

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of: )  
North Clackamas School District 12 )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-029

**I. BACKGROUND**

On June 26, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Parent (Parent) of a student (Student) who receives special education services from the North Clackamas School District 12 (District). The Department confirmed receipt of the Complaint and forwarded it to the District on June 26, 2019.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.<sup>2</sup> Based on the date the Department received the Complaint, the relevant period for this Complaint investigation is June 27, 2018 through June 26, 2019.

On July 12, 2019, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of July 29, 2019. The Final Order is due to be issued on August 25, 2019.

On July 27, 2019, the District submitted a written response to the Complaint and a packet of materials for the Investigator. The materials included in the submission are listed below.

1. IEPs, IEP Meeting Notices, and IEP meeting minutes relating to the Student during the 2018-2019 school year
2. Prior Written Notices provided to the Parents during the 2018-2019 school year
3. Documents that describe how the District implemented the Student's IEP during the 2018-2019 school year
4. 2018-2019 communications (including email) between the Parents and the District relating to the allegations in the Complaint's Request for Response
5. Disciplinary and attendance records, as well as progress reports and any grading reports for the Student during the 2018-2019 school year
6. District policies/procedures relating to language interpretation at IEP team meetings for parents whose native language is other than English
7. Other documentation related to the allegations that the District believes may be helpful in resolving this complaint
8. A list of staff or others who are knowledgeable about the circumstances alleged in the complaint and their contact information

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<sup>1</sup> 34 CFR § 300.152(a); Oregon Administrative Rule (OAR) 581-015-2030(12).

<sup>2</sup> 34 CFR § 300.152(b); OAR 581-015-2030(5).

The Investigator determined that on-site interviews were necessary. On August 9, 2019, the Investigator interviewed a Principal, two Special Education Administrators, an Autism Specialist, and the Case Manager. On the same day, the Investigator interviewed the Parents with the assistance of an interpreter. The Parent provided the Investigator with the materials listed below.<sup>3</sup>

1. Parent Statement
2. Notice of Disciplinary Action
3. May 6, 2019 IEP meeting notes
4. Students Drawings
5. Emails between Parents and District, April 2019
6. Consent to Exchange Information, July 15, 2019
7. Parent Consent for Individual Evaluation<sup>4</sup> & Prior Written Notice June 12, 2019
8. Meeting Notice (Spanish), April 30, 2019
9. Meeting Minutes, May 6, 2019
10. Amended IEP, May 6, 2019
11. Psychoeducational/Autism Evaluation Report, October/November 2016
12. Prior Written Notice (Spanish), May 6, 2019
13. IEP & Special Education Placement Determination, November 6, 2018<sup>5</sup>
14. Meeting Minutes, November 6, 2018
15. STAR Reading and Math Reports
16. Draft IEP, November 6, 2018<sup>6</sup>
17. English Language Development Proficiency Progress Report (English and Spanish) April 12, 2018
18. IEP Goals Data Sheets, 2018-2019
19. Email from District staff to Parents, April 17, 2019
20. Prior Written Notice, November 6, 2018
21. Meeting Notice (Spanish), November 27, 2018
22. IEP Progress Reports, December 3, 2018
23. Request for Complaint Investigation, June 26, 2019
24. Meeting Notice (Spanish), September 28, 2018
25. Prior Written Notice (English), November 6, 2018
26. Special Education Placement Determination, November 28, 2017
27. Team Meeting Notes, November 28, 2017
28. Prior Written Notice, November 28, 2017
29. Draft IEP, December 7, 2016
30. Letters from District to Parents (English and Spanish)
31. English Language Proficiency Assessment, 2015-2016
32. Letter to Parents (Spanish), May 13, 2019
33. Pictures of Student
34. Email about Student Attendance, June 17, 2019

The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

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<sup>3</sup> The Investigator provided the District with a copy of these materials.

<sup>4</sup> English and Spanish.

<sup>5</sup> Two copies.

<sup>6</sup> Three copies.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>7</sup> 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 on the Discussion in Section IV. This complaint covers the one-year period from June 27, 2018 through June 26, 2019.

