

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Springfield School District 19

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FINDINGS OF FACT,
CONCLUSIONS, AND FINAL ORDER
Case No. 17-054-023

I. BACKGROUND

On November 6, 2017, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from a Parent (Parent) on behalf of a Student residing and attending school in Springfield School District 19 (District). The Parent requested that the Department conduct a special education investigation pursuant to Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint on November 7, 2017 and also provided District with a copy of the Complaint on November 7, 2017. A contractor with the Department (Investigator) investigated this Complaint.

On November 14, 2017, the Investigator sent a *Request for Response* (RFR) to the District, identifying the specific allegations in the Complaint that the Department would investigate. On November 27, 2017, the District sent a timely narrative *Response* and related documents that the Investigator requested.

The Department, by and through the Investigator, determined that on-site interviews were necessary and conducted interviews. On December 22, 2017, the Investigator interviewed, in the presence of the Attorney representing the District, four people who were most knowledgeable about the circumstances and events related to the Complaint: The District's Special Education Director, the Student's Middle School Principal, the Student's Middle School Teacher, and the School Nurse.

The Investigator did not interview the Parent. The Parent did not respond to the Investigator's inquiries at the beginning of the investigation to provide clarification and factual support for Parent's allegations. The Investigator attempted several times to contact the Parent. After several failed attempts to contact the Parent, on November 14, 2017, the Investigator received an email from Parent explaining that the Parent had retained legal counsel and that further communications should be directed to the attorneys representing the Parent. Thereafter, the Investigator directed communications to Parent's retained legal counsel. The Parent—both individually and through Parent's retained counsel—had numerous opportunities to respond to the District *Response* and to otherwise participate in the Complaint investigation, but did not submit to the Investigator any additional narrative or documents. The Investigator also attempted, through the Parent's legal counsel, to interview the Parent, but Parent's legal counsel did not provide an opportunity for such an interview to take place.

The Investigator reviewed and considered all information that the parties provided, including information obtained through the interviews, and the following:

From the Parent

1. Complaint request and five-page Complaint narrative
2. Student's 6/1/16 Individualized Educational Program (IEP), including Behavior Plan
3. 29 pages of emails between Parent and District staff

From the District

1. Six-page Response to the Complaint and 584 pages of documentary support for its response, including:
 - a. Student's 6/1/16 and 5/31/17 IEPs, Behavior Plans and Health Plans
2. 427 pages of emails between Parent and District staff
3. District bullying & harassment policies
4. Meeting notes
5. Special Education forms (evaluation & eligibility forms, prior written notices, etc.)
6. Attendance records
7. Discipline records
8. Progress and grade reports
9. Medication administration records and other health & medical records

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) 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. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint pursuant to 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 (Section III) and the Discussion (Section IV).

	Allegations	Conclusions
	The written Complaint alleges that the District violated the IDEA in the following ways:	
1.	IEP Implementation The Complaint alleges that the District did not provide the Student with accommodations as provided in the Student's IEP Supplementary Aids/Services; Modifications; Accommodations section. Specifically, the Parent alleges that	Not substantiated

<p>the District:</p> <p>a) Did not provide:</p> <ul style="list-style-type: none"> i. one-on-one and small group instruction ii. a study period for homework completion <p>b) Did not implement the Behavior Plan outlined in an attachment to the Student's IEP by not providing the following behavior supports:</p> <ul style="list-style-type: none"> i. advance notice of changes in routine or schedule ii. a system for organizing materials and support from the school to help use organizational systems iii. a check-in person at the beginning and end of the day iv. positive feedback <p>c) Did not implement Student's Health Plan</p>	<p>Student's IEP did not require one-on-one instruction.</p> <p>Student's classes were designed to allow enough time for in-class work completion. Homework was provided at Parent's request after Student missed many school days for illness and doctor appointments. Homework was discontinued, by mutual agreement, when it became a source of frustration for the Student.</p> <p>Not Substantiated</p> <p>District staff provided this support.</p> <p>District staff provided this support.</p> <p>District staff provided this support.</p> <p>District staff provided this support.</p> <p>Not substantiated</p> <p>School nurse worked closely with Parent, accommodating almost all requests for revisions to the Health Plan. Staff was on notice of Student's Health Plan and consistently implemented it.</p>
<p>2. Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleges that the District violated the IDEA by not protecting the Student from verbal and physical bullying by another student in a variety of school locations (bus, classroom,</p>	<p>Not substantiated</p> <p>The District took immediate action to prevent further bullying. Neither the bullying nor the District's remedial action limited or impaired the services and accommodations to which the Student was entitled, and the Student continued to enjoy meaningful</p>

