

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Ashland School District 5)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 15-054-021

I. BACKGROUND

On May 14, 2015, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parents) of a student (Student) who attended school in the Ashland School District (District). The complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District by email on May 14, 2015.

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 May 20, 2015, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On June 3, 2015, the District timely submitted its *Response* to the *Request for Response* electronically, with accompanying documentation and the hard copy of the *Response* was received on June 4, 2015. On June 19, 2015 and June 20, 2015, the Parents provided their *Reply* by email with several email messages accompanied by documentation in this case. The Department forwarded the *Reply* email messages and documentation to the District.

On June 26, 2015, the Department extended the investigation timeline in this case by 63 days, with the final order due out by September 14, 2015, due to exceptional circumstances; i.e., unavailability of key District staff. On July 16, 2015, the Department issued a corrected *Request for Response* and letter to the complainant to correct typographical errors, which did not further impact the investigation timeline. The Department provided a copy of the Parent's *Reply* to the District on July 24, 2014. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined an on-site investigation to be necessary in this case, and on August 28, 2015, the complaint investigator interviewed District staff, including a School Psychologist, an Elementary Principal, a Classroom Teacher, a Special Education Teacher, a Child Development Specialist and the Director of Student Services. The Parent declined the opportunity to speak by telephone with the complaint investigator. The complaint investigator reviewed and considered all of the documents received 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

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

the Discussion in Section IV. This complaint covers the one year period from May 14, 2014, to the filing of this complaint on May 14, 2015.²

No.	Allegations	Conclusions
1.	<p><u>Content of IEP</u></p> <p>The complaint alleges that the District violated the IDEA by failing to include in the Student's IEP and by failing to provide to the Student, academic, nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities. Specifically, the complaint alleges that on May 14, 2014, May 15, 2014, May 23, 2014, May 30, 2014, June 4, 2014 and June 6, 2014, the District failed to provide the Student an opportunity for participation in academic, nonacademic and extracurricular activities including field trips and an athletic event.</p> <p>Relevant Law: OAR 581-015-2200(1)(d)(B) and 34 CFR 300.320(a)(4); OAR 581-015-2070 and 34 CFR 300.107</p>	<p><u>Not Substantiated</u></p> <p>The Department concludes that the District appropriately addressed the Student's participation in field trips in the Student's IEP. The Department does not substantiate the allegation that the District failed to include in the Student's IEP, services that provide an equal opportunity to participate in the field trips.</p>
2.	<p><u>When IEPs Must Be in Effect (IEP Implementation)</u></p> <p>The complaint alleges the District violated the IDEA by failing to implement the Student's IEP during an extracurricular activity on May 30, 2014 by failing to provide an educational assistant or "aide".</p> <p>Relevant Law: OAR 581-015-2220 and 34 CFR 300.323, 300.324.</p>	<p><u>Not Substantiated</u></p> <p>It is clear in this case that the allegations concerning the "ZooSnooze" field trip allege events occurring before May 14, 2014. The District and a Parent met on April 28, 2014, and the District modified the Student's Behavior Support Plan (BSP) on May 9, 2014 to state that the Student would not be attending the ZooSnooze field trip. The District's Director of Student Services confirmed this decision in email messages sent on May 12 and May 13, 2014. The only event that occurred on or after May 14, 2014 is the actual two-day field trip. The Department concludes that as concerns the ZooSnooze field trip, the complaint in this case does not allege a violation that occurred not more than one year before the date the</p>

² OAR 581-015-2030(5)

