

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Wasco County SD )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-036

**I. BACKGROUND**

On November 14, 2016, the Oregon Department of Education (Department) received a Letter of Complaint (Complaint) from the Parent of a student (Student) residing in the North Wasco County School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint on November 15, 2016 and provided the District a copy of the Complaint on November 15, 2016

On November 21, 2016, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of December 9, 2016. The District completed its *Response* that was received by the Investigator on December 12, 2016. The District sent its *Response* to the Parent but failed to send the Parent the supporting documents. The Investigator sent the supporting documentation to the Parent as an email attachment on December 19, 2016. The Parent sent responsive documentation via email to the Investigator on December 21, 2016. The District's *Response* included a narrative response, partial exhibit listing, and the following documents:

1. Pre-Referral Information 2/25/13
2. Contact log: single incident 2/25/13
3. EI/ECSE Evaluation Checklist (undated)
4. Prior Written Notice and Consent for Evaluation 2/28/13
5. Columbia Gorge ESD Child Evaluation Report 3/4/13
6. Case History Form 3/4/13
7. Health Screening Questionnaire 3/4/13
8. Notice of IFSP Team Meeting 3/7/13
9. Columbia Gorge ESD Speech and Language Summary Report 3/12/13
10. Eligibility Statement re: Developmental Delay 3/20/13
11. Authorization to Use or Disclose Educational and Health Information 4/2/13
12. Prior Written Notice for Initial Provision of Special Education services dated 4/2/13
13. Individualized Family Service Plan dated 4/2/13
14. Multidisciplinary Team Report dated 4/2/13
15. Initial Eligibility Statement re: Communication Disorder dated 4/2/13
16. Prior Written Notice of Proposed Initial Services dated 4/2/13
17. Records Release Document: Mid-Columbia Children's Council 5/7/13
18. Notice of IEP Team Meeting dated 9/20/13
19. Prior Written Notice of Proposed Change in placement (Head Start) 9/26/13
20. Multidisciplinary Team Report dated 9/26/13
21. Mid-Columbia Children's Council correspondence re: sensory evaluation referral 3/13/14
22. Mid-Columbia Children's Council Correspondence re: Student referral 3/13/14
23. Columbia Gorge ESD Checklist (undated)
24. Consent to access Medicaid records 3/18/14
25. Records Release Document: Mid-Columbia Children's Council 3/18/14
26. Authorization to Use or Disclose Educational and Health Information 3/18/14

27. Notice of IFSP Team Meeting 3/18/14
28. Prior Written Notice re: Proposed use of Public Insurance 3/19/14
29. Prior Written Notice and Consent for Evaluation 3/19/14
30. Multidisciplinary Team Report 3/19/14
31. Prior Written Notice 3/19/14
32. Columbia Gorge ESD Occupational Therapy Evaluation Summary 4/28/14
33. Notice of IFSP Team Meeting 5/21/14
34. Prior Written Notice of Proposed Change in Services dated May 28, 2014
35. Prior Written Notice of Proposed Change in Services 5/28/14
36. Multidisciplinary Team Report 5/28/14
37. Individualized Family Service Plan 5/28/14
38. Occupational Therapist recommendation for weighted blanket 6/10/14
39. Authorization to Use or Disclose Educational and Health Information 9/2/14
40. Notice of IFSP Team Meeting 9/5/14
41. Prior Written Notice of proposed change to IFSP 9/17/14
42. Multidisciplinary Team Report 9/17/14
43. Authorization to Use or Disclose Educational and Health Information 9/17/14
44. Records Release, Mid-Columbia Children's Counsel 10/10/14
45. Doernbecher Psychological Evaluation 2/10/15
46. Doernbecher Occupational Therapy Evaluation 2/10/15
47. Doernbecher Hearing Evaluation 2/10/15
48. Doernbecher Speech Language Evaluation 2/10/15
49. OHSU psychological evaluation 5/10/15
50. ESD Release 2/25/15
51. Authorization to Use or Disclose Educational or Health Information 3/2/15
52. Prior Notice re: Evaluation and Consent for Evaluation 3/2/15
53. Multidisciplinary Team Report 3/2/15
54. Notice of IEP Team Meeting 3/3/15
55. Records Release document 3/10/15 and 3/13/15
56. Physician notice of medical necessity of essential oils 3/11/15
57. Prior Written Notice of Proposed Change to IFSP 3/16/15
58. Individualized Family Service Plan 3/16/15
59. Authorization to Use or Disclose Educational or Health Information 3/16/15
60. Annual Prior Written Notice 3/16/15
61. Multidisciplinary Team Report 3/16/15
62. Student's "Eco-map" 3/16/15
63. Authorization to Use or Disclose Educational or Health Information 3/18/15
64. Notice of IEP Team Meeting 4/9/15
65. Notice of IEP Team Meeting 4/10/15
66. Kindergarten Transition Form 4/15/15
67. Kindergarten Readiness Screening Tool 4/15/15
68. Prior Written Notice of Proposed Change in placement (District) 4/24/15
69. Prior Written Notice of Proposed Change in Placement (ESD) 4/24/15
70. Meeting Notes 4/24/15
71. Multidisciplinary Team Report 4/24/15
72. Student's IEP 4/24/15 – this is the first IEP, held prior to kindergarten entrance includes kindergarten assessment testing – at level
73. Columbia Gorge ESD Functional Communication Evaluation 6/2/15
74. Notice of IFSP Team Meeting 6/5/15
75. Prior Written Notice of Identification 6/10/15
76. Initial Eligibility Statement re: Autism Spectrum Disorder 6/10/15
77. Columbia Gorge ESD Autism Spectrum Disorder Evaluation Report 6/10/15
78. Doernbecher Psychological report 8/10/15

79. Doernbecher Occupational Therapy Assessment 8/20/15
80. Notice of IEP Team Meeting 8/26/15
81. Prior Written Notice of Change in Identification 8/31/15
82. Meeting Notes 8/31/15
83. Student's Amended IEP 8/31/15
84. Authorization to Disclose or Use Educational or Health Information 8/31/15
85. Proposed daily Kindergarten Schedule from Parent (undated)
86. Student attendance report 9/1/15 - 6/10/16
87. Data chart regarding negative behaviors and essential oil application 9/7/15 - 9/25/15
88. Notice of IEP Team Meeting 9/8/15
89. Correspondence to District from D. C. 9/8/15
90. Intra-district emails 9/9/15 (interventions)
91. Continuum of Services Summary 9/2015
92. Meeting Notes 9/10/15
93. Parent Correspondence to IEP Team 9/10/15
94. Student introduction fact page created by parent for school year 2015-2016 (undated)
95. Article: Children with Developmental Coordination Disorder (undated)
96. Prior Written Notice of Proposal to Student's support 9/11/15
97. Incident Analysis 9/18/15
98. Prior Written Notice of Initial Placement/scheduling 9/20/15
99. Handwritten notes regarding behavior and early dismissal 9/23/15
100. Notice of IEP Team Meeting 9/23/15
101. Out of School Suspension Notification 9/24/15
102. Out of School Suspension Notification 9/25/15
103. Data chart regarding negative behaviors and essential oil application 9/28/15 - 10/21/15
104. Draft IEP 9/30/15
105. Meeting Notes 9/30/15
106. Handwritten meeting notes by District employee 9/30/15
107. Draft of Functional Behavioral Assessment 10/1/15
108. Parent request for all incidents of restraint 10/5/15
109. Parent request for copy of aide's classroom behavior notes 10/5/15
110. Parent request for Functional Behavioral Assessment 10/5/15
111. Parent request for Prior Written Notices regarding shortened days 10/5/15
112. Behavior Support Plan 10/8/15
113. Handwritten notes by District employee re: team meeting for Behavioral Support Plan 10/12/15
114. Meeting Notes 10/12/15
115. Behavioral Data and application of essential oils 10/21/15 - 11/6/15
116. Draft Behavioral Support Plan 10/18 - 10/21/15
117. Handwritten meeting notes by District employee 10/21/15
118. Meeting Notes 10/21/15
119. Prior Written Notice and Consent for Assistive Technology Evaluation 10/21/15
120. Transition Schedule for full day 10/22/15
121. Application for Assistive Technology services 10/22/15
122. Behavioral Support Plan 10/22/15
123. Meeting Notes/ Agreements 10/22/15
124. IEP Progress Report Note 10/29/15
125. Notice of IEP Team Meeting 11/4/15
126. Release to Disability Rights Oregon 11/5/15
127. Correspondence from Disability Rights Oregon to District 11/7/15
128. Prior Written Notice of Proposed change in schedule 11/9/15
129. Meeting Notes 11/9/15
130. Student's Amended IEP 11/9/15
131. Attendance report 11/10/15