<p>lunchroom, library, etc.). The Parent alleges that District staff was aware of the bullying but did not notify the Parent. The Parent alleges that the bully caused the Student both emotional and physical injury, resulting in repeated absences from school. The impact on the Student from the alleged bullying was so severe that the Student required hospitalization. The Complaint alleges that the bullying led to a loss of educational opportunity that constitutes a denial of FAPE.</p>	<p>benefit from special education.</p>
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The Parent requests the following corrective action:

1. Provide time & training to educators including mainstream educators to fully support students (sic) individual needs.
2. Compensatory Ed for [Student's] 8th grade year. Education for the educators as well as aides, etc. A system and time for the team of school employees to effectively communicate the individual needs of the student.
3. Ensure children are consistently monitored with adult supervision, whether (sic) it be a bus driver or aide or the school staff making sure students are within an adult's sight or sound supervision, not left unattended during an interim period (e.g. The time the bus stops kids off at the school and when the school actually opens its doors for the students to enter & be monitored.)
4. Educating educators, aides, administrators, all school staff ideally about trauma, bullying and what the "zero tolerance" policy allows/doesn't allow. The librarian who witnessed an incident of punching saying "it didn't seem like a big deal" is absolutely unacceptable. The incident report [written] on 10/26/2016 should have been communicated to me immediately and should not have fallen through the cracks. I have yet to receive a copy of said report though it was read to me over the phone . . . on 11/8/2016 and I'm told was written by [the librarian].
5. Train staff on the signs of bullying. Also on how to communicate effectively with those on the spectrum who may not process and/or verbalize how they feel emotionally and/or physically the same as neurotypicals. Ensure communication from school to family is done in a timely and respectful way.
6. Educate the educators, aides, all school staff to watch for signs of bullying and trauma related issues. Educate all on effective communication.
7. Trainings on effective communication for all school staff. Trainings on bullying, bullying prevention and bystanders. Also how trauma affects people, not just emotionally and mentally but physically.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before the Department's receipt of a special education complaint. As such, this Complaint investigation did not consider any IDEA violations alleged to have occurred before November 8, 2016. Any facts listed below relating to circumstances or events prior to that date are included solely to provide context necessary to understand the Student's disability, special education history, and IEP content relevant to events alleged to have occurred on or after November 8, 2016.

Background

1. Student is 14 years old, resides within the District, and attends a District high school. Student is eligible for special education as a child with Autism Spectrum Disorder.
2. In elementary school, Student had a history of behavioral problems, including disrespect, disruptive behavior, destruction of objects, and one incident of threat of violence.
3. In middle school, Student showed much growth in behavior, though Student sometimes needed to take breaks when frustrated or unhappy with something a teacher or student said or did. These episodes usually resolved quickly, and Student would soon rejoin the class.
4. Parent is closely involved in Student's schooling. Parent maintains regular in-person, telephone, and email contact with a variety of school staff. District staff have been responsive, often replying to more than one email each day and scheduling meetings whenever Parent has requested them.
5. Student has a history of health problems, which became more severe during the 2016-17 school year.

06/01/16 IEP

6. Student's IEP team met on June 1, 2016 to develop Student's 2016-2017 IEP. The Parent participated as an IEP Team Member. Student's IEP included a Behavior Plan and Health Plan, in addition to academic goals, social-emotional goals, and instructional services.
7. Student's IEP dated June 1, 2016 includes the following provisions relevant to the allegations in this Complaint:
 - a) Summary of Present Levels of Academic Achievement & Functional Performance
 - *Strengths of Student:*
[Student] is a pleasant and cooperative student when motivated. When given a task, [Student] will do [Student's] best to complete it. [Student] is friendly and helpful with younger students and is generally comfortable

interacting with teachers. [Student] has a beautiful smile that lights up [Student's] face, and enjoys visual-spatial activities, especially Legos. [Student] is beginning to make more age-appropriate choices in [Student's] behavior and is becoming more comfortable with same-age peers.

- *Concerns of the parent(s) for enhancing the education of the student:*
[Parent] is concerned that [Student] is behind [Student's] peers in academic growth, and struggles to be organized. [Parent] would also like to see improvement in [Student's] ability to understand and respond appropriately to social expectations from peers and staff. [Parent] reports that [Student] still resists doing homework, though [Student] will willingly engage in reading, and doesn't think of this as "homework." [Parent] does not want to have other kinds of homework assigned to [Student] at this time.

b) Present levels of developmental and functional performance

- *Behavior.*

In [Student's] current high-structure, high-support setting, [Student] often achieves 100% success on [Student's] behavior goals. [Student] still struggles to identify feelings at times, but will independently and consistently take steps to resolve problems in productive ways, usually by asking to check in or take space. Though [Student] struggled with a tendency to "shut down" at the beginning of this school year, [Student] rarely will do that currently. Major transitions or unanticipated changes can overwhelm [Student] emotionally, and they may be responded to with anxiety and nervous energy.

