

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
School District 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-018

I. BACKGROUND

On September 5, 2017, the Oregon Department of Education (Department) received a Letter of Complaint from the Parent (Parent) of a student (Student) residing in the Portland Public 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 September 5, 2017 and provided the District a copy of the Complaint on September 5, 2017.

On September 11, 2017, 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 September 25, 2017. The District completed its *Response* which was received by the Complaint Investigator on September 20, 2017. The District sent its *Response* to the Parent's Attorney as well. The District's *Response* included a narrative response, partial exhibit listing, and the following documents:

1. Team Meeting Request/Notice of Team Meeting dated May 16, 2016
2. Prior Written Notice dated May 17, 2016
3. IEP dated May 17, 2016
4. Discipline records dated September 9, 2017 through September 27, 2017
5. Notice of Team Meeting dated September 27, 2016
6. IEP Meeting Minutes dated September 27, 2016
7. Prior Written Notice about Evaluation/Consent for Evaluation dated September 27, 2016
8. Notice of Team Meeting dated October 11, 2016
9. Reminder regarding Notice of October Team Meeting dated October 17, 2016
10. IEP Team Meeting Minutes dated October 18, 2016
11. Notice of Team Meeting dated October 25, 2016
12. Prior Written Notice/Notice of Triennial dated October 28, 2016
13. IEP Meeting Minutes dated October 28, 2016
14. Prior Written Notice dated December 13, 2016
15. Emails between Parent and Student's instructors/staff dated December 16, 2016 through August 28, 2017
16. Functional Assessment: Interview: Parent/Guardian December 16, 2016
17. Emails between District counsel and Parent counsel dated January 4, 2017 through August 9, 2017
18. Inter-District scheduling emails beginning January 10, 2017 through August 10, 2017
19. Prior Written Notice/Notice of Eligibility dated January 10, 2017
20. IEP Team Meeting Minutes dated January 10, 2017
21. Notice of Team Meeting dated January 20, 2017
22. Meeting Request/Notice of Team Meeting dated January 10, 2017
23. Worksheet for Function-based Behavior Support Planning dated January 10, 2017
24. Prior Written Notice dated February 8, 2017
25. IEP dated February 8, 2017, marked "Draft"
26. IEP dated February 8, 2017
27. Prior Written Notice dated March 20, 2017
28. Memorandum from Parent's Counsel dated April 3, 2017

29. Final Order in ODE Complaint Investigation dated June 16, 2017
30. IEP Progress Period Detail dated August 27, 2017
31. "School District No. 1, Multnomah County Oregon and Portland Association of Teachers 2013-2016" (commonly referred to as the "PAT contract")

The Complaint Investigator determined that in person interviews were required. On October 9, 2017 and October 10, 2017, the Complaint Investigator interviewed District personnel, some via telephone and some on-site.

The Complaint Investigator also interviewed the Parent and the administrative support personnel employed by the Parent's Attorney on October 2, 2017. The Parent submitted the following documents to the Complaint Investigator:

1. Function-based Behavior Support Planning dated January 10, 2017
2. Draft IEP dated February 8, 2017, annotated in handwriting by Parent's Counsel;
3. Death Certificate dated May 31, 2017
4. Statement of Funeral Goods and Services dated June 7, 2017
5. Recreational Vehicle Camping Reservation receipt dated August 24, 2017 through August 28, 2017
6. Emails between District and Parent's Counsel dated September 8, 2017 through September 21, 2017;
7. Responsive memorandum from Parent's Counsel dated October 2, 2017 addressed to the Complaint Investigator

The 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.¹ This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from September 6, 2016 through September 5, 2017.

	Allegations	Conclusions
1.	<p><u>Parent Participation.</u></p> <p>The Parents allege that the District violated the IDEA because the Parents were not included in any IEP meetings prior to the District's implementation of the Student's</p>	<p>Not substantiated.</p> <p>The Parent and the Parent's Attorney participated in the Student's eligibility meeting on January 10, 2017 and the IEP Meeting on February 8, 2017. The District</p>

¹ OAR 581-015-2030 (12)

