

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of )  
Hood River County School District )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 20-054-004

**BACKGROUND**

On February 27, 2020, the Oregon Department of Education (Department) received a written request for a complaint investigation under Oregon Administrative Rule (OAR) 581-015-2030 from an attorney representing the Parents (Parents) of a child who receives special education services from the Hood River County School District (District). The complaint contains allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Department confirmed receipt of the complaints and forwarded them on to the District by email on February 28, 2020.

Under federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the parties agree in writing to an extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup> A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.<sup>3</sup> Based on the date the Department received the initial complaint, the relevant period for investigation is February 28, 2019 through February 27, 2020. Originally the Final Order was due to be issued on April 27, 2020. However, all parties agreed to participate in mediation; additionally, all Oregon schools were closed on March 12, 2020 due to the COVID-19 pandemic, and the closure was extended through the end of the 2019-2020 school year on April 9, 2020. On June 15, 2020, the mediator notified the Department and the Department’s Complaint Investigator (Investigator) that the complaint did not resolve in mediation, thus restarting the complaint investigation process. On June 23, 2020, the District requested a ten-day extension of the complaint due to extenuating circumstances. The Department approved this request and the Final Order is now due on August 10, 2020.

On June 24, 2020, the Investigator sent a revised *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a new timeline for the complaint investigation process. The revised RFR established a new *Response* due date of July 10, 2020.

On July 10, 2020, the District submitted a packet of materials to the Investigator. The materials included in the submission are listed below:

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

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The Investigator determined that on-site interviews<sup>4</sup> were necessary. On July 13, 2020, the Investigator interviewed the Parents and their Counsel. On July 14, 2020, the Investigator interviewed the middle school principal, a behavior specialist, a learning specialist, and the Online Academy<sup>5</sup> administrator. On July 15, 2020, the Investigator interviewed the District Special Education Director and the District’s Counsel.

The Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

### I. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.<sup>6</sup> The Parents’ 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 on the Discussion in Section IV. This complaint covers the one-year period from February 28, 2019 through February 27, 2020.

<b>1.</b>	<p><b><u>Access to Student Education Records</u></b></p> <p>The District has failed to provide the Parents with the Student’s educational record in a timely manner. The Parents, through their Attorney, requested the cumulative file on October 17, 2019.</p> <p>(34 CFR § 300.613, OAR 581-015-2300 (3)(b))</p>	<p><b><u>District Agrees<sup>7</sup> and the Department Substantiates</u></b></p> <p>The District concedes that it did not provide the family’s attorney a copy of the Student’s educational records within 45 days. The District plans to address this matter by annually training all staff who handle records requests of the 45-day timeline and Family Educational Rights and Privacy Act (FERPA) obligations. Additionally, the District will inform parents/guardians of their right to inspect/review records per FERPA.</p>
<b>2.</b>	<p><b><u>Review and Revision of IEPs</u></b></p>	<p><b><u>Not Substantiated</u></b></p>

<sup>4</sup> Due to continued Covid-19 restrictions, the Investigator conducted all interviews with Parents, their Counsel, District Staff and Counsel virtually.

<sup>5</sup> The District has an Online Academy for students grade 6—12. Students can complete coursework online through this program and can attend classes in one of the District’s brick and mortar schools concurrently.

<sup>6</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

<sup>7</sup> Given the District’s agreement with this allegation, no Facts about the Request for Records are included in the Findings below.

