

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Woodburn School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-037

I. BACKGROUND

On October 17, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Woodburn School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on October 17, 2019.

On October 28, 2019, 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 November 11, 2019. On November 7, 2019 the District remitted its response via email to the Complaint Investigator. The *Response* included a narrative, and the following documents, upon which the Investigator relied:

1. Communication Assessment Report dated March 21, 2018
2. Confidential Psychological Report dated March 21, 2018
3. Eligibility Statement (Communication Disorder “CD”) dated March 21, 2018
4. Eligibility Statement (Other Health Impairment, “OHI”) dated March 21, 2018
5. Occupational Therapy Evaluation dated May 23, 2018
6. Behavioral Plan data dated May 2018
7. I-SWIS time segment report data taken between September 3, 2018 and December 4, 2018
8. I-SWIS time segment report data taken between November 5, 2018 and December 4, 2018
9. Consent for Evaluation dated November 6, 2018
10. Student Assessment list dated November 6, 2018
11. Tier III Functional Behavioral Analysis (“FBA”) dated December 17, 2018
12. Tier II/III Behavior Intervention Plan (“BIP”) (unsigned, undated)
13. Sample behavioral data chart (check-in)
14. I-SWIS Measure Report data taken between December 31, 2018 and January 25, 2019
15. Notice of Team Meeting dated January 14, 2019
16. Individual Education Plan (“IEP”) dated January 24, 2019
17. Prior Written Notice (“PWN”) dated January 24, 2019
18. IEP team meeting notes dated January 24, 2019
19. Daily tracking sheets dated between February 12, 2019 and June 11, 2019
20. Confidential Psychological Report dated March 21, 2019
21. I-SWIS time segment report data taken between April 22, 2019 and May 21, 2019
22. Medical Assessment executed April 25, 2019
23. Notice of Team Meeting dated May 9, 2013
24. Confidential Psychoeducation Report dated May 22, 2019
25. Eligibility Statement (Autism Spectrum Disorder “ASD”) dated May 23, 2019
26. Eligibility Statement (Intellectual Disability “ID”) dated May 23, 2019
27. Eligibility Statement (OHI) dated May 23, 2019
28. Eligibility Statement (CD) dated May 23, 2019
29. IEP dated May 23, 2019
30. Placement Determination dated May 23, 2019
31. Prior Written Notice dated May 23, 2019
32. IEP team meeting notes dated May 23, 2019

33. Placement Determination page, undated but signed
34. Emails between Parent and District dated between April 3, 2018 and May 31, 2019
35. Student's attendance data for school years 2018-2019 and 2019-2020
36. Disciplinary Referrals for school years 2017-2018, 2018-2019, and 2019-2020

The Department's Complaint Investigator (Investigator) determined that onsite interviews were necessary. The Investigator interviewed both District personnel and the Parent on November 21, 2019. During the District interview, the Investigator requested specific records from the District and received the following during the in person interview:

1. IEP dated June 1, 2018, as an amendment to the March 21, 2018 IEP
2. Functional Assessment Observation Form dated December 13 and December 14, 2018
3. Parent Functional Assessment Interview dated December 14, 2018

The Parent did not submit any additional documentation either in response to the District's submission or when the Investigator inquired regarding Parent documentation.

The 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

The Department has jurisdiction to resolve this Complaint.¹ Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from October 18, 2018 through October 17, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

II. ALLEGATIONS AND CONCLUSIONS

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.

	Allegations	Conclusions
1.	<p>Placement</p> <p>The Parent alleges that District violated the IDEA because the District improperly placed the Student in a general education classroom when there were more appropriate alternatives in light of the Student's disability.</p>	<p>Substantiated</p> <p>The Student's IEP contains internal inconsistencies regarding placement, are complicated by the discrepancy between the Student's IEP placement and actual placement, and exacerbated by the Student's previous removal from the SLP for non-educational reasons.</p>
2.	<p>IEP Content and Implementation</p> <p>The Parent alleges that the District violated the IDEA because the District failed to create and implement a behavioral support plan for the Student.</p>	<p>Not Substantiated</p> <p>The District implemented Tier I and Tier II interventions to address the Student's behavior. When these were not successful, the District sought consent for a functional behavioral assessment (FBA) from the Parent.</p>

¹ 34 CFR §§ 300.151-153; OAR 581-015-2030.

