

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Gresham-Barlow
School District # 10J

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 16-054-034

I. BACKGROUND

On October 31, 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 Gresham-Barlow School District 10J (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 October 31, 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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On November 3, 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 November 17, 2016.

On November 17, 2016, the District submitted a *Response* indicating they disputed most of the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. District's Letter Responding to Request for Response,
2. Table of Contents,
3. Prior Notice About Evaluation/Consent for Evaluation, 12/02/2010,
4. Evaluation Description List, 12/02/2010,
5. Medical Statement of Health Assessment, 12/02/2010,
6. Medical Statement of Health Assessment, 03/07/2011,
7. Occupational Therapy Evaluation, 05/18/2010 & 03/16/2011,
8. Notice of Team Meeting, 03/17/2011,
9. III NU Compuscore and Profiles Program, 03/29/2011,
10. Statement of Eligibility for Special Education (Autism Spectrum Disorder), 03/30/2011,
11. Summary of Team Meeting, 03/30/2011,
12. (Outside) Occupational Therapy Evaluation 06/09/2011,
13. Authorization to Use and/or Disclose Educational and Protected Health Information, 12/02/2011,

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

14. IEP Agenda and Meeting Notes, 02/20/2013
15. IEP Agenda and Meeting Notes, 02/21/2013
16. IEP Agenda and Meeting Notes, 03/01/2013,
17. Occupational Therapy Evaluation, 07/14/2013,
18. Brief Functional Behavior Analysis & GBSD Behavior Intervention Plan, 10/10/2013,
19. Confidential Psychological Evaluation, 12/03/2013,
20. Student's IEP: 12/03/2013
21. Notice of Team Meeting, 09/23/2014,
22. IEP Agenda and Meeting Notes, 10/02/2014,
23. Written Agreement between Parents and the District on Individualized Education Program, 10/02/2014,
24. Notice of Team Meeting, 10/20/2014,
25. Prior Notice of Special Education Action, 10/22/2014,
26. Eligibility Summary Statement, 10/22/2014,
27. Disability Statement, Emotional Disturbance, 10/22/2014,
28. IEP Agenda and Meeting Notes, 10/22/2014,
29. Confidential Psychological Evaluation, 10/22/2014,
30. Notice of Team Meeting, 11/04/2014,
31. IEP Agenda and Meeting Notes, 11/18/2014,
32. Student's IEP: 11/18/2014,
33. Prior Notice of Special Education Action, 11/18/2014,
34. School Safety Plan, 11/18/2014,
35. IEP Progress Report—Annual Goal, 01/30/2015,
36. Notice of Team Meeting, 04/15/2015,
37. IEP Agenda and Meeting Notes, 04/23/2015,
38. Brief Functional Behavior Analysis & GBSD Behavior Intervention Plan, 04/23/2015,
39. IEP Progress Report—Annual Goal, 06/08/2015,
40. Student Schedule for Semester 1 (09/06/2016—01/27/2017),
41. Notice of Team Meeting, 10/06/2015,
42. IEP Agenda and Meeting Notes, 10/07/2015,
43. Notice of Team Meeting, 11/10/2015,
44. Student's IEP: 11/16/2015,
45. IEP Agenda and Meeting Notes, 11/16/2015,
46. Prior Notice of Special Education Action, 11/16/2015,
47. Prior Notice of Special Education Action, 02/08/2016,
48. Notice of Team Meeting, 04/22/2016,
49. IEP Agenda and Meeting Notes, 05/03/2016,
50. Prior Notice of Special Education Action, 05/03/2016,
51. Student's IEP: 09/27/2016,
52. Descriptive Document following 09/27/2016 meeting,
53. Prior Written Notice, 09/27/2016,
54. Brief Functional Behavior Analysis, 10/28/2016
55. Purchase Order, 10/31/2016,
56. High School Transcript, 11/15/2016,
57. Evaluation Description List,
58. Parent/Guardian Consent for Individual Evaluation,
59. Academic Testing Report,
60. List of Knowledgeable Staff.

