

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Grants Pass School District 7	) ) ) ) )	CORRECTED <sup>1</sup> FINDINGS OF FACT, CONCLUSIONS AND FINAL ORDER Case No. 18-054-041
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**I. BACKGROUND**

On October 22, 2018, 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 Grants Pass School District 7 (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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>2</sup> This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.<sup>3</sup>

On October 26, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 9, 2018.

On November 1, 2018, the Department received an additional written request for a special education complaint investigation from the Parent. The Parent's additional allegations were incorporated into the ongoing investigation. The Department confirmed receipt on November 1, 2018.

On November 8, 2018, the Investigator sent a *Revised Request for Response* to the District identifying the additional allegations in the complaint to be investigated contiguously.

On November 9, 2018, the District submitted a *Response* in which the District disputed the allegations and welcomed additional dialogue with the Department in this matter. In total, the District submitted the following items:<sup>4</sup>

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<sup>1</sup> On February 15, 2019, the Parent requested reconsideration of this order “[d]ue to the fact that there are numerous clerical errors, missing dates that become redundant with incomplete information.” The majority of the Parent’s reconsideration request relates not to the content of the Final Order itself, but the alleged inadequacies of the underlying documents produced by the District. Here, the Department only addresses the Parent’s request for reconsideration of the contents of the Final Order. Besides correcting several transposed numbers in the list of District-produced documents, the Department does not alter any of its findings in the body of the Final Order issued on December 21, 2018.

<sup>2</sup> 34 CFR § 300.152(a); OAR 581-015-2030(12).

<sup>3</sup> 34 CFR § 300.152(b); OAR 581-015-2030(12).

<sup>4</sup> The Parent’s Request for Reconsideration asserts that the Final Order contains numerous clerical errors. The Department identified several transposed numbers in the Final Order’s list of documents submitted by the District. The transposed numbers are corrected here, but do not substantively change any of the findings of fact or conclusions. The Parent further alleges that the District-produced records referenced in the Final Order were not provided. However, Parent concedes awareness of the content of the “1700 pages” of the District’s *Response*. On or about November 9, 2018, a District administrator personally delivered a box containing the documents the District submitted to the Department in response to the Complaint, and which are listed here. The Parent confirmed receipt of the documents in a November 9, 2018 email to the Investigator.

1. District Response
2. List of Knowledgeable District Staff
3. Special Education Notice of Team Meeting, 10/19/2018
4. Prior Notice of Special Education Action, 10/22/2018
5. Phone meeting notes, 08/16/2017
6. Meeting notes, unscheduled meeting with Parent, 01/12/2018
7. Special Education Notice of Team Meeting, 04/27/2018
8. Prior Notice of Special Education Action, 04/27/2018
9. Student's Individualized Education Program, 01/16/2018
10. Woodcock Johnson IV Score Report, 06/13/2017
11. Prior Notice of Special Education Action, 05/07/2018
12. Special Education Notice of Team Meeting, 04/27/2018
13. Permission to Obtain and Release Information to Parent advocate, 01/02/2018
14. Special Education Notice of Team Meeting, 01/03/2018
15. Prior Notice of Special Education Action, 01/16/2018
16. Student's IEP, 01/16/2018
17. Permission to Obtain and Release Information, 01/02/2018
18. Student IEP 02/28/2017
19. Special Education Placement Determination, 02/28/2017
20. Student IEP, 01/26/2017
21. Special Education Placement Determination, 02/28/2017
22. Student IEP Meeting Minutes, 02/28/2017
23. Student IEP 01/28/2016
24. Student IEP Meeting Minutes, 11/01/2016
25. Student IEP 01/28/2016
26. Student IEP Meeting Minutes, 01/28/2015
27. Authorization to Use and/or Disclose Educational and Protected Health Information, 01/27/2016
28. Agenda Eligibility/IEP Meeting, 01/28/2016
29. Prior Notice of Special Education Action, 08/29/2017
30. Prior Notice of Special Education Action, 04/13/2017
31. Student IEP 02/28/2017
32. Student IEP, Annual Academic and Functional Goal and Objectives, 01/26/2017
33. Student IEP, Annual Academic and Functional Goal and Objectives, 01/28/2016
34. Student IEP Meeting Minutes, 02/09/2017 (4 pages)
35. Prior Notice about Evaluation/Consent for Evaluation 03/17/2017
36. Prior Notice about Evaluation/Consent for Evaluation 02/01/2017
37. Prior Notice about Evaluation/Consent for Evaluation 01/12/2017
38. Prior Notice about Evaluation/Consent for Evaluation 02/03/2016
39. Prior Notice about Evaluation/Consent for Evaluation 02/03/2016
40. Statement of Eligibility for Special Education (Communication Disorder 50), 01/26/2017
41. Review of Records—Communication Disorder (50), 01/26/2017
42. File Review—Triennial ASD Eligibility, 01/26/2017
43. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82), 01/26/2017
44. File Review—Triennial ASD Eligibility, 01/26/2017
45. Score Report, Woodcock Johnson, 2014
46. TRS Score Summary, 02/21/2014
47. Medical Health Statement or Health Assessment Statement, 10/31/2013
48. Physician's note, Autism Spectrum Disorder Dx, 01/31/2017
49. Behavioral Assessment Update, 06/02/2017
50. Feeding/Swallowing Evaluation 04/06/2016
51. Occupational Therapy Evaluation, 03/09/2016
52. Request for Student Services, 02/08/2016