	<p>February 8, 2017 IEP.</p> <p>(OAR 581-015-2190(1), 34 CFR 300.501, OAR 581-015-2195(1)(b), 34 CFR 300.322, OAR 581-015-2210(a)(1), 34 CFR 300.324)</p>	<p>presented the Parent with a draft IEP on February 8, 2017 and subsequently incorporated many of the changes to that IEP requested in an April 3, 2017 Memorandum from the Parent's Attorney. On April 28, 2017, the District invited the Parent's Attorney to a meeting to discuss changes that the District declined to make, but the Parent's Attorney declined this invitation.</p>
<p>2.</p>	<p><u>FAPE</u></p> <p>(a) The Parents allege that the District violated the IDEA because it failed to provide a free, appropriate public education to the Student, i.e. the District finalized and implemented the February 8, 2017 IEP without obtaining parental input and without proper notice to the Parents that the February 8, 2017 IEP had been finalized and implemented.</p> <p>(b) The Parents also allege that the District denied the Student a free appropriate public education by failing to convene an IEP Team Meeting prior to the start of the 2017-2018 school year as ordered by the Department in Complaint Investigation 17-054-011.</p> <p>(OAR 581-15-2040, 34 CFR 300.101)</p>	<p>Not substantiated.</p> <p>The District did provide a Prior Written Notice (PWN) regarding the February 8, 2017 IEP. The PWN stated that the Student required the services included on this IEP. The District also extended an invitation to the Parent's Attorney for meetings regarding non-consensus items, though these meetings were declined by the attorney. The Parent and the Parent's Attorney fully participated in the IEP process.</p> <p>The Student's IEP needed to be amended to comply with the Department's Order in 17-054-011. On July 10, 2017, the District and the Parent's Attorney agreed to conduct an IEP Meeting on August 25, 2017 but later cancelled due to the Parent's unavailability. The District subsequently offered to hold an IEP meeting via phone or Skype on August 29, 2017 due to the Parent's continued unavailability. Each of these dates was prior to the beginning of the 2017-2018 school year. There is no evidence that the inability of the IEP Team, including the Parent, to meet prior to the beginning of the 2017-2018 school year resulted in a denial of FAPE.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<p>1. Require the District to convene an IEP meeting within 10 days of the order issued for this Request for Complaint Investigation, to review and revise the IEP as necessary;</p> <p>2. Require the District to provide compensatory education in all areas listed on Student's IEP from February 8, 2017, through the future date of the IEP meeting to be held as a results of</p>

this Request for Complaint Investigation; and

3. Require District staff who work at, or are associate with, Woodstock Elementary School, including Brian Baker and Jeff Brown, to participate in training regarding proper implementation of IEPs and procedural requirements under the IDEA.

III. FINDINGS OF FACT

1. The Student is six years old and currently attends first grade in the District.
2. The Student was initially found eligible for Special Education services under the category of Autism Spectrum Disorder. The Student had an IEP created prior to beginning kindergarten on May 17, 2016. Among other things, this IEP provided for "Adult Support" and "Adult support for transitions, work tasks, group activities, specials, recess, safety, new activities".
3. The Parent executed a Consent for Re-evaluation for the Student on September 26, 2016 because the Student was displaying high anxiety related behaviors. Based upon these evaluation results, the Student was found eligible for services under the categories of Autism Spectrum Disorder, Communication Disorder, and Other Health Impairment on January 10, 2017.
4. An IEP meeting was held on February 8, 2017. The Parent and the Parent's Attorney were in attendance. During that meeting the IEP Team agreed to take the following actions:
 - a) Look into creating a more detailed description of where the adult support was when the unexpected behavior occurs.
 - b) A prior written notice will be sent to indicate that the school team will not be able to accommodate a tracking sheet for adult support for accountability purposes.
 - c) School team will have a small training on what a quality incident report contains.
 - d) Staff should be made aware that chase games are a trigger and cue prior to excepted behavior.
 - e) Re-teaching/de-brief will be added to the BSP to be implemented when behaviors of concern occur.
 - f) The changes from the BSP that were discussed at the January 10, 2017 meeting will be added to the accommodations on the IEP.
 - g) The Occupational Therapist will be made aware of proprioceptive needs and the team will look at how to incorporate proprioceptive need and perspective-taking.
 - h) The Parent will work on getting the Student's medications worked out.
 - i) The IEP will be updated in the social language goals and self-regulation goals to the present level; criteria will be added to first social language goal/objections; a baseline will be added to 2nd social language goal present level; a BSP alternative behavior will be added to the goals, and working for the IEP long term goal and wording for the baseline will be worked on by the team.
 - j) The goal wording will include expected behaviors and will specifically reference non-Mandarin classes; baseline data will be taken and added to the IEP in English class; the IEP will be updated to include adult support.
 - k) Safety goals will be updated to present level and the criteria (including the generalization piece) will be written into the long-term goal.
 - l) A baseline will be added to the articulation goal.
 - m) Staff will make an effort to refrain from removing the Student from Mandarin but this cannot