The Complaint Investigator interviewed the Parent on November 29, 2016. The Parent submitted additional information at that time, including numerous emails, a partial psychological evaluation/diagnosis, notes from a 2014 meeting with the District, and a letter from Student's Physician. The Complaint Investigation determined that onsite interviews were needed. On December 12, 2016, the Complaint Investigator interviewed the District's Special Education Director, District Special Education Program Director, the Student's Special Education Teacher, Occupational Therapist, and District Autism/Behavior Coach. The District's Legal Counsel was also present. The District provided additional documents during the interview. 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. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 1, 2015 to the filing of this complaint on October 31, 2016.³

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Alternative Placements and Supplementary Aids and Services:</u></p> <p>(a) The Parent alleges that the District violated the IDEA when the Student was not provided with an appropriate alternative placement, although available, due to concerns about cost. The Parent points to the Student's IEP which documents difficulties the Student exhibits in the Library that could be alleviated through an alternative placement.</p> <p>(b) The Parent further alleges that supplementary aides and services listed in the IEP were not provided to the Student (such as a scribe, and teacher provided notes for daily lecture).</p> <p>(OAR 581-015-2245 & 34 CFR 300.115)</p>	<p><u>Substantiated In Part</u></p> <p>(a) This portion of the allegation is not substantiated. The IEP Team was not presented with nor did the IEP Team reject the alternative placement options suggested by the Parent for the Student. The District Administrator for Student Services offered to reconvene the Student's IEP Team to discuss the Student's services prior to the filing of this Complaint.</p> <p>(b) This portion of the allegation is substantiated. The District acknowledges uneven implementation of supplementary aides and services to the Student.</p>

³ This order does include some facts that are relevant to the case and that happened before November 1, 2015.

<p>2.</p>	<p><u>When IEPs Must Be in Effect/IEP Implementation:</u></p> <p>The Parent alleges that the District violated the IDEA when:</p> <p>(a) It did not provide lessons for the Student to take home as indicated by the Autism Specialist; and</p> <p>(b) It did not provide a required monitor of the Student's computer use, (to avoid accessing inappropriate materials) as evidenced by statements in the Student's IEP that the Student accesses inappropriate content on the internet, thereby frustrating the Student's required use of computers to complete school assignments.</p> <p>(OAR 581-015-2220(1)(b), 34 CFR 300.323 & 34 CFR 300.324)</p>	<p><u>Not Substantiated</u></p> <p>(a) The Student's IEP does not include this provision. This issue appears to have arisen out of conversations between the Parent and the District which each party interpreted differently.</p> <p>(b) There is no evidence in the record within the investigation timeline of the Student having inappropriate access to computers.</p>
<p>3.</p>	<p><u>Content of IEP:</u></p> <p>The Parent alleges that the District violated the IDEA when it formulated an IEP for the Student that lacked:</p> <p>(a) A statement of the Student's present levels of academic achievement and functional performance, and how the Student's disability affects the Student's involvement and progress in the general education curriculum.</p> <p>(b) A statement of measureable annual goals, and a description of how the Student's progress toward meeting the annual goal will be measured,</p>	<p><u>Substantiated In Part</u></p> <p>(a) This portion of the allegation is not substantiated. The Student's IEP contained a statement of the Student's present levels of academic achievement and functional performance and contained information about how the Student's disability affects the Student's involvement and progress in the general education curriculum.</p> <p>(b) Substantiated in Part:</p>

