

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of McMinnville
School District 40

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 17-054-007

I. BACKGROUND

On March 20, 2017, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in McMinnville School District 40 (District). 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.

Under state and 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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On March 23, 2017, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegation in the Complaint to be investigated and establishing a *Response* due date of April 7, 2017.

On April 7, 2017, the District submitted a *Response* indicating they disputed the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. District's Letter Responding to Request for Response
2. Student's 2017 IEP
3. Notice of 03/21/2107 IEP Team Meeting
4. 04/03/2017 IEP Meeting Minutes
5. District High School Diploma Options Notice
6. 04/03/2017 Behavior Support Plan
7. 04/03/2017 Proposed Notice of Special Education Action
8. 02/17/2017 Notice of IEP Team Meeting
9. 02/28/2017 IEP showing change of placement
10. 02/28/2017 Meeting Agenda for Student
11. 02/28/2017 Meeting Minutes
12. 03/01/2017 Prior Notice of Special Education Action
13. Student's Discipline Summary

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

14. (draft) IEP Progress Report as of 06/17/2016
15. 04/04/2016 Student's IEP
16. 11/23/2016 Prior Notice of Special Education Action
17. 11/27/2017 Prior Notice of Special Education Action
18. 04/04/2016 Written Agreement Between Parent and District
19. 04/04/2016 IEP Team Meeting Minutes
20. Prior Notice of Special Education
21. 04/04/2016 District High School Diploma Options Notice
22. 12/07/2016 District internal email with draft FBA
23. 04/09/2015 Statement of Eligibility for Special Education (Intellectual Disability 10)
24. 04/08/2015 Psychoeducational Evaluation Report
25. 03/08/2015 Medical Statement or Health Assessment
26. 04/09/2015 Prior Notice of Special Education Action
27. 04/09/2015 Statement of Eligibility for Special Education
28. 04/09/2015 Speech and Language Assessment Summary
29. 04/09/2015 Prior Notice of Special Education Action
30. 03/04/2015 Prior Notice About Evaluation/Consent for Evaluation
31. 03/04/2015 Student Assessment List
32. 11/08/2016 Consent Form for Functional Behavioral Assessment
33. 02/02/2017 Student Threat Assessment & Management System ~Level 1 Protocol~
34. Level 2 Threat Assessment Investigation Team, 02/13/2017
35. 02/13/2017 Student Threat Assessment & Management System ~Level 2 Protocol~
36. 02/02/2017 Manifestation Determination
37. 11/23/2016, Functional Behavioral Assessment
38. Student Attendance Reports
39. 01/27/2017 Suspension Report
40. 01/18/2017 Suspension Report
41. 06/09/2016 Suspension Report
42. 06/13/2016 Suspension Report
43. 11/15/2016 Suspension Report
44. 11/15/2016 Student's Behavior Referral Form
45. 11/21/2016 Restraint Incident Report
46. 06/13/2016 Restraint Incident Report
47. Home—School Communication Logs 2015—2017
48. Relevant email communications between District and Parent
49. 03/01/2017 Prior Notice of Special Education Action
50. 06/13/2013 Behavior Description
51. 06/09/2012 Documentation of Student Behavior
52. 06/07/2016 Meeting Notes
53. 03/24/2017 Email regarding Field Trip
54. 11/21/2016 Notice of Parent Meeting

