

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School District)
No. 24J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-015

I. BACKGROUND

On May 27, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in the Salem-Keizer School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on May 27, 2010. The parent provided the District a copy of the complaint letter through facsimile transmission on May 24, 2010.

Under 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.¹ This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or for exceptional circumstances related to the complaint.² This order is timely.

On June 4, 2010, the Department 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 June 18, 2010. The District submitted its *Response* to the Department and to the parent on June 19, 2010. The District's *Response* included a narrative response and a thoroughly indexed and chronologically organized documentary file containing IEPs, incident reports, witness statements, meeting notices and minutes, physical and occupational therapists' files, and student records.

The Department's complaint investigator determined that phone interviews were required. On July 6, 2010 the Department's complaint investigator interviewed the parent and scheduled a follow-up phone interview with the parent for July 8, 2010. The follow-up call was not attended by the parent.

On July 8, 2010, the Department's complaint investigator interviewed the Director of Elementary Education, and on July 10, 2010, the investigator interviewed the elementary school principal and the Student Services Coordinator.

The Department's complaint 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.

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a) (2009).

² OAR 581-015-2030(12) and 34 CFR § 300.152(b).

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030 (2010). 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. This complaint covers the one year period from May 26, 2009 to the filing of this complaint on May 27, 2010.³

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p>Assistive Technology</p> <p>Failing to ensure that assistive technology devices, specifically a weighted blanket/belt, were made available to the student as required as part of the student's special education.</p>	<p>Unsubstantiated.</p> <p>The Department concludes that the District did not violate the IDEA by failing to provide for the use of a weighted blanket in the student's IEP.</p>
2.	<p>IEP Team Considerations and Special Factors</p> <p>Failing to consider the concerns of the parent for enhancing the safety and education of the student and failing to consider whether the student needs assistive technology devices and services.</p>	<p>Unsubstantiated.</p> <p>The Department concludes that the District made accommodations to ensure the student was safe at school and only participated in appropriate activities. Additionally, the District utilized the assessments of occupational and physical therapists in developing an IEP that provided special education and related services, modifications, and accommodations that are reasonably calculated to provide the student with an educational benefit.</p>
3.	<p>When IEPs Must Be In Effect</p> <p>Failing to provide special education and related services to the child in accordance with the child's Individualized Education Program (IEP). Specifically, the parent alleges that the District</p>	<p>Unsubstantiated.</p> <p>The Department concludes that the District provided the student services consistent with the student's IEP.</p>

³ OAR 581-015-2030(5) and 34 CFR § 300.153(c).

	<p>(a) did not modify the student’s physical education (PE) course consistent with the student’s IEP,</p> <p>(b) did not provide access to the weighted belt referenced in the child’s IEP, and</p> <p>(c) did not follow the student’s safety plan.</p>	
	<p>Requested Corrective Action.</p> <p>The parent is requesting the precise and consistent implementation of all safety protocols and assistive technology services/devices be utilized as appropriate for the student’s special education services.</p>	<p><i>Corrective Action – None required.</i></p>

III. FINDINGS OF FACT

Background Information on Student

1. The student is a resident of the District, is 11 years old and is eligible for special education services as a student with autism, specific learning disabilities, and emotional disturbance.
2. The student transitioned from an Emotional Growth Center (EGC) at a District elementary school into an EGC at another District elementary school during the 2008-09 school year as a fourth grader.
3. The student has a history of various behavioral and disciplinary infractions, which appear to have recently escalated.
4. The student was transitioned to a District middle school as a fifth grader during the 2009-10 academic year in response to an escalation in behavior/disciplinary incidents. The middle school placement was expected to continue into the 2010-11 school year.

Chronology of Events

5. The student’s IEP dated January 14, 2009 lists the following Supplementary Aids/Services, Modifications, and Accommodations: 1) bus support plan; 2) preferential seating; 3) reduced task size; and 4) an individual behavior plan. The IEP does not include a weighted lap belt/blanket.
6. IEP meeting notes dated September 18, 2009 indicate that members of the team believed that the student would benefit from occupational and physical therapy services. This

change was indicated by recommendations contained in an occupational/physical therapy analysis conducted in April of 2009. The recommendations of this assessment state that "...due to motor delays, [the student] may need some modifications to physical education as [the student] progresses to middle school and high school. Currently the PE teachers are accommodating for the student's motor delays."

