

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Redmond Public School)
District)
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)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-006

I. BACKGROUND

On March 16, 2016, the Oregon Department of Education (Department) received a Request for Complaint Investigation from the parent (Parent) of a student (Student) residing and attending school in the Redmond 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 March 16, 2016.

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 March 21, 2016, the Department sent the *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On April 13, 2016, the District mailed its *Response* to the *Request for Response*, with accompanying documentation and these were received on April 15, 2016. This order is timely.

In total, the District provided these materials:

1. IEP Meeting Notices, Attendance & Agendas, and Meeting Summaries 4/28/15 – 2/26/16
2. Documentation & Emails related to Student Transportation 9/2/15 - 3/4/16
3. Restraint & Seclusion Incident Reports 5/14/15 - 9/23/15
4. Student Monitoring Records 5/15/15 & 9/15/15
5. Behavior Intervention & Support Plans
6. Contact Log 5/8/15 - 3/29/16
7. Prior Notice about Evaluation/Consent for Evaluation 10/28/15
8. OT/PT Referral 11/2/15
9. Occupational Therapy Evaluation 11/2015
10. Daily Attendance Profile 9/11/15 - 4/11/16
11. Elementary School Permanent Record Card
12. 3rd Grade Report Card
13. 4th Grade Report Card
14. IEPs with Related Documentation 5/21/15, 6/8/15, 10/5/15, 10/29/15, 1/14/16
15. Behavior Support Plan 1/26/15
16. Transition Plan 5/21/15
17. Behavior Intervention Plan 9/8/15
18. Student Progress Report 10/30/15
19. Consent for Initial Provision of Special Ed Services 5/21/15
20. Statement of Eligibility for Special Education 5/18/15

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153
15-054-042

21. Notice of Team Meeting for 5/18/15
22. Attendance & Agenda 5/18/15
23. Meeting Summary 5/18/15
24. School Psycho-Educational Assessment 5/15/15
25. Major & Minor Referral Logs 11/6/14 - 4/4/16
26. Check In Check Out Card 3rd Grade 1/6/15
27. Information Related to Staffing for the Student, including email communications and telephone logs 3/17/15 - 4/8/16
28. District Staff Knowledgeable of Student 4/7/16

On April 24, 2016, the Parents submitted a rebuttal letter for the Complaint Investigator to review, as well as copies of two discipline referrals for the Student and Parent's cell phone records from March 10, 2016 until March 17, 2016.

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On April 28, 2016, the Complaint Investigator interviewed the Parent and the Parent's advocate in-person, and conducted in-person interviews with District staff members, including the School Principal, the Student's Homeroom Teacher at the elementary school, the Student's Special Education Teacher, two teachers at the Educational Service District program the Student attends, and the District's Director of Student Services. 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 March 17, 2015, to the filing of this Complaint on March 16, 2016.²

| No. | Allegations | Conclusions |
|-----|--|--|
| 1. | <p><u>When IEPs Must Be in Effect (IEP Implementation)</u></p> <p>The Complaint alleges that during the 2014-15 and 2015-16 school years, the District has violated the IDEA by failing to implement the Student's IEP in the following ways:</p> <p>a. The District failed to provide required accommodations listed in the Student's IEP by not providing physical space between the Student and staff members and continuing to verbally engage with the Student</p> | <p style="text-align: center;"><u>Not Substantiated</u></p> <p>The records provided by the District and the statements made by District staff members during the interview process reflect that as much physical space as possible is provided to</p> |

² OAR 581-015-2030(5)