55. 02/01/2017 Notice of IEP Team Meeting
56. 02/01/2017 Notice of Treat Assessment
57. 02/01/2017 Notice of Manifestation Determination Team Meeting
58. 01/27/2017 Tutoring Request Form
59. 01/27/2017 Prior Notice of Special Education Action
60. 03/01/2017 Prior Notice of Special Education Action
61. List of Knowledgeable Staff
62. (additional documents received after District Interview)
63. 06/07/2016 Meeting Notes
64. Email: 11/22/2016, Meeting Summary
65. 11/21/2016 Letter from District to Student's Physician
66. 12/05/2016 Meeting Minutes
67. 04/06/2009 Pediatric Progress Note
68. Psychoeducational Assessment Report
69. 01/13/2017 Meeting Notes
70. Email: 02/01/2017, Information
71. Email: 01/19/2017, "Student"
72. Email: 01/01/2017, "Student" Update
73. Email: 01/31/2017, "Student" Follow-up
74. 04/03/2017 IEP Meeting Notes
75. Email: 04/28/2017, (no subject)
76. Prior Notice of Special Education Action, 04/18/2017
77. IEP Meeting Notes, 04/14/2017
78. McMinnville School District Policy: Threats of Violence
79. Student Discipline Summary
80. Email: 02/01/2017, Contact Information
81. Email: 01/31/2017, Parent Call
82. Email: 01/31/2017, "Student" Next Steps
83. Notice of IEP Team Meeting, 02/01/2017
84. 02/02/2017, Manifestation Determination
85. Email: 02/10/2017, Important Information

The Parent submitted what the Parent deemed an "amendment" to the February 28, 2017 IEP Meeting Notes as well as two other documents previously submitted by the District. The Complaint Investigator interviewed the Parent on April 18, 2017 and received an email the Parent sent to the District on April 10, 2017. The Complaint Investigator determined that onsite interviews were needed. On April 27, 2017, the Complaint Investigator interviewed the Special Education Teacher, School Psychologist, Behavior Specialist, Speech Language Pathologist, and Director of Student Services. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. 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 allegation and the Department's conclusion are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from March 21, 2016 to the filing of this Complaint on March 20, 2017.³

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Disciplinary Removals/Manifestation Determination</u></p> <p>The Parent alleges that the District violated the IDEA when the Student was removed from school,</p> <ul style="list-style-type: none"> (a) for more than ten cumulative days during the 2015-2016 school years, and (b) for more than ten consecutive days during the 2016-2017 school year and did not conduct a Manifestation Determination, nor a functional behavioral assessment. <p>(OAR 581-015-2415 & 34 CFR 300.530(e))</p>	<p><u>Not Substantiated</u></p> <p>The Student was not suspended for more than ten days during the 2015 - 2016 school year.</p> <p>A Manifestation Determination was conducted during the 2016 - 2017 school year. The District found that the Student's behavior was not a manifestation of the Student's diagnosed disabilities. The Student's absence from school during February, 2017 was due to the need for threat assessments conducted under ORS 339.250(4)(b)(C), as well as the Student residing with relatives living outside the District and who were unable to transport the Student to school.</p>
2	<p><u>Prior Written Notice (PWN)</u></p> <p>The Parent alleges that the District violated the IDEA and that the Student was denied FAPE when the District did not provide Prior Written Notice of a change in the Student's placement to home instruction.</p> <p>(OAR 581-015-2310, 34 CFR 300.503)</p>	<p><u>Not Substantiated</u></p> <p>The District provided a Prior Written Notice for each change in the Student's placement.</p>
3	<p><u>IEP Implementation</u></p> <p>The Parent alleges that the District violated</p>	<p><u>Not Substantiated</u></p> <p>The Student did not attend school</p>

³ This order does include some facts that are relevant to the case and that happened before November 1, 2015.

	<p>the IDEA when the Student's placement was changed to home instruction without conducting an IEP meeting.</p> <p>(OAR 581-015-2220 and CFR 300.323, 300.324)</p>	<p>during February, 2017 due to the results of threat assessments that were conducted. In addition, the Student was unable to attend school while Parents were out of town as the Student was staying with relatives who were unable to provide transportation to school. The District did not have the ability to fully implement the IEP during this period. On February 28, 2017, the IEP Team placed the Student on home tutoring.</p>
4	<p><u>Parent Participation</u></p> <p>The Parent alleges that the District violated the IDEA when the Parent was not included in the District's decisions to change the Student's placement.</p> <p>(OAR 581-015-2190, 34 CFR 300.500, 300.327, 300.501(b))</p>	<p><u>Not Substantiated</u></p> <p>The records in this case reflect that the Parent was provided a written invitation to a February 2, 2017 IEP Meeting. However, there is no evidence that this meeting occurred, although a Manifestation Determination and a Level One threat assessment took place on this date. The Parents were made aware of these meetings on February 1, 2017 via telephone and email, but were traveling out-of-state and did not participate. A Parent did participate in the February 28, 2017 IEP Meeting.</p>
5	<p><u>Free Appropriate Public Education</u></p> <p>The Parent alleges that the District denied FAPE to the Student when it failed to provide adequate behavior and educational supports to allow the Student to remain in school.</p> <p>(OAR 581-015-2040 & 34 CFR 300.101)</p>	<p><u>Substantiated</u></p> <p>The District attempted behavior intervention methods to support the Student during the spring of 2016, after the Student began exhibiting physically aggressive behavior. The District also encouraged the Parent to obtain medical and psychoeducational evaluations for the Student; however, the District never requested parental consent in order to reevaluate the Student to determine what behavioral supports were necessary. The results of the threat assessments and the manifestation determination also demonstrate that the Student's behavioral needs were not being met at that time and that additional evaluation</p>

