student receives in the community
14. OT & AT Summary 11/30/15 – 4/27/16
15. Meeting Agenda 2/26/16

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

16. IEP Goals Progress Report 2/5/15
17. Meeting Summary 2/23/16
18. Paperwork Procedural Checklist 2/3/16
19. Meeting Participants List 2/3/16
20. Consent for Evaluation 2/3/16
21. Notice of Team Meeting 2/2/16
22. Written Agreement 2/3/16
23. Meeting Summary 2/3/16
24. Three Year Re-evaluation File Review Form 2/2/16
25. Placement Determination Form
26. Written Agreement 2/3/16
27. IEP 2/23/16
28. Paperwork Procedural Checklist 2/3/16
29. Notice of Team Meeting 2/4/15
30. Meeting Summary 1/30/15
31. Written Agreement 2/5/15
32. Meeting Summary 11/4/14
33. Prior Written Notice 11/4/14
34. IEP 11/4/14, 2/11/14 & 10/13/14
35. Physical Restraint Incident Reporting Form 4/27/16
36. Physical Restraint Incident Reporting Form 2/18/16
37. Seclusion Incident Reporting Form 2/18/16
38. Seclusion Incident Debriefing Notes 2/22/16
39. Health and Registration paperwork from Student's Cumulative File
40. Emails Regarding Student
41. Daily Logs between home and school<sup>2</sup> 4/26/16 – 9/21/15
42. School Notes 4/26/16 – 9/21/15
43. Meeting Minutes 11/9/15
44. Eligibility and Re-evaluation Documents 2/3/16
45. Daily School Notes 4/27/16 – 5/5/16
46. Disciplinary Reports 4/27/16 – 5/10/16
47. Occupational Therapist's Service Activity Log 8/28/15 – 5/5/16
48. Speech/Language Pathologist's Service Activity Log 9/23/15 – 5/10/16
49. Augmentative Communication Specialist's Service Activity Log 12/9/15 – 5/11/16
50. ILS Classroom Sample Data Sheet 2014 - 2015
51. Adaptive PE Specialist's Service Activity Log 9/15/15 – 5/17/16

During the Interview process, the District gave the Complaint Investigator additional materials which are included in the list above. The District sent these to the Parent as well

On May 15, the Parent submitted a packet of materials for the Department's Complaint Investigator to review. In total, the Parent provided these materials;

1. Email from District nutrition service sent to Parent<sup>3</sup> 5/11/16
2. Email from Parent to District about behavioral issue 9/27/15
3. Email from Parent to District about recess issue 10/12/15

<sup>2</sup> Each date usually has two pages. One is the page sent home to the parent, and the second is a response form given to the parent to complete and send back to school the next day.

<sup>3</sup> This email is not relevant to complaint issues.

4. Email from Parent to District about choosing not to attend General Education Parent/Teacher conference 10/27/15
5. Email from Parent to District about lack of information sent to Parent about 3<sup>rd</sup> grade holiday program participation 12/14/15
6. Email from ERC Teacher regarding CPS (sic)<sup>4</sup> training and outside support (for Parent) from another agency person who provided the training 3/1/16
7. Email from Parent to District about Student's physical placement in the ILS classroom 5/2/16
8. Email from Parent to District regarding behavioral incident and use of picture schedule 5/6/16
9. BIP 2/19/16
10. BIP and daily schedule 4/28/16
11. Third Grade Report Card
12. Email from Parent to District about behavioral incident 5/5/16
13. Email from District Library to Parent about library fine<sup>5</sup> 1/29/16
14. School Note sent home daily to Parent 5/3/16
15. Trauma Informed Behavior Plan presented to IEP team by Behavior Specialist who works with the Parent and Student via a community agency 11/2015
16. IEP meeting notes taken by a community agency representative who attended the meeting with the Parent 2/3/16

The Department's Complaint Investigator determined that on-site interviews were needed. On May 17, 2016, the Department's Complaint Investigator interviewed the Parent. On the same day, the Complaint Investigator interviewed the District Executive Director of Student Services and the Director of Student Services; as well as the Augmentative Communication Specialist (ACS), the Speech Language Pathologist (SLP), the school Counselor (C), and the Student's Special Education Case Manager (CM2) from the current school year. On May 18, 2016, the Complaint Investigator interviewed the Behavior Specialist (BS), the Principal (P), the School Psychologist (SP), and two Occupational Therapists (OT1 & OT2). OT1 served the Student during the 2014-2015 school year, and OT2 has served the Student during the 2015-2016 school year. On the same date, the Department's Complaint Investigator interviewed the two Educational Resource Center (ERC) Special Education teachers who were assigned to the Independent Life Skills (ILS) classroom during the transition period (ERC1 & ERC2); the Adaptive PE Teacher (AP), the second and third grade general education teachers (GR2 & GR3), and the Special Education Case Manager from the 2014-2015 school year (CM1.)

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.

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<sup>4</sup> Is actually (CPI) Crisis Prevention Institute training on how to deescalate behavior.

<sup>5</sup> This email is not relevant to complaint issues.

