

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Knappa School District )  
)  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-017

**I. BACKGROUND**

On April 26, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Knappa School District (District). 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 April 29, 2019.

On May 2, 2019, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of May 16, 2019. The District completed its *Response* and the Department's Contract Investigator (Investigator) received it partially in hard copy and partially in electronic format on May 16, 2019. The *Response* included a narrative and the following documents:

1. Interim program notes (undated)
2. Correspondence from NWRESD to parent dated January 8, 2016
3. Eligibility Statement (Developmental Delay) dated January 13, 2016
4. Correspondence from NWRESD to Parent dated February 1, 2016
5. Consent for evaluation dated July 27, 2016
6. Eligibility Statement (Developmental Delay) dated August 3, 2016
7. Prior Written Notice/Consent dated August 3, 2016
8. Correspondence from NWRESD to Parent dated September 26, 2016
9. Emails between parties irrelevant to the Complaint dated January 2, 2017 through February 2, 2017
10. Notice of IFSP Team Meeting dated February 7, 2017
11. IFSP Team Meeting Minutes dated February 26, 2017
12. Notice of IFSP Team Meeting dated May 1, 2017
13. IFSP Team Meeting Minutes dated July 13, 2017
14. Authorization to Use or Disclose Educational and Protected Health Information dated July 19, 2017
15. Consent for Evaluation dated July 19, 2017
16. Medical Statement completed and signed July 21, 2017
17. Autism evaluation referral dated by hand September 11, 2017
18. Prior Written Notice dated October 10, 2017
19. Doernbecher SLP Evaluation dated November 16, 2017
20. Doernbecher ASD Evaluation dated November 16, 2017
21. NWRESD Evaluation dated January 1, 2018
22. Notice of Team IFSP Meeting dated January 3, 2018
23. ASD Evaluation Report dated January 8, 2018
24. Eligibility Statement (ASD) dated January 12, 2018
25. Partial IFSP dated January 11, 2018
26. NWRESD Evaluation dated January 12, 2018
27. IFSP Team Meeting Minutes dated January 12, 2018
28. Developmental Information dated January 12, 2018
29. Prior Written Notice dated January 12, 2018
30. Placement decision dated January 12, 2018

31. Confidential Court documents unrelated to this proceeding stamped received on April 26, 2018
32. Notice of Team Meeting dated May 31, 2018
33. Transition to Kindergarten Meeting Agenda, undated
34. IEP dated June 8, 2018 with handwritten amendments dated November 11, 2018
35. Prior Written Notice dated June 8, 2018
36. Written Agreement between Parent and District dated June 8, 2018
37. IEP Team Meeting Minutes dated June 8, 2018
38. Progress Report dated June 19, 2018
39. Emails between the District and NWRESA dated between August 30, 2018 and December 13, 2018
40. Notice of Team Meeting dated September 17, 2018
41. IEP Team Meeting Minutes dated September 20, 2018
42. Notice of Team Meeting dated October 29, 2018
43. Prior Written Notice dated November 1, 2018
44. IEP Team Meeting Minutes dated November 2, 2018
45. Behavioral Data Tracking dated between November 26, 2018 and December 12, 2018
46. Notice of Team Meeting dated March 1, 2019
47. IEP Team Meeting Minutes dated March 6, 2019
48. Prior Written Notice dated March 6, 2019
49. Correspondence from District to Parent dated March 30, 2019

At the request of the Investigator, the District submitted the following documents during and after the in-person interviews:

1. A legible copy of the page evidencing handwritten changes to the Student's November 11, 2018 IEP accommodations, modifications, and specially designed instruction
2. A complete copy of the Student's IFSP

The Investigator requested attendance records for the Student for both the Summer 2018 extended school year program and for the 2018-2019 school year. Full attendance records were not provided.

The Parents did not submit any supplementary documentation.

