

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE EDUCATION OF STUDENT AND CORVALLIS SCHOOL DISTRICT 509J) FINAL ORDER)) OAH Case No. 2020-ABC-03783) Agency Case No. DP-107
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HISTORY OF THE CASE

On May 26, 2020, Parent, on behalf of Student, filed a Request for Due Process Hearing (Original Complaint) with the Oregon Department of Education (ODE) under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC §§ 1400 *et seq.*¹ In the complaint, Parent alleged procedural and substantive violations of the IDEA, regarding the evaluation, educational placement, and the provision of a free appropriate education to their child, and violations of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA).

On May 27, 2020, ODE referred the case to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Jessica E. Toth to conduct the due process hearing and issue a Final Order in the case. ALJ Toth presided over a telephone prehearing conference on June 30, 2020. Attorney Christine Furrer represented Parent and Student. Attorney Joel Hungerford represented Corvallis School District 509J (District). Parent participated in the conference. During the prehearing conference, the parties agreed the 45 day hearing timeline was not feasible. The ALJ granted Parent’s request to waive the 45 day hearing timeline.

With permission of the ALJ, and following other filings, Parent filed a Fourth Amended Complaint (Complaint) on October 15, 2020. On November 5, 2020, attorney Furrer notified OAH of her withdrawal as Parent’s attorney and on November 6, 2020, attorney Kimberly Sherman filed written Notice of Representation with OAH.

In a prehearing conference held on November 12, 2020, the District stated its intention to file prehearing motion(s). The ALJ established a prehearing motion timeline and identified May 17, 2021 as the date certain for issuance of the final order.

¹ The Individuals with Disabilities Education Act (IDEA) was reauthorized and amended in 2004 as the Individual with Disabilities Education Improvement Act of 2004 (IDEIA of 2004). Pub L 108-446, 118 Stat 2647 (2004). The Act as amended, applies to all time periods at issue in this Order but will be referred to as IDEA for readability and convenience.

The District filed a Motion for Partial Summary Determination on January 22, 2021 (Motion). The Motion was granted in part and denied in part as set out in the ruling issued by the ALJ on February 26, 2021.

The hearing was held as scheduled before ALJ Toth from March 8 through March 17, 2021, via video conference. Attorney Kimberly Sherman represented the Parents, accompanied by Parent. Attorney Joel Hungerford represented the District, accompanied by Sabrina Wood, Special Education Coordinator for the District. The District provided a court reporter for the hearing. Naegeli Reporting prepared written transcripts of the hearing sessions. At the Parents' request, the hearing was closed to the public.

The District presented its case first. In addition to Parent and Student, the following witnesses testified: special education teacher Michael Troy Shorey, assistant principal Jon Strowbridge, District transition specialist Kimberly Murphy, District registrar Bonnie Ryan, school counselor Robbie Cox, principal Aaron McKee, ceramics teacher Keith Moses, behavior assistant Kodi Fagan, special education coordinator Sabrina Wood, special education teacher Jacob Dorr, special education teacher Jacob Dorr, physical education teacher Michael Connor, school psychologist Dawn Meier, postsecondary transition expert Dr. Dawn Rowe, and behavior expert Torri Wright.

Mr. Shorey, Ms. Wood, Dr. Rowe, and Ms. Wright appeared as expert witnesses. Mr. Shorey appeared as an expert in special education case management. Ms. Wood appeared as an expert in special education administration. Dr. Rowe, the technical assistance provider with the National Technical Assistance Center for Transition the Collaborative, appeared as an expert in the area of postsecondary transition, and particularly the U.S. Department of Education's Office of Special Education Programs' Indicator 13 criteria regarding postsecondary planning. Ms. Wright appeared as an expert in designing and conducting functional behavior supports; designing and implementing behavior support plans; designing and implementing behavior interventions; designing data collection tools and strategies; and analysis of behavior data.

At the close of the hearing, the record was left open for receipt of the final hearing transcript and the parties' written closing arguments. The ALJ granted the District's request to extend the deadline for filing of closing briefs to April 26, 2021, and identified May 24, 2021 as the new date certain by which the final order would be issued. Naegeli Reporting provided the completed transcript on April 2, 2021. The parties filed written post-hearing briefs on April 26, 2021, and the hearing record closed on that date.²

ISSUES

Prior to the start of the hearing, Parent withdrew Claims 1B1, 3B, 4A, 4B, 4C, and 4D; therefore, those claims were not at issue during the hearing. The ALJ granted the District's Motion with regard to dismissal of Claims 1A and 3A; those claims were dismissed in their entirety. The due process hearing included the following issues raised by Parent:

² On May 18, 2021, the ALJ received and incorporated as a record document the District's Objection to Portions of Student's Closing Brief.

1. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to appropriately assess Student's unique needs regarding postsecondary transition planning and services between May 26, 2018 and May 10, 2019.
2. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to develop appropriate measurable postsecondary goals based on age appropriate transition assessments related to "training, education, employment, and, where appropriate, independent living skills" as required in the IDEA between May 26, 2018 and May 10, 2019.
3. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to craft appropriate math and reading goals between May 26, 2018 and May 10, 2019.
4. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to allocate appropriate specially designed instruction in mathematics, reading, and writing May 26, 2018 and May 10, 2019.
5. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to assess Student's need for assistive technology between May 26, 2018 and May 10, 2019.
6. Whether the District denied Student FAPE by failing to implement Student's specially designed instruction relating to the IEP team's assertion that Student required assistive technology between May 26, 2018 and May 10, 2019.
7. Whether the District denied Student FAPE by failing to implement adult support as required in Student's IEP between May 26, 2018 and May 10, 2019.
8. Whether the District denied Student FAPE by failing to implement Student's supplementary aids/services and formal behavior support plan between May 17, 2018 and May 10, 2019.

EVIDENTIARY RULINGS

Parent removed Exhibits S13, S14, S19, S25, S29, S34, S35, S37, S38, S41, S54, S61, S62, S65, S67, S78, and S79 during the hearing. The District removed Exhibits D45 through D48 during the hearing.

The ALJ excluded Exhibits D32, D41, and D44 on relevance grounds, and D38 as unduly repetitious.

All remaining exhibits from D1 through D106 and S1 through S129 were admitted to the record.

LIST OF ABBREVIATIONS

The following list of terms appear in their abbreviated form throughout this Order:

ASD: autism spectrum disorder
AT: assistive technology
BSP: behavior support plan
FAPE: free appropriate public education
FBA: functional behavior assessment
GPA: grade point average
IDEA: Individuals with Disabilities Education Improvement Act of 2004
IEP: Individualized Education Plan
KTEA: Kaufman Test of Educational Achievement
LEA: local educational agency
LBCC: Linn-Benton Community College
LRC: Learning Resource Center
OHI: Other Health Impaired
P.E.: Physical Education
SDI: specially designed instruction
SIS: Student Information System
STO: short term objective

FINDINGS OF FACT

General background

1. Student initially became eligible to receive special education and related services in Oregon in October 2010, under the eligibility categories of ASD and OHI, while attending school in a different school district. (Ex. S23.)
2. On February 27, 2015, while still enrolled in a different school district, Student underwent the Woodcock-Johnson Test of Cognitive Abilities, the results of which demonstrated that Student's general intellectual ability was 85. Student's subtests showed a range from 54 in the area of Visual Matching to 112 in the area of Concept Formation. Scores between 85 and 115 represent the Average range. (Ex. D14 at 6.)
3. Student enrolled in the District in September 2016. (Ex. S3.)
4. In May 2017, the District administered the KTEA to Student. The District produced an evaluation report from Student's KTEA on June 2, 2017. Student scored in the Below Average range, with scores ranging from 77 to 83, in Reading, and in the Significantly Below Average range, with scores ranging from 67 to 68, in Math. (Ex. D21.)
5. The IEP team reviewed the results of the KTEA assessment at Student's September 5, 2017 IEP meeting. (Ex. D10 at 28.)

6. A Progress Report dated June 22, 2017 stated that Student's reading comprehension rate was 90% when using an 8th grade level text. (Ex. D24 at 3).

7. Between May 17, 2018 and when Student exited the District on May 10, 2019, (the time period at issue in Student's due process hearing), Student qualified to receive special education and related services under the eligibility categories of ASD and OHI. Throughout that time period, Student had an IEP. (Exs. D10, D14.)

8. Student's September 5, 2017 annual IEP served as the operative IEP for the relevant time period of May 17, 2018 through May 24, 2018. (Ex. D10.)

9. On May 25, 2018, the District held another annual IEP meeting. Parent signed agreement to the May 25, 2018 annual IEP on that date. The May 25, 2018 IEP served as Student's operative IEP from May 25, 2018 until Student exited the District on May 10, 2019. (Ex. D14.)

10. As of May 25, 2018, a test known as "STAR" conducted by the District showed Student performing as follows: Reading – fifth grade level equivalent, tested on May 17, 2018; and Math – fifth grade level equivalent, tested on May 8, 2018. Between October 2017 and May 2018, Student's reading level on the STAR test improved from a fourth grade level to the fifth grade level. (Ex. D14 at 5.)

11. Parent expressed to the District her goal of Student achieving at least at 2.5 GPA by the time of graduation from high school. (S102 at 1.)

Postsecondary transition planning

12. While in high school, both before and including the time period at issue for hearing, Student aspired to attend LBCC following graduation. Student hoped to take courses in preparation for a career in the field of automotive repair. Student was very interested in automobile repair and customization. (Ex. D14.)

13. On April 17, 2018, the District's school to career transition specialist, Ms. Murphy, spoke with Parent by phone about assisting Student with securing a work experience. (Tr. Vol. 6 at 427:23-25, 428:1-3, 430:9-25.) Parent reported that Student wanted to work at a car dealership or grocery store. (Tr. Vol. 6 at 430:20-25.)