	<p>The District failed to conduct an IEP meeting to revise the IEP, as appropriate, to address information the Parents provided to the District about the Student’s changing mental health.</p> <p>(34 CFR § 300.324 (b); OAR 581-015-2225(1))</p>	<p>The Department finds that the District employed a variety of ways to address the Student’s mental health concerns, scheduled an IEP meeting as soon as possible given scheduling constraints, and afforded the Parents multiple opportunities to discuss their concerns.</p>
<p><b>3.</b></p>	<p><b><u>IEP Team</u></b></p> <p>The District failed to ensure that all required IEP team members were present at IEP team meetings; and failed to obtain written parental consent for IEP team members to be excused from the meetings. Specifically, the District held bi-weekly “BSP” meetings that were in fact IEP meetings convened without the required attendees. Additionally, a general education teacher was not present and not correctly excused from November and December 2019 IEP meetings.</p> <p>(34 CFR § 300.321 (a) (e); OAR 581-015-2210 (1) (3))</p>	<p><b><u>Not Substantiated</u></b></p> <p>The meetings in question were not formal IEP meetings, but were conducted with a specific purpose in mind—to continually review the Behavior Support Plan and the Student’s progress. There was not a requirement for general education teachers to attend these, although they did many times, and therefore written parental consent for excusal from these meetings was not necessary.</p>
<p><b>4.</b></p>	<p><b><u>Parent Participation</u></b></p> <p>The District failed to provide the Parents an opportunity to meaningfully participate in the Student’s IEP meetings when it designated the meetings as “BSP” meetings but discussed and revised the IEP at these meetings. The Parents were not provided copies of the Student’s BSP and were not provided Prior Written Notice of the meetings.</p> <p>(34 CFR §§ 300.500, 300.327, 300.501 (b); OAR 581-015-2190)</p>	<p><b><u>Not Substantiated</u></b></p> <p>As previously stated, these were not IEP meeting; however, the Parents were notified of these meetings, fully participated in the meetings, and received all materials discussed in these meetings.</p>
<p><b>5.</b></p>	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The cumulative effect of the above allegations caused the Student to miss 28 full days of school, in addition to many partial day absences, thus resulting in a loss of FAPE.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>	<p><b><u>Not Substantiated</u></b></p> <p>Other than Allegation One, the Department does not substantiate the above allegations. The failure to provide access to records did not result in a denial of FAPE.</p>

### **Requested Corrective Action**

The Complainants request the following action be implemented as a resolution to the Complaint:

1. The Oregon Department of Education should issue an order finding that District is in violation of IDEA for failure to provide the requested educational records within 45 days after the request has been made.
2. The Oregon Department of Education should compel the District to provide Parents with the requested educational records.
3. The Oregon Department of Education should require training for District staff regarding timely response to records requests.
4. The Oregon Department of Education should require training for District special education staff regarding IEPs, Evaluations, and mental health services.
5. The Oregon Department of Education should require training for District staff regarding IEPs and necessary team members.
6. The Oregon Department of Education should order compensatory education for Student's lost educational opportunities.
7. The Oregon Department of Education should order a facilitated IEP meeting to develop an IEP for Student that is reasonably calculated to provide educational benefit and address appropriate placement for Student.

### **III. FINDINGS OF FACT**

1. The Student is fourteen years old and is eligible for special education as a student with an Other Health Impairment (OHI). The Student is fun-loving, outgoing, and well-liked by peers. The Student prefers hands-on activities and has strong reading, math and cognitive skills. During the time under investigation, the Student was enrolled at the District middle school and attended the District Online Academy.
2. Due to concerns about the Student's difficulty in completing work, the District convened a meeting to discuss creating a Section 504 Plan. This plan was created on April 26, 2016, and<sup>8</sup> focused on the Student asking for help, working during classes, and turning in assignments.
3. Based upon the results of a private evaluation completed during the summer of 2018, the Parents requested for a special education evaluation on October 8, 2018. The district agreed, and consent was signed. Additionally, the Parents provided consent for District evaluators to administer the Behavior Assessment System for Children-3 and the Connors-3 on December 19, 2018 and gave consent for a vision and hearing screening on January 8, 2019.
4. On October 16, 2018, Behavior Support Team (BST), consisting of the Parents, the Student, twelve general education teachers, the Behavior Specialist and the Learning Specialist, met and conducted a Functional Behavior Assessment (FBA) and wrote a Behavior Support Plan (BSP). The BST identified two problem behaviors—non-compliance with work completion, and not turning work in to the teacher for grading. The BST determined that the function of

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<sup>8</sup> The Section 504 Plan was updated on September 4, 2018.

these behaviors was to allow the Student to avoid demonstrating a lack of ability to complete the tasks, especially any tasks involving writing. In designing the BSP, the BST selected specific strategies teachers could use to help prevent these behaviors, such as modifying the amount of work, and providing extra help to the Student. Additionally, the BST noted that the Student needed instruction in asking for help, self-management skills, and problem-solving skills. Staff members agreed to use consistent and calm responses and verbal or visual redirection to minimize the problem behaviors; and to use collaborative problem solving as a response to the problem behaviors.