<p>specifically in the following areas:</p> <ul style="list-style-type: none"> i. Writing: The Parent alleges that the goal is unclear and doesn't articulate how the Student will progress toward meeting the goal; ii. Math: The Parent alleges that the goal is unclear, and further that the Student is not enrolled in a Math class and therefore cannot make progress toward meeting this goal; iii. Social Skills: The Parent alleges that the goal does not anticipate the Student's needs for a 1:1 aide to help the Student make progress toward the goal; and iv. College Classes: The Parent alleges that the goal is limited to the Student "learning" with no description of how the goal will be achieved. <p>(c) The Parent also alleges that the IEP does not meet the Student's needs in the areas of:</p> <ul style="list-style-type: none"> i. Behavior: The Parent alleges that the Student's IEP states that the Student does not exhibit behavior that impedes the Student's learning or the learning of others, when the Student does exhibit such behavior needs; and ii. Communication: The Parent alleges that the Student's IEP states that the Student does not have communication needs when an attendant symptom of the Student's diagnosis of Autism Spectrum Disorder is difficulty with communication. The Parent provides the examples that the Student's IEP requires that the Student request notes when needed, but also acknowledges that the Student makes needed requests only 1 in 5 times. 	<ul style="list-style-type: none"> i. Writing goal: substantiated. The District does not dispute that the goal is unclear. ii. Math goal: substantiated. The District does not dispute this allegation. The Student is not currently enrolled in a Math course and has completed Math graduation requirements. iii. Social skills: not substantiated. The IEP does not include this support, nor would a 1:1 aide be necessary for the Student to meet this goal. iv. College classes: not substantiated. This is not a goal; rather this entry appears in the transition planning portion of the Student's IEP and is not to take place until the Student completes high school. <p>(c) Substantiated in Part:</p> <ul style="list-style-type: none"> i. Behavior: This allegation is substantiated. The District acknowledges that the IEP incorrectly records this information. ii. Communication: This allegation is not substantiated. The Student is not impacted with communication difficulties, and in fact communicates effectively with peers and adults when interested in the topic being discussed. However, the Student does not always willingly communicate when disinterested in what's being discussed.
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	<p>(d) The Parent alleges that progress data is not being provided in accordance with the IEP.</p> <p>(OAR 581-015-2200 & 34 CFR 300.320)</p>	<p>(d) Substantiated.</p> <p>The District does not dispute this allegation. Progress data has not been provided in accordance with the IEP.</p>
4.	<p><u>Autism Spectrum Disorder/General Evaluation and Reevaluation Procedures</u></p> <p>The Parent alleges that the District has violated the IDEA by failing to evaluate the Student for Autism Spectrum Disorder. The Parent alleges that a community organization has evaluated and found the Student has Autism Spectrum Disorder, that this information was offered to the District, but is not reflected in the Student's IEP.</p> <p>(OAR 581-015-2110, OAR 581-015-2130 & 34 CFR 300.8, 300.306)</p>	<p><u>Not Substantiated</u></p> <p>The Student was evaluated for Autism Spectrum Disorder in 2011 and was determined to be ineligible in this category. The Parent obtained a medical diagnosis of Autism for the Student on November 11, 2015. However, there is no evidence in the record of the Parent providing this diagnosis to the District until the week before this Complaint was filed, or of the Parent requesting the District to reevaluate the Student. The Student was and continues to be eligible for Special Education under Emotional Disturbance.</p>

III. FINDINGS OF FACT

Background

- 1) The Student in this case is an 18-year-old high school senior residing in Gresham-Barlow School District 10J. The Student is scheduled to graduate at the end of the 2016-2017 school year with a modified diploma.
- 2) The Student was originally found eligible for Special Education in the category of Emotional Disturbance (60) on November 16, 2006. On October 22, 2014, the Student was once again determined to be eligible for Special Education under the designation of Emotional Disturbance during a triennial evaluation.

The Student is also diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) and Posttraumatic Stress Disorder (PTSD), and is under the care of a physician for these conditions. The Student exhibits behaviors that impact the Student's education, specifically: not following directions, boundaries regarding classroom materials, the ability to follow a prescribed break taking routine, shutting down/withdrawing, and staying on task.

- 3) On November 11, 2015, the Student underwent a psychological evaluation by a

community provider. That evaluation concluded that the Student's "...adaptive deficits should be ascribed to [the Student's] mild Autism condition. It is this condition which makes it very difficult for [the Student] to self-manage [the Student's] behaviors, to understand the social cues of others, to establish age-expected social relationships, etc....Without [the Student's] symptoms of mild Autism, [the Student's] levels of adaptive functioning would have been substantially higher than they were found to be." The District received a partial copy of this evaluation shortly before the filing of this Complaint.