		The Parent signed the consent, an evaluation was conducted, and an IEP team meeting convened to develop appropriate behavior interventions. Thereafter, an FBA was appropriately implemented.
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REQUESTED CORRECTIVE ACTION
<ol style="list-style-type: none"> 1. The District should be more transparent regarding placement choices and resources; 2. All persons who can assist the Student in making progress should be attending the IEP meetings.

III. FINDINGS OF FACT

1. The Student is nine years old and currently in the second grade. The Student is savvy with computers and likes electronics and watching YouTube videos. The Student responds well to positive feedback. The Student is eligible for special education services under the primary category of Autism Spectrum Disorder (ASD). The Student is also eligible for special education services under the categories of Intellectual Disability (ID) and Other Health Impairment (OHI).
2. In 2016, during preschool, the Student was evaluated for special education services and was found eligible under the category of Communication Disorder (“CD”).
3. The Student’s eligibility under the categories of ASD and ID were later established at a May 23, 2019 Individualized Education Program (IEP) team meeting.
4. Upon entering kindergarten during the 2016-2017 school year, the Student was placed in a District Social Learning Program (“SLP”) classroom. The SLP classroom provides intensive staff support to assist students with making academic progress while teaching behavioral skills to facilitate each student’s integration back into the general education environment. The Parent believed the Student made progress in the SLP classroom and wanted the Student to remain in the SLP classroom.
5. Prior to the start of the 2017-2018 school year, the District removed children from the Student’s SLP classroom due to a planned remodeling of the Student’s elementary school. The District gave the Parent a choice: the Student could be placed in a general education classroom at a neighborhood school or continue in the SLP classroom at a different elementary school.
6. The Parent did not want the Student to transition from the SLP classroom to the general education environment, and either did not know or did not understand that the option of the Student being placed in an SLP classroom at a different elementary school was available. The Parent was under the impression that all District SLP classrooms had been eliminated.
7. The closest alternative SLP classroom was located at a different elementary school less than two miles from the Student’s residence. The Student had family members attending the school and the Parent states they would have agreed to the Student being placed in the SLP classroom at the neighboring school. However, since the Parent believed SLP classrooms had been terminated District-wide, the Parent agreed to the Student

repeating kindergarten for the 2017-2018 school year in a general education classroom, with pull-out for special education services.

8. During the 2018-2019 school year, the Student attended first grade in the general education environment with pull-out for special education services. The placement documentation from the Student's June 1, 2018 IEP indicates that one placement option was considered prior to the Student's first grade year: General education classroom with pull-out for special education instruction. The June 1, 2018 IEP states that the Student will be pulled out for individual or small group specially designed instruction for less than 21% of the school day.
9. During the 2018-2019 school year, the District assigned an adult assistant to assist with the Student's transitions, social interaction, and following directions. The Student demonstrated disruptive behaviors in the classroom. An adult assistant is not reflected as an accommodation or supplementary aid in the Student's June 1, 2018, January 24, 2019 IEP, or May 23, 2019 IEP.
10. During the 2018-2019 school year, the Student struggled with focusing on classroom tasks. The Student's behavior was disruptive and violent. The Student would interrupt class and often repeat a phrase over and over. The Student also used inappropriate language during class time and slapped a teacher. The Student required supervision during bathroom visits to avoid engaging in inappropriate behaviors. District staff reported incidents to the office where the Student scratched peers or a teacher.
11. In addition to assigning an adult assistant, the District also engaged in Tier I behavioral interventions. Tier I interventions included reminders and closer supervision in the general education environment. When Tier I interventions were not successful, the District engaged in Tier II interventions. Tier II interventions included social stories, a check-in routine, visual schedule, and data tracking. Overall, Tier II interventions in the general education environment were not successful.
12. During the 2018-2019 school year, the Student spent the majority of the school day in the Learning Resource Center ("LRC") and would only participate in the general education environment for math and an English learning class. Occasionally, the Student attended music class in the general education environment.
13. On November 6, 2018, the District sent the Parent a Prior Written Notice ("PWN") and Consent for Evaluation so the District could begin an evaluation "due to recent behavior concerns." The correspondence noted that the District would conduct a Functional Behavioral Assessment (FBA). The Parent signed the consent for evaluation the same day.
14. Between November 26, 2018 and December 17, 2018, the District's Behavioral Specialist conducted a records review, review of prior supports, a parent interview, a Student interview (with a Spanish language support to help translate), three observations of the Student, staff interviews, and a thinking skills inventory with the assistance of the Student's special education teacher.
15. On, January 24, 2019, the Student's IEP team convened for an annual IEP review. The Special Education Placement Determination contained two placement considerations: general education with special education services in the classroom; and general education classroom with pullout for special education instruction.

