

BEFORE THE STATE 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. 17-054-028

I. BACKGROUND

On December 11, 2017, the Oregon Department of Education (Department) received a Request for Complaint Investigation (Complaint) from a Special Education teacher (Complainant) in the Portland School District (District). The Complainant requested that the Department conduct an investigation pursuant to Oregon Administrative Rule (OAR) 581-015-2030. The Department provided a copy of the Complaint to the District by email on December 11, 2017. Department staff and a contractor with the Department (Investigator) investigated this Complaint.

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 60 days of receipt of the complaint.¹ This timeline may be extended if the complainant and the public agency agree to an extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.

On December 19, 2017, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On December 20, 2017, the District requested and received an extension of time to submit its *Response* to January 9, 2018 due to the absence and unavailability of District staff during winter break. As a result, the Department extended the issuance date of this Order to February 20, 2018. To complete additional interviews to fully address the systemic nature of the Complainant's allegations, the Department once more extended the issuance date of this Order to March 17, 2018.

On January 9, 2018, the District submitted its *Response* to the *Request for Response* with accompanying documentation. On January 5, 2018, the Complainant provided additional documentation to the Investigator via email. The Investigator forwarded the documentation to the District via email on January 7, 2018. On January 9, 2018, the Complainant provided additional documentation to the Department and District via email. On January 12, 2018, the Complainant provided a narrative *Reply* and additional documentation to the Department and District via email.

The District provided the following documentation in its *Response*:

1. Ex. D-1: Email communication 5/9/17 to 11/30/17
2. Ex. D-2: District policies regarding IEPs

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

3. Ex. D-3: Additional documents regarding IEPs
4. Ex. D-4: List of District staff knowledgeable about circumstances in complaint.

The Complainant provided the following documents concerning the Complaint on January 5, 2018, via email:

1. C-1: Letter from Complainant 1/5/18
2. C-2: "Glossary" with names of District staff and his/her title
3. C-3 to C-23: Email communication 9/29/08 – 11/17/16
4. C-24 to C-27: Email communication 1/3/17 to 4/3/17

The Complainant provided the additional documents to the Investigator concerning the Complaint on January 9, 2018:

1. C-28 to C-30: Email communication 11/1/17 to 12/14/17

The Complainant provided the following documents in reply to the District's *Response*:

1. C-31 to C-37: Email communication 5/18/17 to 1/10/18
2. C-38 to C-39: Narrative *Reply* to District's *Response*

On February 22, 2018, Department staff conducted an on-site interview with the Complainant. On February 23, 2018, Department staff conducted on-site interviews with two District administrators in the presence of District Counsel. Department staff and the Investigator reviewed and considered all of the documents received in reaching the findings of fact and conclusions of law contained in the Order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from December 12, 2016 to the filing of this Complaint on December 11, 2017.

Matters Beyond Scope of Investigation

The Department will not investigate matters alleged that do not implicate the IDEA. OAR 581-015-2030(4) provides that if a complaint alleges violations outside the scope of the IDEA, the complainant will be informed of alternative procedures that are available to address the complainant's allegations.

In the December 19, 2017 *Request for Response*, the Department advised that the Complaint included issues that do not allege a violation of the IDEA, including allegations of disability and employment discrimination. Information was provided to the Complainant about pursuing claims with the U.S. Department of Education (Region 10) Office for Civil Rights in Seattle, Washington and/or the Department's Civil Rights Specialist. The

Complainant also was provided information about complaint processes through the Oregon Teacher Standards and Practices Commission (TSPC) and the District's complaint process.

	Allegations	Conclusions
(1)	<p><u>When IEPs Must Be In Effect; Requirement for Least Restrictive Environment; Free Appropriate Public Education (FAPE); Procedures for Complaints as Required by IDEA Regulations</u></p> <p>The Complainant alleges that the District failed to provide a group of District Students eligible for special education services with the appropriate interventions in the general education environment.</p> <p>The Complainant further alleges that certain general education teachers were reluctant to, and in some instances refused to, allow Students with IEPs in their classrooms.</p> <p>(34 CFR §§ 300.323, 300.324, OAR 581-015-2220 and OAR 581-015-2240; 34 CFR § 300.114, OAR 581-015-2040; 34 CFR § 300.101, OAR 581-015-2030; and 34 CFR §§ 300.151-153, 34 CFR § 300.504(a)(2))</p>	<p><u>Substantiated, in part</u></p> <p>The Department substantiates the allegation. District general education teachers failed to ensure implementation of accommodations and modifications memorialized in Student IEPs. The Department also substantiates the allegation that District general education teachers failed to implement Student behavior intervention plans and behavior intervention components of Student IEPs in the general education environment</p> <p>The Department did not find that Students with IEPs were systematically refused entry to general education classrooms. However, it did find that general education teachers failed to observe the IDEA's least restrictive environment requirements by periodically sending Students out of general education classrooms before demonstrating that education in the general education environment could not be accomplished satisfactorily without the use of supplementary aids and services. Students with IEPs were prematurely sent out of the general education classroom to complete assignments or when the class was taught by substitute teachers.</p>

	<p><u>Proposed Corrective Action:</u></p> <p>The Complaint requests the following Corrective Action:</p>	<p>See Corrective Action, below.</p>
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<p>“General Education teachers at [] School must fully implement students’ federally protected rights guaranteed under the Individuals with Disabilities Education Act.”</p>	
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III. FINDINGS OF FACT

1. The Complaint alleges systemic failure on the part of the District to provide IEP services to Students with IEPs in general education classrooms at a District school. Specifically, the Complainant alleges that certain middle school general education teachers failed to implement the accommodations and modifications outlined in Student IEPs. The Complainant further alleges that general education teachers are either reluctant to, or refuse Students with IEPs entry into their classrooms.

