

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Tigard Tualatin SD )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 15-054-024

I. BACKGROUND

On May 29, 2015, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Tigard Tualatin School District (District). The Parent requested that the Department conduct a Special Education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on June 1, 2015 and provided the District a copy of the complaint letter on June 1, 2015.

On June 3, 2015, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of June 17, 2015. The District remitted its *Response* which was made available to the Investigator on June 12, 2015. The District also submitted its *Response* to the Parent. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. The Student's attendance records for the school years 2013-2014 and 2014-2015;
2. Attendance letter from District dated March 10, 2015.
3. The District's written policies on Tardiness reduction
4. The District's form attendance letters (in both English and Spanish)
5. The District's policy on Truancy
6. The District policy on Attendance and Enrollment;
7. Discipline referrals for the Student dated April 22, 2015 and May 27, 2015
8. The District's policies on discipline and referrals;
9. The District's Behavior Protocol;
10. Policy regarding "Hello, Update, Goodbye" or HUG policy;
11. The Student's most recent 504 plan, dated April 9, 2015;
12. A draft observation report authored by the Student's Care Coordinator (non- District therapist/counselor)
13. 504 Eligibility Statement dated January 8, 2015;
14. 504 Census Form dated April 9, 2015;
15. Section 504 Notice of Parent and Student Rights;
16. Statement of Eligibility for Special Education (OTI) dated January 8, 2015;
17. Statement of Eligibility for Special Ed (Autism Spectrum Disorder) dated January 8, 2015;
18. Medical evaluations and medical statements for the Student performed between 2012 and 2014
19. Autism Spectrum Disorder Evaluation Report dated January 8, 2015
20. District Evaluation Report dated December 11, 2014;
21. Occupational Therapy Observation dated December 3, 2014;
22. Notice of Team Meeting dated November 14, 2014;
23. Notice of Team Meeting dated November 10, 2014;
24. Referral for Special education dated November 18, 2014;
25. Fall 2014 Academic Feedback for the Student;
26. 2013-2014 Academic test results

27. Emails between Parent/Advocates and District dated between October 2014 and May 2015;

Further, during the in-person interviews with the District, the District submitted the following documents at the request of the investigator:

1. Discipline Referral dated May 29, 2015;
2. May 27, 2015 correspondence from District to Parent regarding Discipline Referral;
3. Major Referral form dated May 27, 2015
4. A HUG chart modified for the Student
5. A graphic representation of the Student's progress in relation to the HUG chart;

The Parent submitted the following documents in response to the District's submission:

1. Educator Complaint form dated April 22, 2015 signed by Parent;
2. Documents responsive to the Parent's ODE complaint No. 15-054-015;
3. Discipline Referrals for the Student identical to those provided by District;
4. Major Referral Notice dated May 27, 2015;
5. Attendance letter dated March 10, 2014 identical to that provided by District;
6. Attendance and Truancy policy of District identical to that provided by District;
7. Various OARS and Statutes;
8. Attendance records for the Student identical to that provided by District;
9. Attendance record for a sibling of the Student also attending the District for school year 2014-2015

During the in-person interview, the Parent submitted the following documents at the request of the interviewer:

1. Grades for 2014 - 2015 school year;
2. Multiple daily "check in/check out" or HUG sheets for the Student dated between December 11, 2014 and May 13, 2015;
3. A "HUG" chart fashioned by the Parent's advocacy team for the Student
4. Email correspondence between the Parent and District dated between December 2014 and May 2014;
5. Correspondence from Parent Advocate regarding Student's homework
6. Meeting recap correspondence dated March 23, 2015

The Department's complaint investigator determined that on-site interviews were required. On June 30, 2015, the Department's investigator interviewed two District employees and conducted an additional District interview on July 8, 2014. The Department's investigator interviewed the Parent and her Advocate (pursuant to signed consent) on July 1, 2015. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation, or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

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<sup>1</sup> OAR 581-015-2030 (12)

