

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Tigard Tualatin School)
District 23J)
)
)

FINDINGS OF FACT
CONCLUSIONS AND
FINAL ORDER
Case No. 14-054-014

I. BACKGROUND

On April 2, 2014, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Tigard-Tualatin School District 23J (District). The Parents 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 by email on April 2, 2014.

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. 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.

On April 11, 2014, the Parents requested and the Department granted a 30 day extension of the complaint timeline, due to Parents' unavailability. The final order was therefore due on July 1, 2014. The order's timeline was also extended by seven days due to two large supplemental complaint filings which were made by the Parents. The Final Order is due July 8, 2014.

On May 14, 2014, 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 May 28, 2014.

On May 27, 2014, the District submitted a *Response* indicating they disputed all but one subsection of Allegation #1 in the Parents' complaint. In total, the District submitted the following items:

- A. District Response Letter;
- B. IEP and Placement Determination Documents;
- C. Evaluation and Eligibility Documents;
- D. Meeting Notices;
- E. Written Agreements Between the Parents and the District;
- F. Prior Written Notices;
- G. Behavioral Records;
- H. Documentation of Manifestation Determination Hearing;
- I. Behavior Support Plans;
- J. Substitute Protocols;
- K. District Adopted Discipline Policies;
- L. District Adopted Discipline Procedures;
- M. Communication Between the Parents and the District;
- N. Other Relevant Documents;
- O. Initial Request for Record's Changes and the District's Response
- P. Correspondence Related to Parent Participation Allegation (6)

In addition to the materials submitted with the original complaint, the Parent submitted materials for consideration on April 10; May 7, 9, 12, 14, 20, 23; and June 2, and 16, 2014. The Department's complaint investigator determined that on-site interviews were needed. On June 10, 2014, the complaint investigator interviewed the Principal, Special Education Director, the Learning Specialist, and the School Psychologist. On June 11, 2014 the complaint investigator interviewed the Parent and the Parents' Advocate. 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 Parents' 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 April 3, 2013 to the filing of this complaint on April 2, 2014.¹

Allegations Not Investigated: The written complaint includes many specific allegations regarding the Student's educational records. The Parents alleged that there are multiple cases where the special education paperwork in the Student's record is incorrect, redundant, and incomplete and includes other students' information. The Parents also requested that the Student's records be amended to remove some paperwork from the record and to correct other paperwork in the record. These allegations were not investigated because they are under the purview of the Family Policy Compliance Office (FPCO); or can be investigated by a local request to amend the records pursuant to 34 CFR §99.20.

	Allegations	Conclusions
1.	<p><u>IEP Team Considerations and Special Factors, IEP Content, and Review and Revision of IEP's:</u></p> <p>a. The Parents allege that the District violated the IDEA when it did not review and revise the Student's IEP and create a Behavior Support Plan that included all of the Student's needs for the time period of April to May, 2013.</p> <p>b. The Parents allege the team should have reviewed the IEP and recreated the Behavior Support Plan after a serious disciplinary issue occurred on April 5, 2013.</p> <p>c. The Parents allege the April 22, 2013 IEP does not address the Student's needs and does not have goals that are measurable.</p> <p>d. The Parents allege the Present Levels of Performance statement from the April 22, 2013 IEP is inaccurate.</p>	<p><u>Not Substantiated:</u></p> <p>While the Parents allege the District did not make needed changes to the Student's IEP to meet Student's needs after the disciplinary incident, the fact remains the Student did not return to the school for the remainder of the school year so District was not given an opportunity to create any further modifications. The District did revise the Behavior Support Plan (BSP) in the April 22, 2013 IEP so that it included support for staff working with the Student in all settings in the school. As demonstrated by the Student's excellent performance in meeting behavior goals and in completing academic work, the goals as written were appropriate and were meeting the Student's needs. The District wrote a substitute protocol to include in the IEP, and even though the Parents disagree with the summation paragraph added to the</p>

¹ This order does include some facts that are relevant to the case and that happened before April 3, 2013.

	<p>e. The Parents allege that the District violated the IDEA when it did not include a Substitute Protocol in the Student's IEP under Supports for School Personnel.</p> <p>(OAR 581-015-2205, OAR 581-015-2200, 34 CFR 300.320, & 34 CFR 300.324 (a) (2) (i) and OAR 581-015-2225 (1) (b) (E) & 34 CFR 300.324 (b) (2) (ii) (E).</p> <p>(OAR 581-015-2200(2) and 34 CFR 300.320(b))</p>	<p>PLAAFP, it reflects the team's work for the Student. Given all of these facts, the Department does not substantiate any part of this allegation.</p>
<p>2.</p>	<p><u>Predetermined Placement:</u> The Parents allege that the District violated the IDEA when it predetermined the Student's placement for the 2013-2014 school year without completely reviewing the Student's current IEP.</p> <p>(OAR 581-015-2250 and OAR 581-015-2245 & 34 CFR 300.116 & 34 CFR 300.327).</p>	<p><u>Not Substantiated:</u> Given the District's responsibility to have an IEP (with subsequent placement determination) in effect for the Student at the beginning of the 2013-2104 school year, and given the options presented to and the discussions conducted with the Parents about placement during the team meeting, the Department does not substantiate this allegation and orders no corrective action.</p>
<p>3.</p>	<p><u>Manifestation Determination:</u> The Parents allege that the District violated the IDEA when it did not review the Student's IEP during a Manifestation Determination meeting to consider whether or not the District had implemented the Student's IEP prior to the behavior which led to disciplinary actions.</p> <p>(OAR 581-015-2420 (1) (CFR 300.530(e)).</p>	<p><u>Not Substantiated:</u> Analysis of the facts in this situation in light of IDEA regulations leads to the conclusion that the elements needed to meet the regulations existed in this meeting. All appropriate members of the team were present, and all agreed that the behavior was a manifestation of the Student's disability, as the Student had evidenced this type of behavior before. The team did discuss the implementation of the IEP at issue - albeit not conclusively - and stopped short of reviewing and revising the IEP because a general education teacher was not present at this meeting. Therefore, the Department concludes that the District did not violate the IDEA and orders no corrective action.</p>
<p>4.</p>	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings:</u> The Parents allege that the District violated the IDEA when it did not give the Parents a copy of the April 22, 2013 IEP nor that the Parents were allowed to meet with the</p>	<p><u>Not Substantiated:</u> Here, even though the District does not have parents sign an attendance sheet or a placement determination form to indicate they participated in the meeting, there is ample evidence to show the Parents attended the April 22, 2013 meeting, i.e.,</p>