<sup>6</sup> 34 CFR §300.1510(2010)

## 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 April 19, 2015 to the filing of this Complaint on April 18, 2016.<sup>7</sup>

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><b><u>When IEP's Must Be in Effect: Parent's Allegations #'s 1, 10, 4, 12</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when, starting in September, 2015, the District did not provide the Student with services as described in the IEP, including an adaptive chair for table work, adaptive scissors, visual schedules, snug vest/lap pad, positive behavior supports and reward system;</p> <p>b. The Parent alleges that the District violated the IDEA when it did not provide a copy of the Student's IEP to Educational Assistants (EAs) assigned to work with the Student;</p> <p>c. The Parent alleges that the District violated the IDEA when after agreeing at the IEP Meeting in February, 2016, to allow an outside consultant to consult, observe and create a new behavior plan for the Student, the District refused to implement this agreement;</p> <p>d. The Parent alleges that the District violated the IDEA when it did not fully implement the Student's Behavior Plan. As a result the Student was often removed</p>	<p><b><u>Not Substantiated.</u></b> The Student's IEP contains references to the adaptive chair, vest, scissors, visual schedule and other items. In September, 2015, the OT assessed the Student and determined that several of the items no longer fit the Student. Over the course of the next eight months, the District replaced the vest and chair with appropriately sized items, and provided trials for the Student with a multiplicity of other sensory and supportive techniques and items.</p> <p><b><u>Not Substantiated.</u></b> Copies of the IEP were available to the EA's in notebooks located in the classroom. During the restructuring of the program the IEPs were placed in individual files for each student and were centrally located in the classroom.</p> <p><b><u>Not Substantiated.</u></b> There is no evidence to suggest that any agreement was ever in place for the outside specialist to observe and consult about the Student with District staff.</p> <p><b><u>Not Substantiated.</u></b> There was no Behavior Intervention Plan (BIP) in effect until October 1, 2015. While this BIP was revised on occasion, there is no evidence that the</p>

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

	<p>from the classroom to a seclusion setting; and eventually, the Student's school day was shortened to four hours; and,</p> <p>e. The Parent alleges that the District violated the IDEA when it did not allow the Student to attend classes in a general education setting for 50% of the school day, as outlined in the Student's IEP.<sup>8</sup></p> <p>(OAR 581-015-2220 (1) &amp; (3)) and (34CFR 300.323 &amp; 300.324)</p>	<p>BIP was not being fully implemented.</p> <p><b><u>Not Substantiated.</u></b>  The Placement Determination in the February 5, 2015 IEP makes no mention of any specific period of time that the Student would attend classes in a general education setting. The IEP simply says that the Student will "have access to General Education Classroom, Specialized Instruction, additional adult support." The Student's 2015-16 schedule included the opportunity for the Student to spend 50% of the school day in the general education setting. Due to behavioral challenges, the Student never established and maintained such a schedule. The Student often refused to go to the 3rd grade classroom, left in the middle of class activities, or went into the classroom or setting at an inappropriate time. When it revised the IEP on February 3, 2016, the Team maintained the goal of integrating the Student into the general education classroom as much and as successfully as the Student could tolerate it.</p>
<p>2.</p>	<p><b><u>Content of IEP: Parent's Allegations #'s 11, 12</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it did not delineate necessary Assistive Technology (AT) and services for Special Consideration Issues in the Services Summary of the IEP, specifically the Supplementary Aids and Services section of the Summary; and,</p> <p>b. The Parent alleges that the District violated the IDEA when it included 18 total goals in the Student's IEP. The Parent alleges that, given the Student's modified schedule, there is no way to meaningfully address all 18 goals. (OAR 581-015-2200</p>	<p><b><u>Not Substantiated.</u></b>  The District provided AT services and devices to the Student as required by the IEP and is continuing to assess what produces the most success for the Student in the school settings.</p> <p><b><u>Not Substantiated.</u></b>  The District did not add additional areas of instruction to the IEP, but rather refined the current goals into smaller and more finite ones.</p>

<sup>8</sup> Allegation # 12 was added to the complaint on 4/21/16.

	(1) (b & d) and 34 CFR 300.320)	
3.	<p><b><u>Access to Student Education Records: Parent's Allegations #'s 2, 8</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it did not provide the Parent with a copy of the IEP in a timely fashion after the IEP Meeting;</p> <p>b. The Parent alleges that the District violated the IDEA when it did not provide the Parent with copies of the Student's disciplinary record upon the Parent's request; and,</p> <p>c. In addition, the Parent alleges that the District did not provide the Parent with a copy of the Student's Behavior Plan that was in effect since September, 2015.</p> <p>(OAR 581-015-2300 &amp; CFR 300.501)</p>	<p><b><u>Not Disputed.</u></b> The District does not dispute this and stated in its response: "The District stipulates to this allegation in part as described as follows. The District recognizes that timeliness is essential and is willing to provide support and guidance to ensure all IEP paperwork is received by the parent within 10 school days. Although the District does not find specific evidence that this alleged conduct occurred, it is possible that it did."</p> <p><b><u>Not Substantiated.</u></b> In this case, there were no official disciplinary records generated as the District sent the Student home when the Student was disruptive as part of an agreement with the Parent. The District did not officially suspend the Student in these instances. Instead, District staff completed school referral forms for the incidents, and these were sent home to the Parent.</p> <p><b><u>Substantiated.</u></b> There was no BIP in existence at the start of the 2015-2016 school year. On October 1, 2015, the District wrote a BIP for the Student and revised this as necessary. The parents of a child must be provided an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of a child or the provision of FAPE. There is no evidence that the Parent received each of these revised plans, therefore the Parent was unable to be fully informed regarding the provision of FAPE to the Student.</p>

