

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Hillsboro School District )  
School District # 1J )  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 17-054-004

**I. BACKGROUND**

On February 16, 2017, 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 Hillsboro School District 1J (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 February 16, 2017.

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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On February 21, 2017, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 7, 2017. On February 27, 2017, the District submitted a *Response* indicating they disputed all of the allegations in the Parent's Complaint.

The Complaint Investigator conducted a preliminary interview with the Parent via phone call on February 17, 2017 to clarify Parental concerns alleged in the complaint, plus an additional phone call to the Parent on February 19, 2017 to confirm delivery of and any questions about the Oregon Department of Education Mediation Handbook which the Complaint Investigator sent to the Parent via email. Additionally, the Complaint Investigator formally interviewed the Parent on March 13, 2017, again by phone as per the Parent's request. The Parent did not submit any additional information upon receipt of the District's *Response* to the Complaint allegations or the District's submitted documents as per the required *Request for Response*.

The Complaint Investigator determined that on-site interviews were needed. On March 14 and March 15, 2017 the Complaint Investigator interviewed fifteen District staff members including the District's Special Education Executive Director, District Special Education Director, the District Program Coordinator for the elementary schools the Student had attended during the 2015-2016 and 2016-2017 school years, two Program Support Specialists, the Student's Extended School Year (ESY) Special Education Teacher for the past 5 years, the Student's Special Education Life Skill Teachers from both the 2015-2016 and 2016-2017 school years, the District's Adaptive Physical Education Teacher from the

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)  
<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

past 4 years, the District's Autism Consultant, the elementary school Principal from the 2015-2016 year and the new Principal from the 2016-2017 school year, the District's Speech and Language Pathologist, The District's Behavior Specialist, The District's Home Tutor, the Special Education Teacher and the Student's primary Instructional Assistant for the 2016-2017 school year.

Additionally, the Complaint Investigator conducted on-site interviews at the Hospital, where the Student was residing, with three of the Psychiatric Hospital School Staff that included the Special Education Teacher and Instructional Assistant, and the Educational Service District Administrator overseeing the hospital school program.

The District provided all requested documents and additional documents during the interview process as requested by the Complaint Investigator. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

The following is a list of documents submitted by the District:

1. Emails updated the progress and status of the complaint from the District's Executive Director from February 21-27, 2017.
2. After interview emails from the District documenting the Student's attendance, the Life Skills teacher's absences, and the Life Skills classified staffing sheets from the Student's elementary school for the fall of 2016 and the District school calendar for 2016-2017.
3. District Meeting notes from 1/31/2017 IEP team meeting.
4. Parent email dated 11/2/2016 to District announcing Student's hospitalization.
5. Fall 2016 Discipline Notes, Protective Physical Intervention Incident reports
6. District's Prior Notice of Special Education Action (PWN) of the Student's drop from the District enrollment due to nonattendance
7. IEP, IEP meeting minutes and PWN for 10/25/16 IEP meeting
8. 9/26/16 Meeting Notice for 10/25/16 IEP meeting
9. Protective Physical Intervention Incident reports from 10/12/16
10. Life Skills Classroom schedule for fall, 2016
11. Life Skills Teacher's google docs, Fall 2016
12. Sub Plans for Life Skills Classroom for Student, 10-19-2016
13. Life Skills Crisis Plan for Student 10/19/16
14. School Incentive Plan for Student
15. Brain Break/Mapping for Self-Calming, Self-Directed for Student, 10/24/16
16. Draft of description of behaviors and interventions for Student, 10/24/16
17. Student's Social Stories, Fall 2016
18. Most recent Behavioral Support Plan, revised 1/20/16
19. Prior Notice Consent for Evaluation of FBA and Behavioral Support Plan 9/7/16
20. IEP and meeting minutes for 9/16/16 IEP meeting
21. PWN 9/16/16 to fix clerical errors on Service Summary page from 6/7/16 IEP
22. PWN for 9/16/16 IEP team meeting sent 9/13/16
23. Written Agreement between Parent and District 9/16/16
24. 2016 ESY Teacher Interview notes
25. Notice of Team Meeting, 6/1/16
26. IEP and meeting minutes, 6/7/16

