

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Adrian School District)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 12-054-023

I. BACKGROUND

On August 16, 2012, the Oregon Department of Education (Department) received a faxed letter of complaint from the parent (Parent) of a student (Student) formerly residing in and attending school within the Adrian School District (District) during the 2011-12 school year. The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email and by US mail on August 20, 2012.

On August 21, 2012, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint that the Department would investigate. The District mailed its *Response* to the Department and to the parent on September 5, 2012, along with approximately 213 pages of documents in support of its *Response* and pursuant to the request contained in the RFR. The parent did not submit a formal Reply or any additional documents by the due date of September 12, 2012. The Department's complaint investigator identified and requested missing minutes from an outside agency, and the District provided the minutes, an additional four pages, on September 17, 2012.

The Department's complaint investigator determined that on-site interviews were not required. On September 13, 2012, the Department's investigator interviewed the Parent. On September 18, 2012, the Department's investigator interviewed the District Superintendent the Principal of the school the Student attended during the 2011-12 school year, the Student's general education teacher, two instructional aides, and the District's former special education director.¹ The Department's complaint investigator reviewed and considered all of these documents, exhibits, and interviews.

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.² The Department may extend the timeline if the District and the parent agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present.³ 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

¹ This individual described her role within the District as "diagnostician/consultant" responsible for evaluations, case management, and writing IEPs. This staff member clarified that the District's special education director was located at the local ESD.

² 34 CFR §300.151 (2010)

³ OAR 581-015-2030(12) (2010)

chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one-year period from August 17, 2011 to the filing of this complaint on August 16, 2012.⁴

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>IEP Implementation:</u></p> <p>A. Not providing the Student a full time aide in the second half of the 2011-12 school year when the Student needed a full time aide. For example, the Student left school grounds during recess when there was no aide assigned to the Student;</p> <p>B. Not utilizing the Student's picture schedule throughout the day, as specified in the Student's IEP;</p> <p>C. Not contacting the Parent, as required by the Student's IEP, when the Student had an accidental (other than when the Student's bathroom protocol provided) bowel movement or when it was appropriate to administer medication;</p> <p>D. Not addressing the Student's behavioral issues through positive behavioral interventions (i.e., Functional Behavioral Assessment (FBA) and a Behavior Support Plan (BSP)) when the Student's behaviors impede the Student's learning or the learning of others, including but not limited to chasing the Student when the Student was having a behavioral episode.</p> <p>(Relevant Law and Regulations: OAR 581-015-2040 and 34 CFR 300.101; OAR 581-</p>	<p>A. Substantiated, in Part. While there was no change in the Student's IEP regarding adult assistance, instances when the aide was not with the Student resulted in the Student running away from class on multiple occasions, including running off school grounds.</p> <p>B. Substantiated. The District staff did not consistently use the Student's picture schedule in the morning and the afternoon.</p> <p>C. Not Substantiated. The Student's IEP did not require the District to contact the Parent in the event of an accidental bowel movement. The District did contact the Parent to administer a specific medication (Medication A).</p> <p>D. Not Substantiated. The District completed the FBA within 60 days of receiving parental consent to perform the assessment and evidence indicates student behaviors were considered by the IEP team and addressed via ESD assistance.</p>