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| | <p>when the Student's behavior is escalated;</p> <p>b. The District failed to consistently warn the Student of changes or transitions that were to occur;</p> <p>c. The District has failed to consistently provide transportation to the Student in a timely fashion;</p> <p>d. The District has physically restrained the Student in violation of the Student's Behavior Plan.</p> <p>OAR 581-015-2220; 34 CFR 323, 300.324.</p> | <p>the Student without jeopardizing the Student's safety and the safety of others. There is no evidence that staff members continue to verbally engage with the Student when the Student's behavior is escalated.</p> <p><u>Not Substantiated</u></p> <p>The Student's Special Education Teacher prints off the next month's calendar at the end of each month and goes through all known changes to the schedule with the Student, marks these on the calendar, provides the Student with a copy of the calendar and sends a copy of the completed calendar home with the Student. Staff members attempt to keep the Student updated as much as possible with daily changes.</p> <p><u>Not Substantiated</u></p> <p>The District's records and the Parent's statements to the Investigator indicate that transportation changes have generally been implemented within five days of the Student's schedule changes. There have been numerous instances in which the Student has refused to get on the bus to go from one location to the other during the school day. Staff members have tried a wide variety of ways to get the Student to get on the bus but have not physically forced the Student to do so.</p> <p><u>Not Substantiated</u></p> <p>There is no evidence that the Student's Behavior Plan has not been followed. Although physical restraint has been necessary on some occasions to ensure the safety of the Student, other students, and staff members, this is not the result of a failure to implement the Behavior Plan.</p> |
| 2. | <p><u>General Evaluation and Reevaluation Procedures</u></p> <p>The Complaint alleges that the District failed to obtain the Parent's Consent for Evaluation for Occupational Therapy for over a month after this was agreed to in the Student's IEP Meeting.</p> | <p><u>Not Substantiated</u></p> <p>Although the Student's May 21, 2015 IEP does mention that an Occupational Therapy Evaluation (OTE) would be considered, there was no final decision made at this time. This topic was discussed again during the September 24, 2015 IEP Meeting and Consent</p> |

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| | OAR 5810-01-015-2110; 34 CFR 304. | for Evaluation was received on October 28, 2015, after the IEP Team made a final decision to move forward with the OTE. The OTE was completed and OT services were added to the Student's IEP on January 14, 2016. |
|--|-----------------------------------|--|

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| | <p><u>Proposed Corrective Action</u></p> <p>The Parent requests that the accommodations listed in the IEP be provided along with the recommendations made in the Occupational Therapy Evaluation.</p> | |
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III. FINDINGS OF FACT

1. The Student in this case is presently ten years old and is in the fourth grade. The Student is currently attending a behavioral program at the High Desert Educational Service District (ESD) for the first forty-five minutes of each school day, and attends an elementary school for the remainder of the school day.
2. The Student was referred for an evaluation to determine Special Education eligibility due to escalating behavior concerns, which necessitated numerous classroom removals. The Student had previously received a diagnosis of Adjustment Disorder as well as a provisional diagnosis of Post-Traumatic Stress Disorder from the Student's Physician on March 20, 2015.
3. The Student was found eligible for Special Education services on May 18, 2015 for Emotional Disturbance (ED). The initial IEP was dated May 21, 2015. The Student was placed at the elementary school for half of each day and at a short-term behavioral center at the ESD for the other half. The Student was to start attending a different behavioral program at the ESD for half of each day at the start of the 2015-16 school year due to the fact that the initial behavioral center is utilized for six weeks only, while the second behavioral program is more flexible. The "Nonparticipation Justification" section of the IEP states that the Student may be removed from the classroom for up to 900 minutes per week.
4. The Student's IEP accommodations are listed below:

| Modifications; Accommodations Anticipated | Anticipated Amount/Frequency | Location | Starting Date | Ending Date |
|--|---|---|--------------------------|------------------------|
| Provide no more than two clear choices or options | To reduce anxiety | General education/ special education | 5/21/15 | 5/20/16 |
| Allow more physical space between self and student | When student is escalated | General education/ special education | 5/21/15 | 5/20/16 |
| Reduce verbal communication | When student is escalated | General education/ special education | 5/21/15 | 5/20/16 |
| Allow longer processing | When student is making | General education/ | 5/21/15 | 5/20/16 |

| time | decisions or choices | special education | | |
|--|---|---|---------|---------|
| Provide alternate setting | To calm and self-soothe | General education/ special education | 5/21/15 | 5/20/16 |
| Provide non-verbal/visual supports | To increase student's ability to express self | General education/ special education | 5/21/15 | 5/20/16 |
| Provide a 5 point scale (colored scale) | To help student identify and communicate emotions or feelings | General education/ special education | 5/21/15 | 5/20/16 |
| Hold student accountable for missed work | When work is missed Due to escalations | General education/ special education | 5/21/15 | 5/20/16 |
| Provide student with specific scripted responses | To express difficult or uncomfortable feeling | General education/ special education | 5/21/15 | 5/20/16 |
| Provide sensory diet | To help with calming/reduce anxiety | General education/ special education | 5/21/15 | 5/20/16 |
| Use social stories, games, role-plays, small group instruction | To teach and reinforce appropriate ways to seek help, using calming tools, express feelings, read social cues, and reinforce team work and compromise | General education/ special education | 5/21/15 | 5/20/16 |
| Use concrete language like "First/Then" | When directions are given | General education/ special education | 5/21/15 | 5/20/16 |
| Provide forewarning of changes or transitions | Daily to decrease anxiety | General education/ special education | 5/21/15 | 5/20/16 |