		is necessary.
6	<p><u>Review and Revision of IEP's</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to provide appropriate educational supports to ensure the Student made progress toward the Student's IEP goals and provided insufficient tutoring time.</p> <p>(OAR 581-015-2225, 34 CFR 300.324(a)(4), (a)(5), (a)(6), (b)(1))</p>	<p><u>Not Substantiated</u></p> <p>The Student's IEP Team met numerous times during the period covered in this Complaint. The Student's IEP Team met on February 28, 2017 to determine the appropriateness of tutoring. There is no evidence in the records that the tutoring provided was insufficient.</p>
7	<p><u>Requirement for Least Restrictive Environment</u></p> <p>The Parent alleged that the District has violated the IDEA by failing to implement appropriate supports for the Student which has resulted in the Student having no access to peers due to home tutoring.</p> <p>(OAR 581-015-2240, OAR 581-015-2250(b), 34 CFR 300.114)</p>	<p><u>Not Substantiated</u></p> <p>The Student did not attend school during February, 2017 due in part to the Student staying with a relative who was unable to transport the Student to school, and in part due to the need for threat assessments to be conducted following threats of violence to self and others. The District changed the Student's placement to home tutoring during an IEP Meeting on February 28, 2017 due to the results of the threat assessments. This placement was to be reviewed during the April 4, 2017 IEP Meeting.</p>
8	<p><u>Placement of the Child</u></p> <p>The Parent alleges that the District has violated the IDEA by determining the Student's placement without a meeting of the Student's IEP Team.</p> <p>(OAR 581-015-2250, 34 CFR 300.116, 300.327)</p>	<p><u>Not Substantiated</u></p> <p>The District issued a Prior Written Notice dated January 27, 2017 indicating that the Student's placement was being changed while the Parents were on vacation. The PWN indicates that the Parents agreed to home tutoring during a phone conversation on February 1, 2017. The District convened an IEP Meeting to discuss the Student's placement on February 28, 2017. At that time, the Student was placed on home tutoring.</p>

III. FINDINGS OF FACT

Background

- 1) The Student in this case is a 13-year-old middle-school student residing in McMinnville School District 40. The Student is eligible for Special Education under the categories of Communication Disorder (50), established on September 12, 2007, and Intellectual Disability (10), established on April 19, 2012.
- 2) The April 4, 2016 IEP indicates the Student spent approximately 70% of the time in a self-contained classroom with access to school-wide activities. The Student received educational services in a life skills classroom. The Student displayed difficulty with skill acquisition and retention, required consistent and individualized instruction in order to gain new skills, and is not able to understand the concepts of his/her same-age peers. No other significant behavioral issues were noted.
- 3) The Student receives Specially Designed Instruction (SDI) in the areas of: activities of daily living, behavior, functional math, functional reading, speech/language, and vocational services. The Student also receives the related service of transportation, communication board, dry erase board, manipulatives, and a visual schedule.
- 4) During the 2015 - 2016 school year, the Student began to exhibit behavioral issues not previously observed by the Parents or the District. The "School Communication Logs" that were used by the Classroom Teacher and the Parents to exchange information about the Student's daily behavior indicate that there were at least six occasions when the Student was physically aggressive with staff members. The Student was also occasionally physically aggressive toward himself/herself and frequently refused to participate in classroom activities. As a result, the District encouraged the Parent to take the Student for an updated medical evaluation and a mental health evaluation. However, the District did not attempt to obtain consent from the Parent to conduct these evaluations.
- 5) During the 2015 - 2016 school year the Student was suspended on two occasions for a total of five days. The Student was also physically restrained on at least one occasion.
- 6) During the 2016 - 2017 school year the Student was suspended on three occasions for a total of six days. The Student was also physically restrained on at least one occasion.
- 7) On June 7, 2016, one of the Student's Parents met with the District Student Services Director and the Student's Life Skills Teacher to discuss the Student's behavioral issues. During the meeting, it was noted that the Student's behavior issues appear to be triggered by the Parents leaving on trips for prolonged periods. The Meeting Notes indicate that there were instances when the Parents were contacted to pick up the Student due to behavioral issues rather than the Student being formally suspended.
- 8) A Functional Behavioral Assessment (FBA) was conducted on November 23, 2016, due to the Student's aggressive behaviors. On December 5, 2016, one of the Parents, the

