

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Clackamas SD

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-037

I. BACKGROUND:

On November 30, 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 North Clackamas School District (District). The Parent requested that the Department conduct a Special Education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email on November 30, 2016.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint; or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.¹ Based on the date the Department received the complaint, the relevant period for this Complaint is December 1, 2015 through November 30, 2016. The Final Order is due January 29, 2017.

On December 5, 2016, the Department's Complaint Investigator 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 19, 2016. The Department's Complaint Investigator revised the RFR on December 6, 2016, after the Parent clarified one of the allegations, and resent the amended RFR to the District and the Parent that same day.

On December 20, 2016, the Parent submitted a packet of materials for the Complaint Investigator to review. In total, the Parent provided these materials;

1. Parent Response Letter 1 12/20/2016
2. Parent Response Letter 2 12/21/2016
3. Meeting Notice for meeting to discuss outside placement options on 10/17/16 10/11/2016
4. Prior Written Notice 10/14/2016
5. Meeting Minutes from placement meeting on 10/17/16
6. Placement Determination documents 10/10/2016
7. Parent Response Letter 2 12/21/2016
8. 2015-2016 School Year Progress Reports and work samples 5/12/2016
9. Work Samples from SLC-B class undated
10. Work Samples from Home Instruction Tutoring undated
11. Educational Placement Discussion and Decisions undated

¹ OAR 581-015-2030 (5).

12. Documents Related to OCR Complaint Parent Filed in 2014 12/3/2014
13. Documents Related to a Behavioral Incident which occurred at the Afterschool Care Program 8/31/2016
14. CARE Behavior Incident Form 9/7/2016
15. Behavior Tracking Cards, 9/6/16 to 9/14/16
16. Behavior Tracking Cards, 9/15/16 to 10/2/16
17. Function Based Behavior Support Plan revised 11/4/16
18. Student Safety Plan, revised 11/4/16
19. Restraint Reporting Documents 9/21/2016
20. Office Referral 9/23/2016
21. CARE Behavior Incident Form 9/21/2016
22. Prior Written Notice 9/26/2016
23. Language and Literacy Standards undated
24. Meeting Minutes, 9/26/16
25. Partial IEP with curriculum goal progress sheets 5/12/2016
26. Emails 9/26/16 & 9/28/16
27. IEP of 5/12/16 revised on 9/26/16
28. IEP of 5/12/16 revised on 10/17/16
29. Discipline Incident Report 10/5/2016
30. Physical Restraint Incident Debriefing Notes 10/7/2016
31. Email 9/29/16
32. Email 10/5/16
33. Email 10/17/16
34. CARE Behavior Incident Form 10/19/2016
35. Emails 10/30/16 to 11/2/16
36. CARE Accommodation Plan 11/4/2016
37. Emails 10/19/16 to 11/10/16
38. CARE Behavior Incident Form 11/9/2016
39. Emails 11/15/16 to 11/21/16
40. CARE Behavior Incident Form 11/16/2016

On December 19, 2016, the District submitted a *Response* with materials as listed below. In total, the District provided these materials;

1. Table of Contents 12/26/2016
2. 5/12/16 IEP revised on 10/17/16
3. 5/12/16 IEP revised on 9/26/16
4. 5/17/16 Behavior Support Plan revised on 11/4/16
5. 5/17/16 Behavior Support Plan revised on 9/26/16
6. 5/17/16 Behavior Support Plan revised on 11/4/16
7. 5/13/16 Student Safety Plan revised on 9/26/16
8. IEP 5/12/16
9. Eligibility Statement for Other Health Impairment 5/12/2016
10. Prior Written Notice and Consent for Initial Placement in Special Education 6/7/2013
11. Placement Determination Statement 5/12/2016
12. Student Safety Plan 5/13/2016

13. Prior Written Notice 5/12/2016
14. Meeting Minutes from 5/12/16 IEP meeting
15. Meeting Notice for IEP meeting on 5/12/16
16. Parent Consent for Individual Evaluation 3/2/2016
17. Prior Written Notice of Evaluation 3/2/2016
18. Meeting Notice for outside placement meeting on 10/17/16 10/11/2016
19. Meeting Notice for IEP meeting on 10/7/16
20. Meeting Notice for IEP meeting on 9/26/16 9/23/2016
21. Meeting Notice for IEP meeting on 5/12/16 1/19/2016
22. Meeting Minutes from 11/1/16 meeting requested by Parent
23. Meeting Minutes from 10/17/16 IEP meeting
24. Meeting Minutes from 10/10/16 placement meeting
25. Meeting Minutes from problem-solving meeting held on 10/7/16
26. Meeting Minutes from 9/26/16 IEP meeting
27. Meeting Minutes from 5/12/16 IEP meeting
28. Prior Written Notice 10/17/2016
29. Prior Written Notice 9/26/2016
30. Prior Written Notice of Evaluation 3/2/2016
31. Special Education Placement Determination 10/17/2016
32. Special Education Placement Determination 5/12/2016
33. Psycho-Educational Evaluation 3/30/2016
34. Behavioral Specialist Intervention and Coaching Log for Fall, 2016 in SLC-B classroom 12/26/2016
35. First Trimester Report Card 12/1/2016
36. First Trimester IEP Goal Progress Reports 11/23/2016
37. IEP Goal Progress Reports 3/18/2016
38. 5/17/2015 Behavior Support Plan revised on 11/4/16
39. 5/13/16 Student Safety Plan revised on 11/4/16
40. Memo from Parent's Attorney regarding changes to the 9/26/16 Behavior Support and Safety Plans 10/9/2016
41. Discipline Incident Report 10/5/2016
42. Discipline Incident Report 9/21/2016
43. Office Referral 9/23/2016
44. Emails from 9/22/16 to 12/1/16
45. Daily Student Behavior Tracking Cards 9/6/2016
46. Letter from Parent's Attorney with Parent's permission to release Student's records to Attorney 9/22/2016
47. Bus Referral 11/17/2016
48. List of Staff Interviewees 12/26/2016
49. Behavior Specialist's and Special Education Coordinator's Resumes undated
50. Staffing for CARE 2013—2017 12/26/2016
51. *CARE Accommodation Plan² 11/4/2016*
52. *Behavior Support Plan 11/4/2016*
53. *Student Safety Plan 11/4/2016*

² Document titles which are italicized and in purple are from the NCSD Afterschool CARE program.