<p>4. <b><u>Review and Revision of IEP's: Parent's Allegations # 3, 5, 6</u></b></p> <p>a. The Parent alleges that the District violated the IDEA when it shortened the Student's school day instead of meeting to review and revise the IEP after multiple instances when the Student's Behavior Plan was either not implemented or incorrectly implemented.</p> <p>(OAR 581-015-2225 (1) (b) (E) and 34 CFR 300.324)</p> <p>b. The Parent alleges that the District violated the IDEA when it did not convene an IEP meeting for the purpose of reviewing and revising the Student's Behavior Plan after more than five incidents of seclusion in the year to date.</p> <p>(OAR 581-021-0556 (2)(b) and (5) ORS 326.051.</p>	<p><b><u>Not Substantiated.</u></b> The IEP Team met on November 9, 2015, and reviewed the BIP in place at that time. Due to the Student's behavior, the IEP Team decided to continue the BIP and decided to shorten the Student's school day. After the IEP was revised in February, 2016, the IEP Team implemented a plan for the Student to attend two full days per week. There is no evidence that the BIP was not implemented or incorrectly implemented once it was put into effect.</p> <p><b><u>Not Substantiated.</u></b> Although the Parent believes the Student was secluded from the educational setting at least three times during the 2015-2016 school year, there is only one documented seclusion incident, along with two incidents of physical restraint.</p>
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**Issues outside the Scope of the Individuals with Disabilities Education Act (IDEA): Parent's Allegations #'s 5, 6, 7, 9**

The Parent alleges that until April 4, 2016, the District continued to assign a support person to work with the Student, even though there was evidence that the Student exhibited more explosive behaviors with this individual. Additionally, the Parent alleges that the District is charging the Parent the replacement cost of a library book the Student destroyed during an undocumented behavioral episode. The Parent also alleges that the District violated several portions of OAR 581-021-0550 through 581-021-0569 when it improperly secluded the Student in a seclusion room. These issues may be addressed by filing a complaint with the District and utilizing the District's complaint procedures.<sup>9</sup>

**Requested Corrective Action**

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

1. Provide supports agreed upon and written into the IEP;
2. Follow established timelines for paperwork, meetings, etc.;
3. Allow the agreed upon consultation for a new behavior plan and provide Parent with a copy;
4. All use of seclusion needs to be properly documented, in a space which fits the guidelines

<sup>9</sup> OAR 581-015-2030(4)

- for a seclusion room, and it must be used only as a LAST resort;
5. Parent needs to be provided with copies of all disciplinary/behavioral records in a timely fashion;
  6. Parent should not be charged for property damage resulting from the school's inadequate development and implementation of a behavior plan;
  7. IEP needs to be readdressed. It's poorly written; and,
  8. The Student has not received FAPE this year because the school has failed to develop a successful behavior plan. The Parent would like the Student to be compensated hours for schooling this year.

### III. FINDINGS OF FACT

**1. Relevant Student Information:**

- a. The Student is nine years old, and is eligible for Special Education services as a student with an Other Health Impairment, based on the medical diagnosis of Down syndrome. This eligibility was most recently established on February 3, 2016. The Student is a 3rd grader at one of the District elementary schools.
- b. The Student's placement has generally been in the Independent Life Skills classroom (ILS) during the time period under investigation. This program is designed to meet the needs of students, grades K-5, who have significant cognitive, medical and physical needs; and is staffed by a Special Education Teacher and six Educational Assistants (EAs).
- c. Due to personnel changes within the District, the ILS teacher in place at the beginning of the 2015-16 school year (CM1) was reassigned approximately six weeks into the school year. The ILS classroom was staffed by two Educational Resource Center (ERC) teachers until a new ILS teacher (CM2) arrived in January, 2016.
- d. Generally, there are 12-15 students assigned to this classroom. In addition, the school also has an ERC staffed by two teachers and three EAs. These programs are supported by a Speech/Language Pathologist, School Psychologist, and Adaptive PE Teacher—all of whom are part time at this school. Students receive part-time services, as needed, from an Occupational Therapist, Physical Therapist and other specialists who are employed by the local Education Service District.
- e. There were two IEPs in effect during the time period under investigation in the Complaint. They are outlined in the chart below for ease of comparison and for ease in understanding the events on a more global scale. However, the goals are presented in fact number three following this chart. The Parent has specifically alleged that the number (eighteen) of goals in the February 3, 2016 is inappropriate. Therefore more specificity about the goals is necessary to understanding the situation.

<b><u>IEP Element</u></b>	<b><u>2/5/2015 IEP</u></b>	<b><u>2/3/2016 IEP</u></b>
<b><u>Consideration of Special Factors</u></b>	1. Needs assistive technology devices or services 2. Has communication needs	1. Needs assistive technology devices or services 2. Has communication needs 3. Exhibits behavior that

	3. Exhibits behavior that impedes learning	impedes learning
<u>Procedural Safeguards Notification</u>	Yes, given to Parent	Yes, given to Parent
<u>Present Level of Academic Achievement and Functional Performance</u>	<p>The Student is a second grade student and follows a daily schedule consisting of activities with the general education class and ILS services for reading, writing and math. The Student is happy but strong-willed. As of June, 2014, the Student is able to:</p> <ol style="list-style-type: none"> <li>1. Identify 20 letter names;</li> <li>2. Trace numbers 1-10;</li> <li>3. Write 16 letters using a visual model and write name using a visual model;</li> <li>4. Uses 2 word phrases 3 of 10 opportunities;</li> <li>5. Uses bathroom 63% of time;</li> <li>6. Takes turn with a peer in a structured setting 62% of time;</li> </ol> <p>Results of the most recent evaluation completed on April 8, 2010, on the Battelle Developmental Inventory 2 are:</p> <p>Cognitive Quotient: 66  Communication: 58  Motor: 79  Adaptive: 73.</p> <p>Parent does not want Student to be evaluated with IQ testing or Common Core State Testing.</p>	<p>A joyful child who loves to perform and make others laugh, the Student attends general education classes for opening, specials, read aloud, projects and lunch. The Student receives SDI in reading, math, adaptive skills<sup>10</sup>, and writing. Behavioral outbursts at various times of the day impede the Student's learning and that of others. Currently, the Student attends school on a modified daily schedule (9 a.m.—12:20 p.m.). The team is working to increase the amount of time the Student is able to be in school on a daily basis.</p> <p>The Student currently:</p> <ol style="list-style-type: none"> <li>1. Recognizes and names 10 upper and lower case letters;</li> <li>2. Recognizes numbers 0, 1, 2, 3, 4, 6, 7, and 9.</li> <li>3. Is not able to copy any upper or lower case letters, but can trace the letters of name.</li> <li>4. Is significantly below age expectancy in articulation, receptive language and expressive language.</li> <li>5. Uses an adaptive trike for sensory needs, and also uses other sensory materials—some of which are on a trial basis to see which are preferred.</li> <li>6. Has currently grown out of the adaptive chair and others are being tried.</li> </ol> <p>The team has decided to try to add full school days on Tuesday</p>