Life Skills Teacher, the Principal, the Dean of Students, the School Psychologist, the Speech Language Pathologist, and the District Special Education Coordinator met to review the FBA. The Parent was to take the FBA home to review with the other Parent and then report back to the IEP Team so that a Behavior Support Plan (BSP) could be drafted. At that IEP Meeting, the Parent informed the District that the Parents would travel out-of-state in late January for one to two weeks and that the Student would stay with the Student's aunt during that time and would not attend school because the aunt that would care for the Student lives outside the area and does not drive.

- 9) On January 13, 2017, members of the Student's IEP Team, including a Parent, met to discuss the Student's behavior. It does not appear that this was a formal IEP meeting. This team discussed the various behavior issues observed regarding the Student, interventions the District had attempted, and the Parent's intent to follow-up with the Student's Physician.
- 10) On January 18, 2017, the Parent informed the District in writing that the Parent would be leaving on a trip on January 26, 2017 for approximately two weeks, and that the Parent's cousin would be caring for the Student during this time. This cousin was able to provide transportation to school for the Student.
- 11) On January 27, 2017, the Student's behavior escalated to a point that necessitated the Student's removal and caused the District to determine that a threat assessment was needed. The Student's behavior on this day started out as "rude and disrespectful comments toward staff in front of the other students in the commons" The Student's behavior reportedly escalated and included change in behavior and posture up to and including threats of violence such as saying "I hate you", "I'm going to kill you" and triggered a response from a school Resource Officer. The Student reportedly made threats of harm toward staff, toward himself/herself, and about the Parents.
- 12) On January 27, 2017, the District completed a tutoring request form to obtain a tutor for the Student beginning January 31, 2017. The tutoring request was left open-ended due to the uncertainty about when the Student would return to school. A PWN was issued documenting this change. The PWN is dated January 27, 2017; however the document indicates that the Parent expressed agreement with this decision on February 1, 2017. The reason given for the change in placement is that the Student would be unable to attend school while the Parents were out of town.
- 13) On February 1, 2017, the District confirmed via email that the Student would be moving to an adjacent community and not attending school during the period that the Parents were out-of-state. The District also provided the Parents with written invitations for an IEP Meeting, Manifestation Determination, and threat assessment, all to be conducted on February 2, 2017. However, there is no evidence that an IEP Meeting actually occurred. The District communicated with the Parents via email and telephone on February 1, 2017.
- 14) On February 2, 2017, the District conducted a Manifestation Determination as well as a level one threat assessment. The Parents did not participate in these meetings. The team determined that the Student's behavior was not a manifestation of any of the

Student's diagnosed disabilities. The threat assessment revealed that when the Student suffers the loss of attention from those to whom the Student is closest, whether the Student's Parents or District staff to whom the Student attaches him/herself, the Student will exhibit violence to whomever the Student perceives as obstructing the Student's access to their preferred person.