On May 31, 2019, the Investigator interviewed the District Autism Specialist, the Student's teacher, the Education Service District director, and the District's Special Education Director. On June 6, 2019, the Investigator interviewed the custodial Parent (who holds educational decision-making authority) and on June 7, 2019 spoke with the Student's custodial grandparent. The Investigator spoke with a family member who is also a District employee on June 10, 2019 to discuss placement offers and IEP meeting date information. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> 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. This Complaint covers the one-year period from April 27, 2018 to April 26, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

---

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

## II. ALLEGATIONS AND CONCLUSIONS

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.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1.</b>	<p><b>Least Restrictive Environment</b></p> <p>The Parent alleges that the District violated the IDEA because the District failed to educate the Student in the least restrictive environment when it: (1) did not allow the Student to attend kindergarten; and (2) did not allow the Student to attend an educational program at the Student's neighborhood school.</p> <p>(34 CFR § 300.114; OARs 581-015-2240, 581-015-2245)</p>	<p><b>Not substantiated</b></p> <p>The District appropriately placed the Student in a more restrictive setting based upon the Student's communication and behavior needs, and considerations of student safety.</p>
<b>2.</b>	<p><b>Placement</b></p> <p>The Parent alleges that the District violated the IDEA because the District has placed the Student in an inappropriate classroom, i.e., the District has refused to allow the Student to attend kindergarten and has placed the Student in a part-time early childhood class with no access to peers without disabilities.</p> <p>(34 CFR § 300.115; OAR 581-015-2245)</p>	<p><b>Not substantiated</b></p> <p>The District appropriately placed the Student in a more restrictive educational setting based upon the Student's communication and behavior needs, and considerations of student safety.</p>
<b>3.</b>	<p><b>IEP Content and Implementation</b></p> <p>The Parent alleges the District violated the IDEA when it failed to develop an IEP for the Student that would allow the Student to develop communication skills and socialization skills, that it failed to provide assistive technology, appropriate speech and language services, and failed to provide the Student with access to age appropriate peers so the Student could practice communication skills.</p> <p>(34 CFR §§ 300.323, 300.324; OARs</p>	<p><b>Partially Substantiated</b></p> <p><b>a. Assistive Technology</b> A Picture Exchange Communication System (PECS) proved to be a successful tool to advance the Student's communication skills. However, because the skill was not practiced consistently or in the home environment, it was lost. The circumstances here called for the use of school-purchased assistive technology devices in the Student's home, and associated Parent training. The Department substantiates this portion of the allegation.</p> <p><b>b. Speech and Language services</b></p>

	<p>581-015-2205, 581-015-2220)</p>	<p>The District did not sufficiently work with the Student to make progress in the area of expressive communication. This portion of the allegation is substantiated.</p> <p><b>c. Access to peers</b> The District considered the Student's behavior and communication needs, as well as school safety considerations, and made appropriate decisions about the Student's access to peers. This portion of the allegation is not substantiated.</p>
<p><b>4.</b></p>	<p><b>Supplementary Aids and Services</b></p> <p>The Parent alleges that the District violated the IDEA because it failed to provide supplementary aids and services to the Student, more particularly, failed to provide transportation services to the Student.</p> <p>(34 CFR § 300.107; OAR 581-015-2070)</p>	<p><b>Substantiated</b></p> <p>Beginning March 6, 2019, the District no longer offered the Student transportation. Because this was a necessary nonacademic service for the Student, this allegation is substantiated from March 6, 2019 to April 26, 2019—the date this Complaint was filed.</p>
<p><b>5.</b></p>	<p><b>FAPE</b></p> <p>The Parent alleges that the District failed to provide the Student with a free appropriate public education (FAPE) because the District has failed to offer the Student an appropriate placement inclusive of transportation that would create an educational opportunity for the Student and has failed to appropriately create and implement an IEP that would allow the Student to gain communication and socialization skills while accessing peers without disabilities.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>	<p><b>Partially Substantiated</b></p> <p><b>a. Appropriate Placement and Transportation</b> From a program perspective, the “Seaside classroom” placement offer was appropriate based on the Student's needs. However, between March 9, 2019 and April 26, 2019, the District did not offer to provide the Student with transportation to participate in this program. This failure to provide transportation resulted in a denial of FAPE.</p> <p><b>b. Communication</b> The District did not sufficiently work with the Student to make progress in the area of expressive communication. This portion of the allegation is substantiated.</p> <p><b>c. Socialization</b> The District did develop an appropriate plan toward improving the Student's socialization skills. The Student made progress on their “Social/Emotional” goal. The Department does not substantiate this portion of the allegation.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
The Parent seeks a remedy to address the length of the Student's bus ride.