- 4) On September 27, 2016, the Parent, school staff members, and a District representative held an IEP Meeting to discuss issues of concern to the Parent, which had been expressed in an email dated September 21, 2016. Within this email, the Parent suggested that the Student "may need to attend another school where there is closer monitoring such as Serendipity", due to the Student's tendency to leave school without permission; however, neither the IEP nor the IEP Meeting Notes indicate that the Parent brought up this possibility during the IEP Meeting. Issues that were discussed during the IEP Meeting included: 1) the Student's high number of absences, 2) the Student's difficulty completing some aspects of some assignments, 3) the Student's task avoidance strategies, 4) the need for teachers to modify curriculum to comply with the Student's IEP, and 5) the Student's computer use and internet access.
- 5) The September 27, 2016 IEP states in the Summary of Present Levels of Academic Achievement and Functional Performance (PLAAFP) section, that the Student has attempted to check out library books with inappropriate content and that an adult is required to sit with the Student when the Student needs to complete an assignment on the computer due to the Student's history of accessing inappropriate websites.
- 6) The Student's most recent IEP, dated September 27, 2016, specifies that the Student will receive the modifications to the general education curriculum for adaptive skills, social/emotional/behavioral, Written Language, and Math. The IEP also contains measureable annual goals in the areas of adaptive skills, social/emotional/behavioral, Writing, and Math.
- 7) The PLAAFP section of the September 27, 2016 IEP also indicates that the Student is able to successfully communicate with peers and adults, but that the Student only communicates needs verbally in 1 out of 5 trials. This was determined to be a behavioral issue and is addressed in the Student's behavioral goal, where the Student's goal is to verbally communicate needs in 4 out of 5 trials.
- 8) The September 27, 2016 IEP states that the Student does not exhibit behavior that impedes the Student's learning or the learning of others. The District states that this error will be corrected during an IEP Meeting that was to occur on December 1, 2016.
- 9) The Student's September 27, 2016 IEP specifies that the Student will receive the following Specially Designed Instruction (SDI): transition services, Written Language; Math; and Communication. In addition, the Student receives transportation to and from school.

- 10) The Transition section of the Student's September 27, 2016 IEP states that the Student "would like to take classes in college... "and that upon completion of high school, the Student will enroll in a community college.
- 11) The District also received consent from the Parent to complete a Functional Behavior Analysis (FBA) on September 27, 2016. As part of this process, the Autism Coach sent a list of books for the Parent to review in order to identify what social skills the Parent and Student would like the Student to work on. The book selected by the Parent was ordered on October 31, 2016.
- 12) The Parent began to look for alternative placement options for the Student to address the Parent's concerns about the Student avoiding tasks, not asking for help when needed, and leaving campus to avoid class periods scheduled in the afternoon. The Parent identified the Serendipity Center as offering solutions to all of the Parent's concerns. Serendipity Center is a private non-profit school that accepts students from districts within the metropolitan Portland area based on district referrals. Serendipity is a therapeutic school, with a high student/staff ratio, locked facility, and provides education, behavioral and therapeutic supports for students with complex needs.
- 13) On October 7, 2016 the Parent sent an email to the Principal stating that Serendipity could meet the Student's needs and that the Student's home school was unable to do so. The Parent's email also stated that "I suppose I should forward my emails to the superintendent. Unless, someone at the lower level is willing to advocate on [the Student's] behalf to get [the Student] to Serendipity." In the Principal's response, the Principal provided contact information for the Director of Secondary Services and the Administrator for Student Services, and copied them on this email. Later that day, the Principal sent an email to the Parent reading in relevant part, "The benefit of programs like Serendipity is the high degree of resources they have on demand. The downside is the financial cost of the placement, versus the public funding on a per pupil basis that public schools receive." The Principal then encouraged the Parent to speak with the district administrators listed above.
- 14) The Parent interpreted the Principal's comment to mean that the Student would not be considered for placement in the Serendipity facility because cost was prioritized over the Student's needs.
- 15) On October 25, 2016, the Parent sent an email to the District outlining issues that the Parent noted with the Student's IEP. These issues included things such as misspellings, transcription errors, team members not listed as having been in attendance, potential missing diagnoses, and other concerns the Parent had regarding the Student. The Administrator of Student Services responded that any inaccuracies in the IEP would be corrected. The Administrator of Student Services also stated that it was the Administrator's belief that the Student's home school is able to provide the "right programming and support for [the Student]" and proposed a follow-up IEP Review Meeting.
- 16) On October 31, 2016, the Parent filed this Complaint.