<sup>10</sup> The Student is not toilet-trained and wears Depends. Efforts to encourage the Student to use the bathroom *often* end in the Student becoming agitated and refusing to cooperate.

		<p>and Friday, with the goal being to add other days as the Student tolerates these two longer days more successfully. Triggers for the Student's behavior difficulty are transitions, and having to leave a preferred task for one that is not preferred. The team is using a work/play schedule, lots of touching/play, reducing the audience during a difficult behavioral time and enforcing a predictable and structured schedule.</p> <p>The Student is able to dress self with some assistance, and eat independently.</p>
<u>Transition Planning</u>	Not Applicable	Not Applicable
<u>Graduation Options &amp; Transfer of Rights</u>	Not Applicable	Not Applicable
<u>Statewide Assessment</u>	Not Applicable	Standard English Language Arts/Literacy and Math with accessibility supports.
<u>Districtwide Assessment</u>	Easy CBM Literacy and Math, Standard Assessment, grades 2-3	Easy CBM Literacy and Math, Alternate Assessment, with accessibility supports at Kindergarten level.
<u>Service Summary – Specially Designed Instruction (SDI)</u>	<ol style="list-style-type: none"> <li>1. Speech/Language; 160 min. per month</li> <li>2. Writing; 120 min. per week</li> <li>3. Reading; 30 min. weekly (ESY)</li> <li>4. Adaptive Skills; 30 min. weekly</li> <li>5. Math; 120 min. weekly</li> <li>6. Math; 30 min. weekly (ESY)</li> <li>7. Social Skills; 30 min. weekly</li> <li>8. Reading; 120 min. weekly</li> <li>9. Speech/Language; 30 min. weekly (ESY)</li> <li>10. Writing; 30 min. weekly (ESY)</li> </ol>	<ol style="list-style-type: none"> <li>1. Speech/Language; 30 min. per week</li> <li>2. Reading; 100 min. weekly;</li> <li>3. Math; 100 min. weekly</li> <li>4. Math; 30 min. weekly;</li> <li>5. Writing; 100 min. weekly;</li> <li>6. Social Skills; 30 min. weekly</li> <li>7. Reading; 120 min. weekly</li> <li>8. Adaptive Skills; 100 min. weekly;</li> <li>9. Social/Behavior Skills; 300 min. weekly.</li> </ol>

<u>Service Summary -- Related Services</u>	<ol style="list-style-type: none"> <li>1. Transportation; 20 min. daily</li> <li>2. Recreation-swimming; 13 times annually</li> <li>3. Recreation-adaptive PE; 120 min. monthly</li> </ol>	<ol style="list-style-type: none"> <li>1. Recreation- 120 min. monthly;</li> <li>2. Recreation-30 min. weekly.</li> </ol>
<u>Service Summary -- Supplementary Aids/Services; Modifications and Accommodations</u>	<ol style="list-style-type: none"> <li>1. Check for understanding when instructions are given or new learning is taking place;</li> <li>2. Positive behavior supports/reward system, when rewarding positive choices;</li> <li>3. Snug vest/weighted lap pad; 30 min. weekly;</li> <li>4. Visual supports/schedules for teaching expectations, routines, new skills, etc.;</li> <li>5. Clear simple directions when directions are given;</li> <li>6. Instructional assistance for field trips for safety, behavior and understanding directions; 4 times per year;</li> <li>7. Educational assistance for accessing the General Education classroom;</li> <li>8. Adaptive scissors for cutting activities;</li> <li>9. Adaptive seating for table work.</li> </ol>	<ol style="list-style-type: none"> <li>1. Check for understanding when instructions are given or new learning is taking place;</li> <li>2. Positive behavior supports/reward system, when rewarding positive choices and giving a preferred choice option after completing a non-preferred task;</li> <li>3. Snug vest/weighted lap pad as needed for sensory input</li> <li>4. Visual supports/schedules for teaching expectations, routines, new skills, giving instructions, etc.;</li> <li>5. Clear simple directions when directions are given;</li> <li>6. Instructional assistance for field trips for safety, behavior and understanding directions; 4 times per year;</li> <li>7. Educational assistance for accessing the General Education classroom;</li> <li>8. Adaptive scissors for cutting activities;</li> <li>9. Adaptive seating for table work.</li> </ol>
<u>Service Summary -- Program Modifications &amp; Supports for School Personnel</u>	<ol style="list-style-type: none"> <li>1. Speech Language Consultation; 100 min. per year;</li> <li>2. Special Education Consultation; 100 min. per year;</li> <li>3. Occupational Therapy; 180 min. per year.</li> </ol>	<ol style="list-style-type: none"> <li>a. Speech Language Consultation; 60 min. per year;</li> <li>b. Special Education Consultation; 100 min. per year;</li> <li>c. Occupational Therapy; 180 min. per year.</li> </ol>
<u>Non-Participation Justification</u>	Student needs to be removed from participating with non-disabled students in the	The Student will benefit from 700 minutes a week in small group instruction for Reading,