	<p>April 22, 2013 IEP team. (OAR 581-015-2195 (5) & 34 CFR 300.322 (f).)</p>	<p>the Parents' own recordings of the meeting. The Parents received an emailed copy of the IEP four days after the meeting via email, and included a copy of this emailed IEP in their response packet. Therefore, the Department does not substantiate this allegation and orders no corrective action.</p>
5.	<p><u>When IEP's Must Be in Effect:</u> The Parents allege that the District violated the IDEA when a teacher informed the Parents that the teacher did not need to follow the Student's IEP, relevant to an incident leading to disciplinary actions, because the incident happened outside of school hours - even though the Parent alleges the incident began during the school day. (OAR 581-015-2220 (1) & 34 CFR 300.323).</p>	<p><u>Not Substantiated:</u> Even though the case manager made a suggestion that the IEP might not be relevant to this particular situation, the case manager used strategies that were part of the Student's IEP or the BSP before, during, and after the incident in question. For this reason, the Department does not substantiate the allegation and orders no corrective action.</p>
6.	<p><u>Parent Participation – General:</u> The Parents allege that the District violated the IDEA when it did not schedule or send notice of a meeting to be held in August 2013 to discuss the Student's IEP and transition to high school. (OAR 581-015-2190 (1) & 34 CFR 300.501(b) (1) (i)).</p>	<p><u>Not Substantiated:</u> In this case, the team met in April and May of 2013 to discuss the Student's IEP and placement for the fall of 2013. While a date was suggested in a final email to the Parents, no meeting notice was sent. One week before the suggested meeting date, the Parent withdrew the Student from school, and the meeting was cancelled. Once this happened, there was no need to schedule or hold a meeting. Therefore, the Department does not substantiate this allegation and orders no corrective action.</p>
7.	<p><u>Free Appropriate Public Education (FAPE)- Denial of FAPE</u> The Parents allege the District failed to develop an IEP and BSP in April and May 2013 that addressed Student's needs and offered educational benefit. (OAR 581-015-2040 & 34 CFR 300.101)</p>	<p><u>Not Substantiated:</u> As noted in the analysis in Allegation #1 the District continued to revise the Student's IEP and other support plans after a serious behavioral incident occurred on April 5, 2013. The Parents disagreed with the placement offered by the District and chose not to return the Student to school. However, the District still offered to provide home tutoring, to include instruction in the Student's behavioral goals. The Parents refused that instruction. The previous IEP had provided the Student with a Free and Appropriate Public Education as</p>

		demonstrated by the Student's success both academically and behaviorally. Given all of this, the Department does not substantiate this allegation and orders no corrective action.
8.	<p><u>IEP Team Members</u> The Parents allege the District violated IEP because the April 17, 2013 IEP team did not have a regular education teacher present to review the IEP and help determine placement.</p> <p>(OAR 581-015-2210 (1) (c) and 34 CFR 300.324(a) (3).</p>	<p><u>Not Substantiated:</u> See Allegation #3 above. The meeting in question was not an IEP team meeting, but was rather a Manifestation Determination, and therefore did not require the attendance of all requisite IEP team members.</p>

III FINDINGS OF FACT:

1. The Student is 15 years old and resides in the Tigard-Tualatin School District 23J. During the 2012-2013 school year, the Student attended school from September 5, 2012 until April 8, 2013. Currently, the Student attends a charter school in a neighboring district² and receives other services as chosen and arranged for by the Parents.
2. The Student is eligible for special education services under the categories of Autism Spectrum Disorder, and Other Health Impairment for Attention Deficit/Hyperactivity Disorder (ADHD). These eligibilities were established on October 26, 2011.
3. The IEP³ team met on October 24, 2012 to review and revise the Student's IEP. The team specified the following in the IEP.

<ul style="list-style-type: none"> • <u>Consideration of Special Factors:</u> 	<ul style="list-style-type: none"> • The Student needs Assistive Technology, has communication needs, and exhibits behavior that impedes the learning of self and others.
<ul style="list-style-type: none"> • <u>PLAAFP:</u> Present Level of Academic Achievement and Functional Performance 	<ul style="list-style-type: none"> • The Student is social, and has made significant progress in the areas of behavior, social skills and academics since the team wrote the previous IEP. • Parents' Concerns: The Parents provide additional services outside of the school setting. These include working with a developmental and behavior specialist; a mental health practitioner, math tutor, occupational therapist, psychologist and learning specialist. The Parents have also arranged for the Student to participate in a "Big Brother" program, and to take bass guitar lessons. The Parents' top concern is the transition to high school at the start of the 2013-2014 school year. Specifically, the Parents asked that the team meet in May or June to plan the transition and to review all of the

² The parents chose to place the student in this setting at the start of the 2013—2014 school year.

³ This order does include some facts that are relevant to the issues under investigation which happened before April 3, 2013.