### III. FINDINGS OF FACT

1. The Student is five years old. The Student enjoys jumping on trampolines and being outside, and is affectionate toward family members.
2. In January 2016, the Student became eligible for special education services under the category of Autism Spectrum Disorder (ASD). The Student has physical, cognitive, and academic needs. The Student is not fully toilet trained, has significant communication needs, and frequently engages in unsafe and inappropriate behaviors, including elopement without warning.
3. The Parent has particular concerns about the Student's inability to communicate. Because of the Student's expressive communication limitations, the Student becomes frustrated and will bite or pinch to gain the attention of others or to show frustration. The District provided staff with Kevlar sleeves to prevent injury, and has separated the Student from peers due to the Student's unsafe behaviors.
4. On November 16, 2017, the Student was evaluated at Oregon Health Sciences University (OHSU) by both a Speech and Language Specialist and an Autism Specialist. The Student's developmental functioning level was found to be far below age equivalent in the areas of visual reception, fine motor skills, receptive learning, and expressive language.
5. As part of their findings, the OHSU evaluators recommended incorporating principles of Applied Behavior Analysis (ABA) into early intervention services and also instruction in play skills, first through interactions with adults, then with familiar children. An evaluator recommended that augmentative and assistive communication resources be explored because the Student's frustration with an inability to communicate was leading to behavioral difficulties. The evaluators recommended soliciting input from District assistive technology professionals. OHSU professionals also suggested that the Student's "articulation skills should continue to be monitored as [the Student] gains functional expressive language skills."
6. On January 12, 2018, the Student began participating in an Early Childhood Special Education (ECSE) program through the Northwest Regional Education Service District (NWRESA).
7. Pursuant to an Individualized Family Service Plan (IFSP), the Student was placed in a highly structured, specially designed intervention program to assist the Student in the following areas: Communication, Social/Emotional, Adaptive, and Fine Motor skills development. The IFSP Team decided the Student would spend eight hours per week in the program, all of which would be spent apart from typical peers. The IFSP Team decided this based upon the Student's struggles with safety, self-regulation, communication, and the Student's need for a small, highly-structured environment.
8. The Student experiences regression after only short breaks from learning activities. The IFSP Team agreed that the Student would be included in Extended Year Services (ESY) for the 2017-2018 school year.
9. The Student's IFSP contained goals regarding daily living routines, remaining in designated

areas, willingness to imitate actions when prompted, improving social skills (greeting, playing next to, sharing materials, responding to others), and expressive/receptive communication.

