

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School)	FINDINGS OF FACT,
District # 1J)	CONCLUSIONS
)	AND FINAL ORDER
)	Case No. 15-054-044

I. BACKGROUND

On December 3, 2015, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Father (Father) of a student (Student) residing in the Portland School District 1J (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 on December 3, 2015.

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 December 7, 2015, the Department's Complaint 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 December 21, 2015.

On December 21, 2015, the District submitted a *Response* indicating they disputed all portions of the allegations in the Father's Complaint. In total, the District submitted the following items:

- A. Building screening committee documentation: referral, pre-referral worksheet, progress monitoring data, hypothesis statements, behavior support plan, test score history, medical statement, 4/21/2015;
- B. Meeting notice, 4/21/2015;
- C. Prior notice/consent for evaluation, 4/21/2015;
- D. Evaluation planning meeting minutes, 4/21/2015;
- E. Notice of team meeting for 5/20/2015, 5/13/2015;
- F. Evaluation by school psychologist, 6/13/2015;
- G. Emotional disturbance (ED) eligibility statement, 5/20/2015;
- H. Specific learning disabilities (SLD) eligibility statement, 5/20/2015;
- I. Eligibility meeting notes, 5/20/2015;
- J. Written agreement, 5/20/2015;
- K. IEP Meeting minutes, 5/27/2015 & 6/03/2015;
- L. Notice of Team Meeting for 6/3/2015, 5/29/2015;
- M. Notice and Initial consent for services, 6/3/2015;
- N. Individualized Education Program and placement, 6/3/2015;
- O. Prior written notice of eligibility and IEP and decision to implement consultation model rather than direct services, 6/13/2015;
- P. Meeting notes for Student meeting, noting parent indicating no need for IEP review for

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

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

- Student since things are going well, 9/21/2015;
- Q. Email exchange between school psychologist, offering times to review research-based curricula, and Parent's refusal, 10/8/2015;
- R. National Association of School Psychologists White Paper on role of school psychologists in providing mental and behavioral Health Services (including dialectical behavioral therapy), orientation checklist, and power-point on use of DBT in public schools;
- S. Community-based therapist release of information signed by parent, 10/5/2015;
- T. Statement of community-based therapist, 10/14/2015;
- U. Statement of school psychologist, 10/15/2015.

The Father submitted materials for consideration on December 8, 2015. Included in these materials were: 1) the Request for Complaint Investigation filed in this matter, 2) a Freedom of Information Act Request related to the Office of Civil Rights (OCR) Complaint Father filed against the District, 3) OCR's Response to this Request and documents OCR was able to provide to Father, and 4) an email Father sent to the District requesting a new counselor for the Student. The Department's Complaint Investigator determined that on-site interviews were needed. On January 12, 2016, the Complaint Investigator interviewed the District's General Counsel, School Psychologist, IEP Case Manager, and School Counselor. Additional materials were collected during this meeting. On January 8, 2016, the Complaint Investigator interviewed the Father. The Father provided materials to the Complaint Investigator during the interview. 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 allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from December 4, 2014 to the filing of this Complaint on December 3, 2015.³

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Content of IEP—General:</u></p> <p>The Parent alleges that the District did not formulate an IEP that addresses the Student's disability.</p> <p>(OAR 581-015-2200(1)(b)(A) & (B))</p>	<p><u>Not Substantiated:</u></p> <p>The IEP services and accommodations are reasonably formulated to address the Student's disability. The Student's absences have impacted the provision of these services.</p>
2.	<p><u>IEP Team /IEP Team Considerations:</u></p> <p>The Parent alleges that the District failed to take the Parent's concerns into consideration regarding members of the Student's IEP team and did not exclude a member of the Team after the Parent requested a change.</p>	<p><u>Not Substantiated:</u></p> <p>The Father alleges a conflict of interest for one staff member where there is none. The IDEA assigns IEP team selection duties to Districts, not parents.</p>

³ This order does include some facts that are relevant to the case and that happened before December 3, 2014.

