

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Clackamas Education )  
Service District North Clackamas School )  
District )  
)

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-011

**I. BACKGROUND**

On March 11, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the North Clackamas School District (District) and attending a Clackamas Education Service District (CESD) therapeutic placement. The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on March 12, 2019.

On March 18, 2019, the Department sent a *Request for Response* (RFR) to the District and CESD, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 1, 2019. The District and CESD completed their respective *Responses* and the Department’s Contract Investigator (Investigator) received each on April 1, 2019. Each *Response* included a narrative, exhibit listing, and documents referenced below. Because the instant Complaint involves the same school district and educational service district and because the instant Complaint involves similar allegations and the same parties, the Investigator retained materials submitted from previously-filed complaints, Complaint Nos. 18-054-039 and 18-054-044, to supplement the instant investigation. The documents received from the District and CESD for all complaints and upon which the Investigator relied are as follows:

1. Let’s Go Learn assessment dated January 29, 2018 (outside date range of Complaint Period)
2. Let’s Go Learn assessment dated February 8, 2018 (outside date range of Complaint Period)
3. IEP dated March 8, 2018
4. Behavioral Incident reports including Restraint Reports dated between March 16, 2018 and March 15, 2019
5. Prior Written Notice dated April 6, 2018
6. Amended IEP dated April 18, 2018
7. IEP Meeting Agenda dated April 18, 2018
8. IEP Team Meeting Notes dated April 18, 2018
9. Special Education Placement Determination dated April 18, 2018
10. Let’s Go Learn Assessment dated May 1, 2018
11. Prior Written Notice dated May 2, 2018
12. IEP Meeting Minutes dated May 2, 2018
13. Incident Report Details Graph May 17, 2018 through 11/15/2018
14. Functional Behavior Support Plan and Behavior Support Plan dated May 17, 2018
15. BSP Progress Monitoring schedule (undated)
16. BSP Addendum (undated)
17. Generic Behavior Data Scoring Summary: Upper Elementary (undated)
18. Social Skills Specialist planned and unplanned intervention notes dated between April 13, 2018 and May 18, 2018
19. Notice of Team Meeting dated June 5, 2018
20. Amended IEP dated June 12, 2018
21. IEP Meeting Minutes dated June 12, 2018

22. Prior Written Notice dated June 12, 2018
23. General Authorization for Community Travel executed by Parent on August 30, 2018
24. Google Apps Parent Permission form executed by Parent (undated)
25. Social/Behavioral Intervention and Permissions to Disclose modified by and executed by Parent on August 30, 2018.
26. 2018-2019 Heron Creek Program Family Acknowledgement Form modified by and executed by Parent on August 30, 2018.
27. Authorization for Mediation Administration by Designated Personal executed by Parent on August 30, 2018
28. Heron Creek Participation agreement modified by and executed by Parent (undated)
29. Emails between District and CESD dated between September 11, 2018 and March 15, 2019
30. Student Feedback forms dated September 2019 (sic) through March 15, 2019
31. Daily data tracking sheets dated between October 1, 2018 and March 15, 2019
32. Emails between District Superintendent and ODE dated October 1, 2018 through March 15, 2019
33. Student's Zone Practice and social skills practice schedule dated October 2, 2018 through October 18, 2018
34. Let's Go Learn testing results for school years 2017-2018 and 2018-2019
35. Inter-District emails dated from December 7, 2018 through March 12, 2019
36. Notice of Team Meeting dated November 5, 2018
37. Prior Written Notice dated November 16, 2018
38. IEP team meeting notes re: FBA/BS review dated November 15, 2018
39. FBA/BSP Review notes dated November 15, 2019
40. IEP Team Meeting Agenda dated November 15, 2018
41. IEP Meeting notes dated November 15, 2018
42. Notice of Team Meeting dated December 4, 2018
43. Parent Guardian Consent for Individual Evaluation dated and signed December 14, 2018
44. Medical Statement dated December 14, 2018
45. Prior Written Notice dated December 14, 2018
46. IEP Team Meeting Notes dated December 14, 2018
47. Notice of Team Meeting dated January 11, 2019
48. Prior Written Notice dated January 25, 2019
49. Notice of Team Meeting dated February 8, 2019
50. IEP Progress Report dated February 15, 2019
51. Prior Written Notices dated February 28, 2019 (three total)
52. IEP Team Meeting Notes (parent did not attend) dated January 24, 2019
53. Let's Go Learn Assessment dated February 26, 2019
54. IEP Team Meeting Agenda dated February 28, 2019
55. IEP Team Meeting Notes dated February 28, 2019
56. IEP dated February 28, 2019
57. Special Education Placement Determination dated February 28, 2019
58. Eligibility Summary States dated February 28, 2019
59. Disability Statement (OHI) dated February 28, 2019
60. Disability Statement (SLD) dated February 28, 2019
61. Disability Statement (ED) dated February 28, 2019
62. Evaluation Report dated February 28, 2019
63. Psycho-Emotional Evaluation dated February 28, 2019
64. Goal Summary data sheet from September 2018 through February 2019
65. Discipline data from September 2018 through February 2019
66. Disciplinary Report regarding suspensions dated March 21, 2019
67. Generic Behavioral Support Plan Guide (undated)

