

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Newberg School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 15-054-046

I. BACKGROUND

On December 14, 2015, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parents) of a student (Student) residing in the Newberg 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 December 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 December 21, 2015, the Department sent the *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On January 8, 2016, the District timely provided its *Response* to the *Request for Response*, with accompanying documentation.

In total, the District provided these materials:

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|----|---|---------------------|
| 1 | Parent completed Medically, Development and Family Information form | 3/29/14 |
| 2 | Parent completed Universal Checklist | 3/29/14 |
| 3 | Medical Statement | 5/20/2014 |
| 4 | Notice of Team Meeting | 5/22/14 |
| 5 | Evaluation Report | 6/11/14 |
| 6 | IEP Addendum | 6/11/14 |
| 7 | Special Education Placement Determination | 6/11/14 |
| 8 | IEP Amendment | 6/11/14 |
| 9 | IEP | 6/11/14 |
| 10 | Eligibility Determination | 6/11/2014 |
| 11 | Provision of Special Education Services | 6/11/2014 |
| 12 | Written Agreements between Parent & District | 10/13/14 |
| 13 | Emails District Internal | 10/15/14 |
| 14 | Prior Written Notice | 10/15/14 |
| 15 | Notes from Classroom Teacher | 10/13/14 - 10/18/14 |
| 16 | Email Parent to District | 11/9/14 |
| 17 | Functional Behavior Assessment | 12/4/2014 |
| 18 | Notes from Behavior Specialist | 10/17/14 - 1/23/15 |
| 19 | IEP Progress Reports | 1/26/2015 |
| 20 | Email Parents to District | 2/3/15 |

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

21	Email District to Parents	2/4/15
22	Staffing Ration for Structured Learning Center	9/2014 - 2/2015
23	Principals personal notes	1/2/15 - 3/2/15
24	Special Education Placement Determination	3/2/15
25	IEP Amendment	3/2/15
26	Meeting Minutes	3/2/15
27	Parent Letter to Team	3/2/15
28	Prior Written Notice	3/3/15
29	Report Card	3/4/2015
30	Letter District to Parents	3/30/15
31	Meeting Minutes	4/21/15
32	Prior Written Notice	4/22/15
33	IEP Amendment	4/22/15
34	Parent Input/Concerns	4/22/15
35	Letter District to Parents	8/14/15
36	Police Report Notes	10/4/15
37	IEP Amendment	10/5/15
38	BSP - undated	
39	Staff Listing	

On January 18, 2016, the Parents provided their written *Reply* to the Department's contract complaint investigator (Complaint Investigator) and to the District, by email. This order is timely.

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On January 29, 2016, the Complaint Investigator interviewed a Behavior Specialist employed with a regional Education Service District (ESD) who evaluated the Student. On February 1, 2016, the Complaint Investigator interviewed District staff including a Music Teacher, Special Programs Coordinator, an Elementary Principal, a Special Education Teacher, a Special Education Director, the Director of Special Programs, and three Educational Assistants (EAs). The Complaint Investigator offered the Parents an opportunity to speak with the Complaint Investigator concerning the Complaint during the on-site interviews or by telephone, but the Parents declined. 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 the Discussion in Section IV. This Complaint covers the one year period from December 15, 2014, to the filing of this Complaint on December 14, 2015.²

² OAR 581-015-2030(5)

No.	Allegations	Conclusions
1.	<p><u>When IEPs Must be in Effect (IEP Implementation)</u></p> <p>A. The Complaint alleges that the District violated the IDEA by failing to implement the Student's IEP during part of the 2014-2015 and 2015-2016 school years. Specifically, the Complaint alleges that the District failed to appropriately implement the provision added to the Student's IEP on October 15, 2014 according to a Prior Written Notice dated October 14, 2014, which states that the Student's IEP was amended to include "one-to-one adult assistance during larger group activities such as P.E., Music, and/or inclusion times (if/when started)."</p> <p>B. The Complaint further alleges that the District failed to monitor the Student's interactions with another student resulting in the Student's exposure to inappropriate materials of a violent nature by the other student; and inappropriate physical contact by the other student including assaultive behavior and the other student putting his/her hands in the Student's pants; and assaultive behavior on a playground by one or more other students. The Complaint further alleges that the Student has been diagnosed with PTSD and anxiety disorder and the inability to attend school at all as a result of the District's failure to implement the Student's IEP.</p> <p>Relevant Law: OAR 581-015-2220 and 34 CFR 300.323, 300.324.</p>	<p><u>Not Substantiated</u></p> <p>A. The Department finds that the provision of the Student's IEP at issue does not require 1:1 adult assistance while on the playground. When the Student was on the playground, there were always two adults to monitor no more than three students. The District did provide 1:1 adult assistance to the Student during P.E. and Music.</p> <p>B. The Department is unable to determine when this alleged behavior occurred, or even if it occurred.</p>
2.	<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Complaint alleges that the District violated the IDEA by denying FAPE to the Student during the 2014-2015 and 2015-2016 school years by failing to implement the Student's IEP, as noted in</p>	<p><u>Not Substantiated</u></p> <p>The Department does not sustain the allegation that the District failed to provide FAPE by failing to monitor the Student for the reasons listed in the previous section.</p>