Events Following the Filing of the Complaint

- 17) On November 11, 2016, the Student's Physician provided a letter stating that the Student was diagnosed with PTSD, ASD, and ADHD. The Parent provided the District with a copy of this letter.
- 18) The IEP Team met to review and revise the Student's IEP on December 1, 2016.

IV. DISCUSSION

1. Alternative Placements and Supplementary Aids and Services:

- (a) The Parent alleges that the District violated the IDEA when the Student was not provided with an appropriate alternative placement, though available, due to concerns about cost. The Parent points to the Student's IEP which documents difficulties the Student exhibits in the Library that could be alleviated through an alternative placement.

Districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for Special Education and related services.⁴ The educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child.⁵ Placement is determined in conformity with the Least Restrictive Environment, and is based on the child's IEP.⁶

The Student's most recent placement determination was made on September 27, 2016. The Student receives 80% or more of the Student's education in the general education classroom with supports. A more restrictive option was rejected by the IEP Team, which included the Parent, because the Student "needs to be exposed to the pace and rigor of the general education setting in order to achieve [the Student's] IEP goals." Although the Parent had mentioned the Serendipity Center as a possible placement option in an email prior to the IEP Meeting, there is no evidence that this was discussed during the meeting.

The High School Principal's email to the Parent on October 7, 2016, which referenced the costs associated with placing the Student at Serendipity Center, was not a placement determination. Placement has to be determined by the Student's IEP Team, and must result in the Student being placed in the Least Restrictive Environment in which the Student's educational needs can be met. Serendipity Center would be a much more restrictive setting than the Student's current placement in the high school. The Student's IEP Team had not determined that such a placement was warranted. The District offered to reconvene the IEP Team to discuss the current placement as it related to the Student's needs, but the Parent filed this Complaint before such a meeting occurred.

The Department does not substantiate this allegation.

⁴ OAR 581-015-2245(1)

⁵ OAR 581-015-2250(1)(a)

⁶ OAR 581-015-2250(1)(b)&(c)

- (b) The Parent further alleges that supplementary aides and services listed in the Student's IEP were not consistently provided to the Student.

Districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for Special Education and related services.⁷ That continuum must make provision for supplementary aids and services, provided in conjunction with regular class placement.⁸

The District does not dispute this allegation. Following receipt of this Complaint, the District interviewed staff and determined that supplementary aids and services listed in the Student's IEP were inconsistently applied. During interviews with District staff, the Complaint Investigator learned that this was attributed to staff turnover and a breakdown in process to educate staff with regard to the specifics of the Student's IEP.

The Department substantiates this allegation.