c) Special Factors

Does the student exhibit behavior that impedes his/her learning or the learning of others? YES

If yes, the IEP team must consider the use of strategies, positive behavioral interventions and supports to address the behavior(s)

d) Supplementary Aids/Services; Modifications; Accommodations

- [Student] can work on assessments and/or large projects in a separate small group or one on one setting.
- Modified Assignments and homework done in study period.
- Behavior Plan.

e) Behavior Plan (included in its entirety)

Provide [Student]:

- Advance notice of changes in routine or schedule.
- A system for organizing materials, a day planner/calendar for managing events and responsibilities, and daily support to use these aids consistently.

- A check-in person at the beginning and end of the day, and support to productively manage academic or social frustrations (take space, take a deep breath, move to another location, etc.).
- Specific positive feedback for [Student's] academic efforts and for persevering when work is hard for [Student].
- Headphones to help [Student] manage distracting noise.
- A consistent schedule and consistent routines during [Student's] day.
- Opportunities to be helpful. [Student] enjoys feeling useful and appreciated!
- Movement breaks and sensory tools to help [Student] manage attention, nervous energy, and/or anxiety.
- Many opportunities to practice skills.
- Manipulatives for math.
- A safe space [Student] can go to at [Student's] discretion without needing to disrupt the class or call attention to [Student].
- Ability to discuss behavior concerns in private and with advance notice. (e.g., saying to [Student] in private, "I would like to discuss this with you today at lunch"). This allows [Student] to prepare and facilitates a productive response to the situation.

8. In its *Response* to the Complaint, District denied all allegations that it did not implement the IEP. Parent, either individually or through [Parent's] retained legal counsel, did not reply to or otherwise dispute District's statements.

a) Regarding *1:1 and small group instruction*, District reports that:

The Student received small group instruction during each period of the school day except related arts (PE and Dream Catchers). This included reading, writing, and math. During small group instruction, the setting is much like a 'resource room' with a teacher and one or two Education Assistants providing instruction in groups of 3-6 students. During 'whole-group,' content instruction, approximately 15 students are instructed by a teacher and one assistant (social studies, science, etc.).

b) Regarding a *study period for homework completion*, District reports that:

Because of the nature of the setting in which the Student was served, there were opportunities to complete all assigned work in class. The Student did not have any required homework during the school year. The only time homework was assigned was at the [Parent's] request. Additionally, when Student was absent and missed classroom work, it was sent home for a short period of time so that the Student could catch up. When Parent mentioned that it was difficult for the Student and the homework sessions were not going well, the teacher immediately adjusted the way that the Student caught up on missing work.

c) Regarding the several components of Student's Behavior Plan mentioned in the Complaint, District reported the following:

Advance notice of changes in routine or schedule

Changes to the schedule, fire drills, etc., were discussed verbally in class and regularly posted with the schedule on the whiteboard in the front of the class. Any students, including the Student, who had sensory or anxiety concerns, would be escorted outside prior to the fire drill. Any time there were changes to the schedule or routines, classroom staff informed the Student. According to the teacher, the Student never expressed any worry or anxiety over small changes to schedules or routines. When bigger changes occurred such as a class schedule change, the Student would be hesitant and uncomfortable with the change at first but would typically recover quickly and adjust in a relatively short time.

A system for organizing materials and support from the school to help use organizational systems

A 'communication planner' was used for communicating between home and school. Initially staff wrote in the planner, and then at the Parent's request, the Student documented and wrote in the journal with assistance from school staff. Regular classroom structures and routines contributed to organization skills. A regular portion of the class structure during the week was organizing materials. Additional time was dedicated for this when individual students needed more time and assistance.

A check in person at the beginning and end of the day

An instructional assistant in the special education classroom was designated as this support and has notes from these daily check-ins. Additionally, the instructional assistant sent emails to [Parent] almost daily.

Positive feedback

The nature of the classroom structure and the trained personnel contributed to regular positive feedback for the Student. 'Paw Prints,' 'positive referrals,' and specific verbal feedback were provided on a regular basis. Praise was specifically provided for raising hand, handling difficult situations properly, and taking breaks appropriately. At Parent's request, the Student could ask and receive a hug from specific staff members.