27. PWN from IEP meeting 6/7/16
28. PWN from IEP meeting 5/13/16
29. Written Agreements between Parent and District 5/13/16
30. IEP and meeting notes 5/13/16
31. Notice of Team Meeting sent 5/9/16 for IEP
32. Protective Physical Intervention Incident reports for 2015-2016 school year
33. Behavior Summary April-May, 2016
34. Date Review meeting notes from 4/25/16 meeting
35. Student Incident Reports 1/25/16-2/24/16
36. Progress Notes from 2015-2015 School Year
37. Behavior Cadre schedules, notes for 2015-2016
38. Safety Plan from 12/14/15
39. PWN from 11/4/15 IEP meeting
40. IEP and meeting minutes 11/4/2015
41. Notice of Team meeting sent 10/25/15 for IEP
42. 2015 ESY PWN, Transportation Plan, ESY worksheet
43. Progress Notes for 2014-2015 school year
44. IEP from 11/17/14
45. Most recent eligibility statement, report and date correction

Additional emails submitted by the District:

1. District administrative emails 2/16/ through 2/21, 2017
2. Emails updating the progress and status of the complaint from the District's Executive Director from February 21-27, 2017
3. After interview emails from the District documenting the Student's attendance, the Life Skills teacher's absences, and the Life Skills classified staffing sheets from the Student's elementary school for the fall of 2016 and the District school calendar for 2016-2017.
4. Emails from Fall 2016 Life Skills teacher
5. Emails from the Fall 2016 elementary school
6. Emails from the Fall 2016 Program Specialist
7. Emails from the Adaptive PE Specialist
8. Emails from 2015-2016 Life Skills teacher
9. Emails regarding behavior for 2015-2016
10. Emails from the 2015-2016 elementary school year staff

## **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 February 17, 2016 to the filing of this complaint on February 16, 2017.<sup>3</sup>

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<sup>3</sup> This Order is based on the review of all submitted documents and interviews.

	<b><u>Allegations:</u></b>	<b><u>Conclusions:</u></b>
1	<p><b>When IEPs Must Be in Effect:</b></p> <p>The Parent alleges the District violated the IDEA when:</p> <p>(a) It did not provide a one-to-one Educational Assistant as written in the IEP at the start of the 2016-2017 school year.</p> <p>(b) It did not adequately staff the Life Skills Classroom at the elementary school for the Student at the start of the 2016-2017 school year.</p> <p>(c) It did not want to work with the Student due to the Student's behaviors related to the Student's disabilities, as stated by the District's representative at a hospital team meeting in November, 2016.</p> <p>OAR 581-015-2220(1)(a)(b); 34 CFR 300.323(a)</p>	<p><b><u>Not Substantiated</u></b></p> <p>(a) The Student's IEP did not include this provision. The fall 2016-2017 IEP (amended June 7, 2016) stated "Additional Adult Assistance to be provided for all transitions within and outside the classroom, for the cafeteria, and for novel learning." The IEP amended on September 16, 2016, stated "Additional Adult Assistance to be provided for all transitions within and outside the classroom, recess and changes in routines."</p> <p><b><u>Not Substantiated</u></b></p> <p>(b) The District's Life Skills Classrooms were staffed across the District with the ratio of one adult per two students (not including the teacher) at a minimum and with the provision for additional immediate support via administrative request as needed for individual student needs. The Life Skills Classroom was staffed adequately to meet the Student's needs.</p> <p><b><u>Not Substantiated</u></b></p> <p>(c) There is no documentation in any of the records submitted or from any of the interviews conducted that support this allegation.</p>

<p>2.</p>	<p><b>Placement of the Student:</b></p> <p>The Parent alleges that the District violated the IDEA when:</p> <p>(a) It did not provide an appropriate Placement for the Student in the fall of the 2016-2017 school year.</p> <p>(b) It did not offer more than one hour per day of home tutoring as a Free and Appropriate Public Education (FAPE) Placement from November, 2016 until January 31, 2017.</p> <p>(c) It did not provide a placement referral to an appropriate treatment program designed for the Student's disability</p>	<p><b><u>Not Substantiated</u></b></p> <p>(a) Spring 2016 IEP Meetings on May 13, 2016 and June 7, 2016 and fall IEP Meetings on September 16, 2016 and October 25, 2016 reflect the IEP Teams' consideration of the level of the Student's current academic and functional performance, a review of behavior data and a continuum of placement options appropriate for the Student given the Student's current level of functioning. At each IEP Meeting the IEP Team, including the Parent, selected the placement option chosen as being most appropriate for the Student.</p> <p><b><u>Not Substantiated</u></b></p> <p>(b) The Student was placed by the Parent in a private hospital's child and adolescent psychiatric ward on November 1, 2016 due to out of control behavior at home that constituted an emergency response. The Student remained in the psychiatric hospital setting until discharge on February 24, 2017. The Student was dropped from the District's enrollment after 10 days of consecutive absences as per OAR 581-023-0006. Multnomah ESD provided services to the Student during the hospitalization. The District stood ready to provide Special Education services to the Student upon re-enrollment in the District.</p> <p><b><u>Not Substantiated</u></b></p> <p>(c) The District continued to participate in the Student's hospital team meetings throughout the Student's</p>
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and complex needs despite the Parent and hospital team's request for such a placement.