	<p>plans in place for the Student (behavior, safety/crisis, safe place, and communication with school safety resource officers).</p> <ul style="list-style-type: none"> • The District staff noted that the Student attends four general education classes in the mainstream setting. • The Student scored 230 on the Mathematics OAKS⁴ test and 240 on the OAKS Reading test. • The Student receives Language Arts instruction in the special education setting, but the team noted that there were no academic concerns about the Student's writing ability. • The Student met all of the goals in self-advocacy, self-regulation, classroom transition, community skills and social communication that were established in the previous IEP. • The Student currently earns 94-100% daily on the daily point sheet. • The Student's disability and subsequent behavior affect involvement in the general education setting. The Student needs strategies, specially designed instruction, adult support, frequent check-ins, a behavior plan and strong communication between teachers and Parent in order to be successful.
<ul style="list-style-type: none"> • <u>Assessment:</u> 	<ul style="list-style-type: none"> • The Student will take the standard Reading/Literature, Mathematics, and Science state and district-wide assessments during the 8th grade year with accommodations including extra time, a quiet small setting, breaks if needed, etc.
<ul style="list-style-type: none"> • <u>Goals:</u> 	<ul style="list-style-type: none"> • Self-Advocacy: Given a social scenario then real life situation, the Student will identify and practice the need to seek adult assistance in the school building on 4 of 5 occasions as evaluated by teacher observation and data by October, 2013. • Social Skills/Communication: Given explicit instruction and feedback, the Student will identify, and utilize socially acceptable language to initiate, respond, maintain, and repair conversation with peers and staff on 8 of 10 occasions as evaluated by teacher observation and data collection by October 2013. • Community Skills: Given instruction, the Student will establish and maintain relationships with community members (Administration, Teachers, Police Officers, Counselors, etc.) as measured by teacher observation and data collection by October 2013. • Self-Advocacy: Given instruction, the Student will identify and use strategies in order to gain clarification, ask for help, receive assistance and support from staff, peers and community members within 8 out of 10 opportunities as evaluated by teacher observation by October 2013. • Sensory/Self-Regulation: Given instruction and feedback the Student will use learned strategies (sensory tool kit, break

⁴ Oregon Assessment of Knowledge and Skills. Math passing score is 232, and reading passing score is 240.

	<p>card, electronic assistance, 5 point scale) in order to identify and maintain [Student's] ability to return to a task, access curriculum, and return to a calm state within 8 out of 10 opportunities as evaluated by teacher observation and data collection.</p> <ul style="list-style-type: none"> • Transition: Given explicit instruction and feedback the Student will increase the ability to prepare, plan, and accept unexpected changes in schedule or routine on 4 out of 5 transition changes as measured by observation of the ability to accept and complete the transition by October 2013.
<ul style="list-style-type: none"> • <u>SDI: Specially Designed Instruction</u> 	<ul style="list-style-type: none"> • Self-Advocacy: 35 minutes per wk., sped setting; • Social Skills Communication: 35 minutes per wk., sped setting; • Community Skills: 35 minutes per wk., sped setting; • Self-Regulation: 35 minutes per wk., sped setting. • Transition: 35 minutes Per wk., sped setting
<ul style="list-style-type: none"> • <u>Related Services:</u> 	<ul style="list-style-type: none"> • Psychological Services: 30 minutes per wk., Office
<ul style="list-style-type: none"> • <u>Supplementary Aids/Services; Modifications; Accommodations:</u> 	<ul style="list-style-type: none"> • Set of classroom books at home: when new classes are started; • Extended time for homework: as needed in classes • Lessened homework and in class work once mastery of topic is shown: as needed in mainstream classes; • Use of assistive technology in classes: as needed; • 5 minute after bell late arrival/departure from mainstream classes: as needed; • Sensory system - tool kit, visual schedule, break card: as needed; • Use of personal and district issued electronics (phone, music player, tablet, etc.): as needed; • Allowed to call home when feeling frustrated or overwhelmed: as needed. • Preferential seating - near door and the teacher: always.
<ul style="list-style-type: none"> • <u>Supports for School Personnel:</u> 	<ul style="list-style-type: none"> • Substitute protocol: when substitutes are in the Student's classes; • Conferences with team prior to starting a new class: when starting a new class; • Conference with admin/Parent before disciplinary action: as needed; • Behavior Plan, Mainstream BSP (Behavior Support Plan), Student Profile: when entering a new class. • Transition Plan: as needed
<ul style="list-style-type: none"> • <u>Non-Participation Justification:</u> 	<ul style="list-style-type: none"> • The Student will be removed for 205 minutes per week from participating with nondisabled students in the regular setting, because the Student needs specially designed instruction in 6 areas as determined by the IEP team.
<ul style="list-style-type: none"> • <u>ESY: Extended School Year:</u> 	<ul style="list-style-type: none"> • No ESY services needed
<ul style="list-style-type: none"> • <u>Placement Determination:</u> 	<ul style="list-style-type: none"> • Special classroom with access to mainstream classroom curriculum as behavior allows.