- 15) Based on the outcome of the level one threat assessment, the District conducted a level two threat assessment on February 13, 2017. The Parent was invited, but chose not to attend. The Threat Assessment Team determined that the Student's behavior incidents could be correlated to the Parent's out-of-state travel, and that the previous year's behavior incidents were likely related to the Parent's out-of-state travel and absence from the home. The Threat Assessment Team further determined that the Student likely suffers from a form of severe attachment disorder as suggested in the Student's last comprehensive medical evaluations conducted in 2009.
- 16) The Threat Assessment Team determined that the Student presented a "high risk for reactive aggression" directed toward other persons, but was "not likely to cause serious or lethal injury." The team noted that the Student's "reactive behavior appears to be for the exaggerated need for constant attention..." and that the Student "...reacts with mild to moderate aggression when being ignored by staff."
- 17) An IEP Meeting was held on February 28, 2017 to discuss the results of the level two threat assessment. At this time, the IEP Team, over the Parent's objections, decided to continue the home tutoring placement until the next scheduled IEP Meeting, which was to occur on April 4, 2017. The Special Education Placement Determination indicates that the benefit of this placement was "reduced academic and social requirements regarding behavioral expectations."
- 18) The documentation provided by the District makes it difficult to determine specifically how the Student's absences were being categorized. The "Student Attendance Report" shows that the Student's absences were unexcused for twelve days from January 31, 2017 through March 9, 2017. A PWN dated January 27, 2017 shows that the Student's placement was changed to home tutoring for an indeterminate period of time due to the Student's family being out of town, and a PWN dated March 1, 2017, following the February 28, 2017 IEP Meeting, shows that the Student's placement was changed to an "interim tutoring placement" pending an IEP Meeting on April 3, 2017 due to the level one and level two threat assessments. The February 28, 2017 IEP reflects this placement.
- 19) On March 20, 2017, the Department received this Complaint.

IV. DISCUSSION

1. Disciplinary Removals/Manifestation Determination:

The Parent alleged that the District violated the IDEA when the Student was removed from school, for more than ten cumulative days during the 2015-2016 school years, and for more

than ten consecutive days during the 2016 - 2017 school year, and did not conduct a Manifestation Determination, nor a functional behavioral assessment.

A disciplinary removal is considered a change in placement if the student is removed for more than 10 consecutive school days, or the student will be removed for more than 10 cumulative school days from his/her current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).⁴ If such a removal takes place, the District must conduct a Manifestation Determination within 10 days of such a change in placement as a result of a violation of a code of student conduct.⁵ The district must determine whether the student's behavior is a manifestation of the student's disability.⁶

During the 2015 - 2016 school year the Student was suspended on two occasions, for a total of five days. During the 2016 - 2017 school year, the Student was suspended on November 15, 2016 for one day, on January 18, 2017 for three days. While there is a suspension form that indicates that the Student was suspended on January 27, 2017 for an indefinite period of time, there is also a PWN dated that same day indicating that the Student was placed on home tutoring for an indefinite period of time (estimated to be approximately two weeks) due to being unable to attend school while the Parents were out of town. The Parent alleges that the District failed to complete either a Manifestation Determination or a functional behavioral assessment as required.

The District completed a Manifestation Determination on February 2, 2017. This was required because while the Student was not technically suspended during this time, but rather was not allowed to attend school pending the results of a threat assessment conducted under ORS 339.250(4)(b)(C), this was still a disciplinary removal under OAR 581-015-2400(3). The District determined that the Student's behavior was not a manifestation of the Student's diagnosed disabilities or eligibilities for Special Education.

Following the February 2, 2017 Manifestation Determination, the District conducted a level one threat assessment on the Student. The Parents were unable to attend this meeting or the Manifestation Determination due to their travel schedule. The District did mail a Meeting Notice to the Parents and communicated with the Parents via phone and email. The Student remained on home instruction with a District-provided tutor following the Manifestation Determination and threat assessments. The Student was also unable to attend school during at least part of this time frame due to being unable to get to school during the Parents' out-of-state travel.

The Department does not substantiate this allegation.

2. Prior Written Notice

The Parent alleges that the District violated the IDEA, and that the Student was denied FAPE, when the District did not provide Prior Written Notice of a change in the Student's placement to home instruction.