hospitalization from November 1, 2016 until discharge on February 24, 2017. On January 31, 2017, an IEP Meeting was held to determine how to best meet the Student's needs upon discharge from the hospital. The IEP Team changed the Student's placement on the IEP to Home Instruction pending a placement at a private school upon discharge. The District also referred the Student to the private school that the Parent wanted the Student placed at via a phone call on February 8, 2017. The Student's start date was contingent upon the Student's hospital discharge, the Student's re-enrollment in the District, the Student's ability to commence school, and the availability of space at the school.

**Not Substantiated**

(d) It did not offer a continuum of alternate placement options to meet the needs of the Student and implement the IEP.

(d) The District IEP Meetings in the spring of 2016 and the fall of 2016 considered a continuum of placement options appropriate for the Student's functional and behavioral levels. Upon hospitalization of the Student on November 1, 2016 by the Parent, the District continued to work with the hospital team and attend meetings to consider updates on the Student's current level of safety and performance and potential appropriate placement options to meet the Student's needs upon discharge.

**Not Substantiated**

(e) It did not update the placement for the IEP when the Student was hospitalized in November, 2016.

(e) The Student's Special Education placement was not changed. The Student was dropped from the District's attendance rolls per OAR 581-023-0006 for nonattendance. The

<p>(f) It proposed an out-of-home placement to the Parent as a FAPE in November, 2016 through February 9, 2017.</p> <p>34 CFR 300.114(a), 34 CFR 300.115(a)(b)(1)(2), 34 CFR 300.116(a)(1)(2); OAR 581-015-2250(1)(a)(b)(c)(2), OAR 581-015-2245(1)</p>	<p>District stood ready to provide all services required by the Student's IEP upon the Student's re-enrollment and also worked with Multnomah ESD to ensure that the Student received FAPE while hospitalized.</p> <p><b><u>Not Substantiated</u></b></p> <p>(f) According to hospital and District meeting notes and staff interviews the District never proposed an out-of-home placement to the Parent as the District's offer of FAPE. An out-of-home placement was proposed for discussion and consideration to the Parent by the Service Coordinator for The Department of Developmental Disabilities.</p>
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<p><b>Requested Corrective Action</b></p> <p>The Parent requests the following action be implemented as the resolution to the Complaint:</p> <p>That the District submit a referral to the Parent's desired appropriate school placement facility.</p>
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### III. FINDINGS OF FACT

- 1) The Student was 10 years old at the time the Parent filed this Complaint. The Parent resides in Hillsboro School District 1J.
- 2) The Student was initially found eligible on February 9, 2009 for Special Education under the category of Autism Spectrum Disorder (82) and again on November 12, 2014 during a re-evaluation under the designation of Autism Spectrum Disorder while in kindergarten in the Hillsboro School District.
- 3) The Student is also diagnosed by medical professionals with Attention Deficit Disorder (ADD), Obsessive Compulsive Disorder (OCD), General Anxiety Disorder, Motor Tic Disorder and Speech and Language and Developmental Delays. The Parent also reports the additional diagnoses of Sensory Processing Disorder and Intellectual Delays.
- 4) The Student is reported to have great difficulties with any changes in routines, personnel,

settings, visual stimuli, transitions, and new or novel tasks as reported in IEP Present Levels of Academic and Functional Performance (PLAAFP).