9. On October 16, 2016, Parent sent an email to Middle School Teacher (MS Teacher), Principal, Assistant Principal, and Student's Behavior Therapist, in which Parent requested an "urgent meeting" to discuss Student's Behavior Plan and strategies for working with Student.
10. On October 24, 2016, District convened a meeting at Parent's request to review the Behavior Plan "for staff awareness." In attendance was MS Teacher, Assistant Principal, Parent, and Behavior Therapist.
11. On November 8, 2016, Parent sent an email to MS Teacher and Principal notifying them that the Student had disclosed that another student (Student 2) had been "punching [Student] in the chest/stomach area and/or kicking [Student] in the shins and stomping on [Student's] feet regularly" The Parent further quoted Student

as saying that Student 2 hit Student and said “mean things” to [Student] in several school locations, including a library class they were in together. According to the Parent, Library Instructional Assistant (Library IA) had separated Student and Student 2, but Student reported that Student 2 “still does things when . . . [Library IA] isn’t looking.”

12. On November 8, 2016, Principal replied by email:

I just wanted to let you know that we are working on the bullying Incidents. Our counselor is meeting with [Student 2] and we have already talked with the Librarian . . . We can look at some changes in classes (i.e. having [Student] work in the library during a different period) and we will follow up with you as we process through it all.

13. On November 9, 2016, Principal spoke with Student, who repeated the information Parent had reported on November 8, 2016 and added that Student 2 had poked Student with a pencil at the beginning of the school year.

14. On November 10, 2016, Principal spoke with Librarian, who reported that Student and Student 2 were friends who sometimes engage in “minor jostling” and that “no major physical aggression” had occurred.

15. Principal arranged for Student 2 to transfer out of the library class scheduled with Student. Student’s schedule was not changed.

16. On November 10, 2016, Principal spoke with Student 2, who stated that Student was a friend. Student 2 denied hitting or hurting Student but reported that, “We sometimes fight about who is first in line for breakfast—goes both ways—that’s what friends do. Student 2 acknowledged calling Student dumb, “cause [Student] is”.

17. On November 13, 2016, Parent sent an email to a District school nurse (Nurse), in which Parent described adverse physical symptoms Student was experiencing. In this email, Parent hypothesized that Student’s adverse physical symptoms had been “brought on by the bullying [Student has been] dealing with since the beginning of the year.”

18. On November 14, 2016, Nurse told Parent in an email that Nurse was working Student’s Health Plan.

19. On November 15, 2016, Parent sent an email to Nurse, MS Teacher, and Principal, sharing with them that Student continued to experience adverse physical symptoms.

20. On November 17, 2016, Parent sent an email to Nurse in which Parent related a conversation where Student suggested to Parent that [Student] was experiencing adverse physical symptoms arising from Student 2 punching [Student] in the stomach. In addition, Parent reported that Student said [Student] was “too scared to go to the bathrooms at school.”

21. On November 17, 2016, Nurse replied in an email that Nurse planned to speak with the Principal about the bullying. Nurse also suggested Student might be more comfortable using a private bathroom and offered to add that to Student's Health Plan.
22. On November 18, 2016, Nurse stated in an email that "[Nurse] did touch base with Principal and [another staff member] about the bullying side of things and the fear of using the school bathrooms. Everyone is in agreement to encourage [Student] to use the health room bathroom or other private bathroom."
23. On November 21, 2016, Parent sent a lengthy email to Nurse in which Parent thanked the Nurse "for ALL [Nurse has] done for [Student]!" Parent then reiterated the belief that "bullying played a LARGE role" in Student's adverse physical symptoms. The Parent asked Nurse for help in encouraging Student to make healthier food choices.
24. On November 29, 2016, Parent sent an email to Nurse, MS Teacher, and Principal (with copies to Student's doctor and Behavioral Therapist) describing Student's adverse physical symptoms. Parent wrote "I just want to thank you all for understanding and being patient with the behaviors [Student] may be exhibiting due to symptoms that are simply not managed yet."
25. On December 1, 2016, Nurse sent a draft Health Plan to Parent and stated, "Please feel free to have me make changes (and let me know if I have forgotten an important component)."
26. On December 2, 2016, Nurse sent an email to MS Teacher informing the teacher of Student's adverse physical symptoms and Parent's requests for dealing with them at school. Nurse wrote "[Student's] [Parent] and I met Monday to discuss things at school and I've tried to incorporate most of [Parent's] requests into [Student's] Health Plan."
27. On December 2, 2016, Nurse sent an email to Parent, notifying Parent that Principal and MS Teacher were aware of Student's adverse physical symptoms and the related provisions in Student's Health Plan.
28. On December 2, 2016, Nurse completed Student's Health Plan, which incorporated most of Parent's requests, including a one-page description of instructions from Parent about helping assisting Student with techniques to employ during anxiety or panic attacks.
29. District implemented Student's Health Plan as follows:

The Student was able to leave the classroom and access a separate classroom for various reasons associated with health-related issues and for other concerns. Typically spending time in the separate classroom was self-selected and for short periods of time (5-15 minutes). In the case of a 'melt-down,' which included head down on desk and verbally expressing

discontent, the Student would be verbally directed to leave the classroom and take a break in the separate classroom. When directed to leave the classroom, the Student would do so generally without protest, spend 5-15 minutes recovering and return to class, generally without protest. The regular classroom practices, in accordance with the Health Plan, the Student was allowed to be near an open window to cool down when [Student] felt hot. [Student] was provided ice packs to help cool down when feeling overheated. Staff regularly encouraged [Student] to use bathroom at scheduled times. . . . Staff were directed to monitor and document ailments [Student] was having/feeling. Communication about physical ailments were documented on [a] point card, in [the] communication folder, and with regular emails to Parent.

30. On December 14, 2016, Teacher sent an email to Parent telling Parent that Teacher had learned that Student had not been taking Student's point card home consistently. Teacher recommended that Teacher send an email information to Parent containing the Student's percentages and also share with Parent any significant behavioral issues. Parent replied by email that Teacher's plan would be helpful and asked that Teacher relate to the other teachers that Parent needed to know about behaviors significantly related to Student's "ongoing health problems."

31. On December 14, 2016, Teacher sent an email to Parent in which Teacher wrote that "[Student] actually seems to be doing pretty well. Most of the time [Student] functions just fine in the classroom and does well with peers and the staff." Teacher added that sometimes Student was sad or upset if Student perceived someone was being mean. Teacher explained:

Sometimes [Student's] perceptions appear to be accurate based on what I see happening. Other times, they appear to be mostly inaccurate. Of course, we try to appropriately address any problem behaviors that we see from all students. .

32. On January 2, 2017, Parent sent an email to the Director thanking the Director for meeting over winter break to discuss concerns about Student.

33. On January 4, 2017, Director replied in an email that [Director] had spoken with Principal, who "had some nice ideas about how to adjust supports and communicate with you about prompts provided to [Student] and symptoms that Student displays while at school.

34. On January 9, 2017, Parent sent an email to MS Teacher and Principal (with copies to Doctor and Behavior Therapist) further describing Student's adverse physical symptoms and episodes of overheating. Parent also quoted Student as complaining that nobody at school understood [Student].

35. On January 10, 2017, Principal sent an email to Parent that informed Parent that another incident between Student and Student 2 had occurred. The Principal wrote:

I apologize that this occurred. There was a mix up with our EAs, we have four out today and I was in a meeting and the assigned individual was absent and the replacement didn't receive word. I am working on getting all of the details. The positive, if there is one, is that [Student] immediately came and told me about it the first time [Student] saw me. There will be additional consequences for the other student and [Student] should not have any additional problems. Once again I apologize that this happened. We can talk further tomorrow or on Thursday when we meet.

36. On January 13, 2017, Parent sent a lengthy email to Principal (with copies to Director, Doctor, and Behavior Therapist). Parent recounted a belief that Student 2 had repeatedly bullied Student since the beginning of the school year and that this bullying was related to the adverse physical symptoms Student experienced. In this email, Parent expressed a need to know that Student would "no longer be affected by [Student 2]'s presence at school, including near [Student] before the school opens." Parent stated that it would be "unfair" if Student were unable to ride the regular school bus or continue eating breakfast with peers. Parent asked for a copy of District policies on bullying and harassment. Parent also asked for notice in writing of actions the District had taken to "rectify the situation and to ensure it does not happen again."
37. On January 17, 2017, Principal notified MS Teacher and Instructional Assistant (MS IA) that MS IA would be Student's "point person" who would help Student when Student is not feeling well, ensure that Student uses the bathroom as scheduled, and help with documentation and communication with Parent.
38. On January 18, 2017, Principal sent an email to Parent, in which the Principal informed the Parent that arrangements had been made for MS IA to be "point person" for Student. In that role, the MS IA would document information in a day planner and would be Student's primary support person to help with academic, health, and other activities. In addition, the Principal described the District's response to the incidents involving Student 2:
 - The students have been separated from any classes that they had together.
 - [A]n Educational will be provided to meet the bus and will escort the other student to another location in the school for breakfast/before school time.
 - Administration will provide daily check-ins with [Student] to ensure communication and make sure everything is going along well. This may be very informal during lunch or in the hallway. A simple "thumbs up" or "thumbs down", followed by conversation when necessary.
 - An Educational Assistant from the Academic Learning Center (ALC) classroom will take [Student] to the bathroom after breakfast and lunch to provide [Student] the opportunity to use the restroom. Student can choose whichever bathroom [Student] feels the most comfortable with . . .
 - An Educational Assistant in the ALC classroom will be [Student's] point person and will document any illnesses or discomfort that [Student]

experiences while at school. [Parent] can be in direct communication with MS IA to inform the MS IA of any look-fors and the best possible responses to help [Student] take care of and be successful at school.