14. Ms. Murphy knew that Student had a long-term employment goal to "work with cars." Ms. Murphy spoke with a service manager at a local Volkswagen dealership about Student working for 50 hours at the dealership prior to graduation. The dealership informed Ms. Murphy that Student would have to be 18 years old to work at the dealership, which Student was not, at that time. Ms. Murphy then contacted a local auto body shop who expressed willingness to consider hosting Student for 50 hours of work experience. However, Ms. Murphy did not hear back from Parent about arranging for a work experience after Parent initially expressed concern regarding Student's schedule. Ms. Murphy did not pursue the opportunity further. (Tr. Vol. 6 at 431:1 – 436:17.) The IEP team included details about how Ms. Murphy could work with Student to find a placement for 50 hours which would earn Student a stipend. (Ex. D14 at 33-34.)

15. Additionally, on May 8, 2018, Ms. Murphy met with Student during school to inquire about what type of work experience Student might enjoy. At that time, Student professed to not know what type of work experience would be preferred, which in Ms. Murphy's experience was a common response for students to give. (Tr. Vol. 6 at 428:6-20.)

16. In May 2018, students and staff toured the Angell Job Corps Site in Yachats, Oregon. However, Student did not return the required permission slip and so did not attend the tour. (Tr. Vol. 6 at 436: 18-25, 437:1-14.)

17. On May 12, 2018, Parent completed a Parent Transition Survey at the request of the District. In response to a query in the survey regarding the type of employment Parent believed Student would enjoy, Parent reported, "automobile, photography, something dealing with electronics or similar technology, mechanics." When asked what type of support or assistance Parent believed Student would need regarding finding and maintaining a job, Parent selected, "Help locating job opportunities." (Ex. D23 at 3, 4.)

18. The District's purpose in requesting completion of the Parent Transition Survey was to gather information directly from the family regarding Student's postsecondary preferences, interest, needs, and strengths. (Tr. Vol. 1 at 64: 8-11.)

19. In May 2018, prior to the May 25, 2018 IEP meeting, the District conducted a Comprehensive High School Transition Survey with Student.³ (Ex. D22.)

20. The purpose of that survey was "[t]o gather information about the [S]tudent's goals and what the [S]tudent would like to do post-high school." (Tr. Vol. 1 at 63: 5-8.) Dr. Rowe, Student's expert in the area of postsecondary transition, opined that the survey provided "really good" information about Student's preferences, interests, needs, and strengths. (Tr. Vol. 1 at 63:18-64:3.)

21. The May 25, 2018 IEP contained a transition planning section. The IEP contained the following postsecondary transition goals:

Training: By the end of [Student's] senior year, [Student] will job shadow a mechanic or body repair/automotive shop to gather information about what requirements are needed for the profession.

Education: Within one year after completion of high school, [Student] will enroll into a trade school that offers accreditation in mechanics of autos or body work.

Employment: Within one year after completing the trade school accreditation, [Student] will obtain a job at a local automotive shop as a mechanic or body technician.

³ During the hearing, no witness was able to clarify whether the date of "5/18" written on the document referenced "May 2018" or "May 18, 2018." However, because the May 25, 2018 IEP referenced an informal interview conducted with Student by the school transition specialist, the ALJ infers that Exhibit D22 was created in May 2018 prior to the May 25, 2018 IEP. See Ex. D14 at 4.

Independent living skills (where appropriate): By the end of [Student's] senior year, [Student] will have successfully completed a personal finance class that entails budgeting, banking, and money management.

(Ex. D14 at 10, 11.)

22. Despite the inclusion of an independent living skills goal, Student's unique needs did not actually require an annual goal in that area. (Tr. Vol. 6 at 1202:22-1204:9; stipulation.)

23. The IEP team considered a Career Day Evaluation conducted at Student's former high school in March 2016 as part of the District's transition planning preparation for the May 2018 IEP. (Tr. Vol. 1 at 58:11-23; Ex. D16.)

24. The IEP team likewise considered a transition inventory called "Your Life: Ready, Set, Go! Postsecondary Education and Training, Employment, and Independent Living Skills List," conducted with Student in September 2016, when developing the draft IEP document presented at the May 25, 2018 IEP meeting. (Ex. D17; Tr. Vol. 5 at 1037:1-1038:1.)

25. Additionally, in preparing for the May 25, 2018 IEP, the IEP team considered the results of an informal inventory and skills inventory list completed with Student on May 30, 2017.

26. The IEP team discussed the results of Student's 2017 KTEA assessment during the May 25, 2018 IEP meeting, though these assessment results had been discussed in greater detail during Student's September 5, 2017 IEP meeting, which was the first IEP meeting following when Student took the assessment. (Ex. D1 at 7; Tr. Vol. 5 at 1090:14-21.)

27. District transition specialist Kimberly Murphy attended the May 25, 2018 IEP meeting. Parent requested that Ms. Murphy exit the meeting "early," before the meeting was completed, because Parent believed that Ms. Murphy was "not considered part of [Student's] core team." (Tr. Vol. 8 at 1594: 15-23.)

28. Regarding the assessment tools employed in Student's postsecondary transition planning, Dr. Rowe opined that the District "did use age-appropriate transition assessment." (Tr. Vol. 6 at 1206:10-11.) Mr. Dorr, Student's case manager for the 2017-2018 school year, and Mr. Shorey, case manager for the 2018-2019 school year, agreed. (Tr. Vol. 5 at 1035:24-1036:6; Tr. Vol. 1 at 64:18-65:14.)

29. The IEP team discussed Student's postsecondary preferences, interests, needs, and strengths during the May 25, 2018 IEP. (Tr. Vol. 5 at 1091:15-1092:12; Tr. Vol. 1 at 65:21-66:17.)

30. The Notes portion of the May 25, 2018 IEP document included the following:

Transition: thoughts of doing a job this summer, [District transition specialist] Kim Murphy to talk about transition, stipend to help students find what they want to do after

graduation, possibly work for 50 hours to get a stipend, any job needs to go to Kim for assistance, or can volunteer (ARC, food bank at St. Mary's), can help [Student] with finding work; provided the transition program info with the family, mother asked about getting VR services, Kim will continue to connect with [Student] and family during [Student's] senior year; [Student] does not have an idea of profession that [Student] wants to do, possible [sic] in the design and modification of things.

(Ex. D14 at 33-34.)

31. In September 2018, the District arranged for a staff member to work with Student in the Career Center on improving Student's resume. (Ex. D86 at 87.) The District arranged for Student to participate in a career day to be held at LBCC on May 1, 2019. (Ex. D89 at 1.)

32. Dr. Rowe, Parent's postsecondary transition expert, did not ever evaluate, observe, work with, meet, or speak to Student, and did not ever speak to or meet Parent or any of Student's IEP team members. (Tr. Vol. 6 at 1255:12-25, 1256:1-12.) Dr. Rowe's opinions about Student's IEP were based on the Indicator 13 guidelines developed by Dr. Rowe and the United States Department of Education's Office of Special Education Programs, which Dr. Rowe understood to be "guidance and not regulation." (Tr. Vol. 6 at 1325:18-23.) The items contained in Indicator 13 are utilized by the Department of Education in determining funding for each state in the area of special education programming. (Tr. Vol. 6 at 1129:14-25, 1130:1-20.)

Core academics (Math, Reading, Writing)

33. During the May 25, 2018 IEP, the IEP team agreed to essentially continue Student's September 5, 2017 annual goals in Math, Reading, and Writing, with minor modifications. (Ex. D14.)

34. Student did not take a Math class during the first semester of the 2017-2018 school year, but took a personal finance class involving math during the spring semester of that school year. (Ex. D26 at 2.)

35. The May 25, 2018 IEP contained the following academic goals:

Written Language: New Goal (all objectives were condensed into just 3 objectives instead of 4, with a new one added about using correct citations):

By May 2019, when given a topic, [Student] will produce clear and coherent writing in which the development, organization, and style are appropriate to the purpose of the assignment, by meeting the following objectives:

(1) Given a writing topic and an organizational tool, [Student] will utilize the graphic organizer as part of the setup process of formulating [Student's] plan for the essay or writing assignment, by identifying an introductory statement, three main ideas for the body, and a clear conclusion, in 3 out of 5 opportunities.

(2) [Student] will edit [Student's] written work to include sentences of varying length and complexity, and transitional words or phrases to a score at least a '3' on the Oregon Department of Education scoring rubric in the area of sentence fluency.

(3) [Student] will use proper citations that can support [Student's] main ideas--by correctly citing a minimum of three references in MLA Format, for each of [Student's] longer written projects.⁴

Math - New Goal (was changed to include the consumer math model that [Student] will now be following, since math instruction will be delivered via Case Manager and/or counselor) * * *

By May 2019, given specialized instruction and real-life examples, [Student] will solve complex mathematical equations with proficiency by meeting the following short term objectives:

(1) [Student] will be given one-step and two-step algebraic equations in which [Student] will need to calculate outcomes in consumer and career math (scenarios such as formulating interest rate, mileage for driving, personal finance budgeting, etc.), to solve with 80% accuracy in 4 out of 5 opportunities.

(2) Given algebraic expressions with differing coefficients and variables, [Student] will combine like terms to simplify each expression with 80% accuracy in 4 out of 5 opportunities.

(3) Given consumer math scenarios, [Student] will convert numbers back and forth between fractions, percentages and decimals, at 80% accuracy in 4 out of 5 opportunities.

Reading - New Goal (no changes other than date were made to this goal) * * *

By May 2019, in a classroom setting, [Student] will answer comprehensive questions (literal and inferential) about a given passage by scoring a 4, using the scale below, in 4 out of 5 opportunities.

* * *

Progress will be measured by observations, assessments, teacher input and/or evaluations. Using the following scale:

1 - Answers less than half of the questions correctly

2 - Answers half of the questions correctly

3 - Answers more than half of the questions correctly

4 - Answers all of the questions correctly

(Ex. D14 at 8 through 10; Ex. D25 at 3.)

