

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

|  |   |                     |
|--|---|---------------------|
| In the Matter of Corvallis School District | ) |                     |
|  | ) |                     |
|  | ) | FINDINGS OF FACT,   |
|  | ) | CONCLUSIONS,        |
|  | ) | AND FINAL ORDER     |
|  | ) | Case No. 21-054-001 |

**I. BACKGROUND**

On January 14, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Corvallis School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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 Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On January 19, 2020, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 2, 2021.

The District submitted a *Response* on February 2, 2021 denying the allegations, providing an explanation, and supporting documents in support of the District's position. The Parents submitted supporting documents on or before February 9, 2021. In total, the District submitted the following items:

1. District Written Response to Complaint, 2/2/21
2. IEP (including placement determination), 10/29/20
3. Special Education Notice of Team Meeting, 10/12/20
4. IEP Team Meeting Notes, 10/29/20
5. IEP Snapshot, no date
6. IEP (added ESY) (including placement determination), 1/8/20
7. Special Education Notice of Team Meeting, 12/11/19
8. Prior Notice and Consent for Initial Provision of Special Education Services, 1/8/20
9. Prior Written Notice of Special Education Action, 1/8/20

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

10. Meeting Notes, 11/25/19, 1/8/20, 1/17/20
11. IEP Snapshot (second version), no date
12. IEP (including placement determination), 1/8/20
13. 2020-2021 Care Plan for Seizures, updated 9/24/20
14. 2019-2020 Care Plan for Seizures, updated 9/24/19
15. Student's OT Equipment for Distance Learning, 4/14/20<sup>3</sup>
16. Email: assistive technology and evaluations request, 10/6/20
17. Email: AAC consultant and equipment, 10/6/20
18. Email: From PT, 1/12/20
19. Email: 11/30/20, 12/2/20
20. Email: ESY, 7/23/20
21. Email: Student's computer equipment, 10/5/20
22. Email: Helpful Tips, 9/14/20
23. Email: January 20th, 1/12/20
24. Email: project-based learning/4th grade news, 9/23/20
25. Email: teletherapy schedule, 12/9/20
26. Email: Student's computer equipment, 10/6/20
27. Email: scheduling IEP Meetings, 12/8/20
28. Email: transportation for assessments/schedule, 12/9/20
29. Email: seizure, 1/11/21
30. Email: teletherapy consent, 12/2/20
31. Email: welcome letter (revised), 9/8/20
32. Email: follow up, 9/9/20
33. Email: AAC, 5/6/20
34. Email: AT and evaluations request, 10/7/20
35. Email: AAC Trials on 1/14/21, 1/14/21
36. Email: case manager/communication plan/reports, 1/4/21
37. Email: weekly update, 1/8/21
38. Email: draft IEP, 12/11/20
39. Email: consent for evaluation, 12/8/20
40. Email: draft IEP, 10/23/20
41. Email: related services, 10/21/20
42. Email: AT and evaluations request, 10/12/20
43. Email: ESY, 7/23/20
44. Email: education plan/ESY, 8/18/20
45. Email: AT and AAC inventory, 10/20/20
46. Email: IEP meeting, 10/1/20
47. Email: assessment, prior written notice, 11/10/20
48. Email: checking in, 4/30/20
49. Email: draft IEP, 10/23/20
50. Email: education plan/ESY, 9/6/20

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<sup>3</sup> OAR 581-015-2300 (3)

51. Email: follow up, 9/9/20
52. Email: ESY/education plan, 8/18/20
53. Email: Student's Education Assistant, 5/8/20
54. Email: limited in-person, 11/12/20
55. Email: meeting notes, 11/6/20
56. Email: parent input/draft IEP, 10/29/20
57. Email: cause effect activities, 10/1/20
58. Email: Vision assessment, 10/20/20
59. Email: related services, 10/16/20
60. Email: supporting student, 4/15/20
61. Email: team meeting notice, 1/7/21
62. Email: weekly schedule continue/IEP notice, 1/11/21
63. Email: seizure, 1/11/21
64. Email: virtual session, 10/6/20
65. Email: related services, 10/15/20
66. Email: teletherapy consent, 11/30/20
67. Email: updated health protocol, 11/18/20
68. Email: ipad, email from PT, 11/10/20
69. Email: AAC introduction, 9/24/20
70. Email: consent to evaluate, 12/8/20
71. Email: limited in person/related services, 11/20/20
72. Email: letter of representation and records request, 9/17/20
73. Email: ROI, 12/2/20
74. Email: academic assessment consent, 12/10/20
75. Email: limited in person, 11/30/20
76. Email: IEP Team Meeting Notice, 1/7/21
77. Email: teletherapy consent, 12/2/20
78. Email: draft IEP, 10/23/20
79. Email: ESY, 6/8/20
80. Email: lightbox and icon cards, 11/13/20
81. Email: IEP Meeting, 10/1/20
82. Email: oxygen concentrator, 12/4/20
83. Email: PT/OT session, 11/19/20
84. Email: consents 12/3/20
85. Email: parent input, 10/28/20
86. Email: medicaid billing, 10/13/20
87. Email: checking in, 4/29/20
88. Email: distance learning, 5/5/20
89. Email: meeting notes, 11/6/20
90. Email: parent input/draft IEP, 10/29/20
91. Email: medicaid billing, 10/13/20
92. Email: state testing, 2/5/20
93. Email: supporting Student, 4/15/20
94. Email: medications, 5/5/20