Principal added, "I am hopeful that this will help [Student] to get the support that [Student] needs both physically and academically. Let me know if you have any questions or if there is something that I have missed."

39. On January 20, 2017, Parent sent an email to Principal, Assistant Principal, Director, MS Teacher, and Behavior Therapist in which Parent requested a change in the bus schedule so that Student would not arrive before the school was open in the morning or before staff were available to supervise arriving students.
40. On January 20, 2017, Director contacted the District Transportation Technician and asked if it would be possible to alter the schedule of Student's bus.
41. On January 24, 2017, the District Transportation Technician notified Director and Principal that Student's bus had been rerouted.
42. On January 30, 2017, Parent emailed Teacher and MS IA saying that Student had been ill and asking that they send homework.
43. On January 31, 2017, Parent sent an email to Principal saying that an aide had told Parent that Student and Student 2 had been having breakfast at the same time and place, as Parent had understood that they would eat in separate places.
44. On January 31, 2017, Principal replied that follow-up with the aide had occurred and clarified that Student and Student 2 could not be in the same physical place at the same time. Principal also stated that apparently the Principal had not previously been clear enough with the aide, and apologized to Parent.
45. On February 6, 2017, Parent sent an email to MS IA (with copies to Teacher and Principal) asking for homework or make-up work.
46. When homework became a source of frustration for Student and Parent, staff and Parent agreed on February 23, 2017 to discontinue homework.
47. MS IA communicated with Parent daily from January 17, 2017 through the end of the school year, by means of the Student's Day Planner and/or through email.
48. On March 14, 2017, Student's Behavior Therapist sent an email to Principal requesting a change in Student's schedule to accommodate medical and health needs, with shortened school days on Tuesdays and Thursdays. Parent, Principal, and Teacher agreed to the proposal and the school would "figure out attendance and see how it needs to work"
49. Student's IEP Progress Report dated April 7, 2017 shows progress toward seven IEP goals. On six annual goals, Student's progress indicated likely attainment by

June 2017. Student had reportedly made progress toward Social/Emotional/Behavioral goals, but continued “melt downs” indicated that Student might not meet Student’s annual goal.

50. On June 12, 2017, Parent wrote an email to District Superintendent in which Parent praised Director and Principal and stated that the Parent hoped that Superintendent could “acknowledge their amazing efforts in response to some serious issues that have gone on with [Student] this year.”

May 31, 2017 IEP

51. Student’s IEP Team met on May 31, 2017 to develop the 2017-2018 IEP. The Parent participated as a team member at this meeting.

52. The identified strengths in Student’s IEP included being friendly, smiling frequently, and enjoying verbal engagement with peers and teachers. Academically, Student showed the ability to focus well and put forth good effort on assignments. Student demonstrated an ability to take breaks when needed.

53. Parent concerns centered around the upcoming transition to high school (class schedule, electives, coordinating breaks).

54. Student’s present levels of developmental and functional performance in the area of “social/emotional/behavior” indicated that Student had difficulty consistently regulating Student’s emotional state, and that major transitions could be overwhelming emotionally. Student responded to such transitions with anxiety and nervous energy. In these situations, Student often takes breaks without direction to return to a calm state. When Student does not recognize that a break is needed, Student responds to staff direction. Student utilizes a class-wide point card to help Student focus on and use appropriate classroom behaviors.

55. Supplementary Aids/Services in the IEP included Student’s ability to work on assessments and large projects in a separate small group setting or one-on-one setting, a separate class period or extra time in class to complete assignments and homework at school, a Behavior Plan and point card, and a Health Plan.

56. Student’s Behavior Plan noted that Student demonstrated some difficulty during moments of frustration and stress. The plan targeted Student being quick to become frustrated and also Student’s practice of seeking negative peer attention. The Behavior Plan’s objectives were to: (1) increase Student compliance with school and class rules and expectations; (2) increase self-regulation skills; (3) allow Student to receive redirections or corrections without outbursts and/or shutting down; and (4) decrease disruptive behaviors.

57. The Behavior Plan also included specific preventative strategies (e.g., advance notice of schedule changes, frequent check-ins, specific positive feedback for academic efforts), alternate behavior instruction strategies (e.g., delivering instruction in a calm neutral tone, developing a system where Student may take

breaks, role play coping skills and strategies such as taking deep breaths and counting) and examples of how teachers will provide Student with positive reinforcement.