53. Request for Student Services, 05/11/2017
54. Request for Student Services, 02/08/2016
55. Annual Academic and Functional Goals and Objectives Progress Report, 01/26/2018
56. Prior Notice of Special Education Action, 02/28/2017
57. Prior Notice of Special Education Action, 02/10/2017
58. Prior Notice of Special Education Action, 02/09/2017
59. Prior Notice of Special Education Action, 02/03/2017
60. Prior Notice of Special Education Action, 02/01/2017
61. Prior Notice of Special Education Action, 01/27/2017
62. Prior Notice of Special Education Action, 02/25/2017
63. Student IEP Meeting Minutes, 01/26/2017
64. Student IEP Meeting Minutes, 02/01/2017
65. Student IEP, 02/28/2017
66. IEP Meeting Minutes, 02/28/2017
67. Special Education Notice of Team Meeting, 09/15/2017
68. Special Education Notice of Team Meeting, 04/13/2017
69. Special Education Notice of Team Meeting, 02/10/2017
70. Special Education Notice of Team Meeting, 02/01/2017
71. Special Education Notice of Team Meeting, 01/26/2017
72. Special Education Notice of Team Meeting, 01/10/2017
73. Special Education Notice of Team Meeting, 10/17/2016
74. Special Education Notice of Team Meeting, 04/26/2016
75. Special Education Notice of Team Meeting, 01/20/2016
76. Prior Notice of Special Education Action, 09/27/2017
77. Student IEP and Services and Annual Goals, 2/28/2017
78. List of Parent emails
79. Emails between District and Parent (and Parent advocate)
80. District Emergency Protocol for Student
81. Email communications between District and Parent (and Parent's advocate)
82. Email with attached letter from Parent Advocate to District, asking that Student be removed from Life Sciences Class/Lab due to safety concerns, 10/09/2018
83. Email communications between District and Parent (and Parent's advocate)
84. Email from Parent Advocate to District asking for specific changes to Student's IEP, 04/16/2018
85. Email communications between District and Parent (and Parent's advocate)
86. Email from Parent to District suggesting IEP amendments/changes, with test score data, 11/02/2018
87. Email communications between District and Parent (and Parent's advocate)
88. Email from District to Parent responding to Parent's suggested IEP amendments/changes. 11/02/2018
89. Email communications between District and Parent (and Parent's advocate)
90. Email Letter of introduction from Parent Advocate to District, 09/18/2018
91. Email communications between District and Parent (and Parent's advocate)
92. Email, Re: bullet point IEP revision es.docx (Between Parent, District, and Department) [scriveners page number error, jumps from 511—572]
93. Email communications between District and Parent (and Parent's advocate)
94. Email: Re: Data and next steps, 08/18/2018 (Parent to District)
95. Email: Re: Re: Data and next steps, 08/20/2018 (District to Parent)
96. Email communications between District and Parent (and Parent's advocate)
97. Email: Letter, 10/18/2018 (Parent responding to District letter)
98. Email communications between District and Parent (and Parent's advocate)
99. Email: "Fwd: Amendment ideas for IEP 5718.dox" 08/25/2018, [Amendment to (Student's) IEP]
100. Email communications between District and Parent (and Parent's advocate)