2. In response, the District reports that District staff has been actively working to address the issues raised by the Complainant to improve implementation of IEPs in general education classrooms. The District denied that its general education teachers refused Students with IEPs entry into their classrooms, and further reported that it could “neither confirm nor deny the allegation regarding non-implementation of IEPs during this time period.”

3. The Complainant has taught special education to Students in the same District school for the past 10 years. The Complainant works in the school’s Behavioral Learning Center and is responsible for convening IEP teams, drafting IEPs, and implementing applicable interventions for Students on the Complainant’s caseload.

4. The District noted that its school Principal took over responsibilities as Principal in Fall of 2016, and was promptly made aware of the Complainant’s concerns. The Principal compiled a report of achievement data at the end of the first quarter of the 2016-2017 school year, which showed a high percentage of Students with IEPs and failing grades. To address this issue, the Principal brought in District administrators and had professional development delivered to staff regarding appropriate supports for Students receiving special education services. The Principal and Complainant found a tight correlation between failing grades among Students with IEPs and the failure to implement appropriate accommodations and modifications in the general education environment.

5. General education teachers have access to Student IEPs in a variety of formats. District staff have access to Synergy, the platform used by the District to view Student IEPs. In addition, after each IEP Team Meeting, the Complainant circulates an “At a Glance” document to staff, including designated general education teachers. The “At a Glance” document is a condensed version of the Student’s IEP and contains the Student’s name, grade level, goal areas, and accommodations and modifications agreed upon in the IEP. The Complainant also circulates an email attachment of each Student’s IEP by email. The District administrators do not dispute that middle school general education

teachers have access to Synergy and also receive the Complainant's "At a Glance" document.

6. The Complainant reports that District general education teachers have admitted they do not implement the accommodations and modifications memorialized in Student IEPs. The accommodations and modifications that are not implemented include but are not limited to the following: testing accommodations, use of calculators, no homework, delivering content at ability level, pre-teaching, and shortened assignments. The District administrators do not dispute that middle school general education teachers in the subject areas of Mathematics, Language Arts, and Social Studies have failed to implement the accommodations and modifications memorialized in Student IEPs.
7. The Complainant reports that District general education teachers do not implement the provisions of Students' behavior intervention plans. The Complainant states that this is a regular practice among general education teachers. For example, one Student's IEP Team developed a non-confrontational method for noting the Student's behavior where the teacher would display a series of colored cards to indicate the Student's behavior was escalating and may result in the Student's removal to the Complainant's classroom. Instead of implementing this protocol agreed upon by the Student's IEP Team, the teacher would simply remove the Student from the classroom and direct the Student to wait in the hallway outside the classroom. The District administrators do not dispute that general education teachers have failed to implement Students' behavior intervention plans in general education classrooms.
8. The Complainant reports that District general education teachers do not adhere to the least restrictive environment requirements of Student IEPs. The Complainant states that general education teachers send Students with IEPs to the Complainant's classroom to perform work. The Complainant also notes that Students with IEPs are sent to the Complainant's classroom as a preventive measure when substitutes are expected to be in the general education classroom. The District administrators do not dispute that this practice occurs, however they note that the practice has declined in frequency since the Principal began working at the school.

IV. DISCUSSION

A. Implementation of IEPs That Are In Effect

1. Failure to Implement Accommodations and Modifications in the General Education Environment

The District has failed to implement accommodations and modifications memorialized in District Student Individualized Education Programs (IEPs) while they attend classes in the general education environment. At the beginning of each school year, the district must have an IEP in effect for each child with a disability within its jurisdiction."² The IEP must include "a statement of the program modifications or supports for school personnel that will be

² 34 CFR § 300.323(a); OAR 581-015-2220(1)(a).

provided for the child . . . to advance appropriately toward attaining the annual goals . . . and to be involved and progress in the general education curriculum”³

Certain District general education teachers do not regularly implement the accommodations and modifications memorialized in Student IEPs. District Student IEPs contain accommodations and modifications such as testing environment accommodations, use of calculators, no homework, delivery of content at ability level, pre-teaching, and shortened assignments.⁴ The District administrators do not dispute that middle school general education teachers in the subject areas of Mathematics, Language Arts, and Social Studies have failed to implement the accommodations and modifications memorialized in Student IEPs.

One result of this failure on the part of District general education teachers is a tight correlation found between failing grades among Students with IEPs at the school and the failure to implement appropriate accommodations and modifications in the general education environment.

