

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath County
School District

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 18-054-002

I. BACKGROUND

On January 24, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) who previously attended school in the Klamath County School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (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 an extension in order to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On January 30, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 13, 2018.

On February 7, 2018, the District submitted a *Response* indicating it disputed the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. Copy of the Request for Response in 18-054-0002
2. Student IEP, 04/11/2017
3. Authorization for Release of Records/Information, 3/22/17
4. Student IEP, 04/18/2016
5. Statement of Eligibility for Special Education (Other Health Impairment), 04/08/2015
6. Medical Statement or Health Assessment Statement, 04/01/2015
7. Statement of Eligibility for Special Education (Communication Disorder) 04/18/2015
8. Special Services Evaluation Report, 2/23/2015
9. Speech Pathologist Evaluation, 1/16/2015
10. Occupational Therapy Sensory Motor Evaluation, 04/07/2015
11. Observations & Ideas related to BIP, 11/04/2016
12. Observations & Ideas related to BIP, 10/05/2016

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

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

13. Functional Behavior Assessment & Behavior Intervention Plan, 05/03/2016
14. Functional Behavior Assessment Summary and Behavior Intervention Plan, 03/-8/2016
15. Behavior Intervention Plan, 08/26/2015
16. Behavior Contract, 02/20/2015
17. Meeting Minutes, 04/08/2015
18. Meeting Minutes, 02/25/2015
19. Meeting Minutes, 01/12/2015
20. Referral To Community Agency, 03/20/2015
21. Referral to Community Agency, 03/06/2015
22. Meeting Minutes, 4/10/2015
23. Speech Language Evaluation, 02/11/2014
24. Speech and Language Evaluation Report, 09/15/2010
25. Speech and Language Evaluation Report, 06/14/2011
26. Speech and Language Evaluation Report, 1/15/2010
27. Prior Notice of Special Education Action, 11/07/2017
28. Notice of Team Meeting
29. Prior Notice of Special Education Action, 10/23/2017
30. Notice of Team Meeting, 10/23/2017
31. Prior Notice of Special Education Action, 05/30/2017
32. Extended School Year IEP Team Decision, 08/11/2008
33. Notice of Team Meeting, 04/11/2017
34. Prior Notice of Special Education Action, 04/11/2017
35. Notice of Team Meeting, 04/03/2017
36. Prior Notice of Special Education Action, 03/22/2017
37. FBA/BIP Review & Update Form, 05/18/2016
38. Notice of Team Meeting, 03/15/2017
39. Prior Notice of Special Education Action, 02/01/2017
40. FBA/BIP Review & Update Form, 05/18/2016
41. Notice of Team Meeting, 12/14/2016
42. Prior Notice of Special Education Action, 12/14/2016
43. FBA/BIP Review & Update Form, 12/14/2016
44. Notice of Team Meeting, 12/06/2016
45. Prior Notice of Special Education Action, 11/4/2016
46. FBA/BIP Review & Update Form, 5/3/2016
47. Notice of Team Meeting, 11/04/2016
48. Prior Notice of Special Education Action, 09/26/2016
49. Notice of Team Meeting, 09/26/2016
50. Prior Notice of Special Education Action, 08/26/2016
51. Prior Notice of Special Education Action, 04/18/2016
52. District Special Transport Request, 04/19/2016
53. Notice of Team Meeting, 03/31/2016