⁴ See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

	015-2220 and 34 CFR 300.323 and 300.324).	
2.	<p><u>Denial of FAPE</u></p> <p>Allowing other students to harass the Student, which caused the Student's behavior to escalate, resulting in a denial of the Student's right to a Free and Appropriate Public Education (FAPE).</p> <p>(Relevant Law and Regulations: OAR 581-015-2040 and 34 CFR 300.101).</p>	<p>Not Substantiated.</p> <p>The Department has not identified evidence that the Student was harassed in a way that would interfere with any IDEA rights nor that any actions by other students resulted in a denial of FAPE.</p>
3.	<p><u>Prior Written Notice (PWN)</u></p> <p>A. Not providing the Parent with a PWN when the District proposed to initiate or change, or refused to initiate or change the provision of a FAPE. Specifically, as alleged that the District did not provide a PWN when it changed the amount of educational assistant services contained in the Student's IEP in approximately January 2012.</p> <p>B. In addition, the District did not provide a PWN when the Parent requested an IEP meeting in May 2012 and the District refused to schedule an IEP meeting.</p> <p>(Relevant Law and Regulations: OAR 581-015-2310 and 34 CFR 300.503).</p>	<p>A. Not substantiated.</p> <p>The Student's IEPs in effect during the 2011-12 school year relating to adult assistance did not change, nor did the actual amount of adult assistance change on the IEPs during the 2011-12 school year. Therefore, no PWN was required for this as there was no actual change in the provision of services to the Student.</p> <p>B. Substantiated.</p> <p>The Parent's request for an IEP meeting in May 2012 received no formal response from the District when it should have issued a PWN.</p>
4.	<p><u>Parent Participation</u></p> <p>Not scheduling an IEP meeting, pursuant to the Parent's request in May 2012 to hold an IEP meeting, at a mutually agreeable time.</p> <p>(Relevant Law and Regulations: OAR 581-015-2195 and 34 CFR 300.322 (a)(2))</p>	<p>Substantiated.</p> <p>The Parent requested an IEP meeting in the early portion of May; the District considered the request on May 15, 2011 but decided that since the school year was coming to an end and staff would change, it deferred scheduling the meeting until the following school year.</p>

1.	<p><u>Requested Corrective Action.</u></p> <p>The Parent has not requested any specific corrective action.</p>	See Corrective Action
----	---	-----------------------

III. FINDINGS OF FACT

Background

1. The Student is currently nine years old and attended second grade during the 2011-12 school year within the District. The Student was a resident of the District for the 2011-12 school year, but moved out of the District for the 2012-13 school year. The Student was first determined eligible for special education services while in kindergarten under the category of Other Health Impaired. In 2010, the District evaluated the Student for special education eligibility under the category of Autism Spectrum Disorder (ASD) and on May 18, 2010 determined that the Student was eligible as a student with ASD. During the 2010-11 school year, the Student ran from school staff on two occasions.

2011-12 School Year

May 24, 2011 IEP

2. The Student's May 24, 2011 IEP was in effect at the beginning of the 2011-12 school year. The IEP team considered special factors as part of the Student's IEP development, determining, in part, that the Student needed assistive technology consisting of a visual schedule, had communication needs (addressed in the Student's IEP), and that the Student did not have behaviors that impeded the Student's learning or the learning of others.
3. The IEP contained five annual goals with associated short-term objectives in Math, Reading, Writing, Communication and Behavioral/Social Emotional. The IEP included specially designed instruction in each area of the annual goals, including "Behavioral" for thirty minutes per month in the general and special education settings. Behavioral Consultation Support from the Education Service District (ESD) was included as a related service at thirty minutes per month.
4. The IEP included a number of Supplementary Aids/Services, Modifications/Accommodations. The relevant descriptions are listed verbatim in the chart below:

Supplementary Aids/Services Mod/Accom	Amount/ Frequency	Location
Picture Cues/ Schedules	School Days	Gen Ed & Sp Ed Settings
Social Stories	Per unresolved behavior issues	Gen Ed & Sp Ed Settings

Bathroom Access	School Days	All school settings
Calming/Time Out Space	School Days	Time-out setting
Frequent Adult Assistance ⁵	Unstructured activities (e.g. recess, ??? [sic])	Gen Ed & Sp Ed Settings