		<p>Department received the complaint in this case. The Department thus may not address the allegation that the District failed to implement the Student's June 4, 2013 IEP as concerns the ZooSnooze field trip on May 14 and 15, 2014.</p> <p>The Department does not conclude that the documentation in this case demonstrates a failure to implement the Student's IEP and BSP as concerns the May 23, 2014 field trip. The Department does not substantiate the allegation that the District failed to implement the Student's IEP for the May 23, 2014 field trip.</p> <p>The failure of the District to schedule an EA for the May 30, 2015 field trip reasonably occurred following a behavior incident the day before and the reported statement by one of the Parents that the Student would not be able to attend this field trip based upon the Student's behavior on May 29, 2014. The Student's Regular Education Teacher, consistent with the Student's IEP and BSP, planned an alternate activity in the resource room for the Student on the day of the field trip. The District did not give permission for the Student to attend this field trip, but one of the Student's Parents picked up the Student from school and then took the Student to the field trip. The Student successfully attended this field trip.</p> <p>The Department concludes that the District did not fail to implement the Student's IEP and BSP as concerns the May 30, 2014 field trip. The Department does not substantiate the allegation that the District failed to implement the Student's IEP for the May 30, 2014 field trip.</p>
3.	<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The complaint alleges the District violated the IDEA by denying FAPE to the Student by failing to allow Student participation in the extracurricular activities occurring on May 14, 2014, May 15, 2014, May 23, 2014, May 30, 2014, June 4, 2014, and June 6, 2014.</p> <p>Relevant Law: OAR 581-015-2040 and 34 CFR 300.101 and 300.201.</p>	<p><u>Not Substantiated</u></p> <p>In this case, the Department has already found no violations concerning the five field trips in this case, only two of which the Student did not attend. The facts do not show how the actions of the District resulted in a failure to provide FAPE to the Student. The Department does not substantiate the allegation that the District failed to provide FAPE to the Student during the one year period preceding the Department's receipt of the complaint.</p>

	<p><u>Proposed Corrective Action</u></p> <p>The Parent's proposed solution includes: a detailed letter of apology to Student and Parent including an admission in writing of wrong doing and acknowledgement of willful violation of the Student's and Parent's Civil Rights and other violations of IDEA, FAPE, ADA as well as ORS and OARs; reimbursement for trip to Portland; censure or reprimand and termination of various District staff; training for District staff and monitoring by OED (sic) and Parent; withholding of State and Federal Funds until in compliance with State and Federal law.</p>	<p>No Corrective Action is ordered in this case.</p>

III. FINDINGS OF FACT

1. The Student in this case is presently eleven years old and completed fourth grade at an elementary school in the District, during the 2013-2014 school year, which ended on June 10, 2014. The Student did not attend school in the District during the 2014-2015 school year and no longer resides within the District boundaries. The last IEP developed for the Student is dated June 4, 2013, and this IEP stated that the Student is eligible for Special Education under the category of Emotional Disturbance (ED). The Service Summary of the Student's June 4, 2013 IEP, includes Specially Designed Instruction (SDI) in "Writing" for "120 min per wk" in the "resource room"; and SDI in "Social Skills" during the "writing group time"; and Related Services of "Speech/Language" for "90 min per mo" in the "resource room". The Student's June 4, 2013 IEP provides a placement of "Regular education with pull-out Special Education services for writing and communication and social skills." The Student's June 4, 2013 IEP includes annual goals in the areas of writing, school behavior, social skills and communication.
2. The Student's June 4, 2013 IEP refers to a Behavior Support Plan (BSP) in the Service Summary of the IEP in the "Supplementary Aids/Services: Modifications/Accommodations" and provides the BSP is to be followed daily. The "Nonparticipation Justification" statement in the Student's June 4, 2013 IEP provides "Resource pullout for 120 min per wk in writing" and "SLP 90 min per mo". The explanation justifying the removal states that the Student "needs support to manage behavior. The District provided a "timeline" for the Student's BSPs which shows that the District initially developed a BSP for the Student on January 21, 2010, prior to the Student's evaluation and initial eligibility for Special Education services on May 1, 2012. The District revised the BSP several times, including February 24, 2010, April 6, 2012, June 5, 2013, April 16, 2014, April 28, 2014 and May 9, 2014.
3. In an email dated May 30, 2014, the District's Director of Student Services sent an email to the Parents in which it is stated that even if the Student is otherwise able to attend the remaining two field trips due to demonstration by the Student of good behavior preceding the field trips the

Student may not be able to attend the upcoming field trips if the District is “unable to get a substitute Education Assistant [EA] as they are currently in short supply.” However, the possibility of the Student missing a field trip due to the unavailability of an EA never materialized.