58. On August 17, 2017, Parent requested a meeting to “go over [Student’s] Health Plan, Behavior Plan, and transition to [High School].
59. Student began attending high school in September 2017.
60. On September 29, 2017, Parent requested an IEP meeting to discuss Student’s Health Plan, which had been updated the previous day with information related to a surgery Student was scheduled for in November.
61. On October 4, 2017, Parent arrived at school to pick up Student and was upset that Student was not waiting for Parent. Student had forgotten that Parent was going to pick Student up that day, and was with an instructional assistant waiting for the school bus. In an email the next morning, Parent stated that Student needed to be in “sight or sound” supervision by a responsible adult. Student had been with an instructional assistant at all times.
62. On October 4, 2017, HS Teacher sent email to Parent in which the HS Teacher suggested a streamlined form of Student’s point card. HS Teacher explained that Student was doing “a terrific job socially, academically, and vocationally,” but added that Student still had difficulty accepting constructive criticism and accepting “no” for an answer.
63. On October 4, 2017, Parent replied that the Parent, Behavior Therapist, and Student’s doctor believed it was important to receive feedback from school staff, but Parent agreed to edit the point card as HS Teacher had suggested.
64. On October 13, 2017, per Parent’s request, District convened a meeting to update Student’s Health Plan and discuss behavior.
65. Student is doing well in high school. Student is passing all classes, although Student has a C- in Vocational Skills. Most comments on the grade report are positive, e.g., “good habits & attitude” “a pleasure to have in class.”

IV. DISCUSSION

A. IEP Implementation

The IDEA requires that an IEP be in effect at the beginning of a school year, and a school district must provide special education and related services in accordance with the IEP.¹ A school district must ensure that the IEP of a student with a disability is available to all staff members who are responsible for implementing the IEP and that

¹ Oregon Administrative Rule (OAR) 581-015-2220(1) and 34 CFR § 300.323(a).

each staff member is informed of his or her specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the student in accordance with the IEP.²

The Ninth Circuit Court of Appeals has held that “a material failure to implement an IEP violates the IDEA.”³ The Court found that, “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.”⁴

The Complaint alleges that the Student's IEP was incompletely or inconsistently implemented. The documentation and other evidence acquired during the course of the Complaint investigation does not support that allegation.

a) One-on-One and Small Group Instruction.

Student's IEPs provide that Student could work on assessments and/or large projects in a separate small group or one-on-one setting. Student's class was designed with a teacher, instructional assistants, and small class size to provide small group instruction. Nothing in the materials accompanying the Complaint, and nothing in the District *Response* indicates any failure on the part of the District to provide instructional services or accommodations as prescribed by Student's IEP.

b) Study Period.

Student's IEP provides that modified assignments and homework would be done in a study period. Student's class was designed to allow all work to be completed in class, and Student's Teacher does not assign homework. For a period of time after Student had missed school due to illness, Parent asked to have make-up work sent home. This process was not successful and was soon discontinued.

c) Behavior Plan—Advance Notice of Changes in Routine or Schedule.

Student's Teacher or an instructional assistant routinely gave Student advance notice of changes in routine or schedule. The Complaint provided no specific examples of failure to implement this provision of Student's Behavior Plan, and nothing in the materials accompanying the Complaint or in the District *Response* supports this allegation.

d) Behavior Plan—A System for Organizing Materials and Support from the School to Help Use Organizational Systems.

Teaching organizational skills was an integral part of Student's class, and students received extra assistance in organizing as needed. At Parent's request, Teacher adjusted the system so that the Student wrote in Student's own journal with staff assistance. The Complaint provided no specific examples of failure to implement this provision of Student's Behavior Plan, and nothing in the materials accompanying the Complaint or in the District *Response* supports this allegation.

² OAR 581-015-2220(3) and 34 § CFR 300.323(d).

³ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007).

⁴ *Id.* at 822.

e) Behavior Plan—A Check-in Person at the Beginning and End of the Day.

An Instructional Assistant, MS IA, was Student's "point person" all day and also served as the check-in person. MS IA communicated frequently via email with Parent from January 17, 2017 until the end of the school year. Although the Complaint alleges that the school failed to provide adults responsible for actively checking in and communicating with [Student] as well as the Parent, it provided no specific examples of failure to implement this provision of Student's Behavior Plan. To the contrary, materials accompanying the Complaint and the District *Response* include abundant evidence of District efforts to maintain continuous communication with Student and Parent.

f) Behavior Plan—Positive Feedback.