10. The January 12, 2018 IFSP contained supplemental aids and services of ASD consult for eight hours per year, occupational therapy consult for ninety minutes per year, and Speech Language Pathologist consult for four hours per year. The consultations were provided to staff.
11. On June 8, 2018, the Student's IEP Team met to discuss the Student's transition from ECSE to kindergarten. The Student's goals were continued from the January 12, 2018 IFSP. Assistive technology was added to the Student's IEP to assist in the area of communication. The IEP Team decided the Student would receive Specially Designed Instruction (SDI) that tracked the identified goal areas, including receptive and expressive communication SDI. Bus transportation twice a day was added as a related service.
12. The Student's June 8, 2018 IEP was written to begin on September 4, 2018. The location for delivery of services was "TBA Seaside."<sup>2</sup> The Parent visited the "Seaside classroom" during the Summer of 2018.
13. Supplementary aids, services, and accommodations in the June 8, 2018 IEP included "pictures for expressive communication," sensory supports, and sensory breaks.
14. The District uses the Picture Exchange Communication System (PECS) to meet the supplementary aid the Student's June 8, 2018 IEP described as "pictures for expressive communication." PECS is a series of cards displaying familiar items. Because of the Student's significant communications needs, PECS was introduced to assist the Student with communicating their wants and needs through the selection of a card.
15. The Student learned to use PECS during the ECSE program. The Student was able to select foods from an array of 2-3 pictures that were commonly used. For PECS to be effective, the Student had to use it regularly. Gaps in usage resulted in the Student losing the skill. The Parent has never been trained in using PECS, nor does the Parent have access to PECS cards.
16. On September 20, 2018, the Student's placement team convened. District staff shared information about the "Seaside classroom" with the Parent. District staff described the "Seaside classroom" as having staff trained in incorporating ABA principles, a low student-to-staff ratio, and other interventions designed specifically to address the Student's needs.
17. The placement team also discussed concerns about the length of time the Student would be on bus transportation if placement were at the "Seaside classroom." The Parent estimates the bus ride from the Student's home to the "Seaside classroom" would be 75-90 minutes each way.
18. The Parent had reservations about the length of the bus ride, the impact it would have on the Student, and associated safety risks in light of the Student's history of elopement and challenges appreciating dangerous situations.
19. The Parent did not agree to placement in the "Seaside classroom."

---

<sup>2</sup> The District participates with other Clatsop County school districts in placing students in "consortium classrooms," which are a network of special education classrooms that address particular student needs. The classrooms are populated with students from school districts around the county. Some school districts host classrooms, others do not. The classrooms are run by school district staff employed by the school district where the classroom is located.

20. On November 2, 2018, an IEP Team Meeting was held to again address the issue of the Student's placement. The Team discussed the length of the bus ride and the benefits of the "Seaside classroom" program. The Parent continued to reject the District's offer of placement in the "Seaside classroom." Ultimately, the placement team decided that the Student would continue to participate in a 1:1 program with special education staff from NWRESD.
21. The Student's IEP Team convened on November 11, 2018 and amended the Student's IEP. The Team reduced the Student's SDI minutes in fine motor (fifteen minutes), cognitive (fifteen minutes), and expressive communication (thirty minutes) from a daily basis to a weekly basis, with a start date of November 15, 2018.
22. From November 2018 through March 2019, the Student's schedule indicated the Student would attend class two times per week for approximately 1.25 hours through NWRESD. The Student received SDI, including work on PECS.
23. The Student's NWRESD teacher stated that over the course of the 2018-2019 school year, incidents of the Student biting and pinching decreased dramatically, from over fifty per day to fewer than ten per day. The Parent also noted that the Student was making progress in toilet training.
24. On March 6, 2019, an IEP Team Meeting convened. At that meeting, the District changed the Student's placement from the NWRESD program to the "Seaside classroom" for half-day classes. Additionally, the District eliminated its offer of round-trip transportation as a related service. In its response to the Complaint in this matter, the District concedes that it did not have a driver available to transport the Student. The District explained that the Parent would be responsible for transportation to and from the "Seaside classroom," but that the District would reimburse the Parent for mileage. The Parent works full-time and cannot transport the Student to the "Seaside classroom."

## IV. DISCUSSION

### A. Least Restrictive Environment (LRE)

The Parent alleges that the District violated the IDEA by failing to educate the Student in the least restrictive environment when it: (1) did not allow the Student to attend kindergarten; or (2) attend an educational program at the Student's neighborhood school.