- be guaranteed.
- n) Self-regulation will be changed to "Social Emotional" for 15 minutes per week and added to the Goal/SDI area; "Social language" is changed to "communication" for 180 per month; and "Safety Goal" will be changed to "Classroom Skills" for 45 minutes per week;
 - o) "Line of sight" is removed from the accommodations.
 - p) The team will gather data for adult support in Mandarin class.
 - q) Weekly updates will follow a template to be completed by the Special Education Teacher; they can be electronic.
 - r) The Parent and her Attorney will receive the IEP, BSP, Meeting Minutes and Prior Written Notice.
5. On February 8, 2017, a PWN was sent to the Parent explaining that "the IEP team has determined that [the Student] requires the services listed on the attached IEP." The options that were rejected, according to the PWN were "continuing to educate [the Student] without the provision of Special Education services . . . because [the Student's] needs cannot be addressed sufficiently without the services indicated on the IEP. The relevant factor leading to this action was that "all service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team".
 6. On March 17, 2017, the District remitted a draft of the Student's February 8, 2017 IEP to the Parent's Attorney. Emails between the Parent's Attorney and the District's Attorney indicate that this IEP had not yet been finalized.
 7. On March 20, 2017, the District provided to the Parent a PWN notice advising the Parent that they would not be implementing an "Accountability System" for the Student.
 8. On April 3, 2017, the Parent's Attorney sent a Memorandum to the District requesting 24 changes to the February 8, 2017 draft IEP. The District amended the Student's February 8, 2017 IEP, making all but 3 of the requested changes.
 9. On April 18, 2017, the Parent's Attorney filed a Complaint with the Department alleging the District, among other things, (1) failed to properly implement the Student's IEP including failing to provide adult support (2) did not provide support at all times during the day and (3) failed to properly implement the Student's BSP. The Parent's Attorney attached a copy of the Student's May 17, 2016 IEP as an Exhibit to that Complaint.
 10. On April 27, 2017, the District contacted the Parent's Attorney to schedule the Student's annual IEP meeting, stating the Student's IEP meeting was due on May 16, 2017. The Parent's Attorney responded to that email stating she believed the February 8, 2017 Meeting had been the Student's IEP Meeting and questioned the purpose of the meeting.
 11. On April 28, 2017, the District contacted the Parent's Attorney stating that the IEP Team needed to "meet further to finalize the IEP goals emerging from the discussions back and forth . . . Do the 5/22, 23, 24 dates and times still work for you and [Parent]? If so, I'll ask [staff member] to confirm with our team to set the meeting."
 12. On May 1, 2017, the Parent's Attorney contacted the District questioning why another IEP meeting was necessary, stating, "What discussions have emerged that lead to us needing another meeting to finalize the goals? The only thing I'm aware of are the memos I have sent you, but the memos do not request the district make additional changes to the IEP . . . These items were already agreed to . . . If the district disagrees with the items we requested to be corrected in my most recent memo, then please send a Prior Written Notice. I don't believe

we need another meeting to discuss these disagreements, if that is what the meeting would be about."