5. The Eligibility Team met on January 15, 2019. They reviewed all the testing results<sup>9</sup> and found the Student eligible to receive special education services in the category of OHI but not for Autism Spectrum Disorder (ASD) or Specific Learning Disability (SLD). On January 31, 2019, the IEP Team met and wrote an IEP for the Student. The Parents signed consent to receive special education services. The major elements of the IEP are listed below:
  - a. Student needs support for behavioral issues and needs Assistive Technology;
  - b. Parents were concerned about the anxiety the Student experiences when faced with writing tasks;
  - c. Writing Goal: To write a complete outline and a two or more-paragraph essay receiving score of three or higher in ideas, content, and organization on the State Writing Assessment over two of four opportunities;
  - d. Study Skills: The Student will organize a binder and turn in 50% or more assignments in every class over two of four quarters;
  - e. Specially Designed Instruction (SDI) will be provided for 20 minutes weekly each in written language and study skills;
  - f. Accommodations provided will include reduced academic work, separate area for testing, backpack, chunked assignments, 5-minute break 30 minutes into class or after instruction, Co-Writer, Graphic Organizer, and a Behavior Support Plan;
  - g. The Student will not participate in the general education classroom for 120 minutes weekly for writing and study skills SDI; and,
  - h. The Student's Placement will be in the General Education classroom with support in writing and study skills.
6. The Learning and Behavior Specialists suggested that they conduct frequent BSP meetings with the Parents and relevant staff to review, manage and revise, as necessary, the Student's progress on the BSP<sup>10</sup>. The Parents agreed, and BSP meetings were held eight times between March 6, 2019 and February 14, 2020. District staff members took minutes at these meetings. Some of the meetings were scheduled using email, and the District sent some written meeting notices to Parents.
7. On March 6, 2019, one of the Parents met with the Learning and Behavioral Specialists in the first BSP meeting. The Parent informed the staff that the Student had seen an out of school counselor, but the session did not go well, and that the Student had changed medication. The other Parent was experiencing some health issues and the Student was very concerned about this. The Specialists noted that the BSP was working but the data was limited due to schools

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<sup>9</sup> In addition to the tools listed in Fact 4, the District obtained a Developmental History, conducted a Parent interview, and made three observations, one of which included a direct interaction with the Student. The District evaluators obtained a Medical Statement and conducted a vision and hearing screening. Additionally, the Team used the Social Communication Assessment; the Childhood Autism Rating Scale, Second Edition; Adaptive Behavior Assessment System, Third Edition; Behavior Rating Inventory of Executive Function 2; and the Kaufman Test of Educational Achievement (Writing), Third Edition.

<sup>10</sup> The District is using this process with other Parents whose Students are using a BSP for support.

being closed because of snow. The group discussed additional supports for the Student on the iPad and scheduled another meeting.

8. On April 10, 2019, the Parents met with the Assistant Principal, Learning and Behavior Specialists, and a General Education Teacher to inform the staff that the Student was now meeting weekly with a Counselor to work on problem-solving skills. Staff members noted that the new medication appeared to be helping the Student manage behavior more positively, and that the Student was more concerned about academics. The group agreed that the Learning Specialist would meet with teachers to gather information about their class expectations.
9. The Parents, Principal, Learning Specialist, and Behavior Specialist met on June 5, 2019 to discuss the Student's progress on the BSP, discuss some behavioral challenges the Student had been experiencing, and consider a potential placement change. The Parents stated that the Student's medication had been changed. The team noted that while Student was taking Abilify from December 2018 to April 2019, the Student had received no behavioral referrals. However, when the Student's doctor changed the medication, the Student's anxiety increased and interventions were not successful.

The Behavior Specialist outlined some of the recent negative behaviors the Student was exhibiting. Between March 22, 2019 and June 5, 2019, the Student had received nine referrals for behaviors such as fighting, disruption, theft, possessing tobacco on campus, disrespect, and skipping school. In comparison, during the 2018-2019 school year, the Student had received two referrals, one for fighting<sup>11</sup>. The Behavior Specialist suggested the team consider an abbreviated day, during which the Student would attend elective classes for periods 3 and 4, with access to the learning center. In agreement, the team changed the Student's placement<sup>12</sup> to two General Education classes on an abbreviated day and with a third class in the Learning Center for instruction and support in writing skills. Further, the team agreed this schedule would be in effect for the last nine days of the 2018-2019 school year and that the Team would reconvene before the start of the 2019-2020 school year.