	<p>allegation (1), above.</p> <p>Relevant Law: OAR 581-015-2040 and 34 CFR 300.101.</p>	
3.	<p><u>General Evaluation and Reevaluation Procedures</u></p> <p>The Complaint alleges that the District violated the IDEA by failing to conduct an appropriate Functional Behavior Assessment (FBA) of the Student. Specifically, the Complaint alleges that the District failed to observe the Student in the classroom as part of the FBA.</p> <p>Relevant Law: OAR 581-015-2105; OAR 581-015-2110, OAR 581-015-2115 and 34 CFR 300.301 and 34 CFR 300.303.</p>	<p><u>Unable to Determine</u></p> <p>The Department concludes that this allegation is beyond the authority of the Department as a matter occurring more than one year prior to the Department's receipt of the Complaint in this case.</p>

	<p><u>Proposed Corrective Action</u></p> <p>The Complaint requests the following corrective action:</p> <ol style="list-style-type: none"> 1. Train Special Education teachers regarding Asperger's/High Functioning Autism. The verbal children were paid an inadequate amount of attention to with regard to social skills and emotional safety. 2. Provide an adequate number of aides to care for the verbal and/or gifted children with Autism Spectrum Disorder (ASD). 3. Provide training on the normalizing of horror/violence at younger ages in literature, and the impact of that on kids with ASD, who tend toward anxiety disorders. 4. Provide training to staff on how to complete an FBA. [The Student's] FBA did not include being observed in the classroom. If it had, all this might have been truncated/prevented. 5. Award compensatory education for [the Student], to make up for education [the Student] did not receive while [the Student] was denied FAPE." 	<p>No Corrective Action is ordered in this case.</p>
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III. FINDINGS OF FACT

1. The Student was homeschooled from kindergarten until the end of 2nd grade. Near the end of 2nd grade (the 2013-2014 school year), the Parents decided to send the Student to public school for the 2014-15 school year. At the request of the Parents, the District performed an initial evaluation of the Student, and on June 11, 2014 determined that the Student eligible to receive Special Education services under the disability category of Autism Spectrum Disorder (ASD).
2. The resulting Individualized Education Program (IEP) includes Specially Designed Instruction (SDI) in the areas of Social Skills, Communication Skills, and Behavioral Skills.
3. The IEP Team determined that the Student would be placed in the District's Structured Learning Center (SLC) due in part to concerns about the Student's emotional maturity.
4. The Student began attending 3rd grade at a District elementary school at the beginning of the 2014-15 school year.
5. The Student in this case is presently not enrolled in school with the District, and last attended class on February 6, 2015. The District dropped the Student from enrollment following 10 consecutive school day absences, on February 27, 2015.
6. Since that time, the District convened an IEP Team to discuss possible placements for the Student on March 2, 2015, April 22, 2015 and October 5, 2015. The District stands ready to provide Special Education services to the Student, though the Student is still not attending school in the District.

When IEPs Must Be In Effect (IEP Implementation)

7. The Student's IEP was amended on October 15, 2014 to provide for a 1:1 assistant during "larger group activities", including P.E. and Music, following refusal of the Parents' request for a "dedicated" 1:1 assistant during the entire school day.
8. The SLC classroom the Student attended had approximately nine students until Winter Break (which began on December 22, 2014), and dropped to approximately seven students after Winter Break. The SLC students varied in grade level from kindergarten through fifth grade. The SLC classroom staffing always included at least four to five Educational Assistants (EAs) and one Special Education Teacher.
9. This educational placement is highly structured and offers monitoring of students throughout the school day. During the Student's time in the SLC classroom, the Special Education Teacher located the Student's desk with a group of two other students, within inches of the Special Education Teacher's desk.
10. A station for using iPads is located approximately eight feet away from the Special Education Teacher's desk, which has an unobstructed view of the iPad area. Near the back of the room, approximately twelve feet from the Teacher's desk, is a computer station, which is clearly visible to the Special Education Teacher.
11. During the school day from the beginning of the 2014-2015 school year until Winter Break, another student in the classroom required a 1:1 EA. The remaining four to five adults in the classroom assisted the remaining eight students. Of those eight students, five were kindergarten students. After lunch in the classroom, the three non-kindergarten students would be accompanied to the playground by at least two EAs.