4. On January 27, 2013 (end of the second quarter) the District reported the Student's progress on IEP goals to the Parents. The District stated that the Student was making good progress on each goal, and noted specific examples of progress for each goal.
5. At the end of the semester, the Student was being successful in all classes.
6. The Student's special class placement was in a program called Bridges at a District middle school. Staff described the program as follows: "Every year the case manager designs a schedule based on the students who are in the program and considers their academic and behavior needs, grade level standard, and level of mainstream. The case manager then clusters any students who have similar needs- grade level, achievement level, etc. There is a classroom management plan and a point system to assist students in monitoring their behaviors. Each student has their own individual plan that includes, as needed- 1) what specific social/emotion/behavioral instruction they may need to improve their functioning, 2) variations in the amount or kind of reinforcement for positive behaviors, 3) variation in the way staff responds to the student if they do not follow the expectations; and this goes through escalation cycle through recovery depending on the student, 4) variation in the data that is collected to monitor their individual plans and 5) safety protocols. Typically the point sheets include specific goals the student is working on. The school psychologist works with students each week on their own goals. The team meets weekly to review progress of every student, and communicates with parents daily in most cases (via point sheets or e-mails). The goal is for student to be able to integrate back into the school community as independently as possible."
7. Staff in this program track the students' progress on daily behavior cards and keep the data in an Excel spreadsheet. Staff tracked this Student's progress in Self-Regulation, Following Directions, and On-Task Behavior, Social Skills, Social Communication, Respecting Space, Respectful Language, and Self-Advocacy. According to the spreadsheet the District presented, the Student's daily totals behavior averaged 97% for the time period in school during the 2012-2013 year.
8. On February 19, 2013, the Student was suspended from school for one day for threatening a substitute teacher and for pushing the Learning Specialist. On February 15, 2013, the Student's daily behavior average was 58%.
9. On February 25, 2013, the Student was again suspended - this time for four days after attacking another student in the cafeteria and having to be restrained by staff so that no other students (or this Student) were injured. On February 25, 2013, the Student's daily behavior average was 22%.
10. The Student had several support plans in place during 2012-2013 school year. First, the Student had a Behavior Support Plan, originally written on December 7, 2011, and revised on March 21, 2012. The March, 2012 plan outlined a plan to enable the Student to demonstrate desired behaviors (use of coping strategies), a plan to reduce disruptive behaviors (arguing), and a plan to address unsafe behaviors (physical aggression).
11. The District also had developed a "Student Profile", dated February 21, 2012. This document outlined the following: 1) Things to Know about the Student; 2) What factors do the Student's disability "present"; 3) What is important to the Student and for the Student; 4) What "sets up" the Student to engage in disruptive behavior; 5) What escalates the disruptive behavior; 6) What are the problem behaviors; 7) What are the desired behaviors; 8) What are the planned incentives for positive behavior; 9. What are appropriate alternative behaviors; and, 10. What are the Student's IEP goals and expectations regarding safe and

appropriate behavior? The Student's case manager prepared this document and shared it with staff who taught or supervised the Student.

12. Finally, the case manager developed and distributed a Mainstream Behavior Support Plan (MBSP). This plan outlined steps for the classroom teachers and other mainstream staff to use in order to reinforce the Student's positive behaviors and to help the Student manage disruptive behaviors in an accepted manner; but did not include steps or strategies to support the Student once in crisis.
13. Although a substitute protocol was listed in the October 24, 2012 IEP, the investigator could not confirm that it had actually been created and had been shared with other appropriate staff.⁵ However, after the April 22, 2013 IEP, the District did write a substitute protocol.
14. On April 4, 2013, the case manager responded to an email from the Parent sent earlier that day. In the email, the Parent asked a number of questions and expressed concerns about the Student's upcoming transition to high school. In the response, the case manager answered the Parent's questions, provided information about the transition process, and said there would be more information at the transition meeting scheduled for April 24, 2013.
15. On April 5, 2013, the Student returned from the 6th period Language Arts general education class to the Bridges Program classroom. During this week, the Student had earned 100% daily behavior totals on Monday through Thursday. When the Student entered the classroom, the teacher (case manager) informed the Student that the Language Arts assignment from the previous period needed to be finished before the Student could participate in the Friday Reward program.⁶ The Student argued with the teacher about completing the assignment, and refused to do it - eventually sitting in another area of the classroom and ignoring the teacher's reminders. At 3:10 p.m.⁷ the teacher sent an email to the Parent, stating that the Student was being disrespectful and was refusing to work. In the email the teacher explained that the Student admitted to not following directions on the assignment. The teacher also reminded the Parent that the assignment was due by midnight Sunday, April 7, 2013, via Google docs. Finally the teacher noted that the Student would be expected to work the following Monday during the "break and homework" periods as a consequence - and that the Student knew this but was not happy about it. When the bell rang, the Student grabbed a cookie and ran out of the room. After the other students had left, the teacher opened the outside classroom door and stood on the porch⁸ waiting for a student who was coming in for some after-school tutoring. The teacher saw the Student (who is the subject of this complaint) returning to the classroom and described the Student as "stomping feet, hands clinched into fists." As the Student got closer, the teacher asked the Student to turn around and go to the Parents' car - reminding the Student of the consequences for physical aggression.⁹ The Student threw a backpack at the teacher, walked up the steps, punched the teacher in the head, and slammed the teacher's shoulder into the door before turning around and leaving. Immediately after the incident the case manager (teacher) called the parent and told the parent what had happened. The case manager (teacher) then went to the office and informed other staff. The teacher suffered a concussion as a result of this attack and was treated that afternoon at a local hospital's emergency room.

⁵ In the Parent's Response materials, the parent quotes the Learning Specialist as saying in a February 27, 2013 meeting that it might be a good idea to create a "Sub Protocol".

⁶ At that point, the student's behavior card point total was 87% for the day.

⁷ School is dismissed at 3:35 p.m.

⁸ The Bridges Program is located in a portable.

⁹ School staff would call the School Resource Officer or other law enforcement officials.