5. The Student's placement was regular education with pullout.
6. During the entire 2011-12 school year, the District assigned two primary educational aides to the Student, with the morning and afternoon aides changing at 1:15 pm each day. However, there were short periods of time that a third aide covered for the other two aides, or the two aides covered for one another, to allow for staff breaks. District staff stated that there was a single one to one aide assigned to the Student from 1:15 to 3:40 pm.
7. District records list October 20, 2011 as the first "meltdown since school started." Staff recollections of this incident were very vague, although one staff member believed that the incident occurred outside during a recess with the Student walking around the outskirts of the playground avoiding other children.
8. On October 20, 2011, the Parent informed the District that the Student had reported to the Parent that the Student was "coming home telling her that other kids pick on [the Student] on the playground...[the Student] doesn't tell the teacher on duty because then the kids pick on [the Student] more." No staff member could describe or identify any occasion, including this date, of other students picking on or harassing the Student.
9. On December 8, 2011, the Student's health care provider wrote the District with recommendations to establish a specific bowel schedule for the Student to address a continuing medical concern.
10. On either January 3 or 4, 2012, (the records are inconsistent) the student refused to follow the bus driver's instructions on the afternoon route. District staff met the following day, established a protocol if the Student repeated inappropriate behavior on the bus, including sending the Student to the "Detention Room" as punishment. The next day, the Student refused to sit in the Student's assigned seat and the Student was removed from the bus and sent to the principal's office.
11. On January 23, 2012, the Parent met with a number of District staff to address the Student's behavior on the bus, toileting and bowel issues, refusals to follow staff directives, and the Student's fear of police. The meeting resulted in strategies including new social stories to reinforce positive behavior, reward systems to reinforce positive behaviors, visual schedules to prepare the Student for transitions as well as staff training to understand ASD, in general, and specifically how the Student exhibits ASD.
12. On January 27, 2012, the Parent met with District staff and other providers from various agencies in the initial "Community Resource Team (CRT) Meeting" to "determine appropriate services for [the Student] at home and school and to get everyone back together on the same page for [the Student]." Identified goals were to establish a plan to "control [Student's] anger and reduce verbal abuse, to control [Student's] bowels and to

⁵ District staff admitted that this accommodation was "not adequately clear" to describe the services provided the Student.

control [Student's] behaviors on the playground." The District committed to hold an IEP meeting on February 2, 2012.

13. During the month of January 2012, the District created social stories for staff to use regarding toileting, respecting staff at school, fear of police, and appropriate bus behavior (Staff revised the bus social story from August 2011).

February 2, 2012 IEP

14. On February 2, 2012, the IEP team met and wrote a new annual IEP. The Student's Present Level of Academic Achievement and Functional Performance was substantially revised. Significantly, Special Factor C, relating to behaviors impeding the Student's learning or the learning of others, was changed to "Yes." The annual goals were substantially, or identically, the same as the May 2011 IEP. The District substantially revised the Communication short-term objectives. Placement remained the same general education classroom with pullout services.
15. The IEP included specially designed instruction in each area of the annual goals, including "Behavioral" for thirty minutes per day with the location described as "bathroom setting". Behavioral Consultation Support from the ESD remained as a related service at thirty minutes per month.
16. The IEP included a number of Supplementary Aids/Services, Modifications/Accommodations. The relevant descriptions are listed verbatim in the chart below, with the differences from the May 2011 IEP in bold:

Aids.Services Mod/Accom	Amount/ Frequency	Location
Picture Cues/ Schedules	School Days	Gen Ed & Sp Ed Settings
Social Stories	Per unresolved behavior issues	Gen Ed & Sp Ed Settings
Toileting Routine	Per [medical provider's] schedule	Bathroom
Bathroom Access	School Days	All school settings
Calming/Time Out Space	School Days	Time-out setting
Frequent Adult Assistance	Unstructured activities (e.g. recess, transitions)	Gen Ed & Sp Ed Settings

17. Meeting minutes reflect that the Parent, along with six District staff, a representative from the Student's health care provider and two ESD staff members attended the meeting. The team discussed current issues involving home and school with strategies shared among the participants, including the Parent.
18. The District provided the parent a PWN dated February 2, 2012 requesting consent to complete a Functional behavioral Assessment (FBA) to address the Student's behaviors that were interfering with the Student's progress in the general curriculum. The parent signed consent for the ESD to conduct an FBA on February 2, 2012.