132. Daily behavior and observation reports 11/9/15 - 11/13/15
133. Functional Behavioral Assessment 11/9/15
134. Behavior and Antecedent data 11/9/15 - 11/16/15
135. Daily behavioral notes and logs completed by one to one assistants starting 11/16/15 - 4/19/16
136. Meeting Notes 11/16/15
137. Prior Written Notice of Proposed Change in schedule 11/16/15
138. Placement Meeting Agenda 11/17/15
139. Article: Essentials Every Classroom Must have for Autism Success (undated)
140. Classroom observation notes 11/30/15
141. Out of School Suspension Notification 12/18/15
142. Correspondence from Parent to IEP team 1/9/16
143. Notice of IEP Team Meeting 1/12/16
144. Out of School Suspension Notification 1/15/16
145. Out of School Suspension Notification 1/21/16
146. Out of School Suspension notes 1/21/16
147. Columbia Regional Program Referral (assistive technology) 1/25/16
148. Prior Written Notice to Change in IEP 1/26/16
149. Student's IEP 1/26/16
150. IEP Meeting Notes 1/26/16
151. Prior Written Notice and Consent for Evaluation re: Other Health Impairment 1/26/16
152. Behavior Support Plan 1/26/16
153. Handwritten notes by District employee regarding Student's behavior 1/26/16
154. Assistive Technology Contract Record 1/27/16
155. Handwritten incident/restraint report by District employee 1/28/16
156. IEP Progress Report 2/1/16
157. Behavior Support Plan 2/3/16
158. Assistive Technology Evaluation 2/17/16
159. Behavior Support Plan 2/4 – 2/26/16
160. Mid-Columbia Speech Language Evaluation 3/1/16
161. Notice of Team Meeting 3/12/16
162. Aggressive behavior modification to BSP 3/14/16
163. Prior Written Notice of Proposed Change to placement 3/15/16
164. Major discipline referral for physical aggression 3/20/16
165. Medical Statement or Health Assessment Statement 3/29/16
166. Major discipline referral for physical aggression 3/29/16
167. Restraint report 3/29/16
168. Discipline referral 3/29/16 – physical aggression
169. Handwritten class notes from one to one aide beginning 3/29/16 - 4/15/16
170. Discipline Referral 3/30/16 – physical aggression
171. Prior Written Notice of Proposed Change in Identification 4/1/16
172. IEP Meeting Notes 4/1/16
173. Student's Amended IEP 4/1/16
174. Eligibility Statement re: Other Health Impairment 4/1/16
175. Eligibility Statement re: Communication Disorder 4/1/16
176. District's Speech and Language Evaluation Report 4/1/16
177. Notice of IEP Team Meeting 4/4/16
178. Major discipline referral for physical aggression 4/12/16
179. Out of school suspension notification 4/12/16
180. Major discipline referral for physical aggression 4/14/16
181. Out of school suspension notification 4/14/16
182. Communication sheet 4/14/16 completed by principal
183. Principal notes regarding behavior plan and parent involvement (undated)
184. Major discipline referral for physical aggression for other problem behavior 4/15/16

185. Out of school suspension notification 4/15/16
186. Communication sheet 4/15/16 completed by principal
187. Out of school suspension notification 4/16/16
188. Major discipline referral for physical aggression 4/18/16
189. Communication sheet 4/18/16 completed by principal
190. Major discipline referral for physical aggression 4/19/16
191. Out of school suspension notification 4/19/16
192. Communication sheet 4/19/16 completed by principal
193. Notice of IEP Team Meeting 4/19/16
194. Handwritten notes by District employee regarding Student 4/19/16
195. IEP Meeting Notes 4/19/16
196. IEP Prep Notes 4/22/16
197. Authorization to Use or Disclosure Educational and Health Information 4/26/16
198. Prior Written Notice and Consent regarding ASD re-evaluation 4/26/16
199. Prior Written Notice of Proposed Change in Placement 4/26/16
200. Student's Amended IEP 4/26/16
201. Written Agreement between Parent & District re: Excused Team Member 4/26/16
202. Meeting Notes 4/26/16
203. Notice of IEP Team Meeting 4/26/16
204. Restraint report 4/28/16
205. "Let's Go Learn" Summary Report 5/24/16
206. Multnomah Education Service District Re-Evaluation Summary Report 5/25/16
207. Independent Evaluation Report 5/26/16
208. Handwritten meeting notes by District employee 5/26/16
209. Eligibility Statement re: Autism Spectrum Disorder 5/26/16
210. Notice of IEP Team Meeting 5/26/16
211. IEP Meeting Prep notes 5/26/16
212. IEP Prep Notes 5/31/16
213. Authorization to Use or Disclose Educational & Health Information 6/2/16
214. Student's IEP 6/2/16
215. Meeting Notes 6/2/16
216. Email from Parent to District 6/3/16
217. Notice of IEP Team Meeting 6/7/16
218. IEP Progress Report 6/10/16
219. Mid-Columbia Center for Living Correspondence re: skills for anxiety 8/23/16
220. Student introduction sheet created by Parent for school year 2016-2017 (undated)
221. Prior Written Notice re: proposed change in placement 8/26/16
222. Notice of IEP Team Meeting 8/26/16
223. Handwritten meeting notes by District employee 8/26/16
224. Handwritten notations on meeting agenda and aggressive behaviors handout by District employee 8/26/16
225. Meeting Notes and Agenda 8/26/16
226. Summary of Communication Characteristics of ASD 8/26/16
227. Daily progress logs beginning 8/31/16 - 11/1/16
228. Injury/Accident Report 9/8/16
229. Minute by minute classroom notes 9/9/16
230. Consent to disclose educational records 9/16/16
231. Meeting Notes 9/16/16
232. Handwritten Meeting notes 9/16/16 by District employee
233. Student's IEP 9/16/16
234. Incident notes from 1<sup>st</sup> grade teacher 9/19/16
235. Restraint report 9/19/16
236. Incident notes from school principal (undated)