2. When IEPs Must Be in Effect/IEP Implementation

The Parent alleges that the District violated the IDEA when (a) it did not provide lessons for the Student to take home as indicated by the Autism Specialist, and (b) when the District did not provide a required monitor of the Student's computer use, (to avoid accessing of inappropriate materials) as evidenced by statements in the Student's IEP that the Student has accessed inappropriate content on the internet, thereby frustrating the Student's required use of computers to complete school assignments.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.⁹ Districts must provide Special Education and related services to each child with a disability in accordance with said IEP.¹⁰

- (a) The Parent alleges that the Student's IEP requires that the Student be provided with copies of assignments to take home. During the September 27, 2016 IEP Meeting, the IEP Team discussed the Student's behavior and strategies to address the concerns. However, there was no requirement included in the IEP that the Student be provided with assignments to take home. This misunderstanding arose from some emails between the Behavior Consultant and the Parent in which the Behavior Consultant suggested that the Parent purchase a specific textbook that the Student had a specific interest in. The District, in fact, ordered the book for the Parent on October 31, 2016.

The Department does not substantiate this portion of the allegation.

- (b) The Parent also alleges that the District neglected to provide a monitor for the Student's computer use. The Student has in the past managed to bypass the District firewalls to

⁷ OAR 584-015-2245(1)

⁸ OAR 581-015-2245(2)

⁹ OAR 581-015-2220(1)(a)

¹⁰ OAR 581-015-2220(1)(b)

access adult material through the District computers. The Parent has raised this as a concern at IEP meetings. The Student's IEP includes the following notation:

"[the Student] will need to have adult sitting next to [the Student] if [the Student] is going to use a computer at [the High School] because of [the Student's] OCD issues, as well as some inappropriate past experiences. Anytime [the Student] needs to use the computer for an assignment, [the Student] will do so in the presence of an adult to monitor [the Student's] computer activity."

The Student is currently only required to access the internet for school assignments in the Special Education classroom and this is done in the presence of an adult. The Student's IEP Team will continue to monitor the Student's internet access.

The Department does not substantiate this portion of the allegation.

3. Content of the IEP

The Parent alleges that the District violated the IDEA when it formulated an IEP for the Student that lacked:

- (a) A statement of the Student's present levels of academic achievement and functional performance, and how the Student's disability affects the Student's involvement and progress in the general education curriculum; and
- (b) A statement of measureable annual goals, and a description of how the Student's progress toward meeting the annual goals will be measured, specifically in the following areas:
 - i. Writing: The Parent alleges that the goal is unclear and doesn't articulate how the Student will progress toward meeting the goal;
 - ii. Math: The Parent alleges that the goal is unclear, and further that the Student is not enrolled in a Math class and therefore cannot make progress toward meeting this goal;
 - iii. Social Skills: The Parent alleges that the goal does not anticipate the Student's needs for a 1:1 aide to help the Student make progress toward the goal; and
 - iv. College Classes: The Parent alleges that the goal is limited to the Student "learning" with no description of how the goal will be achieved.
- (c) The Parent also alleges that the IEP does not meet the Student's needs in the areas of:
 - i. Behavior: The Parent alleges that the Student's IEP states that the Student does not exhibit behavior that impedes the Student's learning or the learning of others, when the Student does exhibit such behavior needs; and
 - ii. Communication: The Parent alleges that the Student's IEP states that the Student does not have communication needs when an attendant symptom of the Student's diagnosis of Autism Spectrum Disorder is difficulty with communication. The Parent provides the examples that the Student's IEP requires that the Student request notes when needed, but also acknowledges that the Student makes needed requests only 1 in 5 times.
- (d) The Parent alleges that progress data is not being provided in accordance with the IEP.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.¹¹ School district must provide Special Education and related services to a child with a disability in accordance with an IEP.¹² Each school district must ensure that the IEP is accessible to each regular education teacher, Special Education teacher, related service provider and other service provider who is responsible for its implementation.¹³ The school district must also inform each teacher and provider described above, of his or her specific responsibilities for implementing the child's IEP, and the specific accommodations, modifications and supports that must be provided for, or on behalf of, the child in accordance with the IEP.¹⁴

An Individualized Education Program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.¹⁵ The IEP must also contain a statement of measureable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and, meet each of the child's other educational needs that result from the child's disability.¹⁶

- (a) The Student's September 27, 2016 IEP and prior IEPs do include present level statements. The present level statements specify how the Student's specific behaviors manifest and areas where the Student is impacted. In its *Response*, the District expressed a willingness to revisit the present level statements to ensure they accurately track the Student's present levels.