19. The Student's health care provider wrote the District on March 8, 2012 to address the Student's toileting schedule and attached a toileting log for the District to use with the Student. Specific recommendations included various dietary recommendations, participation in recess, physical education and sports, and a reward system, consistent between home and school, for successful toileting efforts. In addition, the provider stated "if [the Student] is not continent, [the Student] needs to take some responsibility for cleaning himself, taking care of [the Student's] needs, and cleaning up any messes that are made. I understand that this may take some patience from the assistant/parent but it is very important that [the Student] begin to learn to become self-reliant for [the Student's] own personal hygiene."
20. The District included copies of completed toileting logs dated April 9, 2012 through May 17, 2012.
21. The CRT team met on March 14, 2012. Issues discussed included anticipated completion of the FBA, revising some social stories and the Student's refusal to do homework.
22. On April 12, 2012, the IEP team met to review the results of the FBA. The assessment, stated, in part, "[District] personnel could not agree upon the communication and service coordination methods recommended for consistent implementation of [the Student's] IEP at school.... A period of stability that was supportive for [the Student] to progress academically and socially has now devolved to crisis management and social survival." Included in the assessment is a recommendation to not chase the Student, and that "adult caregivers contribute to both the intensity and duration of [the Student's] escalation pattern through their Reactive Responses to [the Student's] behaviors."
23. The CRT team met on April 18, 2012. Relevant entries in the minutes include:
- "[the Student] doesn't like that mommy doesn't come to school when [the Student] has an accident"
- "Picture schedule is not being implemented at this time
- Disagreements regarding how it is going to be implemented
 - Those who work with him in the morning have a system they feel is working well and don't want to change
 - Afternoon is when [the Student] has problems with behavior
 - Have tried to come up with a plan with the afternoon staff"
- "[Team member] met with team to go over picture schedule
- Not received well
 - Need to come up with a different plan
 - Stressed importance of consistency between morning and afternoon
 - 2 systems would be hard for [Student]
 - Stressed importance of helping him transition next year
 - [Student] needs to know how the system works for [the Student's] bad days"
- "Concern between schedule differences between morning and afternoon at school"
- "[Three team members] need to meet with school staff regarding implementing of picture schedule/behavior plan as well as expectations- what happens when they are/are not met."
24. On May 1, 2012, during the afternoon recess, the Student's afternoon educational aide became ill and had to go home. An incident occurred on the playground, with the Student

ultimately running from staff and leaving school grounds. The District called the Parent to retrieve the Student from off school grounds.

25. On May 9, 2012, ESD staff provided to a particular District staff member "Safe Intervention Guidelines." These guidelines were intended for use with the Student in combination with "a comprehensive set of behavior management and modification strategies" including a visual schedule for daily activities, daily communication between the Parent and school personnel, and "prescribed repertoire of consequences that clarifies options adults can use to motivate [the Student's] investment in replacement behaviors."
26. On May 9, 2012, the Student ran away from the Physical Education teacher, left the school grounds and went across the road into a barbed wire enclosed pasture off school grounds. The Student's assigned educational aide was usually, but not on this day, with the Student during physical education. District staff assisted in controlling traffic on the nearby highway in the event the Student left the pasture and ran towards the highway during this time. The Student threw rocks at staff members while in the pasture. The District called the Parent to assist in removing the Student from the pasture behind the barbed wire fence. The Parent administered Medication A to the Student to calm the Student.

On May 15, 2012, District staff wrote the Student's medical care provider, explaining that the Student's behavior continued to escalate. District staff stated "We're all so swamped we haven't had time to create a follow-up behavior plan." The Parent had previously asked District staff members to administer a specific medication (Medication A) to the Student at the first sign of agitation. District staff expressed to the health care provider that they were not comfortable in honoring the Parent's request to determine when they should dispense the medication and inquired of the health care provider for advice and her recommendation

27. On May 15, 2012, at an administrative staff meeting, the administrators discussed the requested IEP meeting. However, with the last day of school on May 24, 2012, and with the retirement of the special education director at the end of the school year, the District decided to wait until the following year to hold a follow up meeting.
28. On May 16, 2012, the District staff member who received the "Safe Intervention Guidelines" distributed it to staff that worked with the Student with the comment that the guidelines "accurately define [the Student's] behaviors and general guidelines for responding to [the Student's] meltdowns."
29. On May 17, 2012, the Student was in the library with both a teacher and an aide present, had a behavioral incident, and ran out of the library to an adjacent street. The Parent was in the school parking lot and District staff notified her of the incident.
30. On May 24, 2012, District staff met without the Parent to review the "Safe Interventions Guidelines" and to discuss the Student's continuing behavioral issues. The District intended to develop a behavior plan in the fall with ESD assistance. The minutes reflect that the Parent previously informed the District that the Parent did not intend for the Student to attend school the last week of school. May 24, 2012 was the last day students attended school within the District.
31. On May 30, 2012, District staff again wrote to the Student's health care provider reiterating that staff was not comfortable determining when Medication A should be administered and

asking for a written protocol from the health care provider to provide guidance and permission to dispense the medication. The next day, in the reply from the medical provider, there was no clear guidance and she suggested that, "Hopefully, next year a better prevention plan can be devised" which would reduce the need for the medication. The provider did not clearly respond to District staff's request for a protocol for the dispensing of the medication.