237. Narrative police report, follow up 9/23/16
238. Parent request for formal Functional Behavioral Assessment 9/26/16
239. Major discipline referral for physical aggression 9/27/16
240. Police incident report 9/27/16
241. Email and handwritten notes regarding classroom incident 9/28/16
242. Interim Safety and Intervention Plan 9/28/16
243. Incident notes from one to one aid 9/29/16
244. Notice of IEP Team Meeting 9/29/16
245. Restraint report 9/29/16
246. Restraint report (undated)
247. Meeting Notices 10/3/16
248. Classroom Observation Form 10/4/16
249. Behavior incident report 10/4/16
250. Restraint report 10/4/16
251. Restraint debriefing report 10/5/16
252. Restraint report 10/6/16
253. Restraint report 10/6/16
254. Classroom Observation Form 10/7/16
255. Restraint report 10/11/16
256. Restraint report 10/17/16
257. Restraint report 10/17/16
258. Parent Notes from Classroom Observations 10/19, 10/26, and 10/27, 10/28/16
259. Functional Assessment Interview: Parent/Guardian 10/21/16
260. Student Assisted Interview 10/24/16
261. Functional Behavioral Assessment 10/24/16
262. Restraint Debriefing notes 10/24/16
263. Restraint report 10/25/16
264. Restraint report (undated)
265. Restraint report 10/26/16
266. Restraint report 10/26/16
267. Restraint report 10/27/16
268. Parent concern notes 10/31/16
269. District employee notes regarding parent complaint
270. FBA and BIP Requirements (undated)
271. District Complaint form 11/1/16
272. Handwritten incident report from Vanessa Fortune 11/1/16
273. Behavioral Support Plan (rough draft) 11/2/16
274. Safety Plan (rough draft) 11/2/16
275. Parent notice of Student's Removal from school 11/2/16
276. Functional Behavioral Assessment 11/2/16
277. District employee documentation attached to email regarding classroom incident 11/3/16
278. Handwritten notes by District employee included on email regarding classroom incident, email and notes 11/4/16
279. Restraint reports without dates and signatures
280. Class schedule, no references (undated)
281. Blank data tracking sheets for annual measurable goals with Student's name and goals but no information on progress
282. Classroom observation notes (undated, unsigned)
283. District policy on truancy readopted on 6/9/04
284. District Policy on use of restraint and exclusion 3/20/08
285. District Policy on discipline of Students with Disabilities 3/20/08
286. District Policy on suspension revised and readopted 12/17/15
287. District Policy regarding Student Discipline, revised & readopted 8/18/16

288. Essential oil application chart

289. Emails between District employees, between District and Parent, and between third parties and District/Parent

The Investigator received the following documents from the Parent:

1. Timeline
2. Personal Notes from meetings
3. Copies of emails between Parent and District
4. Copy of Complaint to District and Superintendent response

The Department's Complaint Investigator determined that in person interviews were required. On December 16, 2016, the Investigator interviewed the Student's kindergarten teacher from the first elementary school that the Student attended, the Student's primary one-to-one aide, the Student's current Special Education Teacher, and the District's Special Education Director via Skype. The Investigator also interviewed the Principal from the Student's second elementary school (also the building Principal where the Student's current placement is located) via telephone on January 5, 2017. On December 23, 2016, the Investigator interviewed the Parent via Skype. The Department's Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts 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; the timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation, or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 15, 2015 through November 14, 2016.

	<b>Allegations</b>	<b>Conclusions</b>
<b>(1)</b>	<b><u>IEP Implementation</u></b>  The Parent alleges that the District violated the IDEA because the Student's IEP has not been properly implemented regarding transitions, sensory breaks, cues (verbal and visual), "fidgets", <sup>2</sup> transition rings, <sup>3</sup> seat cushions and/or essential oils. The Parent also alleges that the staff lacks the training	<b><u>Substantiated in Part.</u></b>

<sup>1</sup> OAR 581-015-2030 (12)

<sup>2</sup> "Fidgets" are otherwise known as sensory toys

<sup>3</sup> "Transition rings" are cloth stuffed rings sewn by the Parent to aid in transitions. Since the Student does not tolerate touching, the "transition ring" is designed to be held by both the Student and staff during class changes and other transitions. There is no mechanism for the Student to continually grasp the ring and hence, at any time, the Student can let go of the "transition ring" and elope from the immediate area or school grounds altogether.



	<p>placement without the proper procedural safeguards and notices.</p> <p>(OAR 581-015-2415, OAR 581-015-2420, OAR 581-015-2250; 34 CFR 300.536, 34 CFR 300.116)</p>	<p>exacerbating the Student's behaviors. The Student's placement has been consistent with the Student's IEP at all times during the time period covered by this Complaint. Further, when the Student began being suspended on consecutive days, the District changed the Student's placement after an IEP Team Meeting and an amendment to the Student's IEP on April 26, 2016.</p>
(3)	<p><b><u>IEP Content</u></b></p> <p>The Parent alleges that the District violated the IDEA because it did not create an IEP that addressed the Student's academic abilities in Reading and Math. The Parent alleges that the Student is not receiving core Reading or Math instruction pursuant to the IEP. The Student is also not being tested in the same assessments as the Student's classmates to chart the Student's progress.</p> <p>(OAR 581-015-2200(1)(b)(A); 34 CFR 300.320)</p>	<p><b><u>Not Substantiated.</u></b></p> <p>The District attempted to administer the Kindergarten Assessment (which occurred prior to the time period covered by this Complaint), but the Student refused to take the test. No other state-wide assessments are given until the 3rd grade. The Student's IEP indicates that the Student's abilities in Math and Reading are at grade level, and the IEP Team determined that the Student does not need additional support in these areas.</p>
(4)	<p><b><u>Parental Consent</u></b></p> <p>The Parent alleges that the District violated the IDEA because it did not obtain consent from the Parent to perform the testing, observation and other functions when developing a Functional Behavioral Assessment (FBA) for the Student. The Parent further alleges that this FBA was done without the knowledge of the Parent.</p> <p>(OAR 581-015-2090; 34 CFR 300.9, 34 CFR 300.300)</p>	<p><b><u>Not Substantiated.</u></b></p> <p>The notes of the IEP meetings and emails show that the Parent was aware of both Functional Behavioral Assessments; the first during early November of 2015 and the second during the academic year 2016-2017. Therefore, the Parent's claim that she knew nothing of the initial FBA is without merit. The District failed to obtain a written consent from the Parent for the first Functional Behavioral Assessment; however this Functional Behavioral Assessment was completed prior to the timeframe covered by this Complaint. The second FBA for academic year 2016-2017 was begun with the Parent's full knowledge and consent.</p>
(5)	<p><b><u>Parent Participation/Special Factors</u></b></p> <p>The Parent alleges that the District violated the IDEA because it failed to address the Parent's request for an FBA at the Student's current placement, failed to remit documentation to the Parent and/or failed to document all disciplinary actions regarding</p>	<p><b><u>Substantiated in Part.</u></b></p> <p>The Parent has had a high degree of input in the Student's education, including receiving IEPs prior to meeting dates and implementing many suggestions from the Parent. There is no evidence that the Parent has been unable to appropriately participate</p>