- 5) The Student has great difficulty in regulating emotions and behaviors and responds to internal anxiety and perceived threats from the environment and others in unpredictable ways that seem to have escalated since the second half of the fourth grade. These behaviors have at times caused the Student to be a risk to himself/herself as well as others.
- 6) The Student's annual IEP Meeting was held on November 4, 2015. The IEP Team considered two placement options; "General Education Classroom with pull out to ERC as appropriate" and the selected option of "Life Skills Specialized Program" that provided "High adult to student ratio, structured and intensified individualized instruction." No Supplementary Aids/Services; Modifications were listed on this IEP and no additional adult support was indicated on the IEP other than that selected within the Placement option.
- 7) Additionally, a Prior Written Notice (PWN) from the November 4, 2015 IEP Meeting noted the Student "has made progress in the academic and functional skills over the past year, mastering several IEP goals." Further the PWN stated that the "team agrees that the Student's need for stability and routine during the summer indicates the Student already qualifies for ESY" and that "The team decided to place this in the Student's IEP now rather than waiting until the spring."
- 8) Beginning in January 2016 and continuing throughout the early spring of 2016, the Student had an increase in disruptive and aggressive behaviors. This increase was attributed by the Parent and school staff to the temporary move of the Student's family from the family home. The District requested extra help from the District's Specialized Behavior Cadre Team. A review of behavior data and Restraint and Seclusion reports by Team Members, including the Parent, at an April 25, 2016 Data Review Meeting considered if additional interventions were needed.
- 9) The Data Review Team then considered whether the IEP needed to include "rest days" or if the Student's day at school needed to be reduced. The Parent was opposed to both considerations and stated a preference to maintain the same school day length routine and use rest days for emergencies rather than formally listing them in the IEP. The IEP Team agreed that the Parent "can choose a rest day" whenever the Parent determined that the Student needed a break. The Data Review Team also noted that the Student seemed more fatigued and more easily upset in the afternoon. It was decided that the afternoon recess would be held inside rather than outside to help the Student cope with fatigue and provide closer supervision and safety of the Student. The Data Review Team continued with staff coaching support and supervision of the Student and the consistent implementation of the Behavior Support Plan by the District's Specialized Behavior Cadre. The Data Review Team also decided to have a follow-up IEP meeting to look again at the data and to consider the transition needs of the Student for the summer and fall.
- 10) The Student's IEP was amended on May 12, 2016. The IEP Team noted on the resulting

Prior Written Notice that “the team has seen a decrease in the intensity and duration of behaviors when the Student has access to and receives instruction in a small quiet space, which is provided in the break room in the Life Skills Classroom. The IEP Team agreed to create a Parallel Learning Environment (PLE) within the break room to help increase the Student’s success at school.” As a result, the IEP Team decided to change the Student’s placement to the PLE, a more restrictive setting than that listed in the November 4, 2015 IEP. No Supplementary Aids/Services/Accommodations for additional adult assistance were listed on this IEP and no additional adult support was indicated on the IEP other than that selected within the Placement option and the IEP Revision page that noted staff coaching support from the Behavior Cadre.

- 11) The IEP Team met again on June 7, 2016 to consider transition for the summer and the fall. Due to a decrease in disruptive and aggressive behaviors and perceived improvement in the Student’s self-regulation of emotions and behaviors, the June 7, 2016 IEP Team amended the Student’s Placement for the summer and the fall back to the Less Restrictive Environment of “Life Skills Specialized Program with opportunities for inclusion and access to a quiet workspace, with transition from a Parallel Learning Environment (PLE): attend PLE through 6/16/16, attend Life Skills Classroom beginning summer 2016.”
- 12) Other Clarifications and changes made to the Student’s IEP during the June 7, 2016 IEP Meeting included under Supplementary Aids/Services/Accommodations clarified the dates for “Additional Adult Assistance for all transitions within and outside the classroom, for the cafeteria and for novel learning”, and “access to quiet work space as needed.” This was a new accommodation on the IEP. The IEP revision stated that the “team discussed the Student’s behavior and progress and noted that the Student had shown a decrease in anxiety-related behaviors at home and at school since the Student’s family was able to move back into the family house. In order to make the transition to a new school successful, the Team discussed accommodations that would benefit the Student.” The IEP Service Summary page was revised to reflect the accommodations for “self-regulation breaks on at least an hourly basis, a restroom routine throughout the school day, headphones for loud settings and access to a quiet work space.”
- 13) The Prior Written Notice from the June 7, 2016 IEP Meeting noted the justified selection of a less restrictive setting for the Student in stating, “The team also agreed that due to the Student’s decreased level of anxiety-related behaviors, it is appropriate to end the PLE placement at the end of the 2015-2016 school year.” Further, “The student has a strong sense of routine, so the team felt that the Student should start the 2016-2017 school year with the same placement intended for the entire year so that the Student gets used to the new school in a predictable and consistent environment that the Student can expect for the rest of the year.”
- 14) The Parent chose to have the Student attend a new school beginning with the 2016-2017 school year. The Parent was aware of the fact that the new school setting did not have a fenced yard as the previous school had.
- 15) The Parent wrote to the Life Skills Teacher on September 6, the first day of school, which stated that a neighbor had been to the school and saw that the Student was alone in the