<b>1.</b>	<p><b><u>Parent Participation</u></b></p> <p>The Parent alleges the District violated the IDEA when it did not provide adequate interpretation in the Parents' native language of the IEP Team's discussion in IEP meetings.</p> <p>(34 CFR § 300.501; OAR 581-015-2190(3))</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District arranged for and provided an adequate interpreter for each IEP team meeting.</p>
<b>2.</b>	<p><b><u>IEP Team</u></b></p> <p>The Parent alleges the District violated the IDEA when it did not have all required team members at IEP meetings.</p> <p>(34 CFR § 300.321; OAR 581-015-2210)</p>	<p><b><u>Not Substantiated</u></b></p> <p>All required IEP team members were present at each of the Student's IEP team meetings.</p>
<b>3.</b>	<p><b><u>When IEPs Must Be in Effect</u></b></p> <p>The Parent alleges the District violated the IDEA when it did not provide all accommodations written in the Student's IEP.</p> <p>(34 CFR § 300.323; OAR 581-015-2220(1)(b))</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District provided accommodations to the Student in accordance with the Student's IEP.</p>

### **Issues Outside the Scope of This IDEA Investigation**

The Parents assert that the Student was improperly suspended for one day for fabricating a story about a teacher hitting the Student. This single day of disciplinary removal does not invoke any manifestation determination review issues, nor do the Parents contend that the Student has behaviors that are not being addressed by the District. As such, the appropriateness of the one-day suspension is not investigated in this order. The Parent may pursue these issues through the District complaint process.

The Parents also contend that the investigation the District conducted in response to allegations of a teacher hitting the Student was biased based upon the Student's disability. This issue is not within the scope of the Department's investigative authority under OAR 581-015-2030 and will not be addressed in this order. The Parents may pursue this issue by contacting Winston Cornwall, Civil Rights Education Specialist, 255 Capitol Street NE, Salem, OR 97310; phone: 503-947-5675 or fax: 503-378-5156.

<sup>7</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

### **Requested Corrective Action**

The Parent requests the following action be implemented as a resolution to the Complaint:

1. Retraining of all staff involved on the IEP, ableism and disability student rights;
2. Reevaluations of IEP accommodations for the Student;
3. When a student brings up an issue with staff that it not be taken lightly. The investigation should not be performed by fellow staff members who work at the school due to the work bias;
4. Transfer student to different school;
5. Constant translation of all material in Spanish.

### **III. FINDINGS OF FACT**

1. The Student is nine years old and during the 2018-2019 school year was in the third grade at a District elementary school. The Student is eligible for special education under the category of Autism Spectrum Disorder, established on December 6, 2016. The Student is described as a kind, respectful, and considerate student who is well liked by District staff and students.
2. The Student speaks Spanish and English and took the English Language Proficiency Assessment (ELPA) as a second grader. At that time, the Student was rated as Level 2 (progressing) in Proficiency, with scores of 3 in Listening, 2 in Reading and Writing, and 1 in Speaking.<sup>8</sup>
3. The Student's Individualized Education Program (IEP) contains goals in Reading, Writing, Organizational/Study Skills, Social Skills, Communication and Math. The Student receives 30 minutes of Specially Designed Instruction (SDI) in Social Skills and Organizational/Study Skills per week and 120 minutes of SDI per week in each of the Student's other goal areas. SDI is provided in a special education classroom or in the location where the Speech/Language Therapist works. The Student is provided with accommodations either school wide or in the general education classroom. The Student's accommodations are as follows:
  - a. Access to sentence frames in writing and science;
  - b. Access to repetitions of directions;
  - c. Preferential seating (facing instruction, near strong peer model);
  - d. Access to social stories;
  - e. Designated Support of text to speech on high stakes math testing one time per year;
  - f. Frequent check-ins with the teacher;
  - g. Access to a safe person to check in with (i.e., learning specialist, speech/language specialist);
  - h. Access to headphones for assemblies, fire drills;
  - i. Visuals to support understanding of LEA classroom routines and academic content;
  - j. Access to a visual pass to talk with identified safe check-in people; and,
  - k. Daily school to home communication.<sup>9</sup>
4. The IEP Team identified the most appropriate placement as the general education classroom, with 420 minutes per week of SDI provided outside of the general education environment due

<sup>8</sup> According to the Student's IEP, "To be considered ready to exit ELD services, a student should receive 5s on the different strands of the ELPA."

<sup>9</sup> Items j and k were added at the May 6, 2019 IEP team meeting.

to the Student need for direct and frequent feedback in a small group setting in order to make progress toward general education standards, along with 120 minutes per month of SDI in the area of “Communication Skills.”