	<p>the Student. The Parent further alleges that the District failed to give the Parent choice or alternate dates for educational conferences regarding the Student and did not consider her input after the District changed the Student's status regarding the disability for which the Student was to receive Special Education services.</p> <p>(OAR 581-015-2205, OAR 581-015-2190; 34 CFR 300.321, 34 CFR 300.322, 34 CFR 300.324)</p>	<p>in the Student's education.</p> <p>However, the District failed to provide appropriate notice to the Parent following several incidents when the Student was restrained.</p>
(6)	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The Parent alleges that the District violated the IDEA because it failed to provide a Free Appropriate Public Education to the Student, i.e. the District could not guarantee the Student's safety at school so the Parent has been unable to send the Student to school until the conditions at the Student's school are changed so that the Student is no longer in an unsafe environment.</p> <p>(OAR 581-015-2040; 34 CFR 300.101)</p>	<p><b><u>Substantiated.</u></b></p> <p>The IEP Team has amended the Student's IEP on numerous occasions to attempt to address the Student's behaviors. An FBA was completed, and the Student's Behavior Plan has been revised multiple times. However, none of these measures have successfully addressed this Student's behaviors, and the Student therefore continues to disrupt his/her learning as well as the learning of other students.</p>

<p><b>REQUESTED CORRECTIVE ACTION:</b></p>
<p>Parent requests that:</p> <ol style="list-style-type: none"> <li>a. the District create a visual schedule that can be placed on the Student's desk and one that is mobile so that the Student has a visual to activity expectation; the District create a visual behavior chart that can be placed on the Student's desk and can be referred to as often as needed to reinforce positive behavior and expectations; create a schedule that includes established sensory breaks; create in the daily planner should when application of essential oils will be applied and document application time and by whom; provide a bag or box of fidgets that the Student can access alone or at the direction of a staff member when their use would have a positive impact; establish the use of transition rings in the hallway; create a safe place alternative if the corner area is occupied.</li> <li>b. Complete the functional behavior assessment as soon as possible; implement strategies of the current behavior plan, remove improper documentation, obtain parent consent before any testing that is not conducted with every student.</li> <li>c. Only trained staff may initiate a restraint on a student and the district form must be completed and a copy sent home with the child</li> <li>d. Training and implementation of safety plan that includes transitioning, more staff for transitions times. Staff at end of hall before transitions and staff should run after students not walking</li> <li>e. increase specific training in regard to children who have sensory/behavioral and emotional regulation disabilities, place a certified Special Education teacher in the classroom, place the Student in a Gen Ed setting with a one-to-one aide;</li> <li>f. have the Student tested using all the same assessments for all other students of that grade</li> </ol>

- level, increase exposure/push-in to general ed for CORE instruction
- g. Complete all suspension paperwork and remit to Parents; if a restraint is used, a copy of the form required by the District must be completed and sent home to Parent;
  - h. Fire all Student's current teachers and replace them with qualified personnel
  - i. create an IEP to provide the best educational program for the Student;
  - j. Place video cameras in all the classrooms
  - k. Obtain a new IEE regarding the Student's autism diagnosis, remit to the Parent all the documentation used by the District in removing the Student from category of Autism Spectrum Disorder

### III. FINDINGS OF FACT

1. At the time of the filing of the Complaint, the Student was 6 years old and enrolled in 1st grade. The Student resides in the North Wasco County School District.
2. The Student was initially identified for Early Childhood Intervention Services (EI/ECSE) prior to kindergarten and received Special Education services under the category of Communication Disorder. The Student was also found to be eligible under Autism Spectrum Disorder (ASD) on June 10, 2015, and a new IEP was written on August 31, 2015.
3. At the beginning of the 2015-2016 school year, the Student was placed in a general education classroom with a pull out for Speech/Language services as well as Occupational Therapy. However, on September 10, 2015 the Student's IEP was revised because the IEP Team determined the Student needed a full time one-to-one aide to help the Student learn classroom and school rules and to teach the Student to follow the rules. The one-to-one aide was to be phased out prior to January 30, 2016. The Student's IEP was revised again on September 30, 2015 to address physically aggressive behaviors toward peers and staff members as well as refusal to follow staff directives, and the IEP Team, over the objections of the Parent, reduced the Student's school day so that the Student would attend school from 7:50 am to 12:15 pm.
4. The IEP Team met again on November 9, 2015. The Meeting Notes indicate that the District had difficulty coordinating a meeting time with the Parent. During this meeting, the Parent requested the Student's schedule be adjusted to full days. The District expressed concern over the Student being physically aggressive toward other students. The Parent stated that "body checking" is part of the Student's disability. The IEP Team stated that a behavior assessment would be needed to determine how to best address this behavior. The IEP Team lengthened the Student's day to 1:30 pm in order to allow the Student to attend Music/PE/Library. A plan for gradual full time re-integration was put in place at this time. The Student's access to the full time one-to-one aide was also extended to January 30, 2016.
5. The Student's Specially Designed Instruction, Related Services and Supplementary Aids/Services; Accommodations as noted on the November 9, 2015<sup>4</sup> Amended IEP were as follows:

<sup>4</sup> The November 9, 2015 IEP is the first IEP that falls within the Complaint Period. The Student had several IEPs prior to the Complaint Period and has had a total of nine (9) IEPs for the kindergarten school year and the first three months of first grade.

<b>Specialty Designed Instruction</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Full Time Assistance	Daily	All School Settings	09/01/15	01/30/16	LEA	
Speech/Language Services	160 minutes/month	Speech Room	09/01/15	09/01/16	LEA	Speech/Language Pathologist
<b>Related Services</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Occupational Therapy	60 Minutes per month	All Environments	09/01/15	09/01/16	LEA	
<b>Supplementary Aids/Services; Accommodations</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Bathroom support/instruction	Daily	All School Settings	09/01/15	09/01/16	LEA	
[Student] may wear a hat due to light sensitivity	Daily as needed	All School Settings	09/01/15	09/01/16	LEA	
Provide [Student] with a designated "break" location	Daily as needed	Classroom	09/01/15	09/01/16	LEA	
Sensory Tools/Sensory Diet	Daily	Classroom	09/01/15	09/01/16	LEA	
Visual Schedule: Use visuals/pictures for safety signals (i.e. stop sign, etc.)	Daily	Classroom	09/01/15	09/01/16	LEA	

6. On November 16, 2015 the IEP Team met to discuss placement, as the Parent wanted the Student to attend a full day program. The IEP Team discussed other placements for the Student including home tutoring, a virtual academy, a residential treatment facility or the Mid-Columbia Alternate School-Based Treatment (MAST) program at Wahtonka, an alternate/therapeutic school. The District also discussed the anticipated creation of a sensory/behavior classroom option for academic year 2016-2017. The Parent was resistant to the District's suggestions for other placements, and believes this is why the Student's placement did not change.
7. At the next IEP Meeting on January 26, 2016, the Student's need for full time assistance was extended to January 26, 2017. The Parent was provided with a draft IEP on January 15, 2016 so that the Parent could review the IEP with the Student's Case Manager and make changes and suggestions. The BSP was revised at this time to incorporate some changes recommended by the Parent. The Parent also signed Consent to Evaluate so the District could consider eligibility for Special Education services under the category of Other Health Impairment (OHI) because the Student has a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). The Meeting Notes for this meeting indicate that the Student would be taking an Assistive Technology assessment on the following day and that the Parent was working with an outside agency to select a tablet/device due to the Student's need for augmentative communication.
8. On or around March 15, 2016, the Parent requested a zone waiver to change the location of the Student's school. A zone waiver was granted and the Student attended a different elementary

school for less than one month, from approximately March 28, 2016 to April 26, 2016. The transfer of the Student from one school to another school was not deemed a change in placement because the Student would retain the same services but at a different location.