## 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 May 29, 2014 through May 29, 2015.

|           | <b>Allegations</b>   | <b>Conclusions</b>   |
|-----------|--|--|
| <b>1.</b> | <p><b><u>Retaliation:</u></b></p> <p>The Parent alleges that the District violated IDEA by retaliating and discriminating against the Student and Parent as a result of participation in the state IDEA complaint process against the District. Specifically, the Parent alleges that the requests for parent/teacher conferences have been ignored, that the Student is not given access to assistive technology as proscribed in the Student's 504 Plan, that the Student is not given preferential seating and access to instruction, and that the Student's Teacher is disciplining the Student for manifesting the Student's particular disability. The Parent also alleges the District disenrolled the Student for absences but did not disenroll similarly situated Students, namely the Student's siblings.</p> | <p><b>Not Substantiated.</b></p> <p>The District accommodated the request for conferences by substituting another knowledgeable District employee for the Teacher due to the discordant relationship between the Teacher and Parent. Further, the District offered meetings in May to assist the Student in transitioning to middle school which garnered no response from the Parent. The Student is given access to assistive technology in accordance with the Student's 504 Plan and had been given more access to the technology in other subjects such as Math. The District also incentivized the technology as a reward, allowing the Student to play games during free time until the Parent demanded that the District stop using the technology in any manner other than instructional. The Student is given seating in accordance with the 504 plan; the seating the Parent proposes is not contained in the 504 Plan. The discipline of the Student was not retaliatory (1) because the first referral was given prior to the District having notice of the ODE complaint; (2) the Student's behavior was unrelated to the disability and (3) the safety and health concerns of other students was the rationale for the final disciplinary referral. The attendance letter was not a threat of disenrollment but a part of the Effective Behavior and Instructional Support System (EBISS) that provides intervention to students who have discipline and attendance difficulties.</p> |

|    | <b><u>Requested Corrective Action:</u></b>  |  |
|----|---|--|
| 1. | <p>Elimination of the HUG chart. Allow the Student to use the iPad in the whole writing process due to the poor penmanship and spacing issues, not just for the final draft. Hold parent/teacher conferences even if they must be facilitated by the Principal. "Retaliation in regards to singling [the Student] out for Truancy was harassment when the absences were excused. The major retaliation has come from [the Teacher]. She needs to have some training to learn how to work with students like [the Student] who have disabilities. Stop disciplining the disability."</p> |  |

### III. FINDINGS OF FACT

1. The Student is 11 years old and resides in the Tigard-Tualatin School District. The Student recently completed the 5th grade at Tualatin Elementary and will be entering 6th grade in the school year 2015-2016.
2. During 3rd grade, the Student "choiced" into Tualatin Elementary and has been a student at this location ever since. Prior to entering Tualatin Elementary, the Student had been bullied by other children in the Student's class at another District elementary school. The Student then started bullying others and the Parent requested the District's help at that time. Due to the behavioral concerns, the Student was labelled a "red zone student" and was given special behavior protocols to ensure the Student was kept in the classroom. Red zone students are at the top of the behavioral protocol and are generally given more leeway in terms of what constitutes a behavioral infraction.
3. In January 2012, the Student was diagnosed with Disruptive Behavior NOS, dyspraxia, and a history of anxiety. In August of 2014 and October of 2014, the Student was evaluated by Western Psychological and Counseling Services, P.C. and given the diagnosis of ADHD and Autism Spectrum Disorder without intellectual or language impairment.
4. The Student had been taking medication to assist with the ADHD symptoms but in the fall of 2014, the Parent took the Student off the medication because the Parent felt the Student was losing weight.
5. Thereafter, on November 14, 2014, the Student was referred for an evaluation to determine whether the Student was eligible for Special Education services under the IDEA.
6. On December 11, 2014, the District prepared an Evaluation Report based on a file review, developmental history, observation, Connors-3 Test, a Behavior Assessment System for Children Section Edition (BASC-2), a Behavior Rating Inventory of Executive Function and a Wechsler Individual Achievement Test – Third Edition. As part of the evaluation, an Occupational Therapist from the District also evaluated the Student and found that the Student

performed at the level of the Student's peers with the exception of Writing in that the Student does not space between words.

7. On January 8, 2015, the Student was not found to need special services under the IDEA but a 504 plan was created for the Student based on ADHD. Both the Parent and District assented to the creation of the 504 plan.