54. Request for Confidential Records, 11/14/2017
55. Email: Discipline Information
56. Email: [Student Initials]
57. Email: 11/08/2017
58. Duration Data Sheets
59. [Student] Notes
60. Implementation Checklists and Duration Data Sheets, 09/07-11/06
61. Physical Restraint and/or Seclusion Incident Report, 10/30/2017
62. Physical Restraint and/or Seclusion Incident Report, 10/27/2017
63. Physical Restraint and/or Seclusion Incident Report, 10/10/2017
64. Physical Restraint and/or Seclusion Incident Report, 10/09/2017
65. Physical Restraint and/or Seclusion Incident Report, 06/05/2017
66. Physical Restraint and/or Seclusion Incident Report, 05/10/2017
67. Physical Restraint and/or Seclusion Incident Report, 05/02/2017
68. Physical Restraint and/or Seclusion Incident Report, 04/27/2017
69. Physical Restraint and/or Seclusion Incident Report, 04/20/2017
70. Physical Restraint and/or Seclusion Incident Report, 04/19/2017
71. Physical Restraint and/or Seclusion Incident Report, 04/11/2017
72. Physical Restraint and/or Seclusion Incident Report, 04/10/2017
73. Physical Restraint and/or Seclusion Incident Report, 04/06/2017
74. Physical Restraint and/or Seclusion Incident Report, 03/22/2017
75. Physical Restraint and/or Seclusion Incident Report, 03/07/2017
76. Physical Restraint and/or Seclusion Incident Report, 02/28/2017
77. Physical Restraint and/or Seclusion Incident Report, 02/06/2017
78. Physical Restraint and/or Seclusion Incident Report, 02/02/2017
79. Physical Restraint and/or Seclusion Incident Report, 01/20/2017
80. Physical Restraint and/or Seclusion Incident Report, 01/19/2017
81. Physical Restraint and/or Seclusion Incident Report, 01/13/2017
82. Physical Restraint and/or Seclusion Incident Report, 01/10/2017
83. Physical Restraint and/or Seclusion Incident Report, 12/16/2016
84. Physical Restraint and/or Seclusion Incident Report, 12/12/2016
85. Physical Restraint and/or Seclusion Incident Report, 12/09/2016
86. Physical Restraint and/or Seclusion Incident Report, 11/28/2016
87. Physical Restraint and/or Seclusion Incident Report, 11/18/2016
88. Physical Restraint and/or Seclusion Incident Report, 11/16/2016
89. Physical Restraint and/or Seclusion Incident Report, 11/1/2016
90. Physical Restraint and/or Seclusion Incident Report, 10/17/2016
91. Physical Restraint and/or Seclusion Incident Report, 09/26/2016
92. Physical Restraint and/or Seclusion Incident Report, 09/21/2016
93. Notice of Separation, 11/01/2017
94. Discipline Referral Form, 11/01/2017

- 95. Notice of Separation, 10/30/2017
- 96. Discipline Referral Form, 10/30/2017
- 97. Discipline Referral Form, 10/27/2017
- 98. Notice of Separation, 10/10/2017
- 99. Discipline Referral Form, 10/10/2017
- 100. Notice of Separation, 04/27/2017
- 101. Notice of Separation, 10/07/2016
- 102. Discipline Referral Form, 10/07/2016
- 103. School Bus Conduct Report Form, 11/17/2016
- 104. School Bus Conduct Form, 09/16/2016
- 105. Phone messages from District to Parent 09/21/2016-05/30/2017
- 106. List of staff knowledgeable in this case

The Parent submitted a Response on or about February 8, 2018. The Investigator interviewed the Parent on February 23, and March 1, 2018, and collected additional documentation from the Parent at those times. The Investigator determined that onsite interviews were not needed. On March 5, 2018, the Investigator interviewed the District Special Education Director by telephone. The 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 allegations and the Department's conclusions are set out in the chart below. The 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 January 25, 2017, to the filing of this Complaint on January 24, 2018.