9. The Student's IEP was amended on April 1, 2016 because the Student was due for a re-evaluation based on eligibility for services under a communication disorder. The Student re-qualified for services under Communication Disorder but also qualified for services under Other Health Impairment because the Student had a diagnosis of ADHD and Sensory Integration Disorder.
10. After transferring to the new elementary school, the Student was suspended in accordance with the BSP in place at that time. The BSP stated that if the Student would not comply with staff directives and could not be relocated to the resource room, the Student was to be sent home. All suspensions were ½ day on the following occasions.
  - a) March 29, 2016 Student suspended for physical assault on a peer
  - b) March 30, 2016 Student suspended for throwing chairs at a peer
  - c) April 4, 2016 Student transitioned to resource room in lieu of suspension after hitting staff multiple times
  - d) April 14, 2016 Student suspended for hitting staff and tearing apart office
  - e) April 15, 2016 Student suspended for eloping, failing to transition and failing to listen to staff and Parent
  - f) April 18, 2016 Student suspended for eloping, hiding under tables, throwing furniture, hitting and biting both staff and one-to-one aid
  - g) April 19, 2016 Student suspended after punching a peer in the face
11. On April 19, 2016, the IEP Team met to discuss the Student's placement as the "Zone Waiver" had been revoked. According to the Meeting Notes, the IEP Team discussed options of home schooling, home tutorial, MAST program or the Student's neighborhood school.
12. The Student was then removed from the second elementary school and placed in the MAST program. Once enrolled in the MAST program, the Student was alone with an aide and next door to a kindergarten class. This placement was in effect for the remainder of the 2015-2016 academic year. The Student was placed at MAST so that the Student could "access curriculum".
13. The Student was referred to Multnomah Education Service District (MESD) for a re-evaluation regarding the categories under which the Student was obtaining services. The Parent signed consent for this re-evaluation on April 26, 2016. The evaluations consisted of psycho-educational tests to determine whether the current eligibilities were appropriate for the Student's services. MESD found that the Student still qualified for services under the categories of Other Health Impairment and Communication Disorder but did not qualify under Autism Spectrum Disorder (ASD) because the Student did not experience clinically significant problems with communication which is a criterion necessary to qualify for educational services under ASD. The Parent was in attendance at the meeting when this determination was made. The designation for the Student's placement was "public separate school" for the remainder of the 2015-2016 academic year.
14. The Student had another IEP Meeting on June 2, 2016 to reflect the Student's eligibility categories and placement for academic year 2016-2017 which was to be at a newly designed program, the Learning Resource Center B ("LRC-B"). The Parent requested that the IEP Team create annual measurable goals in all academic areas during the June 2, 2016 IEP Meeting. At that time, the District explained that the Student was academically performing at grade level, and did not create any academic goals for the Student.

15. On June 3, 2016 the Parent sent an email to the District requesting another IEP meeting and requested a new IEP because she did not agree with the IEP that had been put in place the previous day. The Parent also requested the documentation of "what exactly the communication requirements are to meet the educational autism diagnoses." The District did not schedule another IEP meeting during the summer months.
16. The Student began the 2016-2017 academic year at the LRC-B which was a specially designed classroom that the District developed for students with sensory and/or behavioral challenges. The LRC-B has (or is limited to) six students and is staffed by one teacher and two aides all of whom were trained in Crisis Prevention Institute (CPI) I holds.
17. Another IEP meeting was held on September 16, 2016. The September 16, 2016 IEP is the last IEP for the Student during the Complaint period and contains the following:

<b>Specially Designed Instruction</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Social/Emotional Skills	150 minutes per week	General Ed/ Special Ed Classroom	09/17/16	09/15/17	LEA	Special Education Teacher
Speech Services	30 minutes per week	Special Ed Classroom	09/17/16	09/15/17	LEA	Speech/Language Pathologist
<b>Related Services</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Occupational Therapy	60 Minutes per month	All Environments	09/17/16	09/15/17	LEA	Occupational Therapist
<b>Supplementary Aids/Services; Accommodations</b>	<b>Anticipated Amount and Frequency</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>
Bathroom support/instruction	Daily	All School Settings	09/17/16	09/15/17	LEA	Case Manager
[Student] may wear a hat due to light sensitivity	Daily as needed	All School Settings	09/17/16	09/15/17	LEA	Case Manager
Provide [Student] with a designated "break" location	Daily as needed	Classroom	09/17/16	09/15/17	LEA	Case Manager
Sensory Tools/Sensory Diet	Daily	Classroom	09/17/16	09/15/17	LEA	Case Manager
Transition Warnings	Daily	All School Settings	09/17/16	09/15/17	LEA	Case Manager
Visual Schedule: Use visuals/pictures for safety signals (i.e. stop sign, etc.)	Daily	Classroom	09/01/16	09/15/17	LEA	Case Manager
Visual timers, transition warnings	Daily	All School Settings	09/17/16	09/15/17	LEA	Case Manager
<b>Program Modifications/Sup</b>	<b>Anticipated Amount and</b>	<b>Anticipated Location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>	<b>Role Responsible for Monitoring</b>

ports for School Personnel	Frequency					
Consultation between speech-language pathologist and classroom teachers and specialists	30 minutes per month	Attending School	09/17/16	09/15/17	Speech/ Language Pathologist	Case Manager
Consultation between the general education teacher and special education staff	15 minutes/ quarter	General Ed/Special Ed Classroom	09/17/16	09/15/17	LEA	Special Education Teacher

18. According to the September 16, 2016 IEP, the Student had grade appropriate skills in Literacy and Math and excelled with numbers and counting. The Student excelled in calculation but was in the low average range in Writing. The Student, however, resisted seatwork and other “non-preferred” tasks and requires a number of physical, sensory and comprehension supports for positive, safe school behavior. The Student refused to participate in teacher directed activities and requires “frequent/maximum redirection to participate in an activity not of [the Student’s] choosing”.
19. The Meeting Notes for the IEP Meetings indicate “fidgets” for transitions and transition objects as well as a check-in chart with rewards have been utilized, as well as the use of a large timer at the front of the class so that the Student would be aware of when transitions were going to occur. The timer would count down to when a break would occur. The District also made a new set of visual aid cards for the Student when the Student’s schedule changed in the spring of 2016.
20. The District also regularly applied essential oils to the Student when the Student would allow an individual to apply them, despite the fact that this was not required by the Student’s IEP. The District has begun to use an “oil diffuser” in the classroom rather than continually attempt to apply “essential oils” to the Student.
21. At the beginning of the 2016-2017 academic year, the District had initially scheduled sensory breaks for the Student but found that the Student required breaks at various times and therefore allowed the Student to take sensory breaks as needed.
22. During this 2016-2017 academic year, the staff has attempted to take the class to Physical Education or Music class but that plan has been abandoned because trying to get these students to transition to and from Music is not possible as it leads to dangerous and non-compliant behavior on the part of the Student. On at least one occasion, the Student was not required to hold onto a rope held by a staff member and not required to hold a staff member’s hand, as required by the Student’s Safety Plan.
23. Because the Student continually runs away from campus, it is not possible to allow the Student to engage in any unsupervised activity. Since the Student requires “heavy physical activity” for sensory breaks, the District will either have the Student walk stairs with an aide or teacher, will have the Student do jumping jacks or carry reams of paper to the office to give the Student “heavy physical activity”
24. While at the LRC-B, the Student continued to engage in physical aggression against both students and staff including kicking, hitting, scratching and biting. The Student also engaged in throwing

food, furniture, and supplies. The Student was not suspended from school for any of these behaviors while attending school at the LRC-B.