32. District medication records for the Student include three different medications dispensed during the 2011-12 school year. Relevant to this complaint was the administration of Medication A. The instructions for dispensing this medication state that "Parent will be called if pill has to be given." Records reflect that the Parent administered this medication to the Student twice, on May 9 and May 16, 2012.
33. The District special education director⁶ retired at the end of the 2011-12 school year.
34. The Parent stated that in May 2012, three students in the Student's class would harass the Student, which would cause the Student to go into a rage and have a meltdown in the classroom.
35. All District staff deny ever seeing the Student harassed by other students in the classroom, during lunch or on the playground.
36. At the beginning of May 2012, the Parent stated that she made her initial verbal request for an IEP meeting to the special education director, then later to the classroom teacher, then to the principal, but the District did not set a meeting or send her a PWN. The Parent stated that she has always had an IEP meeting at the end of the school year to prepare for the next school year.
37. District staff reported that the Parent requested an IEP meeting in the first part of May, the exact date was uncertain.
38. The District's 2011-12 school year calendar is available at http://www.adriansd.com/Adrian_School_District/PDF/2011-12%20District%20Calendar.pdf.
39. The Parent currently reports that the Student is having a very good beginning of the 2012-13 school year in the new district and no meltdowns had occurred in the first two weeks of school.

IV. DISCUSSION

1) IEP Implementation

The parent alleges that the District failed to implement the student's IEP in four areas. School districts must provide special education and related services to a child with a disability in accordance with the Student's IEP.⁷

⁶ See clarification in footnote 1, supra

⁷ OAR 581-015-2220

A. Not providing a full-time aide in the second half of the 2011-12 school year.

The Student's two IEPs in effect during the 2011-12 school year contain the Supplemental Service of "Frequent Adult Assistance" at "unstructured activities, e.g. recess", with an added example of "transitions" in the February 2012 IEP. The May 1, 2012 recess incident, when the Student's aide became sick and was not with the Student, is an example of the District not fulfilling the accommodation contained in the IEP to provide adult assistance to the Student during recess. The May 9, 2012 incident when the Student ran across the street into a barbed wire enclosed pasture avoiding PE, when there was no educational aide, was another example of not having sufficient adult assistance. On May 16, 2012, when there was an aide present, the District was unable to keep the Student within the school building. There were clear lapses in the "adult assistance" provided, with the Student being put at significant risk by running off school grounds. Based on the report that the Student had run away from staff twice in the 2010-11 school year, the IEP team had the factual support to include more specific requirements for adult assistance in the Student's IEPs. There is substantial and persuasive evidence to sustain that the "frequent adult assistance" noted on the IEP was not implemented.

The Department does not find that there was a change in the amount of adult assistance in the second half of the 2011-12 school year, as alleged by the Parent. The description between the May 2011 IEP and the February 2012 IEP is virtually the same. However, the anticipated amount/frequency column describes a setting ("Unstructured activities, (e.g. recess, transitions)") and does not describe how often or the amount of adult assistance envisioned by the IEP team. The location for the "frequent adult assistance" is described as the "gen ed and sped settings." After reviewing this Student's IEPs, the Department determines that the District's descriptions of the amount of adult assistance in the IEP are vague and as the District staff stated, "not adequately clear." A person unfamiliar with the Student, reading the IEP, would not be able to be determined when and how much adult assistance was needed or what was appropriate for the Student.

Therefore, the Department substantiates the allegation to the extent that the District did not provide adult assistance on May 1, 2012 while the student was at recess and ran from the school grounds. On at least one other occasion, there was insufficient adult assistance. In addition, the description of this supplemental aid/service is admittedly vague, necessitating the corrective action contained in this Order.