When determining the least restrictive environment, school districts must consider the following: (1) the educational benefits available to the Student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the Student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the Student in a regular classroom.<sup>3</sup>

The evidence in this case supports the District's decision to offer placement in a setting more restrictive than a kindergarten class at the Student's neighborhood school. While there certainly are benefits to having the Student attend a general education kindergarten class—such as engaging in parallel play and modeling other students' positive behaviors—the Student's need for a small, intensive educational environment that emphasized the Student's personal safety and

---

<sup>3</sup> *Sacramento City School Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).

the safety of others militated against such a decision. The Student required significant adult assistance in toileting. The Student's frustrations associated with limited communication abilities prompted the Student to engage in behaviors (e.g., biting, pinching, eloping) that were unsafe for the Student and others.

Based upon the Student's overall developmental functioning level and individualized need, it was appropriate for the District to place the Student in a more restrictive setting than the Student's neighborhood kindergarten class, even with supplemental aids and services. The Department does not substantiate this allegation.

## **B. Placement**

Similar to their least restrictive environment contentions described above, the Parent alleges that the District violated the IDEA when it inappropriately placed the Student by refusing to allow the Student to attend kindergarten and instead placed the Student in a part-time early childhood class with no access to peers without disabilities.

School districts must ensure that the educational placement of a child with a disability is: (1) determined by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) made in conformity with the least restrictive environment requirements; (3) based on the child's current IEP; (4) determined at least once per year; and (5) as close as possible to the child's home. Alternative placements outside of the general education environment are available for placement purposes, to the extent they are necessary to implement a student's IEP.<sup>4</sup> There is a presumption that students with disabilities will be placed in a general education environment with peers of a similar age. This presumption can be rebutted by a showing that the student's educational needs require removal from the general education environment.<sup>5</sup>

### **1. NWRES D Placement**

As detailed above, the Student's record demonstrates a need for a placement more restrictive than the Student's neighborhood school's kindergarten classroom. The team making these placement decisions was composed of individuals who are knowledgeable about the Student and used appropriate evaluations to inform their decision-making. For the majority of the Complaint period, the Student was placed at the NWRES D program. While there, the evidence shows that the services the Student received intensive adult support in a safe environment. The NWRES D program conformed to the IDEA's least restrictive environment requirements, were based on the Student's IEP, and were as close as possible to the Student's home. The Department does not substantiate this allegation for the time the Student attended the NWRES D program.

### **2. "Seaside Classroom" Program**

The Student never participated in the "Seaside classroom" program, so a conclusion cannot be reached as to whether this was an appropriate placement. By all accounts, the Student's team of knowledgeable individuals advocated for the appropriateness of the program based upon staff training and the Student's needs. In the event that the Student is placed in the "Seaside classroom" in the future, the Student's IEP Team is urged to closely consider the impact that the commute time has on the educational benefit the Student receives.<sup>6</sup>

---

<sup>4</sup> 34 CFR § 300.116; OAR 581-015-2250.

<sup>5</sup> See *Regan-Adkins v. San Diego Unified Sch. Dist.*, 37 Fed. Appx. 932, 934 (9th Cir. 2002).

<sup>6</sup> *Parents on Behalf of Student v. Oceanside Unified School District*, 58 IDELR 266 (Cal. 2012); See also *Fremont (CA) Union High Sch Dist.* 58 IDELR 21 (OCR 2011) (finding that an increase in a student's travel time can constitute a change in placement).



## **C. IEP Implementation**

The Parent alleges the District violated the IDEA when it failed to develop an IEP for the Student that would allow the Student to develop communication skills and socialization skills, that it failed to provide assistive technology, appropriate speech and language services, and failed to provide the Student with access to age appropriate peers so the Student could practice communication skills.

