

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Gresham-Barlow School District # 10J)

) FINDINGS OF FACT,
) CONCLUSIONS
) AND FINAL ORDER
) Case No. 13-054-032

I. BACKGROUND

On October 31, 2013, 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 Gresham-Barlow School District 10J (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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On November 5, 2013, 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 November 19, 2013.

On November 14, 2013, the District submitted a timely *Response* indicating they disputed some but not all portions of the allegations in the Parent's complaint. On November 27, 2013, the District submitted additional materials.

The Parent submitted materials for consideration on October 29, 2013, and November 25, 2013.

The Department's complaint investigator determined that on-site interviews were needed. On November 25, 2013, the complaint investigator interviewed the Parent. On November 27, 2013 the complaint investigator interviewed the District Program Directors of Student Support Services, Middle School Principal, and Special Education Teacher. On December 4, 2013, the complaint investigator interviewed the Educational Assistant. During the interviews, both the Parent and the District submitted additional materials for review. 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. These conclusions are based on the Findings of Fact in Section III and the Discussion in

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

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

Section IV. This complaint covers the one-year period from November 1, 2012 to the filing of this complaint on October 31, 2013.³

No.	<u>Allegations:</u>	<u>Conclusions:</u>
1.	<p><u>When IEP's Must Be In Effect/IEP Implementation:</u></p> <p>(a) The Parent alleges that Student was not escorted between locations school-wide as required by the April 25, 2013 IEP.</p> <p>(b) The Parent alleges that the District violated the IDEA when staff deviated from the IEP's requirement that an Educational Assistant escort Student between locations school wide, when the Parent was informed that the Educational Assistant was instead attempting to "...help [Student] become more independent."</p> <p>(OAR 581-015-2220 and CFR 300.323, 200.324)</p>	<p><u>Uncontested:</u></p> <p>(a) In its November 14, 2013 <i>Response</i>; the District agrees that Student was not appropriately escorted between locations. The Department substantiates this portion of the allegation. The District has since taken corrective action by informing the Educational Assistant of the requirement that Students be escorted between locations. The Department further orders Corrective Action to ensure compliance with the IDEA. See Corrective Action.</p> <p><u>Substantiated:</u></p> <p>(b) The District contests this part of the allegation. The Department substantiates this portion of the allegation based on staff interviews, and therefore orders Corrective Action. See Corrective Action.</p>
2.	<p><u>IEP Content:</u></p> <p>Parent alleges District has not provided the Student with an appropriate level of support, particularly as related to the Student's need for adult supervision, because of an alleged history of wandering in public and nonverbal behaviors.</p> <p>(OAR 581-015-2225(2)(a), (2)(b), (3)(a), 34 CFR 300.320(4), and 34 CFR 300.324)</p>	<p><u>Not Substantiated:</u></p> <p>The record indicates that the Parent has raised concerns with the school regarding the Student's potential to wander. There is no evidence or indication that the Student has ever wandered at school or that the Student is unable to navigate the school without an adult present.</p>

³ This order does include some facts that are relevant to the case and that happened before November 1, 2012.

III. FINDINGS OF FACT

- 1) The Student in this case is 12 years old and resides in the Gresham-Barlow School District 10J.
- 2) The Student is diagnosed with Autism Spectrum Disorder. Autism impacts the Student educationally, and in the areas of math, written language, social skills and communication. The Student is also diagnosed with rumination syndrome that potentially poses a choking risk for Student during meal times. Student's IEP contains information regarding further Parent concerns regarding food choices, and post toileting hygiene.
- 3) The Student currently attends middle school in the Gresham-Barlow School District.