The Investigator determined that in-person interviews with CESD staff were necessary. On April 24, 2019, the Investigator interviewed CESD personnel, including the Special Education Director, classroom teacher, and School Principal. The Investigator did not interview District personnel for this Complaint, having conducted comprehensive interviews of District personnel in connection with the Case No. 18-054-039 investigation. The Investigator conducted an in-person interview with the Parent on March 29, 2019.

At their in-person interview, the Parent provided the Investigator with the following documents:

1. IEP dated March 8, 2018
2. Goal Report: Behavioral Summary Report from September 2018 through December 2018
3. Let's Go Learn DORA Teacher Report dated October 5, 2018
4. Annual Measurable Goal report dated November 30, 2018
5. Emails between Parent and District dated from December 1, 2018 through March 14, 2019
6. Notice of Team Meeting dated December 4, 2018
7. Student Discipline data dated December 12, 2018
8. IEP team meeting notes dated December 14, 2018
9. Prior Written Notice dated December 14, 2018
10. IEP team meeting agenda dated December 14, 2018
11. Notice of Team Meeting dated January 11, 2019
12. Incident report dated January 24, 2019
13. IEP meeting notes dated January 24, 2019
14. Daily Tracking Data Sheet for behavior December 2018
15. Notice of Team Meeting dated February 8, 2019
16. Eligibility Summary dated February 28, 2019
17. IEP meeting notes dated February 28, 2019
18. Team Meeting Agenda dated February 28, 2019
19. Parent letter to District and CESD dated March 11, 2019
20. Behavioral and Discipline Incident reports dated between January 5, 2018 and July 11, 2018

The Investigator reviewed and considered the previously-described documents, previously conducted interviews, exhibits, and Complaint Nos. 18-054-039 and 19-054-044 materials in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. The Department must issue a final order within sixty days of receiving the complaint. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> 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 March 12, 2018 through March 11, 2019.

No	Allegations	Conclusions
1.	<b>IEP Implementation</b>  The Parent alleges that the District and	<b>Not Substantiated</b>  The Student's Functional Behavior

<sup>1</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>CESD violated the IDEA because it did not create and implement appropriate behavioral supports for the Student.</p> <p>(34 CFR §§ 300.323, 300.324, 300.320; OARs 581-015-2220, 581-015-2205, 581-015-2181)</p>	<p>Assessment and Behavior Support Plan were modified and specific amendments were added in June 2018, which have resulted in a significant reduction in the Student's physically violent behaviors. Staff has successfully implemented the Student's Behavior Support Plan to address new behaviors.</p>
<p><b>2.</b></p>	<p><b>Parent Participation</b></p> <p>a. The Parent alleges that the District and CESD violated the IDEA by setting unrealistic time limits on the Student's IEP meetings in December 2018 and February 2019.</p> <p>b. The Parent also alleges that the Parent does not receive any homework, tests, or documents evidencing the Student's daily or periodic academic progress.</p>	<p><b>Substantiated</b></p> <p>a. The combination of the communication plan and time cap on the February 28, 2019 IEP Team Meeting resulted in the Team being unable to complete its work, which was not completed before this Complaint was filed. This infringed on the Parent's meaningful opportunity to participate in the IEP development process.</p> <p>b. CESD could not demonstrate that it was implementing the 40 minutes per month of "Communication Home" accommodation on the Student's IEP.</p>
<p><b>3.</b></p>	<p><b>Eligibility</b></p> <p>The Parent alleges the District and CESD violated the IDEA by adding the category of emotional disturbance to the Student's IEP without the Parent's knowledge or consent.</p>	<p><b>Substantiated</b></p> <p>Although the Parent knowingly gave consent for a reevaluation, the District did not fulfill the evaluation requirements for establishing emotional disturbance eligibility. Specifically, it did not obtain a second observation of the Student outside of the classroom and did not obtain two completed behavior-rating scales.</p>
<p><b>4.</b></p>	<p><b>FAPE</b></p> <p>The Parent alleges that the District and CESD violated the IDEA because they collectively:</p> <p>a. Failed to provide sufficient supports to complete statewide testing.</p> <p>b. Failed to provide 1:1 direct staff support</p>	<p><b>Substantiated in Part</b></p> <p><b>a. Not substantiated</b> There is no evidence that the District or CESD failed to implement the Student's accommodations during statewide testing. CESD's testing procedures are identical to the Student's accommodations.</p> <p><b>b. Not substantiated</b> The Order arising out of Complaint No. 18-054-039 stated that the Student would be</p>