36. In the May 25, 2018 IEP, Student's Math goal was substantially similar to the prior Math goal from September 5, 2017. However, the goal's STOs were updated. The second STO in the September 5, 2017 goal read, "Given an algebraic expression, [Student] will combine like terms to simplify with 80% accuracy in 4 out of 5 opportunities." (Ex. D10 at 14.) By contrast, the second STO in the May 25, 2018 IEP stated, "Given an algebraic expression *with differing coefficients and variables*, [Student] will combine like terms to simplify with 80% accuracy in 4 out of 5 opportunities," adding a new condition or requirement to the objective. (Ex. D14 at 17, (italics added).) Similarly, the third STO from the September 5, 2017 Math goal read, "Given a rational number, [Student] will convert the number to a decimal, with a calculator, with 90%

⁴ Student's Written Language goal was not at issue during the hearing. The goal is included here merely as a reference point for the determination of the adequacy of SDI minutes offered in Writing, which was raised as an issue.

accuracy in 4 out of 5 opportunities.” (Ex. D10 at 14.) In the May 25, 2018 IEP, that objective was updated to state, “Given consumer math scenarios, [Student] will convert numbers back and forth between fractions, percentages, and decimals, at 80% accuracy in 4 out of 5 opportunities.” (Ex. D14 at 7.)

37. In the May 25, 2018 IEP, the District reduced Student’s SDI minutes from 150 minutes per week for each core subject of Math, Reading, and Written Language to 120 minutes per week in each area. (Ex. D14 at 31.)

38. On June 15, 2018, Student scored between a “2” and a “3” on the scoring rubric in terms of progress toward achieving the IEP Reading goal. (Ex. D26 at 3.)

39. On January 31, 2019, the District produced a Progress Report regarding Student’s IEP goal progress. The report indicated that Student answered 75% of comprehension questions correctly when given a 9th grade level prompt. (Ex. D26 at 3.) Mr. Shorey clarified that achievement at that level equated to a “3” on the scoring rubric, indicating that Student had progressed toward Reading goal achievement between June 15, 2018 and January 31, 2019. (Tr. Vol. 1 at 101:1-15.)

40. In the January 31, 2019 Progress Report, the District reported that Student demonstrated “Satisfactory” progress toward the Math goal, stating, “Student is currently taking an algebra class in which they are working on multi-step equations and graphing problems. [Student] is still completing enough to show proficiency and [Student] is completing the work with 90% accuracy on the tests and quizzes.” (Ex. D26 at 2.)

41. Mr. Shorey, as Student’s case manager, believed that both the Math and Reading goals from the May 25, 2018 IEP represented appropriate goals for Student to be working on during the 2018-2019 school year, based on Mr. Shorey’s knowledge of Student’s academic strengths and needs. (Tr. Vol. 1 at 85:23-86:2.)

42. Further, the Progress Report documented that, by January 31, 2019, Student had met the second STO of the annual Written Language goal. (Ex. D36 at 1; *see* Ex. D14 at 16.)

43. Mr. Shorey likewise believed that 120 minutes per week of SDI in Reading, Math, and Writing was an amount of SDI appropriate to enable Student to make meaningful progress toward achieving the Reading, Math, and Written Language goals contained in the May 25, 2018 IEP. (Tr. Vol. 1 at 86:7-13, 86:25-87:6, 87:10-23.) Mr. Dorr, as Student’s case manager through the end of the 2017-2018 school year, believed the same. (Tr. Vol. 5 at 1018:10-15, 1018:19-24, 1019:3-7.)

44. Student met the Essential Skills requirements for Reading, Math, and Writing at the end of the 2017-2018 school year. (Ex. D73.) Mr. Shorey explained that meeting those requirements “shows that the student is making progress academically and at the same level as their peers.” (Tr. Vol. 1 at 103:18-103:23.) The Essential Skills requirements were a required component for a student to receive a diploma from the District. (Ex. D14 at 5.)

45. On March 6, 2019, Parent requested that the District continue to implement the goals set in the May 25, 2018 beyond the annual deadline of May 25, 2019 rather than develop new goals, given that Student was expected to graduate from high school in June 2019. (Ex. D87 at 38, 39.)

46. At the end of the 2018-2019 fall semester, Student earned a B in Algebra class. (Ex. D73.)

AT

47. The May 25, 2018 IEP documented Student's need for AT. Specifically, the IEP team identified that Student needed an AT device "to help [Student] with writing and work completion, as well as written instructions – in one form or another – that can provide something for [Student] to tangibly refer to in assignment completion." (Ex. D14 at 3, 4.)

Student required assistive technology to assist with notetaking during class, and keeping track of assignments and upcoming due dates. (Tr. 820:08-12.) Additionally, Student required AT due to difficulties with handwriting, spelling and grammar. (Tr. Vol. 1 at 75:76:1.)

48. The May 25, 2018 IEP guaranteed the following AT to Student:

Support tools: Word processor: Every class, every day – access to a district issued assistive tech device.

Support tools: Pocket organizer/planner: On writing assignments or lengthy projects, staff will encourage and remind student to utilize assignment organization tools.

Use of technology to photograph notes and/or assignments on board: Every class, every day

Support tools: Calculator: Every class, every day

(Ex. D14 at 21-23.)

49. Following the May 25, 2018 IEP, the District provided Student with a "Chromebook" laptop computer to use in school and for homework. (Tr. Vol. 1 at 77:10-12.) Student also utilized an iPad previously provided by the District. Further, Student had access to a calculator as a support tool. (D14 at 23; Tr. Vol. 1 at 82:6-10.)

50. Mr. Shorey observed that Student used the word processor during school. (Tr. Vol. 1 at 78:16-21.)

51. Additionally, Student utilized a personal laptop and cell phone during school, preferring to use them over a District-owned device. (Tr. Vol. 1 at 78:2-8.) For example, Student used the cell phone to take photographs of notes written by teachers on the board in class. (Tr. Vol. 1 at 81:18-24; Tr. Vol. 5 at 1077:9-1078:2.)

52. Mr. Shorey assisted Student by setting up and showing Student how to use an application on Student's cell phone which color coordinated Student's classes and enabled Student to enter

assignments and due dates. (Tr. Vol. 1 at 82:20-83:3, 83:13-16.)

53. The May 25, 2018 IEP contained no annual goal or SDI in the area of AT. (Ex. D14.)

Behavior needs and support

54. Student had a history of unique needs in the area of behavior impeding learning. On September 20, 2016, the IEP team developed a BSP for Student which was subsequently adopted by the IEP teams on September 5, 2017 and May 25, 2018 and incorporated into the IEP documents corresponding to those meeting dates. (Ex. D14 at 31.)

55. The May 25, 2018 IEP stated:

[Student] occasionally struggles with impulsivity. The manifestation of this is most evident in [Student's] cell phone use and distractions with technology. When [Student] gets distracted by [Student's] phone during class time – whether it's texting, social media or surfing information on the web, it can have an effect on [Student's] ability to listen to teachers' instruction, and can also be a distraction to peers. [Student] is very protective of [Student's] technology and as a result, [Student] can feel like shielding [him/herself] from participation in [Student's] class interactions. What stems originally from [Student's] inability to leave [Student's] phone alone during class time, can be perceived as oppositional behavior by others. It is important for [Student's] teachers to know about [Student's] behavior plan so it can be followed in times that [Student] feels this disequilibrium.

(Ex. D14 at 7.)

56. The BSP identified as Student's unique needs in the area of behavior that “[g]iven transitions and/or unstructured settings, [Student] may use inappropriate language towards peers and staff, and may run away from staff and exit the school building without permission.” (Ex. D27 at 1.)

57. The BSP stated that Parent was to be contacted if Student's behavior escalated. (Ex. D27 at 3.)

58. In Student's May 25, 2018 annual IEP, the IEP team agreed to incorporate the BSP contained in the September 5, 2017 IEP into the new IEP. (Ex. D14 at 31.)

59. Parent's understanding from the May 25, 2018 IEP meeting was that the BSP from the September 5, 2017 IEP was the BSP in place at the beginning of the 2018-2019 school year. (Tr. Vol. 8 at 1587: 17-25.)

60. Additionally, the IEP team agreed that Student's case manager, Mr. Dorr, would develop an informal BSP based on the IEP team's discussion, for the purpose of assisting Student's various teachers in understanding how to implement the formal BSP in their particular classroom

environment. (Ex. D14 at 6, 31.)

61. Parent's understanding from the May 25, 2018 IEP meeting was that the informal BSP was intended to be a document "more tailored towards each class in which the student would receive supports." (Tr. Vol. 8 at 1584: 15-18.)

62. On June 1, 2018, in accordance with the IEP team's discussion, Mr. Dorr drafted the informal BSP and shared it with Student's teachers as a tool to aid the teachers in implementing the formal BSP. The informal BSP provided specific guidance for how Student should be supported in each of Student's various classes. (Ex. D28 at 1.)

63. The District documented a number of incidents in the SIS, a computer log. The District's purpose in logging incidents is to help the District identify when patterns of behavior emerge with a student. (Tr. Vol. 1 at 248:13-22.)

64. Entry of an incident in the SIS does not mean that the incident necessarily led to or involved disciplinary action by the District. (Tr. Vol. 1 at 246: 1-17.)

65. The SIS is not utilized as a means of tracking whether behavior interventions were implemented. Not all interventions employed or BSP implementation following an incident would typically be logged in the SIS. (Tr. Vol. 1 at 263: 6-17.)

66. On May 17, 2018, Student engaged in making "loud dinosaur noises" in a school hallway during class time. (Ex. D30 at 4.) School staff had a conversation with Student and asked Student to cease the behavior. Student did not appear behaviorally escalated, and was not disciplined for the event. (Tr. Vol. 3 at 190:25-191:4; 191:14-21.)

67. On May 21, 2018, during a guest lecture in class, Student disregarded the teacher's request that Student either put away a cell phone or step outside of the class. Rather than selecting either of those options, Student put on headphones. School staff responded by reviewing the IEP's protocols and expectations, and by contacting Parent. (Ex. D30 at 4.)