101. Email: "Re: (Student's) lunch now being missed as well, 10/16/2018
102. Email communications between District and Parent (and Parent's advocate)
103. Proposed draft amendments to Student IEP 11/06/2018
104. Email communications between District and Parent (and Parent's advocate)
105. 01/06/2018 IEP Analysis for (Student), Prepared by Parent and advocate
106. Email communications between District and Parent (and Parent's advocate)
107. Email: "Re: Analysis" 10/26/2018, District to Parent
108. Email communications between District and Parent (and Parent's advocate)
109. Email: "(Student) Study Skills Week of 10/15—10/19" District to Parent
110. Email communications between District and Parent (and Parent's advocate)
111. Email: "Re: Emergency protocol statement ready?" 05/24/2018
112. Email communications between District and Parent (and Parent's advocate)
113. 11/20/2017, Letter from Parent's advocate to District requesting education records
114. Email, "Re: (Student), Classroom teacher providing Parent with snapshot of test scores to date
115. Email communications between District and Parent (and Parent's advocate)
116. Email, "Planning for start of school" 08/29/2018, District to Parent
117. Email communications between District and Parent (and Parent's advocate)
118. Email: "Re: Update on Information Request" 10/28/2017
119. Email communications between District and Parent (and Parent's advocate)
120. Email, "Re: Analysis" From Superintendent to Parent, 10/19/2018
121. Email: "Re: Update on Records Request, Information Request, and Meeting Details" 1/14/2017
122. Email communications between District and Parent (and Parent's advocate)
123. Email, "RE: Analysis" 10/19/2018, Superintendent to Parent
124. Email communications between District and Parent (and Parent's advocate)
125. Email "Re: Your report has not been amended as we spoke on the phone" 04/21/2017 District  
SLP to Parent
126. Email communications between District and Parent (and Parent's advocate)
127. Special Education Notice of Team Meeting, 10/29/2018
128. Prior Notice of Special Education Action, 11/06/2018
129. IEP Meeting Minutes & List of Participants, 01/16/2018
130. Special Education Notice of Team Meeting, 10/19/2018
131. Prior Notice of Special Education Action, 10/22/2018
132. IEP Meeting Minutes, 10/22/2018
133. Student IEP, 01/16/2018
134. Prior Notice about Evaluation/Consent for Evaluation, 02/01/2017
135. Student Feeding/Swallowing Evaluation, 04/06/2016
136. Student Physical Therapy, Present Level of Progress, 10/26/2018
137. Prior Notice about Evaluation/Consent for Evaluation, 02/01/2017
138. Student Feeding/Swallowing Evaluation, 04/06/2016
139. Student Physical Therapy, Present Levels of Progress, 10/26/2018
140. Student Physical Therapy Evaluation
141. Request for Student Services, 05/11/2017
142. Prior Notice about Evaluation/Consent for Evaluation, 03/17/2017
143. Email, 05/11/2017
144. Email, "ES – APPROVED: Request for Student Services and Consent for Evaluation forms"  
5/11/2017
145. Student Behavior Assessment, 06/02/2017
146. Student Woodcock Johnson Score Report, 06/13/2017
147. Student Career Comparison Worksheet, 11/16/2018
148. Student Career Research work product, provided to Parent 11/16/2018

The Parent submitted additional documents to support the Complaint. The Investigator interviewed the

Parent and the Parent’s Advocate. The Investigator determined that on-site interviews were necessary. On December 3, 2018, the Investigator interviewed the District’s Superintendent, Director of Special Education, former Director of Special Education, and Autism Specialist. Following the interview, the District provided additional documentation regarding the case. The Investigator reviewed and considered all of the previously-described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This Order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint<sup>5</sup> The Parent's allegations and the Department's conclusions are set out in the chart below. The 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 October 23, 2017 to the filing of this Complaint on October 22, 2018.<sup>6</sup> This order does include some facts outside that timeline that inform the concerns at issue.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1.</b>	<p><b>IEP Team/Parent Participation</b></p> <p>The Parent alleges that the District violated the IDEA when it denied the Parent the ability to meaningfully participate in IEP meetings through a variety of methods.</p> <p>(34 CFR §§ 300.500, 300.501(b); OAR 581-015-2190)</p>	<p><b>Not Substantiated</b></p> <p>The Parent received notice of, and attended all IEP Team Meetings for the Student. The District scheduled meetings at the Parent's request and considered the Parent's input.</p> <p>The Department does not substantiate this allegation.</p>
<b>2.</b>	<p><b>IEP Content</b></p> <ol style="list-style-type: none"> <li>1. The Parent alleges that the District violated the IDEA by obstructing the Parent's input and participation, resulting in the IEP containing inaccuracies and generally being out of compliance with accommodations.</li> <li>2. The Parent further alleges that the District violated the IDEA when it failed to include an accurate statement of the Student's present levels of academic achievement, measurable annual goals, and how progress would be measured.</li> </ol> <p>(34 CFR § 300.320; OAR 581-015-2200(1))</p>	<p><b>Not Substantiated</b></p> <ol style="list-style-type: none"> <li>1. The Parent attended IEP Team Meetings and provided input regarding the Student's abilities and the Parent's concerns for the Student's education.</li> <li>2. The Student's IEP includes appropriate statements of present levels, annual goals, and progress measurement.</li> </ol> <p>The Department does not substantiate this allegation.</p>

<sup>5</sup> 34 CFR §§ 300.151-153 and OAR 581-015-2030.

<sup>6</sup> The Parent's February 15, 2019 Request for Reconsideration contends that the Final Order is incorrect because the date of the complaint is 2017. However, it is undisputed that Parent's complaint was received by the Department on October 22, 2018. The Parent's Request for Reconsideration further alleges that there is confusion in the order arising from the fact that documents from prior to one year before the filing of the complaint were part of the investigative record. A state complaint investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint is received by the Department. However, there is no limitation on the record containing documents that precede the complaint investigation period.