<p>c. Failed to provide Assistive Technology supports such as speech to text supports</p> <p>d. Failed to provide manipulatives to complete math assignments and testing</p> <p>e. Failed to provide appropriate occupational therapy supports</p> <p>f. Failed to provide psychological services</p> <p>g. Failed to provide a general education teacher for the Student's IEP meeting.</p> <p>(34 CFR § 300.101, OAR 581-015-2040).</p>	<p>given 1:1 support in an amount not less than the number of days the Student did not receive 1:1 support prior to an IEP Amendment removing the Student's 1:1 aide. The District provided the Student with a 1:1 aide from January 25, 2019 through February 20, 2019. There have been no new facts or evidence to merit re-opening a claim that has been investigated and upon which the Department has ordered corrective action.</p> <p><b>c. Partially substantiated</b> The Student's February 28, 2019 includes the accommodations of speech-to-text software for writing assignments, which the Student has not received. This allegation is substantiated against the District and CESD for the period from February 28, 2019 to the filing of this Complaint.</p> <p><b>d. Not substantiated</b> The Student is taught math concepts in the classroom using manipulatives.</p> <p><b>e. Not substantiated</b> The Student and staff received consultation from the occupational therapist and the Student has made progress appropriate in light of the Student's circumstances in this area.</p> <p><b>f. Not substantiated.</b> This allegation was addressed in Complaint No. 18-054-044. There have been no new facts or evidence to merit a re-opening of a claim that has been investigated and upon which the Department has ruled not substantiated. Further, the parent has not signed a release to allow a qualified mental health professional to consult with staff regarding the Student.</p> <p><b>g. Substantiated</b> Each placement consideration in the Student's February 28, 2019 IEP indicate that the Student may participate in the general education environment. A general education teacher should have been present.</p>
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### III. FINDINGS OF FACT

1. The Student is eleven years old and in the fifth grade. The Student resides within the North Clackamas School District (District) and attends a Clackamas Education Service District (CESD) therapeutic placement.
2. The Student is business-oriented and has developed a recycling business and a craft business. The Student is also physically active and enjoys playing sports such as soccer and basketball. The Student has become a natural leader and is extremely social.
3. The Student has historically received special education services under the eligibility category of Other Health Impairment (OHI). In the school environment, during the end of the Student's fourth grade year, the Student exhibited behaviors such as walking out of assigned areas, hitting, pushing, throwing items, grabbing, kicking, and slapping. The Student's behaviors resulted in multiple incident reports and the use of physical restraint by school staff.
4. Between January 4, 2018 and July 11, 2018, the Parent received 106 written behavioral incident reports from CESD. The reports include incidents of the Student's failure to follow directions, expression of aggression toward and injury to peers and staff, and incidents of property damage that occurred both inside and out of the classroom. The Student had 94 incidents of "danger to others," 70 incidents of violent acts, and 91 reported incidents of classroom disruption.
5. Upon entering the CESD program, the Student was instructed at a second grade level because this was the level at which the "Let's Go Learn" testing placed the Student. However, school staff at the Student's current placement have recently opined that the Let's Go Learn was not an accurate measure of the Student's progress, especially in reading. After academic observation and continued class interaction, CESD staff believe the Student is much closer to grade level in both math and reading than the Let's Go Learn testing has evidenced.
6. The Student's March 8, 2018 IEP states that the Student needs assistive technology or devices in the area of writing and that the District will be "piloting assistive technology in the area of writing." During the 2017-2018 and 2018-2019 school years, the Student used an "Alpha Smart" device. An Alpha Smart is a computerized writing program that allows a child to write and spell-check at the same time. The Alpha Smart operates on the same basis as a word processing program. The Student uses Alpha Smart quite well. The Alpha Smart does not include speech-to-text functionality.
7. The Student's current classroom (grades 3-5) has historically had access to speech-to-text technology through the use of Google Docs. However, this year the school has experienced a technical difficulty with Google Docs and so the Student has not used speech-to-text technology. When the Student uses the computer lab, the Student will mainly work on Let's Go Learn programs and will not use the computer to create narratives or any type of composition. The Student's classroom teacher will physically scribe for the Student, either writing entire passages or work with the Student on the phonetic construction of words with both the teacher and Student writing words and composing them together.
8. The Student's February 28, 2019 IEP notes in the accommodation page that the Student will receive the accommodation of speech-to-text for writing assignments, assessments, and responses to reading comprehension questions, for an anticipated amount of 160 minutes per month.
9. Both of the Student's IEPs dated March 8, 2018 and February 28, 2019 include an