25. On September 19, 2016, the Student became agitated while lining up for recess. There are varying accounts of what took place once the Student was back inside, but the Student was still demonstrating escalated behaviors. The Student's Special Education Teacher says that the Special Education Teacher was holding the Student's head "like I would hold a baby's head" so that the Student would not head butt the Special Education Teacher. The building Principal stated that the Special Education Teacher pushed the Student away from the Special Education Teacher "with a lot of force". The Principal was called to come to the room by the Special Education Teacher because "several children were out of control." Upon arriving, the Principal witnessed the Special Education Teacher recording on her phone one of the LRC-B aides restraining the Student from behind.

The District's Human Resources Director contacted The Dalles Police Department on September 20, 2016 after being made aware of the situation. An officer took statements from the Principal, the Special Education Teacher, and the LRC-B aides. The officer also went to the Student's home with the District Special Education Director and another Special Education Teacher and interviewed the Student in the presence of the Student's Parent. Ultimately, no charges were filed but emails in the materials provided by the District indicate that the Principal did file a complaint with the Teacher Standards and Practices Commission against the Special Education Teacher.

26. On September 27, 2016, the Student managed to leave the school cafeteria unattended. The Student left the elementary school campus and ran to the Wahtonka Campus, which is across the high school football field from the elementary school. The Crossroads staff managed to prevent the Student from leaving until the Student's grandfather arrived to pick up the Student. An Interim Safety & Intervention Plan was drafted on September 28, 2016, which provided for the Student to either take the hand of a staff member or hold onto a transition rope when transitioning from one location to another. The entire contents of the Safety Plan are listed below:

Block exits from room or playground (do not chase)

Redirect to safe locations

Use "time out" procedures for inappropriate or aggressive behaviors

Allow a return to the classroom once Student is calm

In cases of aggressive behavior:

1. Time out in Nurse's office or Principal's office (15 minutes) – using a timer and soothing voice
2. Parent called
3. Remainder of day in resource room or Parent is called and removed from school (i.e. suspension for ½ day)

27. On November 1, 2016, the Student ran away from one of the Special Education aides while transitioning from the computer lab. The Student was able to depart from school grounds. The Principal was unaware that the Student had eloped until she heard one of the LRC-B aides "screaming". The Principal sent an assistant after the Student, called 911, got in a car, and met the Student and the assistant down the street. The Principal alleged that the LRC-B aide failed to either have the Student hold her hand or to have the Student hold onto a rope held by the aide, as required by the Student's Safety Plan, while trying to transition the Student, and that the aide admitted failing to do so. The Principal also alleged that no one from the LRC-B staff followed up with the Principal regarding the whereabouts of the Student for at least ten minutes.

28. The Student has not attended school since the November 1, 2016 incident, due to the Parent's concerns about the District's inability to keep the Student from leaving school grounds.

29. The Student was not suspended from school while in attendance at the LRC-B classroom but was restrained on the following days:
- a) October 3, 2016 (CPI level 3, heavy hold)
  - b) October 6, 2016 (CPI level 3 heavy hold)
  - c) Level 1 hold (not dated or initialed)
  - d) October 10, 2016 – two restraints
  - e) October 17, 2016
  - f) October 29, 2016
30. There is not any evidence that the District gave the Parent notice of the restraints, and only page one of many of these reports (which does not include the Parent notification section or the section indicating who is completing the report) was provided to the Complaint Investigator. There is also one restraint form that has no date on it. There is also no evidence that the Parent was notified of many of these restraints or the debriefing meetings that occurred after the restraints. Debriefing notes were only provided for three debriefing meetings, none of which were attended by the Parent. The Parent did not obtain all information regarding the restraints of the Student until the Parent received the District's responsive submission to this Complaint. According to District policy as well as OAR 581-021-0556, when a student is restrained, the restraint information must be recorded and then the student's parent is to be notified regarding the restraint and circumstances surrounding that restraint.
31. The Student's Special Education Teacher was trained in CPI, as were the two aids that worked with the Student. These staff members were also fully aware of the accommodations required by the Student's IEP.

## IV. DISCUSSION

### **Section 1. Implementation of IEP**

The Parent alleges that the District violated the IDEA because the Student's IEP has not been properly implemented regarding transitions, sensory breaks, cues (verbal and visual), "fidgets", transition rings, seat cushions and/or essential oils. The Parent also alleges that the staff lacks the training necessary for staff to carry out the accommodations and special services delineated in the Student's IEP; more specifically the Parent alleges that staff is improperly trained in self-management skills, in working with disabled students and in communication skills. The Parent further alleges that the District has not provided positive supports to the Student and has only provided limited break areas. (OAR 581-015-2220; OAR 581-015-2205, 34 CFR 300.323, 34 CFR 300.324).

#### **A. Implementation of Services and Accommodations**

Pursuant to OAR 581-015-2220, the IEP team must consider the academic, developmental and functional needs of the child as well as parental concerns and the most recent evaluations.

In the instant case, there is no evidence that the District has failed to implement any listed services or accommodations on the Student's IEP. The Student receives sensory breaks and, as proscribed by the regulations, the District no longer mandates a set time for a sensory break but gives sensory breaks when the Student needs them. From the initial IEP, the District has used a "sensory diet" to assist the Student's sensory integration disorder. Further, the District has implemented multiple visuals for the Student including a large timer to warn of transitions so the Student can "count down" to transitions. The Student's one-to-one aide has also made visuals to assist the Student in new schedule changes when the Student moved from the elementary school to the MAST program.

The accommodations portion of the Student's IEP does not provide any provision for application of "essential oils", therefore, the District is not obligated to apply "essential oils" to the Student or even to utilize the oil diffuser that has been provided for the classroom. The IEP also does not call for use of "transition rings" or "fidgets" which the District, although not mandated to do so, has provided upon occasion in an effort to bring the Student into compliance with school behaviors and safety guidelines both for the Student as well as staff and peers. Finally, there is no mandate for the Student to engage in Music or Physical Education and the District is not obligated to provide these classes for the Student. Further, although the District has attempted to include the Student in Music class, this idea has been abandoned for the entire LRC-B due to the non-compliant and dangerous behaviors of the Student when transitions are attempted.

The District has had difficulty in creating specific "sensory break" areas for the Student due to the Student's continual running away. The District allows specific walking areas with a teacher or aid or use of the recess area when possible. However, the need for a varied sensory break will often mean having the Student do "heavy physical activity" such as jumping jacks in place or lifting heavy things and walking to the office.

However, since the Student has been placed in LRC-B, the District has failed, on at least one documented occasion, to properly transition the Student in accordance with the Student's Safety Plan.

The Department substantiates this allegation.

#### **B. Staff Training:**

The Parent alleges that staff is improperly trained in self-management skills, in working with disabled students and in communication skills

The IDEA as modified by the new "Every Student Succeeds Act" (20 USC §1412(a)(14)(C), mandates that teachers working directly with Special Education students must obtain a full State Certification as a Special Education teacher, or have passed the State Special Education teacher licensing examination and hold a license to teach in the State. A Special Education teacher must also hold at least a Bachelor's Degree and must not have had any certifications or licensing requirements waived on an emergency, temporary or provisional basis. The IDEA does not contain any provisions regarding "self-regulation" and does not mandate any such training. Further, OAR 581-037-0025 provides that "Districts employing educational assistants in any capacity shall provide or arrange for suitable training to prepare them to perform such functions as they may be assigned".

The Student attended a general education kindergarten and was engaged in a "pull out" model wherein Special Education services were provided to the Student outside of the general education classroom. The Speech/Language Pathologist (SLP) was licensed to be a service provider for Special Education services.

