

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Brookings-Harbor SD)
17C)
)
CORRECTED¹ FINDINGS OF
FACT, CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-014

I. BACKGROUND:

On May 26, 2017, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from a complainant (Complainant) on behalf of students with disabilities (Students) receiving services from the Brookings-Harbor School District No. 17C (District). The Complaint contained allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Complainant 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 by email on May 26, 2017.

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. This timeline may be extended if the Complainant and the District agree to the extension to engage in mediation or local resolution of the complaint; or for extenuating circumstances. A complaint must allege violations that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the complaint, the relevant period for this Complaint is May 27, 2016 through May 26, 2017. Due to the large number of documents to be reviewed, and the number of staff to interview, this Complaint was extended for 14 days. The Final Order is due August 8, 2017.

On May 30, 2017, the Department's Complaint Investigator 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 13, 2017. When the Department granted the extension, the due date for the District's *Response* was established as June 30, 2017.

On June 30, 2017, the District submitted a packet of materials for the Department's investigator to review. In total, the District submitted copies of Special Education files for twenty-nine Students. These files totaled 6400 pages. Most of the Student's Special

¹ The Department issued a final order on August 8, 2017. Subsequent to the issuance, the Department discovered three errors within the order. There were two references to items that had been deleted during the editing process, one on page 12, fifth full paragraph, and one on page 16, fact 5.1. There was also a fact that was not numbered, which is now fact 4.3.

² OAR 581-015-2030 (5)

Education files contained material that was outside the complaint investigation timeline, because the District sent copies of Students' IEP's dating back as far as 2006. The Complaint Investigator sorted all the files and removed any paperwork that was outside of the complaint timeline. During the interview process, the Complaint Investigator requested and received discipline records for one Student, a copy of the District's Special Education Manual, and an email link to the District's Special Education Policies and Administrative Rules.

For each of the Students included in the complaint, the District submitted, and the Complaint Investigator reviewed:

- a) All IEP's in effect during the 2016-2017 school year;
- b) All meeting notices sent for and all minutes taken during special education meetings for these students during the 2016-2017 school year;
- c) All eligibility statements and accompanying documentation in effect³ during the 2016-2017 school year,⁴
- d) All Prior Written Notices written during the 2016-2017 school year;
- e) Any reports from other agencies or professional service providers given to the District during the 2016-2017 school year;
- f) All copies of any documentation relating to any Manifestation Determination hearings held during the 2016-2017 school year for relevant Students;
- g) All copies of written agreements in effect during the 2016-2017 school year for relevant students; and,
- h) Any other documentation submitted by the District that was relevant to the allegations.

Once sorted, these materials totaled 1695 pages.

On July 10, 2017, the Complaint Investigator interviewed the Complainant in person. On July 11-12, 2017, in the District offices,⁵ the Complaint Investigator interviewed two elementary Special Education Teachers, a High School Instructional Assistant, a General Education Elementary Teacher, a General Education High School Teacher, and a High School Assistant Principal. On Friday, July 14, 2017, the Complaint Investigator interviewed by telephone the High School Principal, and a High School Special Education Teacher. On Monday, July 17, 2017, the Complaint Investigator interviewed a District General Education Teacher by phone. Finally, on Thursday, July 20, 2017, the Complaint Investigator interviewed a High School Special Education Teacher by phone. The District's Special Education Director left the District in early July 2017, and thus was not available for an interview. Other Special Education staff were out of town and unavailable for interviews even by telephone.

³ In some cases, the Student's eligibility had been established two years previously, but was still in effect for the third year as per IDEA. Even though these documents are outside the complaint investigation timeline, they are still pertinent.

⁴ Psychoeducational evaluation reports, Academic Achievement reports, Medical Statements, Physical and Occupational Therapy Reports, Speech/Language Reports, and any other documentation the teams had used in establishing a Student's eligibility for Special Education.

⁵ Some of these interviews were conducted by telephone as staff were not available to come to the District Office for an in-person interview.

The Complaint Investigator reviewed and considered these documents, interviews, and exhibits in reaching the Findings of Fact 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.⁶ However, due the number of allegations and the amount of materials that needed to be reviewed, the Department extended the timeline by 14 days.

II. ALLEGATIONS AND CONCLUSIONS:

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151 – 153 and OAR 581-015-2030. The Complainant’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 on the Discussion in Section IV. This Complaint covers the one-year period from May 27, 2016 through May 26, 2017.⁷

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>When IEPs Must Be In Effect (Systemic)</u></p> <p>a. Not providing Special Education and related services to Students with disabilities in accordance with each Student’s IEP.</p> <p>(Relevant Law and Regulations: OAR 581-015-2220; 34 CFR § 300.323; 34 CFR § 300.324)</p>	<p><u>Substantiated:</u></p> <p>The District could not provide any documentation to demonstrate that Specially Designed Instruction (SDI) was provided. The IEPs reviewed included a minimal amount of time allotted for SDI on IEPs, in general, which appeared to be the same amount of time in almost every IEP. While ten of the seventeen IEPs for high school Students indicate that SDI was to be delivered in the general education classroom, staff members indicated that Students simply went to the Special Education Teacher or a Special Education Assistant for help on assignments as needed.</p>

⁶ 34 CFR §300.1510(2010)

⁷ See OAR 581-015-2030(5) (2008); 34 CFR §300.153(c)