8. The 504 plan was as follows:

| Effects of Disability on Student's Education   | Educational Services, Modifications or Supplemental Aids to be Provided  | Person Responsible   |
|--|--|--|
| Student has a difficult time maintaining attention to task and not becoming distracted                                 | <ul style="list-style-type: none"> <li>• Provide Student with verbal and visual reminders to slow down and show quality work</li> <li>• Extra check-ins to confirm Student understands direction</li> <li>• Extended response time</li> <li>• Preferential seating (space to move body away from friends, Student tends to socialize with extra personal space between desks)</li> <li>• Allow Student to sit, stand or move around while working as needed</li> <li>• Allow Student access to fidgets and/or wiggle seat so long as Student can manage them without disruption to Student or others</li> <li>• Allow Student access to small group setting during state testing, that is a quiet environment and free of distraction *</li> </ul> | <p>Teacher</p> <p>Teacher</p> <p>Teacher<br/>Teacher</p> <p>Teacher</p> <p>Teacher</p> <p>Teacher/Counselor*</p> |
| Work completion and work quality is sometimes impacted due to Student's organization skills and attention difficulties | <ul style="list-style-type: none"> <li>• Home communication about nightly homework</li> <li>• Check In and Check Out program to help Student (and the adults who support Student) monitor Student's behavior through the day, reflect at the end of the day and share about Student's day with Parents</li> <li>• Break multi-step assignments/activities into smaller chunks when possible</li> <li>• Facilitate organization of</li> </ul>   | <p>Teacher/Parent/Counselor/<br/>Teacher</p> <p>Teacher</p>  |

|   |   |                             |
|---|---|-----------------------------|
|   | Student's space including desk <ul style="list-style-type: none"> <li>• Provide checklist for organization that Student can access.</li> </ul>  | Counselor/Teacher           |
| Student tends to lack spaces between words when written work is required                    | <ul style="list-style-type: none"> <li>• Teacher promotes spaces between words for final lengthy papers through the use of verbal request, reward system, edit, draft with slash marks, use graph paper, type final copy or a combination</li> <li>• Invite district occupational therapist to 504 Plan meetings</li> </ul> | OT/Teacher<br><br>Counselor |
| Description of Placement for Services (include extent of participation in regular programs) | Rational for Placement  | Review Date                 |
| General Education Classroom 100% of time  | The Student's needs will best be met in the classroom and Student does not need specially designed instruction  | 2/2/16                      |

\* Denotes April 9, 2015 addition to take into account Student's needs for state testing.

9. In the spring of 2015, the District contacted the Parent via email to modify the 504 Plan to accommodate the Student for state testing. The Parent assented to the change in the 504 plan to make accommodations for the Student's state testing. The last iteration of the 504 plan was created and approved on April 9, 2015;

10. In February of 2015, the Student had an injury and was absent from school from February 2, 2015 through February 9, 2015 for a total of 6 consecutive absences.

The Student was then absent on February 18, February 23 and February 26. All of the Student's absences were excused.

11. The District uses the EBISS for students in the lowest 20th percentile for behavior and attendance. The District is more attentive to these students and utilizes several tiers of intervention to assist a student's continued attendance and advancement in school. An attendance reminder letter is the first step in intervention for students under EBISS.

12. On March 10, 2015, the District sent a letter to the Parent advising the Parent of the Student's absences which totaled 12.5 days from September 2, 2014 through the date of the letter. The correspondence also advised the Parent that if the Student continued to be absent and/or tardy for school, the District would eventually be required to report the Student's attendance records to the Washington County Truancy Office assigned to Tualatin Elementary.

13. The Student has siblings who attend the District as well and one of the Student's siblings accumulated 9 absences during the same school year as the Student. The sibling's absences were sporadic, i.e. there were no consecutive days that the sibling missed school. These absences were excused. The Parent never received an attendance letter from the District regarding the sibling's absences.