12. The Parents allege that the District failed to implement the Student's IEP, specifically, the provision added to the Student's IEP on October 15, 2014 providing for a 1:1 adult assistant during larger group activities, including P.E. and Music. However, the Parents do not allege any inappropriate interactions during the P.E. or Music "specials".
13. The Parents allege that the Student was exposed to inappropriate materials in the classroom and during recess. On November 29, 2014, one of the Student's Parents sent an email to the Student's Special Education Teacher, expressing concern about another student (a fifth grader) in the classroom. These concerns were based upon stories created by the other student on an iPad that made the Student sad because of the "death in the stories." This other student had mentioned "zombies" to the Student previously in the presence of the Parent. The other student also tried to influence the Student to go down a slide head first and grabbed the Student's shirt.
14. The November 29, 2014 email also referenced the other student prompting the Student to "fart/poop in public, and following [the Student] around singing a poop song when [the Student] was yelling at [the other student] not to." The Parent said in the email that the Student and the other student "should be supervised casually but consistently when working together." The foregoing all occurred prior to December 15, 2014, thus, more than one year before the receipt of the Complaint by the Department in this case.
15. On January 2, 2015, one of the Parents sent an email to the District's Special Education Teacher, Special Programs Coordinator, and Elementary Principal, referencing "some things that happened the last day of school and the effects of it and previous experiences [the Student] has had with [the other student]." last day of school before Winter Break during the 2014-2015 school year was December 19, 2014.
16. The January 2, 2015 email also reported that the Student had become upset because the other student had told the Student that if the Student did not believe something the other student had said that the other student would kill the Student.
17. District staff who worked in the SLC classroom with the Student reported that they had never heard the other student tell the Student he/she would kill the Student, as alleged in the Parents' January 2, 2015 email. Rather, the other student would occasionally become upset at himself/herself and would say "I am going to kill myself," District staff explained to the Student that the other student was using this as a figure of speech and did not intend to kill himself/herself.
18. The Educational Assistants responsible for playground supervision of the Student reported no behavior incidents occurred involving the Student when on the playground, nor were other District staff made aware of any incidents involving the Student.
19. In the Parents' *Reply*, the Parents assert that the Student reported being hit and kicked on the playground. The EA involved stated during the on-site interview that the Student had not reported being hit and kicked while on the playground.
20. The Parents also report within their *Reply* that the Student has clicked on news links concerning murder and pictures of the murderer and the victim (when alive) and that the other student has on one or two other occasions shown the Student news items. The Parents report that the Student "isn't exposed to news at home at all so these experiences at school have been very disturbing to [the Student]."
21. On January 5, 2015, the Special Education Teacher replied to the Parent's January 2, 2015 email and stated "it will be easy enough to separate their free times (it seemed to work out today), but I

can't guarantee that [the Student] isn't going to see or hear some of [the other student's] stories * * * on the iPad. The teacher then stated that it is currently feasible in the classroom to: limit interaction during free time, offer other reward options in lieu of the computer and encourage interaction with other peers at recess.

22. In the Parents' *Reply* in this case, the Parents state that it took about a week for the Principal to change the home pages on computers and iPads after a discussion of the news web pages.
23. Following the resumption of school on January 5, 2015, the Student was not allowed to share an iPad with the other student. This was upsetting to the Student, who still wanted to see the other student's stories.
24. District EAs and the Special Education Teacher reported that the Student was always supervised in the classroom. The Special Education Teacher also reported that following receipt of an email from a Parent sent on January 2, 2015, the Teacher ensured that the Student and the other student were not at the computer station together and that the Teacher specifically separated their times for use of the computer. (on-site interviews)
25. On or about January 21, 2015, the other student announced that he/she had put a paperclip in a smoothie drink as the Student was about to pick up the smoothie. District staff located a paperclip in the Student's drink and the Student did not drink the smoothie with the paperclip in it.
26. The Complaint alleges that the other student "hypnotized" the Student and that the other student told the Student "You hate your parents. Kill your parents. I am the god of evil." The Complaint further states that the Student now believes the other student has "actual god-like powers, follows [the Student] around the house, talks to him, and appears to him", and the Parents believe this "is not actually psychosis, but rather a delusion based on the many times [the Student] heard [the other student] say, 'I am the god of evil.'"
27. On February 3, 2015, the Parents sent an email to the District in which they stated that they were unilaterally reducing the Student's school day to 2 hours, from "around 10 or 10:15 until about noon or 12:15." Previously, the Student had been attending school all day, but with the start and end times flexible because the Student did not wish to arrive and leave with large groups of students. The Student last attended school in the District on February 6, 2015.
28. The District continued to meet with the Parents to discuss various placement options, as noted in Finding of Fact #1, above. On March 2, 2015, the District offered continued placement in the SLC, but with a 1:1 EA during the entire school day. The District provided 1:1 tutoring following an IEP Meeting on October 5, 2015. The Parents notified the District on November 10, 2015 that the Student would not return to tutoring.
29. The Complaint included, as an attachment, a medical statement dated October 12, 2015, which includes diagnoses of anxiety disorder and Post Traumatic Stress Disorder (PTSD). Complaint also included a letter from a medical doctor dated October 1, 2015 which states, in part, that the Student "has been diagnosed with Asperger Syndrome. [The Student] is a bright, sensitive and anxious child. [The Student's] previous experience in the public school setting was quite harmful to [the Student's] well-being and has had lasting negative effects on mood and behavior. [The Student] was placed in a special education class with other children with ASD and was exposed to violent, disturbing material by another student in the classroom. I concur that [the Student] requires highly-structured and closely supervised instruction as [the Student] needs not to be repeatedly exposed to externalizing aggression. This could be accomplished by an in-home tutor with social skills support in a social setting or instruction in a private school setting where [the Student] can be in a very limited size classroom with a one-on-one aide."