<p>2.</p>	<p><u>Content of IEP (Systemic)</u></p> <p>a. Not appropriately identifying how progress on the Students' annual goals will be measured (specifically, using general education grades to measure goals on an individual's annual goals);</p> <p>b. Not collecting data on the Students' progress toward their annual goals;</p> <p>c. Not reporting progress on the Students' annual goals;</p> <p>d. For transition aged Students, not using age-appropriate assessments to identify appropriate measurable post-secondary goals.</p> <p>(Relevant Law and Regulations: OAR 581-015-2200; 34 CFR § 300.320)</p>	<p><u>Substantiated:</u></p> <p>The District neither established nor implemented a consistent system for providing parents with progress reports on IEP goals or for collecting data concerning progress toward these goals. Goals in the IEPs are often written as Common Core standards and the SDI and other supports required by the IEP bear no relationship to the IEP goals. The District also used global and generic transition assessments which resulted in very similar and global transition plans for students with disabilities, and in some instances portions of the transition plan seemed to be unrelated to the stated transition goals.</p>
<p>3.</p>	<p><u>Team Considerations and Special Factors (Systemic)</u></p> <p>a. Not having the IEP Team consider the academic, developmental, functional needs of the Students;</p> <p>b. When a Student whose behavior impedes the Student's learning, or that of others, not having the IEP Team consider positive behavioral interventions and supports and other strategies to address the behavior as a special factor.</p> <p>(Relevant Law and Regulations: OAR 581-015-2205; 34 CFR § 300.320; 34 CFR § 300.324(a)(1) & (2), (b)(2))</p>	<p><u>Substantiated:</u></p> <p>Although the District considered the issue of behavior for the Students, the components included in IEPs to help Students learn new, positive behaviors were minimal. Student strengths included in the IEPs are generally limited to those identified by the Students themselves, and often do not change at all from year to year. General education teachers were also frequently absent from IEP meetings. While written permission for these absences was obtained from Parents, the general education teachers failed to provide written reports, limiting the ability of the IEP Team to consider Students' behavioral needs as well as the effectiveness of interventions to address those needs.</p>

<p>4.</p>	<p><u>Review and Revision of IEPs (Systemic):</u></p> <ul style="list-style-type: none"> a. Not having the IEP Team review the Students' IEPs periodically, but at least once every 365 days, to determine whether the annual goals for the Students are being achieved; b. Not reviewing progress toward the Students' annual goals; c. Not revising the Students' IEPs to address the lack of expected progress toward the Students' annual goals; d. Not considering information provided by the Students' parents. <p>(Relevant Law and Regulations: 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 District did review Students' IEPs at least once every 365 days. The lack of required information in Students' IEPs and the vague nature of Meeting Minutes make it impossible to determine with any degree of accuracy specifically what was or was not reviewed during IEP meetings.</p>
<p>5.</p>	<p><u>General Evaluation and Re-evaluation Procedures (Systemic)</u></p> <ul style="list-style-type: none"> a. Not assessing the Students in all areas related to the suspected disability; b. Not evaluating the Students with sufficiently comprehensive evaluations to identify all of the Students' Special Education and related service needs; c. Not including a variety of assessment tools and strategies to gather relevant functional, developmental and academic information in determining whether the Student has a disability and that may assist in determining the content of the Student's IEP including assessments tailored to assess specific areas of educational 	<p><u>Substantiated:</u></p> <p>There are multiple occasions in which IEP Teams failed to assess Students in all areas related to the suspected disability during re-evaluations, including instances in which medical information from parents was ignored and at least one instance in which a psycho-educational evaluation specifically states that the Student "demonstrates the markers" for a specific disability, yet no evaluation for this disability was conducted. There are also occasions in which evaluations relied upon by the Evaluation Team were significantly outdated. Similarly, the District often failed to re-evaluate students with attendance issues to determine what the cause of these issues might be.</p>

	<p>need; and</p> <p>d. Requiring a medical statement with a health care provider providing a diagnosis of Intellectual Disability (ID) before considering and determining the Student eligible for the category of ID. (Individual)</p> <p>(Relevant Law and Regulations: OAR 581-015-2110; 34 CFR § 300.304; 34 CFR § 300.305; OAR 581-015-2155; 34 CFR § 300.8, 300.306)</p>	<p>ORS 581-015-2155(1)(c) requires that a medical or health assessment be provided. This assessment must include a statement indicating whether there are any sensory or physical factors that may be affecting the child's educational performance. It was thus inappropriate for District staff to either delay or refuse to consider ID as an eligibility category when a medical or health assessment meeting the requirements listed above has been provided.</p>
<p>6.</p>	<p><u>Evaluation and Re-evaluation Requirements (Individual)</u></p> <p>a. Not conducting a re-evaluation before terminating the Student's eligibility as a Student with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for Special Education services.</p> <p>(Relevant Law and Regulations: OAR 581-015-2105; 34 CFR § 300.301; 34 CFR § 300.303)</p>	<p><u>Not Substantiated:</u></p> <p>It was suggested the District simply declare the Student ineligible without a re-evaluation; even though the Student's eligibility would naturally expire in nine days at graduation. While this suggestion was inappropriate, the suggestion was never actually implemented, as the Parent chose to revoke consent for the provision of Special Education services.</p>
<p>7.</p>	<p><u>Manifestation Determination (Individual)</u></p> <p>a. Holding a Manifestation Determination without including relevant members of the IEP Team and without reviewing all relevant information included in the IEP;</p> <p>b. Changing the Student's placement without complying with the Manifestation Determination process;</p> <p>c. Regardless of whether the</p>	<p><u>Not Substantiated:</u></p> <p>Although the general education teacher was not part of the Manifestation Determination process, this is not specifically required under OAR 581-015-2420. There is no evidence that the Parent requested that the general education teacher attend, and the District determined that the general education teacher's presence was not necessary, even though this teacher had written the underlying discipline referrals and the</p>