14. As part of the Student's 504 plan, the Student was permitted to type the final copy of any assignments and was also to be rewarded for correctly spacing between words in any written assignment. The 504 Plan does not designate the means by which the Student is to type any final drafts of writing assignments and is silent on what type of reward system should be used with the Student.
15. As part of the 2014-2015 school year, all 5th grade students in the District were given an iPad to use as part of their instruction. The iPad was drafted into use for the Student as part of the 504 Plan accommodation for typing.
16. The Student was to use the iPad when the Teacher was giving instruction and for classwork. For example, the iPad would be used for Math class when the Teacher was using Apple TV in conjunction with the iPads to explain a Math process. The Student was also permitted to do all writing assignments with the iPad, not just the final draft. The Student, however, would, at times, use the iPad to play games, to draw or, as the Student's own Care Coordinator noted, to play with Google Earth at times when the Student should have been on task. If the Student used the iPad for off task activities, the iPad would be taken from the Student until it was necessary to be used once more for classwork. The iPad would be placed on the Teacher's desk and returned to the Student when appropriate.
17. The District became aware of the Student's acumen with the iPad and the enjoyment the Student got playing with the iPad. The District then decided to incentivize the iPad and use it as a reward for the Student when the Student achieved certain behavioral goals. Therefore, when the Student remained on task and hit certain daily goals, the Student would be given the iPad for free time play separate and apart from any iPad usage for school work.
18. On May 22, 2015, the Parent emailed the District stating she did not want the iPad used as a reward for the Student's good behavior stating that she wanted "the bartering to stop!!!"
19. Upon receiving this email, the District no longer rewarded the Student for good behavior with free play time on the iPad.
20. The District held its first set of parent/teacher conferences in October 2014. At that time, both the Parent and the Student's Teacher had engaged in the conferences. Upon making the referral for a Special Education evaluation, the Parent was given all notices of all meetings regarding the Student's evaluation and team meetings.
21. On December 9, 2014, the Parent, through her Advocate, requested a meeting with the District to focus on the Student's safety and other issues. A meeting was held on December 11, 2014 and at that time, the Student began using a "check in/check out" communication log sheet to assist the Student with school.
22. On March 11, 2015, the Parent's Advocate emailed the District Superintendent requesting a meeting with him personally, stating that the Advocate and Parent "had multiple meetings with [District personnel] this year. We do not feel another meeting with them will solve [Parent's] concerns." The Advocate then requested the meeting take place on March 13, which was not possible as District personnel were not available because it was parent/teacher conference day for the entire District.
23. Notices of parent/teacher conferences (to be held on March 13, 2015) are published on-line at the District website and are also displayed on the school's "reader boards" in front of the school

property. The Parent did not attend the parent/teacher conference stating that she did not have notice of the conference. The Student's Teacher did not contact the Parent to personally schedule a conference either on conference day or thereafter.

24. Pursuant to the emails to the Superintendent, the District held a meeting with the Parent and her Advocate on March 20, 2015.
25. On April 10, 2015, the Parent, through her Advocate, requested another meeting with District personnel to take place on April 22, 2015. This meeting request did not include the Student's Teacher but only administrative personnel. Again on April 17, 2015, the Parent's Advocate requested another meeting to review the 504 Plan. The plan had only been revised on April 9, 2015 to include testing accommodations with the assent of all parties.
26. On April 17, 2015 the Director of Student Services requested that the Parent and her Advocate stop sending emails to multiple District administrators. The Director of Student Services advised that one individual from the District would answer emails on a certain day each week to give accurate updates on the Student. The District went on to explain that the 504 plan was fully developed and in place on February 2, 2014 and revised on April 9, 2015 for testing. The District would not meet again to revise the plan again. The District offered a meeting in May to address transition to middle school under the current 504 plan.
27. Thereafter, on April 21, 2015, the Parent's Advocate emailed the District and requested a meeting on May 11, 2015. The Parent also emailed the District on April 21, 2015 and demanded a meeting stating that "it would be advantageous for TTSD to honor our request for a meeting within the next two weeks".
28. On April 22, 2015, the Parent filed a complaint with the ODE, complaint No. 15-054-015 and contemporaneously filed a Teacher Standards and Practices Commission (TSPC) complaint against the Student's Teacher. The District received notice of the Parent's ODE complaint on April 23, 2015.
29. On April 24, 2015 and again on May 1, 2015, the District offered to have a transitional meeting for the Parent and Student so that the Student's transition to middle school could be better facilitated given the Student has a 504 Plan. The Parent did not take advantage of the offer to have a transitional meeting.
30. There were no other 504 Plan or parent/teacher/district meeting requests via email from the Parent or Advocate after the ODE complaint was filed on April 22, 2015. At the end of May, the Parent requested the District only communicate with the Parent through her Advocate.
31. Pursuant to the December 11, 2014 meeting, the Student continued to participate in a "check in/check out" program which was aided by use of a "HUG" program and chart. The HUG program stands for "hello, update and goodbye". During the school day, a student is to "check in" with a teacher or administrator and then meet again at the end of the school day to review what happened during the day, present a HUG chart to the teacher or administrator and then "check out" which was, in essence, reviewing behaviors, noting homework and getting rewards if applicable.
32. The Student received daily HUG charts that went home to the Parent on a daily basis. The Parent estimates she received about 98% of the daily HUG charts. The HUG chart was modified specifically for the Student wherein the colors were defined as: "Green" Work quietly, stay on task, follow directions; "Yellow" two or fewer reminders; and "Red" Multiple reminders



needed". This behavioral aid was incorporated into the Student's 504 plan as "check in/check out".

