

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Reynolds SD 7

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-021

I. BACKGROUND

On June 21, 2016, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing in the Reynolds School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint on June 21, 2016, and provided the District a copy of the Complaint on June 21, 2016.

On June 24, 2016, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of July 8, 2016. The District completed its *Response* which was received by the Investigator on July 8, 2016. The District also sent its *Response* to the Parent. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. Attendance policy adopted December 14, 2011
2. Student's IEP dated September 10, 2014
3. Special Education Determination Placement dated September 10, 2014
4. Early Childhood Special Education Evaluation Report dated September 10, 2014
5. Functional Behavioral Analysis from third party (Non District) dated September 15, 2014 including Behavior Support Plan
6. Student Functional Behavioral Assessment compiled by the District dated January 16, 2015
7. Student Behavior Intervention Plan dated January 16, 2015
8. IEP Progress Report – Annual Goal dated June 19, 2015
9. Student's Kindergarten report card for school year 2014-2015
10. Notice of Team Meeting dated September 8, 2015
11. Prior Written Notice for annual IEP review dated September 9, 2015
12. Student's IEP dated September 9, 2015
13. Special Education Determination Placement dated September 9, 2015
14. Special Education Team Meeting Notes Form dated September 9, 2015
15. IEP Progress Report – Annual Goal dated February 1, 2016
16. District notice to parents regarding in school injury to Student dated March 29, 2016
17. Letter from Student's teacher to Parents dated April 20, 2016 regarding repeated tardiness
18. District notice to parents regarding in school injury to Student dated April 28, 2016
19. District notice to parents regarding in school injury to Student dated May 16, 2016
20. Student's weekly behavior chart for the following weeks:
 - a. December 14, 2015 – December 18, 2015
 - b. January 6, 2016 –January 8, 2016
 - c. February 29, 2016-March 5, 2016
 - d. April 18, 2016-April 22, 2016
 - e. May 9, 2016-May 13, 2016

- f. May 16, 2016-May 20, 2016
21. Letter dated May 21, 2016 from Parent to District regarding teacher report of Student's truancy and teacher's reporting to CPS
 22. Facsimile from Parent to District dated May 23, 2016 giving District notice of Student's removal from school for remainder of school year 2015-2016
 23. Interdistrict facsimile coversheet dated May 23, 2016
 24. Correspondence from District to Parent dated May 24, 2016 regarding complaint about Student's teacher
 25. Correspondence from Parent to District regarding request for an aide dated June 16, 2016
 26. Request from Parent for complete educational record of Student dated June 16, 2016
 27. Certification of Copy of Records from District dated June 30, 2016
 28. Student's Attendance Profile for school year 2015-2016
 29. Student's First Grade Report card for school year 2015-2016
 30. Color coded attendance record of Student for school year 2015-2016
 31. Interdistrict email response to SPED Director regarding failure to locate any emails from Parent during the last quarter of the 2015-2016 school year
 32. Parent Teacher Conference form (undated)
 33. Handwritten notes from Student's Teacher regarding "discussion points" (undated)
 34. Classroom work for Student for Week 1 (undated)
 35. Blank Oregon School Health Screening Record for the Student (undated)
 36. Student's Enrollment History (undated)

The Investigator received the following documents from the Parent:

1. DDS Disclosure/Release for Reynolds School District dated July 29, 2014
2. DDS Disclosure/Release for Troutdale Elementary dated July 29, 2014
3. DDS Disclosure/Release for Multnomah County ESD dated July 29, 2014
4. Early Childhood Special Education Evaluation Report dated September 10, 2014
5. IE/ECSE Eligibility Team Meeting Minutes dated September 10, 2014
6. Partial IEP dated September 10, 2014
7. SPED Placement Determination dated September 10, 2014
8. Prior Notice of Early Childhood Special Education Action dated September 10, 2014
9. Prior Written Notice dated September 10, 2014
10. Functional Behavioral Analysis dated September 15, 2014
11. DHS Family Support Plan dated December 15, 2014
12. Individual Service Plan Risk Identification Tool from DHS for Student dated July 15, 2015
13. Individual Service Plan from DHS dated July 15, 2015
14. Out of Class referral dated October 2, 2015
15. Student Diagnostic Report dated November 9, 2015
16. Student Progress Monitoring Report dated April 13, 2016
17. Student's Weekly Behavioral Progress notes and Parent response from the following dates:
 - a. October 19, 2015
 - b. October 26-October 29, 2015
 - c. November 3–November, 4, 2015
 - d. November 8, 2015
 - e. November 16-November 20,
 - f. November 18, 2015
 - g. November 23, 2015-November 25, 2015