	<p>behavior was or was not a manifestation of the Student's disability, not providing a functional behavioral assessment and behavior intervention services to address the behavior violation so it does not occur again</p> <p>(Relevant Law and Regulations: OAR 581-015-2415; 34 CFR § 300.504(a)(3); 34 CFR § 300.530; 300.531; 300.532; 300.533; OAR 581-015-2420; 34 CFR § 300.530 (e))</p>	<p>Student only attended general education classes. The Manifestation Determination process was followed. Issues regarding the lack of services provided to the Student to address problematic behaviors and the failure to implement the Student's Behavior Plan are not evidence that the Manifestation Determination process was not followed.</p>
<p>8.</p>	<p><u>Prior Written Notice</u></p> <p>a. Not providing a prior written notice regarding the Student in the native language of the Parent.</p> <p>(Relevant Law and Regulations: OAR 581-015-2310; 34 CFR § 300.503)</p>	<p><u>Substantiated:</u></p> <p>There were multiple examples of Special Education documents written in other languages in the files however, there were no Prior Written Notices written in other languages.</p>
<p>9.</p>	<p><u>Placement of the Child</u></p> <p>a. Changing the Students' placement without:</p> <ol style="list-style-type: none"> 1) Holding a meeting to determine placement; 2) Placing the child in the least restrictive environment; 3) Basing the placement on the Students' current IEPs; and 4) Not providing needed modifications in the age-appropriate regular classrooms and instead removing the Students from their general education classrooms. <p>(Relevant Law and Regulations:</p>	<p><u>Not Substantiated:</u></p> <p>In four files reviewed by the Complaint Investigator, the District shortened the Students' days to 2—3 hours and removed the Students to a much more restrictive environment. There is no evidence that the placement of any Student was changed without holding a meeting to determine placement; therefore, this portion of the allegation is not substantiated. The content of the IEPs and the failure to document the provision of SDI makes it impossible to determine what modifications were needed in order to keep Students in age-appropriate regular classrooms prior to removing Students from these classrooms.</p>

	OAR 581-015-2240; 34 CFR § 300.115; OAR 581-015-2250; 34 CFR § 300.116; 34 CFR § 300.327)	
--	---	--

Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA):

The Complainant raised a non-IDEA issue arising from Division 22 regulations.⁸ The allegation relates to the over-identification of Students eligible for Special Education who have decided to pursue modified diplomas.⁹ This allegation is not within the jurisdiction granted under OAR 581-015-2030. The Complainant may utilize the District’s formal complaint process to address this issue.

Requested Corrective Action:

The Complainant proposes that systemic changes within the District are required to correct the alleged deficiencies. Specifically, the Corrective Action requested includes specially designed instruction taught to the individuals’ annual goals, monitoring progress toward the Students’ annual goals and utilization of the data from the monitoring to generate successful strategies to assist the Students in achieving their annual goals or to create revised goals. In addition, the Complainant requests that the Students’ civil rights cease being violated. The Complainant has filed a claim for violation of Students’ civil rights with the Office of Civil Rights, U.S. Department of Education (Seattle office) and this request for Corrective Action will not be included within the current complaint procedure under OAR 581-015-2030.

Systemic Complaint:

This Complaint was filed as a systemic complaint on behalf of multiple students identified with disabilities who were served in the District during the 2016-2017 school year. The Complaint Investigator reviewed a total of thirty student files. Of these, twenty-one¹⁰ are the basis for the fact patterns presented below. The Complainant had suggested specific students whose files should be considered, and those were the files the District provided to the Investigator. Seventeen files were of high school students; one file was of a middle school student; and three files were of elementary students. Given the number of students involved, and the complexity of the allegations, the Findings of Fact will be presented by allegation, and will be followed by the Discussion of that allegation.

⁸ See, OAR 581-022-1134, et seq. “Standards for Public Elementary and Secondary Schools”

⁹ OAR 581-022-1134

¹⁰ Nine of the files described situations that were not pertinent to the Complaint.

General District Background Information:

The District served 1614 students during the 2016-2017 school year, and reported a Special Education population of 240, 15% of the District's general population. Several years ago, the District made the decision to change its service provision model. Currently, the District has self-contained classrooms for students who need instruction in "life skills" at the elementary, middle and high schools. Specially Designed Instruction in Reading, Math, written language, and behavior (including social skills) is provided to students across the District primarily by a "push-in" service delivery model. Instructional assistants are assigned to various general education classrooms and help the eligible students in these classrooms complete the assignments given by the general education teachers. The District uses a Response to Intervention system for Reading instruction at the elementary level. Occasionally, at the high school, students are pulled out of the general education setting for "academic support" in a Special Education classroom. When this occurs, the Student brings in the assignment from the general education classroom, and an instructional assistant helps the student complete the assignment.

Additionally, at the high school, two sections of freshman Language Arts are co-taught by a general education teacher and a Special Education teacher. There is also one period of General Science available to students for whom the regular Science curriculum is difficult. The District has a full-time general education teacher who manages and teaches classes for the Youth Transition Program at the high school. Special Education students may take these classes, if appropriate.

The District operated several alternative programs for students in the District during the 2016-2017 school year. One was an on-line alternative available to all students in the District for approximately half of the school day. Students could return to the general education setting for the other half of the school day. The second alternative program was an alternative high school on-line program which offered instruction using computer curriculums in a setting away from the high school. The third alternative program offered by the District was a home-tutoring program where students met a tutor off campus and worked with a 1:1 tutor for up to two hours per day.

During the 2016-2017 school year, the District employed a full-time School Psychologist whose duties consisted primarily of conducting evaluations or re-evaluations of students. The District also receives mental health services from a county agency; and other Special Education services from the area's Education Service District. The District is in the process of implementing a new student information data system that will increase the general education teachers' access to Special Education information about students.

III. FINDINGS OF FACT and IV. DISCUSSION:

1. When IEPs Must Be In Effect (Systemic):

The Complainant alleged that the District violated the IDEA by not providing Special Education and related services to Students with disabilities in accordance with each Student's IEP.