During the Student's tenure at the MAST program, the Student was not attending regular education classrooms and was only exposed to the aide who was hired by the District (with the assent of the Parent). The one-to-one aide had undergone CPI training and has an Associate's Degree in teaching with an emphasis on early childhood development. There is no evidence that the one-to-one aide was improperly trained or equipped to perform the duties of a one-to-one aide for a Special Education student. Further, the one-to-one aide continued to attend trainings coordinated by the District's SLP throughout the academic years 2015-2016 and 2016-2017.

Finally, the Teacher in the LRC-B classroom has an extensive background in teaching, has a Bachelor's Degree and has a Special Education endorsement from the State of Oregon. There is no evidence that this individual is not properly trained to teach a self-contained class of Special

Education students, nor is there any evidence that all staff members that performed restraints on the Student had not been trained in CPI.

The Department does not substantiate this allegation.

### **Section 2: Disciplinary Removal**

The Parent alleges that the District violated the IDEA because it continually ended the Student's school day early which constituted a pattern of removal and thus a change in placement without the proper procedural safeguards and notices. (OAR 581-015-2415, OAR 581-015-2420, OAR 581-015-2250, 34 CFR 300.536, 34 CFR 300.116)

A Special Education student will be disciplined in the same manner as a regular education student. However, a Special Education student's disciplinary removal may constitute a change of placement if a Special Education student is removed for more than 10 consecutive school days (e.g. expulsion); or if the Special Education student will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).

Less than thirty days from the date that the Student began kindergarten, an IEP Team Meeting was held to reduce the Student's day in order to acclimate the Student to full day school attendance. The IEP Team posited that the full school day was a stressor to the Student and proposed a schedule to re-integrate the Student into school when the Student could better learn what behaviors were expected of the Student at school. There is no evidence that the Student was suspended during the first month of kindergarten. The District's decision to shorten the Student's day was an accommodation for the Student to learn what was expected and to reduce a stressing situation that exacerbated the Student's behaviors. Subsequently, on two separate occasions, the District created re-integration plans and later, a Behavioral Support Plan to enable the Student to stay in school if the Student could self-regulate. The Behavioral Support Plan specifically allowed the Student to remain in school but in the "resource room" if the Student could not self-regulate enough to re-enter the general education classroom. Therefore, during the initial general education placement, the reduced school day did not constitute a disciplinary removal.

However, when the Student began attending school at the second elementary school at the end of March, 2016, the Student was repeatedly suspended for ½ days for a series of aggressive and insubordinate behaviors, some of which endangered both staff and peers. The Student was suspended a total of seven (7) days. Before the Student could accumulate ten (10) days of suspension, the Student's placement was changed to the MAST program. The District held an IEP Meeting regarding the change of placement and the Student was placed with the Student's aide in a room next-door to the therapeutic classroom for the remainder of the Student's kindergarten year. The change in placement was made because the Student was unable to access curriculum in the general education kindergarten at the elementary school.

The Department does not substantiate this allegation.

### **Section 3: IEP Content**

The Parent alleges that the District violated the IDEA because it did not create an IEP that addressed the Student's academic abilities in Reading and Math. The Parent alleges the Student is not receiving core Reading or Math instruction pursuant to the IEP. The Student is also not being tested in the same assessments as the Student's classmates to chart the Student's progress. (OAR 581-015-2200(1)(b)(A), 34 CFR 300.320)

An IEP must include a child's present level of performance which includes how the child's disability affects the child's progress in the general education curriculum and must have a statement of annual goals, including how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP must "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 must meet each of the child's other educational needs that result from the child's disability" OAR 581-015-2200. The IDEA requires districts to address each child's unique needs that arise from the child's disability – needs which may go beyond academics to include social skills and classroom behavior.<sup>5</sup>

The goals for the Student's IEP are specific to the Student's disability. The disability keeps the Student from engaging in an academic setting; therefore the goals are appropriate to the academic advancement of the Student. The Student performs at grade level and, in some cases, exceeds grade level especially in math functions and calculations. The Student's disability does not affect the Student's cognitive skills but affects the Student's ability to engage academically in "seatwork", to understand school behaviors and to, most importantly, follow teacher directions – skills necessary to excel academically at any level of education.

The Department does not substantiate this allegation. However, the Department also finds that despite the fact that the Special Factors section of the IEPs state that the Student exhibits behaviors that impede his/her learning or the learning of others. The IEPs do not comprehensively address the use of positive behavioral interventions and supports, and replacement skills, given the range of behavioral difficulty the student exhibits.

#### **Section 4: Parental Consent**

The Parent alleges that the District violated the IDEA because it did not obtain consent from the Parent to perform the testing, observation and other functions when developing a Functional Behavioral Assessment (FBA) for the Student. The Parent further alleges that this FBA was done without the knowledge of the Parent. (OAR 581-015-2090, 34 CFR 300.9, 34 CFR 300.300)

A Functional Behavioral Assessment is considered an evaluation and therefore, written consent is needed.

The second FBA was actually done upon request of the Parent. The Parent executed consent to the FBA and fully participated in the evaluation process of that FBA prior to removing the Student from the District on November 2, 2016.

The Department does not substantiate this allegation.

#### **Section 5: Parental Participation/Special Factors**

The Parent alleges that the District violated the IDEA because it failed to address the Parent's request for an FBA at the Student's current placement, failed to remit documentation to the Parent and/or failed to document all disciplinary actions regarding the Student. The Parent further alleges that the District failed to give the Parent choice or alternate dates for educational conferences regarding the Student and did not consider the Parent's input after the District changed the Student's status regarding the disability for which the Student was to receive Special Education services. (OAR 581-015-2205, OAR 581-015-2190, OAR 581-015-2205, 34 CFR 300.321, 34 CFR 300.322, 34 CFR 300.324)

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<sup>5</sup> Letter to Anonymous, 60 IDELR 47 (OSEP 2012)

## **A. Parent Requests Regarding FBA and Conference Dates**

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child, and the provision of a Free Appropriate Public Education to the child. OAR 581-015-2190.

The District, on several occasions, contacted the Parent prior to scheduling any meetings and ensured that the Parent could be present. There is no evidence in the record that the District failed to accommodate the Parent's requests for meetings.

In regard to the second FBA requested by the Parent, the evidence shows that within a few weeks of receiving written requests to begin a new FBA, the District's Behavioral Specialist contacted the Parent and began a new FBA with questionnaires to both the Parent and the Student.

The Department does not substantiate this portion of the allegation.

## **B. Parent Input Regarding Change of Disability Category**

When interpreting evaluation data, the IEP team must draw upon information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior and must ensure that information obtained from all these sources is documented and carefully considered. OAR 581-015-2125. Although a parent may disagree with findings, a parent is not the sole control for the education of a child. The IDEA does not require the district to simply accede to parent's demands.<sup>6</sup>

The removal of Autism Spectrum Disorder (ASD) as a category of eligibility was done through an Independent Educational Evaluation (IEE) performed by Multnomah Education Services District (MESD). The evaluation was explained to the Parent and was based on a conclusion by an independent evaluator. The evaluators did not observe impairment in communication. Specifically, the evaluators found that the Student was able to hold an appropriate reciprocal conversation with the evaluator. The ability to hold a conversation such as this is not indicative of ASD or a characteristic similar to individuals diagnosed with ASD. Because the Student did not meet the criteria necessary for eligibility under ASD, the District removed the Student from the ASD category for services. The Parent disagreed with this finding and refused to sign the documentation regarding eligibility for services from the June 2, 2016 meeting regarding the IEE findings.