halls and in the bathrooms. The neighbor reported the incident to the male aide who appeared and was looking for the Student. The Parent also requested an aide for the Student. The Life Skills Teacher wrote back and told the Parent that the Student "did ok today" but "bolted" a few times while walking with a staff person. The Life Skills Teacher also stated in the email that "no student has a 1:1 aide but that there was always someone with the Student and that health and safety concerns are #1". The Parent wrote back and informed the Life Skills Teacher that the Student would not be returning to school until an aide was assigned to the Student. The Parent did not send the Student to school on Wednesday, September 7, but did send the Student on Thursday, September 8.

- 16) An IEP Meeting was convened on September 16, 2016 due to the need to fix clerical errors that were discovered on the June 7, 2016 Revised IEP as well as to clarify the level of adult support for the Student to the Parent and obtain consent for an updated Functional Behavioral Analysis (FBA). The IEP revision states "Student's IEP is being revised to correct clerical errors on the Service Summary page which included correcting start and end dates for program modifications/supports for school personnel and clarifying the accommodations of Additional Adult Assistance to be for all transitions within and outside the classroom, for the cafeteria, for recess and for changes in routines. The Student's annual IEP review will take place next month after the team has had the opportunity to get to know the Student and the Student's current strengths and needs." Consent for an updated FBA was agreed to and signed by the Parent. The original FBA from November 18, 2013 had last been updated on January 20, 2016.
- 17) The annual IEP Meeting was held on October 25, 2016. The Parent participated by phone. The Life Skills Teacher reported to the Team that the Parent had signed consent to do a new FBA to help the Team write a current Behavior Support Plan. The Life Skills Teacher let the Team know that the FBA Meeting would be scheduled upon completion of the FBA. The Student was to be on a reduced day schedule to help support the Student in settling into the new school setting. The Life Skills Teacher reported the Student was doing better during transitions and that there had been no "bolting" recently. The IEP Team changed the Placement to a more restrictive setting of "Life Skills Specialized Program with Parallel Learning Environment." Under the IEP Nonparticipation Justification the IEP states "The Student is removed from participating with non-disabled peers for 100% of the school day at this time due to the intensity of the Student's behavior." Also, the IEP states that the "Student requires specially designed instruction in the areas of social skills, self-management, writing, reading and mathematics and speech/language. Because of the intensive nature of these needs, they are best met in a small-group environment designed to specifically meet the Student's needs."
- 18) "Additional Adult Assistance" remained on the October 25, 2016 IEP under Supplementary Aids/Services. Under the PLAFF section of Self-Management, the IEP states "Due to significant changes in the Student's life the Student has shown regression in self-management, eventually leading to placement in a parallel learning environment to better support the Student's behavior learning needs." The PWN dated October 25, 2016 states, "The team will meet next month to develop a new BSP which will support the Student in the new school setting. The Student is currently attending school four hours a

day. Service times reflect the minimum amount of instruction per week.”

- 19) The Student appeared to be settling into a daily routine on a reduced day throughout the rest of October. However, on November 1, 2016 at 11:56 pm the Parent wrote an email to the Life Skills Teacher stating that the Parent had to call the 24-hour crisis hot line due to an emergency situation. The police and social worker came and the Student was taken by ambulance to the local emergency hospital room. The Student did not return to school for the rest of 2016 and was hospitalized in a psychiatric ward for children and adolescents until being discharged on February 24, 2017. The hospital's school program is run by Multnomah ESD. The Student was dropped from the District for non-attendance on November 21, 2016.
- 20) When the Student's Life Skills Teacher was absent, District administration responded by immediately assigning extra support staff to ensure that the Student's IEP could be fully implemented.
- 21) The Life Skills Teacher reported that the Student was always with an adult, that the class the Student was in had four students total with four adults plus the teacher. Thus, with a total of five adults there was always a second adult available in addition to the teacher to be with the Student if two or more adults were needed to support the Student. The Life Skills Teacher stated that additional coverage was provided to the class given the behaviors exhibited by the Student the very first day of the school year. Thus, the Student always had one if not two adults present for support to the Student in addition to the Life Skills Teacher.
- 22) The Parent alleges that during a hospital team meeting in November, 2016, a District representative stated that staff members did not want to work with the Student due to the Student's behaviors. However, District meeting notes and staff interviews indicate that no staff members refused to work with the Student due to the Student's behaviors related to the Student's disabilities. Further, staff interviews revealed that staff volunteered to work with the Student and that the Student was regarded by the staff as a "very cool and fun kid."
- 23) The Student's daily instruction depended upon the Student's ability to interact with others on that particular day. Immediately after being admitted, the Student received instruction two to three times per day in forty-five minute increments in the hospital school program with other students. As the Student's condition deteriorated, the Student rarely left the hospital room and received at most two periods of instruction of thirty minutes each in the Student's hospital room. This instruction was provided in the Student's hospital room with a 2:1 staff ratio for safety.
- 24) The determination of what would constitute an appropriate placement for the Student upon the Student's discharge remained unclear throughout January, 2017 and part of February due to the lack of stabilization of the Student's behavior and concerns for the Student's safety. The District stayed in contact with the Parent, the hospital, and the Student's Developmental Disabilities Service Manager to monitor the Student's stability and progress and to further explore placement options.