	(OAR 581-015-2210; 34 CFR 300.320, 300.324(a)(1) & (2), (b)(2), 34 CFR 300.244, 34 CFR 300.321, 34 CFR 300.324(a)(3) & (b)(3))	
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III. FINDINGS OF FACT

- 1) The Student in this case is 16 years old and resides in the Portland School District 1J.
- 2) The Student is eligible for Special Education services because of an Emotional Disturbance, specifically anxiety and depression, social anxiety disorder and Specific Learning Disability (math). The Student is impacted in the areas of remembering and processing information when anxious or upset. The Student's condition impacts attendance, which exacerbates academic performance difficulties.
- 3) The Student had attendance difficulties since kindergarten, missing an average of twenty-eight days of school per year.
- 4) The Student was placed on a 504 Plan near the end of the Student's eighth grade year in order to facilitate the Student's entry to high school at the beginning of the 2014-14 school year. During the second semester of the 2014-15 school year, it was determined that 504 Plan accommodations were not sufficient to meet the Student's needs.
- 5) On April 21, 2015, an IEP Meeting was held to determine the Student's eligibility for Special Education services, specifically whether student had an Emotional Disturbance and/or Specific Learning Disability. The Father signed a consent giving permission to the District to perform an evaluation of the Student. The Father also signed consent for the District to receive medical information related to the Student.
- 6) At the April 21, 2015 meeting the IEP Team discussed past 504 plan accommodations. The District and the Father differed on the reason for the lack of effectiveness of 504 accommodations during the 2014-15 school year. The Father displayed concern that accommodations were not implemented. The District noted that the Student's attendance made it difficult to implement the accommodations.
- 7) During April and May of 2015, the School Psychologist conducted evaluations of the Student in a variety of areas. The School Psychologist recommended that teachers work with the Student to review main points of lessons and support the Student through note-taking, oral review, or visual diagraming. The School Psychologist also recommended skill building in emotional regulation, cognitive reframing, and interpersonal communication and effectiveness skills. The School Psychologist noted that the Student's Community-based Therapist reports that the Student's absences are due mainly to anxiety and depression.
- 8) On May 20, 2015 (and continued on June 3, 2015), an IEP Meeting was held where the Student was found eligible for special education services in the category of Emotional Disturbance and also qualified for services under Specific Learning Disability in math. It was determined that the Student's Community-based Therapist would communicate with the District on progress towards goals related to Student's emotional needs. Accommodations were added for teachers to assist the Student in completing weekly progress reports. The Student received accommodations for time on test taking, and was allowed breaks from class in the counseling center.

- 9) On October 5, 2015, the Student's Father indicated that he would cancel the release of information to allow the District to communicate with the Student's Community-based Therapist. The Student's Mother communicated with the District that she preferred that the collaboration continue.
- 10) On October 14, 2015, the District received a letter from the Student's Community-based Therapist stating that due to disagreement between the Parents about granting consent to exchange information, the Therapist would cease all collaboration with the District.
- 11) On October 5, 2015, the Mother met with the School Psychologist to discuss possible counseling curriculum for the Student, including Dialectic Behavioral Therapy (DBT). Father declined to attend this meeting, as the materials had previously been provided to the Parents and Father objected to the District providing this service.
- 12) On December 3, 2015, the Father emailed the District regarding ongoing attendance issues, and methods used by the District to record the Student's absences.
- 13) On December 3, 2015, the Parent filed this Complaint.

IV. DISCUSSION

1. Content of IEP—General:

The Father alleges that the District did not formulate an IEP that addresses all of the Student's disabilities. Specifically, the Father alleges that the IEP accommodations in the Student's June 3, 2015 IEP do not provide accommodations necessary to address the Student's anxiety. The Father objects to the District's proposed use of Dialectical Behavior Therapy (DBT) as an inappropriate means of addressing the Student's disability.