<p><b>3.</b></p>	<p><b>IEP Team</b></p> <p>The Parent alleges that the District violated the IDEA when it excluded the Parent's Advocate from meetings and from having meaningful communication with the District.</p> <p>(34 CFR §§ 300.344, 300.321, 300.324(a)(3), (b)(3); OAR 581-015-2210(1)(g)(A))</p>	<p><b>Not Substantiated</b></p> <p>While communication between the Parent and the District have at times eroded, the Parent's Advocate has never been excluded from an IEP Team Meeting.</p> <p>The Department does not substantiate this allegation.</p>
<p><b>4.</b></p>	<p><b>IEP Team Considerations</b></p> <p>The Parent alleges that the District violated the IDEA when it neglected or refused to consider the Parent's concerns for enhancing the education of the Student.</p> <p>(34 CFR §§ 300.320, 300.324(a)(1)-(2), (b)(2); OAR 581-015-2205(1)(b))</p>	<p><b>Not substantiated</b></p> <p>The District acknowledged and considered the Parent's concerns regarding the Student. The Parent and District have different perspectives of the Student's abilities, however, the record included accurate and complete information for the District to rely upon to formulate the Student's IEP.</p> <p>The Department does not substantiate this allegation.</p>
<p><b>5.</b></p>	<p><b>Prior Written Notice</b></p> <p>The Parent alleges that the District neglected to provide Prior Written Notice of proposed or refused actions regarding the initiation, change, identification, evaluation, educational placement, or the provision of FAPE for the Student when it changed its periodic reporting format.</p> <p>(34 CFR § 300.503; OAR 581-015-2310)</p>	<p><b>Not substantiated</b></p> <p>The format of the periodic reporting provided to the Parent of the Student's progress toward IEP goals has changed over time. This alteration did not trigger the District's obligation to issue a Prior Written Notice.</p> <p>The Department does not substantiate this allegation.</p>

**III. FINDINGS OF FACT**

1. The Student is in the tenth grade and attends school in the Grants Pass School District (District). The Student receives special education services under the primary eligibility categories of Autism Spectrum Disorder and Communication Disorder.
2. On March 3, 2014, at the age of 11, the Student underwent an evaluation by the Child Development Clinic at Oregon Health & Science University. The Student's Pediatrician observed that the Student would follow other children but not interact. The Pediatrician noted such things as short-term memory problems, lack of understanding of personal space, and that the Student required assistance with personal hygiene and certain dressing tasks. The Pediatrician further noted that the Student was then reading at a second grade level and that the District had identified the Student as a student with Autism based on history, classroom observations, and Autism Diagnostic Observation Schedule (ADOS).

3. The District had at that time administered the Wechsler Intelligence Scale for Children, Woodcock Johnson Test of Achievement, and conducted a Speech Therapy Evaluation. The Pediatrician concluded that the Student met the criteria for an Autism diagnosis with impairments in social communication, impaired peer relationships, and restricted interest.
4. At the time of the pediatric evaluation, the Student was close to grade level in language related skills (spelling, written language, etc.) and demonstrated below-grade-level math scores.
5. The Student's Pediatrician noted that while the Student met the criteria for intellectual disability, that diagnosis should be considered provisional as the Student had not yet received ideal services (the Student had only recently begun receiving special education services). The Pediatrician's post-evaluation recommendations included Occupational Therapy to address sensory issues.
6. On February 24, 2014, the District's Speech and Language Pathologist (SLP) completed a Functional Communication Assessment for the Student. The assessment indicated the Student demonstrated average expressive skills and low-average ability in understanding language. The subtests that indicated the greatest area of need were in recalling sentences and concepts and following directions.
7. The SLP concluded that, expressively, the Student "is able to convey [the Student's] thoughts and ideas and speaks in complete sentences with adequate complexity and grammatical usage." The SLP also found that the Student had difficulties "determining the intent of a social situation and how to respond appropriately . . . challenges with numerous classroom interactions including asking for clarification, making requests appropriately, and in carrying on conversations in general. [The Student] does not readily pick up the subtleties and nuances in language" and noted the Student's manner of speaking displays oddities. The SLP recommended that the IEP Team consider the assessment in determining eligibility and services.
8. On February 20, 2015, the Student underwent a psychological exam with a Clinical Psychologist, the results of which were shared with the District. The Clinical Psychologist conducted various tests, interviews, review of assessments, and observations. The Clinical Psychologist determined that the Student's IQ was 71, in the third percentile, placing the Student in the mild range of intellectual disability. The outcomes of the exam confirmed and paralleled 2014 findings by the District pursuant to an Autism Spectrum Evaluation.
9. On March 9, 2016, the District completed an Occupational Therapy Evaluation of the Student. The evaluation found that the Student exhibited difficulties with fine and visual motor performance. The Student's adaptive skills were "significantly below expected performance for" the Student's age range and performance and "is not congruent with foundational abilities."
10. On April 16, 2016, the District conducted a Feeding/Swallowing Evaluation in response to the Parent's request, stemming from concerns about choking during mealtime at school. The District's SLP referenced an existing 2015 Emergency Protocol for choking episodes. The SLP's assessment found that the Student's oral/motor assessment was within normal limits. The SLP recommended no dietary restrictions based on the Student's "demonstrated skills to adequately and safely chew and swallow all textured foods and thin liquids."
11. The District reports that District staff have not observed that the Student has feeding difficulties. Nevertheless, the District staff is available to address choking issues, as necessary.
12. On January 16, 2017, the District conducted a file review to evaluate the Student's continued