- 25) Throughout the Student's hospitalization the District stayed in contact with the hospital staff and the Parent and continued to remain involved in the Student's program planning via phone conversations with the Parent and attending meetings on January 9, 2017 and January 31, 2017. The purpose of the January 31, 2017 meeting was to determine how to best meet the Student's needs upon discharge from the hospital as well as to discuss placement options.
- 26) At the January 31, 2017 IEP Meeting, the following people attended: the Parent, Special Education Teacher, School Counselor, Support Specialist, Principal, and County Service Coordinator for Developmental Disabilities. Attending by phone were the Hospital Program Teacher, the Hospital Program Aide, and the Hospital Program Psychiatrist. The Team agreed to Home Instruction pending actual placement from the District as an interim placement upon discharge from the hospital program and re-enrollment in the District until there was availability at a private therapeutic day school for the Student.
- 27) The District called the private therapeutic day school on February 8, 2017 to put the Student on the wait list for admission.
- 28) On February 14, 2017 both the Executive Director and the Director of Special Education called the Parent to check in on the Student's progress at the hospital and reiterate the plan for the Student upon discharge. The Parent was reported to be agreeable to the plan previously discussed.
- 29) The Parent filed this Complaint with Oregon Department of Education (ODE) on February 16, 2017.
- 30) On February 22, 2017 the District got a call from the private school notifying the District that an opening had occurred unexpectedly. The District notified ODE via email that the District was moving forth with conducting an IEP meeting and formally requesting placement at the private school as soon as the Student was discharged and re-enrolled in the District. The Student was discharged on Friday, February 24, 2017. The District commenced Home Tutoring on Tuesday, February 28, 2017. At the time of the Complaint Investigator's interviews, the Student was already through the intake process for the private school placement and was anticipated to start at the private school full time the week of March 20, 2017.

#### **IV. DISCUSSION**

##### **1. When IEPs Must Be in Effect:**

The Parent alleges that the District violated the IDEA when it (a) did not provide a one-on-one Educational Assistant as written in the IEP at the start of the 2016-2017 school year, and (b) when it did not adequately staff the Life Skills Classroom at the elementary school for the Student at the start of the 2016-2017 school year, and (c) did not want to work with the Student due to the Student's behaviors related to the Student's disabilities, as stated by the District's representative at the hospital team meeting in November, 2016.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the District's jurisdiction.<sup>4</sup> Districts must provide Special Education and related services to each child with a disability in accordance with said IEP.<sup>5</sup>

**(a) The District Failed to Provide a One-to-One Educational Assistant**

The Parent alleges that the District did not provide a one-on-one Educational Assistant as written in the IEP at the start of the 2016-2017 school year. In fact, the Student's IEP never states that the Student would be provided with a one-on-one Educational Assistant in any of the IEPs submitted by the District, including the IEP from June 7, 2016 which was the IEP for the Student at the start of the school year. That IEP stated under Supplementary Aids/Services that the Student would have "Additional Adult Assistance for all transitions within and outside the classroom, for the cafeteria and for novel learning." It was, however, the practice of the District to have an adult with the Student at all times and the availability of additional adult support whenever needed. The Life Skills Teacher reports that there was always at least one adult with the Student. The Principal and District administrators state that the District provided additional staffing coverage as needed and/or requested by staff members.

The Department does not substantiate this portion of the allegation.