⁴ OAR 581-015-2415(1)(a) & (b)

⁵ OAR 581-015-2415(3)

⁶ *Id.*

A district must provide prior written notice to the parents of a student with disabilities, within a reasonable prior of time before it proposes to initiate a change in the educational placement of the student.⁷

On January 27, 2017, the District sent the Parent a PWN of the change in the Student's placement to home tutoring due to the Student's inability to attend school during the Parent's absence. The Parent was not then in the state, but the District communicated with the Parent by email and telephone. The District also issued a PWN following the February 28, 2017 IEP Meeting.

The Department does not substantiate this allegation.

3. IEP Implementation

The Parent alleges that the District violated the IDEA when the Student's placement was changed to home instruction without conducting an IEP meeting.

A district must provide special education and related services to a child with a disability in accordance with an IEP.⁸

There is no evidence that the Student's IEP was not implemented prior to January 27, 2017. Between January 27, 2017 and February 28, 2017, the District was not able to fully implement the IEP due to the Student's absences related to the factors previously discussed. Once the IEP Team had sufficient information from the two threat assessments to formulate an appropriate course of action, the District attempted to schedule an IEP meeting as soon as possible to revise the Student's IEP. The Student was provided home tutoring until an IEP meeting could be scheduled. Due to scheduling conflicts the earliest date an IEP Meeting could be held was February 28, 2017.

The Department does not substantiate this allegation.

4. Parent Participation

The Parent alleges that the District violated the IDEA when the Parent was not included in the District's decisions to change the Student's placement.

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and education placement of the child, and with provision of a free appropriate public education to the child.⁹

The Parents were included to the extent possible in these decisions given their travel schedule. The District provided written, email, and telephone knowledge of each meeting related to the placement of the Student. The decision to remove the Student pending the

⁷ OAR 581-015-2310(2)(a)

⁸ OAR 581-015-2220(1)(b)

⁹ OAR 581-015-2190(1)

results of the threat assessments necessitated that decisions be made in an expedient fashion due to the risk of the Student harming himself/herself or others. The Parents were certainly involved in the decision for the Student to receive home tutoring during their absence, had the opportunity to participate in the manifestation determination and the threat assessments, and did fully participate in the February 28, 2017 IEP Meeting. The Meeting Notes from this IEP Meeting reflect that the Parent in attendance disagreed with the decision to place the Student on home tutoring.

The Department does not substantiate this allegation.

5. Free Appropriate Public Education (FAPE)

The Parent alleged that the District denied FAPE to the Student when it failed to provide adequate behavior and educational supports to allow the Student to remain in school.

A district must provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible.¹⁰ This requirement includes students who have been suspended or expelled from school.¹¹

The Parent alleges that the District failed to provide adequate supports and interventions around behavior problems that impede the Student's learning to enable the Student to remain in school. The Parent specifically alleges that the District has not attempted sufficient interventions nor recognized the cause of the Student's behavior issues, which has led the District to suspend the Student from time to time or required the Parent to pick the Student up from school.

The Student became increasingly physically aggressive during the spring of 2016. The District continued to work with the Student to address these behaviors; however, the Student's behaviors continued into the 2016-2017 school year. A FBA was prepared on November 23, 2016. The FBA was reviewed with the Parent on December 5, 2016. The Parent was asked to take the FBA home, review it with the other Parent, and then let the IEP Team know the Parent's thoughts. The Parent did not report back to the IEP Team prior to the Student receiving an out of school suspension for physically aggressive behavior on January 27, 2017.

On February 2, 2017, the District conducted a Manifestation Determination as well as a level one threat assessment. The threat assessment was conducted by the Principal, the District's Special Education Coordinator, and the Student's Special Education Teacher. It was determined that the behavior was not a manifestation of the Student's disability and that an additional threat assessment was needed. A level two threat assessment was conducted on February 13, 2017 by the Willamette Education Service District's Threat Assessment Consultant. This threat assessment indicated that the Student presented a "high risk for reactive aggression" but was "not likely to cause serious or lethal injury." The results of the two threat assessments demonstrate that the Student's behavioral needs were not being met at that time and that additional evaluations need to be conducted to identify these needs and

¹⁰ OAR 581-015-2040(1)

¹¹ OAR 581-015-2040(3)

determine how to address the needs identified.