54. *Accommodation Plans 12/26/2016*
55. *CARE Accommodation Plan 9/2/2016*
56. *Behavior Support Plan 5/17/2015*
57. *Behavior Support Plan 5/12/2016*
58. *Student Safety Plan 5/13/2016*
59. *Accident Analysis dated 9/21/16 to 10/19/16*
60. *CARE Behavior Incident Forms dated 9/30/16 to 11/16/16*
61. *CARE Behavior Tracker undated*
62. *Emails dated 9/22/16 to 11/15/16*

During the Interview process, the District gave the Complaint Investigator the additional materials listed below. The District provided these materials on January 4-6, 2017, and the Complaint Investigator forwarded copies to the Parent.

1. SLC-B classroom schedule 2016—2017 12/26/2016
2. Sample OT Log 12/26/2016
3. Attendance records 2015-2016 & 2016-2017 12/26/2016
4. CARE Expectations 12/26/2016
5. Medical Statement 4/7/2016

The Department's Complaint Investigator determined that on-site interviews were needed. On January 3, 2017, the Department's Complaint Investigator interviewed the Parent. On January 4, 2017, the Department's Complaint Investigator interviewed the Executive Director of Special Education, the Coordinator of Special Education and Administration for the Elementary Structured Learning Centers, a Behavior Specialist, and a Coordinator for Special Education who is also the Lead Trainer for Oregon Intervention System (OIS). On the same day, the Complaint Investigator interviewed an elementary Assistant Principal who supports the Structured Learning Centers for Behavior (SLC-B), and an Occupational Therapist. On January 5, 2017, the Department's Complaint Investigator interviewed two Special Education Teachers who teach in the SLC-B for grades K-2 and grades 3-5.³ On that same day, the Complaint Investigator interviewed the Principal, two Instructional Assistants, and an interim Elementary Principal. On January 6, 2017, the Department's Complaint Investigator interviewed the Home Instruction Tutor, the Coordinator for Special Education and Evaluation and the former Director of Community Services⁴.

The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint.⁵ This order is timely.

³ The SLC-B teacher for grades K-2 taught the Student during the 2015-2016 school year and will be referred to as SLC-B teacher 1; and the SLC-B teacher for grades 3-5, who taught the Student for 6 weeks at the beginning of the 2016-2017 school year, will be referred to as SLC-B teacher 2.

⁴ This individual supervised the After School Care Program, but now works for another agency.

⁵ 34 CFR §300.1510(2010)

II. ALLEGATIONS AND CONCLUSIONS:

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151 – 153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from December 1, 2015 through November 30, 2016.⁶

	Allegations	Conclusions
1.	<p><u>Access to Student Education Records:</u></p> <p>The Parent alleges that the District violated the IDEA when it:</p> <p>a) Did not provide the Parent with information about the Student’s academic progress, after the Parent requested such records.</p> <p>b) Did not provide the Parent with a copy of the IEP as revised on 9/26/2016 in a timely fashion.</p> <p>c) Did not provide the Parent with information from the Occupational Therapist and Behavioral Specialist as per a Parent request.</p> <p>(OAR 581-015-2300 (3)) and (34CFR 99.1 to 99.38)</p>	<p><u>Not Substantiated:</u></p> <p>a) The District provided Progress Reports to the Parent on three occasions during the period for this Complaint and also provided report cards to the Parent. Copies of the Student’s work have also been provided, although there is some question about when the Parent received them. Meeting Notes also reflect that the Parent was provided with information about the Student’s academic progress during these meetings.</p> <p><u>Not Substantiated</u></p> <p>b) During the interview the Parent told the Department’s Complaint Investigator that the Parent did receive copies of the Student’s IEP and this was a non-issue.</p> <p><u>Not Substantiated</u></p> <p>c) The Behavior Specialist and the Occupational Therapist (OT) were mandated by the IEP to provide support to staff rather than specially designed instruction to the Student. Given the multiplicity and seriousness of the Student’s behavioral issues during the time the Student was in the SLC-B class, there was limited opportunity for the OT to consult with the SLC-B Teacher, and no log of consultation was generated. The Behavioral</p>

⁶ See OAR 581-015-2030(5)(2008); 34 CFR §300.153(c)

		<p>Specialist provided information to the Parent during meetings and in-person conversations, but did not write any specific documents pertaining to the Student.</p>
<p>2.</p>	<p><u>When IEP's Must Be in Effect:</u></p> <p>The Parent alleges that the District violated the IDEA when it:</p> <p>a) Did not provide specially designed instruction as per the IEP written on May 12, 2016 from September 6, 2016 until the Student was enrolled in a specialized regional classroom in another District;</p> <p>b) Did not implement the Student's safety and behavioral support plan as per the IEP written on May 12, 2016 from September 6, 2016 until the Student was enrolled in a specialized regional classroom in another District.</p> <p>c) Did not implement the Student's May 12, 2016 IEP or the IEP as revised on September 26, 2016 and October 17, 2016 during the Student's attendance at a District afterschool care program.</p> <p>(OAR 581-015-2220 (1) (3)) and 34 CFR 300.323)</p>	<p><u>Not Substantiated:</u></p> <p>a) Given the information presented in the interviews by District staff as well as information disclosed by a review of the Daily Behavior Trackers and Progress Reports, the Department concludes that the District provided as much specially designed instruction as the Student was able to tolerate given the Student's self-regulation and other behavioral issues.</p> <p><u>Not Substantiated:</u></p> <p>b) Similarly, there is substantive evidence that the District implemented the Student's Behavior Support Plan (BSP) and Student Safety Plan (SSP) during the time the Student attended District programs. The District provided the Department's Complaint Investigator with copies of the Student's Daily Behavior Tracker and of disciplinary paperwork which described the Student's out of control behavior in detail. In these documents there are many instances when Staff recorded the options, supports and alternatives offered to the Student to help the Student de-escalate behavior.</p> <p><u>Not Substantiated:</u></p> <p>c) The Student's IEP makes no mention of the Student's afterschool care program, nor has the Student's IEP Team ever determined that the Student needs to attend this program in order to receive a Free Appropriate Public Education (FAPE).</p>