The Department does not substantiate this portion of the allegation.

- (b) In its *Response*, the District also recognized that the goals in the Student's IEP are vague and challenging to measure. The District expressed a willingness to convene an IEP meeting to rewrite the goals in a manner that adds clarity and which are easier to measure. The Student has goals in the areas of Writing, Math, Social Skills, and College Classes.

- i. The District does not dispute that the Writing goal is unclear.

This portion of the allegation is substantiated.

- ii. The District does not dispute that the Math goal is unclear. The Student is not currently enrolled in a Math class and therefore the goal is not logically related to the Student's current curriculum. The District acknowledges that this goal should be removed from the Student's IEP.

¹¹ OAR 581-015-2220(1)(a)

¹² OAR 581-015-2220(1)(b)

¹³ OAR 581-015-2220(3)(a)

¹⁴ OAR 581-015-2220(3)(b)

¹⁵ OAR 581-015-2200(1)(b)

¹⁶ OAR 851-015-2200(1)(b)(A) & (B)

This portion of the allegation is substantiated.

- iii. The District disputes that the Social Skills goal does not anticipate the Student's need for a 1:1 aide. There is nothing in the IEP Meeting Notes from the September 27, 2016 Meeting that indicates that anyone on the IEP Team, including the Parent, believed at that time that a 1:1 aide would be necessary to help the Student achieve the Social/Emotional/Behavioral goal of "given appropriate opportunities, [the Student] will communicate [the Student's] needs verbally in 4 out of 5 trials." The Student's IEP specifies that the Student will receive modified general curriculum in accomplishing this goal. The assignment of a 1:1 aide in this instance would be inconsistent with the requirement that the District educate the Student in the Least Restrictive Environment possible while meeting the needs of the Student.

The Department does not substantiate this portion of the allegation.

- iv. The Student's most recent IEP, dated September 27, 2016, does not include a goal related to college classes. Rather, this entry is included in the portion of the IEP related to transition planning (post-secondary). The language in the IEP simply says that the Student would like to take college classes and "will enroll in the local community college/technical school to pursue a degree/certificate related to science as measured by teacher check-in."

The Department does not substantiate this portion of the allegation.

(c) The Parent alleges that the IEP does not meet the Student's needs in the areas of behavior and communication.

- i. The Parent alleges that the IEP states that the Student does not exhibit behavior that impedes the Student's learning or the learning of others. The District acknowledges that the Student's IEP does indicate this, and that it is due to a typographical error.

This portion of the allegation is substantiated.

- ii. The Parent alleges that the Student's IEP is in error because it states that the Student does not have communication needs. The Parent asserts that the Student has communication needs evidenced by the Student's diagnosis of ASD because an attendant symptom of Autism is difficulty with communication, and because the Student's IEP includes a goal focusing on this skill, and it states that the Student "communicates [the Student's] needs verbally in 1 out of 5 trials."

The District maintains that the Student's difficulties in communicating needs are not a communication problem but rather a behavioral issue (social skills). The Student qualifies for Special Education services in the Emotional Disturbance eligibility category, and was diagnosed with ADHD and PTSD and has difficulty maintaining appropriate conversation with peers/adults when the topic is not of high interest.

The Department does not substantiate this portion of the allegation.

(d) The Parent alleges that the District has not provided progress data in accordance with the IEP. The District does not dispute this allegation. Due to staffing changes, the specific requirements of the IEP were not properly communicated to staff. This resulted in uneven data collection related to progress notes.

The Department substantiates this portion of the allegation.

4. Autism Spectrum Disorder/General Evaluation and Reevaluation Procedures

The Parent alleges that the District has violated the IDEA by failing to evaluate the Student for ASD. The Parent alleges that a community organization has evaluated and found that the Student has ASD and that this information was offered to the District, but is not reflected in the Student's IEP.