- h. December 7, 2015 to December 11, 2015
- i. December 14, 2015 –December 18, 2015
- j. January 6, 2016 – January 8, 2016
- k. January 25, 2016 to January 29, 2016
- l. February 29, 2016 to March 5, 2016
- m. May 9, 2016 to May 13, 2016
- n. May 16, 2016 to May 20, 2016

- 18. Three (3) undated behavioral notes and forms from Student’s Teacher
- 19. Sample IEP Planning Form (undated)
- 20. IEP Cheat Sheet (undated)

The Department’s Complaint Investigator determined that on-site interviews were required. On July 25, 2016, the Department’s Complaint Investigator interviewed the Student’s 1st grade regular education teacher, the Student’s Special Education Teacher, and the School Psychologist. The Complaint Investigator interviewed the Student’s previous Case Manager/Speech Pathologist by telephone on August 16, 2016, then interviewed the District’s Special Education Director and re-interviewed the Student’s 1st grade regular education Teacher by phone on August 17, 2016. The Complaint Investigator interviewed the Parent on July 27, 2015. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation, or if exceptional circumstances require an extension.¹ This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one year period from June 22, 2015 through June 21, 2016.

	Allegations	Conclusions
1.	<p><u>Parent Participation/Special Factors</u></p> <p>The Parent alleges that the District violated the IDEA because it did not consider the Parent’s request for Extended School Year (ESY), assistive technology, a one to one aide, and other modifications proposed by the Parent.</p>	<p>Not substantiated.</p> <p>The District did consider the Parent’s request for ESY, a one-to-one aide, and other requests as evidenced by the documentation denying ESY and incorporating assistive technology into the Student’s IEP. The District met its legal</p>

¹ OAR 581-015-2030 (12)

	(OAR 581-015-2205, 581-015-2190, 34 CFR 300.501, 34 CFR 300.324)	obligation by considering the Parent's requests.
2.	<p><u>Prior Written Notice</u></p> <p>The Parent alleges that the District violated the IDEA because it failed to give the Parent written notice regarding the denial of her requested modifications for the Student and any other denial of services or changes in placement.</p> <p>(OAR 581-015-2310, 34 CFR 300.503)</p>	<p>Substantiated.</p> <p>The District The District did provide a Prior Written Notice regarding the September 9, 2015 IEP Meeting, however the Prior Written Notice did not address the denial of "push in" services that were requested by the Parent during this meeting as required by the IDEA.</p>
3.	<p><u>Content of IEP</u></p> <p>The Parent alleges that the District violated the IDEA because the IEP developed for the Student does not reflect the Student's ADHD diagnosis, includes the same annual measurable goals as the Student's previous IEP, does not include a Behavioral Intervention Plan (BIP) and does not include any new information regarding the Student's disability in light of the private Functional Behavioral Assessment (FBA) submitted by the Parent and in light of the District's own FBA. The Parent also alleges that the District violated the IDEA because it did not amend or modify the Student's IEP after obtaining the two separate FBAs and a medical diagnosis of ADHD.</p> <p>(OAR 581-015-2200, 581-015-2225, 581-015-2165, 34 CFR 320.324)</p>	<p>Substantiated in Part.</p> <p>Because the District does not have a formal diagnosis of the Student's ADHD, which is required for a classification of "other health impairment", that required information is not contained in or reflected in the Student's IEP. Further, the Student's annual measurable goals have changed from one school year to the next.</p> <p>However, while teachers can access IEPs online, they cannot access FBAs and BIPs in this manner. When a student's behavior impacts that student's learning or the learning of others, that student's BIP must be included in the IEP.² When these documents cannot be accessed in the same location or in the same manner, the IEP cannot be said to "include" the BIP. While the Student's IEP contains some elements of the BIP, the BIP is not fully incorporated into the IEP.</p>
4.	<p><u>Implementation of IEP</u></p> <p>The Parent alleges that the District violated the IDEA because it did not allow the Student access to the "sensory room", failed to allow the Student out of class breaks, did not properly inform the substitute teacher of the Student's IEP</p>	<p>Substantiated in part.</p> <p>The Student's IEP does not contain an accommodation for access to a "sensory room" or "out of class breaks". Further, there is no record of discipline or evidence that the Student was missing portions of the school day.</p>