3.	<p><u>Review and Revision of IEP's:</u></p> <p>The Parent alleges that the District violated the IDEA when it refused to review and revise the safety plan in the Student's IEP after the Parent requested such a review.</p> <p>(OAR 581-015-2225 (C) (D) (E) and 34 CFR 300.324)</p>	<p><u>Not Substantiated:</u></p> <p>When a parent requests review or revision of the IEP, the District must consider that request. Here the IEP Team did review the safety plan and did make some revisions to the Student's Behavior Support Plan and the Student's Safety Plan but did not make the specific revision to the safety plan requested by the Parent.</p>
4.	<p><u>Placement of the Child and Requirement for Least Restrictive Environment:</u></p> <p>The Parent alleges that the District violated the IDEA when it:</p> <p>a) Placed the Student in an inappropriate classroom with younger students without benefit of an IEP meeting.</p> <p>(OAR 581-015-2250 and 34 CFR 300.116 and 300.327)</p> <p>b) Placed the Student in the "Homeschool" program for only two hours per day. The Parent alleges this environment was an unnecessarily restrictive environment for the Student and that it deprived the Student of participation with non-disabled peers.</p> <p>(OAR 581-015-2240 and 34 CFR 300.114)</p>	<p><u>Not Substantiated:</u></p> <p>a) The Department finds that the District was not changing the Student's placement but rather attempting to create a positive leadership experience for the Student. The Student went to the classroom with the younger students on approximately six occasions for less than one hour per occasion. This did not result in a change in placement.</p> <p><u>Not Substantiated:</u></p> <p>b) The IEP Team determined that due to the Student's behavioral issues, a placement change was necessary to ensure the safety of the Student and staff members. However, a slot at the agreed-upon placement was not immediately available. The IEP Team placed the Student in a "Homeschool" program (located at another elementary school) for eleven days, two hours per day, until a spot at the agreed-upon placement was available.</p>
5.	<p><u>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</u></p> <p>The Parent also alleges that the District violated the IDEA when it removed the Student from the Student's IEP placement to a "homeschool" placement</p>	<p><u>Not Substantiated:</u></p> <p>The Student had been suspended for 1.5 days before the Student was moved to the "Homeschool" Program. The Student was placed in the "Homeschool" placement by the</p>

<p>for two hours daily without conducting a Manifestation Determination after more than 10 school days.</p> <p>(OAR 581-01-2415 and 34 CFR 300.504(a) (3) and 300.530, 300.531, 300.532, 300.533)</p>	<p>IEP Team and the Student's IEP was amended to reflect this placement decision. There was no change in placement constituting a disciplinary removal.</p>
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Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA):

The Parent alleges the District violated the IDEA when it did not provide the Parent timely notice so that the Parent could attend a debriefing meeting after the Student was restrained on September 21, 2016. (OAR 581-021-0556 (2)(b)(H)). The Parent also alleges that the District used inappropriate restraint procedures with the Student. The Parent alleges the District physically harmed the child during restraint. These issues may be addressed by filing a complaint with the District and utilizing the District's complaint procedures.⁷ If the Parent has exhausted the District complaint procedure, the Parent may file a written complaint with the Oregon Department of Education under the rules governing restraint and seclusion under Section 21. The Parent may contact Emily Nazarov (503-947-5637) to initiate this process.

Finally, the Parent alleges the District discriminated against the Student when it provided transportation for the Student to the specialized regional program in another District. The Student rode a bus for a three-hour daily round trip, and was in the company of older students and the Parent believes these other students modeled inappropriate behavior during the bus ride. The Parent had been informed that the Student would be the only Student during this bus ride. The Parent may contact Winston Cornwall (503-947-5675) at the Department for information about how to file a complaint on this issue with the Civil Rights Division.⁸

<p><u>Requested Corrective Action:</u></p> <p>The Parent requests the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> 1. I want my child back at { } school 1—2 months after the teacher who is on leave returns to the classroom; 2. I don't want the school district to have the option to home school. Why would they try harder to put the correct supports in in a timely, effective manner? They didn't try harder for my child at { }; 3. I want a 2 person hold added to my child's safety plan for school and the afterschool program; 4. I don't want them to be able to suspend my child like they have been doing if my child becomes aggressive and a hold is put into place. The students in the program are not suspended every time a hold is put into place – only if there is a crisis or a serious behavior with incident while the behavior support plan is put into place – just enough time for them to meet and to put further supports in place. Students with this level of disability need to be in school with regular routines and structure; 5. I want the District to have to use an outside, independent investigator to investigate all further injuries regarding my child;

⁷ OAR 581-015-2030(4)

⁸ OAR 581-015-2030(4)

6. I want my child to receive compensatory education because I do not feel that my child received hardly any education from September 7, 2016 to November 4, 2016 until my child started at { }. It might look like homeschool in the morning at the evaluation center and a camp to work on social skills/behavioral skills and goals in the afternoon during the summer;
7. I want the District to not be able to not do what they are supposed to do by law (inviting me to debriefing meetings) and not to be able to say they are going to do something and then not do it (bus situation with my child, not getting OT notes, not getting behavior support information from [].);
8. I want the District to have to be responsible in calling parents when there is a significant incident on the bus or anywhere; and,
9. I want compensation for many of the days my child had to leave the afterschool program or could not participate in the afterschool program when it was paid for from the afterschool program that were related to not following my child's schedule and other afterschool program or school issues that led to suspensions, to not having trained staff available to care for my child, etc. I want compensation for the time I had to take off for the ridiculous 1.5 week suspension and for the weeks of homeschool which made me miss at least 3.5 hours per day of work because they were not willing to try another classroom because of []'s opinion that it wouldn't work.