The Department substantiates this allegation.

6. Review and Revision of IEPs

The Parent alleges that the District violated the IDEA when it failed to provide appropriate educational supports to ensure that the Student made progress toward the Student's IEP goals, and provided insufficient tutoring time.

Each school district must ensure that the IEP Team reviews the student's IEP periodically, but at least once every 365 days to determine whether the annual goals for the student are being achieved and must also ensure that the IEP Team reviews the IEP to ensure that it is appropriate.¹²

The Student began to exhibit behavior problems during the 2015 - 2016 school year, and continued to exhibit these problems during the 2016 - 2017 school year. The IEP Team met numerous times to discuss these behaviors. The District noted that the most extreme behavioral issues coincided with the Parents' travel and absence from the home.

At the February 28, 2017 IEP Meeting, the IEP Team decided to continue with tutoring until the IEP Meeting scheduled for April 4, 2017. The IEP Team determined that the Student should be provided with 2.5 hours of tutoring time per week. Tutoring time was based on the Student's capacity to attend to academic instruction and the expectation that the Student's needs would be re-examined at the upcoming IEP Meeting.

The Department does not substantiate this allegation.

7. Requirement for Least Restrictive Environment

The Parent alleges that the District has violated the IDEA by failing to implement appropriate supports for the Student which has resulted in the Student having no access to peers due to home tutoring.

School districts must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability.¹³ School districts should also ensure that removal of a student with disabilities from the regular educational environment occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁴

In light of the factors previously discussed, the District did not violate the requirement for LRE in this matter. The Student's threats necessitated that the District obtain both level one and level two threat assessments to determine when it was safe for all involved for the Student to

¹² OAR 581-015-2225(1)(a) & (b)

¹³ OAR 581-015-2240(1)

¹⁴ OAR 581-015-2240(2)

return to school. Once these results were received, the District attempted to schedule an IEP meeting as soon as possible to determine the least restrictive placement appropriate to meet the Student's needs. The IEP Team met on February 28, 2017 and, over the Parent's objections, placed the Student on home tutoring until the April 4, 2017 IEP Meeting.

The Department does not substantiate this allegation.

8. Placement of the Child

The Parent alleges that the District has violated the IDEA by determining the Student's placement without a meeting of the Student's IEP team.

School districts must ensure that the educational placement of a student with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child.¹⁵

The circumstances surrounding the placement of the Student are discussed above. In consideration of these circumstances, the District conducted an IEP meeting as soon as possible to determine the appropriate placement for the Student.

The Department does not substantiate this allegation.

Additional Findings

The attendance data provided to the Complaint Investigator is not consistent with the other documentation provided. The attendance data does not reflect the January 27, 2017 out-of-school suspension, nor does it reflect any change in the Student's placement. The District needs to review the Student's attendance data and make corrections and clarifications as appropriate.

V. CORRECTIVE ACTION¹⁶

*In the Matter of McMinnville School District #40
Case No. 17-054-007*

Actions Required	Submissions ¹⁷	Due By
1. District will obtain parental	1. Provide documentation of	August 11,

¹⁵ OAR 581-015-2250(1)(a)

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.

<p>consent for a behavioral evaluation to specifically address the attachment and transition difficulties identified by the two threat assessments. District may want to contact the Education Evaluation Center at Western Oregon University as a resource (http://trouw.org/centers/ec).</p> <p>2. Following completion of the evaluation, the IEP team including the Parents to determine what changes may need to be made to the special education services and supports provided to the Student, including a Behavior Support Plan.</p>	<p>completion of evaluation, including written parental consent (e.g., evaluation report).</p> <p>1. Submit amended IEP, including Behavior Support Plan, along with the IEP Meeting Invitation and the Prior Written Notice.</p>	<p>2107</p> <p>September 15, 2017</p>
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Dated: This 19th Day of May, 2017



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

Mailing Date: May 19, 2017