

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Grants Pass SD 7

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 13-054-004

I. BACKGROUND

On January 23, 2013, the Oregon Department of Education (Department) received a letter of complaint from an advocacy organization (complainant) on behalf of unspecified students residing in the Grants Pass School District (District). The complaint alleges systemic violations of the Individuals with Disabilities Education Act (IDEA) and requested a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the complaint by the District and also forwarded a copy of the complaint letter to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On January 28, 2013, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated.² The District timely submitted its *Response* to the *Request for Response*, with accompanying documentation. On February 26, 2013, the complainant submitted a written *Reply* to the Department. After reassigning this case to a new contract complaint investigator, due to exceptional circumstances, the Department extended the 60-day timeline in this case by seven days. The final order due date was further extended for another seven days to allow for a thorough review of this order as well as the two complaints submitted concurrently by the complainant. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that an on-site investigation would not be necessary in this case. The complaint investigator reviewed and considered all of the documents in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from January 24, 2012, to the filing of this complaint on January 23, 2013.³

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

² Note the Department of Education is concurrently investigating other State law violations associated with this complaint as a separate non-IDEA complaint.

³ OAR 581-015-2030(5)

No.	Allegations	Conclusions
(1)	<p><u>Denial of Free Appropriate Public Education (FAPE)</u></p> <p>The complaint alleges that the District is unilaterally reducing specially-designed instruction and service hours for all students 18-21 (or students who have received a Modified Diploma or Certificate of Completion) without regard to individual students' needs which has resulted in a denial of FAPE.</p> <p>Relevant law: OAR 581-015-2040; 34 CFR 300.101</p>	<p><u>Not Substantiated</u></p> <p>The Department's review of the ten IEPs submitted by the District, as summarized in part in the summary below, reveal that the complainant's allegations of a systemic failure to provide FAPE to students who have obtained either a Modified Diploma or a Certificate of Completion are not supported. There was not sufficient material presented in the record to substantiate this allegation.</p> <p>Each of the IEPs reviewed included the requisite procedural components and each IEP was reasonably calculated to provide the student with educational benefit. This allegation is not substantiated.</p>
(2)	<p><u>Predetermined Placement</u></p> <p>The complaint alleges the District is predetermining IEP content and placement based on factors other than the students' individual needs (i.e. severity of the disability).</p> <p>Relevant law: OAR 581-015-2250; 34 CFR 300.327</p>	<p><u>Not Substantiated</u></p> <p>The Department's review of the ten IEPs submitted by the District, as summarized in part in the summary also provided, reveals that the complainant's allegations of a systemic predetermination of placement concerning students who have obtained either a Modified Diploma or Certificate of Completion are simply not supported.</p>
	<p><u>Proposed Corrective Action:</u></p> <p>The complainant requests:</p> <p>Provide the student with compensatory education by providing:</p> <ol style="list-style-type: none"> 1. full days of instruction and individualized SDI and related services for the remainder of the student's eligibility to receive special education and one additional year of the same instruction, SDI, and related services; or 2. \$4000.00 available for the purchase of compensatory education in the form of equipment, instruction, or services from non-District providers during the remainder of each student's eligibility to receive special education and one additional year. 	

	<p>Provide the Department and Disability Rights Oregon (DRO) with data that would accurately inform DRO and the Department of the following:</p> <ol style="list-style-type: none"> 1. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15); 2. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15) and attend full days of school; 3. the number of transition-aged students who are eligible for special education in the District during the next 3 school years (2012-13 through 2014-15) and receive 15 or fewer hours per week of instruction and services. 	
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III. FINDINGS OF FACT

Background

1. At the request of the Department, in this complaint alleging systemic violations of the IDEA, the District provided to the Department:
 - (i) a list of current programs and curricular offerings for IDEA students who have obtained a Certificate of Completion or a Modified Diploma and are eligible students aged 18-21 in the District;
 - (ii) copies of the District's policies and procedures for Transition age students and 18-21 year old students;
 - (iii) copies of any training sessions or instructional materials or email messages sent from the District to its staff regarding services to offer IDEA students pursuant to the requirements of ORS 329.451 and HB 2283 and HB 2285 during the 2011-2012 or 2012-2013 school years;
 - (iv) selection of ten random files of similarly situated students;
 - (v) IEPs for the three preceding years for each of these students along with applicable progress monitoring data, and progress reports for the students which indicate how their IEP goals have been met, and all planning meeting notes and meetings notices for these students; and
 - (vi) records of all meetings related to the placement of these students.