accommodation for “communication home” for an anticipated 40 minutes every month.

10. The provision of a 1:1 aide was the subject of an allegation in ODE Complaint No. 18-054-039. Corrective action was ordered as the allegation regarding the 1:1 aide was partially substantiated. The District complied with the Department’s corrective action and provided the Student a 1:1 aide for 16 days from January 25, 2019 through February 20, 2019.
11. On April 18, 2018, the IEP Team met with the purpose of amending the Student’s IEP and to develop a revised Functional Behavioral Assessment (FBA) and Behavior Support Plan (BSP). The Student’s previous IEPs dated March 15, 2017 and March 8, 2018 did not contain a BSP as a supplementary aid, service or modification/accommodation. However, each IEP contains supports for school personnel from a Functional Behavioral Assessment/Development of the Positive Behavior Support Plan. The Student’s March 8, 2018 IEP was amended on April 18, 2018 to provide a BSP.
12. On August 30, 2018, the Parent executed a “Social/Behavioral Intervention and Permissions to Disclose” on August 30, 2018. The Parent handwrote the following after giving consent for the Student to participate in social/behavioral services based on the Student’s IEP and/or BSP: “I do not consent for [CESD psychiatrist] to work with [the Student] or staff in relationship to [the Student]. I am willing for a different psychiatrist other than [CESD psychiatrist] to work with [the Student].” Because the Parent would not consent to the school psychiatrist working with the Student, the IEP Team, on January 24, 2019 removed the psychiatrist consultation from the Student’s IEP and added a consultation with a Qualified Mental Health Professional (QMHP). The Parent has not signed a release of information for the QMHP to date.
13. The IEP Team met again on November 15, 2018 to discuss the Student’s BSP. At this time, the Student had begun to use inappropriate language at school. CESD staff continued to use the BSP to de-escalate the Student with body proximity, redirection, and processing.  
  
Between August 30, 2018 and March 16, 2019, the Student’s behavior has generated 27 incident reports. The Student has stopped physically attacking peers and staff. However, the Student’s behaviors are now verbally aggressive or abusive. The Student’s behavior has not resulted in placement in a physical restraint since September 26, 2018.
14. The Student’s BSP was amended to increase options available for the Student to de-escalate, engage in clear de-briefing strategies, and identify related skill deficits.
15. From March 15, 2018 through June 15, 2018, Team Meeting Agendas contain starting and ending times, with all meetings being capped at one hour.
16. The District implemented a Communication Plan in May 2018 and subsequently amended that plan during the 2018-2019 school year. The Communication Plan was the subject of an allegation in Complaint No. 18-054-044. The Department partially substantiated the Parent’s allegation regarding the practice of limiting the Parent’s weekly communications to 1,000 words, regardless of subject matter. A communication plan is still in place and the Parent complies with parameters of the plan a majority of the time, i.e. the Parent communicates only with the Special Education Director at CESD and does not contact staff.
17. The Parent does not have regular contact with the Student’s IEP Team Members including the classroom teacher and behavioral specialist. The Parent’s only contact with the Student’s IEP Team Members is at IEP Team Meetings.
18. During the Student’s November 15, 2018 IEP Team Meeting, the District’s Special Education

Director raised the issue of evaluating the Student for Emotional Disturbance (ED) eligibility. The Parent expressed agreement to this evaluation and also requested that the Student be evaluated for Specific Learning Disability (SLD).

