

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School District 1J )  
)  
)  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 15-054-042

I. BACKGROUND

On November 20, 2015, the Oregon Department of Education (Department) received a Letter of Complaint from the parents (Parents) of a student (Student) residing and attending school in the Portland School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint letter to the District by email on November 24, 2015.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On December 1, 2015, the Department sent the *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On December 14, 2015, the District mailed its *Response* to the *Request for Response*, with accompanying documentation and these were received on December 16, 2015. This order is timely.

In total, the District provided these materials:

1. ECSE Evaluation Report & Eligibility 12/3/12
2. Prior Notice of Special Ed Action 4/13/14;
3. Notice of Team Meeting 4/15/14;
4. Meeting notes 4/23/14;
5. Individualized Education Program (IEP) & placement 4/23/14;
6. Building Screening Committee Meeting Summary 12/18/14.
7. Notice of Team Meeting 1/27/15;
8. Meeting notes 1/27/15;
9. Notice/Consent for Evaluation 1/27/15
10. Psychoeducational Report 1/28/15;
11. Letter to medical provider 1/28/15;
12. Medical Statement 1/28/15;
13. Letter from OHSU psychologist 2/19/15;
14. Meeting Notes 3/20/15;
15. Letter from OHSU psychologist 3/26/15;
16. Initial Assessment Report 4/12/15;
17. Notice of Team Meeting 4/13/15
18. Medical Statement 4/15/15;
19. Functional Communication Evaluation Report 4/20/15;
20. Eligibility statements 4/20/15;
21. Prior Notices about Eligibility 4/20/15;
22. IEP Progress notes 4/20/15;

---

<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153  
15-054-042

23. Meeting notes (Evaluation results, eligibility) 4/20/15;
24. Interim Toileting Plans & Enhanced Toileting Exercises and emails related to toileting plans and implementation 2/20/15, 3/10/15, 3/20/15 & 4/24/15;
25. Hearing Screening 5/8/15;
26. Other emails 2/15/15, 4/16/15, & 5/12/15;
27. Medical excusal statement from medical provider;
28. Section 504 plan (proposed) & related emails 6/8/15;
29. Report Cards 2014-2015;
30. Parent letter requesting inter-district transfer 6/17/15;
31. Emails regarding inter-district transfer 7/2/15 & 7/9/15;
32. PPS response to inter-district transfer request 7/9/15;
33. Emails following inter-district transfer request denial 7/9/15;
34. Statement of school principal 12/10/15;

On January 1 2016, the Parents submitted a rebuttal letter for the Complaint Investigator to review.

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On January 5, 2016, the Complaint Investigator interviewed the Mother by telephone, and conducted in person interviews with District staff members, including the School Principal, the Student's Homeroom Teacher, the School Psychologist, and one of the school's Special Education Teachers (in the presence of and with participation by the District's legal counsel). The Complaint Investigator reviewed and considered all of the documents received in reaching the findings of fact and conclusions of law contained in this order.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under OAR 581-015-2030 and 34 CFR 300.151-153. The Complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one year period from November 21, 2014, to the filing of this Complaint on November 20, 2015.<sup>2</sup>

No.	Allegations	Conclusions
1.	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The Complaint alleges the District violated the IDEA by denying FAPE during the 2014-15 school year by failing to implement toileting plans as required by the Student's IEP and by failing to allow the Student to transfer to another school district for the 2015-16 school year.</p> <p>OAR 581-015-2040; 34 CFR 300.101.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Department finds that the Student's toileting plans were not part of the Student's IEP. The Department also finds that the District did work with the Parents to develop an appropriate toileting plan for the Student, which was modified numerous times in order to meet the Student's needs. The District also provided a different Homeroom Teacher to the Student in an attempt to resolve these issues.</p>

<sup>2</sup> OAR 581-015-2030(5)