Background Information:

- 4) The Student began school in the District at the elementary level.
- 5) Student's IEPs in both elementary and middle school have required an "adult escort between locations."
- 6) District also has a Safety Plan in place for the Student, at request of Parent, with procedures for staff to follow should Student wander from school. The safety plan requires that police be contacted if Student is not located within five minutes. reported that on occasion, especially in crowded places such as museums, Student has wandered away. Parent is concerned that Student may find school to be a similarly frenetic and crowded environment, and exhibit the same wandering behavior as Parent reportedly experienced over the summer in public places.
- 7) Student has never wandered away during school.
- 8) Parent further expressed the need for the Educational Assistant to escort Student in such situations as to/from the restroom, because during elementary school Student did not always verbalize the need to use the restroom.
- 9) The Parent expressed concern that because the 2013-2014 school year is the Student's first year in middle school, and a new building, that the Student's potential for wandering may be more acute. Parent was especially concerned about this because Student may become non-verbal when confronted with strangers because the Student does not always self-advocate.
- 10) Student is diagnosed with regurgitation problems.
- 11) The April 25, 2013 IEP requires "adult escorts between locations." The IEP also requires "adult check-in for restroom needs," and a "toileting schedule."
- 12) Student's IEP also contained the short-term goal that Student will "...communicate [Student's] needs to staff members through a variety of modalities," and that Student "...will request to use the restroom when needed." A June 2013 progress report showed that Student was making "satisfactory progress" toward this goal, requesting to use the bathroom prior to any scheduled trip.
- 13) This complaint was filed after the Student's brother, who also attends the same middle school, reported to the Parent that Student navigated the school unassisted on two days, from the bus drop off area to get breakfast in the common area.

- 14) Parent contacted District with the concern that Student was not being escorted at all times as required by the IEP, specifically that Student did not have an Educational Assistant present during breakfast.
- 15) On October 28, 2013, District sent an email to Parent explaining that on the two days that Student did navigate self through the morning routine, at times unattended by an adult, from the bus drop off area in the morning to the cafeteria. The Educational Assistant was reportedly attempting to "work with Student on becoming more independent with the morning breakfast routine."
- 16) On October 29, 2013 in response to a Parent email, the District responded that Student will be closely monitored, and that the Student "will not leave the adult's side."
- 17) Parent raised the concern that the IEP requirement for the adult escort also included closer monitoring during meal times.
- 18) Parent was especially concerned about Student's food selection (helping Student to avoid foods that might pose a choking hazard) and whether District monitors Student closely to address any potential issues that may arise from Student's regurgitation problem while eating.
- 19) District staff reported that Student has never had choking problems in school. Staff did note that middle school students generally do not choose the healthiest foods, so each student's food choice is difficult to manage; however, District is aware of Student's potential choking issues. Multiple adults monitor the cafeteria and the common area at all times, and all of these adults are certified and trained in CPR and could respond to any student who was choking. District reports that any student who would potentially choke on foods could be helped in a matter of seconds.
- 20) Student's IEP documents Parent's concerns regarding the regurgitation diagnosis.
- 21) During a September 12, 2013 IEP meeting, Parent asked that Student be placed in Band class. Parent requested a 1:1 assistant during the Band class to help Student acclimate and operate in a new classroom environment. Parent reports concerns regarding Student wandering, and having to use a harness in public the prior summer. District assigned an Autism coach and classroom teacher to make reports and assess the need for the 1:1 assistant.
- 22) Based on the Parent request for a 1:1 assistant during band class, District gathered data on Student's independence and ability to navigate the school without an adult escort: During this assessment period, Student was able to navigate between classes with a verbal prompt. No wandering behavior was observed by District, either before or after this period of observation began.⁴
- 23) During the Department's interviews with District staff, the Educational Assistant assigned to Student reported having never seen the Student's IEP, and having not been briefed on specific details contained in the IEP. The Educational Assistant was also not aware of any special needs or concerns regarding meal times beyond escorting the Student between locations. The Educational Assistant has never observed the Student wandering, reporting that Student will remain in the general vicinity of adults and wait for instructions. Rather than wandering, the Educational Assistant reported that the Student will "hover" until verbally prompted toward a task or location.

⁴ This IEP meeting was held on 9/12/2013. Some of the data gathered by the district for the potential placement in the Band class with the 1:1 assistant was gathered after October 31, 2013, which is the end of the relevant period for this complaint.