10. On August 27, 2019, the District sent a Meeting Notice to the Parents for an IEP meeting<sup>13</sup> to be held on September 3, 2019. The Parents, the Learning Specialist, the Principal as the District Representative, and the Behavior Specialist attended the meeting. A general Education Teacher was invited but did not attend. The IEP Team added the use of music via earbuds for independent work time as a Supplementary Aid/Service, Accommodation in the IEP. The IEP Team changed the Student's Placement to a full-day General Education schedule with continued support in writing.
11. The IEP Team met again on October 7, 2019. The Parent, Principal, Learning Specialist, Behavior Specialist, and a General Education Teacher attended. The IEP Team discussed the positives—the Student was doing some work, was using collaborative problem solving, was feeling more confident, and was showing an improved response to challenging behaviors. Attendance and meeting behavior expectations on a sustained basis were still problematic as was being able to independently negotiate changes in teacher expectations. The IEP Team also reviewed the elements of the Student's self-regulation plan and collaborative problem-

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<sup>11</sup> The other referral reason was undefined on the discipline record.

<sup>12</sup> Team completed and signed Special Education Placement Determination form.

<sup>13</sup> The meeting notice lists the purpose of the meeting as a meeting to develop or review an IEP and Placement for the Student.



solving plan<sup>14</sup>. The Behavior Specialist suggested that the IEP Team consider the possibility of a District online program. Finally, the IEP Team decided to allow the Student to use the phone for listening to music, and to work on Math and English/Language Arts in the Learning Center.

12. The Parents hired an attorney to represent them, and on October 17, 2019 the Attorney sent the District a letter (accompanied by a parentally signed Authorization for Release of all Educational Records) to the District's Attorney<sup>15</sup>. The request specified that the Attorney was requesting all records maintained within the District for the Student, and that the Attorney was also asking for an IEP meeting as soon as possible. The request for an IEP meeting did not specify the reason for requesting the meeting or the proposed purpose of the meeting. On November 7, 2019 a staff person from the Parents' Attorney's office emailed the District's Attorney, again asking for a meeting. The District's Attorney replied asking, "Can you tell me what the Parents would like to address at an IEP meeting...placement, evaluation, etc.? It is difficult for team to be fully prepared without knowing what the family would like to discuss". The Parents' Attorney's staff member replied that the Parents would like to "address the IEP in its entirety, but we have specific concerns regarding mental health. We would also like to relay that the Student has been struggling to get to school lately."
13. The Parties (or their representatives) sent multiple emails over the remainder of 2019 attempting to schedule an IEP meeting. The District noted in its Response that between November 7, 2019 and December 10, 2019 (when the District proposed and the Parents accepted a meeting date of January 8, 2020) there were only five school days<sup>16</sup> when Counsel from the Parents and the District were available to meet.
14. The Parents met with the Learning Specialist, Behavior Specialist and the Principal on October 21, 2019 to review BSP data. The Specialist noted the Student is making progress in math and has had occasions when the Student was able to come to school even though fearful. The Team discussed various individuals Student could meet with to discuss fears. The Behavior Specialist asked for a meeting with the Student, Outside Therapist, and the Parent to discuss attendance. The Team decided the Student should continue on the current schedule; and the Behavior Specialist will create a program for Check In and Check Out for the Student to use.
15. On December 10, 2019, the Parents, Principal, Learning Specialist, School Psychologist, Behavior Specialist met. Staff members noted that a General Education Teacher might attend, but the Parents stated they were okay with meeting without that teacher. The Parents shared that although the Student appeared to be shutting down, and was not attending school regularly, the Student had left the house to attend some holiday events with family members. They also informed the staff that the psychiatrist had started Student on a new medication similar to Abilify and that the psychiatrist was considering further evaluation. Strategies were discussed to increase the Student's school attendance, as was the possibility that the Student, Parent, and Behavior Specialist might tour the District's Online Academy. Finally, it was

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<sup>14</sup> Self-Regulation: 1. Take a break and see a trusted adult; 2. During independent instruction, use headphone and listen to music; 3. Phone home and talk with Parent; 4. Go to office to take calming medication; and, 5. If Student and Parent decide Student should go home, all Student needs to do is check out at the office. Collaborative Problem-Solving: Implement plans Student made with each teacher at beginning of term about what Student can do when not understanding or not wanting to do a task: quietly read or draw.

<sup>15</sup> The District has requested that attorneys representing parents in matters of special education contact the District's attorney for such record requests.

<sup>16</sup> The District and the Parents' Attorney were engaged in litigation about another situation during several weeks in November and December 2019; there are significant holidays and planning and grading days in November, and in December school is only in session for three weeks.

decided that the Behavior Specialist would contact the Psychiatrist and the Online Academy to gather information and the Parents would talk to the Therapist and the Psychiatrist for more ideas to help the Student.