² 52 IDELR 231

<p>and/or disability and effectively shortened the Student's school days through the use of discipline.</p> <p>(OAR 581-015-2220, 34 CFR 300.324(b).</p>	<p>However, fact that the Student's regular education teacher had never seen the Student's FBA or BIP and the failure of the District to ensure that substitute teachers were provided with necessary information about supports required for students on IEPs, does constitute a violation of the IDEA.</p>
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REQUESTED CORRECTIVE ACTION:

The Parent requests numerous remedies that are beyond the scope of an IDEA investigation. The Parent also requests that the District "make it right, offering a tutor for at least 6 months after school in our home paid by the district." The Parent also requests that the District provide an aide to help the Student "specifically in class, during lunch, and at recess . . ."

III. FINDINGS OF FACT

1. At the time of the filing of the Complaint, the Student was six years old and resided in the Reynolds School District.
2. The Student did not attend preschool but was evaluated in August of 2013 by the District's Early Childhood Evaluation Team. That Team found the Student eligible to receive Special Education services under the category of Developmental Delay.
3. The District evaluated the Student and produced a report dated September 10, 2014 that, among other things, stated that "[although] there are significant scores in behavior and adaptive skills, the state requires a signed medical statement from a health care provider in order to consider other types of eligibilities (ED, OHI). [The Student's] mother was reluctant to sign a release to contact a health care provider so it was not possible to pursue any school age eligibility other than Communication Disorder (CD), at this time."
4. The Student exhibits some behavioral characteristics consistent with ADHD but has never received a medical diagnosis of ADHD.
5. The Student was found eligible for Early Childhood Special Education services on September 10, 2014 when the Student entered kindergarten. The Student was found eligible under the classification of Communication Disorder.
6. The Student had three measurable annual goals noted in the initial September 10, 2014 IEP:

<p>Goal 1</p>	<p>Given faded verbal and visual cues, [the Student] use (sic) appropriate strategies and language for expressing frustration, wants and needs when communicating with peers and adults, with 80% accuracy or, in 4 out of 5 observations, over at least 4 days, in order to improve [the Student's] ability to function with increased independence across settings</p>
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Goal 2	Given visual support and verbal reminders, [the Student] will attend to adult directed activities for increasing lengths of time, in 4 out of 5 observed opportunities over at least 4 days. In order to improve [the Student's] ability to access educational curriculum.
Goal 3	Given faded visual and verbal cues, [the Student] will follow oral directions of increasing length and complexity, and share conversational turns, with 80% accuracy, or in 3 out of 4 observations, over at least 3 days, in order to improve [the student's] ability to function with independence across settings.

7. The Student's September 9, 2015 IEP contains two measurable annual goals:

Goal 1 – Social/Emotional/Behavioral	Given faced visual supports and verbal cues, [the Student] will engage in independent work for increasing lengths of time, with 80% accuracy in 3 out of 4 opportunities over at least 4 days, in order to improve [the Student's] ability to access education curriculum with greater independence.
Goal 2 – Speech/Language	Given faded visual and verbal cues, [the Student], will demonstrate comprehension of developmentally appropriate basic concepts and relationship with 80% accuracy in 3 out of 4 opportunities, in order to improve [the Student's] ability to access grade level curriculum with greater independence.