19. On December 12, 2018, the Parent executed a Consent for Evaluation that permitted the District to evaluate the Student in all other areas of suspected disability, including SLD and ED.
20. The Student was observed as part of the evaluation for ED. The Student's classroom teacher completed a rating scale form regarding the Student's behaviors. The Parent did not complete any rating scale as part of the Student's ED evaluation. A medical statement was received from the Student's physician diagnosing the Student with Attention-Deficit/Hyperactivity Disorder, and as impulsive and overly active.
21. The Parent did not attend a January 24, 2019 IEP Team Meeting, notifying the Special Education Director in an email. The Parent stated that it was useless to attend a team meeting when the Parent's input was never considered. The Parent further refused to attend the January 24, 2019 IEP Team Meeting because the District contracted with a third party to facilitate the IEP Team Meeting.
22. The Parent was present at the February 28, 2019 IEP Team Meeting. There, based upon a discussion including the in-class observation, rating scale, and other components of the evaluation, the Student was found eligible under a secondary eligibility category of ED.
23. A general education teacher did not attend the Student's February 28, 2019 IEP Meeting.
24. The Student participated in statewide testing during the 2017-2018 school year. The Student's IEP contains the following accommodations for Assessment Participation: All universal tools; embedded and non-embedded. Shorter chunks of time, a quiet environment, small group testing, noise buffers.
25. The Student attends a school that has approximately 45 other children ranging from kindergarten through eighth grade. Nearly every child in the program has an IEP and most have some accommodations for statewide testing. The school takes a specific approach to the testing. Computer-based statewide testing is completed over the course of one month. An area on campus is designated for testing purposes. During the month of testing, the school hires a substitute teacher to instruct students during regular class hours. The regular teacher then takes each student to the testing area and administers statewide testing after reviewing each student's IEP accommodations and modifications. Then, with accommodations in place, students take as much of the test as possible before a break is given or before the student stops testing for the day. Statewide testing is completed based on each student's attention level and how much testing each student can tolerate. There is no indication that the Student's experience differed from how the school typically administers statewide testing.
26. The Student's IEP does not contain any accommodations related to math other than specially designed instruction. The Student's February 28, 2019 IEP contains a math goal using money and manipulatives.
27. An Occupational Therapist meets monthly with the Student's teacher to review the Student's progress, consult with the classroom teacher, and implement exercises and strategies for both the Student and staff.
28. The Occupational Therapist has made the following considerations and recommendations:

deep breathing, using an electronic game program to teach different types of breathing techniques, walks, deep pressure, pencil grips, "Handwriting Without Tears" exercises and worksheets, Alpha Smart, squeeze balls, desk bands, and weighted balls. For staff, the Occupational Therapist has recommended Super Flex curriculum support.

29. In the fall of 2018, when the Student began making marked behavioral progress, CESD began considering the appropriateness of a change in placement. The District and CESD had considered moving the Student to another CESD therapeutic facility that is more academically challenging and more closely resembles a general education environment. The District and CESD also considered moving the Student back to a middle school after some site visits. However, the Student's behaviors increased in December 2018 and January 2019, largely attributed to a change in medication. Placement discussions from fall 2018 have been delayed in light of the Student's increased behaviors. The Parent continues to be a strong advocate for the Student's placement in a general education classroom among typical peers.
30. Because of the behavioral focus of the CESD program and rigors associated with addressing prosocial skill development, the Student is not typically assigned homework. CESD sends a "Family Feedback form" on a weekly basis discussing the Student's challenges and gains for a specific week. The form does not contain any work samples or test results. The Parent has requested work samples during IEP Team Meetings.

## **IV. DISCUSSION**

### **A. IEP Implementation**

The Parent alleges that the District and CESD violated the IDEA when it did not develop and implement appropriate behavioral supports for the Student. A school district must review or revise a student's existing functional behavior assessment (FBA) if a student places themselves, other students, or staff at imminent risk of serious bodily injury as a result of the student's behavior.<sup>2</sup> Additionally, a school district must ensure a student's behavior intervention plan<sup>3</sup> appropriately addresses the student's need.<sup>4</sup>

Previous complaint investigations (Complaint Nos. 18-054-039 and 18-054-044) have addressed the Parent's allegations regarding the Student's FBA and BSP. This Complaint only explores the instant allegation from November 11, 2018 to March 15, 2019 as this allegation repeats the Parent's previous concern.

On March 8, 2018, the Parent was furnished with and signed a consent to evaluate for a new FBA. A collaborative FBA meeting was held in May 2018 and a new FBA/BSP was finalized in June 2018. Since November 2018, the Student has begun using increasingly inappropriate language, which has led to incident reports. In responding to these incidents, District staff have responded by utilizing body proximity, redirection, and processing, each of which are all strategies listed on the Student's FBA addendum. Another FBA meeting was held on November 15, 2018. The IEP Team amended the Student's Behavior Support Plan (BSP) and included new adult responses, debriefing strategies, and identified skills deficits.