III. FINDINGS OF FACT:

1. The Student is eight years old, and is eligible for Special Education services as a student with an Other Health Impairment. This eligibility was established on June 7, 2013 and reestablished during the Student's triennial review on May 12, 2016. The Student's Doctor noted in a medical statement dated April 7, 2016, that the Student has developmental delays, craniosynostosis, prenatal drug exposure, depression and a conduct disorder.
2. The Student lives in the District, and has attended school there since starting kindergarten. The Student was placed in a Structured Learning Center for Behavior (SLC-B) at the end of 1st grade, and attended this class for all of the 2nd grade school year (2015-2016). The 2nd grade class (K-2) was taught by SLC-B teacher #1. During 2nd grade, the Student had no suspensions, either in or out of school, and had one excused absence.
3. The Student started the 2016-2017 school year in the SLC-B class for 3rd – 5th graders and presently attends a regional program run by the local Educational Service District. This program serves students with behavioral and emotional needs.
4. On March 2, 2016, the Parent signed consent for the District to complete the Student's three year re-evaluation. The IEP Team met on May 12, 2016 to conduct its annual review of the Student's IEP. The IEP written on May 12, 2016 contains the following elements:

IEP Element	March 12, 2016 IEP
<u>Consideration of Special Factors</u>	Student has behavior that impedes the learning of self or others.
<u>Present Level of Academic</u>	Engaging student who loves helping others and who can be kind; Home behaviors are becoming more unsafe, there is increasing

<u>Achievement and Functional Performance</u>	<p>evidence of frontal lobe damage; Reading at mid second grade level in general education curriculum; Loves copying published books and making own books; Was able to write 30 total words with 18 correct writing sequences on a 7 minute quick write; Consistently scores between 19th and 43rd percentile in STAR assessment in math; Works well in the small structured setting of the SLC-B; First term had 5 room clears, 9 incidents of physical aggression and 5 times was out of the appropriate area; Third term has had no critical incidents to date; Continues to struggle with managing personal business and taking personal responsibility, and; Is making excellent catch-up growth in academics.</p>
<u>Statewide Assessment</u>	<p>SBA English Language Arts/Literacy and Math –Standard Accommodations in a smaller setting with close proximity to an adult.</p>
<u>Districtwide Assessment</u>	<p>None at this grade level</p>
<u>Goals:</u> <u>Behavior:</u> <u>Reading:</u> <u>Math:</u> <u>Social Skills:</u> <u>Writing:</u>	<p>Student will participate in school activities and instruction while maintaining safe and responsible behavior with 98% accuracy across each of 2 consecutive terms; as measured by a daily data tracker.</p> <p>Given a third grade reading level passage the Student will read 90 correct words per minute with 90% accuracy and 80% of comprehension questions answer correctly; as measured by probes.</p> <p>Given grade level math instruction and assessments, the Student will solve, explain and demonstrate addition and subtraction with numbers to 10,000; telling time to the minute; combining coins and making change; simple fractions and decimals; and multiplication and division facts—as measured by probes and formative assessments.</p> <p>In a school-wide setting, the Student will show appropriate social skills for 90% of observed opportunities; as measured by observation.</p> <p>Given a verbal or visual prompt, the Student will write a 5—7 sentence paragraph response, with a topic sentence and at least 2 details or supporting ideas, remaining on topic and for 80% of assessed opportunities—as measured by formative assessments and work samples.</p>
<u>Service Summary – Specially Designed Instruction (SDI)</u>	<p>Social Skills—180 min. per week; Written Language—120 min. per week; Reading—300 min. per week; Math—180 min. per week, and; Behavior—180 min. per week.</p>

<u>Service Summary -- Related Services</u>	Transportation—40 min. round trip.
<u>Service Summary -- Supplementary Aids/Services; Modifications and Accommodations</u>	Opportunity to restate directions—schoolwide, 10 min throughout day; Access to visuals (classroom schedule, timers, visual cues)—schoolwide, 10 throughout day; Access to self-regulation, and calming program (i.e. “Zones of Regulation”)—schoolwide, 10 min. throughout day; Daily behavior incentive system/tracker—schoolwide, 10 min. throughout day; Break work up into chunks--schoolwide, 10 min. throughout day; Frequent movement breaks/stretching/exercises—schoolwide, 10 min throughout day; Access to sensory strategies—schoolwide, to min. throughout the day; Safety Plan—schoolwide, 0 min. throughout the day, and; Behavior Support Plan—schoolwide, 10 min. throughout the day.
<u>Service Summary -- Program Modifications & Supports for School Personnel</u>	Consultation with Occupational Therapist, 60 min per year.
<u>Non-Participation Justification</u>	The Student will be removed for 960 minutes per week for direct instruction on IEP goals in a smaller, more structured setting.
<u>Extended School Year</u>	Available data do not demonstrate the need for ESY services
<u>Placement Determination</u>	Structured Learning Center for Behavior with limited mainstreaming into PE, music, library, meals, recess, and special activities as Student’s behavior allows.

5. At the IEP Meeting held on May 12, 2016, the IEP Team also reviewed the Student’s Behavior Support Plan (BSP) and the Student’s Safety Plan (SSP). Both plans are function-based and provide techniques and guidance for staff to use when the Student refuses to comply with directions and becomes disruptive and sometimes physically aggressive in order to gain control of the situation. The Student has also attempted on occasion to leave both the classroom and the school.
6. The SSP specifies that staff should not try to engage or intervene with the Student when the Student is having a physical tantrum. However, if the Student escalates to the point where either the Student, staff or other students are threatened with imminent harm, an Oregon Intervention System (OIS) trained staff may use an OIS Belt-Shirt Protective Physical Intervention for no more than ten seconds before release.
7. The BSP specifies that staff will teach replacement behaviors such as “requesting direct adult attention for up to a 5 minute period”, or “requesting a cool down break in a designated area”. Staff will provide reinforcements such as prize points, individual adult attention, or the opportunity to choose a group game or activity, among other things.
8. The Student started the 2016-2017 school year on September 6, 2016. The school day for 3rd grade students in the District is in session from 7:45 a.m. to 1:45 p.m., except for early

dismissal days. The schedule in the SLC-B classroom was divided into approximately 20-25 minute increments, and students received instruction in Reading, Social Skills, Math, Community Building, Science and Writing. They also were given three "choice" times per day, and participated in 3rd, 4th or 5th grade specials such as Physical Education, Music, and Library. The Student also participated in recess.