Facts:

- 1.1. In all, twenty-one files reviewed, IEPs were in place at the start of the school year, and were reviewed annually at the appropriate time.
- 1.2. Staff members interviewed, especially from the high school, told the Complaint Investigator that the general education teacher is often excused from the IEP Meeting.
- 1.3. On ten of the seventeen high school IEPs reviewed, the IEP Team wrote that the Students would receive Specially Designed Instruction (SDI) in goal areas in the general education setting. Most frequently the amount of SDI time designated was twenty minutes per week for Language Arts, twenty minutes per week for Math, and twenty minutes per week for Transition SDI.
- 1.4. However, no staff at the high school could provide any documentation of SDI being provided in the general education classrooms. Most generally, staff described the SDI as, "When a student with an IEP is having trouble with a classroom assignment, they can go to the Special Education teacher or the assistant for help with the assignment." In several Student interview reports that were part of evaluations conducted with the Students over the course of the school year, the Students commented that, "I really don't have any special education—they just help me with assignments."
- 1.5. At the elementary and middle school levels, the instructional assistants are assigned to specific classrooms, and students on IEPs are clustered in those classrooms. Again, according to staff interviews, most of the service the staff provided in the general education classrooms was help with the current classroom assignment.
- 1.6. In thirteen of the twenty-one files, there was a completed "Written Agreement Between the Parent and the District, Attendance at IEP meeting not Required" form attached to the IEP document. Most often, the Agreement form was filled out as part of the Draft IEP, and then signed by the Parent at the IEP Meeting.
- 1.7. Additionally the Complaint Investigator found at least twenty occasions where Parents signed written agreements, referenced in Fact 1.6, which had been executed in the two years before the 2016-2017 school year.

Discussion:

Under OAR 581-015-2220 (1) (b) and 34 CFR § 300.323 and 34 CFR § 300.324, a district meets its responsibilities to a student with disabilities when it has an IEP in place for the student at the beginning of a school year. Further, the district meets its responsibilities when it provides the “special education and related services” in accordance with the IEP.¹¹ This includes the supplementary aids and services, accommodations, modifications and supports to school staff.

SDI is defined as “adapting, as appropriate to the needs of an eligible child the content, methodology, or delivery of instruction, to meet the student’s unique needs and to ensure the student has access to the general education curriculum”. (34 CFR § 300.39) An individual helping a student in the general education classroom to complete an assignment given by the general education teacher for twenty minutes per week does not constitute SDI. In this case, there is no evidence to support that content, methodology or delivery of instruction had been specially designed to meet individual students’ needs, nor is there any documentation that SDI was actually provided to the Students.

The Department substantiates this allegation.

2. Content of IEP (Systemic)

The Complainant alleges that the District violated the IDEA by:

- a) Not appropriately identifying how progress on the Students’ annual goals will be measured (specifically, using general education grades to measure goals on an individual’s annual goals);
- b) Not collecting data on the Students’ progress toward their annual goals;
- c) Not reporting progress on the Students’ annual goals;
- d) For transition aged students, not using age-appropriate assessments to identify appropriate measurable post-secondary goals.

Facts:

2.1. In general, the District noted it would provide progress reports “at same frequency as high school reporting periods”; or “4 times per year with report cards”.¹² None of the twenty-one files reviewed specified on any IEP the specific months the District would send report cards with IEP goal progress reports. When asked how the District sends IEP goal progress reports to parents, the staff interviewed described variable processes, timelines and practices. Some of the Special Education teachers

¹¹ OAR 581-015-2220 (1) (b)

¹² The District operates on a quarterly schedule. Progress is reported to parents at conferences held at the end of the 1st and 3rd quarters. Written progress reports (report cards) are sent home at the end of the 2nd and 4th quarters. These 2nd and 4th quarter report cards are the only ones documented on the students’ transcripts at the high school. In the District special education manual, teachers are instructed to list “specific months” when report cards will be sent to parents.

reported they looked up Students' grades in the on-line grading system, and some said they talked to classroom teachers.

2.2. On the majority of IEPs reviewed, the District noted that progress on Students' goals will be measured by "curriculum based measures, teacher data reports and observations, teacher designed assessments, and work samples". In fifteen of the twenty-one files there were no reports on IEP goal progress. When there was an IEP goal progress report, it was generally reported in the format of percentage of assignments correct in Students' general education classes.

2.3. Of nineteen of the twenty-one files reviewed, the IEP Teams decided the Student had no need for Related Services. This was true even in cases where the Team documented in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) that the Student had a need that could be addressed with a Related Service. For example, Student D, a seventh grader, is identified as Other Health Impaired due to a Social Anxiety Disorder. Counseling or psychological services might have helped Student D learn to maintain focus when completing difficult assignments. No Related Services were included in the IEP.

2.4. For transition-age Students, the District uses two transition assessments. The first is the "student centered transition interview", and the second is the Career Information Survey, the completion of which is also a graduation requirement for all students in the District. No other individual assessments targeted for youth with disabilities are used.

Discussion:

Under OAR 581-015-2200 (1) and 34 CFR § 300.320, a student's IEP must contain measurable goals, must describe the student's current achievement and functioning in each IEP, and must report the student's progress on IEP goals to the parent at least as often as the District sends report cards. All areas of the student's needs must be addressed in the IEP, either through SDI (goals), related services or supplementary aids and services.

This allegation centered primarily on the IEP Content sections about goal progress reporting systems and the use of age-appropriate transition assessments.

A District meets its responsibility to students with disabilities when the District informs parents of the degree to which students are meeting the IEP goals on a regular basis. Generally, this reporting occurs when general education report cards are issued. In this case, although the District wrote that such progress reporting would occur in this manner, it was accomplished in a very scattered pattern. With one exception,¹³ staff was unable to identify a consistent reporting process. Seventy-one percent of the files reviewed contained no IEP goal progress reports.