68. On June 6, 2018, Student had an incident involving taking money. School staff had a conversation with Student and reminded Student that found money should be returned to the school office. (Ex. D30 at 4; Tr. Vol. 1 at 256:4-11.) Student returned the money, did not become behaviorally escalated, and was not disciplined. (Tr. Vol. 1 at 256:14-257:21; 262:1-4.)

69. On September 14, 2018, Student engaged in the behavior of calling another student a negative term. Staff responded by conferring with Student about the incident. (Ex. D30 at 3.)

70. On October 16, 2018, Student refused to put a personal cell phone away after several requests by school staff. School staff responded by discussing expectations of class participation and respect toward teachers and by contacting Parent. (Ex. D30 at 2.)

71. On October 30, 2018, the District discovered Student in possession of expensive headphones which belonged to another student, without that student's permission. The District

contacted Parent regarding the incident and spoke with Student about the incident. (Ex. D30 at 2; Tr. Vol. 2 at 291:5-15.)

72. On January 7, 2019, Student parked in the staff parking lot. (Ex. D31 at 2.) Student received a warning but no disciplinary consequences in response to the incident. (Tr. Vol. 2 at 303: 2-5.)

73. February 12, 2019, Student engaged in the behavior of using a magnetic key card without permission to enter a locked portion of a school building. (Tr. Vol. 2 at 303: 11-25 through 304: 1-25.) In response to the incident, the District contacted Parent. Parent, the District, and Student agreed that Student would serve a detention as a consequence for the incident. Student did not become behaviorally escalated during the incident. (Tr. Vol 2 at 309: 15-25 through 310:1-24.)

74. On March 5, 2019, Student engaged in the behavior of driving around the school parking lot following a friend who was driving backwards. The District spoke with Student about the incident, but no disciplinary consequences were imposed. (Ex. D30 at 2; Tr. Vol. 2 at 315:7-10.)

75. On March 12, 2019, after school hours at 3:15 p.m., Student engaged in the behavior of driving through the school parking lot and past a pedestrian at a high rate of speed. (Ex. D30 at 1.)

76. On March 21, 2019, Student parked in the staff parking lot at school. In response, the District requested that Student move the vehicle. Student was not otherwise disciplined for the incident. (Tr. Vol. 2 at 319:11-24.)

77. On April 4, 2019, Student engaged in the behavior of driving over a double yellow painted line and passing a school staff member's vehicle while driving on a public roadway. The staff member then confronted Student in the school parking lot and hallway. The District imposed two days of in-school suspension for the incident. (Ex. D30 at 1.)

78. On April 25, 2019, after school hours at approximately 3:10 p.m., Student engaged in the behavior of driving over a curb, tailgating a bus, and driving in reverse in the bus lane on the school campus. (Ex. D31 at 1.)

79. Ms. Wright, Parent's expert in the area of Behavior, never evaluated, observed, met, worked with, or spoke with, Student. (Tr. Vol. 7 at 1475: 8-24.)

80. Ms. Wright, based on her review of the SIS descriptions of the incidents between May 17, 2018 and April 25, 2019, and a review of video footage of the April 25, 2019 incident, could not definitively identify the cause of the behavior or definitively state that the behavior was a manifestation of Student's disability for any of the incidents. (Tr. Vol. 7 at 1481: 6-12 through 1499: 18-20.)

81. The District contacted Parent in response to incidents when Student became behaviorally escalated or when disciplinary consequences were imposed. If an incident did not involve either of those occurrences, the District did not contact Parent. (Tr. Vol. 2 at 316:20-25 through 317:1-

6.) When the District contacted Parent, staff did so because it was required in Student's BSP. (Tr. Vol. 2 at 332:1-11.)

82. Mr. Connor, Student's P.E. teacher, was aware that Student had a BSP. (Tr. Vol. 3 at 120:12-121:12.)

83. During Mr. Connor's weightlifting class, Student never exhibited any of the behaviors described in the BSP or became behaviorally escalated. (Tr. Vol. 3 at 132:25-133:5.)

84. Mr. Moses, Student's Ceramics teacher, was aware that Student had a BSP. (Tr. Vol. 3 at 150:13-16.)

85. During Mr. Moses' Ceramics class, Student never exhibited any of the behaviors described in the BSP or became behaviorally escalated. (Tr. Vol. 3 at 153:23-154:7.)

Adult support

86. The May 25, 2018 IEP offered Student "access to support staff" in terms of adult support. (Ex. D14 at 24.)

87. Similarly, the IEP stated that Student would "receive assistance from school staff during all classes." (Ex. D14 at 22.)

88. The May 25, 2018 IEP also stated, "For fall of 2018 [Student] will receive math curriculum in LRC or Alt Ed setting, and will have access to a staff support person in all of [Student's] non Sped classes, which already have support staff available." (Ex. D14 at 6.)

89. Similarly, the BSP incorporated into the May 25, 2018 IEP states that Student had "[a]ccess to 1 on 1 staff support as needed, during all classes" and "1 on 1 staff support in all classes, core and elective." (Ex. D27 at 2.)

90. As part of the access to support staff, Student had the option of going to the LRC classroom at any time during the school day to obtain support from staff in that room. (Tr. Vol. 4 at 770:3-771:7.)

91. Based on his interaction with Student as Student's case manager during the 2018-2019 school year, Mr. Shorey believed that Student was capable of self-advocating for, or requesting, adult support when Student needed that support. (Tr. Vol. 1 at 123:10-15.) During daily or near-daily interactions with Mr. Shorey, Student did not ever request a level of adult support different from what was being provided during the 2018-2019 school year. (Tr. Vol. 1 at 122:20-25.)

92. The District's use of the term "support staff" was not intended to refer specifically to an "educational assistant," but rather to "anybody who's able to provide support to the student when they need it." (Tr. Vol. 4 762:3-8.)

93. Parent did not believe that the May 25, 2018 IEP guaranteed to Student a "designated

one-to-one aide with [Student] all day every day” or “an aide pushed into all of [Student’s] classes to work with [Student] directly.” (Tr. Vol. 8 at 1606: 12-20.)

94. Further, Parent did not believe that the May 25, 2018 IEP guaranteed that there would even be an aide in every class “just in the classroom as a whole.” (Tr. Vol. 8 at 1607: 12-14.)

95. Parent believed that the May 25, 2018 IEP guaranteed that Student “would be given dedicated one-to-one support in particular courses” which had not yet been identified at the time of the meeting, because Student had not yet registered for courses for the 2018-2019 school year. (Tr. Vol. 8 at 1607: 21-25; 1608: 1-25; 1609: 1-18.)

96. At the time of the May 25, 2018 IEP meeting, Parent also believed that Student was capable of recognizing when Student required more assistance, was capable of going into the LRC to request additional support, and was not prevented by anyone from doing so. (Tr. Vol. 8 at 1644: 18-23.)

97. Student had an educational assistant available in the classroom during Math in the fall semester of the 2018-2019 school year. (Ex. D86 at 82, 84.)

98. Student sometimes felt the need for additional assistance in Ceramics class, but never left the class to get assistance from Mr. Shorey in the LRC if Mr. Moses was unavailable. (Tr. Vol. 4 at 848: 19-25.)

99. In weightlifting class, Student received direct one-to-one support from Mr. Connor. (Tr. Vol. 3 at 124: 5-8.)

100. Student had an aide available during weightlifting class on some occasions but not on others. (Tr. Vol. 1 at 114:13-21; Tr. Vol. 3 at 123:8-12.)

101. Student lost points in weightlifting class by failing to turn in daily workout sheets. (Tr. Vol. 3 at 127:16-129:4.) Student’s success in turning in worksheets was not markedly different on days that an aide was present versus days without an aide. (Tr. Vol. 3 at 124:12-21.)

102. Mr. Connor provided all students in weightlifting class, including Student, with a class syllabus informing students that missed class work could be made up, and all missing points earned, if the student completed 30 minutes of physical activity outside of class for any missing assignment, and reported the activity to Mr. Connor. (Ex. D82.) Student had the option to make up missing points in that manner; however, Student did not utilize the makeup option. (Tr. Vol. 3 at 129:5-130:16; 141:17-143:9.)

103. As of at least February 22, 2019, Student had an educational assistant assigned to work directly with Student during weightlifting class, Autos class, and STEAM class. (Ex. D92 at 1.)

104. Student had an open period every day during the 2018-2019 school year until Student’s exit from the District. (Tr. Vol. 4 at 869: 19-23.)

105. Student believed that receiving adult support during the open periods “would have helped” Student with tracking assignments. (Tr. Vol. 4 at 867: 9-25; 868: 1-17.)
106. On February 20, 2019, Parent instructed Student to leave campus during the open periods. (Tr. Vol. 4 at 871:13-16.) Parent informed the District of this in an email. (Ex. S102 at 1.)
107. At times, when Student went to the LRC and sought assistance from Mr. Shorey, no adult was immediately available to provide the assistance. (Tr. Vol. 4 at 872: 15-19.)
108. Mr. Shorey, as Student’s case manager, did not believe that a lack of access to adult support ever prevented Student from accessing Student’s educational program. (Tr. Vol. 1 at 116:15-24.)