33. Between December 2014 and May 2015, per the daily HUG reports, the Student has earned more greens than reds or yellows. The Student nearly earned all greens on April 27, 2015, the day a field trip was taken. The Student earns yellows or reds most often for work not being completed.
34. On March 11, 2015, the Parent contacted the District questioning the efficacy of using the HUG program for the Student stating it was affecting the Student's mental health. The District then began producing graphs for the Parent and her Advocate to chart how and when the Student would earn "reds" "yellows" or "greens".
35. On May 15, 2015, the District updated the Parent regarding how and/or why the Student was receiving "reds" on the HUG chart, stating that the "reds have been earned mostly when [the Student] needs multiple reminders to stay on task (the [Student] has been disrupting the class with loud noises continuing on and on after adult reminders and redirections) and general refusal to follow Teacher directions. [The Student's] done a great job having homework list filled out this week."
36. The District continued to use the HUG chart even after the Parent began questioning its efficacy. On June 2, 2015, the Advocate contacted the District inquiring whether the District discontinued using the HUG chart. However, before that email, for the last two weeks of school, the Student simply "self-selected" out of the program and stopped showing up to either check in or check out.
37. On April 22, 2015, the Student was given a Discipline Referral for defiance. The Student had been disruptive by throwing paper airplanes and then refused to participate in Math class. Finally the Student stated that "someone should give [the Student] a knife so [the Student] could [commit suicide]", this statement being made in front of several classmates. The Student had heard the Parent using similar language at home in reference to having to endure a bad television program.
38. The District interviewed the Student to ascertain if the Student had definite suicidal ideation or risk of harm to self or others. The District determined that the Student was merely attempting to gain attention by making this statement.
39. On May 27, 2015, the Student was given another Discipline Referral for disrespect. The Student had been mumbling throughout the day that the Student hated the Teacher and that she was a jerk. As the behavior continued into the afternoon, the Teacher finally made a referral.
40. The April 22, 2015 Behavior Referral did not carry any consequences other than the District contacting the Parent and advising the Parent of the situation and sending a referral notice home which typically the Parent will acknowledge with a signature and send back to the school.
41. The May 27, 2015 referral was classified as a "Major Referral" and carried the consequence of the Student losing a break with the remainder of the class and having to go to the Principal's office, as well as having a referral form sent home to the Parent. The Discipline Referral was sent to the Parent who responded that the District could "take the referral and shove it". Further stating that the District was disciplining the Student's disability. The referral was torn up and returned to the District unsigned.

42. On May 29, 2015, the Student received another Discipline Referral for physical contact/physical aggression toward a peer, while in front of District personnel. The Student was disciplined by being segregated for one lunch period and made to eat alone.
43. As part of the 504 Plan, the Student is to be given preferential seating, more specifically, "space to move body, away from friends [the Student] tends to socialize with, extra personal space between desks."
44. Since the inception of the 504 Plan, the Student has had many seating arrangements due to the Teacher experimenting with seating plans with rows and with seating plans in groups. The Student is most often seated next to a student who is not present for much of the school day. The Student had been seated in the front of the class but when the Student began turning around to socialize with classmates, the Student was moved to an aisle seat. When partner work is necessary, another child will move over to the empty desk and work with the Student on team assignments.

#### **IV. DISCUSSION**

The Parent alleges that the District retaliated and discriminated against the Student and the Parent as a result of the Parent's participation in the state IDEA complaint process against the District beginning on April 22, 2015. (OAR 581-015-2030(19) and 34 CFR 300.151).

OAR 581-015-2030(19) prohibits retaliation against an individual who has filed a complaint alleging violations of the IDEA. It provides that, "no person shall suffer retaliation or discrimination for having filed or participated in [the] complaint procedure. Any person who believes he or she has suffered retaliation or discrimination may file a complaint under this rule with the Superintendent."