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>7</sup> A material failure to implement an IEP constitutes a violation of the IDEA. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."<sup>8</sup>

### **1. Assistive Technology**

The Parent alleges the District failed to adequately implement assistive technology portions of the Student's IEP because PECS instruction was not properly delivered to the Student. With limited exception, an assistive technology device includes any item that is used to "increase, maintain, or improve the functional capabilities of a child with a disability."<sup>9</sup> An assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. An assistive technology service can include training or technical assistance for a child's family, if appropriate.<sup>10</sup> On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices to receive a free appropriate public education.<sup>11</sup>

The Student's IFSP and IEP Teams knew that the Student's frustration with the inability to communicate led to behaviors such as pinching and biting. The Student's IEP called for the use of PECS, which was characterized in the IEP as the supplementary aid/service of, "pictures for expressive communication." The Student used PECS to communicate wants and needs. The Student learned to use PECS to make food choices as early as three years old. However, the Student's success with PECS was lost when not used frequently or reinforced. The Parent did not have access to, or training in PECS, so the skill was not reinforced at home. As a result, the Student consistently lost their ability to successfully use PECS.

The Student has significant communications needs. One avenue of success was the use of PECS. But because the skill was not deployed consistently or in the Student's home environment, it was lost. This was an instance where the circumstances called for the use of school-purchased assistive technology devices in the Student's home, and associated parent training. The Department substantiates this allegation.

### **2. Speech and Language Services**

The Parent alleges that the Student did not receive appropriate speech and language services during the Complaint period. Special education services include "specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability." Specially

---

<sup>7</sup> 34 CFR § 300.323; OAR 581-015-2220.

<sup>8</sup> *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007).

<sup>9</sup> OAR 581-015-2000(2).

<sup>10</sup> OAR 581-015-2000(3).

<sup>11</sup> OAR 581-015-2055.

Designed Instruction may involve the delivery of speech and language services.<sup>12</sup>

The 2017 OHSU evaluation suggested that the Student's "articulation skills should continue to be monitored as [the Student] gains functional expressive language skills." As noted previously, there is an observed nexus between the Student's biting/pinching and frustration with communication. The Student's June 8, 2018 IEP prescribes Specially Designed Instruction in the area of expressive and receptive communication. The Student has an expressive communication IEP goal, to "produce 40 consistent words/word approximations." The IEP also calls for four hours per year of Speech Language Pathologist consult.

Despite this emphasis on developing expressive communication skills, the record does not demonstrate that the District worked with the Student to make progress in the area of expressive communication. Data sheets from the 2018-2019 school year do not reveal that the Student is receiving expressive communication instruction. Additionally, there is no reporting on the Student's progress toward meeting their expressive communication goal. The Department substantiates this allegation.

### **3. Access to Peers**

As discussed Sections A and B, above, the Student was appropriately placed in a more restrictive setting to develop safe, prosocial skills to allow the Student to participate safely in a classroom with similarly aged peers. In this environment, the Student made progress on their "Social/Emotional" goal, as incidents of biting fell significantly during the 2018-2019 school year. The Department does not substantiate this portion of the allegation.

### **D. Supplementary Aids and Services**

The Parent alleges that the District violated the IDEA when it failed to provide supplementary aids and services to the Student, specifically when it failed to offer the Student transportation services. School districts must take steps to provide Students with nonacademic services so that students with disabilities have an equal opportunity to participate in school activities. "Nonacademic services" includes transportation.<sup>13</sup> Transportation is also characterized as a related service under the IDEA.<sup>14</sup> If an IEP team decides to include transportation as a related service, "the public agency may not fulfill its obligation to provide this required related service at no cost to parents by requiring the parent to transport the student and be reimbursed for mileage."<sup>15</sup>

At the beginning of the 2018-2019 school year, the District offered the Student round trip home/school transportation by bus. The Student's June 8, 2018 IEP reflected this as a related service with a September 4, 2018 start date and a June 7, 2019 end date. Then, at the March 6, 2019 IEP Meeting, the District changed the Student's placement to the "Seaside classroom" and withdrew the related service of bus transportation. In its response to the Complaint in this matter, the District concedes that it did not have a driver available to transport the Student. The District offered the Parent reimbursement if the Parent provided the Student with round-trip transportation to the "Seaside classroom." However, the Parent's work schedule would not allow the Parent to undertake these transportation responsibilities. The District did not offer another alternative.