16. The Parent kept the Student at home on Monday morning. The Assistant Principal¹⁰ called the Parent mid-morning and informed the Parent that because of the incident on Friday afternoon (April 5, 2013) the Student was being suspended out of school and would be recommended for expulsion. On April 8, 2013, the Assistant Principal sent a letter to the Parents officially informing them the Student would be suspended for 10 school days and would be recommended for expulsion.¹¹ The Assistant Principal noted that a Manifestation Determination Hearing (MDH) had been scheduled for April 10, 2013, and that if the team determined the conduct was a manifestation of the Student's disability, the expulsion process would be cancelled.
17. The Parents asked for an extension of time for the MDH so that they could arrange for the Student's Physician, the Parents' attorney and advocate to attend the meeting. The District agreed and the meeting was eventually held on April 17, 2013.
18. The Parents, District Special Education Director, Learning Specialist, School Psychologist, Principal, Physician, Parents' Attorney and Parents' Advocate all met on April 17, 2013 to consider whether or not the Student's behavior on April 5, 2013 was a manifestation of disability. The District does not take meeting minutes or notes, but memorializes the proceedings on Prior Written Notice (PWN) forms and other appropriate special education paperwork. The group concluded that the Student's behavior on April 5, 2013 was a manifestation of the Student's disability. Two separate Manifestation Determination forms were generated from this meeting. All are dated April 10, 2013. One of the forms has a lengthy description of the incident and the other has a one sentence description. Neither has the box checked in answer to the question about whether the behavior was a result of lack of IEP implementation. During the meeting, the Principal asked the Learning Specialist to address the issue of whether or not the incident was a result of the District's failure to implement the IEP. The teacher noted that "as far as implementation, the incident happened after school." When the Special Education Director began to complete the form at the end of the meeting, the Parents' Attorney noted that the District could not check "yes" or "no" in answer to the question about IEP implementation; as it had not reviewed the IEP. The Parents' Attorney agreed that all relevant members of the team were there, and that the Parents agreed that the Student's behavior was a manifestation of the disability; but pointed out that the team meeting notice included as a discussion item, the development of a new IEP. The Director agreed, also noting that there was no general education teacher present at the meeting - but also noting that a general education teacher is not a required member of a Manifestation Determination team. Consequently, the Director noted on the PWN that "Manifestation Determination team did not work toward decisions regarding IEP revision and placement determination as these decisions are the responsibility of the IEP team. These areas will be addressed at the meeting on April 22, 2013."
19. On April 12 and 20, 2013, District staff reported progress on the Student's IEP goals. Staff noted that the Student had met the Community Skills goal (has established and is maintaining relationships with teachers, administrators and other community members). On the Transition and Social Skills/Communication goals, staff noted the Student was close to achieving these goals (able to transition with work tasks but not disciplinary tasks; able to reflect on a conflict with peer and use appropriate social language). On the two Self-Advocacy goals and the Sensory/Self-Regulation goal, staff reported that the Student was demonstrating slow but steady progress towards each of the goals (able to identify an appropriate adult to discuss bullying; as encounters new experiences, skills in self-advocacy

¹⁰ Now the Principal of the school where the Bridges program is located.

¹¹ The Assistant Principal cited the District Student Rights and Responsibilities Handbook, Section 25, Threats of Violence.

are still in development; and, with newer experiences, displays difficulty generalizing self-regulation skills).

20. The IEP team met again on April 22, 2013.¹² This time, the Assistant Principal and Associate Director of Special Education¹³ attended the meeting in place of the Principal and Special Education Director. Again, the results of the meeting are memorialized in a PWN.¹⁴ In the PWN the District noted that:

- a. The team made changes to the BSP, Sensory/Self-Regulation Goal, Supplementary Aids and Services, Modifications & Accommodations section of the Services Summary;
- b. The District continues to offer the Student tutoring services for a total of eight hours per week through May 3, 2013;
- c. By May 1, 2013, the family will notify the District whether they choose to continue the tutoring or to return the Student to school in a modified day schedule; and,
- d. The team will meet on May 20, 2013 to review and revise the Student's IEP and placement for the fall of 2013.

21. The District also recorded the discussion by revising the PLAAFP and adding this summary paragraph to it. "The team convened on April 22, 2013 to review and revise the Student's IEP. There were several changes made to the BSP and Behavior protocols (see attached document). In addition, the team discussed the revision on annual goals and objectives, but decided to wait until a meeting scheduled for May 20, 2013 to formalize said changes with a team that included high school staff. In addition to the revision noted above, the team agreed to create an informational document that could be presented to police officers if they were called to an incident where the Student was involved. This document will be drafted by the Student's advocate and Physician. The team also agreed to create a formal "substitute teacher protocol" that will detail family notification, strategies for the Student to use and strategies for the substitute teacher, in classes that the Student attends. Also, the district offered an additional three hours of tutoring (8 total) a week while the family considers returning the Student to school. The additional three hours will be used to instruct the Student on self-regulation tools and strategies, as they relate to annual goals and objectives. A half hour of that time will be used for 1 on 1 counseling with the Bridge program's school psychologist. The District team has created a shortened day schedule that the Student's Parents will consider as a placement option for the remainder of the year. This schedule will be attached to the IEP and will include Science, Math, Lunch, and Choir at the school. This program will include a 1 on 1 adult for safety and supervision, a case manager outside of the Bridge program, and a designated "safe space" for the Student to continue break program and check ins. Lastly the school team voiced concern about the emerging behaviors witnessed this spring. The Student's three year re-evaluation is due next fall and the school team discussed entering into the evaluation early while the people who have known the Student for more than two years are still involved (so while the Student is still in the middle school). The Student's family did not want to do that at this time."¹⁵

¹² The District does not ask IEP meeting attendants to initial or sign anywhere on the placement determination document to signify their presence at the meeting. The parents allege that they were not allowed to attend the meeting; however, it is clear from their recordings, and the documents they submitted, that the parents did attend the meeting.

¹³ Now the Director of Special Education for the District.

¹⁴ Both parties submitted many documents related to this meeting. The parent disagrees with many of the conclusions stated in the PWN.