eligibility for special education under the eligibility category of communication disorder. That review notes that the Student's annual IEP was due by January 28, 2017 and the required triennial eligibility determination was due by February 22, 2017. The District documented that the "team made several attempts to obtain consent to evaluate, but it was determined that a records review would be sufficient . . . in providing information/data necessary, when considered with data collected during scheduled Speech Language Therapy sessions, to determine if the Student continues to exhibit articulation and language deficits secondary to primary exceptionality of Autism Spectrum Disorder."

13. On January 26, 2017, the District's SLP conducted a Communication Disorder records review. The District found the Student was within functional limits in the areas of voice/fluency and hearing, showed concerns in the area of articulation, deficits in receptive/expressive language, but had made progress in SLP sessions. The SLP noted that the Student had made progress with improving targeted skills, but still required specialized support. It was further noted that the Student "has become increasingly comfortable with interactions with therapist (sic) and has become more open in conversation and sharing of personal preferences . . . ."
14. On January 26, 2017, the District completed a file review to assess the Student's continued eligibility for special education under the category of Autism Spectrum Disorder. The District's Autism Specialist reviewed the Student feeding/swallowing evaluation, IEP Meeting Minutes, the Student's IEPs and amendments, the Speech/Language Evaluation Report, Initial ASD Eligibility, Eligibility SLD (found ineligible), and Occupational Therapy Report.
15. The Autism Specialist noted that the Student "continues to be challenged with academics as well as pragmatics, the social use of language. There is evidence that [the Student] processes information at a slower rate than typical peers." The Autism Specialist recommended that the IEP Team consider the Student's progress, improved social skills, participation, in adapted physical education, and other observations in determining continued eligibility.
16. On January 31, 2017, the Student's Physician provided a note stating that the Student, "has [pseudobulbar affect (PBA)] which may be related to [the Student's] underlying diagnosis of autism spectrum disorder." That Physician's statement did not provide insight into the potential effect's PBA may have on the Student in the educational setting.
17. PBA is a neurological condition "characterized by uncontrolled crying or laughing which may be disproportionate or inappropriate to the social context. Thus, there is a disparity between the patient's emotional expression and his or her emotional experience."<sup>7</sup> Patients may find that they suffer from "involuntary emotional expression disorder, emotional lability, emotional dysregulation, pathological laughter and crying, emotional dysregulation, emotional incontinence, and emotionalism."<sup>8</sup>
18. On February 1, 2017, the District sent the Parent a Prior Written Notice (PWN) about Evaluation/Consent for Evaluation for the Student's triennial reevaluation. On February 28, 2017, the Parent provided the District with written consent.
19. The District proposed to reevaluate the Student through a variety of means, including a file review, classroom assessment, teacher reports, Parent concerns, class participation, observations and interactions, and Parent input. Additionally, the District proposed to utilize specific assessment batteries.

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<sup>7</sup> Pseudobulbar affect: prevalence and management. Ahmed, Aiesha and Zachary Simmons. "Pseudobulbar affect: prevalence and management" *Therapeutics and clinical risk management* vol. 9 (2013) at 483.

<sup>8</sup> *Id.*

20. Prior to the District conducting assessments for the Student's triennial reevaluation, the Parent and the District engaged in discussions regarding which District staff would be involved in the reevaluation process. The Parent objected to specific District staff having contact with the Student, some of whom would be central to the Student's reevaluation process. The Parent and the District agree that these issues led to a delay in the District's planned reevaluation of the Student.
21. On February 28, 2017, the District formulated an IEP for the Student that included Specially Designed Instruction (SDI) in reading, math, social skills, and Speech/Language. The Student's IEP also included the following supplementary aids, services, and accommodations: adaptive physical education, frequent adult assistance, breaking task into steps, paring auditory with visual supports, being provided a copy of class notes, preferred seating, processing time, monitored lunch with safety protocols to accommodate the Student's PBA, quieter testing locations, and communication with home on a weekly basis. The IEP also included modified grading in reading and math, a PBA choking protocol, an option for the Student to be removed to a quieter area, accommodations for transitions, and aids for understanding social relationships.
22. The February 28, 2017 IEP Team Meeting Minutes show detailed discussions among the Parent, the Parent's Advocate, and the District regarding aspects of the Student's IEP. The IEP Team Meeting Minutes reveal discussion about Speech Language Pathology services, manner of delivery of services, and specific goals. The District and the Parent engaged in conversation regarding a variety of changes, updates, and corrections to the IEP.
23. In September 2017, the District completed a Physical Therapy Evaluation of the Student. The evaluation report notes that the assessment was scheduled for the Spring of the 2016-2017 school year, but was delayed due to Student absence. The District Physical Therapist administered relevant tests and reviews of the Student's ability. The report indicated that the Student, then in the ninth grade, showed significant improvement over prior Physical Therapy Evaluations.
24. In April 2018, the District and the Parent exchanged emails regarding potentially participating in the Department's Dispute Resolution processes.
25. On May 7, 2018, the Students IEP Team met to consider the Student's eligibility, review and revise the IEP, and consider future transition services. The IEP Team Meeting lasted over two hours and covered many aspects of the Student's IEP, including services and SDI.
26. On November 29, 2018, the Investigator interviewed the Parent's Advocate. The Advocate provided information relevant to her background and experience with special education students. The Parent's Advocate explained her efforts to provide the District with sample IEP language, help improve IEP goal formulation, and generally her efforts in assisting the Parent with communications with the District. The Advocate also explained her role, the Parent's concerns regarding the Student, and the Advocate's insights into the Student's circumstances, and suggestions to improve relations with the District.
27. On December 1, 2018, the Investigator interviewed the Parent. The Parent acknowledged that the District had not restricted the Parent's Advocate from attending any IEP Team Meetings. The Parent shared a concern that the District preferred that the Parent choose a different advocate and had offered to help locate a different advocate. The Parent also expressed concern that the District had attempted to obstruct the Parent's Advocate in a variety of ways.
28. On December 3, 2018, the Investigator interviewed relevant District staff. During interviews, District staff noted that the Parent reports the Student functions at a level significantly lower at home than functional observations made by the District in the school environment.