8. The IEP Team decided that the Student was not eligible for ESY as a related Service during an IEP Meeting on September 9, 2015. The IEP Meeting Notes do not reflect that the Parent requested ESY at that time. According to the District's IEP Team Meeting Notes dated September 9, 2015, the Parent requested some instruction be given in a "push in" method to which the Speech Language Pathologist (SLP) agreed. However, The Student's Educational Placement Discussion and Decisions" portion of the IEP dated September 9, 2015 states that "push in" was rejected for the Student. The District did not send a Prior Written Notice (PWN) to the Parent regarding the rejection of "push in" for the Student.
9. The Student's current IEP dated September 9, 2015 notes that the Student has a Behavioral Intervention Plan (BIP). There is no other reference to a BIP in this IEP, although the IEP incorporates some of the elements of the BIP.
10. The District's Special Education Director informed the Complaint Investigator that student Special Education files are kept at the District office. Students receiving Special Education services will also have "working files" in the control of his/her Case Manager. While these files are not complete, they will have notes and reports regarding accommodations "and whatever the Case Manager needs."
11. The IEP states that the Student needs assistive technology. The assistive technologies provided were "visuals for schedule and expectations". The Student had access to a shared iPad which had preloaded educational materials. The Student did not have individual access to an iPad. The Student's teacher was informed that the Student's assistive technology was "dragon ware" which is a "speak and spell" program on the iPad.

12. The Student's Service Summary for the Student's September 9, 2015 IEP is as follows:

Specially designed instruction	Provider	Role	Anticipated Location	Time	Frequency	Start Date	End Date
Communication Skills	LEA	Speech Language Pathologist	School wide	80 min.	Every Month	9/9/15	9/8/16

13. The Student's Supplementary Aids/Services; Modifications; Accommodations are as follows:

Description	Provider	Role	Anticipated Location	Time	Frequency	Start Date	End Date
Preferential seating	LEA	General Ed Teacher	School wide	200 min	Per week	9/9/15	9/8/16
Movement and/or calming breaks	LEA	General Ed Teacher	School wide	10 min	Per day	9/9/15	9/8/16
Visual supports for expectations	LEA	General Ed Teacher	School wide	10 min	Per day	9/9/15	9/8/16
Repeat/rephrase directions	LEA	General Ed Teacher	School wide	5 min	Per day	9/9/15	9/8/16
Social stories for school expectations	LEA	General Ed Teacher	School wide	10 min	Every month	9/9/15	9/8/16

14. The District performed a Functional Behavioral Assessment (FBA) during the Student's kindergarten year and also created a Behavioral Intervention Plan (BIP). The FBA and BIP are dated January 16, 2015. .

15. The District's FBA states that the Student "presents with many characteristics associated with Attention Deficit Hyperactivity Disorder (ADHD) but does not have a clinical diagnosis of ADHD." The District also states that during data collection for the analysis, the Student was out of the Student's seat at least forty-seven times per day, talked to others at least ninety times per day when the Student should have been listening to the teacher and exhibited some type of off task behavior at least sixty-three times per day.

16. On October 2, 2015, there was an incident of discipline wherein the Student was "written up" for physical aggression. According to the Student's attendance records, the Student was not suspended or sent home from school early.

17. The BIP and FBA were not included in the Student's IEP for the school year 2015-2016, despite the fact that the IEP Team found the Student's learning and the learning of other students to be impeded by the Student's behaviors. The Student's previous Case Manager told the Complaint Investigator that teachers can access IEPs online but, to the best of her knowledge, cannot access FBAs or BIPs online.

18. The Student's 1st grade regular education teacher stated during his first interview with the Complaint Investigator that he did not have a hard copy of the Student's September 9, 2015 IEP but was given direction on how to access that information by the Student's Speech

Language Pathology/Special Education (SLP/SPED) instructor. However, in his subsequent interview, this teacher said that he did have a hard copy of the IEP, and that the training to access IEPs online was never completed. This teacher also stated that he had never seen this Student's FBA or BIP. The regular education teacher said that when he was absent, he left notes for substitute teachers about the Student's behavioral issues and detailing the Student's breaks, but did not leave a copy of the Student's IEP.

