

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Beaverton School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-011

I. BACKGROUND

On March 2, 2009, the Oregon Department of Education (“Department”) received a letter of complaint from the parent of a student attending school and residing in the Beaverton 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 on March 3, 2009. The parent did not provide the District a copy of the complaint letter; the Department provided a copy along with the acknowledgement letter.

On March 6, 2009, the Department sent a *Request for Response* (“RFR”) to the District identifying the specific allegations in the complaint to be investigated with a Response due date of March 20, 2009. The District submitted its timely *Response* to the Department and to the parent on March 19, 2009. The District’s Response included seven pages of narrative explanation and 253 pages of documents and exhibits requested in the RFR. On March 21, 2009, the parent submitted a Reply to the RFR.

The Department’s complaint investigator determined that on-site interviews were necessary. The Department’s investigator interviewed the parent on March 31, 2009. On March 31, 2009, the Department’s investigator also interviewed the student’s special education teacher, two of the student’s general education teachers, and the District’s Assistant Director of Special Education. The Department’s complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations 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 unless exceptional circumstances require an extension.¹ 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. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one year period from March 4, 2008 to the filing of this complaint on March 3, 2009.²

¹ OAR 581-015-2030(12)

² See 34 CFR 300.153 (c); OAR 581-015-2030(5).

	Allegations	Conclusions
1.	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p> <p><u>IEP Implementation:</u></p> <p>Not implementing the student's IEP regarding the modification of assignments and the general education curriculum by limiting his enrollment to specific classes.</p>	<p>Not Substantiated.</p> <p>The Department finds that the District implemented the modifications and accommodations listed on the student's IEP and that the District did not limit the student's enrollment based on the student's needed modifications or accommodations.</p>
2.	<p><u>Alternative Placements:</u></p> <p>Not providing a continuum of alternative placements for this student to meet his needs for special education and related services.</p>	<p>Not Substantiated</p> <p>The Department finds that the District provides a continuum of alternative placements in accordance with the requirements of the IDEA.</p>
3.	<p><u>Requested Corrective Action:</u></p> <p>The parents are requesting that the District provide a continuum of placements that includes core course offerings to meet the student's special education needs.</p>	<p>Not Required</p>
4.	<p><u>Issues Beyond the Scope of this complaint:</u></p> <p>To the extent that the parent is alleging disability discrimination under Section 504 of the Rehabilitation Act of 1973, a federal law, and Oregon Revised Statute 659.850, Discrimination in Education Prohibited, the Department may not yet investigate such an allegation.</p>	

III. FINDINGS OF FACT

Background

1. The child is currently 17 years old, resides in the District, and attends eleventh grade at a District high school. The student is presently eligible for special education as a

child with an orthopedic impairment and under the category of Other Health Impaired.

2. The District high school operates on an “Odd/Even” schedule, with four class periods on each day, so the student has the opportunity of enrolling in eight classes each semester. The class periods are broken down into roughly 90 minutes increments.
3. The IEP team reviewed and revised the student’s IEP on April 28, 2008 (April 2008 IEP). It included specially designed instruction in the following areas: communication skills (90 minutes/every other day); life skills (90 minutes/daily); written language (45 minutes/every other day); reading (45 minutes/every other day); mathematics (90 minutes/every other day); transition services (90 minutes/every other day). The student had related services for speech/language therapy (30 minutes/weekly) and health services (60 minutes/year). The IEP transition page identifies that the student is pursuing a modified diploma.
4. The student’s IEP included 22 modifications and accommodations. Relevant to this complaint, the IEP contained the following modifications and accommodations:
 - a) Modify assignments while retaining content [and/or topic³];
 - b) Modified letter grading on report card/transcript;
 - c) Access to additional adult support in GE classes.
5. The nonparticipation justification states that the student “will not participate with his nondisabled peers during 6 of the 8 classes he spends in a Special Education setting.” The IEP lists three placement options: “Academic Learning Center - All Levels,” which was selected as the “least restrictive environment to meet [the student’s] academic and transition needs.”⁴ “Resource Room” and “Resource Room only” are listed but were rejected as overly restrictive, not meeting the student’s academic or transition needs, and not providing enough support for the student to achieve IEP goals and objectives.⁵
6. The student’s official transcript includes the designation “Diploma Type: Modified” in the heading of the document.