When the year started there were seven students in this classroom who were supported by the teacher and three classroom assistants. SLC-B Teacher #1 mentored SLC-B Teacher #2, and the Behavior Specialist provided additional coaching on a weekly basis. Both of these staff helped SLC-B Teacher #2 set up the classroom to operate very similarly to the SLC-B classroom the Student had attended for 2nd grade. The staff in the SLC-B classroom worked with all students grouped according to academic skill level.

9. This Student began the year in a reading group with one other student working with SLC-B Teacher #2. Because the Student struggled to read aloud, SLC-B Teacher #2 rearranged the schedule and worked with the Student one-to-one on reading instruction. In this setting, SLC-B Teacher #2 noted that the Student was "able to decode with more confidence and read with more fluency". SLC-B Teacher #2 and assistants provided Specially Designed Instruction (SDI) to the Student at academic skill level in Math, Reading and Writing using appropriate skill level materials, manipulatives, an electronic white board, small group and one-to-one instruction, minimized assignments, sentence starters and other techniques.
10. Every thirty minutes, the classroom staff rated each student on a Behavior Tracking Card as to whether each student had been safe, kind and responsible in the classroom during each half hour. Students were awarded two points when they were given no more than one reminder about a specific behavior, one point when they were given more than two reminders, and zero points when they were given more than three reminders about a specific behavior. Therefore, a perfect day per student equaled seventy-two total points across the three behavior categories. Staff noted specific comments about a student's behavior on the cards, as well as whether or not any "Critical Incidents"⁹ had occurred.
11. The Student attended school for twenty days at the District elementary school in the SLC-B class from September 6, 2016 through October 5, 2016. Over those twenty days, the Student earned 63% of points available for behavior (723 of 1152). From September 6, 2016 through September 20, 2016, staff reported no critical incidents on the Behavior Tracking Card, although the Student did not earn 100% of points during that time, and did spend some time with the Principal or in a cool down setting out of class. From September 21, 2016 through October 5, 2016, the Student had multiple behavioral difficulties at school, was physically aggressive, required a Belt-Shirt hold on several occasions, and was destructive in the classroom. The Student was suspended for the remainder of the day on September 23, 2016 and October 5, 2016 for the remainder of the day.
12. On September 15, 2016 the Coordinator for Special Education and Administration for the Elementary Structured Learning Centers (Coordinator) suggested to the Parent and the two SLC-B teachers that the team try an intervention that might improve the Student's behavior in the afternoon. The Coordinator suggested the Student go to the SLC-B class for K-2 graders and work with the previous year's teacher as an "assistant". The class was working on Legos Math during this time, and the Student had been very successful with this program and

⁹ Critical Incidents are defined as Room Clear, Property Destruction, Running or Out of Area, Physical Aggression or Protective Physical Intervention.

teacher the previous year. The intention was to give the Student some time during the day to be a leader, and to work with a teacher with whom the Student had had a very positive relationship. The Parent agreed with this, but stated that it would “probably not work”. The Student went to the other classroom several times, refused to go other times, and the intervention was discontinued.

13. On September 26, 2016, the IEP Team met to review the Student's BSP, SSP and IEP. The Parent expressed concerns that the Student was receiving all “0's” on the Daily Behavior Tracker, and that this negativity was influencing the Student in the CARE program. The Parent also questioned the District's decision on Extended School Year (ESY) eligibility, made at the May 12, 2016 IEP meeting. The Parent asked:
 - a. For clarification about when and how parents are notified after a restraint situation;
 - b. Which District staff had participated in OIS training;
 - c. For a review of the services the OT had provided thus far in the school year;
 - d. What the Student was doing academically daily in the classroom; and,
 - e. What reinforcement strategies were being used with the Student?

The Parent also expressed concern that the District was not providing enough support to the Student from the Behavioral Specialist. The Parent's Attorney stated that the Daily Behavior Tracker did not match the Student's IEP goals and objectives. The Parent also suggested that the District might need to consider using a two person OIS hold with the Student, as the Student is growing. The District told the Parent that the District would not add a two-person hold to the Student's plan after consultation with the OIS Director. The OIS Director advised the District that for an eight year old child a two-person hold could be very demeaning and overly invasive.

The District agreed to work on coordinating the IEP goals and the Daily Behavior Tracker, noted that it is still gathering information to be used in determining ESY needs, and agreed to gather samples of the Student's academic work. Finally, the Parent requested an opportunity to visit two other SLC-B classrooms in the District, as the Parent questioned SLC-B Teacher #2's ability to manage the classroom. The Executive Director told the Parent that the Executive Director did not believe either of those classrooms would be a good placement for the Student.

14. After this meeting, the District added some informational statements to the Student's present level of academic achievement and functional performance (PLAAFP) statement that reflected concerns and items discussed at the IEP Meeting. In addition, the District updated the Student's current level of functioning in each goal area. After reviewing the Student's BSP, the District added a goal in Social Skills: “Given direct instruction in calming strategies to regulate frustration and emotions and, a visual prompt, the Student will use calming strategies when starting to get frustrated (yellow zone) on 8 out of 10 opportunities as observed by teachers”. The District increased the amount of SDI in Social Skills to 250 minutes per week, and added 120 minutes per week of consultation from the Behavioral Specialist to Supports for School Personnel.
15. Finally, the District noted in the Student's SSP that attempting to leave the school building had become an issue, and stated that the District staff would notify the CARE program staff each day about the Student's behavior during the school day.