22. Specifically, there was no change in the Self-Regulation goal and the Student's three year re-evaluation was not due until October 25, 2013. The team did make changes to some of the anticipated amounts and frequency specifications in the Services Summary. The extended time for homework and use of assistive technology in classes accommodations were changed to "daily in classes". The "option to work alone rather than in a group" accommodation was added; and under Supports for School Personnel the team added an "informational sheet for SRO" (School Resource Officer).
23. Again, because the District does not take minutes at IEP meetings, there is no substantive record on the discussion about the revision of the BSP. After the meeting, the District created a document which combined elements of the BSP and the Mainstream Behavior Support Plan (MBSP).
24. On April 26, 2013, the Assistant Special Education Director emailed the IEP team (including Parents and Parents' Attorney) with seven documents attached. In the body of the email, the Assistant Director noted that the tutoring was occurring; that a new case manager had been appointed; that safe spaces had been identified; and included a proposed schedule for the Student which would be supervised by a 1 on 1 instructional assistant. The Assistant Director also asked the Parents to inform the District by May 1, 2013, if they intended for their Student to return to the school. In addition, the Assistant Director asked the team members to convene on the afternoon of August 29, 2013 to plan the beginning of the Student's high school year. The District did not, however, send a meeting notice for this date. The attached documents were:
- a. The 4/22/13 IEP with revisions as noted above;
 - b. A placement determination document - dated 4/22/13. This placement recorded consideration of three placements - shortened day in general education with 1 on 1 assistant; home tutoring; and, the previous placement in the Bridges Program with mainstreaming. The team had selected the home tutoring placement, primarily because the Parents felt it was inadvisable to return the Student to school;
 - c. The PWN which described the meeting and the actions proposed;
 - d. A proposed Substitute Protocol;
 - e. An updated Behavior Support Plan - a combined version of the previous BSP and the Mainstream Behavior Support Plan. This new plan integrated support for general education teachers as they worked with the Student in their classrooms, as well as instructions on what to do if the Student began to escalate disruptive behavior and lost self-control;
 - f. A meeting notice for a meeting scheduled for May 20, 2013 - that stated the purposes of the meeting was to review existing information about the Student, develop an IEP, and discuss transition from middle to high school; and,
 - g. A copy of the TTSD Physical Restraint and Seclusion Incident Report from February 25, 2013.
25. Once they read the revised paragraph in the PLAAFP, the Parents expressed disagreement with some of the actions taken at this meeting. They also had questions and concerns about the revised BSP and some of the language used on the PWN. For example, the Parents felt the BSP needed to include specific instructions to the general education teachers that if that observed "early signs of escalation" they should call the case manager immediately. The Parents felt the District's description of the meeting reflected actions the District had taken unilaterally and that the Parents' opinions had not been considered. In addition, when the Parents reported that when they asked the Physician to help write the informational sheet for the SRO, the Physician told the Parents that police should never be involved with the Student.

26. The team met again on May 20, 2013, and the PWN dated for that day notes that the team decided the Student would continue on home tutoring for the remainder of the 2012-2013 school year. The PWN also informs the Parents that the Student will begin the 2013-2014 school year in the Pathways Program at the Student's neighborhood District high school. The Learning Specialist noted on the form that the team had considered a placement at the other District high school, at an online District program, or with some combination and a modified/shortened day as well. The team rejected all options except the Pathways program in the neighborhood school due to the supports the Student needed as outlined in the IEP. Again, the District completed a Placement Determination Form using the three options above. Several staff from both District high schools attended the meeting.
27. Again, the Parents took issue with the District's report on the meeting. The Parents believed the team did not consider the Student's IEP in full at the April 22, 2013 meeting and that the District "predetermined" the Student's placement by the statement made on the PWN. The Parents left the meeting believing that the three options were all still on the table for the Student's placement and that they would have time to consider each option, visit various programs, and reach a conclusion before the decision was finalized. In addition, the Parents were in the process of completing an application to a specialized high school in another district. The Parents conceptualized the meeting as "informational" versus as an IEP meeting.
28. During the month of May (dates not verified), the Parents visited the on-line District program. The Student continued with home tutoring and the school psychologist contacted the Parent to arrange the self-regulation tools and strategies instruction. The Parent refused to have the School Psychologist work with the Student.¹⁶ The home tutor asked one Parent several times whether or not the tutor could work with the Student on the self-regulation tools and strategies, and informed the Parent the tutor had been trained by the District Bridges School Psychologist. The Parent refused, and asked the tutor to work only on academic subjects.
29. On June 10, 2013, the District sent the Parents another PWN, informing them that due to the Parent's request, the Student had not received any instruction on the IEP goals during the tutoring. Therefore, the District would not be able to provide any progress monitoring data on the IEP goals for the last quarter of the school year.
30. On August 21, 2013, the Parent went to the District and withdrew the Student.
31. On August 27, 2013, the District's Attorney emailed the Parent's Attorney and asked if the meeting for August 29, 2013 was still on the schedule. The Parent's Attorney replied a day later, and informed the District's attorney that there "is no need for a meeting."

IV. DISCUSSION

IEP Team Considerations and Special Factors, IEP Content, and Review and Revision of IEP's:

The Parents allege that the District violated the IDEA when it did not review and revise the Student's IEP and create a Behavior Support Plan (BSP) that included all of the Student's needs for the time period of April to May, 2013; and, the Parents allege the team should have

¹⁶ After the April 5, 2012 incident, the parents asked the District to change the student's case manager.

reviewed the IEP and recreated the Behavior Support Plan after a serious disciplinary issue occurred on April 5, 2013. The Parents also allege that the April 22, 2013 IEP does not address the Student's needs and does not have measureable goals. The Parents allege the Present Levels of Performance statement from the April 22, 2013 is inaccurate; and, the Parents allege that the District violated the IDEA when it did not include a Substitute Protocol in the Student's IEP under Supports for School Personnel.

OAR 581-015-2200, Content of IEP, outlines the elements a District must include in the Student's IEP so that the IEP is "reasonably calculated to confer benefit". Specific to this case, the pertinent elements are that the District must include a description of the Student's present levels of functional performance and academic achievement; annual goals and how they will be measured; goals that meet the Student's needs; and a statement of the supports that will be provided to school personnel. Under OAR 581-015-2205, the District must consider special factors that affect the student's ability to participate in and make progress in the general education classroom. If, after considering these factors, the team determines the student needs a particular service, the IEP must include a statement to that effect. Finally, the District must conduct an annual review of the IEP at least once every 365 days, or after the lack of expected progress, results of a reevaluation, information provided by parents, the student's anticipated needs, or other matters. (OAR 581-015-2225(1)).