16. The District developed an FBA dated January 24, 2019, which was discussed during the Student's January 24, 2019 IEP team meeting.
17. The FBA was implemented and thereafter, the Student's adult assistant began tracking data on the Student. The Parent visited the classroom and observed the District's implementation of the Student's individualized behavior plan.
18. After the Student's FBA was implemented, the Parent remained concerned that the Student was not making academic progress. During Spring 2019, the Parent had the Student evaluated at Oregon Health and Sciences University (OHSU), which resulted in the following diagnoses: Autism Spectrum Disorder, Intellectual Disability, Attention Deficit Hyperactivity Disorder, Mixed Receptive–Expressive Language Disorder, Microcephaly, and Hypotonia.
19. After the Student received these diagnoses, the Parent contacted the District's school psychologist to discuss the results. At that time, the Parent expressed regret about the Student moving into the general education environment due to the elimination of the District's SLP classrooms. The school psychologist informed the Parent that the District still offered SLP classrooms.
20. In response to the Student's OHSU evaluation and the Parent's communication with the District school psychologist, the District convened an IEP team meeting on May 23, 2019. The IEP Team amended the Student's IEP, updated the Student's eligibility, and changed the Student's placement to an SLP classroom for the 2019-2020 school year. The Student's May 23, 2019 Special Education Placement Determination notes that beginning September 3, 2019, the Student would attend the SLP classroom, with placement in the "special education setting for 65% of [the] school week."
21. The Student's May 23, 2019 Special Education Placement Determination notes the selected placement for the Student as "General education classroom with pullout for special education instruction" for between May 23 and June 14, 2019. The "Federal Placement Code" notes that the student will spend 80% or more of the day in general education. The Student's Services page notes that the Student would be removed to the "Special Ed Class" or "Speech Room" for an anticipated 180 minutes per month for "Communication," 120 minutes per week for "Reading," 120 minutes per month for "Math," 120 minutes per week for "Written Language," and 30 minutes per week for "Study Skills."
22. The Student's "Daily Tracking Sheets" indicate the Student attends school from 7:55 a.m. to 2:15 p.m. for a total of 380 minutes.²
23. The Parent reports that the Student is making some academic progress now that the Student is placed in the SLP classroom.

IV. DISCUSSION

A. Placement

The Parent alleges that the District violated the IDEA when it improperly placed the Student in a general education classroom when there were more appropriate alternatives in light of the

² Some documents indicate the Student attends class from 7:45 a.m. to 2:15 p.m. (390 minutes). On Wednesdays, the Student attends from 9:25 a.m. to 2:15 p.m. (290 minutes) as part of a District-wide late start schedule.

Student's disability. School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.³ Further, school districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.⁴ After considering placements and services, "the school district must take the final step and clearly identify an appropriate placement from the range of possibilities."⁵

The Student's placement in a District SLP classroom was interrupted by the District renovating the Student's school prior to the 2017-2018 school year. The District gave the Parent a choice of continued placement in the SLP classroom at another elementary school or placement in the general education environment. The Parent misunderstood the options and developed the impression that SLP classrooms had been eliminated District-wide. As a consequence, the Student was placed in a general education environment with pull-out services for special education.⁶ The record does not indicate an IEP team meeting convened to make this decision.

Thereafter, the Student remained in the general education environment with varying levels of removal to receive special education in a resource room. In this placement, the Student demonstrated increasingly challenging behaviors. The Student's IEP team convened on June 1, 2018, January 24, 2019, and May 23, 2019. It was not until the May 23, 2019 meeting that the District considered the Student's return to the SLP placement, despite the fact that: (1) the Student's removal from the SLP placement occurred because of a District facilities issue, and not a change in the Student's demonstrated need; and (2) the Student was exhibiting increasingly challenging behaviors. Instead, the considered placements were limited to general education with special education services in the classroom and general education classroom with pull-out for special education instruction.