16. From September 21, 2016 through October 5, 2016, the Student struggled in both the SLC-B classroom and the CARE program. On Monday, September 26, 2016, the Student was suspended from school for half of the day, arriving at school at 11 a.m. During the remaining three days that week (no school that Friday), the SLC-B classroom had to be cleared twice due to the Student's behavior, and on the third day of that week, the Student had multiple instances of yelling, running and teasing in the classroom. On October 5, an Elementary Assistant Principal from another school had to come to the SLC-B classroom because the Student was being physically aggressive. The Student was suspended for the remainder of the day.
17. The Parent's Attorney talked with the Executive Director and then relayed several messages to the Parent via email on October 5, 2016. In the email the Attorney noted that the District was unwilling to move the Student to another SLC-B class in the District because of specific conditions in each of those classes. The Attorney also informed the Parent that the Executive Director was willing to create a separate physical space in the classroom for the Student that may help the Student decrease disruptive behaviors. The Executive Director also stated that the District was trying to define the antecedents which were triggering the Student to be disruptive, but that there was no discernable pattern. The Executive Director noted that the District had added additional staff to the classroom, and that the Behavior Specialist was providing more support to the classroom. In addition, the school team was going to add more breaks, an earlier lunch time, and more preferred activities such as walking and basketball.
18. The District organized an IEP Meeting for October 7, 2016. On the Meeting Notice the District said the purpose of the meeting was to review the IEP and placement for the Student. The Parent and Attorney attended via conference call from the Attorney's office. At the beginning of the meeting the Coordinator for SLC-B Classrooms announced that the meeting was a problem-solving meeting and not an IEP meeting. During the meeting, the Coordinator for Special Education and Evaluation suggested that the team could change the current meeting to an IEP meeting. The Attorney then noted that there was no general education teacher present and that the Parent had not been notified that no general education teacher would be present. Although the Attorney and the Parent agreed to sign a written agreement excusing the general education representative, no paperwork was signed at this meeting.

The IEP Team discussed the events of October 5, 2016, and the Parent requested a new placement for the Student. District staff provided information about three separate out of District programs designed to serve students with behavioral and emotional needs. The IEP Team also suggested that the Student could return to the SLC-B classroom on a shortened-day basis, or that the District could provide Home Instruction Tutoring at another District facility on a one-to-one basis for two hours per day. The Parent was not pleased with any of the options, but did agree to meet District staff at the Tutoring Center on October 10, 2016 for a tour and explanation of the Tutoring Program. The District suggested some additional assessments and the Parent and the Attorney agreed with this. The Coordinator of Special Education and Evaluation asked if the Parent would like to meet on October 10, 2016 to sign the Consent to Evaluate and a new placement page to reflect the decision the IEP Team had made to change the Student's placement to Home Instruction Tutoring at this meeting.

19. The Coordinator of Special Education and Evaluation met the Parent at the Tutoring Center on October 10, 2016. The Parent disagreed with the way the Placement Determination paperwork was completed and refused to sign it, as well as the Written Agreement to excuse a general education teacher. The Parent signed the Consent to Evaluate. The District agreed

to schedule another IEP meeting, and gave the Parent a Meeting Notice for a meeting on October 17, 2016 to discuss "Outside Placement Options".

20. The IEP Team met again on October 17, 2016. At this Meeting, the IEP Team reviewed the Parent's concerns about the Student's year-to-date experience with school, and shared information from some assessments the District staff had completed. District staff told the Parent that an opening would soon be available in a regional program that serves students with behavioral and emotional disabilities. The Parent agreed to this placement, but asked if the Student could return to the SLC-B in the interim. The Parent expressed concerns that the Home Instruction Tutoring would not be motivational for the Student and could lead to further serious behavior problems. The other members of the IEP Team believed that the tutoring could be very successful for the Student and the IEP Team made the decision to place the Student there until a placement at the regional program was available, even though the Parent disagreed. The Parent noted the disagreement in writing on the Placement Determination form. The Student did not attend the SLC-B classroom again, but started Home Instruction Tutoring on October 18, 2016 and continued until November 7, 2016.

21. At the Parent's request, a meeting took place on November 1, 2016. Participants in this meeting included the Parent, the Parent's Attorney, the Executive Director of Student Support Services, the Coordinator of Early Childhood and Special Education, and the Associate Director of Elementary Programs. At this meeting, the Parent again expressed many of the concerns expressed in earlier meetings. The Parent requested a very specific list of items from the District. These items were:

- a. A list of triggers that cause the Student's disruptive behaviors;
- b. A list of interventions used with the Student prior to and during the week the Behavior Specialist taught the class;¹⁰
- c. Samples of the Student's academic work;
- d. Information about the reasons the Student was suspended from the CARE program;
- e. A copy of the Debrief form from the Restraint episode on October 5, 2016;
- f. A service log notating what OT services the Student had received year to date;
- g. A list of interventions that the SLC-B teacher #2 employed when the Student was in that classroom, and;
- h. Credentials of the Behavioral Specialist.

22. SLC-B teacher #2 wrote IEP goal Progress Reports on November 23, 2016, which were sent to the Parent with the Student's report card at the end of the first trimester. These reported on progress the Student had made in both the SLC-B classroom and in the Home Instruction Tutoring. They are as follows¹¹:

Area:	Goal Area	End of Grade 2 in SLC-B class	SLC-B	Tutoring
Behavior	Safety	99.8%	62 %	90%
	Responsibility	95.2%	57%	90%
	Kindness		56%	95%
Reading	Correct Words Per Min.	22 CWPM	30%	70%

¹⁰ The Behavior Specialist taught the class in late September for a couple of days so that the teacher could observe in other SLC-B classrooms. The Behavior Specialist is a former SLC-B teacher.

¹¹ Progress Report data from the end of the 2nd grade year in SLC-B is reported for comparison.