FAPE

30. The findings in Facts 9-29, above, also apply to the allegations of denial of FAPE.

General Evaluation and Reevaluation Procedures

31. On or about October 13, 2014, the Special Education Teacher talked to the Parents about proceeding with a Functional Behavior Assessment (FBA) for the Student. The Special Education Teacher contacted a Behavior Specialist who first observed the Student in the classroom on October 17, 2014 and again on October 24, 2014. On December 4, 2014, the Parents met with District staff and provided a signed consent for the FBA.
32. The Behavior Specialist developed the Functional Behavior Plan/Behavior Support Plan (FBA/BSP) on December 4, 2014 following a meeting on that date.
33. On December 11, 2014, the Behavior Specialist met with a District Speech Language Pathologist (SLP) and with the Student to discuss coming up with a group in which the Student could participate.
34. On January 15, 2015, the Behavior Specialist sent the BSP to the Student's Special Education Teacher by email, and followed up with the Teacher on January 23, 2015.

IV. DISCUSSION

When IEPs Must be in Effect (IEP Implementation)

The Complaint alleges that the District violated the IDEA by failing to implement the Student's IEP during part of the 2014-2015 and 2015-2016 school years. Specifically, the Complaint alleges that the District failed to provide "one-to-one adult assistance during larger group activities such as P.E., Music, and/or inclusion times (if/when started)." The Parents also allege that the District failed to monitor the Student's interactions with another student, which ultimately resulted in the Student being diagnosed with PTSD and anxiety disorder and the inability to attend school at all as a result of the District's failure to implement the Student's IEP.

OAR 581-015-2220(1)(b) states that school districts must provide special education and related services to a child with a disability in accordance with an IEP.

The Department finds that the District provided the Student with 1:1 adult assistance during large group activities, as required by the Student's IEP, during P.E. and Music. No incidents were observed or reported by District staff during these "specials".

The Student's IEP provides for 1:1 adult assistance while in larger group settings, such as P.E. and Music. At least two SLC staff accompanied the Student and no more than two other students during recess. District staff from the SLC did not observe any incidents of assaultive behavior or inappropriate touching, and no incident reports were made involving the Student during the Student's time of attendance at the SLC. The Department notes that the Student did not report any incidents of inappropriate touching until eight months after the most recent instance of inappropriate behavior had occurred. It is also impossible for the Department to determine specifically when many of these alleged behaviors occurred, which is significant due to the one-year lookback provision in complaint investigations.

The allegation that the District failed to appropriately monitor the Student in the classroom, therefore allowing the Student to be subjected to inappropriate material by another student, also falls outside the one-year window for the Complaint, therefore the Department does not have jurisdiction to address this allegation. The Department is also unable to substantiate that the Student was actually exposed to any inappropriate materials while in the classroom.

The Department does not substantiate this allegation.

FAPE

The Complaint alleges that the District violated the IDEA by denying FAPE to the Student during the 2014-2015 and 2015-2016 school years by failing to implement the Student's IEP.

OAR 581-015-2040 provides that a district must provide "Special Education and related services to all school-age children with disabilities". FAPE requires that 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.³

The Department does not substantiate this allegation due to the reasons listed in the previous allegation, as well as the fact that the Student has not attended school to access services since February 6, 2015.

General Evaluation and Reevaluation Procedures

The Department concludes that this allegation is beyond the authority of the Department as a matter occurring more than one year prior to the Department's receipt of the Complaint in this case.

CORRECTIVE ACTION⁴
In the Matter of Newberg School District
Case No. 15-054-046

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

Dated this 11th day of February, 2016



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

Mailing Date: February 11, 2016.

³ *Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)

⁴ 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)).