7. Occupational therapist service log notes dated September 18 and October 22, 2009 list the following therapist-recommended equipment/strategies: 1) celled paper/letter boxes; 2) pencil grip; 3) writing incline; and 4) keyboard familiarity practice.
8. The student's January 13, 2010 IEP lists the following Supplementary Aids/Services, Modifications, and Accommodations: 1) adult assistance; 2) access to keyboard or dictation assistance for written assignments; and 3) preferred seating close to board. The meeting notes indicate a discussion of transitioning the student to a middle school life skills class. The notes also mention the student's improvement in academics due to use of a slanted binder and writing tool and the student's improvement in gross motor skills in Physical Education (PE) class. The notes do not mention a weighted lap belt/blanket.
9. On January 21, 2010, while performing an exercise known as "Brain Gym," the student fell. As a result of the fall, the student's head hit a chair. The student lost consciousness during the incident, but it is unclear whether the student lost consciousness before or as a result of the fall. The school contacted the school nurse and the parent. The parent subsequently picked the child up from school. The student was examined by a doctor on January 22, 2010.
10. On January 28, 2010 a Student Threat Assessment was prepared based upon an incident the same day wherein the student brandished a broom handle as a weapon and attempted to stab school staff with a large pencil. A school resource officer was summoned in response.
11. Meeting notes dated February 1, 2010 reflect a discussion surrounding the parent's concern about communication effectiveness of District staff and her perception of less than professional treatment by District staff. The meeting notes indicate that District staff and the parent attended the meeting, but no attendee list was included with the notes.
12. A Prior Notice of Special Education Action form dated February 8, 2010 indicates the addition of a safety vest to the services page of the IEP. The vest had been a component of the student's IEP since 2007 but had been inadvertently omitted.
13. On March 1, 2010 the student sustained scratches on the arm, believed to be from an interaction with another student, and the school conducted an investigation due to the parent's concerns. The investigation was inconclusive.
14. An evaluation report dated March 15, 2010 indicated that a small-group setting would work best for the student and that the student was not achieving commensurate with same-age peers. A statement of eligibility for special education dated the same day mentions placement within a life skills program at a middle school.
15. On April 16, 2010 the student was physically restrained in response to the student's attempt to run outside after a classroom confrontation in which the student refused to wear a safety vest/harness for the bus ride home.

16. On April 16, 2010 the Director of Elementary Education interviewed District staff to investigate the parent's concerns related to the student's safety and her treatment by District staff.
17. On April 21, 2010 the Director of Elementary Education responded to the parent's concern via letter and also established a school protocol and communication guidelines for the parent.
18. On April 29, 2010 the student was secluded after attempting to leave the classroom and throwing a laptop to the floor.
19. Occupational therapy service log notes dated May 7, 2010 indicated that the parent expressed concern about a weighted lap blanket/belt, specifically, that it was no longer available to the student. The notes also indicated that District staff would check the classroom and replace the belt if necessary. Meeting minutes from the May 7, 2010 IEP meeting also indicated that, per the parent's instructions, the student was not to participate in PE until the school was otherwise notified by parent. The student was allowed to play at recess where the student could self-regulate activity.
20. IEP meeting notes dated May 7, 2010 acknowledge the parent's concern with keeping the child safe at school and the parent's perception that parental concerns have not been addressed. A communication plan was discussed as a strategy for improving home-school communication.
21. Meeting notes and a Prior Notice of Special Education Action form, both dated May 7, 2010, indicate that the parent had concerns about the student attending a reduced school day.
22. On May 24, 2010, the student's IEP Team met and changed the student's educational program and placement.
23. On May 26, 2010, the student began attending a life skills program at a District middle school.
24. On May 27, 2010, ODE received the parent's complaint letter.
25. Occupational therapist notes dated June 1, 2010 indicate availability of a weighted lap blanket in the student's new classroom at the District middle school.

IV. DISCUSSION

1. Assistive Technology

Under Oregon law, School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services.⁴

Additionally, a child's individualized education program (IEP) must include a statement of the specific special education and related services and supplementary aids and services, based on

⁴ OAR 581-015-2055(1).

peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child.⁵ It must also include a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, as well as the projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications.⁶

On May 7, 2010 the parent inquired as to the availability of a weighted lap blanket/belt for her child contending that a weighted blanket/belt was included in a previous IEP as an assistive technology device in 2008-09 and that it was beneficial to the student. The parent contends that the District violated the provisions of the student's IEP by failing to timely replace the weighted lap blanket/belt and thereby making it unavailable to the student as an assistive technology device.

The District in their response indicates that a weighted lap blanket/belt is not considered assistive technology but, rather, sensory support that is available to any student within the classroom. In interviews District personnel acknowledge that there are instances wherein a sensory support, such as a weighted lap blanket/belt, provides a positive educational effect upon a student making it proper to include it in the IEP as part of the student's supplementary aids/services or modifications and accommodations.

However, in this instance the District points to the occupational and physical therapy assessments that identified appropriate supports for this student; neither assessment indicated that the student would benefit from a weighted lap blanket/belt. Additionally, the District contends that, once they were made aware that the lap blanket/belt had been destroyed and that the parent felt it provided some benefit to the student, they replaced it. The District also points out that they confirmed this device was available to the student in the new placement at the District middle school on June 1, 2010.

In a review of IEPs from January 2009 to the present, no reference was found to the weighted lap blanket/belt as being used with the student. The first written documentation of the parent's interest in this device appears to have been at the May 7, 2010 meeting. Other than at that meeting there is no reference to the device being used by the student in meeting notes, incident reports, or District/parent communications.

The Department does not find that the District failed to provide assistive technology devices as required by the student's IEP or, in the alternative, that the District failed to provide the child with access to such devices although they were necessary to allow the student to access the curriculum. None of the relevant IEPs required the student to have access to a weighted lap blanket/belt, and there is no indication that the District failed to address each of the child's needs in developing the IEP. The Department does not substantiate the allegation that the district violated the IDEA by failing to provide access to a weighted lap blanket/belt.