	Comprehension	47 th percentile	20%	70%
Math	Addition & Subtraction	28 th percentile	70%	75%
	Multiplication			50%
Social Skills	Reciprocal peer relationship	Earned 99% of all possible points in this area	2/10	NA
	Appropriate reactions		0/10	9/10
	Appropriate levels of intimacy, words and behaviors		0/10	8/10
	Use appropriate words and actions		0/10	7/10
Social Skills	Use of Zones of Regulation	NA	8/10	8/10
	Identify current zone	NA	5/10	8/10
Writing	Sentence Writing	Making Good progress	60%	
	On Topic		70%	75%

23. The District provided copies of all materials the Parent requested over the course of Fall 2016. Sometimes, District staff sent the materials via email directly to the Parent and sometimes the District staff sent the materials to the Parent by email via the Parent's Attorney. The provision of these materials was usually done at the Parent's or Attorney's request.¹²

IV. DISCUSSION

Access to Student Education Records:

The Parent alleges that the District violated the IDEA when it:

- a) Did not provide the Parent with information about the Student's academic progress, after the Parent requested such records.
- b) Did not provide the Parent with a copy of the IEP as revised on September 26, 2016 in a timely fashion.
- c) Did not provide the Parent with information from the Occupational Therapist and Behavioral Specialist as per the Parent's request.

a. Information about Academic Progress

As per OAR 581-015-2300 (3), a District meets its responsibility when it complies with a parent's request to inspect and review records without unnecessary delay and within specified timelines. For school age children, a District must provide records asked for in a general parental request no more than 45 days after the request is made.

During Open House at the beginning of the school year, the SLC-B Teacher #2 informed parents that the Teacher would not require homework of students for the 2016-2017 school year, but would provide "Study Packets" if parents requested them. In addition, the Teacher told parents the Teacher would be gathering samples of students' academic work into portfolios which would be available to parents at various times of the year. Although this Parent was unable to attend the

¹² The Parent suggested that the Department's Complaint Investigator interview the Parent's attorney, but then did not give permission to the complaint investigator when asked at the interview.

Open House, the Parent and the SLC –B Teacher #2 met the next day and discussed these two practices with the Parent. The SLC-B Teacher #2 did send some copies of the Student's academic work home and the District gave the Parent copies of some of the Student's work completed during the Home Instruction Tutoring period. The District also provided Progress Reports for the Student on three occasions during the period covered by this Complaint and also provided report cards for the Student. The Student's academic progress was also discussed with the Parent during the numerous meetings that occurred during the timeframe for this Complaint.

The Department does not substantiate this portion of the allegation.

b. Copy of IEP

During the interview process, the Parent told the Department's Complaint Investigator that the Parent had received a copy of the IEP, and that this was a non-issue which should not have been included in the Complaint.

The Department does not substantiate this portion of the allegation.

c. Information from Occupational Therapist and Behavior Specialist

On the Student's IEP, the provision of services from the Occupational Therapist (OT) and Behavior Specialist are identified as supports to staff, not as Specially Designed Instruction or Related Services provided directly to the Student. In this case, the OT planned to check in with the SLC-B Teacher #2 after several weeks of school to see what Occupational Therapy or sensory needs the Student might be exhibiting. The OT had followed this same pattern the previous year, and on three different occasions the SLC-B Teacher #1 informed the OT that the Student was demonstrating no sensory issues.¹³ On one occasion in September, 2016, the OT was in the school and witnessed the Student being out of control, but the situation was being monitored and attended to by other school staff. Because the OT had not yet formally observed the Student or consulted with the SLC-B Teacher #2, the OT had not generated any log. Therefore there was no log to share with the Parent.

There are two Behavior Goals in the Student's IEP: Demonstrating Kind Behavior and Demonstrating Safe Behavior. The Kind Behavior Goal was to be measured through observation and probes, and the Safe Behavior Goal was to be measured by teacher observations. The Daily Behavior Tracker utilized to record the Student's behaviors each day was completed and provided to the Parent. The Behavior Specialist was also involved in revising the Student's Behavior Support Plan, which was provided to the Parent.

The Behavioral Specialist was involved in the Student's classroom to a significant degree, even substituting for the SLC-B Teacher #2 when the Teacher went to observe other programs. The Behavioral Specialist was present in the classroom several times when the Parent came to pick up the Student after a disciplinary incident, and did talk with the Parent at other times as well. Again, according to the Student's IEP the support provided by the Behavioral Specialist was directed to the SLC-B Teacher #2, and to the classroom assistants. Although the Behavioral Specialist kept a written log of the coaching provided to SLC-B Teacher #2, and noted on disciplinary records when and how the Behavioral Specialist was involved in an incident with the Student, the Behavior Specialist generated no other significant paperwork. Behavior Support

¹³ September 30, 2015; December 16, 2015 and April 13, 2016. (District, pp. D334)

Plans and Student Safety Plans were written by the SLC-B Teacher #2 and the School Psychologist.

The Department does not substantiate this portion of the allegation.

When IEP's Must Be in Effect:

The Parent alleges that the District violated the IDEA when it:

- a) Did not provide specially designed instruction as per the IEP written on May 12, 2016 from September 6, 2016 until the Student was enrolled in a specialized regional classroom in another District;
- b) Did not implement the Student's safety and behavioral support plan as per the IEP written on May 12, 2016 from September 6, 2016 until the Student was enrolled in a specialized regional classroom in another District.
- c) Did not implement the Student's May 12, 2016 IEP or the IEP as revised on September 26, 2016 and October 17, 2016 during the Student's attendance at a District afterschool care program.

As per OAR 581-015-2220 (1), a district meets its responsibility when it has an IEP in effect for a student at the beginning of each school year, and when it provides the Special Education and related services notated on that IEP.

a. Provision of Specially Designed Instruction (SDI)

The Student worked in small groups, one-to-one settings and with many different types of materials over the course of the twenty days the Student was in the SLC-B classroom. SLC-B Teacher #2 and two SLC-B assistants all described a variety of ways in which they provided SDI to the Student. The Tutor also described a variety of methods and instructional systems the Tutor used with the Student in the one to one setting. When the Student was placed in the Home Instruction Tutoring setting, the Student worked exclusively one-to-one with a Tutor. According to the Daily Behavior Tracker data, in 20 days in the SLC-B classroom, the Student was on-task 75% of those days in Reading and 65% of those days in Math.