¹³ Life Skills classroom teachers could describe data collection and reporting methods.

To create transition plans for students at the age of transition, the District is responsible for gathering data about the students in a variety of ways, including using an age-appropriate transition assessment. In the same way that SDI should be unique to the student, so should transition assessments. Here the District used no individualized assessments targeted for youth with disabilities. The “student centered transition interview” focuses on how the student perceives his or her strengths and weaknesses, and asks the student what career the student is interested.

In summary, the District neither established nor implemented a consistent system for providing parents with progress reports on IEP goals. The District also failed to use individual assessments targeted for youth with disabilities, which negatively impacted the District’s ability to create individualized transition plans for these students.

The Department substantiates this allegation.

3. Team Considerations and Special Factors (Systemic):

The Complainant alleges that the District violated the IDEA by:

- a) Not having the IEP Team consider the academic, developmental, functional needs of the Student;
- b) When a Student whose behavior impedes the Student’s learning, or that of others, not having the IEP Team consider positive behavioral interventions and supports and other strategies to address the behavior as a special factor.

Facts:

3.1. In the twenty-one files reviewed in this investigation, ten Students were identified as evidencing behavior that impedes their learning or that of others. Among those, the IEP Teams specified that the Students would be supported by Behavior Plans in two instances, by accommodations in seven instances, by Related Services in no instances, and by SDI in nine instances. Three of these Students were scheduled to receive SDI in a Special Education setting, and the others were to receive SDI in the general education classroom. The amount of SDI to be provided ranged from fifteen minutes per week to forty minutes daily.

3.2. For a Student in the District who experiences severe anxiety, the IEP Team acknowledged that the Student had behavioral needs. The IEP Team wrote a goal for the practice of relaxation and calming techniques, but did not specify in the goal exactly what SDI would be used to teach the Student these strategies. In the PLAAFP, the IEP Team described the Student as “significantly struggling with characteristics of anxiety and exhibiting significant difficulty with depression, withdrawal, somatization and adaptability. However, the IEP Team included nothing in the IEP that could help the Student learn skills to decrease the need to withdraw and to increase the ability to adapt. There is no suggestion of a Behavior Plan in the IEP, although the IEP Team noted the Student’s need for a calming accommodation and the use of a red/green card to indicate readiness to communicate.

Discussion:

Under OAR 581-015-2205, an IEP team must consider whether seven different factors contribute to the student's need for SDI, related services and accommodations to acquire a Free Appropriate Public Education. Specifically, at issue here is whether the District demonstrated a pattern of considering the use of positive behavioral interventions, supports and strategies as a part of the larger picture for Students with behavioral issues. After the IEP team considers the student's behavioral profile, and if the IEP team determines the student exhibits disruptive behavior, the IEP team must include interventions and support that address the difficult behavior. Most generally, when the team finds the student has behavior that impedes his or her learning and that of others, the IEP team adds a goal and specially designed instruction, behavioral accommodations such as a behavior intervention plan and perhaps a related service such as counseling.

Here, the District clearly identified Students whose behavior was impeding their own and others' learning. In all cases, the IEP Teams wrote goals and included SDI in the IEPs. The difficulty is that the goals, in most cases, did not clearly outline what SDI would be provided so that the Student could learn the described behavior. In addition, the amount of SDI provided, in comparison with the Students' needs as described in the PLAAFP and evaluation materials, is minimal. There is also no documentation that SDI was provided in the general education classroom. Although the District clearly considered the issue of behavior for the Students, the SDI and supports provided to help Students learn new, positive behaviors was minimal.

The Department substantiates this allegation.

4. Review and Revision of IEPs (Systemic):

The Complainant alleges that the District violated the IDEA by:

- a) Not having the IEP Team review the Students' IEPs periodically, but at least once every 365 days, to determine whether the annual goals for the Students are being achieved;
- b) Not reviewing progress toward the Students' annual goals;
- c) Not revising the Students' IEPs to address the lack of expected progress toward the Students' annual goals; and,
- d) Not considering information provided by the Students' Parents.

Facts:

- 4.1. No IEPs were written outside the 365 day timeline.
- 4.2. The lack of IEP goal progress reports is discussed in Allegation #2.
- 4.3. In general, IEP Team Meeting Minutes and IEP PLAAFP statements reflect discussion on the previous IEP goals. The reported statement is most often, "The

Student met all goals.” Very little data was reported about the achievement of the IEP goals. The lack of data included in Students’ IEPs as well as the vague nature of the Meeting Notes makes it impossible to determine what information was relied upon when reviewing these IEPs.

Discussion:

Under OAR 581-015-2225 and 34 CFR 300.324 (b), a district meets its responsibility to a student with a disability when it reviews and revises the student’s IEP on an annual basis to determine whether the student’s goals are being achieved. A district is also responsible to review and revise the student’s IEP to address any lack of expected progress toward the annual IEP goals and in the general education curriculum; and to consider any information proved by the parents.

In this case, IEP Teams did meet at least once every 365 days. The lack of IEP goal progress reporting, the lack of data collection on SDI provision, and a reliance on classroom grades as data produced minimal data for IEP Teams to use in reviewing and revising IEPs. The Meeting Notes also do not provide enough information to determine what issues were actually discussed with any degree of accuracy.

The Department does not substantiate this allegation.

5. General Evaluation and Re-evaluation Procedures (Systemic):

The Complainant alleges that the District violated the IDEA by:

- a) Not assessing the Students in all areas related to the suspected disability;
- b) Not evaluating the Students with sufficiently comprehensive evaluations to identify all the Students’ Special Education and related service needs;
- c) Not including a variety of assessment tools and strategies to gather relevant functional, developmental and academic information in determining whether the Student has a disability and that may assist in determining the content of the Student’s IEP including assessments tailored to assess specific areas of educational need; and,
- d) Not requiring a medical statement with a health care provider providing a diagnosis of Intellectual Disability (ID) before considering and determining the Student eligible for the category of ID.