**(b) The District Failed to Adequately Staff the Life Skills Classroom**

The Parent alleges that the District did not adequately staff the Life Skills Classroom at the elementary school at the start of the 2016-2017 school year. The Student's Life Skills Program was staffed consistently with the across-the-District staffing allocation for all Life Skills Programs of one adult for every two students, not including the teacher. Further, the District's staffing policy allowed building Principals to immediately request and allocate an additional 150 hours of Educational Aide time prior to permanently hiring more staff. The Student's Principal did invoke the use of this policy by immediately requesting additional staffing as per the District policy for the Student's Life Skills Program.

The Department does not substantiate portion of the allegation.

**(c) Staff Members Did Not Want to Work with the Student**

The Parent alleges the District did not want to work with the Student due to the Student's behaviors related to the Student's disabilities. The Parent alleges that this was said by the District's representative at the hospital team meeting in November 2016. At no time in any documents or meeting minutes was this allegation substantiated. Further, District staff members denied this allegation during interviews with the Complaint Investigator. In fact, all staff reiterated their desire to work with the Student in any capacity that would help the Student be successful.

The Department does not substantiate this portion of the allegation.

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<sup>4</sup> OAR 581-015-2220(1))a)

<sup>5</sup> OAR 581-015-2220(1)(b)

## **2. Placement of the Student:**

The Parent alleges that the District violated the IDEA when it (a) did not provide an appropriate Placement for the Student in the fall of the 2016-2017 school year; (b) did not offer more than one hour per day of home tutoring as a Free Appropriate Public Education (FAPE) Placement from November, 2016 until January 31, 2017; (c) did not provide a placement referral to an appropriate treatment program designed for the Student's disability and complex needs despite the Parent and hospital team's request for such a placement; (d) did not offer a continuum of alternate placement options to meet the needs of the Student and implement the IEP; and (e) did not update the IEP when the Student was hospitalized in November, 2016, and (f) proposed an out-of-home placement to the Parent as a FAPE in November, 2016 through February 9, 2017.<sup>6</sup>

### **(a) The District Did Not Provide an Appropriate Placement**

The Parent alleges that the District violated the IDEA when it did not provide an appropriate placement for the Student in the fall of the 2016-2017 school year. IDEA requires that the placement be determined by the IEP team.<sup>7</sup> The Student's IEP dated November 4, 2015 was in effect at the beginning of the 2016-2017 school year and the IEP Team met in June, 2016 at the end of the Student's 4th grade year to amend the IEP and determine placement for both the ESY summer session and the fall of the Student's 5th grade year. The Parent was a part of the IEP Team and the IEP Team determined the placement for the Student based on the Student's current level of functional and behavioral performance as per the Student's Present Level of Academic Achievement and Functional Performance (PLAAFP) in the IEP. The IEP Team considered a continuum of placement options for the Student and selected the appropriate placement under which the Student began the 2016-2017 school year.

The Department does not substantiate this allegation.

### **(b) The District Did Not Provide FAPE During Hospitalization**

The Parent alleges the District did not offer more than one hour per day of home tutoring as a Free Appropriate Public Education (FAPE) placement from November, 2016 until January 31, 2017. The Student was hospitalized by the Parent due to out-of-control behavior at home on November 1, 2016. The Student was dropped from District enrollment on November 21, 2016 upon missing ten consecutive days of school. The Student remained hospitalized in the Child and Adolescent Psychiatric Treatment until discharge on February 24, 2017, with the exception of a six-hour trial return to home over Thanksgiving break upon which the Student was again hospitalized continuously until the Student's discharge. During this time, the District coordinated with the education staff at the hospital, provided by Multnomah ESD, in anticipation of the Student's return to the District. The amount of instruction provided to the Student was limited by the Student's condition.

The Department does not substantiate this portion of the allegation.

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<sup>6</sup> OAR 581-015-2040, 34 CFR 300.327

<sup>7</sup> OAR 581-015-2250(1)(a)

**(c) The District Did Not Provide a Placement Referral to an Appropriate Treatment Program**

The Parent alleges the District did not provide a placement referral to an appropriate treatment program designed for the Student's disability and complex needs despite the Parent and hospital team's request for such a placement. The District initially did not provide a formal referral to any treatment program since the Student was hospitalized out of the District and not yet enrolled back in the District. An IEP Meeting was held on January 31, 2017. During this IEP Meeting, the IEP Team determined that home instruction should be in place immediately following the Student's release from the hospital, assuming the Student was re-enrolled in the District.