B. Not utilizing the Student's picture schedule throughout the day

Both of the Student's 2011-12 IEPs include the accommodation of picture cues/schedules on school days in the general and special education settings. As the District narrative to the RFR states, "The Student's *picture* schedule was thought not to be necessary by some of the staff and, therefore, was not used" (emphasis in original).

Meeting minutes from the April 18, 2012 CRT meeting also reflect that staff was not implementing the picture schedule. There were specific references to disagreements between staff on its use. Follow up meetings with school staff were planned to ensure use of the picture schedules.

ESD staff noted the disagreements about implementation of this accommodation were causing issues among staff. In the May 9, 2012 "Safe Intervention Guidelines" authored by the ESD for

District staff, the author noted that implementation of a visual schedule was a key element for success.

Based on the facts found during the investigation, the Department substantiates this allegation that the District did not implement the Student's IEPs by consistently using the picture schedule, as intended by the IEP team, as recommended by the ESD, and as included in the Student's IEP.

C. Not contacting the Parent when the Student had an accidental bowel movement or administering certain medication (Medication A)

Neither of the Student's IEPs in effect during the 2011-12 school year addresses contacting the Parent in case of accidental bowel movements. The February 2012 IEP included the medical provider's toileting routine as an accommodation. The Student's medical provider, on two occasions, reinforced not contacting the Parent if there was an accidental bowel movement so that the Student would become more self-reliant. The District was under no obligation to contact the Parent if there was an accidental bowel movement nor was it included in the Student's IEPs.

The Student's IEPs do not incorporate any reference to medication dispensing or a medical protocol other than the toileting routine. During the investigation of this complaint, the Parent clarified that the Parent's concern was not that the District contact her before administering Medication A, but that she wanted the District staff to dispense Medication A at the first signs of the Student's agitation. As the email communication between the District and the health care providers confirms, the District staff wanted clear instructions on when to dispense it. District staff did not receive clear instructions on when to administer the medication. Based on the medication records, the Parent administered Medication A on two occasions. Since there was no reference in the Student's IEP relating to the administration of the medication, and the health care provider did not provide a clear protocol to follow, the District did not fail to implement the Student's IEP. Therefore, the Department does not substantiate this allegation.

D. Not addressing the Student's behavioral issues through positive behavioral interventions

The student's May 2011 IEP, specifically Special Factor C, did not identify the Student's behaviors impeding the Student's learning or the learning of others. The first time the IEP team identified this special factor was in the February 2012 IEP. When the student has this special factor identified, the IEP team must consider the use of strategies, positive behavioral interventions and supports to address the behaviors.⁸ This IEP notes the parent's concerns for "behaviors that have required development of support plans and social stories." Both IEPs contained annual goals for "behavior/social emotional" with accompanying short-term objectives which address "appropriate classroom, playground, and bus behavior"⁹. Once the IEP team identified Special Factor C as applicable to the Student, the IEP team included behavioral goals in the February 2012 IEP.

Further, the District requested and obtained the Parent's consent to conduct an FBA on February 2, 2012. Once consent is obtained, the District must complete evaluations and hold a

⁸ OAR 581-015-2205(3)

⁹ February 2012 IEP (pg 6)

meeting within 60 school days after receiving the consent.¹⁰ The IEP team met to discuss the FBA on April 12, 2012, approximately 22 school days following receipt of the signed parental consent.

The ESD provided "Safe Intervention Guidelines" to the District on May 9, 2012, and the District distributed those guidelines to staff on May 16, 2012 in an effort to address behavior concerns. Included with the transmittal memo to staff was a comment that the guidelines "accurately define [the Student's] behaviors and general guidelines for responding to [the Student's] meltdowns." The District deferred until the following school year (2012-13) creating a BSP for the Student because they were "swamped," did not have the time to draft a support plan before the end of the year and there would be a new special education director for the District. Had the District put a support plan in place earlier, the events in May 2012 may not have occurred. However, since the IEP team met well within the sixty school day time limit following the requisite consent from the parent to complete the FBA, implemented other initiatives to address the behaviors, worked with the ESD for support, and subsequently discussed creating a BSP to address student needs, the District is technically in regulatory compliance, and therefore, the Department does not substantiate this allegation.