Student’s exit from the District

109. The May 25, 2018 IEP documented the team’s agreement that Student was working toward achieving a modified diploma. At the time of the IEP, Student was on track to graduate with more than the minimum number of credits required in June 2019. (Ex. D14 at 5; Tr. Vol. 3 at 38:24-39:6.)
110. At the time of the May 25, 2018 IEP, Student’s cumulative GPA was 1.92. (Ex. D14 at 5.)
111. At the end of the spring semester of the 2017-2018 school year, on June 15, 2018, Student’s cumulative GPA was 2.15. (Ex. D73.)
112. At the end of the first semester of the 2018-2019 school year, Student was on track to graduate in June 2019. (Tr. Vol. 3 at 44:19-45:4; Tr. Vol. 4 at 751:8-15.)
113. At the end of the first semester of the 2018-2019 school year, Student had earned an “Incomplete” grade in Ceramics, due to lack of completed work. (Tr. Vol. 3 at 161:1-17.) The District permitted Student to turn in additional work, and thereafter changed Student’s Ceramics grade to “Pass.” (Ex. D73; Tr. Vol. 3 at 161:18-162:13.)
114. Parent knew and approved of the plan to enter Student’s Ceramics grade in “pass/fail” format as opposed to letter grade format. In an email to the District, Parent stated, “[Student] brought to my attention that the ceramics class that [Student] is currently taking will be modified to a pass/fail. Can you please confirm for us when will this be completed/updated? Thank you for making this change.” (Ex. S102 at 7.)
115. A grade of Incomplete does not impact a student’s GPA or earn a student credits toward graduation. A grade of Pass does not impact a student’s GPA, but it does earn a student credits toward graduation. (Tr. Vol. 2 at 188:4-12, 189:22-190:17.)
116. Student’s cumulative GPA at the end of the first semester of the 2018-2019 school year

was 2.24. (Ex. D73.)

117. Student enrolled in but then dropped courses during the spring semester of the 2018-2019 school year. Student would have received credit for completing those courses, but did not receive credit because the courses were dropped prior to the time when credit had been earned. (Tr. Vol. 3 at 54:1-18.)

118. Between January 17, 2019 and February 20, 2019, Mr. Cox, Student's school guidance counselor, had multiple communications with Parent via email detailing the precise credit requirements Student still needed to meet in order to graduate in June 2019. (Ex. S102.)

119. On February 5, 2019, Parent communicated with the District via email and acknowledged the fact that, as of that date, Student was on track to graduate in June 2019. (Ex. S94 at 1.)

120. Ultimately, Student could have taken more than four classes in the spring semester of the 2018-2019 school year, but did not. (Tr. Vol. 3 at 46:2-11.)

121. On March 6, 2019, Parent declined the District's offer to schedule an IEP meeting for the purpose of clarifying certain aspects of the IEP document and updating other aspects. Parent's response, contained in an email to Ms. Wood, included the following:

I respectfully disagree with you and we do not find it necessary to be present when you explain the language of [Student's] IEP and BSP plans to the staff. We are familiar with what the documents say * * * The plans had proven to be successful. We have no desire to meet with and [sic] of you at the district or [District] staff about their confusion of the language.

In addition, [Student's] existing IEP and BSP do not require renewal until 5/24 and [Student] graduates 6/7, 8 days later. [Student] has only 4 classes left and only 1 is a core class. Science, Autos, LRC, and a PE.

We also do not approve of any changes to any IEP related documents this late in [Student's] final school year especially because the IEP, BSP, and accommodations that are currently documented worked well last year when Mr. Dorr was [Student's] case manager * * *

Our request to Mr. Shorey is to extend [Student's] current IEP renewal date to 6.7 as that is when [Student] is expected to graduate. 8 day difference. If that exception cannot be made then please advise. In addition, we do not need an IEP meeting to discuss any post-high school plans with anyone from [the District]

* * * * *

(Ex. D87 at 38-39.)

122. Following additional email communication regarding an IEP meeting, on March 14, 2019, Parent expressed agreement to schedule and attend an IEP. (Ex. S123 at 1.) Parent requested that the meeting not be held until May. (Ex. D85 at 23.) Ultimately, Student disenrolled from the District before another IEP meeting occurred.

123. Student's last day of attendance at classes in the District was April 4, 2019. After an incident during which school staff confronted Student about driving behavior in the school parking lot, Parent decided not to send Student back to the school. (Ex. D87 at 49.)

124. At the time Student stopped attending school, on April 4, 2019, Student was on track to earn a modified diploma and graduate from high school at the end of the Spring 2019 semester. (Tr. Vol. 3 at 77:21-78:8, 79:2-5; Ex. D87 at 49.)

125. The District sent Parent a letter on April 18, 2019 notifying that Student had been administratively disenrolled after missing 10 consecutive days of school. The letter also stated the District's willingness and ability to provide Student with special education and related services if Student decided to return at any point. (Ex. D94.)

126. Student returned briefly to school to serve two days of in-school suspension on April 22, 2019 and April 23, 2019, but left again immediately thereafter. (Ex. D76 at 1.)

127. Parent confirmed Student's disenrollment from the District on May 10, 2019. (Ex. D73.)

128. The last day of school for the District's 2018-2019 school year was June 18, 2019. (Ex. S88.)

129. For the spring semester of the 2018-2019 school year, Student earned the following grades:

Mod-Alt Ed Literature:	P[ass]	.50 credits
Mod-Automotive:	A	.38 credits
Mod-STEAM s2:	B	.38 credits
Weight Train & Cond.:	F	.00 credits

(Ex. D73.)

130. At the end of the spring semester of the 2018-2019 school year, Student's cumulative GPA was 2.25. (Ex. D73.)

131. After exiting the District, on May 10, 2019, Student enrolled in Oregon Connections Charter Academy, an online schooling program provided through another public school district. (Ex. D93.)

132. Student graduated from high school on June 3, 2020 with a 2.47 cumulative GPA. (Ex. S68.)

CONCLUSIONS OF LAW

1. The District offered an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by appropriately assessing Student's unique needs regarding postsecondary transition planning and services between May 26, 2018 and May 10, 2019.

2. The District offered an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by developing appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills as required in the IDEA between May 26, 2018 and May 10, 2019.
3. The District offered an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by crafting appropriate math and reading goals that would confer meaningful educational benefit between May 26, 2018 and May 10, 2019.
4. The District offered an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by allocating appropriate specially designed instruction in mathematics, reading, and writing between May 26, 2018 and May 10, 2019.
5. The District offered an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances in terms of the Student's need for assistive technology between May 26, 2018 and May 10, 2019.
6. The District provided Student FAPE when it implemented Student's specially designed instruction relating to the IEP team's assertion that Student required assistive technology between May 26, 2018 and May 10, 2019.
7. The District provided Student FAPE when it implemented adult support as required in Student's IEP between May 26, 2018 and May 10, 2019.
8. The District provided Student FAPE when it implemented Student's supplementary aids/services and formal behavior support plan between May 17, 2018 and May 10, 2019.

OPINION

Burden of Proof

The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. *Schaffer v. Weast*, 126 S Ct 528 (2005). In this case Parent sought relief and bore the burden of persuasion. The standard of proof applicable to an administrative hearing is preponderance of the evidence. *Cook v. Employment Div.* 47 Or App 437 (1980) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Federal and state requirements for use of funds under IDEA

Student was eligible to receive special education and related services under the IDEA. Parent alleges that District failed, under the specific allegations set out below, to meet its legal obligation to provide special education and related services as required under IDEA to Student.

States may access federal funding to provide education to children with disabilities, but the states must provide that education in accordance with federal law. *See* 20 U.S.C. §1411 *et seq.* States receiving funds must have in effect certain policies and procedures. *See* 20 U.S.C. §1412 *et seq.* To receive these funds, a state must provide that a “free and appropriate education is available to all children with disabilities[.]” 20 U.S.C §1412(a)(1)(A).

Congress, in amending IDEA in 2004 stated the following:

The purposes of this chapter are—

(1)

(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected [.]

(20 U.S.C. § 1400(d).)

The Supreme Court set out what was required to provide a “free appropriate public education” in the seminal case of *Board of Educ. Of Hendrick Hudson School District v. Rowley*, (1982). Under *Rowley*, a school district has the duty first, to comply with the procedural requirements of the IDEA and, second, to develop an IEP that is reasonably calculated to enable Student to receive educational benefits. *Rowley*, at 207, 208. However, the Ninth Circuit has held that “only those “* * * procedural inadequacies that result in the loss of educational opportunity * * * or seriously infringe on the parent[s]’ opportunity to participate in the IEP formulation process * * * clearly result in the denial of FAPE.” *W.G. v. Bd. Of Trustees of Target Range School D.* 960 F2d 1479, 1484 (9th Cir 1992).

Regarding the “appropriate” aspect of FAPE, a school district must “be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1002 (2017).

Pursuant to the requirements of the IDEA, under 34 U.S.C. part 300 *et seq.*, the United States Department of Education promulgated rules for state use of funds used to carry out the provisions of the Act. OAR chapter 581 division 015, promulgated under ORS chapter 343 mirrors, for the most part, the requirements set out in the federal rules. The majority of the opinion below cites to the relevant OAR as the implementing rule for Oregon with which school districts are required to comply.⁵

⁵ Where more appropriate for purposes of clarity, the federal rule may be cited initially, accompanied by the implementing state rule(s).

Following identification and evaluation requirements, the cornerstone for educating a student under IDEA occurs through developing a procedurally and substantively sufficient IEP which provides an offer of FAPE. IDEA requires that “at the beginning of the school year, each local educational agency * * * shall have in effect, for each child with a disability in the agency’s jurisdiction, an individualized education program[.]” 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. §300.323(a). OAR 581-015-2220 mirrors the federal requirement, requiring that:

(1) General:

- (a) At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.
- (b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.

In relevant parts, OAR 581-018-2200 provides that:

(1) The individualized education program (IEP) must include:

- (a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.
- (b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:
 - (A) Meet the child’s needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child’s other educational needs that result from the child's disability.
- (c) A description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
 - (A) To advance appropriately toward attaining the annual goals;
 - (B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - (C) To be educated and participate with other children with disabilities and children without disabilities,
- (e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.

(f) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule[.]

The IEP team is also directed to develop, review, and revise a student's IEP in consideration of the special factors set out in OAR 581-015-2205. OAR 581-015-2205, entitled "IEP Team Considerations and Special Factors[,]" requires that:

(1) In developing, reviewing and revising the child's IEP, the IEP team must consider:

- (a) The strengths of the child;
- (b) The concerns of the parents for enhancing the education of their child;
- (c) The results of the initial or most recent evaluation of the child; and
- (d) The academic, developmental, and functional needs of the child.