95. Email: modified PE activities, 5/5/20
96. Speech Pathology Evaluation, 2/13/18
97. Nurse documentation sheet, 12/15/20
98. Nurse documentation sheet, 12/16/20
99. Nurse documentation sheet, 12/17/20
100. Records request, 8/21/19
101. Student's day sheet, sample
102. (Physical Therapy) Guidance Documents, 9/11/19
103. District legal counsel letter RE: mediation, 2/23/21
104. Student's pool plan, no date
105. Classroom teacher present levels, no date
106. Gross motor protocol, 1/13/20
107. Dyna wedge sitting, 4/13/20
108. Distance learning routine, no date
109. Student schedule, no date
110. Training and transition plan, 9/19
111. Team contact list, no date
112. Student schedule, no date
113. Directions to EA, no date
114. Student data tracking sheets, no date
115. Fine motor access protocol, 12/19
116. Handwashing visuals, no date
117. Tracing page, no date
118. Fine motor access protocol, updated, 12/19
119. Gait trainer protocol, 9/11/19
120. Movement transitions/transfers, 9/11/19
121. Mat time, 9/11/19
122. Stander protocol, 9/27/19
123. Request for a Complaint Investigation, 1/14/21
124. Legal representation letter, 9/17/20
125. Email, records request, 11/10/20
126. Email, records request, 11/11/20
127. Email, communication, records request, 11/19/20
128. Email, communication, records request, 11/25/20
129. Email, missing documents, 1/11/21
130. IEP meeting minutes, 1/8/20
131. IEP, 1/8/20
132. IEP, 9/23/19
133. Email, records request to Student's prior district, 1/12/21
134. Parent's Reply, 2/9/21
135. IEP from prior district, 3/27/19
136. Physical Assistance Guidelines, 10/25/18
137. School orders, 2020-21
138. Care plan for seizures, 11/18/20

- 139. ESD Service Records 2020-21 school year, 2/10/21
- 140. ESD Service Records 2019-20 school year, 2/10/21
- 141. Service Records for speech therapist, 2019-20 school year
- 142. Service Records for speech therapist, 2020-21 school year
- 143. Email: please confirm information, 2/17/21
- 144. Draft IEP from prior district, 3/27/19

The Complaint Investigator interviewed the Parent on February 16, 2021. On February 17 and 18, 2021, the Complaint Investigator interviewed the District’s Coordinator of Special Education, Building Administrator, two Case Managers, Physical Therapist, Occupational Therapist, Nurse, and Educational Assistant regarding this matter. Virtual meetings were held instead of on-site interviews due to the Coronavirus pandemic. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from January 15, 2020, to the filing of this Complaint on January 14, 2021.

| <b>Allegations</b>   | <b>Conclusions</b>  |
|--|---|
| <p><b>1. Access to Educational Records</b></p> <p>The Parents alleged that the District violated the IDEA when the District failed to produce certain special education records within the required 45 days. Specifically, the Parents alleged that the District had not provided copies of the Nursing Protocol, the Occupational Therapy Protocol, the Physical Therapy Protocol and an evaluation report that were requested by the Parents.</p> <p>(OAR 581-015-2300(3)(b) and 34 CFR § 300.613)</p> | <p><b>Substantiated.</b></p> <p>The District acknowledged that it failed to provide the requested records to the Parents within the required timeline.</p>  |
| <p><b>2. IEP Implementation</b></p> <p>The Parents alleged that the District violated the IDEA when the District failed to properly implement the Student’s IEP. The Parents alleged that certain supplementary aids and services were not implemented. Specifically, the Parents alleged that the accommodations for a Nursing protocol, an Occupational Therapy protocol, and a Physical Therapy protocol may not have been implemented.</p>   | <p><b>Not Substantiated.</b></p> <p>There is sufficient evidence through documentation of protocols and service logs that the District implemented the Student’s IEP, as it relates to the specified supplementary aids and services.</p> |