OAR 581-015-2110; 34 CFR § 300.304; 34 CFR § 300.305; OAR 581-015-2155; 34 CFR § 300.8, 300.306)

Facts:

5.1. After a Parent presented a new diagnosis documenting Post Traumatic Stress Disorder (PTSD), the District refused to conduct an evaluation to consider whether the Student eligible as Specific Learning Disability SLD, might also, or instead, be eligible

under Emotional Disturbance (ED) or Other Health Impairment (OHI). This was after the Student demonstrated anxiety-based behaviors in the school setting.

5.2. In another case, there are two medical statements attached to the evaluation reports and eligibility statements. In the first medical statement, dated February 13, 2017, the doctor reports the Student has other conditions which affect learning and reports them as being "anxiety and depression, morbid obesity." On the other medical statement, the doctor wrote, "I have reviewed the school psychological testing and medical record. Based on this review I believe the child has an acquired brain injury but I have not personally examined the patient." Finally, in a psychoeducational evaluation report dated April 10, 2014, the school psychologist noted that the "current mother" had reported the Traumatic Brain Injury (TBI) because of a car accident when the Student was young, but that there are no medical records to support this diagnosis.

5.3. The District evaluated another Student during the 2016-2017 school year and found the Student eligible as a student with an ED. In the psychoeducational evaluation dated April 19, 2017, the School Psychologist noted, "the Student struggles significantly with negative behaviors at both home and school that include depression, withdrawal, attention, poor relations with adults and peers, and overall lack of compliance and motivation. Overall, the Student demonstrates the markers for the Special Education identifications of Specific Learning Disability (SLD) and Emotional Disturbance." The medical statement, dated March 21, 2017, and attached to the evaluation and eligibility documents states, "Unknown, no formal diagnosis in file." The Evaluation Team did not consider SLD as a possible area of disability.

5.4. The PLAAFP section of one Student's IEP, eligible under SLD, states that the Student failed all first semester classes due to "extremely poor attendance," which started in middle school. The Student did not meet any of the IEP goals due to poor attendance, and was in fact "10 day dropped" for non-attendance in January, 2017. However, there is no evidence that the IEP Team ever met to discuss these attendance concerns or ever re-evaluated the Student to determine the cause of the Student's failure to attend school.

5.5. Another Student in the District was evaluated for Autism Spectrum Disorder (ASD) by the OHSU clinic on March 8, 2016. The OHSU Team concluded that results of the evaluation were consistent with a diagnosis of ASD, with a moderate level of Autism spectrum-related symptoms. The Evaluation Team suggested further interviewing and consideration of all factors. The Student's eligibility at that time was Other Health Impaired (OHI), due to Attention Deficit Disorder, established May 5, 2015. When the 2016-2017 school year started, the Evaluation Team met to review the report from OHSU.

The School Psychologist noted "inappropriate types of behavior and feelings under normal circumstances, often escalating to an extreme level...where the Student would make self-harm or wishing harm to others statements". On December 13, 2016, the

Eligibility Team met and considered the Student's eligibility for Special Education as a student with a Communication Disorder. The Eligibility Team found the Student was not eligible under this category but did not consider any other categories other than OHI.

5.6. One District staff member insisted that the District needed to obtain a diagnosis of Intellectual Disability from a physician before the District could identify a Student as such. When some other Evaluation Team Members disagreed and noted only a medical or health assessment indicating whether there were any sensory or physical factors affecting the Student's educational performance was required, the District staff member suggested the District use other areas of disability, and they did so.

Discussion:

When a District suggests an evaluation for potential disabling condition; it meets its responsibility to the student by carefully planning the evaluation, obtaining informed consent from the parent, and using a variety of tools and strategies to gather data about the student.¹⁴ These assessment tools must be varied and extensive enough to allow the IEP Team to consider all factors which might be contributing to the disabling condition. For some specific areas of disability,¹⁵ the District must obtain a medical statement from the student's physician documenting the presence or absence of physical factors which may affect educational performance. A team must then consider all this data when deciding whether the student has an educational disability.

Here, the District exhibits evaluation practices in some situations that do not meet the criteria as outlined above. The only academic data considered in any of the evaluations reviewed in these files was that gathered in the psychoeducational evaluation, due to the lack of data gathered about the provision of SDI. Even when Parents presented new information about Students, the District declined the opportunity to consider the information and a new or additional area of eligibility. The District also used physician statements that were out of date, not based on concrete medical evidence or found no contributing physical factors.

Additionally, IDEA does not require the physician to make a specific diagnosis of Intellectual Disability. The physician is asked to answer some specific question about vision, hearing, voice and speech/language issues, about the length of time the impairment is expected to last, and whether the child has any other issues that affect educational performance. It was thus inappropriate for District staff to either delay or refuse to consider ID as an eligibility category without such a diagnosis from a physician.

Assessment is a cornerstone of IDEA. Services for students with disabilities are not dependent on eligibility in any specific area. However, solid assessment provides valuable information for the IEP Team to use in designing an IEP reasonably calculated to confer benefit to the student and allow him or her to progress in the general

¹⁴ OAR 581-015-2110

¹⁵ Specific Learning Disabilities is the only disabling condition for which a medical statement is not required.

education curriculum. Here, the District did not attend to all elements of careful assessment.

The Department substantiates this allegation.

6. Evaluation and Re-evaluation Requirements (Individual):

The Complainant alleges that the District violated the IDEA by:

- a) Not conducting a re-evaluation before terminating the Student's eligibility as a Student with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for Special Education services.

Facts:

6.1. Student G was made eligible for Special Education as a student with a Vision Impairment on June 1, 2016. The Student had been recently diagnosed with a progressive eye disease.