19. On one occasion, a substitute teacher was teaching the class. The Parent, who happened to be observing the classroom that day, asked if the substitute teacher was aware that the Student had an IEP. According to the Parent, the substitute teacher did not know the Student had an IEP.
20. On May 23, 2016, the Parent notified the District that she would be home schooling the Student until the Student could return to a different classroom. The Student did not return to school for the remainder of the year and was removed as a student from the District's roll.
21. During the school year, the Parent discussed obtaining a one to one aide with the Principal and followed up that request with a formal letter sent to the District on June 16, 2016, after the conclusion of the school year and after the Parent had withdrawn the Student from school.

IV. DISCUSSION

Section 1: Parent Participation/Special Factors

The Parent alleges that the District violated the IDEA because it did not consider the Parent's request for Extended School Year (ESY), assistive technology, a one to one aide and other modifications proposed by the Parent.

Under OAR 581-015-2205, the IEP team must consider the concerns of the parent for enhancing the education of the child as well as whether the child needs assistive technology.

The IEP Team determined that the Student was not eligible for ESY on September 9, 2015. The IEP Meeting Notes from this meeting do not indicate that the Parent specifically requested ESY at that time. The IEP Meeting Notes also reflect that the Parent requested "push in" services for the Student. However, the IEP Team ultimately determined that "pull out" services for the Student were more appropriate. Finally, the Parent told the Complaint Investigator that a one to one aide was verbally requested from the Principal during the 2015-2016 school year. This request was made in writing on June 16, 2016.

Finally, the Parent states that the Student was not provided with assistive technology devices. The Student was provided with "assistive technology" in the form of visuals for scheduling and expectations, hence the Parent's request was taken into consideration and, in some fashion, granted. The use of a "chart" may not be a conventional form of "assistive technology device" as contemplated by the IDEA³ but some form of assistive technology was provided nonetheless.

³ 34 CFR § 300.5 states an assistive technology device means 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.

The Student also had limited access to an iPad loaded with educational programs. Therefore, the Student was provided with the assistive technology accommodation as stated in the September 9, 2015 IEP.

Although a Parent may request specific services, a request does not automatically translate into a provision of services for a student. An IEP must provide a student with the opportunity to obtain meaningful educational benefits; an IEP does not guarantee a student the best of educational experiences.⁴ Hence, a district must consider a request from a parent but is under no obligation to provide every service or accommodation requested by a parent.

The Department does not substantiate this allegation.

Section 2: Prior Written Notices

The Parent alleges that the District violated the IDEA because it failed to give the Parent written notice regarding the denial of her requested modifications for the Student and any other denial of services or change in placement.

OAR 581-015-2310 states that a District must give a Parent a Prior Written Notice (PWN) within a reasonable time before the District refuses to initiate or change the identification, evaluation or placement of the child or the provision of FAPE.

During the Student's annual IEP Meeting on September 9, 2015, the IEP Team determined that the Student was not eligible for ESY. There is no evidence in the IEP Meeting Notes that the Parent requested ESY at that time, therefore no PWN was necessary.

The District provided a PWN to the Parent with respect to the September 10, 2015 IEP Meeting. However, this PWN did not address the denial of the Parent's request for "push in" services for the Student, rather than "pull out" services.

The Department substantiates this allegation.

Section 3: Content of IEP

The Parent alleges that the District violated the IDEA because the IEP developed for the Student does not reflect the Student's ADHD diagnosis, includes the same annual measurable goals as the Student's previous IEP, does not include a Behavioral Intervention Plan (BIP) and does not include any new information regarding the Student's disability in light of the private Functional Behavioral Assessment (FBA) submitted by the Parent and in light of the District's own FBA. The Parent also alleges that the District violated the IDEA because it did not amend or modify the Student's IEP after obtaining the two separate FBAs and a medical diagnosis of ADHD.

a) Annual measurable goals

OAR 581-015-2200 states that an IEP must contain a statement of measurable annual goals, including academic and functional goals designed to 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 that meet each of the child's other educational needs that result from the child's disability.

⁴ Wood v. Katy Indep. Sch. Dist., 66 IDELR 158 (S.D. Tex. 2015) See also, Board of Education of the Hendrick Hudson Central School District v. Rowley, 553 IDELR 656 (U.S.1982)

The Student's initial IEP, dated September 10, 2014, contained annual measurable goals tailored to the Student's needs for the kindergarten year. The annual measurable goals for school year 2014-2015 focus on the Student's communicating with peers and managing frustration as well as attending to adult directions and actively following oral directions of increasing complexity.