4. The “ZooSnooze” two-day field trip to the Portland area occurred on May 14-15, 2014. On May 14, 2014 (one year preceding the filing of the complaint in this case), the Student’s revised BSP (May 9, 2014) was in effect. The BSP provided that the Student’s attendance on field trips would be contingent upon the absence of “any physical outbursts or serious non-compliance in the week prior to the field trip.” The BSP also indicated: “Update: Based on recent classroom behaviors, [the Student] will not be participating in ZooSnooze because of safety and ongoing compliance concerns.” The District had earlier mentioned, in an email sent to the Parent on April 29, 2014, prior to the May 9, 2014 revision of the Student’s BSP, that the Student may not be able to attend the ZooSnooze field trip. This email followed a meeting on April 28, 2014 concerning the Student’s BSP. The District later confirmed in an email to the Parents on May 12, 2015 the decision made on May 9, 2014 in the Student’s revised BSP that the Student could not attend the ZooSnooze field trip, due to continuing behavior issues. The District again stated in an email to the Parents on May 13, 2014 that the Student may not attend the ZooSnooze field trip, noting that the Student continues to display behaviors that are a concern. In that email, the District also confirmed that an alternate activity was arranged for the Student on the days of the field trip, May 14-15, 2014. The Student did not attend school on May 14-15, 2014 and thus did not participate in the planned alternate activity.
5. The next field trip occurred on May 23, 2014. The District characterized this field trip as a local field trip to the District track meet at Ashland High School. The Student’s May 9, 2015 BSP states that the Student “may attend local field trips with an adult support provider (education assistant from the school) provided [the Student] has not had any physical outbursts or serious non-compliance in the week prior to the field trip.”
6. On May 22, 2014, the Student’s Principal sent an email to the Parents noting that the Student “had a difficult day today”, and recounting behavior demonstrated by the Student, including the Student becoming upset, banging his head against the classroom door, running out of class, banging his head against another door, and tearing up a pass.
7. The only other documentation concerning the Student’s attendance includes (1) an email message sent from one of the Student’s Parents on May 23, 2014 at 8:31 a.m. stating their understanding that the Student may not attend the field trip that day; (2) an email from the District to the Parents stating “An alternate activity is scheduled for [the Student] in the resource center, but my understanding is that you’ve kept [the Student] home”; and (3) a telephone message note dated May 23, 2014 at 10:50 a.m. stating that the Student is “out today” because one of the Student’s Parents “is in from out of town”.
8. The Student’s Regular Education Teacher reported during on-site interviews that the Teacher had not been told the Student would not be attending the track meet and had anticipated the Student would attend and would receive appropriate adult supervision. The Teacher reported providing a t-shirt for the Student’s participation, which was left at the Student’s desk. The Teacher also reports that the Student as being “not too excited” about attending the track meet, but that the Student had agreed to participate in the softball throw. The Student did not attend this field trip, and the Student’s Regular Education Teacher did not learn of the telephone message stating that the Student would be absent that day until returning to the school following the field trip. In its *Response*, the District states: “The Student did not attend a field trip to the local track meet. Initially, there was a decision by the school not to allow [the Student] to attend because of a behavior incident the day before. The decision was reversed and the Student was scheduled to participate in the track meet with support. Details of the reversal do not appear in the record and

it may have been conducted over the phone. Despite the change, the Parents excused the Student from attending because [a Parent] was in town.” The District’s *Response* further states: “The documentation of this event appears incomplete.” On May 23, 2014, in an email chain with the Parents, it is noted that the Student would not attend the track meet. At some point, there was additional conversation and it was determined that the Student could attend and there would be additional adult supports. The Student was scheduled for several events at the meet according to the Classroom Teacher. The following morning, the school received a phone message stating that the Student would not attend because [a Parent] was visiting.