2.	<p><b><u>When IEPs Must Be in Effect (IEP Implementation)</u></b></p> <p>The Complaint alleges that during the 2014-15 school year, the District violated the IDEA by failing to implement the Student's IEP. Specifically, the Parents allege that the District failed to implement toileting plans as required by the Student's IEP.</p> <p>OAR 581-015-2220; 34 CFR 300.323, 300.324.</p>	<p><b><u>Not Substantiated</u></b></p> <p>As discussed above, the Student's toileting plans were not part of the Student's IEP and there is no evidence that the toileting plans were not properly implemented.</p>
3.	<p><b><u>IEP Team Considerations and Special Factors</u></b></p> <p>The Parents allege that their concerns were not appropriately considered by the IEP Team. Specifically, the Parents allege that the IEP Team refused to evaluate their child for eligibility for Attention Deficit Hyperactivity Disorder (ADHD) despite their wishes and a statement from the Student's Psychologist suggesting that the Student be evaluated for ADHD. The Parents also allege that they were "coerced" into signing documents stating their agreement with this refusal and that they were told that the District would "work hard" to find out what the Student did qualify under because "they all agree that there is something going on with (the Student)." The Parents disagree with the IEP Team's determination on April 15, 2015 that the Student no longer qualified for Special Education services.</p> <p>OAR 581-015-2250; 34 CFR 300.501.</p>	<p><b><u>Not Substantiated</u></b></p> <p>There is no evidence that the IEP Team did not consider the wishes of the Parents or the needs of the Student in determining that the Student was no longer eligible for Special Education services, nor is there any evidence that the Parents were "coerced" into signing anything. The IEP Meeting Minutes indicate that Attention Deficit Hyperactivity Disorder was discussed, but that the Student's Physician was not prepared to diagnose this Student with ADHD, so there was no medical or health assessment statement as required by OAR 581-015-2165 (Other Health Impairment) for eligibility. The District also evaluated the Student's eligibility under the categories of Autism Spectrum Disorder and Emotional Disturbance but the IEP Team determined that the Student was not eligible for Special Education services under these categories.</p>
4.	<p><b><u>Placement of the Child</u></b></p> <p>The Parents allege that the District failed to allow them to transfer the Student to an out-of-district school that could better meet the Student's educational needs for the 2015-16 school year.</p> <p>OAR 581-015-2250; 34 CFR 300.501</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student was no longer eligible for special education services at the time the Parents requested an inter-district transfer. The Parents also failed to meet the Portland Public Schools deadline for submitting the inter-district transfer request, which is why this request was denied.</p>

	<p><b><u>Proposed Corrective Action</u></b></p> <p>The Parents request that they be allowed to transfer their children to another district and that the District be "held accountable for their lack of attention to the needs of a child."</p>	
--	---	--

**Issues outside of the Scope of IDEA Complaint Investigations**

The Parents allege that the Principal asked the Parents to stop contacting the Principal about the Student's toileting needs once the Student was determined to be ineligible for Special Education services and instructed them to contact the Student's Case Manager, despite the fact that, due to the discontinuation of Special Education services, the Student no longer had a case manager. The Parents may utilize the District's complaint process in order to address this concern. OAR 581-015-2030(4).

**III. FINDINGS OF FACT**

1. The Student in this case is presently 7 years old and is in the second grade. The Student is currently attending Gervais Elementary School. The Student attended kindergarten in the Cascade School District until moving in April, 2014, and finished kindergarten and attended first grade at Marysville School in Portland Public Schools.
2. The Student was found eligible for Special Education services on January 8, 2013 for "communication disorder" (CD) while attending the Cascade School District. On April 23, 2014, an IEP meeting was held at Marysville School due to the Student's recent move into the District. At that time, the District accepted the IEP from the Cascade School District, which was dated April 28, 2013.