	<u>Allegations:</u>	<u>Conclusions:</u>
1.	<p><u>IEP Implementation</u></p> <p>The Parent alleges that the District violated the IDEA when the Student's Behavior Plan was not followed, leading to incidents of restraint, seclusion, and discipline.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220;)</p>	<p><u>Not Substantiated</u></p> <p>The evidence supports that the Student's behavior intervention plan was followed, that the District recognized that the Student's behavior and needs may have been beyond the capability of the school setting, and was investigating and exploring alternative placements.</p>

III. FINDINGS OF FACT

- 1. The Student attended fourth grade in the Klamath County School District. The Student is eligible for special education services under the primary disability of Other Health Impairment and Communication Disorder, and is diagnosed with ADHD (hyperactivity type).**
- 2. During the 2016-2017 school year, the Student's IEP Team met on April 11, 2017 to review the Student's IEP. The IEP Team noted that the Student was particularly impacted by a lack of focus, an inability to remain in the assigned area, short attention span, impulsivity, and overreaction. The Student engages in running, sliding and crawling on the floor during assigned work time. The IEP Team found that the Student would benefit from small group instruction, as larger classroom groups may prove too distracting.**
- 3. There were 32 incidents of restraint and/or seclusion in the District involving the Student in the calendar year preceding the filing of the Complaint. Four of these incidents occurred during the 2017-2018 school year.**
- 4. The Student has been suspended from school three times during the 2017-2018 school year.**
- 5. Each incident of restraint and/or seclusion involving the Student was accompanied by a report of the incident. The reports include detail regarding the trigger for the incident, whether the incident was avoidable, specifics of the incident, and staff involved, along with other information.**
- 6. On November 1, 2017, the Student was suspended for exhibiting unsafe behaviors.**
- 7. Following this incident, the District called an IEP Team Meeting and informed the Parents of the meeting's date and location. The IEP Team met on November 7, 2017 to discuss the Student's behavior. At this meeting, the IEP Team discussed the increasing frequency of the Student's behaviors. The District reported that behavioral data it collected suggested a strong correlation with increased behaviors and time, noting that concerning behaviors dramatically increased in the afternoon. The Team considered several options including continuing the full day placement, therapeutic day treatment, and a special classroom in a different elementary school.**
- 8. The Parent rejected therapeutic day treatment placement for the Student. The IEP Team determined that the Student's placement would be modified from a full school day to a shortened 8:00 am to 11:25 am school day, with the addition of 10 hours of one-on-one home tutoring. This decision was made in part because the Student's behavior impeded the learning of other students.**
- 9. During the November 7, 2017 Meeting, the Parent advocated for the Student, expressing concerns that that District staff may not have appropriately implemented the behavior plan and were rough with the Student, which contributed to the Student's behavior. The Parent raised other concerns such as whether a change to a shortened school day would negatively impact the Student's academic advancement. The Parent**

further suggested that the problem was the teacher not the Student. The Parent asked for a Functional Behavior Assessment (FBA) to revise the Student's Behavior Intervention Plan (BIP). The Parent ultimately disagreed with the decision to change the Student's placement to a shortened school day.

10. Following a third suspension, and the District's proposal to modify the Student's school day, the Parent transferred the Student to a different school district.

11. On January 24, 2018, the Department received this Complaint.

IV. DISCUSSION

IEP Implementation

The Parent alleges that the District violated the IDEA by not appropriately following the Student's IEP, specifically appropriately implementing the Student's Behavior Intervention Plan (BIP). The Parent points to several issues that allegedly evidenced the District's failure, including staff changes, failure to adjust the BIP as needed, and the Student's diagnosis of ADHD. The Parent also alleges that the District's move to place the Student on an abbreviated school day violated Oregon Senate Bill 263.

School districts must ensure that each child with a disability has an IEP that is in effect at the beginning of the school year.³ Districts must provide special education and related services to students with disabilities in accordance with that IEP.⁴ Each school district must ensure that the IEP is accessible to all teachers responsible for its implementation,⁵ and inform each teacher of their duties for implementing the student's specific accommodations in accordance with the IEP.⁶

Senate Bill 263, which became effective July 1, 2017, places requirements on school district attempts to place students on abbreviated school days.⁷ A school district may place a student on an abbreviated school day program, without obtaining parental consent, if the student's IEP team follows certain protocols.⁸ The abbreviated school day placement may not be implemented unless the student's IEP team determines the placement based on the student's needs, provides parents an opportunity to meaningfully participate in the placement discussion, and documents that the IEP team considered at least one option that included appropriate supports for the student that would not involve an abbreviated day placement.⁹

The Parent points to the numerous instances of restraint and seclusion incidents as evidence of the District's failure to implement the Student's BIP. The Parent alleges that had the District either appropriately implemented the BIP, or appropriately adjusted the BIP, that

³ OAR 581-015-2220(1)(a).