13. On May 31, 2017, in response to a query arising out of the investigation of Complaint 17-054-011, the District stated that the February 8, 2017 IEP was in draft form upon the opening of the investigation of Complaint 17-054-011 (i.e. April 18, 2017), but that the February 8, 2017 IEP that had been furnished to the Department during the investigation of Complaint 17-054-011 is "the final version that is being implemented". The Complaint Investigator received the District's evidence in Complaint 17-054-011 on May 12, 2017.
14. On June 16, 2017, the Final Order in Complaint Investigation 17-054-011 was issued. The Department substantiated the following allegations:
 - a) Regarding IEP content, the District failed to clearly delineate when services for the Student would begin;
 - b) Regarding implementation of the Student's IEP, the District did not properly implement the Student's January 10, 2017 BSP and did not provide "line of sight" supervision when the Student was outside of the classroom.
15. The Department did not substantiate the allegation that the District failed to provide FAPE to the Student.
16. The Department ordered the following Corrective Action: "If a new IEP has not been developed for the 2017-2018 school year, the District will reconvene the IEP Team, including the Parent, prior to the beginning of the 2017-2018 school year and revise the IEP as necessary, including review and revision of accommodations based on student needs."
17. On June 28, 2017, the District contacted the Parent's Attorney regarding the scheduling of an IEP meeting in light of the Department's Order in Complaint 17-054-011. The District also stated that the IEP Team would discuss the changes in the annual goals that the Parent's Attorney had requested but were not incorporated into the final IEP.
18. On July 5, 2017, the District contacted the Parent's Attorney and copied the Parent on an email proposing the dates of Friday, August 25th from 10:30 - 2:30 or Tuesday, August 29th from 12:00 - 2:00 for a meeting.
19. On July 10, 2017, the Parent responded, "That would work for me!" The IEP Meeting was scheduled for August 25, 2017.
20. On July 27, 2017, the Parent's Attorney notified the District that the Parent needed to move the IEP Meeting that was scheduled on August 25th.
21. On July 31, 2017, the District confirmed that the IEP Team still had August 29th open for a meeting in the morning. The Parent's Attorney responded that she was unsure if the Parent still had that date open and copied the Parent on the email questioning the Parent's availability. There is no evidence in the record that the Parent responded to the inquiry regarding whether or not August 29th was still an option for an IEP meeting.
22. On August 7, 2017, the Parent's Attorney proposed possible IEP dates of August 21st or August 22nd at any time or August 23rd in the morning. The District declined these offers because teaching staff at the Student's school would not return from summer break until August 25th. The Portland Area Teacher's Collective Bargaining Agreement – "School District No. 1, Multnomah County Oregon and Portland Association of Teachers 2013-2016"

(commonly referred to as the "PAT contract") would not allow an early return "unless there is mutual agreement between the administrator and the professional educator." The District once more offered August 29th for the IEP meeting.

23. On August 9, 2017, the District contacted the Parent's Attorney and offered either late September or the first few weeks of October for the IEP Team Meeting, opining that the Student would have several new teachers (including a new Special Education Teacher) and that it may be more beneficial to the Student if this meeting was held with staff who had worked with [the Student] for some time and knew [the Student] better. The same day, the District also offered an IEP meeting via Skype or phone on the morning of August 29, 2017.

24. The Parent's Attorney emailed the District on August 9, 2017 and stated the Parent would be unavailable on August 29th as the Parent would be out of town.

IV. DISCUSSION

Section 1: Parent Participation

The Parent alleges that the District violated the IDEA because the Parent was not included in any IEP meetings prior to the District's implementation of the Student's February 8, 2017 IEP.

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child. OAR 581-015-2190.

A review of the Meeting Notes from the February 8, 2017 IEP Meeting shows that the Parent and the Parent's Attorney attended this IEP Meeting and had input into the drafting of the IEP and the amendments to the IEP. On April 3, 2017, the Parent's Attorney sent a memo requesting changes to the February 8, 2017 IEP. The District made a number of the requested changes. Although the District did not adopt all the changes requested by the Parent's Attorney, the District, in an email dated April 28, 2017, invited the Parent's Attorney to "meet further to finalize the IEP goals emerging from the discussions back and forth". On May 1, 2017, the Parent's Attorney questioned the necessity of a meeting to discuss the items the District did not change, and instead requested a PWN regarding the requested changes that the District refused to make. The District emailed the Parent's Attorney on June 28, 2017 and stated that once the IEP Team met to review the IEP as ordered in Complaint 17-054-011, a PWN would be issued addressing the IEP Team's "discussion and decision."

The Department does not substantiate this allegation.

Section 2: FAPE

The Parents allege that the District violated the IDEA because it failed to provide a free, appropriate public education to the Student, i.e. the District finalized and implemented the February 8, 2017 IEP without obtaining parental input and without proper notice to the Parents that the February 8, 2017 IEP had been finalized and implemented

A. Failure to Obtain Parental Input/Failure to Provide Proper Notice

Pursuant to OAR 581-015-2190, school districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and

educational placement of the child, and the provision of a free appropriate public education to the child. The IEP team should consider the parents' suggestions and address their potential concerns, but the IEP team is not required to adopt all of the parents' recommendations. (Anthony C. v. Department of Ed., State of Hawaii, 62 IDELR 257 (2014). See also Blackman v. Springfield R-XII School District, 31 IDELR 132 (8th Cir. 1999)). However, if a consensus cannot be reached regarding the IEP or services, the District must determine appropriate services for the student and provide notice of the District's determinations. (Letter to Richards, 55 IDELR 107 (2010)).