5. District staff provided the Investigator with information illustrating the Student’s IEP accommodations were being implemented in the general education classroom. The Parents also agreed the accommodations had been provided to the Student.
6. The Student’s annual IEP review was conducted on November 6, 2018.
7. Some members of the IEP Team met again with the Parents on November 27, 2018 in an informal follow-up meeting to answer or clarify issues the Parents might have with the Student’s IEP. The Parents and their Advocate attended the November 27, 2018 meeting along with the Case Manager, the school Principal, and a Special Education Administrator. During the interviews, all parties agreed that the November 27, 2018 meeting was not an IEP team meeting
8. The Student’s IEP Team met again on May 6, 2019 to add accommodations to the Student’s IEP.
9. On June 12, 2019, the Student’s IEP Team met again to plan the Student’s upcoming three-year re-evaluation and review progress of the changes made to the Student’s IEP on May 6, 2019. All required members of the IEP Team attended each IEP meeting held during the 2018-2019 school year.
10. The District provided an interpreter for each of the IEP meetings held during the 2018-2019 school year. At an IEP team meeting during the 2017-2018 school year, an interpreter refused to continue providing interpreter services at the end of their contract day. After that, the Parents requested that interpreter not be present at future meetings. The District honored the Parents’ request. During interviews, the Parents agreed that they always had an interpreter available for meetings, but noted that some interpreters did not do as good a job as others.
11. The Parent filed this Complaint on June 26, 2019.

### **III. DISCUSSION**

#### **A. Parent Participation**

The Parent alleges that the District violated the IDEA when it did not provide adequate interpretation in the Parents’ native language of the IEP Team’s discussion in IEP meetings. To ensure that parents have a meaningful opportunity to participate in IEP team meetings, a school district must “take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents . . . whose native language is other than English.”<sup>10</sup> Three IEP team meetings convened during the 2018-2019 school year. At each, the District provided an interpreter for the Parent, honoring the Parent’s request that one particular interpreter not work with the Team. The record supports a finding that the District took action to ensure the Parent understood the IEP team meeting proceedings. The Department does not substantiate this allegation.

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<sup>10</sup> 34 CFR § 300.322(e); OAR 581-015-2190(3).

## B. IEP Team

The Parent alleges that the District violated the IDEA when it did not have all required team members at IEP meetings. A school district must ensure that individuals who participate in a student's IEP fill specific roles and responsibilities. Each student's IEP must typically include the student's parent(s), a general education teacher, special education teacher, a qualified and knowledgeable school district representative, an individual who can interpret the instructional implications of evaluation results, and, whenever appropriate, the student.<sup>11</sup> Each required individual attended each IEP team meeting for the Student during the 2018-2019 school year. During investigative interviews, the Parents agreed with the District that appropriate team members were present during IEP meetings, but felt that IEP team members should have been included during an investigation into certain allegations the Student made against a teacher during the 2018-2019 school year. This task falls outside of the responsibilities of the Student's IEP Team and did not conform to District protocols for such allegations. The Department does not substantiate the Parent's allegation about improper assembly of the Student's IEP Team.

## C. When IEPs Must Be in Effect

The Parent alleges the District violated the IDEA when it did not provide all accommodations written in the Student's IEP. A school district must have an IEP in place at the beginning of the school year for each eligible child and must implement that IEP.<sup>12</sup> The Student's IEPs during the 2018-2019 school year contained a number of different accommodations. District staff provided the Investigator with information illustrating the Student's IEP accommodations were implemented. Furthermore, the Parent agreed that the accommodations had been provided to the Student. The Parent was uncertain whether an accommodation that had been added recently (May 6, 2019) had been provided.<sup>13</sup> The investigator obtained evidence of the identified accommodation and shared it with the Parents, at which time they agreed that it was being implemented. The Department does not substantiate this allegation.

### **CORRECTIVE ACTION<sup>14</sup>**

*In the Matter of North Clackamas School District 12*  
Case No. 19-054-029

The Department does not order corrective action in this matter.

Dated: this 23rd day of August, 2019

*Candace Pelt, Ed.D*

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Candace Pelt Ed.D  
Assistant Superintendent  
Office of Student Services

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<sup>11</sup> 34 CFR § 300.321; OAR 581-015-2210.

<sup>12</sup> 34 CFR § 300.323; OAR 581-015-2220(1)(b).

<sup>13</sup> Access to a visual pass to talk with identified safe check-in people.

<sup>14</sup> 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)).

Mailing Date: August 23, 2019

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).)