9. Another field trip occurred on May 30, 2014. The District characterized this field trip as a local field trip to the “Children’s Heritage Fair (Hanley Farm, Central Point)”. On May 29, 2014, a behavioral incident with the Student occurred and the District called the Student’s Parent, after unsuccessful attempts to “de-escalate” the Student. One of the Student’s Parents decided to pick up the Student at school and, according to a Child Development Specialist, upon arrival at the school the Parent said to the Student “You blew it you can’t go on the field trip”. The Child Development Specialist reported this interaction to the Student’s Regular Education Teacher and Principal. The District understood at this time that the Student would not attend the field trip the next day and did not arrange an Education Assistant (EA) to accompany the Student on the field trip. The Student’s Regular Education Teacher, consistent with the Student’s BSP, planned an alternate activity for the Student for the day of the field trip. On the morning of May 30, 2014, one of the Student’s Parents arrived at the school and told the Student’s Regular Education Teacher that there was a misunderstanding³ and stated the Parent wanted the Student to participate in the field trip that day. The Student’s Regular Education Teacher told the Parent to speak to the Director of Student Services. The Parent took the Student from the school at that time. The Student’s Regular Education Teacher reports that the Student’s Parent brought the Student to the field trip and the Student participated in the field trip.
10. The field trip scheduled for June 4, 2014 was a trip to “North Mountain Park” in Ashland. The Student participated in this field trip and the District provided an EA to supervise the Student.
11. Another field trip occurred on June 6, 2014. The District characterized this field trip as a local field trip to “Rotary Garden And Ashland Food Bank” in Ashland. The Student participated in this field trip and the District provided an EA to supervise the Student.
12. The Student’s Regular Education Teacher and Special Education Teachers reported that during the 2013-2014 school year the Student made adequate progress in the Student’s class work and on the Student’s IEP goals, and remained at grade level. This is consistent with the Student’s report card and reports of progress on the Student’s goals.

IV. DISCUSSION

Content of IEP

The complaint alleges that the District violated the IDEA by 1) failing to include in the Student’s IEP and by 2) failing to provide to the Student, academic, nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in these services and activities. Specifically, the complaint alleges that on May 14,

³ In their *Reply* information in this case, the complainants state that the District staff person “deliberately misquoted” the Student’s Parent on May 29, 2014 and that the Parent actually said that the District would now not allow the Student to attend the field trip. The Department need not make a factual finding as to which version is correct, regarding the interaction between one of the Parents and the District on May 30, 2014.

2014, May 15, 2014, May 23, 2014, May 30, 2014, June 4, 2014 and June 6, 2014, the District failed to provide the Student an opportunity for participation in academic, nonacademic and extracurricular activities including field trips and an athletic event.

OAR 581-015-2200(1)(d)(B) provides:

(1) The individualized education program (IEP) must include:

(d) A statement of the specific 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities[.]”

In this case, the IEP in effect on May 14, 2014 (one year preceding the date of the complaint in this case) is dated June 4, 2013. This IEP references the Student’s BSP in the Student’s June 4, 2013 IEP. The District revised the Student’s BSP on June 5, 2013, one day after the June 4, 2013 IEP. The District also revised the Student’s BSP on April 16, 2014, April 28, 2014 and May 9, 2014. The BSP dated May 9, 2014 is the BSP in effect on May 14, 2014 (one year preceding the date of the complaint in this case). The Student’s June 4, 2013 IEP and the BSP dated May 9, 2014, provided the parameters under which the Student’s participation in field trips would be allowed. Primarily, the Student’s IEP and BSP combined to provide that participation in field trips is conditioned upon appropriate behavior by the Student prior to the field trips; and that an EA would accompany the Student on field trips. The Student’s May 9, 2014 BSP concluded that the Student could not attend the “ZooSnooze” field trip, a 2-day field trip from Ashland to Portland. The Department concludes that the District appropriately addressed the Student’s participation in field trips in the Student’s IEP.

The Department does not substantiate this allegation.

When IEPs Must Be in Effect (IEP Implementation)

The complaint in this case alleges that the District violated the IDEA by failing to implement the Student’s IEP during extracurricular activities and by failing to provide an educational assistant (EA) on the following dates: May 14, 2014, May 15, 2014, May 23, 2014 and May 30, 2014.

OAR 581-015-2220(1)(b) provides that School Districts must provide Special Education and related services to a child with a disability in accordance with an IEP.

The Department will address the three field trip dates identified above in chronological order.