Here, the Parents specifically allege that the IEP team should have reviewed and revised the IEP after a significant behavioral incident which occurred on April 5, 2013. In this incident, the Student returned to the porch of the portable classroom and was physically aggressive with the teacher after the bell had rung, instead of going to the parent's vehicle as directed by the teacher. The Student was therefore suspended from school. As per District policy, the District conducted a Manifestation Determination hearing on April 17, 2013.¹⁷ The District placed the Student on home instruction after this meeting, and the Parents agreed with this placement. The District did not review the IEP at the MDH meeting, but conducted an IEP meeting on April 22, 2013. While the Parents were given the opportunity to return the Student to school in the same placement with the addition of a 1 on 1 instructional assistant, they declined to do so; and also declined instruction during the home tutoring in the IEP goal areas.

At the April 22, 2013 meeting, the team did insert more specificity about some of the accommodations; did review the BSP and combine it with the MBSP so that the plan to be used in all settings in the school contained supports for the staff to use with the Student when the Student was calm and in control and when the Student was displaying escalated disruptive behavior. The only goal on the IEP that was not completely measureable was the goal designed to teach the Student how to establish and maintain relationships with community members. When the team originally wrote the goal they included the question, "how shall we measure this" on the IEP form in the criteria box. Measureable criteria were never fully established - but the staff recorded each observable incident when the Student demonstrated the skill thus measuring Student's success in relation to the goal. The District added a paragraph to the PLAAFP at the April 22, 2013 meeting which summarized the current situation and the actions the team had taken after the disciplinary incident. Finally, the District created a written Substitute Protocol for use in classrooms when a substitute teacher was present and the Student was attending. Previous to the incident, the Student had a 97% average in meeting daily behavioral goals, and was academically successful in mainstream classes.

¹⁷ The meeting was delayed at the parent's request.

Analysis reveals the salient issues in this case. First, the IEP as written on October 24, 2012 was conferring benefit to the Student.¹⁸ The Student was making progress on IEP goals, and achieving positively in the mainstream academic classes. Second, the behavioral incident which occurred after school on April 5, 2013 was very serious and completely interrupted what had been an up-to-then successful program for the Student. Third, the team continued to work together to redesign the Student's IEP and support plans, schedule, and levels of supervision necessary for the Student, in order to decrease the possibility that such an incident would occur again. Finally, the Student never returned to school after this incident - even though the team continued to plan for the Student's return.

While the Parents allege the District did not make needed changes to the Student's IEP to meet Student's needs after the disciplinary incident, the fact remains that the Student did not return to the school for the remainder of the school year. The District did revise the BSP so that it included support for staff working with the Student in all settings at the school. As demonstrated by the Student's excellent performance in meeting behavior goals and in completing academic work prior to unenrollment and the April 5, 2013 incident, the goals as written were appropriate and were meeting the Student's needs. The District also wrote a substitute protocol to include in the IEP (for use by substitute teachers), and even though the Parents disagree with the summation paragraph that was added to the Present Levels of Academic Achievement and Functional Performance (PLAAFP) portion of the IEP, the text as written reflects the team's work at the meeting. Given all of these facts, the Department does not substantiate any part of this allegation.

Predetermined Placement:

The Parents allege that the District violated the IDEA when it predetermined the Student's placement for the 2013-2014 school year without completely reviewing the Student's current IEP.

When making a placement determination for a child with a disability, the district must warrant that the placement is based on the student's current IEP. The placement must conform to the provisions of Least Restrictive Environment, as per OAR 581-015-2240, and the team must consider placements as close as possible to the student's home and any potential harmful effects on the child or the quality of services the student needs. (OAR 581-015-2250) In coordination with OAR 581-015-2220, When IEP's Must Be in Effect, the District must have an IEP in effect for each eligible child at the beginning of the school year.

In this case, the IEP team met twice to consider the Student's IEP and to discuss placement options for the Student. The Parents contend that because the District listed a high school placement on the Student's IEP, even though the Parents were still considering a variety of options, the District over-stepped their boundaries and predetermined the placement.

Predetermination of a placement is defined as the District determining the placement ahead of the required meeting and then presenting only one placement at that meeting, in addition to being unwilling to consider other placement alternatives. In 2007, the Ninth Circuit Court of Appeals stated in *H.B. v. Las Virgenes*, "Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives."¹⁹ In this case, the District presented the Parents with several options, as noted in the May 20, 2013 IEP, suggested and conducted visits to at least one other program, and listened to the Parents' concerns about each

¹⁸ Note that while outside of the jurisdiction for investigation under OAR 581-015-2030, this information is relevant to the investigated allegations.

¹⁹ *H.B. v. Las Virgenes*, 48 IDELR 31 (9th Cir. 2007), on remand 52 IDELR 163 (C.D. Ca. 2008), aff'd 54 IDELR 73 (9th Cir. 2010)

placement option. The discussion of a high school placement was not new to the Parents, and had in fact been under consideration for several months.

Given the District's responsibility to have an IEP (with an appropriate subsequent placement) in effect for the Student at the beginning of the 2013-2104 school year, and given the options presented to and the discussions conducted with the Parents about placement during the team meeting, the Department does not substantiate this allegation and orders no corrective action.

Manifestation Determination:

The Parents allege that the District violated the IDEA when it did not review the Student's IEP during a Manifestation Determination meeting to consider whether or not the District had implemented the Student's IEP prior to the behavior which led to disciplinary actions.