## IV. DISCUSSION

### A. IEP Team/Parent Participation

The Parent alleges that the District violated the IDEA when it denied the Parent the ability to meaningfully participate in IEP Meetings through a variety of methods. Specifically, that the Parent's observations regarding the Student were disregarded, and that the District did not properly consider suggested amendments to the Student's IEP. The Parent alleges that this was accomplished by the District's suppressing the input of the Parent and the Parent's Advocate.

School districts must provide the Parent with a meaningful opportunity to participate in meetings with respect to the identification, evaluation, IEP, educational placement of a student, and the provision of a free appropriate public education (FAPE).<sup>9</sup> A parent may include in IEP team meetings others who are knowledgeable about the student,<sup>10</sup> and "bring questions, concerns, and preliminary recommendations to the IEP team meeting as part of the full discussion of the child's needs and the services to be provided to meet those needs."<sup>11</sup>

During the relevant time period the District held, and the Parent participated in, three IEP Team Meetings (January 16, 2018, May 8, 2018, October 22, 2018). The District provided the Parent with written notice of each meeting. During these IEP Team Meetings, the Parent and the Parent's Advocate were afforded the opportunity to meaningfully participate in the IEP development process. Indeed, each provided the District with detailed suggestions regarding the Student's IEP, including proposed revisions and additions to goals, sample IEP language, and input regarding the Student's present levels and services.<sup>12</sup> An additional IEP Team Meeting was held during the pendency of this Complaint investigation in which the Parent was afforded the ability to meaningfully participate in the IEP development process. The Department does not substantiate this allegation.

### B. IEP Content

#### 1. Deficient IEP Content Arising From District Obstruction

The Parent alleges that the District violated the IDEA by obstructing the Parent's input and participation, resulting in the IEP containing inaccuracies, and generally being out of compliance with accommodations. The Parent alleges that much of the input provided at the Student's IEP Team Meetings was disregarded, resulting in an inaccurate picture of the Student's abilities and the absence of an appropriate educational program. The Parent described providing detailed commentary regarding the Student's IEP, including sample alternative IEP goals, but that the District disregarded that input.

A Student's IEP must include a statement of measurable annual goals.<sup>13</sup> Academic and functional goals must be designed to meet the student's needs that result from the disability enabling the student to be involved in, and make progress in, the general education curriculum.<sup>14</sup> In formulating an IEP, the District has a responsibility to ensure that the IEP be "appropriately ambitious in light of [the Student's] circumstances" and give the Student "the chance to meet challenging objectives."<sup>15</sup>

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<sup>9</sup> OAR 581-015-2190(1).

<sup>10</sup> OAR 581-015-2190(2)(b)(B).

<sup>11</sup> 71 Fed. Reg. 156, at 46678 (August 14, 2006).

<sup>12</sup> *Id.* During the Investigator's interview with the Parent, the Parent raised the additional concerns that not all evaluation materials discussed at the Student's IEP Team Meetings were presented to the Parent in advance. While the Parent is entitled to a copy of all evaluation reports, whether those materials are provided in advance of a meeting is left to the discretion of the District.

<sup>13</sup> OAR 581-015-2200(1)(b)(A).

<sup>14</sup> *Id.*

<sup>15</sup> *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. at 1001.