The Student's second IEP for school year 2015-2016, dated September 9, 2015, contains only two annual measurable goals, both geared toward academics and less toward communication and socialization. For the Student's 1st grade year, the Student's goals focus on engaging in independent work and on comprehending basic concepts so that the Student can access appropriate grade level curriculum.

As shown by the September 10, 2014 IEP and the September 9, 2015 IEP, the Student's annual measurable goals are different and are geared to the Student's needs.

The Department does not substantiate this portion of the allegation.

b) Functional Behavioral Analysis and Behavioral Intervention Plan

The IEP Team must revisit, at least annually, a student's IEP to revise the IEP to address, among other things, information provided to or by the parents about the student as well as any other matters under OAR 581-015-2225. Further, if a child whose behavior impedes the child's learning or that of others, the IEP team should consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. OAR 581-015-2205(3)(a). Guidance provided by the Office of Special Education and Rehabilitation Services in 52 IDELR 231 also states that a student's BIP must be added to the student's IEP when the student's behavior impedes his or her learning or the learning of others.

The District completed an FBA and BIP for the Student in January, 2015. However, these documents could not be accessed electronically by the regular education teacher, even though the IEP could be accessed electronically. While the IEP includes some of the elements of the BIP, it does not fully incorporate the BIP. The fact that the regular education teacher could not access these documents together makes it impossible to accurately say that the IEP included the BIP.

The Department substantiates this portion of the allegation.

c) ADHD diagnosis

Under OAR 581-015-2165, if a child is suspected of having an "other health impairment", the child must have an evaluation that indicates a diagnosis of other health impairment or a description of a health impairment or a description of the impairment and a statement that the child's condition is permanent or is expected to last for more than 60 calendar days.

In the instant case, although the Student displays characteristics indicative of ADHD, the Student was never evaluated by the District for "other health impairment". Further, the Parent never produced a diagnosis from a medical professional indicating that the Student had an "other health impairment" or an ADHD diagnosis.

The Department does not substantiate this portion of the allegation.

Section 4: Implementation of IEP

The Parent alleges that the District violated the IDEA because it did not allow the Student access to the "sensory room", failed to allow the Student "out of class" breaks, did not properly inform the substitute teacher of the Student's IEP and/or disability and effectively shortened the Student's school days through the use of discipline.

a) Sensory room and out of class breaks.

OAR 581-015-2200 provides that an IEP must contain "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."

The Student's IEP provides for movement and calming breaks school wide when the Student is in need of a break. There is no designation that the Student will take calming breaks outside of the classroom or in a specifically designated area. Further, the Student's IEP does not provide any accommodation whatsoever for the use of a sensory room or for the Student to have access to a sensory room.

The Department does not substantiate this portion of the allegations.

b) Access to IEP by substitute teachers.

Pursuant to OAR 581-015-2220, a District must ensure that the IEP is accessible to each regular education teacher, Special Education teacher, related service provider and other service provider who is responsible for its implementation. In the instant case, the regular education teacher had electronic access to the IEP itself, but not to the FBA or BIP. However, the regular education teacher maintains that he was never fully trained how to use this system. Further, the Parent alleges that on at least one occasion, the Student's substitute teacher was entirely unaware of the Student's IEP. During the interview process, the Student's regular education teacher seemed unclear about some of the requirements in the Student's IEP, particularly regarding assistive technology. The regular education teacher also stated that he had never seen the Student's FBA or BIP. It logically follows that if the Student's regular education teacher has never seen the Student's FBA or BIP, it would be impossible for that teacher to leave sufficient information for a substitute teacher to know exactly what services and accommodations the Student requires.

The Department substantiates this portion of the allegation.

c) Use of discipline to shorten school days.

There is only one incident of discipline for the Student and there is no evidence that the Student was suspended from school. The record contains no evidence that the Student was sent to the Principal's office or otherwise excluded from the classroom for disciplinary reasons, nor is there any evidence that the Student's school day was shortened.

The Department does not substantiate this portion of the allegation.