A student's IEP must include measurable annual goals, including functional goals designed to meet the student's needs that result from the student's disability enabling the student to make progress in the general education curriculum. IEPs must include measurable annual goals. The IEP must also include a statement of how the child's progress toward meeting the annual goals will be measured. That statement in the IEP must specify what services and supports will be provided. The services and supports chosen, to the extent practicable, must be based on peer-reviewed research.⁴

In this case, one of the Student's identified disabilities, anxiety, directly affects Student's grades and classroom performance by negatively impacting the Student's school attendance. The Student's IEP states that the Student's Community-based Therapist, in consultation with school-based providers, will provide social-emotional supports. The IEP includes goals for the Student to specifically work on in school such as learning "to build and maintain healthy teacher and peer relationships by participating in four class periods of interpersonal effectiveness skills." The Student's IEP also includes goals like, identifying "influences that contribute to positive and negative self image by participating in four class periods on mindfulness and 'problem solving/thinking' skills," specifically targeted to address the Student's anxiety.

The District did offer the Father the option of the Student participating in the high school's Dialectic Behavior Therapy (DBT) program. The program requires student and parent participation. District provided an orientation to the program. The Mother expressed interest in this program, but the Father did not agree to have the Student participate, preferring instead for the Student's Community-based

⁴ OAR 581-015-2200; 71 Fed. Reg. 46662 (Aug. 14, 2006)

Therapist to provide services to the Student. Therefore, the District never began DBT with the Student and instead agreed to consult with the Student's Community-based Therapist in order to meet the Student's emotional needs.

The Father has, on numerous occasions, reported that the Student continues to struggle with school attendance due to the Student's anxiety. The District offered to review the Student's IEP on September 21, 2015 to address these concerns; however, Father declined, as the Student was "doing well." Father also revoked consent for the Community-based Therapist to consult with the District in order to serve the Student.

Due to the Student's absences as well as Father's revocation of his consent for the Community-based Therapist to consult with the District, the Student has been unable to effectively take advantage of all of the supports and accommodations in the Student's IEP.

This allegation is not substantiated and no corrective action is ordered.

2. IEP Team/IEP Team Considerations:

The Father alleges that the District failed to take the Father's concerns into consideration regarding members of the Student's IEP Team, and did not exclude a member of the Team after the Father requested a change. Specifically, the Father alleges that the District's School Psychologist performed a DBT intervention without the Father's permission, that the Student was removed from the DBT program, and that other accommodations included in the Student's IEP were never implemented. The Father has since filed a complaint with the U.S. Department of Education, Office of Civil Rights (OCR), citing in part the conduct of the School Psychologist. The Father subsequently requested that the School Psychologist be removed from the Student's IEP Team. The District has not removed the School Psychologist from the IEP Team. The District also denies that the Student has ever received DBT services.

It is the District's responsibility to ensure the proper individuals are part of a student's IEP Team. The IEP Team should be composed of one or both of the child's parents, the child, where appropriate, at least one regular education teacher, at least one special education teacher, a representative of the District, someone who can interpret evaluation data, and other individuals as appropriate.⁵ The IDEA encourages parental input and involvement in all aspects of a child's educational program.⁶ Districts must ensure that parents are included in the IEP team.⁷ The team as a whole considers a variety of factors in developing the IEP, including the concerns of the parent.⁸

The District notes that there is only one School Psychologist at the high school, and there is no available replacement for this staff person. Furthermore, the District notes that the District has discretion in the selection of staff to implement IEP services.⁹ No description or definition of parent concerns accompanies the statute beyond stating the district must consider "the concerns of the parent for enhancing the education of their child."¹⁰

The Department does not sustain this allegation and orders no corrective action.

⁵ OAR 581-015-2210

⁶ 71 Fed. Reg. 46688 (Aug. 14, 2006)

⁷ 34 CFR 300.321(a)(1); 34 CFR 300.322(a)

⁸ OAR 581-015-2205(1)(b); 34 CFR 300.324(a)(ii)

⁹ *Slama v. Independent School District No. 2580*, 259 F. Supp. 2d 880 (2003); *Zasslow v. Menlo Park SD* (9th Cir. 2003) 38 IDELR 187

¹⁰ 34 CFR 300.324

V. CORRECTIVE ACTION¹¹

*In the Matter of Portland Public School District #1J
Case No. 15-054-044*

The Department orders no corrective action in this matter.

Dated: this 27th Day of January 2016

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

Mailing Date: January 27, 2016

¹¹ 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)).