The Department does not substantiate this portion of the allegation.

## **C. Failure to Give Notice of Restraints and Disciplinary Action**

The Student began to be formally disciplined after the Student transferred to the second elementary school in late March, 2016. The Student was suspended seven (7) times and notice was given to the Parent on each occasion. The Student has not been formally disciplined since being placed in the LRC-B.

It should be noted regarding discipline, that suspension as a form of discipline was a last resort for the Student under every iteration of the Student's Behavioral Support Plan. A series of interventions was put in place so that the Student could remain in school and only if all the interventions failed, would the Student be suspended from school. When the Student could not regain self-regulation and could not return either to the general education class or to the resource room, the Parent was notified regarding discipline. The District, by keeping the Student in the LRC-B with a series of interventions

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<sup>6</sup> See, Blackman v. Springfield R-XII School District, 31 IDELR 132 (8<sup>th</sup> Cir. 1999)

and restraints, is operating pursuant to the BSP and not resorting to disciplinary action.

The Department does not substantiate this portion of the allegation.

However, regarding restraint, the District's own policy mandates that the Parent will be given notice of any restraints used on the Student. Since the Student has been placed in the LRC-B, the Student has been restrained multiple times, sometimes as often as twice per day but the Parent did not receive notice of the restraints. The record of restraints is spotty at best as the restraint record is sometimes undated and often not initialed by the person either recording the event or in reference to the staff member restraining the Student.

The Department substantiates this portion of the allegation.

### **Section 6: FAPE**

The Parent alleges that the District violated the IDEA because it failed to provide a Free Appropriate Public Education to the Student, i.e. the District could not guarantee the Student's safety at school so the Parent has been unable to send the Student to school until the conditions at the Student's school are changed so that the Student is no longer in an unsafe environment.

School districts must provide a Free Appropriate Public Education to all school-age children with disabilities for whom the district is responsible. OAR 581-015-2040.

The Parent has removed the Student from the current placement as the Parent asserts that the District cannot keep the Student from leaving the premises or guarantee the safety of the Student.

The District, on more than one occasion, offered placements to the Parent which were designed to keep both the Student, staff and peers safe from the Student's aggressive and non-compliant behaviors as well as the Student's continued elopement from classroom, school, and campus. In the past, the District has also put safety gates up and established protocols to keep the Student from eloping with little or no result as the Student is non-compliant and staff is unable to chase the Student.

During the November 9, 2015 IEP Meeting, the District began discussing alternate placements such as home schooling, home tutoring or a residential treatment facility. The Parent refused all these suggestions.

The District has further begun to create a new Functional Behavioral Assessment to assist the Student and revise the Student's Behavior Support Plan. However, the FBA and BSP remain incomplete because the Student is no longer in attendance at the LRC-B.

As seen above, the IEP Team has attempted to address the Student's behaviors in numerous ways. Unfortunately, nothing thus far has proved to be successful. The Student continues to be physically aggressive with staff members and peers, and the Student continues to elude staff members, resulting in potential danger for the Student. The provision of FAPE is ultimately the responsibility of the District and it has not been able to do so.

The Department substantiates this allegation.

V. CORRECTIVE ACTION<sup>7</sup> \*

In the Matter of North Wasco County School District  
Case No. 16-054-036

Based on the facts provided, the following corrective action is ordered.

No.	Actions	Submissions <sup>8</sup>	Due Date
1.	<p><b>IEP Implementation and Parent Participation/Special Factors.</b></p> <p>In consultation with ODE County Contact staff, prepare professional development agenda and materials for staff training. The preparation will also include a review of District Board adopted policies and staff procedural directives and manuals related to discipline and parent notification to determine any changes needed to meet state and federal requirements.</p> <p>The District will provide professional development training to all Special Education staff and District Administrators, responsible for supervising Special Education programs. The training session will include County Contact staff from ODE and the training will include:</p> <ul style="list-style-type: none"> <li>• Requirements of FBAs and behavior support plans</li> <li>• Using assessment data to determine instructional and behavioral needs of students</li> <li>• Developing appropriate IEP goals</li> <li>• Requirements of FBAs and behavior support plans</li> <li>• Monitoring student progress on IEP goals and behavior plans</li> <li>• Content and implementation of</li> </ul>	<ol style="list-style-type: none"> <li>1. Submit Agenda and draft materials developed for professional development training in consultation with County Contact staff, and a copy of the District's procedures and timelines for policy adoptions.</li> <li>2. <i>If</i> Board adopted policies require revision, submit               <ol style="list-style-type: none"> <li>a. Board adoption schedule</li> <li>b. Evidence of completed adoption, including board minutes and materials</li> </ol> </li> <li>3. Submit evidence of completed training, including dated Sign-in sheet and names/roles of participants.</li> </ol>	<p><b>February 17, 2017</b></p> <p><b>a. March 20, 2017</b> <b>b. June 30, 2017</b></p> <p><b>March 20, 2017</b></p>

<sup>7</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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>8</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.

	<p>discipline rules related to students with disabilities;</p> <ul style="list-style-type: none"> <li>• Parent notification of discipline issues, including restraint and seclusion;</li> <li>• District policies related to discipline and parent notification;</li> </ul>		
2.	<p><b>Free Appropriate Public Education.</b></p> <p>Student's IEP Team, inclusive of the Parent, will compile and review all assessment information regarding the Student's behavior. If additional assessment is needed, the District will facilitate appropriate behavioral evaluation, including a comprehensive FBA.</p> <p>With full behavioral information, the IEP team will develop both a comprehensive behavior support plan that includes instructional supports in the academic environment, and a revised IEP that includes:</p> <ol style="list-style-type: none"> <li>1) positive behavioral supports and interventions,</li> <li>2) replacement skills and behaviors,</li> <li>3) safety plan;</li> <li>4) needed accommodations, modifications, and supports of behavioral and academic learning; and</li> <li>5) consideration of ESY based on behavioral and academic regression.</li> </ol> <p>The IEP Team has amended the Student's IEP on numerous occasions to attempt to address the Student's behaviors, including revisions of the Student's behavior support plan. None of these measures have comprehensively addressed this Student's behaviors, including positive supports and the development of replacement skills.</p> <p>The District will provide compensatory services for Student during Summer 2017 based on the student's newly revised IEP and development of</p>	<ol style="list-style-type: none"> <li>1. The District will submit comprehensive FBA documents, along with evaluation consent documents, if additional evaluation conducted.</li> <li>2. The District will submit the complete revised IEP and behavior plan documents, including parent invitation to IEP meeting, and Prior Written Notice.</li> <li>3. Submit copy of agreed upon schedule, to implement compensatory education hours.</li> <li>4. Upon completion of the ordered services, submit a copy of the final progress report, comprehensive attendance and service log. Provide copies of these documents to the Parent.</li> </ol>	<p><b>March 10, 2017</b></p> <p><b>March 10, 2017</b></p> <p><b>June 10, 2017</b></p> <p><b>October 1, 2017</b></p>

	<p>replacement skills, focusing on all goal areas of Students' newly revised IEP (from above).</p> <p>Services will occur over 7 weeks/10 hours per week (70 hrs.) on a schedule mutually determined with Parent.</p> <p>Services to be developed and provided by a licensed Special Educator(s) and/or related services provider. Specify the licensed individual (name and position) responsible for oversight. The District is responsible for transportation.</p>		
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Dated: this 13th Day of January 2017




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

Mailing Date: January 13, 2017