Beginning in June 2018, the Student's IEP Team collectively crafted a new FBA and BSP. The BSP was subsequently amended with input from the Parent and CESD in November 2018. The

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<sup>2</sup> OAR 581-015-2181.

<sup>3</sup> For this Order's purposes, the terms "Behavior Support Plan" and "Behavior Intervention Plan" are used interchangeably.

<sup>4</sup> OAR 581-015-2181(3).

Student's behavioral progress under the updated FBA and BSP has been notable. The Student has become less physically aggressive and has not assaulted any peers or staff, which is a significant improvement from the first few months the Student attended the CESD program. The Student had no incident referrals whatsoever in October 2018 and overall incident reports have decreased significantly.

The Student's FBA and BSP were modified and amended in June 2018 and November 2018 to address newly presenting behaviors. Meanwhile, implementation of the Student's FBA and BSP have contributed to the reduction in the Student's physically violent behaviors. The Department does not substantiate this allegation.

## **B. Parent Participation**

### **1. Time Limits on IEP Team Meetings – December 2018 and February 2019**

The Parent alleges that the District and CESD violated the IDEA by setting unrealistic time limits on the Student's December 2018 and February 2019 IEP Team Meetings. School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.<sup>5</sup>

Beginning with the December 2018 IEP Team Meeting, CESD and the District have remitted IEP Team Meeting agendas which also reflect that the IEP Team Meeting will last for only one hour. During the February 28, 2019 IEP Team Meeting, a classroom teacher advised the group they had to leave after one hour. The Parent was not given a form to excuse the teacher.<sup>6</sup> The February 28, 2019 IEP Team Meeting lasted approximately, one hour and fifteen minutes before the classroom teacher left. The meeting adjourned at that point, without being completed.

As previously discussed in Complaint No. 18-054-044, the District and CESD have implemented a "Communication Plan" wherein the Parent cannot directly contact any of the Student's teachers, staff, or support personnel. The Parent communicates with a designated CESD administrator. The combination of the communication plan and time cap on the February 28, 2019 IEP Team Meeting resulting in the Team being unable to complete its work. This work was not completed before this Complaint was filed, which infringed on the Parent's meaningful opportunity to participate in the IEP development process. The Department substantiates this allegation.

### **2. Sending Communications Home**

The Parent also alleges that the Parent does not receive any homework, tests, or communications evidencing the Student's daily or periodic academic progress. The Student's IEP contains an accommodation for "Communication Home." CESD does not typically assign the Student homework due to the behavioral focus of the program and rigors associated with addressing prosocial skill development. The Student does complete tests and classwork, but there is no practice in place to send these materials home. During the February 28, 2019 IEP Meeting, the Parent requested sample work from the 2018-2019 school year to better understand the Student's writing ability and reading skills. CESD sends a "Family Feedback form" to the Parent, but these forms have not included narratives communicating how the Student is doing in school. The Department substantiates this allegation against CESD as it relates to implementing the "Communication Home" accommodation component of the Student's IEP.

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<sup>5</sup> OAR 581-015-2190.

<sup>6</sup> OAR 518-015-2210(3)

### **C. Eligibility**

The Parent alleges the District and CESD violated the IDEA by adding the category of emotional disturbance to the Student's IEP without the Parent's knowledge or consent. Before a reevaluation can be commenced, a District must obtain informed parent consent before conducting any reevaluation of a child with a disability.<sup>7</sup> If a child is suspected of being eligible under the category of emotional disturbance, an evaluation must take place that must include the following: (1) a social-emotional evaluation; (2) a medical or health assessment statement; (3) the completion of at least two behavior rating scales; and (4) an observation in the classroom and in at least on other setting by someone other than the student's teacher.<sup>8</sup>

The records indicate that the District obtained the Parent's consent to conduct the reevaluation. After consent was obtained, the District obtained a medical statement from the Student's doctor and conducted a single classroom observation. Also, the Student's classroom teacher completed a behavior rating scale as part of the evaluation. The District did not conduct a second observation of the Student outside of the classroom as part of the ED evaluation, nor did it complete a second behavior rating scale. The District did not complete the minimum requirements for evaluation to establish the Student's eligibility under the category of ED. The Department substantiates this allegation.