**1. Free Appropriate Public Education (FAPE)**

3. The Student's Mother made the Student's Case Manager/Speech Pathologist aware of Student's toileting issues via email on February 3, 2015. The Mother, the Speech Language Pathologist and the Student's Home Room Teacher created a toileting plan for the Student on February 5, 2015. This plan was separate from the Student's IEP. The Homeroom Teacher created a special bathroom pass for the Student so that the Student could simply put this pass on the desk when the Homeroom Teacher was busy and could therefore leave to go to the bathroom without speaking with the Homeroom Teacher. This interim plan was to be in place until the School Psychologist obtained a statement from the Student's Physician regarding this condition.
4. The Student's Psychologist wrote a letter on February 19, 2015 stating that the Student was being treated by the Psychologist for Encopresis. The Psychologist recommended that the Student receive permission to use the restroom at any time, which was already occurring under the interim plan adopted on February 5, 2015.
5. The Student's interim toileting plan was updated on February 20, 2015, March 10, 2015 and March 18, 2015 due to continued toileting issues. The IEP Team met on March 20, 2015 to discuss the Student's toileting issues. Additional updates were made to the toileting plan at this time, and the IEP Team agreed that, for the next two weeks, a staff member would email the Mother daily updates concerning the success of this plan. The IEP Team also agreed to change the Student's Homeroom Teacher. This updated plan remained in place until the Mother removed

the Student from school on May 13, 2015 due to concerns about school personnel not following the toileting plan.

## **2. When IEPs Must Be in Effect (IEP Implementation)**

Please refer to Facts #3 - #6 under Section III. Findings of Fact.

## **3. IEP Team Considerations and Special Factors**

6. The IEP Team met on January 27, 2015 to discuss the Student's continued eligibility to receive Special Education services. The IEP Team decided that additional assessments were necessary to determine if the Student was eligible to receive Special Education services under the category of Autism Spectrum Disorder or Emotional Disturbance, and also to determine if the Student was still eligible for Special Education services under Communication Disorder. The Parents were present at this meeting and provided consent for the District to conduct all necessary assessments.
7. A Functional Communication Report was written on April 20, 2015 by the District's Speech Pathologist. The Speech Pathologist concluded that the Student demonstrates "average skills in speech and language and however demonstrates difficulties with social communication, social interactions, patterns of stereo-typical behaviors, and sensory responses."
8. The District's School Psychologist prepared a Psychoeducational Report on February 6, 2015. The School Psychologist concluded that the Student "exhibits characteristics that may be indicative of Autism Spectrum Disorder."
9. An additional report was prepared on April 12, 2015 by the District's Autism Consultant and a District Special Education Teacher. The purpose of this report was to observe the Student to determine whether or not the Student was demonstrating behaviors indicative of Autism Spectrum Disorder. The behaviors observed were not consistent with Autism Spectrum Disorder.
10. On March 26, 2015, the Student's Psychologist wrote a letter indicating that he had "provided a diagnosis of Attention-Deficit Disorder, Combined Type," based upon the Student's "symptoms of inattention, hyperactivity, and impulsivity that significantly affect [the Student's] functioning."
11. The Student's IEP Team met on April 20, 2015. Present were both Parents, the Student's Homeroom Teacher, the District's Autism Consultant, the District's Speech Language Pathologist, an Assistant Principal, the School Psychologist, and another Special Education Teacher. At that time, all IEP Team Members agreed that the Student no longer qualified for Special Education services under Communication Disorder. The IEP Team also agreed that the Student did not qualify for Special Education services under Autism Spectrum Disorder or Emotional Disturbance. The "IEP Team Meeting Notes" indicate that the letter from the Student's Psychologist regarding ADHD was reviewed, but that the Student's Physician "felt that she could not endorse medical diagnosis at this time."
12. The IEP Team recommended a 504 Plan to address the Student's toileting needs. The toileting plan was updated on April 24, 2015. On May 13, 2015, the Principal met with the Mother to discuss a 504 Plan, as well as the possibility of home instruction. The Student's Physician also wrote a letter stating that the Student was under medical care and could not return to school for fourteen days. Home instruction for the Student started on May 21, 2015 and continued until the end of the 2014-15 school year.