6.2. In the 2016-2017 school year, as a senior, the Student successfully met all IEP goals, and the District provided services, accommodations, and support to the Student. When the IEP Team met at the annual meeting on June 1, 2017, the Special Education Director suggested that the IEP Team decide to find the Student ineligible for Special Education, solely because the Student was scheduled to graduate with a regular diploma in nine days. In effect, this would have amounted to a discontinuation of the provision of FAPE for the Student. The Director proposed the District do this without conducting a re-evaluation. The Parent objected to this, and asked how the District would continue to provide the Student with the services, accommodations and support on the IEP. IEP Team members suggested that the District extend the IEP for the remaining five school days or, in the alternative, that the IEP Team write new IEP goals. When the Special Education Director continued to advocate for finding the Student ineligible, the Parent revoked permission for Special Education and asked to schedule a Section 504 meeting.

Discussion:

Under OAR 581-015-2105 (1) (2) (3), 34 CFR 300.301, and 34 CFR 300.303, a District may not terminate a student's eligibility for Special Education without a re-evaluation unless the Student is graduating from high school with a regular diploma or is exceeding the age of eligibility for FAPE.

Here the Student was within one school week of graduation with a regular diploma when the Team met for the annual IEP review. The District Special Education Director suggested the District simply declare the Student ineligible without a re-evaluation, even though the Student's eligibility would naturally expire in nine days at graduation. Such an action, if taken, would have confused the historical record about the Student's

disability and thus had potential to cause problems for the Student being able to advocate successfully for self at college. However, the Parent chose to revoke consent for the provision of Special Education services and the IEP Team did not terminate the Student's eligibility for Special Education.

The Department does not substantiate this allegation.

7. Manifestation Determination (Individual):

The Complainant alleges that the District violated the IDEA by:

- a) Holding a Manifestation Determination without including relevant members of the IEP Team and without reviewing all relevant information included in the IEP;
- b) Changing the Student's placement without complying with the Manifestation Determination process; and,
- c) Not providing a functional behavioral assessment and behavior intervention services to address the behavior violation so it does not occur again, regardless of whether the behavior was or was not a manifestation of the Student's disability.

OAR 581-015-2415; 34 CFR § 300.504(a)(3); 34 CFR §300.530; 300.531; 300.532; 300.533; OAR 581-015-2420; 34 CFR § 300.530 (e))

Facts:

7.1. When the 2016-2017 school year started, Student M's IEP specified full-time regular education with one period of pull-out for organization and behavior instruction. Within the first two weeks of school, the Student accumulated five discipline referrals. On September 21, 2016, the IEP Team revised the Student's IEP and changed the placement to a "partial day regular education with special education service provided in a regular education online setting". The Prior Written Notice from September 21, 2016 states that the purpose of this placement change was "to add consistency to (Student's) day, and to reduce (Student's) exposure to situations in which (Student) struggles."

The Manifestation Determination Team convened on October 20, 2016, to consider whether Student M's behavior was a manifestation of the Student's disability. The Case Manager, the Assistant Principal, the Parent, and Student M attended the meeting. The general education teacher was excused from the meeting. The Manifestation Determination Team decided that Student M's behaviors (inappropriate language and disruption) were manifestations of the Student's disability. The Manifestation Determination Team wrote a Behavior Plan for the Student that went into effect on October 23, 2016.

On November 10, 2016, the District convened the Manifestation Determination Team again after the Student was suspended for two more days. The same individuals plus

the High School Principal and general education teacher attended the meeting. This time, the Team decided that Student M's behavior (phone use) was not a manifestation of the disability. The Manifestation Determination Team again revised the Behavior Plan. This Behavior Plan specifically instructed staff to "avoid and minimize conflicts and power struggles with (Student)." However, subsequent disciplinary referrals are related to incidents in which staff members and the Student engaged in power struggles.

The District convened a Manifestation Determination Team one more time for Student M during the 2016-2017 school year, on February 28, 2017. The Manifestation Determination Team again decided that Student M's behaviors (defiance, disruption, phone issues) were not a manifestation of the disability. This time the Student's Grandmother, Special Education Teacher, Assistant Principal and Student M's Probation Officer attended the meeting. The general education teacher was excused. The Manifestation Determination Team discussed the strategy of "taking five" as a method to help Student M better manage behavior at school.

On March 9, 2017, Student M's IEP Team met to review behavior and to determine placement. The Parent and Student M did not attend, despite being provided a Meeting Notice. At this meeting, the IEP Team decided the Student would attend school for two class periods only, one in the Youth Transitions Program and one in a support class with the Case Manager. There was no discussion of the Behavior Plan.

The IEP Team convened on April 11, 2017 for the annual review of Student M's IEP. The IEP Team reviewed a draft of a new Behavior Plan, discussed the fact that Student M has only earned six credits in four years of high school, and noted that Student M's rate of completion to date in the two classes was between 1%—23%. On April 16, 2017, the District asked for and received consent to re-evaluate Student M, "to better determine (Student's) Special Education identification".

Student M was excused by a physician from attending school May 10, 2017 to May 21, 2017 due to hospitalization for a broken leg. The IEP Team met on May 18, 2017 and changed Student M's placement to "two class periods as tolerated for the remainder of the 2016-2017 school year."

Discussion:

Under OAR 581-015-2415 and 2420, a District must hold a Manifestation Determination meeting within 10 school days of any decision to change a student's placement because of a violation of the District code of conduct. The purpose of this meeting is to determine if the District implemented the student's IEP or if the student's conduct had a direct and substantial relationship to the student's disability. If either of these is true, the district must review and revise the IEP, conduct a Functional Behavior Assessment (FBA), and implement or revise a behavior plan. To answer these questions, the district must invite relevant members of the IEP team, and must review all relevant information in the student's file. IDEA defines relevant members of the team to be those individuals determined as "relevant" by the district and parent.