The Department substantiates this allegation and orders corrective action.

2. Failure to Implement Behavior Intervention Plans

The District failed to implement provisions of Student behavior intervention plans. When a student's behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports to address that behavior.⁵ District staff must implement the positive behavioral interventions that are memorialized in a student's behavior intervention plan or IEP.

Here, District middle school general education teachers did not implement the provisions of Student behavior intervention plans. The Complainant reports that this is a regular practice among general education teachers. The Complainant and the District administrators described one particular instance where a Student's IEP Team developed a non-confrontational method for noting the Student's behavior where the teacher would display a series of colored cards to indicate the Student's behavior was escalating and may result in the Student's removal to Complainant's classroom. Instead of implementing this protocol agreed upon by the Student's IEP Team, the teacher would simply remove the Student from the classroom and direct the Student to wait in the hallway outside the classroom. The District administrators do not dispute that middle school general education teachers have failed to implement Student behavior intervention plans and behavior intervention components of Student IEPs in the general education classrooms.

The Department substantiates this allegation and orders corrective action.

³ 34 CFR § 300.320(a)(4); OAR 581-015-2220(1)(d).

⁴ This failure on the part of certain general education teachers is not due to lack of access to student IEPs, which are made readily available through the District's "Synergy" program, as well as through regular communications from the Complainant.

⁵ 34 CFR 300.324(a)(a)(i); OAR 581-015-2205(2)(a).

B. Requirement for Least Restrictive Environment

The Complainant alleges that general education teachers are either reluctant to, or refuse Students with IEPs entry into their classrooms. The District denies that its general education teachers refused Students with IEPs entry into their classrooms. School districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have disabilities.⁶ Districts must ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes cannot be achieved satisfactorily.⁷

The Department's investigation did not find that Students with IEPs were systematically refused entry to general education classrooms. However, it did find that general education teachers failed to observe the least restrictive environment requirements under IDEA. District general education teachers periodically send Students with IEPs out of the general education classroom before establishing that delivery of instruction cannot be accomplished satisfactorily in that environment without the use of supplementary aids and services. The District administrators do not dispute that this practice occurs, however they note that the practice has declined in frequency since the Principal began working at the school.

The Complainant and the District administrators both provided two examples of this practice: (1) a Student's IEP Team developed a non-confrontational method for noting the Student's behavior where the teacher would display a series of colored cards to indicate the Student's behavior was escalating and may result in the Student's removal to the Complainant's classroom. Instead of implementing this protocol agreed upon by the Student's IEP Team, the teacher would simply remove the Student from the classroom and direct the Student to wait in the hallway outside the classroom; and (2) Students with IEPs are sent to the Complainant's classroom as a preventive measure when substitutes are expected to be in the general education classroom. General education teachers engage in practices of sending Students with IEPs to more restrictive environments without first employing positive behavior intervention strategies that have been previous agreed upon by the Students' IEP Teams and memorialized in their IEPs.

The Department substantiates the allegation that the District failed to fulfill its least restrictive environment placement obligations. The Department orders corrective action.

⁶ 34 CFR § 300.114(a)(2)(i); OAR 581-015-2240(1).

⁷ 34 CFR § 300.114(a)(2)(ii); OAR 581-015-2240(2).

CORRECTIVE ACTION⁸
In the Matter of Portland School District
 Case No. 17-054-028

The Department orders the following Corrective Action resulting from the Investigation:


No.	Actions	Submissions ⁹	Due Date
1.	<p>Professional Development with ODE staff/County Contact, School administrators, and District Special Education administrators: Conduct a planning session to review the findings of this Investigation and develop a series of trainings to address:</p> <p>a. The purposes of academic and behavioral accommodations, modifications, supplementary aids, and supports for students with disabilities.</p> <p>b. Strategies for identifying and implementing appropriate supports (accommodations, modifications, supplementary aids and services and supports, including behavior) for students with disabilities.</p> <p>c. Implementation challenges and solutions in the general education classroom.</p> <p>d. Legal foundations of IEP implementation for instructional personnel to include implementation procedures, ensuring confidential access to IEPs,</p>	<p>In consultation with ODE, submit date for planning meeting and expected participants.</p> <p>Submit evidence of completed planning session and projected training calendar: Agenda, participants, sign-in sheet, meeting notes</p>	<p>April 11, 2018</p> <p>April 30, 2018</p>

⁸ 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)).

⁹ 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: raeann.ray@state.or.us; fax number (503) 378-5156.

	<p>and monitoring implementation.</p> <p>Schedule, conduct, and complete training session(s).</p> <p>Provide all staff members who may be responsible for implementing/ supervising implementation of student IEPs, an informational letter the expectations related to IEP implementation, and any revisions in providing IEP information to them.</p>	<p>For each training session, submit evidence of completion, including agenda, participants, sign-in sheet, meeting notes.</p> <p>Submit evidence of letter distribution to staff members. Distribution may be done electronically.</p>	<p>One week following each completed training session</p> <p>May 18, 2018</p> <p>May 25, 2018</p>
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Dated this 16th Day of March, 2018.



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

Mailing Date: March 16, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty 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).)