	regular classroom for a minimum of 420 minutes per week <sup>11</sup> in small group instruction for Reading, Writing, Math, Social Skills and Adaptive Skills, as well as 160 min. per month for Speech Language skills. The Student requires this removal for specially designed instruction in a low distraction environment to work on goals addressed in this IEP.	Writing, Math, Social Skills, and Adaptive Living Skills and 30 minutes a week for speech/language skills and 240 min. a month for Adaptive PE. The Student requires this removal for specially designed instruction in a low distraction environment to work on goals addressed the IEP.
<u>Extended School Year</u>	Yes, to be provided.	Yes, to be provided.
<u>Placement Determination</u>	General Education classroom with services provided by ILS and Speech at neighborhood school.	Modified school day to support stamina and develop behavioral supports and skills within a focused and intensive period of time. The Student will continue to be supported by the ILS and continue to receive SDI.

<b>2/5/2015 IEP</b>	<b>2/3/2016 IEP</b>
<ol style="list-style-type: none"> <li>1. Adaptive Skills: Will use bathroom at school with 80% success;</li> <li>2. Articulation: Will produce the sounds p,b,w in words with 70% accuracy;</li> <li>3. Expressive Language: Will increase vocabulary by using content words in 2-3 word phrases in 3 of 4 opportunities;</li> <li>4. Receptive Language: Will correctly follow directions with spatial and descriptive concepts embedded with 80% accuracy;</li> <li>5. Social Skills: Will take turns with peer 3 or 4 exchanges in structured and unstructured</li> </ol>	<ol style="list-style-type: none"> <li>1. Speech/Language: Will improve ability to identify and label categorical vocabulary from 30 to 80% accuracy over two consecutive sessions ;</li> <li>2. Speech/Language: Will improve ability to follow one-step directions containing temporal and quantitative concepts from 10 to 80% accuracy;</li> <li>3. Speech/Language: Will improve ability to formulate sentences using pronouns appropriately from 0 to 80% over two consecutive sessions;</li> <li>4. Speech/Language: Will improve ability to articulate specific sounds (p), (b), etc. from 0 to 80% accuracy over two consecutive sessions;</li> <li>5. Adaptive Skills: Will use the bathroom at school during scheduled times in 2 of 3 opportunities;</li> <li>6. Behavior Skills: Will increase cognitive flexibility by following adult directions and transitioning from preferred tasks to non-preferred tasks in 3 of 5 opportunities;</li> </ol>

<sup>11</sup> The school day during the 2014-2015 and 2015-2016 school years is 9 a.m. to 3:35 p.m. on all days of the week except Wednesday when students are dismissed at 2:35 p.m. for staff development for teachers. This is a total of 31.5 hours per week, or 6.5 hours per day.

<p>settings;</p> <p>6. Reading: Will recognize and name all letters and sounds of the alphabet with 75% accuracy;</p> <p>7. Math: Will identify and write numbers 0-20 and represent objects with a written numeral 0-20 with 75% accuracy;</p> <p>8. Writing: Will print many letters, copy simple shapes, and write name with 75% accuracy.</p>	<p>7. Reading: identify the name of all letters in print and 13 of 26 sounds to 80% accuracy;</p> <p>8. Reading: identify name in print with 80% accuracy;</p> <p>9. Math: Will identify, trace and demonstrate 1 to 1 correspondence of numbers 1-20 with 80% accuracy;</p> <p>10. Math: Will identify names of coins, one, five, ten and twenty dollar bills with 80% accuracy;</p> <p>11. Math: identify ten colors and five shapes with 80% accuracy;</p> <p>12. Math: identify days of the week on a calendar and state correctly what day was yesterday and what day is tomorrow with 80% accuracy;</p> <p>13. Writing: trace all capital letters of the alphabet within ¼ inch of the line with 80% accuracy;</p> <p>14. Writing: write name in print with 80% accuracy;</p> <p>15. Functional Life Skills: verbally recite and dial family phone number with 80% accuracy;</p> <p>16. Functional Life Skills: identify the names and functions of ten safety signs with 80% accuracy;</p> <p>17. Fine Motor: cut a square and circle shape within ¼ inch of the line with 80% accuracy;</p> <p>18. Behavior: self-regulate emotions by requesting and utilizing a break option prior to a behavioral outburst in 3 of 4 observed opportunities.</p>
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**2. When IEP's Must Be in Effect:**

d. Throughout the 2015-16 school year, the District has consistently provided the services listed in the Student's IEP. The District has checked the Student's posture in a regular chair, made therabands available to the Student, had wiggle cushions available in the classroom, and made bean bags, therapy balls, and a hammock available to the Student. The District has also modified the Student's tricycle and provided a bicycle helmet. Other sensory materials have been tried, but the Student has been resistant to these.

The District has also provided an adaptive cutout cup to the Student; and provided protocols to CM2 for the hug vest, weighted blanket, and swings. OT2 also sent a lengthy email to the ACS suggesting a multiplicity of activities, sensory materials and schedule changes that could be tried with the Student to determine what supported the student most successfully.

In March, OT2 provided a new adaptive chair and assessed the fit of it, and determined the desk needed to be raised. Finally, OT2 obtained a large cuddle swing for the Student to use in the ILS classroom. On at least one occasion, staff observed this swing to be very helpful in calming the Student.

e. At the start of the 2015-2016 school year, CM1 kept copies of all students' IEPs in the ILS classroom in notebooks that were available to EAs and other support staff. When the Executive

Director and Director of Student Services began restructuring the program in October, 2016, they created a separate file for each student in the class. These files contained copies of the students' IEPs and other protocols as well as BIPs, instructional materials and data sheets. These were prominently displayed in the classroom and EAs were instructed to use the files in their daily work with students.