Within the first month of school, the District shortened the Student's school day to three periods, but did not add a Behavior Plan or revise any other provisions in the IEP. A month later, the Manifestation Determination Team met, found the behavior to be related to the Student's disability, and wrote a Behavior Plan. Over the remainder of the year, the District refined the Behavior Plan, limited the Student's attendance to two periods per day, and found twice that the Student's disruptive behavior was not related to the Student's disability. There is little evidence that the Behavior Plans were implemented or, if they were, with what degree of success.

Despite the Student's behavioral struggles, there is no evidence that the Manifestation Determination process was not complied with. The District determined that the general education teacher's presence was not required at all of the Manifestation Determination meetings. There is no evidence that relevant IEP information was not reviewed. The Student's Behavior Plan was revised at numerous times during the school year. To the degree that the Behavior Plan was not followed, that is an IEP Implementation issue rather than a Manifestation Determination issue. Likewise, the Student's IEP might have been lacking necessary components to address these behaviors, but that is an IEP Content issue rather than a Manifestation Determination issue.

The Department does not substantiate this allegation.

8. Prior Written Notice (Systemic):

The Complainant alleges that the District violated the IDEA by:

- a) Not providing a prior written notice regarding the Student in the native language of the Parent.

OAR 581-015-2310; 34 CFR § 300.503

Under OAR 581-015-2310 and 34 CFR 300.503, a District is obligated to provide parents with Prior Written Notice when the District either proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education. This notice must be written in language the public can understand and must be in the parents' native language.

Facts:

8.1. The District has two full time staff who are bilingual in Spanish. One is a Speech/Language Therapist, and the other is the general education teacher for students for whom English is a second language. Both individuals attend Special Education meetings as interpreters for families for whom Spanish is the native language. The District has access to other language interpreters if needed.

8.2. The District reported that it has access to and uses all appropriate Special Education forms printed in Spanish and other languages for families who speak these

languages. The Interpreters in the District are available to translate the needed language with which to complete the forms for each individual student.

8.3. During a review of the files, the Department's Complaint Investigator found multiple examples of Special Education documents in Spanish. and, in addition, all staff interviewed confirmed that interpreters were available to attend and did attend Special Education meetings. However, there were no examples of Prior Written Notices provided in Spanish in Students' files.

Discussion:

Although there were examples of Special Education documents written in Spanish in the files, and all staff interviewed acknowledged the attendance of interpreters at Special Education meetings regularly, there were no Prior Written Notices written in Spanish.

The Department substantiates this allegation.

9. Placement of the Student (Systemic):

The Complainant alleges that the District violated the IDEA by:

- a) Changing the Students' placements without:
 - 1) Holding a meeting to determine placement;
 - 2) Placing the child in the least restrictive environment;
 - 3) Basing the placement on the Students' current IEPs; and
 - 4) Not providing needed modifications in the age-appropriate regular classrooms and instead removing the Students from their general education classrooms.

OAR 581-015-2240; 34 CFR § 300.115; OAR 581-015-2250; 34 CFR § 300.116; 34 CFR § 300.327

Facts:

9.1. The Students described in Facts 5.4 and 7.1 were both removed from the general education setting described in their IEPs for "behavioral disruptions." In both cases, there is no evidence that the District considered using positive behavioral supports, increased amounts of SDI provided in a different setting than the general education classroom, or other strategies to allow the Students to remain in the least restrictive environment. Not only were both Students moved to a much more restrictive environment (home instruction and an alternative school), but both Students' days were substantially shortened.

9.2. In two other cases in the files reviewed, Students' days were similarly shortened and the educational environment restricted. When the IEP Teams discussed placement, the only other option considered was full-time regular education with Special Education consultation.

Discussion:

Under OAR 581-015-2240, a district must ensure that students with disabilities are educated with normally developing peers to the maximum extent appropriate. The district must also ensure that students with disabilities are only removed from this least restrictive environment when the use of supplementary aids and services are not enough to provide a positive and productive learning atmosphere. In four cases reviewed in this Complaint, the District shortened the Students' days to 2—3 hours and removed the Students to a much more restrictive environment. Placement meetings were held, and there is no evidence that placements were not based upon the Students' IEPs. There is insufficient evidence for the Department to determine whether the use of supplemental aids and services or the provision of SDI in a different environment would have enabled these Students to be placed in a less restrictive environment.

The Department does not substantiate this allegation

CORRECTIVE ACTION¹⁶

In the Matter of Brookings-Harbor SD 17C
Case No. 17-054-014

No.	Action Required	Submissions¹⁷	Due Date
1.	The District will hire a part-time Special Education Consultant, with school district experience, to work with the Special Education Director to review Special Education procedures and processes across the District for a 5-month timeframe. The Consultant will work with the Special Education Director to provide training to District staff to share updated procedures.	Submit potential Consultant name to ODE for review and approval prior to hiring. Hire part-time Consultant for 5 months. The District, in conjunction with the Consultant will provide monthly updates on review and training work, and provide a summary at the end of the 5-month consultation period.	September 8, 2017 October 1, 2017 Ongoing - October 1, 2017 through February 28, 2018

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: raeannray@state.or.us; fax number (503) 378-5156.

	<p>One specific training to occur will be 'Writing High Quality IEPs' in conjunction with the County Contact for Brookings-Harbor School District.</p>	<p>Schedule and hold professional development training with County Contact on 'Writing High Quality IEPs' for all Special Education staff, including related service personnel. Provide documentation of attendees (sign-in sheet) at conclusion of training.</p>	<p>November 1, 2017</p>
--	--	---	--------------------------------

Dated: this 10th day of August, 2017



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

Mailing Date: August 10, 2017