2. IEP Team Considerations and Special Factors

In developing, reviewing, and revising the child's IEP, Oregon law requires the IEP team to consider 1) the strengths of the child 2) the concerns of the parents for enhancing the education

⁵ OAR 581-015-2200(1).

⁶ *Id.*

of their child; 3) the results of the initial or most recent evaluation of the child; and 4) the academic, developmental, and functional needs of the child.⁷

Additionally, in developing, reviewing and revising the child's IEP, the IEP team must consider the 1) communication needs of the child; and 2) whether the child needs assistive technology devices and services.⁸ In considering these special factors, if the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.⁹

The parent alleges that the District failed to consider the concerns of the parent for enhancing the safety and education of the student and to consider whether the student needs assistive technology devices and services in the form of a weighted lap blanket/belt.

The District contends that they did consider the parent's feedback regarding both IEP content and the student's safety through numerous IEP meetings and parent/principal meetings. The student's IEP of January 14, 2009 was revised September 18, 2009 to incorporate the recommendations of the occupational and physical therapist as they relate to the modifications and accommodations provided to the student. Subsequent to this, on January 13, 2010, the IEP team considered the student's level of participation in PE and motor skill progress. Based upon OT input, the District concluded that no additional assistive technology was required.

Based upon various behavior/disciplinary concerns, the IEP was once again revised on February 8, 2010 and March 15, 2010. Two days later, on March 17, 2010, issues related to a bus safety plan and the necessity of wearing a safety vest were addressed at an IEP meeting.

On April 16, 2010, the Director of Elementary Education conducted an independent investigation related to the parent's concern about the student's safety while at school and on the bus and the parent's perceived poor treatment by school staff. With regard to the parent's concerns about the student's safety, the Director found supervision and monitoring of the student were appropriate. With regard to the parent's concerns about poor treatment, the District identified a number of strategies for improving communication between the school and the parent.

On May 7, 2010, additional revisions were made to a behavior support plan to address both parent and school concerns related to the student's safety, and on May 24, 2010, the IEP team agreed to site and program changes, transitioning the student to a life skills program at a District middle school.

Based upon a review of the student's file and supporting paperwork and interviews, the Department does not find that the District failed to consider the concerns of the parent for enhancing the safety and education of the student and failing to consider whether the student needs assistive technology devices and services. Consistent with the discussion above, the Department concludes that the District adequately considered the concerns of the parent and whether the student required assistive technology devices or services. Therefore, the Department does not substantiate this allegation.

⁷ OAR 581-015-2205 (1).

⁸ OAR 581-015-2205 (2).

⁹ OAR 581-015-2205 (4).

3. When IEP's Must Be In Effect

Under Oregon law, a school district must have in effect, at the beginning of each school year, an IEP for each child with a disability within the district's jurisdiction.¹⁰ School districts must provide special education and related services to a child with a disability in accordance with an IEP.¹¹

The parent alleges that the District failed to provide special education and related services to the child in accordance with the child's Individualized Education Program (IEP). Specifically, the parent alleges that the District (a) did not modify the student's physical education course consistent with the student's IEP, (b) did not provide access to the weighted belt referenced in the child's IEP, and (c) did not follow the student's safety plan.

The District contends they are providing all special education and related services to the student consistent with the IEP and that his participation in PE was also consistent with the IEP. The District also contends they were in compliance with the student's safety plan.

A review of the documentation demonstrates that IEPs have been in place and regularly revised based upon the changing needs of the student. Working with subject matter experts in the field of occupational therapy and physical therapy, these changes have been tailored to address the educational needs of the student by way of certain accommodations, modifications, and supports. Moreover, there have been regular changes to the student's behavior support plan, as well as safety plans. The parent participated in most of these meetings and meeting notes clearly reflect the parent's disagreement with certain team decisions, indicating that the District was considering the parent's concerns even when they chose an alternative course of action.

Based on the IEPs in effect during the investigation period, the Department concludes that the District did not fail to service the student in accordance with the IEPs. With regard to the claims that the District failed to provide modifications in PE and access to a weighted belt, the Department finds that none of the IEPs in effect for the student during the investigation timeframe included such provisions. With regard to the allegation that the District failed to implement the student's safety plan, the Department finds that the District complied with the student's safety plan, which was intended to ensure the student's safety on the school bus. Although the student was injured on the bus on March 1, 2010, the Department finds that the District handled that situation consistent with the safety plan and that the District never again had an opportunity to implement the plan.

For these reasons, the Department does not substantiate the allegations that the District failed to provide special education and related services to the child in accordance with the child's Individualized Education Program or that the District failed to adhere to the student's safety plan.

¹⁰ OAR 581-015-2220(1).

¹¹ *Id.*

V. CORRECTIVE ACTION¹²

In the Matter of Salem-Keizer 24J
Case No. 10-054-015

The Department does not order any corrective action as a result of this investigation.

Dated: July 23, 2010

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

Mailing Date: July 23, 2010

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.

¹² 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).