- f. When the 2015-2016 school year started, there was no concrete BIP in effect. On September 28, 2015, a team of staff members met with the Parent to discuss the difficulties the Student was having in several areas. The Parent expressed concern that the Student was not yet toilet trained, and the team discussed some ideas for this. The Student had received a major referral for physical aggression on September 18, 2015, and was beginning to demonstrate reluctance to enter the school some mornings. The Student received another referral on September 24, 2015 for physical aggression in the ILS classroom.
- g. During the September 28, 2015 meeting, this team brainstormed some possible reasons why the Student might be acting out ("behavior is communication"); ideas to positively encourage the Student to make transitions ("visual schedule, social stories, rewards, prompts"); and ideas to handle "long outbursts" when the Student was upset. These included the use of "tokens, choices, break cards, and a timer". The group also considered a Crisis Plan—what to do when these other positive ideas did not work ("drinking from a straw, squeeze vest, small stuffed animals, and intervening when the Student first indicates being upset").
- h. A BIP was developed on for the Student on October 1, 2015.
- i. The IEP Team met on October 14, 2015 and established three different written behavior plans to use when the Student refused to leave the Parent's car and enter the school building. All of these plans have strategies to encourage the Student to come into school, without "begging" or creating a power struggle. If none of the three plans worked, the Parent would take the Student somewhere else and return to try again in thirty minutes. While there is no evidence in the record to verify how or if these plans worked, both the Parent and staff stated in the interviews that entering the school in the morning continued to be a problem.
- j. The IEP Team wrote another Behavior Support Plan on November 2, 2015. In this plan the team identified significant disruptive and violent behaviors that the Student was engaging in. The IEP Team labeled possible pro-active responses, triggers, lagging skills, desired behaviors, reinforcement and strategies, accommodations and interventions to use with the Student.
- k. On this same date, the IEP Team wrote an Individual Safety Plan for the Student for times when the Student's disruptive behavior escalated and either the Student, staff or other peers were at risk of personal safety.
- l. The BIP was updated on February 19, 2016, and the team wrote a similar BIP on February 23, 2016 for use when the Student was swimming as part of the adaptive PE program.<sup>12</sup>
- m. The IEP Team met on November 9, 2015, and reviewed the difficulties the Student was having at school. The team decided at that time to reduce the Student's day to 9:00 a.m. – 12:20 p.m. until they could stabilize the Student more successfully in both the ILS and the 3rd grade

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<sup>12</sup> There was an incident at the swimming pool on February 12, 2016, when the Student became very uncooperative and unsafe in the pool. Although the team wrote this plan for swimming, and created a social story to go along with it, the Student never returned to the swimming lessons by personal choice.

classroom. Although the District did provide a copy of the IEP Meeting Notes for this meeting, and these notes state that the Parent was provided an IEP Placement Determination Form, there is no evidence that the IEP itself was actually revised or that a Prior Written Notice was sent to the Parent.

- n. On February 3, 2016, the IEP Team met and drafted a new IEP for the Student. This IEP reflected the shortened school days that had been in place since November 4, 2015. A new BIP was also written at this time.
- o. The Parent believed that during this IEP Meeting, the District agreed to allow a specialist from a community agency to observe and consult about the Student with the teachers in the Program. Actually one of the ERC teachers had a conversation with the outside specialist about the specialist providing advocacy support to the Parent. There is no evidence to suggest that any agreement was ever in place for the outside specialist to observe and consult about the Student with District staff.
- p. Between December 1, 2015 and April 19, 2016, ILS staff and others documented approximately forty-one instances of the Student being physically aggressive or defiant or a combination of both in the school setting. On two of these occasions the Student was restrained, and during one of the restraint incidents the Student spent ten minutes in seclusion. During interviews, staff stated that there were times they restrained the Student in a more informal way (Staff extends his/her arm to prevent the Student from hitting a peer), but that they did not consider this to be a restraint according to the Crisis Prevention Institute (CPI) definition.
- q. Over the course of the school year, District staff made multiple attempts to help the Student participate in activities in the 3rd grade classroom. Daily school notes, sent home consistently after December 1, 2015, verify that the Student was offered the opportunity to attend activities in the 3rd grade class at least daily, if not several times per day. However, these and other behavioral records indicate that the Student often refused to go to a general education activity, or once there, disrupted the activity, and had to be removed or left independently.

### **3. Content of IEP**

- r. In both IEPs in effect during the time period under investigation, the District enumerated Assistive Technology (AT) on the Student's IEPs. Most of the AT listed is low tech, for example, visual schedules, adaptive scissors, snug vest and weighted lap pad. In addition, the SLP, ACS and OTs 1 & 2 provided many other types of AT to the Student on a trial basis, to see what would be successful. The Behavior Specialist, for example, posted signs in the classroom in the late fall, with clear simple dialogue the staff could use to instruct and or intervene with the Student. These trial materials were not added to the IEP because staff was assessing how successful the materials would be for the Student.
- s. When the new ILS teacher (CM2) wrote the draft IEP for the annual review meeting held on February 3, 2016, the teacher task-analyzed the previous goals into more finite pieces. This resulted in a total of 18 goals, rather than eight.

### **4. Access to Student Records**

- t. The District stated in interviews that there is no evidence to indicate that the Student's IEP was provided to the Parent after the meeting in a timely fashion.