### **D. FAPE**

School districts must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the district is responsible.<sup>9</sup>

#### **1. Sufficient supports to complete statewide testing**

The Parent alleges that the Student's IEP accommodations were not put in place during statewide testing during the 2017-2018 school year as evidenced by the lack of testing results from the Student.<sup>10</sup> An IEP must contain a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment.<sup>11</sup>

The Student is enrolled in a program where nearly every student has an IEP, many of which include statewide testing accommodations. The District and CESD were on notice of the Student's statewide testing accommodations. CESD has gone to great lengths to ensure that all students are appropriately accommodated during statewide testing. CESD directs that the classroom teacher, an individual with whom students are familiar and who knows and can access each students' IEP, will proctor the statewide testing. Statewide testing is administered in small portions according to each individual child's tolerance for test-taking. The tests are administered in an area separated from other classes to minimize distraction. Comparing CESD's testing procedures with the Student's Assessment Participation accommodations, they are virtually identical. There is no evidence to show that either the District or CESD failed to implement the Student's

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<sup>7</sup> OAR 581-054-2090(5)(a).

<sup>8</sup> OAR 581-015-2145.

<sup>9</sup> 34 CFR § 300.101; OAR 581-015-2040.

<sup>10</sup> The Parent alleges that the District must not have implemented the Student's accommodations because the Parent did not receive the Student's test results and/or because the Student did not complete the entire examination. Failure to furnish the Parent with the Student's test results do does not establish failure on the part of the District or CESD to implement the Student's IEP accommodations on statewide testing.

<sup>11</sup> OAR 581-015-2200(1)(g).

accommodations during statewide testing. The Department does not substantiate this allegation.

## **2. 1:1 support**

The Parent re-alleges that the District's failure to provide 1:1 support is a violation of FAPE. This allegation was addressed in Complaint No. 18-054-044. Corrective action was ordered by the Department in the form of providing the Student with 1:1 support for not less than the total amount of days the Student had not received 1:1 support prior to the amendment to the Student's IEP on January 24, 2018. Corrective action must be completed within the timeline established by the Department's order.<sup>12</sup> Between January 25, 2019 and February 20, 2019, the District provided the Student with the 1:1 support required by the order arising out of Complaint No. 18-054-044. There have been no new facts or evidence to merit revisiting this claim, which has previously been investigated, and for which the Department has ordered corrective action. The Department does not substantiate this allegation.

## **3. Assistive technology**

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the school district's jurisdiction. A school district must provide special education and related services in accordance with the student's IEP.<sup>13</sup>

The Student's IEPs consistently note that the Student requires assistive technology or services. The Student's March 8, 2018 IEP did not specify what kind of assistive technology, only that the Student "will be piloting" assistive technology. The Student's February 28, 2019 IEP notes in the accommodation page that the Student will receive the accommodation of speech-to-text for writing assignments, assessments, and responses to reading comprehension questions, for an anticipated amount of 160 minutes per month. From the February 28, 2019 IEP to the filing of this Complaint, the Student did not have access to speech-to-text software. The Student has become proficient using the Alpha Smart, an assistive technology device, but the Alpha Smart does not feature speech to text technology. The Department finds that this failure to implement the Student's IEP constitutes a violation of the IDEA, but does not substantiate it as a denial of FAPE.

## **4. Failure to provide math manipulatives**

The Parent alleges that the District failed to provide manipulatives to complete math assignments and testing, thus failing to provide a FAPE to the Student. A manipulative is any object or tool that helps a student visualize and quantify math problems or functions. For example, a manipulative can be a set of fractional blocks, an abacus, a printed array, or money.

The Student's February 28, 2019 IEP does not contain an accommodation specifically calling for the use of math manipulatives. This IEP does contain a math goal that includes a "Mastery Criteria or Short-Term Objective" that contemplates instruction in math and the use of manipulatives. Indeed, the Student has access to manipulatives such as arrays, money, blocks both in fractions, ones, tens and hundreds units and pencil and paper to work problems out "long hand." The Student receives math concept instruction in the classroom and will also take some tests using the Let's Go Learn program in the computer lab. The Let's Go Learn Math program is multiple choice. There are generally no manipulatives in the computer lab. The Student receives classroom math instruction using manipulatives. This allegation is not substantiated.

## **5. Occupational Therapy**

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<sup>12</sup> OAR 581-015-2030(15).

<sup>13</sup> 34 CFR § 300.323; OAR 581-015-2220.