IV. DISCUSSION

1. When IEP's must be in effect/IEP Implementation:

The Parent alleges that the District violated the IDEA when the Educational Assistant did not escort Student between locations, specifically from the school bus and to breakfast on the morning of October 24, 2013, and October 25, 2013. Additionally, the parent alleges that the District violated the IDEA when staff deviated from the IEP's requirement that an Educational Assistant escort Student between locations school wide, when the Parent was informed that the Educational Assistant was instead attempting to "... help [Student] become more independent."

The legal requirements for IEP implementation can be found at OAR 581-015-2220 and 34 CFR 300.323. These regulations state that at the beginning of each school year, a district must have in effect an IEP for each eligible child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with the IEP. Each public agency must ensure that a child's IEP is accessible to each regulation education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.⁵ Furthermore, each teacher and related service provider responsible for implementing the IEP must be informed of their responsibilities for implementing the IEP, and any specific modification, accommodations, and supports the Student requires in accordance with the IEP.⁶

The evidence provided in the record shows that the Educational Assistant unilaterally deviated from the requirement in the IEP that Student be escorted between locations. During the Department's interviews with the Educational Assistant, the Educational Assistant stated that they had not been provided with a copy of Student's IEP, had not seen a copy of the IEP, nor had the Educational Assistant been briefed on Student's specific needs as contained within the IEP. The Educational Assistant's understanding of the requirements of the work with Student was limited to helping the Student "as needed". The Educational Assistant reported having no knowledge of the specific needs regarding Student.

In its *Response to the Request for Response*, the District agrees with the first portion of this allegation, that on October 24, 2013, and October 25, 2013, Student was not escorted by an adult at all times when Student went to the cafeteria for breakfast in the morning. The District writes that the IEP requires that Student be provided with an "adult escort between locations," but that this does not require that Student be escorted "at arm's length."⁷ The building staff was able to demonstrate that on these two days, at most times when in the school and in the common areas, the Student was within eye sight of at least one adult. Only about five or six feet of space (from one door to another) were unaccounted for in terms of an adult presence on the days in question. The District further notes that it has taken corrective action by directing the Teacher and Educational Assistant involved in this complaint to follow the Student's IEP. However, during the complaint investigator's questioning of the District staff, the Educational Assistant reported having never seen the IEP. The Educational Assistant reported not having access to the IEP, not knowing of any special requirements of Student's IEP, and the Educational Assistant did not have knowledge of any food selection criteria (to address the regurgitation diagnosis) described in the IEP. While Parent's primary concern arose from Student navigating alone from the bus to breakfast in the morning, this complaint investigation also determined that all staff responsible for implementing the IEP do not have access to the IEP, and are not

⁵ 34 CFR 300.323(d)

⁶ OAR 584-015-2220(3)(a)

⁷ 11/14/2013 Letter from District Responding to Complaint

conversant with the specific accommodations, modifications, and supports that must be provided for or on behalf of the Student.

The Department therefore sustains this allegation based on the documentation submitted and interviews with District staff, and orders corrective action. Specifically, additional corrective action is needed, related to the public agency's responsibility to ensure that all relevant staff have access to students IEPs, and that all relevant staff are informed of their specific responsibilities to implement a student's IEP.

2. IEP Content:

Parent alleges District has not provided appropriate Educational Assistant supervision for the Student, particularly as related to the Student's need for adult supervision because of a history of wandering in public and nonverbal behaviors.

An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in an IEP team meeting and which must include the following general information: a statement of each child's present levels of academic achievement and functional performance, including how the child's disability affects the child's progress in the general education curriculum; a statement of measurable annual goals (including functional and academic goals); a description of how the child's progress for meeting the annual goals will be measured (including when periodic reports on progress will be provided); a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child and a statement of program modifications or supports to be offered to the child; an explanation of the extent, if any, to which the child will not be educated in the regular class; a statement of accommodations necessary for state or district wide assessments; the projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of the services and modifications listed on the IEP.⁸

The IEP Team,⁹ developed the April 25, 2013 IEP which required that Student is to receive a "school wide," "adult escort between locations."¹⁰ Parent has reported to the District, the Parent's observation that outside of school Student has, on occasion, "wandered" especially in noisy and crowded situations. Parent has reported that when Student wanders that Student can become nonverbal and may be unable to self-advocate. Parent expressed concern that in a situation where Student has wandered or has become lost, that these factors could lead to the Student being exposed to harm.