- u. The District recorded many disciplinary incidents on a school referral form. Each time this happened, a copy was either given or sent to the Parent. The District did not suspend the Student when it sent the Student home early from school, either on a regular day or a shortened day.
- v. There is no evidence in the record verifying that the District gave the Parent copies of each of the various BIPs that the IEP Team created during the time under investigation.

#### **5. Review and Revision of IEP's**

- w. The IEP Team reviewed the November 2, 2015 BIP at the November 9, 2015 meeting when it decided to shorten the Student's school day. The IEP Team brainstormed additional strategies to strengthen the BIP and to provide additional support to the Student.
- x. The Student was secluded on one occasion and was restrained on two occasions during the time period under investigation, according to records provided by the District.

### **IV. DISCUSSION**

#### **1. When IEP's Must Be in Effect: Parent's Allegations #'s 1, 10, 4, 12**

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. (OAR 581-015-2220 (1) & (3)) and (34CFR 300.323 & 300.324)

- a. The Parent alleges that the District violated the IDEA when, starting in September, 2015, the District did not provide the Student with services as described in the IEP, including an adaptive chair for table work, adaptive scissors, visual schedules, snug vest/lap pad, positive behavior supports and reward system;

The Student's IEP contains references to the adaptive chair, vest, scissors, visual schedule and other items. In September, 2015, the OT assessed the Student and determined that several of the items no longer fit the Student. Over the course of the next eight months, the District replaced the vest and chair with appropriately sized items, and provided trials for the Student with numerous other sensory and supportive techniques and items.

The Department does not substantiate this portion of the allegation.

- b. The Parent alleges that the District violated the IDEA when it did not provide a copy of the Student's IEP to Educational Assistants (EAs) assigned to work with the Student;

Copies of the IEP were available to the EAs in notebooks located in the classroom. During the restructuring of the program the IEPs were placed in individual files for each student and were centrally located in the classroom. Other manifestations of the IEP, such as samples of clear simple language, were posted in the classroom as models for all staff to use.

The Department does not substantiate this portion of the allegation.

- c. The Parent alleges that the District violated the IDEA when after agreeing at the IEP Meeting on February 3, 2016, to allow an outside consultant to consult, observe and create a new behavior plan for the Student, the District refused to implement this agreement;

The Parent believed the District had made an agreement with a specialist from a community agency to allow the specialist to observe and consult about the Student with the teachers in the Program. Actually one of the ERC teachers had a conversation with the outside specialist about the specialist providing advocacy support to the Parent. There is no evidence to suggest that any agreement was ever in place for the outside specialist to observe and consult about the Student with District staff.

The Department does not substantiate this portion of the allegation.

- d. The Parent alleges that the District violated the IDEA when it did not fully implement the Student's Behavior Plan. As a result the Student was often removed from the classroom to a seclusion setting; and eventually, the Student's school day was shortened to four hours; and.

There was not a BIP in existence at the start of the 2015 school year. The new teachers in the ERC classroom wrote BIPs for the Student in October and again in November, 2015. There is no evidence that these BIPs were not followed. While the District failed to revise the Student's IEP and failed to provide Prior Written Notice to the Parent prior to changing the Student's placement, this was not due to a failure to fully implement the Student's BIP once this was developed.

The Department does not substantiate this portion of the allegation.

- e. The Parent alleges that the District violated the IDEA when it did not allow the Student to attend classes in a general education setting for 50% of the school day, as outlined in the Student's IEP.<sup>13</sup> (OAR 581-015-2220 (1) & (3)) and (34CFR 300.323 & 300.324)

The Student's February 5, 2015 IEP does not require the Student to attend classes in a general education setting for 50% of the time. This IEP states that the Student will "have access to General Education Classroom, Specialized Instruction, additional adult support." The Student's 2015-16 schedule provided for the Student to spend 50% of the school day in the general education setting. This included the 3rd grade classroom, specials, lunch, recess, PE and other activities. The Student never established and maintained such a schedule, as the Student's behaviors made this schedule difficult if not impossible to implement. At times, the Student refused to go to the 3rd grade classroom, left in the middle of class activities, or went into the classroom or setting at an inappropriate time. When the IEP was revised on February 3, 2016, the IEP Team maintained the goal of integrating the Student into the general education classroom as much and as successfully as the Student could tolerate it.

The Department does not substantiate this portion of the allegation.

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<sup>13</sup> Allegation # 12 was added to the complaint on 4/21/16.

## **2. Content of IEP: Parent's Allegations #'s 11, 12**

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, among other elements:

- i. A statement of measureable annual goals, including academic and functional goals, designed to meet the child's needs;
  - ii. A statement of the specific special education and related services and supplementary aids and services to be provided to the child. (OAR 581-015-2200 (1) (b & d) and 34 CFR 300.320)
- a. The Parent alleges that the District violated the IDEA when it did not delineate necessary Assistive Technology and services for Special Consideration Issues in the Services Summary of the IEP, specifically the Supplementary Aids and Services section of the Summary; and,

When the 2015-16 school year started, the Student's IEP listed a number of low level AT services to be provided to the Student. As discussed in the finding for allegation (1)(a) on page sixteen, a number of sensory and supportive techniques and items were provided to the Student.

The Department does not substantiate this portion of the allegation

- b. The Parent alleges that the District violated the IDEA when it included 18 total goals in the Student's IEP. The Parent alleges that, given the Student's modified schedule, there is no way to meaningfully address all 18 goals. (OAR 581-015-2200 (1) (b & d) and 34 CFR 300.320)

The Student's February 2015 IEP contained eight goals. When the new ILS teacher revised it for the annual meeting in February 2016, the ILS Teacher refined the eight previous goals into more specific, measurable goals. This is a style difference rather than a content change. While this was confusing for the Parent, it does not mean that the content of the IEP is inappropriate.