Here, the Parent was able to provide the IEP Team with her perspective of the Student based on her collected information and personal observations. The record contains numerous communications regarding the Parent's opinion of the Student's academic and physical abilities. The Parent's Advocate also provided the District with suggested language for the Student's IEP, IEP goals, and information on formulating those goals. Parent/Parent Advocate recommendations were incorporated into the Student's IEP. Both the Parent and the District acknowledge that relations became strained over time, such that the tone and manner of communications were not always smooth. Despite this, the Parent and the District were able to address concerns raised by the Parent at the multiple IEP Team Meetings that convened during the relevant time period.

The Parent and the Parent's Advocate provided the District with significant input both at IEP Team Meetings and at other times throughout the school year. The District incorporated the Parent's input and recommendations into the Student's IEP. Because the District did not obstruct parental input, the Student's resulting IEP content was not inappropriate in light of the Student's circumstances. The Department does not substantiate this allegation.

## **2. Appropriate Statement of Present Levels**

The Parent alleges that the District violated the IDEA when it failed to include a statement of the Student's present levels of academic achievement, measurable annual goals, and how progress would be measured. The Parent alleges that the Parent and the Parent's Advocate provided verbal and written material for the District's consideration, which were not incorporated into the statement of the Student's present levels. The Parent alleges that the District's failure to appropriately consider this information resulted in an IEP that inaccurately depicts the Student.

An IEP must include a statement of the present levels of academic achievement and functional performance, including how the student's disability affects the child's involvement and progress in the general education curriculum.<sup>16</sup> "The IEP Team's determination of how the child's disability affects the child's involvement and progress in the general education curriculum is a primary consideration in the development of the child's annual IEP goals."<sup>17</sup> The IDEA requires the IEP to include a statement of how the child's progress toward meeting the annual goal will be measured.<sup>18</sup> The IDEA does not require goals be written for each specific academic discipline, or to have outcomes and measures on a specific assessment tool. While IEPs "may include more than the minimum content, the IEP Team determines [what] additional content is appropriate."<sup>19</sup>

The Parent and the Parent's Advocate provided the IEP Team with documentation with suggested IEP goals, including the language, format, and content for goals. The IEP Team considered the Parent's input and ultimately produced an IEP for the Student that included an appropriate summation of the Student's present levels, annual goals, and how progress toward the goals would be measured. The Department therefore does not substantiate this allegation.

## **C. IEP Team**

The Parent alleges that the District violated the IDEA when it excluded the Parent's Advocate from meetings and from having meaningful communication with the District. The Parent raised concerns regarding communications the District had with the Parent regarding a change of advocate, as well as

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<sup>16</sup> OAR 581-015-2200(1)(a).

<sup>17</sup> <sup>17</sup> 71 Fed. Reg. 156, at 46662 (August 14, 2006).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

communications with the Department that the Parent construed as subverting the Parent's choice of advocate.

A school district has the responsibility to ensure that the IEP team for each student with a disability includes specific participants.<sup>20</sup> The IEP team must include the parent.<sup>21</sup> In addition to District staff, the parent may invite any individual whom the parent determines has knowledge or special expertise regarding the student.<sup>22</sup>

The Parent acknowledges that her Advocate was not excluded from any IEP Team Meetings. Rather, the Parent had concerns regarding whether the District intended to do so at future meetings. This concern primarily arose out of communications the District had with the Parent about assisting the Parent in locating a different advocate. The Parent also raised concerns regarding the District's April 2018 communication with the Department expressing an interest in engaging the Department's Dispute Resolution processes. The Department inquired of both parties whether they were amenable to Dispute Resolution processes and provided relevant resources. Neither of the previously-described events obstructed meaningful participation in the IEP process either on the part of the Parent or the Parent's Advocate. The Department does not substantiate this allegation.

#### **D. IEP Team Considerations**

The Parent alleges that the District violated the IDEA when it neglected or refused to consider the Parent's concerns for enhancing the Student's education. The Parent alleges she provided the District with information regarding observations of the Student's physical and emotional capabilities or limitations, which were disregarded by the District. The Parent also shared specific concerns regarding the Parent's observation of the Student's comprehension, which the Parent reports was not appropriately reflected in the Student's IEP. The Parent further contends that the IEP was deficient for failing to include relevant observations from the Parent regarding the Student's abilities because that failure resulted in educational goals and services that were inappropriate for the Student.

In formulating a student's IEP, the IEP team must consider the parent's input, especially concerns for the child's education.<sup>23</sup> The IDEA does not define "concerns of the parent"<sup>24</sup> beyond stating that a school district must consider "the concerns of the parent for enhancing the education of their child."<sup>25</sup> Parent concerns are one of the many matters the IEP team considers when developing a student's IEP.<sup>26</sup> The IDEA encourages parental input and involvement in all aspects of a child's educational program.<sup>27</sup> An IEP is composed from a variety of sources of data and assessments.<sup>28</sup> These are considered, developed, and interpreted<sup>29</sup> into the IEP, but are not necessarily included in the IEP itself.