As reflected in the IEP and Meeting Notes, "Home Instruction pending placement" was decided upon since the hospital release date, the mental health/behavioral status of the Student, and the living arrangement for the Student upon discharge from the hospital were unknown at that time. At the IEP Meeting, the Parent stated the Parent had concerns about the Student going immediately from the hospital back to school or to an alternative living situation.

The Parent visited a private therapeutic day school after the January 31, 2017 IEP Meeting. The District's Student Services Director called this school to ask about enrollment and tuition information. At this time, it was not clear if the Student would return to the District since the Parent and the Developmental Disabilities Coordinator had been seeking an appropriate out-of-home placement and visiting possible residential home placements.

On February 13, 2017 both the Executive Director of Student Services and Special Education and the Special Education Director called the Parent to tell the Parent that the Student was on the top of the waiting list at the private school and that when the Student was re-enrolled back into the District the District would make a formal referral to the private school and that an IEP meeting would be convened to formalize the placement. They reviewed the interim plan with the Parent for home tutoring immediately following discharge and pending placement at the private school. The Parent filed this Complaint on February 16, 2017. The District proceeded to complete a formal referral to the private school on February 24, 2017. It should be noted that at that time the Student was still out of the District and in the hospital.

The Department does not substantiate this portion of the allegation.

**(d) The District Did Not Offer a Continuum of Alternative Placement Options**

The Parent alleges the District violated the IDEA when it did not offer a continuum of alternative placement options to meet the needs of the Student and implement the IEP. In fact, the District did offer a continuum of placement considerations at all five IEP meetings held from the fall of 2015 through January of 2017. These placement options were appropriate for the level of functioning of the Student at these times. The Student's present levels of academic achievement and functional performance was considered at each of the meetings. At the time of the Meeting on January 31, 2017, in anticipation of the Student's return to the District.

The Student had been hospitalized for nearly three months and the Student's needs upon discharge were unclear at that time. The District offered a placement plan of home tutoring for the interim return to the District upon hospital discharge pending an IEP meeting to establish a more long term placement. The Parent agreed to this placement.

The Department does not substantiate this portion of the allegation.

**(e) The District Did Not Update the Student's Placement During the Student's Hospitalization**

The Parent alleges the District violated the IDEA when it did not update the IEP when the Student was hospitalized in November, 2016. The District did not update the IEP placement page when the Student was hospitalized in November, 2016. The Student was placed by the Parent out of the District in a private hospital where school services were provided by a regional Educational Service District. The Student was dropped from the District's rolls for non-attendance under OAR 581-023-0006. The District stood ready to implement the Student's IEP upon the Student's reenrollment and coordinated with Multnomah ESD to ensure that the Student received FAPE during the hospitalization. The District participated in the Student's progress meetings and also stayed in touch with the Parent regularly throughout the Student's hospitalization. In anticipation of the Student's eventual return to the District, the District convened an IEP Team Meeting on January 31, 2017 in order to be prepared for the Student's return. The IEP was not updated because the Student was not enrolled in the District.

The Department does not substantiate this portion of the allegation.

**(f) The District Proposed an Out-of-Home Placement**

The Parent alleges the District proposed an out-of-home placement to the Parent as a FAPE in November 2016 through February 9, 2017. There is no evidence that the District proposed any out-of-home placement at any meeting at any time. The Developmental Disabilities Service Coordinator was working with the Parent to secure placement at various out-of-home locations to which the Student could transition to upon release from the hospital should such a placement be necessary.

The Department does not substantiate this portion of the allegation.

**Additional Finding**

The Department finds that when the Student's school day was reduced to half-days on or around September 30, 2016, this decision to change the Student's placement was not made by the IEP Team as required by OAR 581-015-2250 and the Student's IEP was not amended to reflect this change in placement as required by OAR 581-015-2225.

## V. CORRECTIVE ACTION<sup>8</sup>

In the Matter of Hillsboro School District #1J  
Case No. 17-054-004

	<b>Actions Required</b>	<b>Submissions<sup>9</sup></b>	<b>Due Date</b>
1.	District will provide written direction to all Special Education staff and Administrators who supervise school Special Education services regarding the requirement to document 'changes in placement' through the IEP Team process.	<ol style="list-style-type: none"><li>1. Draft written direction for approval by ODE</li><li>2. Documentation of the provision of the written direction to all Special Education staff and Administrators who supervise Special Education services (can be email)</li></ol>	<b>May 5, 2017</b>  <b>May 31, 2017</b>

Dated: this 14th Day of April 2017



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

Mailing Date: April 14, 2017

<sup>8</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<sup>9</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: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.