Positive feedback was an integral component of Student's class. Students regularly received specific verbal feedback as well as material items such as "Paw Prints" and "positive referrals." At Parent's request, Student could ask for and receive hugs from staff. Although the Complaint alleges that the school "consistently decided to not provide positive feedback," it provided no specific examples of failure to implement this provision of Student's Behavior Plan. Nothing in the materials accompanying the Complaint or in the District *Response* supports this allegation.

g) Health Plan.

Because of Student's chronic health problems, Student's Health Plan was a high priority for District staff as well as for Parent. The School Nurse worked closely with Parent and incorporated almost all provisions that Parent requested. The Nurse, Principal, Teacher, and MS IA were all familiar with the content of Student's Health Plan and consistently complied with its provisions. Nothing in the materials accompanying the Complaint or in the District *Response* supports the allegation that the District did not implement Student's Health Plan.

Neither the Complaint narrative, nor any of the documents accompanying the Complaint manifest a material failure to implement Student's IEP. The District provided voluminous evidence of its efforts to implement Student's IEP with fidelity. Neither Parent, nor Parent's retained legal counsel, replied to or contested any of the information the District provided to the Investigator.

The Department cannot substantiate the Complaint allegations of non-implementation of Student's IEP.

B. Free Appropriate Public Education

In the Complaint, the Parent alleges that Student experienced bullying, and that, as a consequence, Student was denied a free appropriate public education (FAPE).

The IDEA requires that school districts provide a FAPE to all school-age children with disabilities for whom the district is responsible.⁵ The IDEA defines FAPE as special education and related services that:

- a) Are provided at public expense, under public supervision and direction, and without charge;
- b) Meet the standards of the [state education agency];
- c) Include an appropriate preschool, elementary school, or secondary school education; and
- d) Are provided in conformity with an individualized education program (IEP).⁶

The element of FAPE's appropriateness has been debated throughout the history of the IDEA. After two landmark US Supreme Court decisions,⁷ the guidance to states and school districts contains two components. First, the IEP must be developed in accordance with IDEA procedural requirements. Second, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁸

The IDEA includes no provisions that expressly reference bullying, and thus bullying is not often an appropriate issue for a Special Education complaint investigation. However, under some circumstances, bullying may cause or contribute to a denial of FAPE to a student with a disability.

The United States Department of Education (DOE) has issued advisory letters on bullying and disability in recent years. While these letters do not have the force of law, they do offer useful guidance. In a 2013 Dear Colleague Letter, the DOE stated that any bullying of a student with a disability that results in a loss of meaningful educational benefit constitutes denial of FAPE and must be remedied. The remedy should not involve a change in the services or placement of a student with a disability unless the student's needs have changed and the IEP team agrees to the changes.

Courts have only recently begun to address the problem of bullying of students with disabilities, and no published judicial decision binding on Oregon school districts has ruled on the issue of when bullying of a student with a disability who has an IEP may lead to a denial of FAPE. A New York case, *T.K. v. New York City Dept. of Education*,⁹ is not binding in Oregon but offers a model for analyzing such claims. In *T.K.*, the Court found that bullying can deprive a student of FAPE if it is sufficiently severe, persistent, or pervasive that it creates a hostile environment. The Court articulated the following rule for addressing such conduct:

When responding to bullying incidents, which may affect the opportunities of a special education student to obtain an appropriate education, a school

⁵ OAR 581-015-2040.

⁶ 20 USC § 1401(9) and 34 CFR § 300.17.

⁷ *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____ (2017)

⁸ *Endrew F.* at 11.

⁹ 779 F Supp. 2d § 289 (2011).

must take prompt and appropriate action. It must investigate if the harassment is reported to have occurred. If harassment is found to have occurred, the school must take appropriate steps to prevent it in the future.¹⁰

In this case, the District immediately investigated the alleged bullying incident in the library on October 26, 2016 and the second incident on January 10, 2017. The District took remedial actions to separate Student 2 from Student, and those actions did not involve removing Student from familiar placements, people, and routines. Student continued to function well and make progress in Student's classes.


The Department does not substantiate the allegation that the District deprived Student of a FAPE in relation to Parent's bullying allegations.

V. CORRECTIVE ACTION¹¹

In the Matter of Springfield School District 19
Case No. 17-054-023

Based on the facts provided and non-substantiation of allegations in this matter, no corrective action is ordered.

Dated: this 5th day of January 2018



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

Mailing Date: January 5, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

¹⁰ *Id.* at 317.

¹¹ A Department order that substantiates any violation of IDEA will include any necessary corrective action to be undertaken, and will describe any documentation or response to be supplied by any party to ensure that the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. OAR 581-015-2030(15). The Department reserves its right to pursue actions against a party who refuses to voluntarily comply with a plan of correction when so ordered. (OAR 581-015-2030(17)-(18).)