16. On December 17, 2019, the District sent a Meeting Notice for an IEP meeting to be held on January 8, 2020. The IEP Meeting was held on that date and was attended by the Parents, Learning Specialist, General Education Teacher, District Representative (SPED Director), School District Attorney, Principal, Administrator from Online Academy, Behavior Specialist, School Psychologist, and the Parents' Attorney. The IEP Team reviewed the IEP and discussed the Parents' concerns that the Student's depression and anxiety had increased to the point where the Student did not attend school at all in December 2019. The Parents agreed to review the outside private evaluations and to provide some information from them to the District; but refused to sign a Release of Information for the complete reports. The IEP Team added information to the PLAAFP to reflect the Student's lack of attendance, and resultant failure to turn in assignments.

The Parents' Attorney suggested that the team conduct a new FBA. The IEP Team agreed to this and agreed to conduct an evaluation for Emotional Disturbance (ED). The IEP Team did not change the goals, SDI, or accommodations in the IEP, although there was some discussion of new goals. The IEP Team agreed that it would need additional information before determining whether the Student would be eligible for Extended School Year services. Finally, the IEP Team agreed to change the Student's placement to a hybrid placement. The Student would take a class through the Online Academy and would receive support and SDI in a smaller learning environment at middle school. The Parents signed consent to conduct an FBA.

17. On January 23, 2020, the Parents, Learning Specialist, Behavior Specialist, Parents' Attorney (via phone), School District Attorney, Administrator of Online Academy, and School Psychologist met to review the Student's progress on the BSP. They noted that the Student had come to the Online Academy twice and completed some work, but was still struggling to attend the Learning Center class at the Middle School. The Parents signed consent for the ED evaluation including updating the BASC-3 and the Connors. The Parents said that they would discuss signing a Release of Information for outside providers with their attorney.
18. On February 14, 2020, this team met again. The Parents, Learning Specialist, Behavior Specialist, Parents' Attorney (via phone), School District Attorney (via phone), Principal of Online Academy, and School Psychologist all attended the meeting to review the BSP. They noted that the Student was having continued difficulties with attendance and turning in assignments. They considered a program of Homebound Instruction with the Online Academy but decided to continue the current program. The Parents reported that the Student was being treated medically for depression and was also struggling to get to baseball practice. The School Psychologist asked about getting ROI from doctors and mental health professionals for part of the ED evaluation. The Parents refused, explaining they "do not want private information from counseling to come back on the Student".
19. The Student's attendance during the time period under investigation is complicated to calculate. According to the District's Special Education Director, the middle school only takes attendance two times daily, and therefore, a student might be present first period when the attendance is taken and be absent the remainder of the day, but only counted for a half day's absence. Additionally, the Student's schedule was changed twice during this time. Attendance at the brick and mortar school trumps attendance at the Online Academy, so ostensibly, the Student could be absent at the Online Academy but present at the middle

school and therefore receive credit for a full day's attendance. Given all these vagaries, the following is a summation of the Student's attendance during the time under investigation:

- a. February 2019 the Student was in attendance 2 of 2 possible days;
- b. March 2019 the Student was in attendance 10 of 15 possible days;
- c. April 2019 the Student was in attendance 16 of 21 possible days;
- d. May 2019 the Student was in attendance 13 of 22 possible days;
- e. June 2019 the Student was in attendance 5 of 7 possible days;
- f. September 2019 the Student was in attendance 12 of 20 possible days;
- g. October 2019 the Student was in attendance 7 of 23 possible days;
- h. November 2019 the Student was in attendance 0 of 16 possible days;
- i. December 2019 the Student was absent the first 8 days of the month and then was dropped due to the 10-day mandatory drop rule;
- j. January 2020 the Student was in attendance 9 of 18 possible days;
- k. February 2020 the Student attended 1 day and then was dropped after 10 consecutive days absent.

20. The Parents filed this Complaint on February 28, 2019.

## II. DISCUSSION

### **Review and Revision of IEPs**

The Parents allege the District failed to conduct an IEP meeting to revise the IEP, as appropriate, to address information the Parents provided to the District about the Student's changing mental health.

OAR 581-015-2225(1) specifies a district meets its responsibility to the parents of an eligible child when it holds an IEP meeting at least once every 365 days to review and revise the IEP, if appropriate. One of the reasons for this review and revision process is to consider information provided by the parents, and which could drive a change in the IEP contents.