⁴ OAR 581-015-2220(1)(b).

⁵ OAR 581-015-2220(3)(a).

⁶ OAR 581-015-2220(3)(b).

⁷ Senate Bill 263.

⁸ *Id.*

⁹ *Id.* at §3.

the Student would exhibit fewer behavior incidents. During interviews with the Investigator, the Parent alleged that the District used restraint and/or seclusion as a convenience, rather than out of necessity. The Parent further points to Senate Bill 263 in support of the contention that the District's recommendation that the Student move to an abbreviated school day was improper.

The District fulfilled its obligation to provide the Student with appropriate behavior-related services and interventions memorialized in the Student's operative IEP. Nevertheless, the Student's escalated behavior required District staff intervention that included physical restraint and/or seclusion. The District documented each incident of restraint and seclusion involving the Student. The reports include the preceding behavior, the District attempts to intercede, and the behavior that ultimately led to the restraint or seclusion. The reports show a general trend of the Student losing interest in schoolwork or voicing a preference for a preferred activity. When unable to engage in a preferred activity, the Student often runs around the classroom, slides on the floor in socks, or crawls on or under desks and chairs. Attempts to stop the student from potentially dangerous behavior have resulted in the Student hitting, kicking, and/or cursing at District staff. The reports include descriptions of District efforts to implement components of the Student's BIP to de-escalate the Student's behavior.

Following an incident on November 1, 2017 that resulted in restraint and/or seclusion of the Student, the Student was suspended from school. The behaviors exhibited on November 1, 2017 were substantially similar to prior behaviors exhibited by the Student throughout the year. The District's records document that the various strategies from the Student's BIP were attempted to no avail, including calling one of the Student's Parents, who was also unsuccessful in de-escalating the Student. The Student's behavior that led to suspension lasted for two hours. The District moved to convene an IEP Team meeting to address the Student's behavior issues and discuss a potential change in placement.

On November 7, 2017, the IEP Team, including the Parent, met to discuss various options to address the Student's needs. The IEP Team considered modifications to the BIP and reviewed the data gathered from the prior months and behavior incidents. The Team also discussed alternative placements including continuing the current full day placement, therapeutic day treatment, and a placement at a special classroom in a different school building. The IEP Team ultimately decided that based on the data, which evidenced the Student's propensity toward elevated behaviors in the afternoon, that an abbreviated school day was an appropriate placement. The Parent voiced displeasure with this plan, expressing concern that an abbreviated school day would result in a negative impact to the Student's academic progress. The District proposed ten hours per week of individual tutoring delivered at home to address the Student's academic needs.

The IEP Team determined that an abbreviated school day, with home tutoring, was the most suitable placement for the Student. This decision was based on data gathered on the Student and in conformity with the provisions of Senate Bill 263. The Parent disagreed with the placement determination and also rejected an alternative full day therapeutic day treatment placement. Before the District could gather additional data on the suitability of the abbreviated school day, the Parent transferred the Student to a different district.

Because the District implemented the agreed-upon BIP and also complied with state and federal requirements before deciding to change the Student's placement to an abbreviated school day program, the Department does not substantiate the allegation.

V. CORRECTIVE ACTION¹⁰

*In the Matter of Klamath County School District
Case No. 18-054-002*

The Department does not order corrective action in this matter.

Dated: this 23rd Day of March 2018



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

Mailing Date: March 23, 2018

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

¹⁰ 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)).