³ The bracketed material was added in the October 2008 IEP.

⁴ In District documentation, the Academic Learning Center (ALC) is described as “a specialized program that provides specially designed instruction and necessary related services in all developmentally appropriate academic areas through modification of grade level curriculum.... ALC curriculum is the regular education curriculum with modifications necessary to meet the IEP goals of the student. In the high schools, student (through age 18) receive services to meet their academic, social communication, life skills, transition and community access needs. Due to the various electives, a student may mainstream more than when in the elementary and middle settings (sic).” (SD 246)

⁵ In District documentation, the Resource Room Programs are described as located at every district school. “It is staffed with a special education teacher(s) and instructional assistants as determined by the needs in each school. This support program provides individualized instruction including pull out service in small group special education settings, instruction in general education class settings, and/or collaborative teaching with general education teachers. The staff also consults with general education teachers and completes assessments with students.... The program is designed to provide as much, or as little, special education service as the student needs.” (SD 248)

2008-2009 School Year

7. During the first semester of the 2008-2009 school year, the student enrolled in three general education classes, Introduction to Psychology, Planetary Science, and Team Sports. The student also enrolled in four classes taught in the ALC: Language Workshop, Math Skills, Life Skills (taught daily), and a separate Academic Seminar to provide additional support for the general education classes. The student also had a period scheduled for work experience and 11th grade advisory.
8. The Introduction to Psychology course is a one semester course, without a prerequisite, offered to students in grade 11 and 12.
9. The Planetary Science class has a prerequisite of BCP 10 (Biology, Chemistry, and Physics - taken in the 10th grade). During the 2008-2009 school year, it was offered as a two semester course. In future school years, it will be offered only as a one semester course.
10. The IEP team met on October 13, 2008 to review and revise the student's IEP. The lengthy present levels statement indicated that the student: met the third grade State Testing requirements with a reduced complexity of questions, read at the first or second grade level, possessed basic math skills, encountered communication difficulties, and exhibited deficits in fine motor skills. The student is described as personable, outgoing, eager to learn, and an active participant in class discussions.
11. The resulting IEP was substantially similar to the April 2008 IEP in the amount and areas of specially designed instruction. The IEP included 17 modifications and accommodations that were substantially similar to the modifications and accommodations contained in the April 2008 IEP. The IEP Team considered placements including "Regular education with resource services in reading, writing, study skills, etc", which was rejected because it did "not provide enough support for [the student] to achieve the goals and objectives in the IEP." The other placement option listed, which was selected, was "small group setting-academic and life skills" based on the "placement is the least restrictive setting to meet [the student's] academic needs". The Nonparticipation Justification stated that the student "will not participate with his non-disabled peers the 5 of 8 classes he spends in a special education setting. This constitutes 63% of his day.... [The student] needs small group instruction to achieve the goals and objectives in his IEP."
12. On October 22, 2008, the District sent the parent and student a Prior Written Notice informing them of a proposed change in the IEP. The Notice stated that "the IEP team determined that the ALC is the least restrictive environment to meet [the student's needs]." The other option considered was "regular education with resource services" but was rejected because "this placement does not provide enough support for [the student] to achieve his goals and objectives."