The District scheduled the “ZooSnooze” field trip to Portland for May 14 and 15, 2014. The District specifically modified the Student’s BSP to state that the Student would not be able to attend the ZooSnooze trip “because of safety and ongoing compliance concerns.” The District confirmed that the Student could not attend this field trip in email messages dated May 12, 2014 and May 13, 2014. Concerning the question of whether the District failed to implement the Student’s June 4,

2013 IEP in relation to the "ZooSnooze" field trip, the Department must first address whether it has authority to address this allegation.

OAR 581-015-2030(5) provides that "The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department". The Department received the complaint in this case on May 14, 2015, so the Department may not address alleged violations occurring before May 14, 2014. It is clear in this case that the allegations concerning the "ZooSnooze" field trip allege events occurring before May 14, 2014. The District and a Parent met on April 28, 2014, and the District modified the Student's BSP on May 9, 2014 to state that the Student would not be attending the ZooSnooze field trip. The District's Director of Student Services confirmed this decision in email messages sent on May 12 and May 13, 2014. The only event that occurred on or after May 14, 2014 was the actual two-day field trip. The Department concludes, that as concerns the ZooSnooze field trip, the complaint in this case does not allege a violation that occurred not more than one year before the date the Department received the complaint in this case.

Thus, the Department may not address the allegation that the District failed to implement the Student's June 4, 2013 IEP as concerns the ZooSnooze field trip on May 14 and 15, 2014.

The next field trip that occurred on May 23, 2014 was a track meet at Ashland High School. The Department notes that confusion occurred concerning whether the Student would be allowed to attend this field trip. It is not clear whether the District communicated a decision that the Student could not attend this field trip, just as it is not clear whether the District communicated a reversal of a decision that the Student would not be able to attend this field trip. Further, it is not clear whether the Student wanted to attend the track meet and whether the Student would have been absent that day due to a Parent being in Ashland from out of state. However, on balance, the Department cannot conclude that the documentation in this case demonstrates a failure to implement the Student's IEP and BSP as concerns the May 23, 2014 field trip.

The Department does not substantiate the allegation that the District failed to implement the Student's IEP for the May 23, 2014 field trip.

The third field trip occurred on May 30, 2014 and was a trip to a "Children's Heritage Fair" at Hanley Farm in Central Point. While it is true that the District did not specifically schedule an EA to supervise the Student's participation in this field trip, the failure of the District to schedule an EA for the field trip reasonably occurred following a behavior incident the day before (on May 29, 2014) and the reported statement by one of the Parents that the Student would not be able to attend this field trip based upon the Student's behavior on May 29, 2014. The Student's Regular Education Teacher, consistent with the Student's IEP and BSP, planned an alternate activity in the resource room for the Student on the day of the field trip. The District did not give permission for the Student to attend this field trip, but one of the Student's Parents picked up the Student from school and then took the Student to the field trip. The Student successfully attended this field trip.

The Department concludes that the District did not fail to implement the Student's IEP and BSP as concerns the May 30, 2014 field trip. The Department does not substantiate the allegation that the District failed to implement the Student's IEP for the May 30, 2014 field trip.

FAPE

The complaint alleges the District violated the IDEA by denying FAPE to the Student by failing to allow Student participation in the extracurricular activities occurring on May 14, 2014, May 15, 2014, May 23, 2014, May 30, 2014, June 4, 2014 and June 6, 2014.

OAR 581-015-2040 provides that a District must provide "Special Education and related services to all school-age children with disabilities". FAPE requires a school district meet the procedural requirements of the IDEA and that a student's IEP must be developed and reasonably calculated to enable the student to receive educational benefit.⁴

In this case, the Department has found no violations concerning the five field trips in this case, only two of which the Student did not attend. The facts do not show how the actions of the District resulted in a failure to provide FAPE to the Student. The Department does not substantiate the allegation that the District failed to provide FAPE to the Student during the one year period preceding the Department's receipt of the complaint in this case.

CORRECTIVE ACTION⁵
In the Matter of Ashland School District
Case No. 15-054-021

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

Dated this 14th Day of September, 2015



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: September 14, 2015

⁴ *Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)

⁵ 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)).