The Parent expressed numerous concerns regarding the suitability of the District's chosen curriculum for the Student, as well as whether the Student's disability impeded the Student's comprehension of classroom instruction. In support of this position, the Parent provided copies of the District's initial evaluations of the Student, suggested modifications to the Student's IEP created by the Parent and the Parent's Advocate, and detailed descriptions of the Student's abilities. On three occasions during the

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<sup>20</sup> OAR 581-015-2210.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> OAR 581-015-2205(1)(b).

<sup>24</sup> 34 CFR 300.324(a)(ii), OAR 581-015-2205(1)(b).

<sup>25</sup> *Id.*

<sup>26</sup> 34 CFR 300.324.

<sup>27</sup> 71 Fed. Reg. 46688 (Aug. 14, 2006).

<sup>28</sup> 34 CFR 300.304, 34 CFR 300.305, and 34 CFR 300.305(c).

<sup>29</sup> 34 CFR 300.321(5).

relevant period (January 16, 2018, May 8, 2018, October 22, 2018), the Parent, the Parent's Advocate, and other IEP Team Members met to revise and update the Student's IEP.

It is evident that the District and the Parent maintained different perspectives regarding the Student's academic capabilities. The Parent reported observing that the Student was often unsure of academic content, at times was emotionally overwhelmed by the school environment, and lacked the fine motor skills necessary to access specific classes. To illustrate, the Parent notes that when questioned about future career opportunities, the Student reported aspirations of becoming different fictional characters. District staff acknowledged these Parent concerns, but also produced recent Student work samples, which included career research wherein the Student expressed interest in a career in computer programming, including salary levels and education requirements that were compiled into a structured presentation.

The Parent and the Parent's Advocate submitted information for the IEP Team's consideration and provided additional input at IEP Team Meetings. Those concerns are incorporated in the IEP and IEP Team Meeting Minutes. As a member of the IEP Team, the Parent was provided with an opportunity to provide input. In this case, the Parent provided input at IEP Team Meetings and in advance of a meeting so that the IEP Team could consider the information as part of the full discussion of the Student's needs. The Parent and the District agree that the Parent and the Parent's Advocate frequently provided input, suggested IEP language, and alternative resources for the review and development of the IEP.

The perspectives of the Parent and the District frequently diverged regarding views of the Student's abilities. However, the District considered the Parent's input and also relied upon complete and accurate information in formulating the Student's IEP. The Department does not substantiate this allegation

#### **E. Prior Written Notice**

The Parent alleges that the District neglected to provide Prior Written Notice (PWN) of proposed or refused actions regarding the initiation, change, identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) for the Student. The Parent contends that the Student's IEP specifies that weekly progress reports would be sent to the Parent, and that the Parent had an agreement with the District regarding the form of those weekly reports. The Parent alleges that the District changed the form of the weekly reports without providing a PWN.

A school district must provide a PWN to the parent of a student within a reasonable period before the school district proposes to initiate or change the identification, evaluation, or educational placement of the student.<sup>30</sup> Such notice is also required when a school district proposes to change the provision of a free appropriate public education to the child.<sup>31</sup> The IDEA's periodic progress reporting requirement is limited to the child's progress in meeting annual IEP goals.<sup>32</sup> "In monitoring a student's progress, the reporting requirement does not mandate periodic progress reporting on the provision of required transition services or any other required services included in a child's IEP."<sup>33</sup> The U.S. Department of Education has noted that the specific times that progress reports are provided to parents and the specific manner and format in which a child's progress toward meeting the annual goals is reported is left to state and local officials to determine.<sup>34</sup>

The Student's IEPs specify a variety of progress data be reported to the Parent at various intervals, including weekly reports. During the 2017-2018 school year, the Parent and the District discussed and

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<sup>30</sup> OAR 581-015-2310(2)(a).

<sup>31</sup> *Id.*

<sup>32</sup> 34 CFR § 300.320(a)(3).

<sup>33</sup> Letter to Pugh, 117 LRP 3733 (January 18, 2017)

<sup>34</sup> 71 Fed. Reg. 46540, 46664 (Aug. 14, 2006)

agreed upon more detailed reporting for the Parent's review on an ongoing basis. The Student's IEP is not specific regarding the form of the reporting, other than such reporting would be in writing. At the beginning of the 2018-2019 school year, the District continued to provide written progress reports, but in a format with less detail than the previous year.

The District did not alter the Student's IEP. Rather, the District changed the format of the periodic reporting memorialized in the IEP. The periodic reporting evolved after the formulation of the IEP. This change did not impact the IEP services or goals, and therefore did not require the District to provide Prior Written Notice in advance of such a change. The Department does not substantiate this allegation.

## V. CORRECTIVE ACTION<sup>35</sup>

*In the Matter of Grants Pass School District 7  
Case No. 18-054-041*

The Department does not order corrective actions as a result of this investigation.

Dated: this 3rd Day of April 2019

*Candace Pelt, Ed.D.*

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Candace Pelt, Ed.D.  
Assistant Superintendent  
Office of Student Services

Mailing Date: April 3, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

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<sup>35</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)).