The purpose of a Manifestation Determination meeting is to determine whether or not a student's behavior is a manifestation of the disability so as to inform the team when it makes further disciplinary decisions. A District meets its responsibility to do so when it conducts a meeting with relevant members of the IEP team (as decided by the parent and district) and considers two questions: 1. Was the conduct caused by or had a direct and substantial relationship to the student's disability; or, 2. Was the conduct a direct result of the school district's failure to implement the IEP. In order to answer these questions, the team must review all relevant information, including information in the student's file, the IEP, teacher observations, and information provided by the parents. (OAR 581-015-2420)

Here the Parents allege the team did not fulfill its responsibility because there was no general education teacher at the meeting, and therefore the team could not review the IEP. When the staff at the meeting checked the box that the team had reviewed the question of IEP implementation, the Parents' Attorney disagreed, pointing out there was no general education teacher at the meeting; and the District director agreed that no general education teacher was present for the Manifestation Determination. The team did agree, including Parents, that the behavior during the incident in question was a manifestation of the Student's disability, because the behavior in question had a direct relationship to the Student's disability. There was minimal discussion about the implementation of the IEP because the team all agreed that although the incident happened on school grounds, it occurred outside of the classroom and after the school day had ended, therefore negating the staff's ability to fully implement the IEP.

Analysis of the facts in this situation in light of IDEA regulations leads to the conclusion that the elements needed to meet the regulations existed in this Manifestation Determination meeting. All appropriate members of the Manifestation Determination team were present, and all agreed that the behavior was a manifestation of the Student's disability, as the Student had evidenced this type of behavior before. The team did discuss the implementation of the IEP issue - albeit not conclusively - and stopped short of reviewing and revising the IEP because a general education teacher was not present at that time. Therefore, the Department concludes that the District did not violate the IDEA and orders no corrective action.

Additional Parent Participation Requirements for IEP and Placement Meetings:

The Parents allege that the District violated the IDEA when it did not give the Parents a copy of the April 22, 2013 IEP nor that the Parents were allowed to meet with the April 22, 2013 IEP team.

Under OAR 581-015-2195, a district must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting. In addition, the district must provide the parents a copy of the IEP at no cost to the parents.

Here, even though the District does not have Parents sign an attendance sheet or a placement determination form to indicate they participated in the meeting, there is ample evidence to show the Parents both attended the April 22, 2013 meeting and received a copy of the IEP in question. This evidence includes, the Parents' own recordings of the meeting. The Parents received a copy of the IEP four days after the meeting via email, and included a copy of this emailed IEP in their response packet to the Department. Therefore, the Department does not substantiate this allegation and orders no corrective action.

When IEP's Must Be In Effect:

The Parents allege that the District violated the IDEA when a teacher informed the Parents that the teacher did not need to follow the Student's IEP, relevant to an incident leading to disciplinary actions, because the incident happened outside of school hours - even though the Parent alleges the incident began during the school day.

As noted in the first allegation, the District must have an IEP in effect for each eligible child at the beginning of the school year; and further, must provide special education and related services in accordance with that IEP. (OAR 581-015-2220)

In this situation, there is ample evidence to indicate the IEP was in effect and was being implemented in school. The case manager kept meticulous behavioral data records on an Excel spreadsheet; the Student was making progress on all of the IEP goals and was successful in academic mainstream classes. When the case manager suggested at the MDH that implementation was not an issue because the behavioral incident occurred outside school hours, the suggestion did not diminish the work the staff and team had done to that point. The case manager was also clearly implementing the IEP during the event in question, which occurred after school, when the teacher warned the Student of the consequences of physical aggression. The case manager emailed the Parent 20 minutes before the incident occurred and talked to the Parent on the phone afterwards.

Even though the case manager made a suggestion at the MDH that the contents of the IEP might not be relevant to the situation, the case manager used strategies before, during and after the incident that were part of the Student's IEP or the BSP. For this reason, the Department does not substantiate the allegation and orders no corrective action.

Parent Participation – General:

The Parents allege that the District violated the IDEA when it did not schedule or send notice of a meeting to be held in August 2013 to discuss the Student's IEP and transition to high school.

When a district schedules a meeting to discuss an element of a student's special education program, it must provide parents with a written notice of the meeting sufficiently in advance so that the parents have an opportunity to attend. The notice must state the time, place, and purpose of the meeting as well as who else will attend. (OAR 581-015-2190).

In this case, the team met in April and May of 2013 to discuss the Student's IEP and placement for the fall of 2014. While a date was suggested in a final email to the Parents, no formal meeting notice was sent at that time as District was still uncertain that Student would attend school in the District during the fall. One week before the suggested meeting date, the Parent withdrew the Student from school, and the meeting was cancelled. Once this happened, there was no need to reschedule a meeting. Therefore, the Department does not substantiate this allegation and orders no corrective action.

Free Appropriate Public Education (FAPE) – Denial of FAPE:

The Parents allege the District failed to develop an IEP and BSP in April and May 2013 that addressed Student's needs and offered educational benefit.

A school district provides FAPE when it delivers special education and related services to a student with a disability who is a resident of the school district who is in need of special education services as a result of the disability. Special education includes specially designed instruction as well as modifications, accommodations and supports for staff.

As noted in the analysis in allegation #1 the District continued to revise the Student's IEP and other support plans after a serious behavioral incident occurred on April 5, 2013. The Parents disagreed with the placement offered by the District and chose not to return the Student to school. However, the District provided home tutoring, to include instruction in the Student's behavioral goals. The Parents refused that instruction. The previous IEP had provided the Student with a Free and Appropriate Public Education as demonstrated by the Student's success both academically and behaviorally. Given all of this, the Department does not substantiate this allegation and orders no corrective action.

IEP Team Members:

The Parents allege the District violated the IEP because the April 17, 2013 IEP team did not have a regular education teacher present to review the IEP and help determine placement.

Given the facts and analysis presented in Allegation #3, and the fact that the meeting held on this date was not an IEP team meeting nor a placement meeting, there is no reason to require the presence of a general education teacher at the Manifestation Determination meeting. The Department does not substantiate this allegation and orders no corrective action.

V. CORRECTIVE ACTION²⁰

*In the Matter of Tigard Tualatin School District
#23J Case No. 14-054-014*

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

Dated the 3rd Day of July 2014



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

Mailing Date: July 3, 2014

²⁰ 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)).