The Student's IEP documents the Parent's concerns regarding wandering, and describes situations where Student has wandered in the past under the supervision of Parent. To address these concerns, Student has, since elementary school, received a school wide adult escort. During the 2013-2014 school year Parent requested that Student receive a 1:1 assistant to help Student during Band class. On September 12, 2013 the District held an IEP meeting to consider this modification to the IEP. The IEP team meeting agenda and notes from the meeting document that Parent continued to have concerns about Student wandering, and that Parent requested the 1:1 assistant. The same meeting notes document that "no data indicates that [Student] needs a 1:1 assistant." Interviews with District found no evidence that Student has ever wandered at school or during school events.

⁸ See 34 CFR 300.320

⁹ OAR 584-015-2210

¹⁰ 2012 and 2013 IEPs

During interviews with District staff, no staff person reported ever observing Student wander away from the school. Such behavior was not observed in elementary school, nor has Student been observed wandering from school since the Student's transition to middle school, and a new school building. The IEP as well as interviews with school staff evidenced Student's comfort in the school environment, capability to navigate alone, and the ability to request help when needed. The record provides numerous examples where Parent's concerns about potential wandering were noted. However, no evidence of wandering was ever witnessed at either the elementary or middle school environments. A safety plan is also in effect for Student to address the potential for wandering from school grounds. Furthermore, the District is required to provide an education for Student in the least restrictive environment.¹¹ To the extent appropriate, the District is required to educate Student with students who do not have a disability, in a regular education setting, using supplementary aids and services only when necessary.¹²

The District offered sufficient evidence to show that District considered and addressed the Parent's concerns and that an Educational Assistant was not deemed necessary for the Student based on the student's individual needs and IEP team decisions. This allegation is not substantiated.

V. CORRECTIVE ACTION¹³

*In the Matter of Gresham-Barlow School District #10J
Case No. 13-054-032*

No.	Actions	Submissions	Due by
1.	<p>Gresham-Barlow School District has adopted and posted the appropriate board policy IGBAF-AR.</p> <p>Distribute the included Gresham-Barlow SD policy IGBAF-AR and attached explanation to all administrators, staff members, and any ESD service providers, contractors who work with students with disabilities, including all educational assistants who may be responsible for implementing IEPs. This information may be distributed by e-mail or in person.</p>	<p>If distributed by e-mail request a "read receipt."</p> <ul style="list-style-type: none"> • Submit a list of staff members and positions of all individuals to whom information was distributed • Submit a list of staff members and positions of all individuals; • Include ODE staff member listed below in the distribution list. <p>If distributed in person:</p> <ul style="list-style-type: none"> • Submit a sign-in sheet or roster of individuals to whom information was distributed, including position 	<p>January 31, 2014</p>

¹¹ OAR 581-015-2240

¹² OAR 584-015-2240(1) and (2)

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)).

		and distribution date.	
2.	<p>For each school site person(s)/position(s) responsible for</p> <ul style="list-style-type: none"> • Informing individuals of their specific responsibilities for implementing student's IEPs; • Monitoring and ensuring that IEPs are implemented as written; and • Providing access to IEPs and ensuring the confidentiality of personally identifiable information. 	<p>For each school site submit the name of the site, and the name, position, and contact information for the designated individual.</p>	<p>January 31, 2014</p>

Dated: this 20th Day of December 2013



 Sarah Drinkwater, Ph.D.
 Assistant Superintendent
 Office of Learning- Student Services

Mailing Date: December 20, 2013