Here, the Parents requested a meeting through their Attorney and specified they wanted to discuss the Student's mental health and attendance issues. They originally requested this meeting on October 17, 2019 and the meeting was held on January 8, 2020. Upon first glance, it might seem that it took the District an inordinate amount of time to schedule an IEP meeting, and thus, deprived the Parents of an opportunity to give the District their information and discuss their concerns. However, the District made a reasonable attempt to hold a meeting in November or December of 2019. During this period, there were no days on which all parties and their attorneys were available.

The District was also responsive to involving the Parents in the implementation of the Student's IEP. The District had been meeting with the Parents on a regular basis since January 31, 2019 when the team wrote the Student's first IEP. Many of these meetings were constituted as Behavior Support Plan meetings where the purpose was to review the BSP and make any necessary changes. Between October 19, 2019 and January 8, 2020, two such meetings occurred; the first on October 21, 2019 and the second on December 10, 2019. During these meetings, the Student's attendance, mental health concerns, academic struggles, and behavioral concerns were discussed.

The Department does not substantiate this allegation.

## **IEP Team**

The Parents allege the District failed to ensure that all required IEP team members were present at IEP team meetings; and failed to obtain written parental consent for IEP team members to be excused from the meetings. Specifically, the District held bi-weekly “BSP” meetings that were in fact IEP meetings convened without the required attendees. Additionally, a general education teacher was not present and not correctly excused from November and December 2019 IEP meetings.

The structure, participants, purpose, and attendance requirements for an appropriate IEP meeting are defined in OAR 581-015-2210 (1) (3). The IEP team must include the parents, the child where appropriate, at least one regular education teacher, at least one special education teacher or provider, a representative of the district, and individual who can interpret the evaluation results and any other individuals as appropriate invited by the parents or the district.

As discussed above, the District conducted eight BSP and two IEP meetings over the course of the time under investigation. By this District’s definition, a BSP meeting is designed for parents and pertinent District staff to meet and review the progress, or lack thereof, the student is making on the Behavior Support Plan. The IDEA defines IEP, Eligibility Determination, and Placement meetings only. Of those three, a general education teacher and district representative is only required for the IEP meeting.

Beyond the regulations of the IEP meeting, a district may constitute a wide variety of meetings in order to support a student with a disability over the course of the school year. These BSP meetings were designed and conducted with a specific purpose in mind—to continually review the Behavior Support Plan and the Student’s progress. There was not a requirement for general education teachers to attend these, although they did many times, and therefore written parental consent for excusal from these meetings was not necessary.

The Department does not substantiate this allegation.

## **Parent Participation**

The Parents allege the District failed to provide the Parents an opportunity to meaningfully participate in the Student’s IEP meetings when it designated the meetings as “BSP” meetings but discussed and revised the IEP at these meetings. The Parents were not provided copies of the Student’s BSP and were not provided Prior Written Notice of the meetings.

Under OAR 581-015-2190 a District must afford both parents the opportunity to participate in IEP meetings, must provide notice of the meeting, and must take action to ensure the parents understand the proceedings at the meetings.

As discussed above, under the allegation of IEP Team, the District held eight BSP meetings and two IEP meetings over the time period under investigation. The Parents were informed of these meetings in advance, attended and participated in these meetings, and were given copies of any documents shared at the meetings.

The Department does not substantiate this allegation.

**Free Appropriate Public Education (FAPE)**

The Parents allege the cumulative effect of the above allegations caused the Student to miss 28 full days of school, in addition to many partial day absences, thus resulting in a loss of FAPE.

As per OAR 581-015-2040 a district must provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible. In *Andrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988 (2017), the Court further refined this definition and determined that, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP [individualized education program] that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

It is true that the Student in this investigation had many absences over the time under investigation. The District tried many strategies to increase the Student’s attendance and wrote an IEP that had potential to enable the Student to make progress. The District conducted thorough evaluations and offered an online option to the Student.

The Department does not substantiate this allegation.

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

*In the Matter of Hood River County School District*  
Case No. 20-054-004

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
Provide information and professional development regarding the intersection of FERPA and IDEA to records management staff, case managers and others the District deems responsible for responding to parent requests for access.	Text of proposed professional development.  Submit a copy of the Agenda, name of the Presenter(s), copies of materials, method of presentation, and sign-in sheet.	<b>November 10, 2020</b>  <b>January 10, 2021</b>

<sup>17</sup>The Department’s order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. (OAR 581-015-2030 (17) & (18)).

Dated: this 29th day of July, 2020

*Candace Pelt, Ed.D*

Candace Pelt Ed.D  
Assistant Superintendent  
Office of Student Services

Mailing Date: July 29 , 2020

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