### III. FINDINGS OF FACT

#### Background and Access to Educational Records

1. The Student is 11 years old and in the fourth grade. Student attends a local elementary school and is in the general education classroom for most of the school day.
2. The Student is sweet and works hard at school. The Student faces challenges daily and has a positive attitude. The Student enjoys social interactions with classmates and engaging in academic activities, especially those involving fun sounds and tactile experiences. The Student enjoys doing activities in the pool. When at school, the Student enjoys PE class and does a great job participating in music. The Student also enjoys playing instruments and vocalizing.
3. The Student is eligible for special education and related services due to four (4) eligibilities: Other Health Impairment with an eligibility due date of November 21, 2019; Visual Impairment with an eligibility due date of November 25, 2019; Communication Disorder with an eligibility due date of November 25, 2019; and Orthopedic Impairment with an eligibility due date of January 8, 2020.
4. The Student's multiple disabilities have resulted in complex needs. These disabilities include Cerebral Palsy, Cortical Vision Impairment, heart concerns, and neurodegenerative disabilities. The Student needs extra support in the classroom and modified curriculum to accommodate needs. This might affect functional and academic performance in the classroom.
5. The Student receives Specially Designed Instruction (SDI) in the areas of communication, fine and gross motor skills, and academic skills. Related services for nursing and transportation are provided. The Student has supplementary aids and services to support medical, physical, sensory, and communication needs. Supports for personnel that are provided include consultation for communication, vision, physical and occupational therapy, and academic modifications.
6. The Parents, through legal counsel, made a records request to the District on September 17, 2020. The records request sought all records related to the Student, including health information and the special education file.
7. The District received the records request on September 18, 2020. As a result, the District was required to provide the records to the Parents by November 2, 2020.
8. The legal counsel for the Parents emailed the District's legal counsel on November 10, 2020, notifying the District that the record submission was 10 days late. Further, the email notified the District that the Parents needed the records for review prior to mediation with the District, which was scheduled later in the week (November 13, 2020). Further, legal counsel for the Parents emailed the District's legal counsel on November 11 and 19, 2021 requesting copies

of Occupational Therapy and Physical Therapy protocols, and a seizure protocol be submitted as part of the records request.

9. The District submitted records to the Parents, through legal counsel, on November 10, 2020, November 13, 2020, and November 19, 2020.
10. The legal representative for the Parents emailed the District's legal counsel on November 11 and 19, 2021 requesting copies of the IEPs dated January 8, 2020 and June 8, 2020 (amended) and in effect during the complaint period. These IEPs list a Nursing/Healthcare Protocol, Occupational Therapy Protocol, and Physical Therapy Protocol as supplementary aids or services. The IEP dated October 29, 2020 does not include Occupational or Physical Therapy Protocols, but does include a Nursing/Healthcare Protocol.
11. IEP Meeting Notes dated January 8, 2020 contain the following exchange:
  - a. *Administrator: to reflect the PT activities that are happening, can we write an accommodation that there is a PT Protocol attached to the IEP that reflects everything that is happening?*
  - b. *Occupational Therapist: yes. I have written one and sent it...already.*
  - c. *Physical Therapist: We can definitely do that...*
  - d. *Parent: We probably need to train someone else again to have a backup in case there needs to be one.*
  - e. *Occupational Therapist: I also have an OT protocol as well. Describe what Student is doing and will need to be updated. It would also include toileting, handwashing, and sensory information.*
  - f. *Case Manager: can we use a google doc as the place to work on it, keep it updated?*
  - g. *Parent: here's a copy of the previous protocol.*
  - h. *Physical Therapist: yes, I can write one like this.*
12. During interviews with the Complaint Investigator, the District acknowledged that the records were not provided to the Parents within the required 45-day timeline. The District further acknowledged that numerous documents in the custodial possession with the District have still not been provided to the Parents as part of the official records request. The outstanding documents include: records from the previous school district, evaluation report from an outside agency, Healthcare Plan, Occupational Therapy Protocols, and Physical Therapy Protocols.
13. Multiple staff reported during interviews that there was a Google shared folder that contained written protocols for Occupational and Physical Therapy. The shared folder also included data collection sheets. The contents of this shared folder were not provided to the Parents.
  - a. The Student's Case Manager reported the shared folder contained all the guidance and protocols for Occupational and Physical Therapy.
  - b. The Student's Occupational Therapist reported using the shared folder and adding data tracking sheets.
  - c. The Student's Physical Therapist reported that multiple staff members had access to the shared folder.
  - d. All staff members interviewed indicated they were not asked by the staff member coordinating the response to the records request for these records as part of the records request.