13. Beginning in the fall semester, the student had a one to one instructional assistant with him in the psychology and science course. General education staff reported that they communicated with one another via email on an approximately weekly basis. They met with the student's special education staff on an approximately twice monthly basis to identify methods of modifying the course content for the student. As each new unit was anticipated to be presented, that unit was discussed on how best to modify it. The modifications included sharing general education power point presentations with the special education to simplify the content and vocabulary. For tests and quizzes, the number of the questions and complexity of the questions were reduced compared to the general education peer tests. After the first test, the student's tests were taken in the resource room. Instead of multiple choice or fill-in-the-blank format questions requiring writing out vocabulary words, the student was provided with a selection of word choices from which he could choose the answer. Other formats for tests included numerically identifying words to simplify fill-in-the-blank type questions. Instead of testing on the entire unit material, a significantly reduced area of content was tested. For example, to identify brain anatomy or structures of planetary bodies, simplified color diagrams were prepared for the student. In lab assignments, the main points were taught since the entire lab could not be completed due to the student's fine motor skill deficits. Alternative reading sources, where available, were provided in lieu of the class' college level text. Course vocabulary words were presented in word search format on various occasions. Staff reported that word searches were presented less than once per week. Staff reported that the science course content areas were more difficult to modify due to the lack of available primary level equivalent course content. A peer tutor, who previously took one of the general education courses, assisted the student in the Academic Seminar class by reviewing concepts and preparing flash cards of major curriculum areas.
14. The student's general education classes were graded on a pass/no pass basis. Staff evaluated the student on his class effort and completion of assignments.
15. The student's first semester report card, dated January 26, 2009 and sent to the parent, reflects a "Pass" in Planetary Science, Introduction to Psychology, Work Experience, and Life Skills. The student received an "A" in Team Sports, Language Workshop, Math Skills and Academic Seminar. At the bottom of the report card is written following statement: "This grade is a modified grade." The report card does not indicate which of the grades are modified.
16. In the second semester of the 2008-2009 school year, the student enrolled in three general education classes, Fitness, Ceramics, and Graphic Design, with the balance of his day in special education classes.

District Programs and Policies

17. The District's documentation describes ten "Special Education Programs." These include the Academic Learning Center (ALC), the Behavior Learning Center,

Children with Autism Support Services, Developmental Kindergarten, Resource Program, Independent Skills Center, Intensive Learning Center, Social Communication Center, Structured Learning Center, and Structured Routines Skills Center. The District also refers to Transition Services for individuals in the 18 to 21 year old age range. The District states it defers to the IEP team to design the appropriate placement for each student who is eligible for Transition Services. The description of each program includes specifics to support the District's assertion that it offers a spectrum of placement options, including instruction in regular classes, a number of special classes and special schools focused on a particular type of need of the student. Staff reported that home instruction is also offered in appropriate circumstances.

18. The District adopted a policy that "ensures that to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are non-disabled. Special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. The District ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services and that the educational placement of a child with a disability is based on the child's current IEP, is determined at least annually, is as close as possible to the child's home, and is made in conformity with the Least Restrictive Environment provisions of OAR 581-015-2240 to OAR 581-015-2255".

IV. DISCUSSION

1. IEP Implementation:

The parent alleges that the District did not implement the student's IEP regarding the modification of assignments and the general education curriculum by limiting his enrollment to specific classes.

Under the IDEA, school districts must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a free appropriate public education ("FAPE").⁶

FAPE is defined as "special education and related services" that are: provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and, are provided in conformity with an IEP.⁷ A school district meets its obligation to provide FAPE for an eligible child by complying with the

⁶ OAR 581-015-2040, 34 CFR 300.341.

⁷ See 20 USC § 1402(8).

procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.⁸

A written IEP must be in effect for each eligible child at the beginning of each school year.⁹ School districts must implement the services, modifications, and accommodations identified on each student's IEP.¹⁰

In the first semester of the 2008-2009 school year, the student enrolled in three general education courses. Two classes were academic courses, Introduction to Psychology and Planetary Science, while the third was a physical education course. The complaint alleged, in part, that the student's two academic courses were not modified in accordance with the IEP. With respect to these two courses, the IEP indicated that the District would "[m]odify assignments while retaining content and/or topic" and "[m]odified letter grading on report card/transcript".