#### **4. Placement of the Child**

13. On June 17, 2015, the Parents filed a Request for Inter-District Transfer with Portland Public Schools to allow them to transfer the Student and the Student's sibling to a school in another district. This request was denied on July 9, 2015 because the Inter-District Transfer application deadline had already passed. The Parents then filed an Emergency Request for Inter-District Transfer; however, the District determined that the Student's circumstances did not meet the criteria for an Emergency Request for Inter-District Transfer and denied the application.

### **IV. DISCUSSION**

#### **1. Free Appropriate Public Education (FAPE)**

The Complaint alleges that the District violated the IDEA by denying FAPE to the Student during the 2014-15 school year by failing to implement toileting plans as required by the Student's IEP, and by failing to allow the Student to transfer to another school for the 2015-16 school year. OAR 581-015-2040 states that a District must provide "Special Education and related services to all school-age children with disabilities". FAPE requires that a school district meet the procedural requirements of the IDEA and that a student's IEP must be developed and reasonably calculated to enable the student to receive educational benefit.<sup>3</sup>

The Department finds that the Student's toileting plans were not required by the Student's IEP. The Department also finds that the toileting plans were followed. While it's unfortunate that District personnel were not always immediately aware when the Student had issues associated with encopresis, there is no evidence that the established procedures were not being followed.

The Student was not denied FAPE by the District's unwillingness to agree to an inter-district transfer. The Parents failed to meet the District's deadline for inter-district transfer requests, and the District was within its rights to deny this request.

This allegation is not substantiated.

#### **2. When IEPs Must Be in Effect (IEP Implementation)**

The Complaint alleges that during the 2014-15 school year, the District violated the IDEA by failing to implement the Student's IEP. Specifically, the Parents allege that the District failed to implement toileting plans as required by the Student's IEP.

OAR 581-015-2220(1)(b) provides that school districts must provide Special Education and related services to a child with a disability in accordance with an IEP.

In the discussion above, the Department addressed, in terms of FAPE, the allegations concerning the District's failure to follow the Student's toileting plan. The Department does not sustain the allegation that the District failed to implement the Student's IEP by failing to follow the Student's toileting plan for the reasons identified in the discussion above.

This allegation is not substantiated.

---

<sup>3</sup> *Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)

### 3. IEP Team Considerations and Special Factors

The Parents allege that their concerns were not appropriately considered by the IEP Team. Specifically, the Parents allege that the IEP Team refused to evaluate their child for eligibility despite their wishes and a statement from the Student's Psychologist suggesting that the Student be evaluated for ADHD. The Parents also allege that they were "coerced" into signing documents stating their agreement with this refusal and that they were told the District would "work hard" to find out what the Student did qualify under because "they all agree that there is something going on with [the Student]." The Parents disagree with the IEP Team's determination on April 20, 2015 that the Student no longer qualified for Special Education services.

OAR 581-015-2205 requires that when a student's IEP is being developed, reviewed and revised, the IEP Team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child.

The Department finds no evidence that the District failed to satisfy any of these requirements. The Student's needs were assessed in a variety of ways. The strengths of the child were measured, the results of all evaluations were considered, the academic, developmental, and functional needs of the child were addressed, and there is nothing to substantiate the Parents' claims that they were "coerced" in any fashion. The Parents signed documents stating their agreement with all eligibility determinations of the IEP Team. The Student's primary Physician stated that she was not able to provide a diagnosis of ADHD. Therefore, there was no medical or health assessment statement as required by OAR 581-015-2016 to establish Special Education eligibility under Other Health Impairment.

This allegation is not substantiated.

**CORRECTIVE ACTION<sup>4</sup>**  
*In the Matter of Portland School District*  
Case No. 15-054-042

The Department does not order Corrective Action resulting from this investigation.

Dated this 15th day of January 2016



---

Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Learning/Student Services

Mailing Date: January 15, 2016

---

<sup>4</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)).