(2) In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors:

- (a) The communication needs of the child; and
- (b) Whether the child needs assistive technology devices and services.

(3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:

- (a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;

* * * * *

(4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

A failure to implement an IEP will constitute a violation of a pupil's right to a FAPE only if the failure was material. There is no statutory requirement that a district must perfectly adhere to an IEP, and, therefore, minor implementation failures will not be deemed a denial of FAPE. A material failure to implement an IEP occurs when the services a school district provides to a disabled pupil fall significantly short of the services required by the IEP. *Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 481 F.3d 770. A party challenging the implementation of an IEP must show more than a minor failure to implement all elements of that IEP, and instead, must demonstrate that the school district failed to implement substantial and significant provisions of the IEP. (*Id.*) However, the materiality test is not a requirement that prejudice must be shown. "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." *Id.* at 822.

Regarding procedural violations, minor errors by the school district will not amount to a denial of FAPE if they do not result in a loss of educational opportunity, interfere with the parent's ability to participate in the IEP process, or result in a deprivation of educational benefit. *Doug C. v. Haw. Dept of Educ.*, 720 F.3d 1038, 1043

(9th Cir. 2013.) Furthermore, the IDEA does not and cannot guarantee any particular educational outcome. *Andrew F.*, 137 S. Ct. at 992 (2017).

1. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child’s circumstances by failing to appropriately assess Student’s unique needs regarding postsecondary transition planning and services between May 26, 2018 and May 10, 2019.

To determine whether a school district offered a FAPE, including in the area of postsecondary transition, the IEP must meet both the procedural and substantive requirements of the IDEA. As discussed above, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. To constitute a denial of FAPE, the procedural inadequacy must have (a) impeded the child’s right to a FAPE, (b) significantly impeded the parent’s opportunity to participate in the decision making process regarding the provision of FAPE, or (c) caused a deprivation of educational benefits.

OAR 581-015-2200(2) states:

For the purposes of transition, the IEP must include:

- (a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:
- (A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
- (B) The transition services (including courses of study) needed to assist the child in reaching those goals.

OAR 581-015-2000(4) defines “transition services” as a coordinated set of activities for a student with a disability that:

- (a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student’s movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (b) Is based on the individual student’s needs, taking into account the student’s preferences and interests; and
- (c) Includes:
 - (A) Instruction;
 - (B) Related services;
 - (C) Community experiences;
 - (D) The development of employment and other post school adult living objectives;and

- (E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and
- (d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

First, Parent contends that the District conducted “inadequate” transition planning because the transition portion of the IEP document “did not discuss the impact of the evaluation results that are detailed in the present levels of academic achievement or in the present levels of functional performance.” (Parent’s post-hearing brief at 23.) This argument fails for numerous reasons. The first reason is that the claim raised by Parent in the Complaint was that the District “failed to appropriately assess,” not “failed to discuss results of academic assessments.” However, even interpreting Parent’s “failure to assess” claim broadly enough to include any possible “failure to meaningfully discuss assessment results,” the claim fails.

The record established that the KTEA results referenced in the present levels sections of Student’s May 25, 2018 IEP had been discussed in greater detail during Student’s September 5, 2017 IEP meeting, which was logical given that was the IEP meeting that most immediately succeeded when the evaluation results had been obtained by the District. The District behaved reasonably in not going into detail about those earlier assessment results yet again at the time of the May 25, 2018 IEP meeting, particularly given that Parent made no request for the results to be further discussed or explained. The District had no affirmative obligation to go into an involved discussion of assessment results which had already been presented to, and considered by, the IEP team the year prior.

Further, Parent, in the post-hearing brief, cites a requirement under 34 C.F.R. 300.306(c)(1) for the premise that the District failed to “ensure that information obtained from [a variety of sources] is documented and carefully considered” in developing Student’s transition plan. (Parent’s post-hearing brief at 28, citing 34 C.F.R. 300.306(c)(1).) Parent’s reliance on that particular federal regulation is misplaced. 34 C.F.R. 300.306 applies specifically to determination of initial eligibility for special education and related services. Nothing in the regulation states or suggests that the requirements it contains must be applied to transition planning, and the ALJ declines to apply it in Student’s case.

Additionally, in the Complaint, Parent emphasized a recent district court decision addressing postsecondary transition, and in particular the court’s statement that “Although the IDEA does not mandate any particular transition assessment tool, a student interview, without more, is insufficient” in terms of conducting assessments as part of transition planning.” (Complaint at 27, citing *S.G.W. v. Eugene Sch. Dist.*, No. 6:16-cv-01612-AA at 12-13 (D. Or. Mar. 16, 2017).) But when viewed in light of the facts in Student’s case, this language from the *S.G.W.* decision supports a conclusion that the District in Student’s case complied with its obligations under IDEA. Given that the IDEA does not require any particular transition assessment tool, and that none of the tools utilized in Student’s case were alleged to be not age-appropriate, the District in Student’s case committed no violation by use of the selection of assessment tools it utilized. And, as detailed below, the District did significantly more in Student’s case than conducting ‘a student interview, without more,’ setting the facts in Student’s

case apart from those in *S.G.W.*

The record established that the District conducted the following age-appropriate transition assessments of Student prior to the May 25, 2018 IEP: the transition inventory conducted with Student in September 2016, the informal inventory completed with Student on May 30, 2017, and the May 2018 Comprehensive High School Transition Survey. The record likewise established that the District considered those assessment results as well as the Parent Transition Survey completed on May 12, 2018 in developing the May 25, 2018 IEP.

In support of the claim that the District failed to conduct age-appropriate transition assessments, Parent claimed that the District did not offer adequate transition services to Student. (Complaint at 32.) But as it turns out, the District offered a number of opportunities that served as transition services. Ms. Murphy contacted Parent, Student, and two local auto businesses to explore the possibility of securing a work experience placement for Student. Student was invited to participate in a tour of a job corps facility. The District planned for Student to attend a career day at LBCC. The District had extensive communication with Student and Parent regarding what courses Student would take in preparation for enrolling at LBCC. The District arranged to have a staff member assist Student in improving Student's written resume. Each of those activities related to Student's goals of enrolling at LBCC and becoming an auto mechanic, demonstrating that the transition assessments conducted by the District served their purpose of enabling the District to offer transition services reasonably calculated to enable Student to make progress toward those goals.

Student's case has factual similarities with *Browell v. Lemahieu*, 127 F. Supp. 2d (D. Haw. 2000). In that case, the court explained the type of transition services that comply with the IDEA. In that particular case, an eighteen-year old's IEP transition plan included goals for completing high school, engaging with the community through a church group, exploring careers, talking to vocational counselors, and identifying community colleges in his area. The school gave the student a career test, visited two community colleges with him, provided him information about getting ready for and enrolling in college, and explained what courses he should take in college. The court found that the services in student's IEP were reasonably calculated to help the student achieve his after high school goals. (*Id.* at 1126.)

Parent's own expert, Dr. Rowe, stated that in her expert opinion the District used age-appropriate transition assessments in developing Student's postsecondary transition plan. Student's special education teachers who served as Student's case managers for the 2017-2018 and 2018-2019 school years concurred. Parent did not establish by a preponderance of the evidence that the District failed to meet its obligation to appropriately assess Student's unique needs in the area of postsecondary transition.

2. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to develop appropriate measurable postsecondary goals based on age appropriate transition assessments related to "training, education, employment, and, where appropriate, independent living skills" as required in the IDEA between May 26, 2018 and May 10, 2019.

Regarding this issue, during hearing, Parent stipulated to the fact that Student did not have a unique need requiring an independent living skills goal. Therefore, the District did not deny Student a FAPE by failing to develop an appropriate independent living skills goal in the May 25, 2018 IEP. In fact, the District did more than what was minimally required by still developing a goal in that area. The remaining aspects of the issue raised are addressed in the following paragraphs.

As noted above, OAR 581-015-2200(2)(a) requires that, as of the annual IEP occurring prior to the child's 16th birthday, the IEP must include "[a]ppropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills * * *" which are updated annually thereafter. Parent alleges that the District denied Student a FAPE by failing to fulfill this requirement in the May 25, 2018 IEP.

As the primary evidence offered to prove that the District failed to develop appropriate measurable postsecondary goals, Parent pointed to the fact that the District did not include in the IEP Student's goals of graduating in June 2019, earning a minimum 2.5 cumulative GPA, and thus being eligible for an Oregon Promise grant by virtue of that GPA. (Parent's post-hearing brief at 24.) The IDEA does not require that the school district include each and every postsecondary goal a student may have. Rather, the District was required to offer appropriate postsecondary goals, developed by the IEP team, related to Student's training, education, and employment. The May 25, 2018 IEP contained such goals.

Reviewing the goals under IDEA and state law requirements, Student's May 25, 2018 IEP included appropriate postsecondary goals. First, as previously established, the District met the threshold requirement that the goals be based upon age-appropriate transition assessments. Then, taking each of the three goals at issue – Training, Education, and Employment – one at a time, the evidence demonstrates that the IEP team developed appropriate goals in each area in light of Student's unique needs and individual circumstances.

The Training goal related directly to Student's aspiration of becoming an auto mechanic. Based on its knowledge of Student's future plans, it was appropriate for the IEP team to set a goal for Student to job-shadow a mechanic in order to become familiar with the requirements of that profession. And Parent, in the Complaint, did not argue that this goal was not appropriate.

Likewise, the Education goal related directly to Student's aspiration of becoming accredited in auto mechanics. The record established that Student consistently expressed a desire for such an education and that the District was well aware of that plan. The District fulfilled its obligation to develop an appropriate postsecondary goal in the area of Education for Student. The goal specified that Student would attend a trade school. That evidence directly disproves Parent's claim that the transition plan "did not include an appropriate, measurable postsecondary goal * * * that would assist Student in realizing [Student's goal] of attending a community college or technical/trade school following high school." (Complaint at 31.)