Not all procedural violations result in a denial of FAPE. "A procedural violation constitutes a denial of FAPE if the inadequacy (1) resulted in the student losing educational opportunity; (2) significantly impeded the parents' opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii). (JW v. Governing Board of East Whitter School District, 58 IDELR 211 (9th Cir., 2012); citing W.G. v. Bd. of Trustees, 960 F.2d 1479, 1383-84 (9th Cir. 1992)).

As discussed in Section I, the Parent has been included in all meetings regarding the development of the Student's IEP. The Parent attended the Eligibility Meeting on January 10, 2017 and then the IEP Meeting on February 8, 2017 to discuss the draft IEP. In both instances the Parent's Attorney was present. Further, on April 3, 2017, the Parent's Attorney remitted a Memorandum of changes the Parent wanted to the February 8, 2017 IEP. The District changed all but 3 of the 24 items the Parents' Attorney wanted changed.

Pursuant to OAR 581-015-2310(2), a District must give notice when it proposed to change the evaluation, identification, placement or the provision of a free appropriate public education. A prior written notice must also give notice of the refusal to initiate or change the identification, evaluation or placement of a child or a provision of a fair appropriate public education.

On February 8, 2017, the District provided a PWN stating that the Student "requires the services listed on the attached IEP." The Parent participated fully in the development of this IEP, as evidenced in the "Parent Participation" section of this order.

The Department does not substantiate this allegation.

B. Failure to Convene IEP Meeting

The Parent also alleges that the District denied the Student a free appropriate public education by failing to convene an IEP team meeting prior to the start of the 2017-2018 school year as ordered by the Department in Complaint Investigation 17-054-011. (OAR 581-15-2040, 34 CFR 300.101)

Pursuant to OAR 581-015-1030(15) corrective action ordered by the Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department. However, procedural requirements of the IDEA can be relaxed to ensure parental participation in the IEP process. (Doug C. v. Hawaii Department of Education, 720 F.3d 1038 (2013)). Further, the IDEA does not require a District to schedule meetings outside of regular business hours to accommodate parents. (Letter to Thomas, 51 IDELR 224 (2008)).

Upon receiving the Department's Order in Complaint Investigation 17-054-011 on June 16, 2017 (one day after the end of the 2016-2017 school year), the District contacted the Parent's Attorney on June 28, 2017 to schedule the IEP Team Meeting as directed by the Department's Order, which stated that an IEP meeting needed to be held if a new IEP for the 2017-2018 school year had not been developed. A new IEP had to be developed to comply with the Department's Order,

as the February 8, 2017 IEP did not delineate the starting times of services for the Student² resulting in a violation of the IDEA. Therefore, another IEP meeting was and still is necessary.

An IEP Meeting was scheduled for August 25, 2017, prior to the beginning of the 2017-2018 school year, with the Parent agreeing to this date on July 10, 2017. However, the Parent subsequently cancelled the meeting due to family obligations. Thereafter, the District continued to offer August 29th as a possible date for the IEP Team Meeting but was never given a clear answer from the Parent's Attorney as to whether that time was acceptable. The District further offered to hold the meeting via telephone or Skype prior to the start of the school year, but the Parent's Attorney stated that this was not acceptable because the Parent would be unavailable up to and including August 29, 2017. There is no evidence that the District's inability to hold an IEP meeting prior to the beginning of the 2016-2017 school year resulted in a denial of FAPE for the Student. The Student did not lose any educational opportunities, the Parent's ability to participate in the decision-making process was not impaired, and the Student was not denied educational benefits.

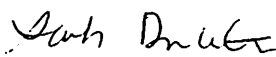
The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

In the Matter of Portland School District 1J
Case No. 17-054-018

There is no corrective action ordered in the present case. However, all Corrective Action ordered in Complaint 17-054-011 remains in effect.

Dated: this 1st Day of November 2017



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

Mailing Date: November 1, 2017

² The substantiated allegation regarding the inclusion of "line of sight supervision" was mooted upon the Parent's agreement in the February 8, 2017 IEP meeting that this accommodation was no longer necessary in the Student's IEP. The second substantiated allegation regarding the use of a "for later" folder did not require any changes to the Student's IEP or BSP.