The Student could not attend school at the District's offered placement without the provision of the related service of transportation. The District offered parent reimbursement, but not District-provided transportation. This allegation is substantiated for the period of March 6, 2019 to April

---

<sup>12</sup> OAR 581-015-2000(36).

<sup>13</sup> 34 CFR §300.107; OAR 581-015-2070.

<sup>14</sup> 34 CFR §300.34; OAR 581-015-2000(29).

<sup>15</sup> *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996).

26, 2019—the date this Complaint was filed.

## **E. Free Appropriate Public Education**

The Parent alleges that the District failed to provide the Student with a free appropriate public education (FAPE) because it: (1) failed to offer the Student an appropriate placement inclusive of transportation that would create an educational opportunity for the Student; and (2) failed to appropriately create and implement an IEP that would allow the Student to gain communication and socialization skills while accessing peers without disabilities. School districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible.<sup>16</sup>

### **1. Appropriate Placement and Transportation**

The District offered the Student placement in the “Seaside classroom,” a program that includes services recommended by the OHSU evaluation. This program has a low student-to-staff ratio, which allows for close monitoring of the Student. In this program, the Student would have opportunities to engage with other similarly-aged peers. From a program perspective, the “Seaside classroom” placement offer is appropriate and comports with needs identified in the Student’s IEP. However, between March 9, 2019 and April 26, 2019, the District did not offer to provide the Student with transportation to participate in this program. This failure to provide transportation as a related services resulted in a denial of FAPE. The Department substantiates this allegation.

### **2. Communication and Socialization Skills**

The Student’s June 8, 2018 IEP prescribes Specially Designed Instruction in the area of expressive and receptive communication. The Student has an expressive communication IEP goal, to “produce 40 consistent words/word approximations.” The IEP also calls for four hours per year of Speech Language Pathologist consult. Despite this emphasis on developing expressive communication skills, the record does not demonstrate that the District worked with the Student to make progress in the area of expressive communication. Data sheets from the 2018-2019 school year do not reveal that the Student is receiving expressive communication instruction. Additionally, there is no reporting on the Student’s progress toward meeting their expressive communication goal. The Department substantiates this allegation.

With respect to socialization skills, the Student has shown a need to develop safe, prosocial skills before spending time with similarly-aged peers. As such, the Student’s participation in the NWRES D program takes place apart from other children. The Student’s June 8, 2018 IEP contains a “Social/Emotional” goal, wherein the Student would “increase . . . social skills by expanding the time [the Student] can play and work next to others (first adults then children). On November 11, 2018, the Student’s NWRES D Teacher observed that incidents of the Student biting and pinching had decreased dramatically, from over fifty per day to fewer than ten per day. The record supports a finding that the District developed an appropriate plan toward improving the Student’s socialization skills, and that the Student made progress on this goal during the Complaint period. The Department does not substantiate this portion of the allegation.

---

<sup>16</sup> OAR 581-015-2040.

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

*In the Matter of Knappa School District*  
Case No.19-054-017

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

<b>Action Required</b>	<b>Submissions<sup>18</sup></b>	<b>Due Date</b>
<p>Reconvene the IEP Team to review and revise the related services, supplementary aids and supports provided to the Student. To assist the Parent, specifically discuss potentially appropriate related services, including but not limited to parent counseling and training, social work, the assistance of the Speech/Language Pathologist in using pictures for expressive communication, and the provision of transportation.</p> <p>In addition to the IEP, develop a plan to implement summer services to provide specialized training and information about using pictures for expressive communication, and additional instruction to the child, beginning not later than July 15, 2019, or other date mutually agreeable to the Parent and the District.</p>	<p>Submit a copy of the plan, signed by the Parent, to ODE.</p>	<p><b>July 15, 2019</b></p>

Dated the 25th Day of June 2019



---

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

Mailing Date: June 25, 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).)

---

<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: raeann.ray@ode.state.or.us, fax number (503) 378-5156.