Also, the Student's IEP is internally inconsistent. The May 23, 2019 IEP (and previous IEPs from the 2018-2019 school year) state that the Student would spend 80% or more of their day in the general education classroom. But the Student's "Services" page indicates that more than 20% of the Student's week in the May 23, 2019 IEP is dedicated to removal to either the "Speech Room" or the "Special Ed Class." This internal inconsistency is further complicated by District staff reports that the Student spent the majority of the school day outside of the general education classroom, in the Learning Resource Center ("LRC"), and would only participate in the general education environment for math and an English learning class.

The Student's placement was changed due to renovations to District facilities. This placement change persisted into the Complaint period. The District developed an IEP for the Student that contained internal inconsistencies and was further complicated by a discrepancy between the Student's IEP and actual placement during the 2018-2019 school year. The District did not make a continuum of alternative placements available to the Student, and did not clearly identify or consistently carry out placement with respect to the Student. For these reasons, the Department substantiates this allegation and orders corrective action.

³ OAR 581-015-2250(a).

⁴ OAR 581-015-2245.

⁵ *Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp.2d 1093, 1108 (C.D. Cal. 2000).

⁶ The Department will not make determinations about the mechanisms of the placement decisions themselves as they fall outside the one-year complaint period, but their outcomes do not.

B. IEP Content and Implementation

The Parent alleges that the District violated the IDEA when it failed to develop and implement a behavioral support plan for the Student. Each school district must ensure that the IEP team reviews the child’s IEP periodically, but at least once every 365 days, to revise it, as appropriate, to address the Student’s anticipated needs or to address other matters.⁷ When developing, reviewing, and revising the IEP of a student whose behavior impedes the child’s learning or that of others, a school district must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.⁸ With respect to FBA evaluations, a school district must conduct an FBA and develop, review or revise a behavior intervention plan within 45 school days of receiving parental consent to conduct the assessment for each student who has an IEP or 504 plan and has placed other students or staff at imminent risk of serious bodily injury as a result of their behavior.⁹

In response to the Student’s behaviors, the District initiated Tier I and Tier II interventions. When these interventions were not successful and the Student’s behaviors escalated to scratching and hitting, the District initiated the FBA evaluation process, sending the Parent a consent to evaluate on November 6, 2018. The District obtained the Parent’s consent the same day, conducted an evaluation and within 45 school days of receiving the Parent’s consent, convened the Student’s IEP team to review the FBA, and develop an individualized plan to assist the Student in decreasing inappropriate behaviors and replace them with alternative appropriate behaviors.

The District timely and appropriately responded to the Student’s behaviors when it conducted an evaluation and developed a plan for the Student. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁰

*In the Matter of Woodburn School District
Case No.19-054-037*

Based on the facts provided, the following corrective action is ordered.

	Action Required	Submissions¹¹	Due Date
1.	After consultation with the District’s County Contact, review the District’s procedures for ensuring a continuum alternative placements is considered for all students with disabilities, as required by OAR 581-015-2245.	Submit a copy of the procedures and any other materials, showing any edits or revisions.	February 14, 2020

⁷ 34 CFR § 300.320; OAR 581-015-2255.

⁸ 34 CFR § 300.324; OAR 581-015-2205.

⁹ OAR 581-015-2181.

¹⁰ The Department’s order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (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).)

¹¹ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634; e-mail: mike.franklin@ode.state.or.us fax number (503) 378-5156.

2.	After consultation with the District's County Contact, review the District's procedures for ensuring IEP development includes a system of checks for internal consistency within each student's IEP (services, placement, nonparticipation justification, etc.)	Submit a copy of any procedures and materials, with any edits or revisions.	February 14, 2020
3.	Provide training using ODE-approved materials to all District special education staff and District/building administrators involved in making placement decisions for students with disabilities and memorializing them accurately and consistently in IEPs.	Submit a copy of the presentation, agenda (including name of presenter) and dated sign-in sheet.	May 1, 2020

Dated the 16th Day of December, 2019

Candace Pelt, Ed.D

Candace Pelt, Ed. D
Assistant Superintendent
Office of Enhancing Student Opportunities

Mailing Date: December 16, 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).)