There is no doubt that the Student was struggling with multiple self-regulation and behavior issues during the time in the SLC-B classroom. However, a review of behavioral data, the Student's Progress Reports, and interviews with staff provided persuasive evidence that the Staff worked very hard to present SDI. Given the detail of the information presented in the interviews by District staff and a review of the Daily Behavior Trackers and Progress Reports, the Department concludes that the District provided as much SDI as possible given the Student's self-regulation and other behavioral issues.

The Department does not substantiate this portion of the allegation.

b. Implementation of Safety Plan and Behavior Support Plan

There is evidence that the District implemented the Student's BSP and SSP during the time the Student attended District programs. The District provided the Department's Complaint Investigator with copies of the Student's Daily Behavior Tracker and of disciplinary paperwork which described the Student's behavior incidents in detail. In these documents there are many instances when Staff recorded the options, supports and alternatives offered to the Student to help the Student de-escalate behavior.

The Department does not substantiate this portion of the allegation.

c. CARE Program

The third part of this allegation is that the District did not implement the Student's IEP in the CARE program. In OAR 581-015-2070 (1), Non-Academic Services, Districts are mandated to provide "supplementary aids and services determined appropriate and necessary by the IEP team to provide non-academic and extracurricular service and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities." At no time has an IEP Team determined that it was necessary for the Student to be enrolled in the CARE program in order to receive a Free Appropriate Public Education, nor is the CARE program mentioned anywhere in the Student's IEP.

The Department does not substantiate this portion of the allegation.

Review and Revision of IEP's:

The Parent alleges that the District violated the IDEA when it refused to review and revise the safety plan in the Student's IEP after the Parent requested such a review.

According to OAR 581-015-2225 (1)(b)(C)(D)(E), a District meets its responsibility when it conducts an IEP meeting to review and revise the student's IEP when the parent has provided information about the child, when there are concerns about the child's needs, and/or when other matters indicate the need for such review and/or revision.

The Parent alleged that the District refused to review and revise the Student's Safety Plan (SSP) referenced in the IEP. The Safety Plan outlines the conditions under which an OIS Belt-Shirt hold could be used to restrain the Student for no more than 10 seconds at a time. Specifically, the Parent wanted the District to change the SSP to include the use of a two-person OIS hold. The District refused to make this change on the advice of the OIS Director. The BSP and SSP were reviewed at every meeting. After such a review on September 26, 2016, the District wrote a new goal for calming strategies, increased the amount of SDI in Social Skills to 250 minutes per week and added 120 minutes of Behavioral Specialist support to the IEP. In the same meeting, the District revised the SSP to address the issue of the Student running from the classroom or school building.

The Department does not substantiate this portion of the allegation.

Placement of the Child and Requirement for Least Restrictive Environment:

The Parent alleges that the District violated the IDEA when it

- a) Placed the Student in an inappropriate classroom with younger students without benefit of an IEP meeting. (OAR 581-015-2250 and 34 CFR 300.116 and 300.327);
- b) Placed the Student in the "Homeschool" program for only two hours per day. The Parent alleges this environment was an unnecessarily restrictive environment for the Student and that it deprived the Student of participation with non-disabled peers. (OAR 581-015-2240 and 34 CFR 300.114)

Under OAR 581-015-2250, a district meets its responsibility when it ensures that a student with a disability is placed in an educational setting determined by a group of persons, based on the student's IEP, determined at least annually and is as close as possible to the student's home. In accordance with OAR 581-015-2240, a district must ensure that a student is educated in a setting which includes students without disabilities; and that a district may only place a student in a more restrictive environment when the "nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily".

a. Placement in Inappropriate Classroom

The Parent alleges that the District placed the Student in an inappropriate classroom without benefit of an IEP meeting. Actually, the District suggested a behavioral intervention in an attempt to create time in the Student's day when the Student could work with younger students and a teacher with whom the Student had an excellent relationship. The intent was to put the Student in a leadership role and thus provide a positive experience for the Student. The Coordinator suggested the idea to the Parent in a phone call, and the Parent agreed to the intervention. However, the Parent did tell the Coordinator that the Parent believed it would not work. After approximately six times, it was determined that this was not successful and this intervention was discontinued.

The Department does not substantiate this portion of the allegation.

b. Placement in Unnecessarily Restrictive Environment

The Parent also alleges that the District placed the Student in an unnecessarily restrictive environment where the Student had no opportunity to interact and learn from normally developing peers. Over the Parent's objections, the IEP Team changed the Student's placement to two hours of Home Instruction Tutoring daily (to take place at a different elementary school) after the Student exhibited multiple instances of injurious behavior in the SLC-B classroom, and supplementary aids and services did not help the Student to be safe. The plan was for the Student to ultimately be placed in a program run by the local ESD for students with emotional and behavioral needs; however that program did not have an open slot for the Student for approximately two to three weeks. The Student was ultimately in the "Homeschool" setting for eleven days, during which the Student's tutoring focused on academic skills and the Student made progress.

The Department does not substantiate this portion of the allegation.

Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

The Parent also alleges that the District violated the IDEA when it:

- a) Removed the Student from the Student's IEP placement to a "Homeschool" placement for two hours daily without conducting a Manifestation Determination after more than 10 school days suspension.

As per OAR 581-01-2415, a district meets its responsibility to a student with a disability when the district considers whether a student's behavior is a manifestation of the student's disability before removing the student from school after 10 suspended school days.

Here the Parent alleges the District moved the Student to a "Homeschool" placement for two hours daily and did not consider whether the Student's behavior which prompted this move was a manifestation of the Student's disability. A district must consider this when the student has been suspended from school for more than 10 days and those suspensions constitute a pattern or are consecutive days. In this case, the Student had been suspended for 1.5 days before the Student was moved to the Tutoring Program. This was a placement change made by the IEP Team rather than a disciplinary removal, therefore no Manifestation Determination was necessary as the Student was not suspended for more than 10 days.

The Department does not substantiate this allegation.

CORRECTIVE ACTION¹⁴

In the Matter of North Clackamas School District
Case No. 16-054-037

The Department orders no Corrective Action resulting from this investigation.

Dated: this 26th day of January 2017



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

Mailing Date: January 26th, 2017

¹⁴ 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)).