Districts are required to gather and consider a variety of assessment information including relevant functional, developmental, and academic information about a child before conducting an evaluation.¹⁷ If a child is suspected of having Autism Spectrum Disorder the district must evaluate the student for impairments in communication, social interaction, patterns of behavior, and unusual responses to sensory experiences.¹⁸ The District must also utilize observations, communication assessments, behavior rating tools, and consider medical or health assessment statements.¹⁹ The District must utilize additional assessments, observations, and evaluations to identify the child's needs.²⁰

To be eligible as a child with Autism Spectrum Disorder the child must meet certain minimum criteria including, characteristics of Autism Spectrum Disorder, inconsistent or discrepant with the child's development in other areas, documented over time and/or intensity.²¹ The eligibility team must determine that the child's disability has an adverse impact on the child's educational performance, and that the child needs Special Education services as a result of the disability.²²

On March 30, 2011, the Student was found ineligible for Special Education as a child with ASD. The Parent agreed with this finding. At that time the Student was assessed by the School Psychologist, Speech Language Pathologist, Occupational Therapist, and Autism Specialist, as well as other Team Members all of whom agreed with the final analysis. On November 11, 2015, the Student underwent a psychological evaluation by a community provider. That evaluation concluded that the Student's "...adaptive deficits should be ascribed to [the Student's] mild Autism condition..."

During the week prior to submitting this Complaint to the Department, the Parent provided the District with a portion of this evaluation. There is no evidence in the record that this evaluation was provided to the District when the Parent received it in 2015, nor did the Parent raise this as a concern in IEP meetings prior to filing this Complaint. The District, in its *Response* noted

¹⁷ OAR 581-015-2110(3)(a)

¹⁸ OAR 581-015-2130(1)(a)

¹⁹ OAR 581-015-2130(1)(b), (c), (d), (e) and (f)

²⁰ OAR 581-015-2130(1)(f)

²¹ OAR 581-015-2130(2)(a)

²² OAR 581-015-2130(3)(a) & (b)

that the information recently provided by the Parent included a differential diagnosis which included ADHD, borderline intellectual functioning and mild Autism. The District further noted that the Parent had not, prior to this Complaint to the Department, requested that the Student be reevaluated. The District expressed the willingness of the IEP Team to consider whatever information the Parent provides.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²³

*In the Matter of Gresham-Barlow School District #10J
Case No. 16-054-034*

Actions Required	Submissions ²⁴	Due By
<p>1. IEP Review</p> <p>a) Schedule a Technical Assistance (TA) meeting with the Oregon Department of Education (ODE) to develop a training outline for a staff professional development session. ODE participants will include the Special Education County Contact, the SPR & I Lead Education Specialist.</p> <p>b) Schedule and conduct professional development session for all special education and administrative staff at the building the Student attends. Content of the training will include IEP components related to implementation of supplementary aids and services, progress reporting</p>	<p>Submit email confirming details of TA meeting/phone conference regarding development of training outline.</p> <p>Schedule and hold professional development session with staff.</p> <p>Submit evidence of completed training, including agenda, signed, dated roster of participants/positions, copies of training materials, and evaluation.</p>	<p>January 20, 2017</p> <p>February 22, 2017</p> <p>February 28, 2017</p>

²³ 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)).

²⁴ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

<p>on annual goals, developing quality goals and objectives, writing present levels of academic achievement and functional performance, and consideration of special factors.</p>		
<p>2. Convene IEP Meeting</p> <p>Schedule an IEP meeting with the Adult Student and other invitees of the Student to update Writing goal and Math goal, and to correct description of behavioral issues.</p> <p>At this same meeting, provide the Student with updated progress reports for each IEP goal.</p>	<p>Schedule and hold an IEP meeting with the Adult Student and other invitees of the Student.</p> <p>Submit evidence of completed/corrected/updated IEP, as well as updated progress reporting documents.</p>	<p>January 25, 2017</p> <p>February 3, 2017</p>

Dated: this 29th Day of December 2016



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

Mailing Date: December 29th 2016