2) Denial of FAPE

The Parent alleges that the District allowed the other students to harass the Student, which caused the behaviors to escalate, resulting in a denial to the Student of a FAPE.

The Department did not identify any specific instances supporting the allegation that the Student was harassed, in the classroom or elsewhere. Without such evidence, and supported only by the statement of the Parent, the Department does not find persuasive evidence to substantiate this allegation.

3) Prior Written Notice

The Parent alleges that the District did not provide the Parent with PWN when the District proposed to initiate or change, or refused to initiate or change the provision of a FAPE. Specifically, the Parent alleges the District did not provide a PWN when it changed the amount of educational assistant services contained in the Student's IEP in approximately January 2012. In addition, the Parent alleges that the District did not provide a PWN when the Parent requested an IEP meeting in May 2012 when the District refused to schedule an IEP meeting.

Written notice must be given to the parents of a child with a disability a reasonable time before the school: proposes to initiate or change the identification, evaluation or educational placement of a child or the provision of FAPE to the child or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child.¹¹ On February 2, 2012, when the Student's IEP team modified the Student's IEP, the team did not change the description, frequency or locations of the accommodation of "adult assistance". If the District did not change, or refuse to change the provision of a FAPE, then the District was not obligated to issue a PWN here.

¹⁰ OAR 581-015-2110

¹¹ 34 CFR 300.503

Regarding the Parent's request for an IEP meeting in early May, the District discussed the request at an administrative meeting on May 15, 2012. While the District intended to hold the requested meeting the next year, due to the change of staff members and the looming end of school year, it should have issued a PWN informing the Parent of its decision not to hold the meeting.¹² The District did not send the Parent any communication informing her of the reasons for not holding a meeting. The District ignored her request for an IEP meeting and didn't communicate with the Parent. Since the District should have issued a notice that it was refusing to hold an IEP meeting before the end of the year the Department substantiates this allegation.

4) Parent Participation

The Parent alleges that the District did not schedule an IEP meeting, following the Parent's request in May 2012, at a mutually agreeable time. A District is required to review a student's IEP periodically, at least every 365 days, to revise the IEP, as appropriate, to address the student's anticipated needs, among a number of other potential purposes.¹³

In order to allow parental participation, the District must schedule the meeting sufficiently in advance and at a mutually agreed time and place.¹⁴ If the District refuses to schedule the meeting, it must issue a PWN as noted above.¹⁵ As there was no meeting held in May of 2012 based on the facts noted above, a lack of parent participation at this meeting, which did not occur, would be moot. Based on the fact that the District did not schedule this IEP in May, the issue of mutually agreeable time and place for parent participation would also be moot as related to this specific allegation. Therefore, the Department does not substantiate this allegation.

CORRECTIVE ACTION¹⁶
In the Matter of Adrian School District
 Case No. 12-054-023

Actions	Submissions ¹⁷	Due By
Training: Provide all District staff and administrators who may participate in IEP meetings, training in the following areas:	Submit evidence of completed training including:	November 19, 2012

¹² OAR 581-015-2310

¹³ OAR 581-015-2225

¹⁴ OAR 581-015-2135

¹⁵ OAR 581-015-2310

¹⁶ 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)).

¹⁷ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

<ol style="list-style-type: none"> 1. Developing, reviewing, and revising the IEP to include accommodations, special considerations, modifications, supplementary aids, and services 2. To address allegations 3 and 4: Identify when a PWN is required. 3. Developing individualized PWN <p>ODE will provide the required content to be used in this training by October 18.</p>	<ol style="list-style-type: none"> 1. Detailed Agenda 2. Signed participant list, including names and positions 3. Copies of materials presented 	
--	---	--

Dated: October 15, 2012



 Petrea Hagen-Gilden
 Interim Assistant Superintendent
 Office of Student Learning & Partnerships

Mailing Date: October 15, 2012

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

Additionally, the Department of Education will not reconsider complaints after the Final Order has been issued pursuant to OAR 581-015-2030 (14)(b).