2. Review of the District's list of transition services, programs and supports provided to the Department, revealed an array of offerings available to students who are eligible for transition services, including: case-management and coordination of services supported through the Like Skills/Multi-Handicapped and Transition Age programs at the District's high school; community outings and potential employment experiences with Southern Oregon Aspire (for moderately to severely disabled individuals); and Alternatives to Employment (for severely disabled

individuals) and other employment experiences at local companies, experiences utilizing public transportation, employment, and social opportunities; experiences provided at the District's high school, visits and support for post-secondary educational opportunities; continued instruction and support in academic areas; communication and vision consultations; physical therapy; occupational therapy consultation and nurse consultation.

3. The District also provided various forms and handbooks concerning transition services, diploma options, and enrollment in transition services as part of their submission to the Department.
4. The District also provided to the Department a copy of the District's written policies concerning Special Education, including diploma options and when special education and related services are to be provided to students.
5. The District also provided to the Department materials related to training and disbursement of information to District staff concerning transition services and questions arising under ORS 329.451.
6. Per the request of the Department, the District provided to the Department relevant portions of ten files of randomly selected students between the ages of 18 and 21 years of age who are receiving special education and related services from the District.
7. Additionally, the District provided a self-created summary of the schedules of "all⁴ Transition Age students." This summary reveals a total of 18 students who are receiving transition services from the District.
8. Of the 10 randomly selected students, two have obtained a Modified Diploma.
9. One of the 10 student's has obtained a Certificate of Participation.
10. Four of the 10 students have received an Alternate Certificate.
11. Two of the 10 students have obtained an Extended Diploma.
12. One of the 10 student's is working toward an Alternate Certificate.

The student files in the record indicate that of the ten randomly selected transition age students: three of the students receive specially designed instruction (SDI) "All Day,"⁵ five days a week; three of the students receive services five days a week for 4 or 4.5 hours per day, a total of just over 22 hours a week; one student receives SDI for 5 periods daily for around 25 hours per week; two students receive SDI for eight hours a week; and one student receives three hours of SDI daily or around 15 hours per week.

⁴ Note that one of the social security/ student identification numbers of a student whose file was turned in for the random sample was not reflected on the Summary of All GPSD Transition Age Schedules/ Hours sheet.

⁵ Or at least 6.5 hours a day.

IV. DISCUSSION

The complaint alleges that the District is unilaterally reducing specially-designed instruction and service hours for all students 18-21 (or IDEA students who have received a Modified Diploma or Certificate of Completion) without regard to individual students' needs, which has resulted in a denial of FAPE. The complaint also alleges the District is predetermining IEP content and placement based on factors other than the students' individual needs (i.e. severity of the disability and transition resources).

OAR 581-015-2250(1)(a) requires that placement be determined by the IEP team. Districts need not cater to a parent's preference and place the student in what the parent alone considers the "better" placement to be in compliance with the IDEA's placement provisions.⁶

For Free Appropriate Public Education (FAPE) requirements, OAR 581-015-2040 provides that Districts must provide "special education and related services to all school-age children with disabilities," and defines "school age children" as "children who have not yet reached 21 years of age on or before September 1 of the current school year." Special education is defined as "specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability."⁷ Additionally, FAPE is broadly defined in the 2006 Part B regulations as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency; include an appropriate preschool, elementary school, or secondary school education in the state involved; and are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.⁸ The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student.⁹ The Supreme Court has developed a two part test to determine the appropriateness of an educational program: 1) the procedural requirements of the IDEA must be met; and 2) the IEP must be developed and reasonably calculated to enable the child to receive educational benefits.¹⁰ The IDEA does not include a minimum number of service hours and a district satisfies its FAPE obligations so long as it offers a program that allows a student to make educational progress.¹¹ Nor does the IDEA quantify the precise amount of instructional hours that every child must receive each school year. To the contrary, the IDEA highlights the importance of a varied and individualized instructional program based upon the individual needs of a student. Finally, districts are not required to maximize a student's educational performance in order to provide a student with FAPE under the IDEA.¹² Instead, the IDEA looks to the ability of a student to receive educational benefit from the instructional program.

In its *Response*, concerning the allegation of systemic denial of FAPE, the District argued that "As documented in all of the IEP's submitted as evidence, all Specially Designed Instruction, Related Services, and Transition Needs are considered and addressed for each student individually through the IEP process. As documented in all of the IEPs, appropriate transition services were addressed on the transition pages of the IEPs as well as documented evidence of parent/student participation and concerns addressed in the PLAAFP of the said IEP documents..."