According to the United States Department of Education's Office for Civil Rights (OCR), in order to establish a claim for retaliation, the following elements must be met:

1. The person alleging retaliation must have been engaged in a protected activity;
2. The public agency accused of retaliation took an adverse action toward the person. This action must be both "significant" and "adverse".
3. A causal connection (based on time sequence, knowledge, or other factors) exists between the protected activity and the adverse action to infer retaliation;
4. If the evidence establishes an adverse action and a causal connection, the agency investigating the claim determines whether there was a legitimate non-retaliatory reason for the adverse action and if so, whether such a reason could be considered pre-text for retaliation.

On April 22, 2015, the Parent engaged in a legally protected activity, to-wit, the filing of a complaint with the ODE. Specifically, after the filing of the complaint, the Parent believes the following retaliatory actions occurred:

1. The Student's 504 Plan was not being followed regarding preferential seating;
2. The Student's 504 Plan was not being followed regarding assistive technology;
3. The Student was being unfairly disciplined;
4. The Parent could not schedule meetings with the Student's Teacher;
5. The Student had been unfairly targeted for disenrollment.

**1. Preferential seating.**

The Parent alleges that the Student was denied preferential seating after the complaint was filed. However, examining the Student's 504 Plan, the Student is not guaranteed a specific area of the class in which to sit or is designated a specific seat. Since the Student has trouble staying on task and socializes with peers, the 504 Plan reflects that the Student will be socially "segregated" from friends in order to keep the Student on task. There is no requirement that the Student sit in the front of the class and no requirement that the Student be given a special seating assignment.

Further, the 504 Plan makes specific mention that the Student becomes distracted. When the Student was sitting at the front of the class, the Student discovered that the Student could turn around and engage with others. Had the Student remained at the front of the class, the Student more than likely would have continued to engage with peers and more than likely would have continued to be distracted. Therefore, moving the Student to another seat on the aisle or in the back next to an empty desk is not retaliatory but in compliance with the Student's needs as evidenced by the Student's 504 Plan. This action is neither significant nor adverse as it is in alignment with the Student's 504 Plan.

Therefore, this portion of the allegation is not substantiated.

**2. Assistive technology.**

The Parent alleges that the Student was denied the use of the iPad. Denial of an accommodation under a 504 Plan may be both "adverse" and "significant".

Again, turning to the 504 Plan, there is no mention of what assistive technology is to be used when completing a final draft of the Student's writing assignments. The 504 Plan simply states that the final drafts will be typed. Had the Student lived in a district where iPads were not available, the Student would be using another word processing device or, in the worst case scenario, a manual typewriter. The iPad is a staple to this specific class in this specific District and has been used as a tool for all members of the Student's class. If, at some point, the Student no longer has an iPad for any reason whatsoever, the Student will be accommodated with some other type of technology by a district to comply with the 504 Plan. Moreover, the District has gone above and beyond in implementing this accommodation because the Student is permitted to use the iPad for all work, not just final drafts of writing assignments.

But examining this matter further, the Parent contends that the District was unfairly limiting access to the iPad. According to the District, the Student uses the iPad for assignments and during instruction time. The iPad is removed if the Student is off task. Again, turning to the 504 Plan, the Student has a "difficult time maintaining attention to task and not becoming distracted". The Student will play games, or as witnessed by the Student's own Care Coordinator, plays Google Earth during instruction time. The removal of the iPad from the Student when the iPad is not required during instruction or classwork does not violate the Student's educational rights and is, in fact, in compliance with the 504 Plan. Therefore, the removal of the iPad from the Student when the iPad is not being used properly does not have adverse consequences to the Student's education and is not a retaliatory action.

Further, the Parent requested that the District refrain from incentivizing the iPad, and requested that the District no longer reward the Student for good behavior. The District complied with the Parent's request.

This allegation is not substantiated.

### **3. Unfair discipline**

The Parent believes that the Student's disciplinary referrals are in retaliation to the filing of the ODE complaint on April 22, 2015.

The first behavioral referral was given to the Student on April 22, 2015, the very day the ODE complaint was filed. Since the District did not have notice of the ODE complaint until April 23, 2015, this portion of the Parent's allegation is unfounded. The District cannot engage in retaliation against the Parent if the District is not aware that the Parent has engaged in a protected action.

The Student received a second Discipline Referral on May 27, 2015 for disrespect, repeatedly telling the Teacher she was hated and that she was a "jerk". This behavior continued throughout the entire school day until the Teacher made the Discipline Referral. The behavioral consequence for the Student was missing a break and being sent to the Principal's office. The Parent asserts that this referral is significant and adverse because the District is "disciplining the disability".