Staff reported that there were frequent meetings between the general education teachers and the special education teacher to modify the course curriculum so the student could gain some educational benefit from the topics presented in class. The psychology course, which did not require prerequisites, included content that was, arguably, more susceptible to modifications and simplification than the Planetary Science course. The science course, using a college level text and requiring a prerequisite,¹¹ included more difficult subject matter and was admittedly more difficult to modify for the student. Efforts to modify the course content were made through simplified curriculum presentations, modified tests, and the support of the instructional assistant assigned to the student. The District staff modified the student's grading to pass/not pass. In each of these general education classes, course content and tests were changed, when compared to the general education content and tests, to satisfy the modifications described in the student's IEP. On this basis, the Department does not substantiate the allegation that the District failed to implement the student's IEP provisions prescribing modified assignments that maintain course content and/or topic.¹²

A separate analysis is required to address the allegation that the District did not implement the student's IEP by limiting enrollment to specific classes. To the extent that the allegation addressed alleged discrimination of disabled students compared to non-disabled peers in their ability to enroll in various classes, the Department does not have jurisdiction under OAR 581-015-2030 to investigate and issued findings. To the extent that the parent is alleging disability discrimination under Section 504 of the Rehabilitation Act of 1973, a federal law, such a claim must be filed with the U.S. Department of Education (Region 10) Office for Civil Rights in Seattle, Washington. To the extent that the parent is alleging disability discrimination under Oregon Revised

⁸ See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

⁹ OAR 581-015-0064(1).

¹⁰ OAR 581-015-0064(2).

¹¹ A substantive basis for the waiver of the prerequisite was not provided by the District.

¹² The report card received by the parents did not clearly identify which courses were modified and which were not. The Department recommends the District clarify its reporting of modified grades, especially in light of OAR 581-22-1134, Modified Diploma.

Statute 659.850, Discrimination in Education Prohibited, only after exhausting local grievance procedures, or 90 days (whichever comes first), may the parent file an appeal in writing with the Department, which will then investigate the allegation.¹³

To the extent that the allegation addresses the procedural aspects of the student's placement determination, these issues are controlled by OAR 581-015-2240 through 581-015-2255. Determination of appropriate placement decisions is the subject of *Board of Education, Sacramento City Unified School District v. Holland*, 14 F.3d 1398 (9th Cir. 1994), *cert. denied*, 512 U.S. 1207 (1994). In *Holland*, the court considered whether the school district proposed an appropriate placement for the student and examined the following factors: (1) the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom; (2) the non-academic benefits of interaction with children who were not disabled; (3) the effect of the student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the student in a regular classroom. The Department does not find that the District failed to adhere to the requirements of the IDEA in determining the student's placement. Additionally, the Department does not find facts establishing that the District limited the availability of classes to the student due to the modifications and accommodations described on the student's IEP.

2. Alternative Placements:

The parent alleges that the District did not provide a spectrum of alternative placements within the District for special education students. The Department incorporates its Discussion above, relating to appropriate placement and the placement process in compliance with the applicable provisions of the IDEA.

OAR 581-015-2245 requires districts to "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 or placement options must include "instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions."¹⁴

The District describes ten specifically identified special education programs, separate from instruction in the general education setting. These programs describe special classes and special schools. District staff also reported that home instruction is offered in certain circumstances. Based on the description of the variety of special education programs, the Department finds that the District offers a spectrum of alternative placements in place within the District. Therefore, the Department does not substantiate this allegation.

¹³ Emphasis added.

¹⁴ OAR 581-015-2245(1).

V. CORRECTIVE ACTION

In the Matter of Beaverton School District
Case No. 09-054-011

The Department did not substantiate the complaint allegations. Therefore, no corrective action is required.

Dated this 28th day of April, 2009

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: April 28, 2009

APPEAL RIGHTS: You are entitled to 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 you reside. Judicial review is pursuant to the provisions of ORS 183.484.