Looking at the Employment goal, again, the IEP offered a postsecondary goal entirely in line with Student's future aspirations. Again, Parent did not argue that the Employment goal

offered was inappropriate. It was clearly an appropriate goal for Student in terms of the assessed preferences, interests, strengths, and needs.

Parent's argument depended on a conclusion that the IEP, despite the inclusion of four appropriate goals in the area of postsecondary planning, was nevertheless deficient because it did not include more and did not address each and every one of Student's unique needs. Parent's contentions relied heavily on Dr. Rowe's testimony. Dr. Rowe examined Student's May 25, 2018 IEP, in conjunction with various other of Student's educational records, utilizing the professional standards as delineated in a reporting instrument called the Indicator 13 Checklist.

The Indicator 13 Checklist addresses transition services and was designed to assist states in planning and reporting special education data to the United States Department of Education's Office of Special Education Programs (OSEP). Dr. Rowe established that the Indicator 13 Checklist covers specified criteria for transition planning and services which are utilized to determine state funding for special education programming, depending on the state's level of compliance with the Indicator 13 Checklist. However, Dr. Rowe, who is not an attorney, did not establish that the Indicator 13 checklist criteria were incorporated into the IDEA or Oregon special education law by either amendment of the applicable statutes or regulations. Parent did not establish any legal requirement that a school district's postsecondary goals and transition services in an IEP must comply with Indicator 13 in order to provide a FAPE.

Further, Dr. Rowe did not ever evaluate, observe, meet, or even talk to, Student. Dr. Rowe likewise did not communicate with Parent or any member of District staff. Her expert opinion was based entirely on her assessment of Student's records through the lens of the Indicator 13 checklist criteria. Her testimony therefore had limited value in making a determination of whether Student's IEP offered a FAPE in the area of postsecondary planning.

For example, Dr. Rowe testified that the Education goal was inadequate by its use of the word "enroll," because, she stated, a student could enroll but never actually attend a postsecondary institution, and therefore to achieve the goal of enrolling in a trade school was not a meaningful postsecondary goal. When questioned, Dr. Rowe stated that the goal would be adequate by merely swapping the word "enroll" out with the word "attend." Parent cited no legal authority for that premise.

The goal simply cannot be read so narrowly in making a FAPE determination. First, following the logic applied by Parent's transition expert, one could argue that using the word "attend" could still result in a meaningless goal, because a student could achieve it by attending a class for one session and never returning, thus gaining virtually nothing from the education. Second, when viewed in light of Student's circumstances, which included Student's clearly expressed desire and plan to gain a postsecondary education in the field of auto mechanics, a plain reading of the goal necessitates a conclusion that the IEP team developed an Education goal directly aligned with Student's desire and plan.

Going back again to the legal standard, IDEA does not require maximization of a student's potential or goal development that encompasses each and every one of a student's preferences, interests, needs, and strengths. Rather, the law requires that the school district

ensure that the IEP is reasonably calculated to enable the student to make meaningful progress in light of the student's circumstances. Parent did not meet the burden of proof for the claim that the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of Student's circumstances by failing to develop appropriate measurable postsecondary goals based on age appropriate transition assessments related to "training, education, employment, and, where appropriate, independent living skills" as required in the IDEA between May 26, 2018 and May 10, 2019.

3. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to craft appropriate math and reading goals between May 26, 2018 and May 10, 2019.

The IEP must include:

A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the child's other educational needs that result from the child's disability.

OAR 581-018-2200(1)(b).

The IEP must provide the child with the opportunity to pursue challenging objectives. As stated by the court in *Andrew F.*, "[h]is educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Andrew F.* at 1000 (2017).

Regarding the claim that the District failed to develop appropriate Math and Reading goals, Parent did not present evidence on the point of whether Student's level of academic achievement was reasonably appropriate in light of Student's cognitive ability. Further, the record contains conflicting evidence about Student's academic achievement levels during the applicable time period. For example, on the one hand, assessment results show Student performing at a 5th grade level in Reading at the time of the May 25, 2018 IEP. On the other hand, Student's progress report from June 20, 2017 states that Student answered 8th grade reading comprehension questions with 90% accuracy. Another progress report from January 31, 2019 stated that Student answered 9th grade reading comprehension questions with 75% accuracy. No testimony or other evidence was presented to reconcile these various reports and precisely identify or define Student's reading level during the time period in question.

Without testimony or other evidence on these points, the question of the appropriateness of the goals must be answered primarily by reviewing Student's performance on those goals during the time period applicable to the due process complaint. The available evidence demonstrates that Student made measurable progress in both the Math and Reading goals

between May 25, 2018 and Student's exit from the District on May 10, 2019. In Reading, as of June 15, 2018, Student scored between a "2" and a "3" on the scoring rubric in terms of progress toward achieving the IEP Reading goal. By January 31, 2019, Student scored at a "3" in terms of progress toward the annual Reading goal. In Math, as of January 31, 2019, Student demonstrated "Satisfactory" progress toward the annual Math goal, completing multi-step equations and graphing problems with 90% accuracy.

The District continued the Reading goal from the September 5, 2017 IEP and made only minor changes to that IEP's Math goal during the May 25, 2018 IEP meeting. But that alone is not dispositive evidence that the District failed to develop goals appropriate to meet Student's unique needs in Math and Reading. The evidence demonstrates that the IEP team tailored the Math goal to the types of math problems Student would face in the fall semester of the 2018-2019 school year. At the time of the May 25, 2018 IEP, Student had not yet had the benefit of a full year to work on the Math or Reading goals from the September 5, 2017 IEP, and had not met either goal. Given that, coupled with the IEP team's reasonable belief at that time that the 2018-2019 school year would be Student's final year of high school, it was appropriate for the team to continue the Reading goal and make only minor adjustments to the Math goal, with the intention of enabling Student to achieve those two goals before the completion of high school. Student made measurable progress toward achievement of both goals in the limited time between when the goals were agreed upon and when Student ceased attending school. As a result Parent did not establish by a preponderance of the evidence that the District denied Student a FAPE regarding the Reading and Math goals contained in the May 25, 2018 IEP.

4. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to allocate appropriate specially designed instruction in mathematics, reading, and writing between May 26, 2018 and May 10, 2019.

The IEP must include:

A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals

* * * * *

(OAR 581-018-2200(1)(d); *see also* 34 C.F.R. 300.320(a)(4)(i).)

Parent contended that, by reducing Student's SDI minutes in each of the three core content areas from 150 minutes per week to 120 minutes per week, the District failed to allocate an appropriate amount of SDI to Student, in light of Student's circumstances. As discussed above, the evidence demonstrates that Student made progress toward achievement of the Math and Reading goals between May 25, 2018 and Student's exit from the District on May 10, 2019. Additionally, by January 31, 2019, Student met the second STO in the Written Language goal.

That goal progress establishes that, more likely than not, the SDI offered to Student in those three content areas was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances.

Parent's primary argument regarding the adequacy of the SDI offered and provided appears to be that Student failed to graduate at the end of the spring 2019 semester. However, that argument fails to take into account the impact that Student's exit from the District had on the graduation date. Ample and uncontroverted evidence presented at hearing clearly established the fact that, at the time Student stopped attending school on or about April 4, 2019, Student was on track to graduate at the end of the spring 2019 semester. Therefore, the fact that Student ceased attending school in the District necessarily must have impacted Student's credits earned and ability to graduate as of June 2019, as it was the only intervening academic event on record between when Student was on track to graduate as of April 4, 2019 and when Student failed to graduate in June 2019. It is not possible to conclude, then, that Student's failure to graduate at that time more likely than not resulted from any denial of FAPE on the part of the District in the amount of SDI offered in Student's IEP.

Parent also argued that the District knew by February 2019 that Student did not have the requisite Reading, Math, or Writing skills to pass the LBCC entrance exam. (Parent's post-hearing brief at 55.) When reviewing an IEP's sufficiency, the IEP is analyzed according to the "snapshot" rule. *J.W. ex rel J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 421, 439 (9th Cir. 2010). Under this rule, an IEP provides a FAPE if it complies with the IDEA and was reasonably calculated to provide educational benefit to the student at the time it was written. (*Id.* at 450.)

At the May 25, 2018 IEP meeting, the team did not have the benefit of the knowledge gained in February 2019 about Student's performance on the LBCC entrance exam. The IEP can only be evaluated in light of the information available to the IEP team at the time the team made decisions about what the document would contain. *See Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047 (9th Cir. 2012). Further, after the information was obtained by both the District and Parent, in February 2019, Parent initially declined the District's suggestion to schedule a new IEP meeting, at which time SDI minutes could have been revisited by the IEP team. Additionally, Parent did not present evidence to show that the requirements of the LBCC entrance exam related to Student's unique needs such that the District had a duty under IDEA to provide Student with special education and related services in the area of preparing for that exam.

For the foregoing reasons, Parent did not prove by a preponderance of the evidence any denial of a FAPE based on failure by the District to allocate an appropriate amount of SDI to Student.

5. Whether the District failed to offer an IEP reasonably calculated to enable Student to make progress in light of the child's circumstances by failing to assess Student's need for assistive technology between May 26, 2018 and May 10, 2019.

Under OAR 581-015-2205(2)(b), the IEP team must consider "[w]hether the child needs assistive technology devices and services." "Assistive technology device" is defined as:

* * * any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

OAR 581-015-2000(2).

“Assistive technology service” is defined as:

* * * any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
- (b) Purchasing, leasing, or otherwise provided for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
- (g) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

OAR 581-015-2000(3).

Parent alleged that the District denied Student a FAPE by failing to assess Student’s need for assistive technology, yet provided no authority for that premise. The ALJ knows of no such authority imposing an assessment requirement on the District in a situation such as this, where the entire IEP team agreed that Student required AT, the team readily identified Student’s specific needs for AT, and offered multiple AT devices to address those needs. The law gives the IEP team the authority to determine if a student requires AT. OAR 581-015-2205.