The Department does not substantiate this portion of the allegation.

## **3. Access to Student Education Records: Parent's Allegations #'s 2, 8**

A District meets its responsibility to the student when it gives the parent of a child with a disability access to all student education records with respect to:

- i. The identification, evaluation and educational placement of the child; and
  - ii. The provision of a free appropriate public education. (OAR 581-015-2300 & CFR 300.501)
- a. The Parent alleges that the District violated the IDEA when it did not provide the Parent with a copy of the IEP in a timely fashion after the IEP Meeting;

The District does not dispute this and so stated in its response:

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<sup>14</sup> *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656

"The District stipulates to this allegation in part as described as follows. The District recognizes that timeliness is essential and is willing to provide support and guidance to ensure all IEP paperwork is received by the Parent within 10 school days. Although the District does not find specific evidence that this alleged conduct occurred, it is possible that it did."

The Department substantiates this portion of the allegation.

- b. The Parent alleges that the District violated the IDEA when it did not provide the Parent with copies of the Student's disciplinary record upon the Parent request; and,

The District questioned in its response whether or not this allegation was relevant and subject to an IDEA complaint. The Department finds that it is, considering the fact that the discipline of the student is part of the provision of FAPE. In this case, there were no official disciplinary records generated as the District did not officially suspend the Student in these instances. Instead, District staff completed school referral forms for the incidents, which were sent home to the Parent.

The Department does not substantiate this portion of the allegation.

- c. In addition, the Parent alleges that the District did not provide the Parent with a copy of the Student's Behavior Plan that was in effect since September, 2015.

There was no BIP in existence at the start of the 2015-2016 school year. A BIP was drafted on October 1, 2015, and another behavior plan was written on October 14, 2015. These documents for the Student were revised as needed. Under OAR 581-015-2300, the parents of a child must be provided an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of a child or the provision of FAPE. There is no evidence that the Parent received each of these plans, therefore the Parent was not fully informed regarding the provision of FAPE to the Student.

The Department substantiates this portion of the allegation.

#### **4. Review and Revision of IEP's: Parent's Allegations # 3, 5, 6**

A district meets its obligation to a student with a disability when it revises the student's IEP outside of the annual review process because:

- i. The student is not making expected progress,
- ii. There are new reevaluation results,
- iii. The Parent has provided new information,
- iv. The student's needs have changed, or
- v. Other matters need to be considered. (OAR 581-015-2225 (1)(b)(E) and 34 CFR 300.324)

Additionally, if the student is secluded from the educational setting more than five times in the course of a school year, the District must convene an IEP meeting for the purpose of reviewing and revising the student's BIP. (OAR 581-021-0556 (2)(b) and (5) ORS 326.051).

- a. The Parent alleges that the District violated the IDEA when it shortened the Student's school day instead of meeting to review and revise the IEP after multiple instances when the

Student's Behavior Plan was either not implemented or incorrectly implemented. (OAR 581-015-2225 (1) (b) (E) and 34 CFR 300.324)

The IEP Team met on November 9, 2015 and reviewed the BIP in place at that time. The IEP Team decided to continue the BIP and to shorten the Student's school day. While it is true that there was no specific BIP in existence at the start of the 2015-2016 school year, a BIP was drafted on October 1, 2015 and was implemented from that time forward. The Student continued to exhibit physically aggressive and defiant behaviors, and the Team believed there was more likelihood of stabilizing the Student's behavior in a shorter day and the Student's daily schedule was reduced to four hours on November 4, 2016, according to the Student's daily attendance record. After the IEP was revised in February, 2016, the IEP Team implemented a plan for the Student to attend two full days per week. There is no evidence that the BIP was not implemented or incorrectly implemented.

The Department does not substantiate this portion of the allegation.

- b. The Parent alleges that the District violated the IDEA when it did not convene an IEP Meeting for the purpose of reviewing and revising the Student's Behavior Plan after more than five incidents of seclusion in the year to date. (OAR 581-021-0556 (2)(b) and (5) ORS 326.051).

Although the Parent believes the Student was secluded from the educational setting at least three times during the 2015-2016 school year, there is only evidence of one seclusion. An IEP Meeting is only required after more than five incidents of seclusion in the year to date under OAR 581-021-0556.

The Department does not substantiate this portion of the allegation.

##### **5. Additional Finding**

The District changed the Student's schedule on November 4, 2015, reducing the Student's attendance to four hours per day. Although an IEP Meeting was held, at which the Parent was present, and the Meeting Notes indicate that the Parent received a Placement Determination Form, the Student's IEP was not revised to reflect this change nor was a Prior Written Notice provided to the Parent. OAR 581-015-2190 requires that school districts must provide parents written notice of meetings concerning the educational placement of a student. OAR 581-015-2310(2) also states 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.

**V: CORRECTIVE ACTION<sup>15</sup>**

*In the Matter of Redmond School District*  
Case No. 16-054-012

No.	Action Required	Submissions <sup>16</sup>	Due Date
1.	Review the requirements of Prior Written Notice with District Special Education staff and administrators, especially as those requirements apply to the findings in this order.	Provide content and agenda in advance for ODE approval.  Submit evidence of completed training including sign-in sheet of participants and positions.	<b>September 9, 2016</b>  <b>September 30, 2016</b>
2.	Provide guidance to District Special Education staff to ensure all IEP paperwork is received by parents within 10 school days.	Guidance can be provided as a part of the training referenced above.	<b>September 30, 2016</b>

Dated: this 8th Day of June, 2016



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

Mailing Date: June 8, 2016

<sup>15</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>16</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.