The Parent alleges that the District and CESD have failed to provide appropriate Occupational Therapy supports, more specifically that the Occupational Therapist should be providing instruction to the Student in the area of writing using text-to-speech and other modalities. “The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit”.<sup>14</sup> An IEP should allow a child to make progress appropriate in light of the child’s circumstances.<sup>15</sup>

As discussed above, the Student’s IEP did not contain a specific text-to-speech accommodation until the Student’s February 28, 2019 IEP was developed. Prior to the February 28, 2019 IEP, the Student received Occupational Therapy services that focused on addressing the Student’s behavior. The Occupational Therapy services were focused on calming strategies such as walk outs, weighted balls, and deep breathing techniques. The Occupational Therapist also consulted District staff on use of the Alpha Smart for the Student’s writing skills. The Student consistently received appropriate Occupational Therapy services that have contributed to a decline in the Student’s incidents of behavior, as well as contributing to the Student’s academic progress during the 2018-2019 school year. The Department does not substantiate this allegation.

## **6. Psychological services**

The previous Complaint No. 18-054-044 addressed the Parent’s allegations regarding the psychological services for the Student. That allegation was not substantiated. Due to the Parent’s refusal to sign a release of information, District staff did not receive psychological consultation contemplated in the Student’s IEP. CESD and the District removed the psychological consult from the Student’s IEP on January 24, 2019 and replaced it with a consultation from a Qualified Mental Health Professional (“QMHP”). As of the date of the Complaint, the Parent has not signed a release to allow the QMHP to consult with staff regarding the Student. This allegation remains unsubstantiated.

## **7. General Education Teacher**

The Parent alleges CESD and the District violated the IDEA because no general education teacher has been in attendance at the Student’s IEP Team Meetings. A general education teacher of a student must attend an IEP meeting if the child is, or may be, participating in the general education environment.<sup>16</sup> The District and CESD did not include a regular education teacher at the February 28, 2019 IEP Team Meeting, even though the District and CESD had previously considered changing the Student’s placement to participate in the general education environment based upon the Student’s positive progress. The three placements considered at the February 28, 2019 IEP Team Meeting were as follows: (1) a separate school with possible transition to a neighborhood middle school; (2) attend neighborhood middle school with 40-79% of time spent in the general education environment; and (3) attend neighborhood middle school with less than 40% of the day in the general education environment. Because each placement option may include participation in the general education environment, the IEP Team Meeting should have been attended by a general education teacher. The Department substantiates this allegation.

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<sup>14</sup> *R.P. v. Prescott Unified School District*, 631 F.3d 1117 (2011).

<sup>15</sup> *Andrew F. v. Douglas County*, 137 S.Ct. 988 (2017).

<sup>16</sup> 34 CFR § 300.321; OAR 581-015-2210.

## V. CORRECTIVE ACTION<sup>17</sup>

*In the Matter of North Clackamas School District and Clackamas Education Service District*  
Case No. 19-054-011

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

No	Action Required	Submissions <sup>18</sup>	Due Date
1.	Develop (or acquire) and implement a “Communication Home” document that includes both academic and behavioral progress data and information to be sent weekly while the Student is enrolled in the therapeutic program.	Submit a copy of the Communication Home document and its projected distribution schedule through September 2019	<b>May 24, 2019</b>
2.	Convene the evaluation planning team, including the Parents, to determine whether the evaluation for emotional disturbance is still needed. If so, with Parent consent, complete the missing components of the evaluation and determine eligibility.	Submit the copy of the evaluation planning document(s) and decision and any associated notices and consents.  If the decision is to complete the evaluation, submit a copy of the completed statement of eligibility.	<b>June 10, 2019</b>  <b>September 30, 2019</b>
3.	Explore the options for appropriate Speech-to-Text technology for the Student’s use in writing assignments and whether this is needed to facilitate the Student’s academic achievement. In making the decision, consider consultation with an assistive technology specialist to develop instructional strategies to support the Student’s transition from the Alpha Smart and acquisition of the skills needed for Speech-to-Text.	A brief description of the options considered, and the decision made.  If a Speech-to-Text selection is made, submit the name of the technology, its implementation date, and a copy of the IEP indicating that revision.	<b>June 7, 2019</b>  <b>June 30, 2019</b>

<sup>17</sup> The Department’s order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (OAR 581-015-2030(15).) The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. (OAR 581-015-2030(17)-(18).)

<sup>18</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: [raeanray@state.or.us](mailto:raeanray@state.or.us); fax number (503) 378-5156.

Dated this 10th Day of May 2019

*Candace Pelt, Ed.D*

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Candace Pelt Ed.D  
Assistant Superintendent  
Office of Student Services

Mailing Date: May 10, 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).)