Parent’s argument regarding an alleged denial of FAPE based on failure to assess Student’s need for AT appears to be that Student failed to graduate at the end of the spring 2019 semester and that Student had declining grades at that time. However, that argument fails to take into account the impact that Student’s exit from the District had on the graduation date. Ample and uncontroverted evidence presented at hearing clearly established the fact that, at the time Student stopped attending school on or about April 4, 2019, Student was on track to graduate at the end of the spring 2019 semester. Therefore, the fact that Student ceased attending school in the District more likely than not impacted Student’s credits earned and ability to graduate as of June 2019. It is not possible to conclude, then, that Student’s failure to graduate and declining

grades at that time more likely than not resulted from a failure to assess in the area of AT. Parent did not prove by a preponderance of the evidence that the District denied Student a FAPE when it failed to assess Student's needs in the area of AT.

6. Whether the District denied Student FAPE by failing to implement Student's specially designed instruction relating to the IEP team's assertion that Student required assistive technology between May 26, 2018 and May 10, 2019.

The record contains no evidence that Student's May 25, 2018 IEP contained any "[SDI] related to the IEP team's assertion that Student required [AT]." No other IEP was at issue in the due process hearing. It is therefore not possible to find that a failure to implement such SDI occurred in Student's case. Furthermore, no evidence was presented on the point that Student's AT needs required provision (and resulting implementation) of any SDI. In particular, Student had no annual goal in the area of AT.

Further, if Parent intended a more broad interpretation of the word "implement" than strictly alleging that the District failed to put into action some service written into and agreed upon in the IEP document, the argument still fails. The record at hearing established that District staff, primarily Mr. Shorey, worked directly with Student to ensure that Student was in possession of functioning AT devices and knew how to make use of them. Student had strengths in the area of technology usage – being 'tech savvy,' as we might colloquially refer to it – and exercised the preference to utilize Student's own personal devices during school. The record did not support a conclusion that accessing the AT was ever a barrier for Student or that Student's unique needs warranted a specific goal and SDI in that area. To the contrary, the record established that Student was able to successfully access, and did access, AT in various forms between May 26, 2018 and May 10, 2019.

Additionally, as with other issues raised, the harm alleged by Parent here is that Student's graduation did not occur in June 2019 and Student's GPA was lower than that required for an Oregon Promise grant. As discussed in relation to other allegations, that argument fails to take into account the impact that Student's exit from the District had on the graduation date and GPA. Ample and uncontroverted evidence presented at hearing clearly established the fact that, at the time Student stopped attending school on or about April 4, 2019, Student was on track to graduate at the end of the spring 2019 semester. Therefore, the fact that Student ceased attending school in the District more likely than not negatively impacted Student's credits earned and ability to graduate as of June 2019. It is not possible to conclude, then, that Student's failure to graduate at that time more likely than not resulted from any denial of FAPE on the part of the District in neglecting to implement SDI in the area of AT. Parent did not prove by a preponderance of the evidence that such a denial of FAPE occurred.

7. Whether the District denied Student FAPE by failing to implement adult support as required in Student's IEP between May 26, 2018 and May 10, 2019.

Parent alleges that the District failed to implement the adult support contained in the BSP aspect of the IEP in Ceramics and weightlifting classes during the 2018-2019 school year. Relevant to determination of this issue is clarifying what "adult support" was required in the

May 25, 2018 IEP. The evidence presented at hearing established that both the District and Parent understood the May 25, 2018 IEP as not guaranteeing to Student one-to-one aide support in all classes. Rather, the IEP provided Student with the option to request and receive direct support from an adult as needed throughout the school day. That adult support could take several forms, such as, direct support from a teacher, from an educational assistant in the classroom, or from staff in the LRC if Student opted to visit that classroom for assistance at any time during the day.

As noted above, the Ninth Circuit has clarified that “there is no statutory requirement of perfect adherence to the IEP,” and that “minor implementation failures” do not amount to a denial of FAPE. *Van Duyn ex rel. v. Baker Sch. Dist.*, 481 F.3d 770, 821 (9th Cir. 2007.) The court further stated, “A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.” *Id.* at 822.

In Ceramics, the evidence established that Mr. Moses, as the sole adult present in the classroom, often was preoccupied with multiple students and thus not able to provide direct support to Student. However, the evidence also established that, in such a case, Student’s BSP provided Student with the option to go to the LRC for assistance if staff was not available in the room at the time Student identified a need for adult support. District witnesses as well as Parent testified that Student possessed the capability to identify when such assistance was needed and then to seek out the assistance. Despite having that option and being capable of exercising it, Student did not ever leave Ceramics and go to the LRC for assistance.

The preponderance of evidence in the record established that the District materially implemented Student’s May 25, 2018 IEP in the area of adult support during weightlifting class. Mr. Connor testified that he provided direct support to Student during class. Additionally, an educational assistant was present in weightlifting class to work with Student on some occasions.

Repeatedly throughout the Complaint and post-hearing brief, Parent stated that a lack of adult support led to grades which lowered Student’s GPA and thus disqualified Student from applying for a grant requiring a 2.5 cumulative GPA. (*See, e.g.*, Complaint at 49.) Regarding Student’s missing points in weightlifting class, the evidence established that students, including Student, could make up any missing class points simply by completing 30 minutes of physical activity outside of class and reporting the activity to Mr. Connor. However, Student disenrolled from the District without reporting any makeup physical activity, and the District calculated Student’s final grade accordingly.

Taking into account the totality of the circumstances, Parent did not prove by a preponderance of the evidence that the District failed to materially implement Student’s adult support accommodation during Ceramics and weightlifting classes such as would result in a denial of a FAPE.

8. Whether the District denied Student FAPE by failing to implement Student’s supplementary aids/services and formal behavior support plan between May 17, 2018 and May 10, 2019.

Parent alleges that the District failed to implement the supports and services contained in Student's BSP on various occasions from May 17, 2018 through when Student exited the District on May 10, 2019, causing a denial of a FAPE to Student. The evidence presented at hearing did not support that conclusion.

Specifically, Parent alleges that the District failed to implement the BSP by failing to contact Parent regarding numerous incidents logged in the SIS computer record. However, the BSP contained no requirement that the District contact Parent following every incident documented in the SIS. Rather, the BSP required Parent contact only in situations where Student's behavior escalated. The District followed a practice of contacting Parent if Student's behavior escalated or if disciplinary consequences were imposed. The record established that Parent was contacted in any situation where either of those scenarios occurred. Testimony during hearing established that absence of details about BSP implementation in the SIS did not prove that District staff failed to implement the BSP on those occasions. Testimony established that the SIS, which Parent relied upon as the primary source of information about cited incidents, was not a comprehensive documentation of any and all behavior interventions employed, but rather was a bare-bones incident log maintained by the District to facilitate tracking of possible behavior patterns, if any emerged, with a student. Parent did not establish, by the evidence presented at hearing, that the District failed to implement Student's BSP during the time period in question.

Looking specifically at some of the cited incidents, on May 17, 2018 and June 6, 2018, Student did not become behaviorally escalated, and therefore the BSP did not require that Parent be contacted regarding those incidents. As a result, the District did not fail to implement the BSP on those dates. On May 21, 2018, October 30, 2018, and February 12, 2019, the District contacted Parent following the incidents. The evidence established that, more likely than not, the District did not fail to implement the BSP on those dates.

During the hearing, Parent attempted to establish that the cited incidents related to Student's tendency toward impulsivity, which is a need identified in the BSP. However, Ms. Wright, Parent's expert in the area of Behavior, admitted that, with the limited information available to her to review, she could not definitely state whether Student's actions during the cited incidents were caused by impulsivity. Thus, the evidence presented did not establish that the District had a duty to implement Student's BSP in response to the cited incidents due to Student exhibiting the target behavior of impulsivity.

Regarding the numerous incidents involving operation of a motor vehicle, nothing in Student's IEP or BSP address that behavior as an area of need. Nor should they have, especially, but not only, concerning the incidents which took place outside of school hours and off school property. The District is not obligated to provide a FAPE to a student under those circumstances. Even during school times and on school property, nothing in Student's IEP suggest that the District was obligated to implement Student's BSP regarding Student's driving incidents. Perhaps there are certain circumstances under which an IEP team would agree to identify driving as an area of unique behavioral need impeding learning, and offer goals, services, or accommodations for the student regarding that behavior. But that was not the case here. The District did not deny Student a FAPE by failing to implement the BSP in response to driving

behavior exhibited by Student.

Overall, taking into consideration all incidents cited by Parent, Parent did not establish by a preponderance of the evidence that the District denied Student a FAPE by failing to implement Student's BSP during the time period from May 17, 2018 to May 10, 2019.

In summary, it was clear from the documentary evidence as well as the testimony presented during hearing that Parent had a specific vision in mind for Student at the time of the May 25, 2018 IEP. Included in that vision were the wholly relatable and understandable desires for Student to graduate from high school at the end of four years, earn a cumulative GPA sufficient to qualify Student for a particular college scholarship, go on to a particular community college, and pursue a career in auto mechanics. But the fact that those things do not occur does not necessitate the conclusion that a school district failed to provide a FAPE to a student. That is especially so in a situation such as this, where the student stopped attending school mid-semester, leaving a gap in the relevant time period, a gap during which the school district did not, and was not legally obligated to, provide special education and related services to the student. Upon careful consideration of all of the evidence presented, the record did not establish that the District violated the IDEA in the ways alleged by Parent. Parent's request for relief is denied.

ORDER

Parent failed to show that District violated its obligation to provide Student with a FAPE with regard to all claims.

Parent's due process complaint filed May 26, 2020 is therefore **DISMISSED** with prejudice.

Jessica E. Toth

Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

ENTERED at Salem, Oregon this 24th day of May, 2021, with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.