## **IEP Implementation**

14. The IEPs dated January 8, 2020 and June 8, 2020 (amended) and in effect during the complaint period list a Nursing/Healthcare Protocol, Occupational Therapy Protocol, and Physical Therapy Protocol as a supplementary aid or service. The IEP dated October 29, 2020 does not include Occupational or Physical therapy protocols, but does include a Nursing/Healthcare Protocol.
15. Care Plans for seizures were developed and are on file for the 2019-20 and 2020-21 school years.
16. During interviews, staff report the Student's care plan for seizures is reviewed daily for implementation, formally reviewed multiple times per year with other staff, and annually with Parents.
17. Nursing service logs were completed daily. Parent reports summarizing these nursing logs were also sent home.
18. Included in the record submission to the Parents was a document titled, "OT Equipment for Distance Learning," created April 4, 2020.
19. Service logs for Occupational and Physical Therapy indicate regular consultation sessions as well as observations of and direct contact time with Student.
20. During multiple interviews, staff indicated they attended weekly consultation meetings with Occupational and Physical Therapists and that services were implemented.

## **IV. DISCUSSION**

### **1. Access to Educational Records**

The Parents alleged that the District violated the IDEA when the District failed to produce certain special education records within the required 45 days. Specifically, the Parents allege that the District has not provided copies of the Nursing Protocol, the Occupational Therapy Protocol, the Physical Therapy Protocol, records from the Student's previous school district and an evaluation report.

Parents may request and review copies of education records of students with disabilities. A school district must comply with a parent request to inspect and review records without unnecessary delay.<sup>3</sup> The required timeline to produce records is within 45 days after the request has been made or before any meeting regarding an IEP.<sup>4</sup>

The Parents requested, in writing, copies of all educational records on September 17, 2020. The District received the written request on September 18, 2020. The District provided incomplete records on November 10, 2020, November 13, 2020, and November 19, 2020. The deadline for producing requested records was November 2, 2020. There was a mediation session scheduled for November 13, 2020. During the interviews, it was discovered that there were several

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<sup>3</sup> OAR 581-015-2300 (3)

<sup>4</sup> OAR 581-015-2300 (3)(b)



documents in the District's possession that were not provided to the Parents prior to the 45-day timeline nor prior to the mediation session. Specifically, the District did not provide the Parents with the Nursing protocol, the Occupational Therapy Protocol, the Physical Therapy Protocol, records from the Student's previous school district, and an evaluation report.

The Department substantiates this allegation.

## **2. IEP Implementation**

The Parents alleged that the District violated the IDEA when the District failed to properly implement the Student's IEP. The Parents alleged that this IDEA violation included the District failing to maintain protocols for the Student. The Parents further alleged that the lack of protocols are evidence of failure to implement those accommodations under the Student's IEP. Specifically, the Parents alleged that the accommodations for a Nursing Protocol, an Occupational Therapy Protocol, and a Physical Therapy Protocol may not have been implemented.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.<sup>5</sup> School districts must provide special education and related services to a child with a disability in accordance with an IEP.<sup>6</sup> Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.<sup>7</sup>

On September 17, 2020, the Parents requested copies of the Student's educational records. In response, the District did not provide the Parents with copies of the Student's Nursing Protocol, Occupational Therapy Protocol, or the Physical Therapy Protocol. This caused the Parents to believe that the protocols might not exist, which would make implementation of the January 8, 2020 and June 8, 2020 IEPs impossible. During the course of interviews, staff members informed the Complaint Investigator that staff members did maintain these protocols in a Google shared folder, but had not been asked to provide them. The District did provide copies of the protocols as part of the investigative process. The District also maintained comprehensive service logs for Nursing, Occupational Therapy, and Physical Therapy.

The District had an IEP in effect with supplementary aids and services. The District provided special education and related services, including accommodations, in accordance with the Student's IEP. The District made the IEP accessible to staff. Staff had access to the written protocols. There is sufficient evidence that demonstrates the District did implement the IEP, including supplementary aids and services of a Nursing Protocol, Occupational Therapy Protocol, and Physical Therapy Protocol, as described in the IEP.

The Department does not substantiate this allegation.

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<sup>5</sup> OAR 581-015-2220 (1)(a)

<sup>6</sup> OAR 581-015-2220 (1)(b)

<sup>7</sup> OAR 581-015-2220 (3)(a)(b)

**V. CORRECTIVE ACTION<sup>8</sup>**

*In the Matter of Corvallis School District  
Case No. 021-054-001*

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

| Action Required  | Submissions   | Due Date                                 |
|--|---|--|
| 1. The District shall provide all requested documents to the Parents including: <ul style="list-style-type: none"> <li>a. Nursing Protocols and service logs</li> <li>b. Occupational Therapy Protocols</li> <li>c. Physical Therapy Protocols</li> <li>d. Records from previous district</li> <li>e. Private evaluation report</li> <li>f. All contents of shared folder</li> </ul> |   | March 26, 2021                           |
| 2. District staff who work with student records shall receive training on records management and related regulations.  | Training agenda/materials to County Contact for review/approval.<br><br>Sign-in sheet for training. | September 1, 2021<br><br>January 1, 2022 |

Dated: this 15<sup>th</sup> Day of March 2021



Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: March 15, 2021

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).)

<sup>8</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)).