⁶ *Z.W. v. Smith*, 47 IDELR 4 (4th Cir. 2006) and *Bradley v. Ark. Dep't of Educ.*, 106 LRP 21288, 443 F. 3d 965 (8th Cir. 2006).

⁷ OAR 581-015-2000(34)

⁸ 34 CFR 300.17

⁹ *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

¹⁰ *Id.*

¹¹ *M.N. and H.N. ex rel. J.N. v. New York City Dep't of Educ., Region 9 (Dist. 2)*, 110 LRP 20287 (S.D.N.Y. 3/25/10).

¹² *J.L. v. Mercer Island School District*, 55 IDELR 164 *W.D. Wash. 2010).

The complainant's allegations are of no substance related to Special Education identification, provision of services, placement determination, procedural safeguards, nor any other components of the district's provision of FAPE under the Individuals with Disabilities Education Act (IDEA). The primary basis of the complainant's allegations are instead solely based on the premise of a new state law (ORS 329.451), a state law outside of the scope of the IDEA. All decisions related to the change of hours of instruction, related services, and transition activities for these ten randomly selected students occurred through the IEP process for each individual student. This can be evidenced by the unique qualities of each IEP submitted as well as the summary of information requested in demonstrating the range of hours and service provisions.

The District argued concerning the allegations of systemic predetermination of placement that "Again, based on the evidence submitted, it is clearly evident that each student's transition age program, services, and activities are determined on an individual basis and demonstrate a variety of activities, range of services, and a range of time in provision of individual needs. As evidenced by the submitted matrix (Summary of All GPSD Transition Age Schedules/Hours), each student has a specific schedule of services and activities determined by the IEP team to meet the identified transition needs of each student. This matrix demonstrates that the range of time and supports is each uniquely determined for the needs of the student."

In its *Reply* to the District, the complainant argues, in part, that "the summary submitted by the District reveals that its consideration of the needs for transition aged special education students consistently results in decision to cut their hours dramatically when they complete the 12th grade. We suspect that the degree of that consistency and the severity of the service cuts is far greater for students such as [the two students on whose behalf complainant filed individual complaints] who have high needs and severe cognitive disabilities that require heavily resourced programs." However, the complainant produced no evidence to support this allegation. The complainant also suggests that the Department request from the District a "more refined summary that would allow it to fully understand how many students with severe cognitive disabilities were provided full day programs before the District was advised in late November of 2012 that one or more complaints were imminent."

The Department's review of the ten IEPs and related documents submitted by the District, as summarized in part in the summary also provided, reveals that the complainant's allegations of a systemic failure to provide FAPE and a systemic predetermination of placement concerning students who have obtained either a Modified Diploma or Certificate of Completion are simply not supported by any evidence. The complainant's desire for a more refined summary is not necessary, because the ten IEPs submitted by the District, when combined with the summary concerning the total 18 Transition students the District provided, were all of the detail needed by the Department to determine whether the District is engaging in a blanket decision to reduce hours of students who have obtained a Modified Diploma or Certificate of Completion. Additionally, many of the ten students whose files were reviewed were students with severe cognitive disabilities. Roughly one third of the randomly selected transition students, three students total, whose files were extensively reviewed by the Department are in full day programs, and four more of these ten students are receiving four or five hours of specially designed instruction daily. Many of these students have severe behavior or physical needs which would warrant reduced instructional time based on their individual needs. Three of the ten students received increased instructional hours due to parental requests and IEP team decisions.

Finally, review of the 10 IEPs and related documents does not confirm the complainant's suspicion that more severely disabled students receive less service than the other disabled students. Rather, review of the IEPs reveals that the District developed reasonable, individual goals in light of the each student's disability and individual needs. Indeed, three of the students in the sample with profound

disabilities received seven hours of service daily, which is more hours of service than were offered to other IDEA students with less severe disabilities.

The Department does not substantiate the allegations of systemic denial of FAPE and systemic predetermination of placement by the District.

CORRECTIVE ACTION¹³
In the Matter of Grants Pass School District
Case No. 13-054-004

The Department does not order any Corrective Action resulting from this investigation.

Dated this 3rd Day of April 2013



Sarah Drinkwater
Interim Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: April 3, 2013

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.

¹³ 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)).