According to the records, the Student has a 504 Plan based on ADHD. This condition manifests in fidgeting, inability to stay on task, becoming distracted and having difficulties with organizational skills and attention difficulties. There is no discussion of aggression, defiance or continual disrespect in the Student's evaluations. Even when the Student made reference to suicide on April 22, 2015, the District determined that the Student was not aggressive, had no violent tendencies or harmful intent and was just seeking attention.

The record does not support the assertion that the Student is being disciplined do to manifestations of the Student's disability. In addition, impulsivity is not a behavior noted on the Student's 504 plan. Since the District appropriately disciplined the Student for an infraction of school protocol, this portion of the allegation is not substantiated.

The last Discipline Referral was made on May 29, 2015 for physical contact/physical aggression toward a peer. Again the Parent points to this being an impulsive behavior of the Student and believes the discipline to be retaliatory. Under the retaliation criteria, the discipline was imposed after the ODE complaint was filed so the disciplinary action could be causally related to the Parent engaging in protected action. Further, the consequence of the Student's behavior is both adverse and significant. However, under the last leg of the test, whether there is a legitimate reason for the action, the Parent's argument for retaliation fails. The act of physical contact/physical aggression toward a peer is not appropriate. The District was acting in a responsible manner and the discipline of the Student was not retaliatory.

This allegation is unsubstantiated.

Finally, regarding "disciplining the disability", the District specifically modified the HUG chart and engaged in a check in/check out process to help support the Student's behavior. It should be noted that the Parent requested that the District refrain from using the HUG chart and check in/check out process. This was the second request the Parent made to the District to deviate from the 504 Plan by eliminating a behavioral aid altogether. The District, however, did not stop using the check in/check out process though, the Student simply stopped showing up for the check in/check out process during the last few weeks of school.

### **4. Failure to schedule teacher conferences**

The Parent asserts the District retaliated against the Student and the Parent by failing to schedule conferences after the ODE complaint was filed on April 22, 2015.

Prior to the filing of the complaint the District had requested that the Parent and her Advocate streamline their communication and that they meet in mid-May to discuss transitioning the Student to middle school. Thereafter, on April 21, 2015, the District received emails from both the Parent and the Advocate requesting a meeting on May 11, 2015. The District could not accommodate that meeting request but on two more occasions offered to have a transitional meeting for the Student. The Parent and the Advocate never took the District up on this offer stating as late as the last week of May that they were concerned about the current school year rather than 6th grade and middle school. The failure of the District to once more re-visit the 504 Plan at the end of the school year does not constitute retaliatory conduct in light of the District's willingness to aid the Student in a transition to middle school.

The District assigned another District employee to interact with the Parent on a weekly basis through emails and through the check in/check out process with the Student. The Parent's Advocate also started requesting meetings with administrative personnel.

The District attempted to schedule meetings with the Parent.

This allegation is unsubstantiated.

#### **5. Targeting for disenrollment**

The Parent contends that the receipt of the attendance letter from the District is tantamount to targeting the Student for disenrollment and that the Student's sister was in a similarly situated circumstance and was treated differently, i.e. not given an attendance letter and not targeted for disenrollment.

Turning to the body of the attendance letter, the body of the letter contains no threat of disenrollment of the Student. The attendance letter is in place to assure communication with parents of students who are in the lower 20% for attendance and behavior. The remittance of an attendance letter is neither significant nor adverse because the District is working to keep the Student in school. If the District had disenrolled the Student without any letter or reported the Student to the truancy officer, then that action would have been both significant and adverse. The allegation does not rise to the level of retaliation.

Finally, the comparison between the Student and the Student's sister is unfounded. The Student had six consecutive excused absences and has known behavioral challenges. The Student's sister, on the other hand, did not have any consecutive absences and it is not known if the sister has behavioral challenges, a 504 Plan or an IEP. The comparison between the Student and the Student's sister is misplaced.

Therefore, this allegation is unsubstantiated.

## V. CORRECTIVE ACTION<sup>2</sup>

*In the Matter of Tigard Tualatin School District*  
Case No. 15.-054-024

Based on the facts provided, the Department did not find violation of the IDEA, and no corrective action is ordered.

Dated: this 28th Day of July 2015



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

Mailing Date: July 28, 2015

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<sup>2</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).