5. The Student continued to exhibit challenging behaviors for the remainder of the 2014-15 school year.
6. The IEP was revised on June 8, 2015 to add Transportation to and from school as a related service.
7. A Behavior Support Plan (BSP) was drafted on August 26, 2015. This BSP incorporated many of the accommodations listed in the IEP, such as limiting verbal interactions to simply-stated desires and increasing personal space.
8. The Student began exhibiting a great deal of resistance to going to the behavioral center and began refusing to go into the building upon arrival. The IEP Team met on September 18, 2015. At that time the IEP Team changed the Student's Placement Determination so that the Student would attend the ESD program for half-days and would not attend any general education classes at the elementary school.
9. The IEP Team met again on October 5, 2015 and revised the Student's IEP so that the Student would attend the ESD program for half a day and would be in general education for up to two hours per day at the elementary school.
10. On October 29, 2015, the IEP Team revised the Student's IEP again, providing for the Student to attend the ESD program for half of each school day and a general education placement at the elementary school for up to three hours per day.

11. The IEP Team met on February 19, 2016 and decided that the Student would attend the ESD program for the first forty-five minutes of each day, with the Student returning to the elementary school for the remainder of the school day. The IEP Team considered this to be a "trial run," therefore the IEP was not amended at that time.
12. These changes in placement led to numerous changes in the Student's transportation needs. Each time the Student's transportation needs changed, it took the District anywhere from three to seven school days to implement the new transportation schedule.
13. There have been numerous occasions when the Student has refused to get on the bus to go from one school to the other. Staff members have been unable to identify any discernable patterns to help better understand the Student's periodic resistance.
14. The Parent wants the Student to attend the elementary school full time, in part to lessen transitions and ease transportation concerns. The District maintains that at this time, the Student's mental health needs make it impossible for the Student to be effectively educated exclusively at the elementary school.
15. The District's Physical Restraint Incident Reporting Forms indicate that the Student has been physically restrained on the following dates: May 14, 2015, September 14, 2015, September 15, 2015, and September 23, 2015. In each of these incidents, staff members determined that the Student's behavior was unsafe to the Student as well as others. The forms also indicate that at least nine different interventions were attempted during each incident prior to the use of restraint. The Student was also placed in seclusion on May 19, 2015 and September 10, 2015.
16. The IEP Team first discussed the possibility of administering an Occupational Therapy Evaluation (OTE) to the Student in the September 24, 2015 IEP Meeting. No decision was made at this time. After consulting with the Occupational Therapy Specialist, the IEP Team agreed that a formal referral for an OTE was needed. Parental consent for this evaluation was received on October 28, 2015. This evaluation was completed and Occupational Therapy Services were added to the Student's IEP on January 14, 2016.

IV. DISCUSSION

1. When IEPs Must Be in Effect (IEP Implementation)

The Complaint alleges that during the 2014-15 and 2015-2016 school years, the District violated the IDEA by failing to implement the Student's IEP in the followings ways:

- a. The District failed to provide required accommodations listed in the Student's IEP by not providing physical space between the Student and staff members and continuing to verbally engage with the Student when the Student's behavior is escalated;
 - b. The District failed to consistently warn the Student of changes or transitions that were to occur;
 - c. The District failed to consistently provide transportation to the Student in a timely fashion;
 - d. The District has physically restrained the Student in violation of the Student's Behavior Plan;
- a. The District Failed to Provide Required Accommodations Listed in the Student's IEP by not Providing Physical Space Between the Student and Staff Members and Continuing to Verbally Engage with the Student when the Student's Behavior Is Escalated.

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.

This Student's IEP includes specific language requiring that staff members provide physical space between staff members and the Student when the Student's behavior is escalated. The IEP also provides protocol about how to verbally interact with the Student during these situations. A Behavior Intervention Plan (BIP) was created that addresses these circumstances. There is no evidence that staff members failed to provide these accommodations to the Student. During each instance where the Student was physically restrained, a checklist was completed by a staff member indicating what steps had been taken prior to restraining the child. The completed checklists indicate that these steps were taken, and the narrative language within the checklists is consistent with this.

This portion of the allegation is not substantiated.

b. The District Failed to Consistently Warn the Student of Changes or Transitions that Were to Occur.

The Student's IEP requires that the Student will be forewarned about changes or transitions. While there have undoubtedly been times where such a warning was not possible, the Meeting Notes from many IEP Meetings make specific reference to incidents where staff members warned the Student about upcoming changes. A staff member also meets with the Student at the end of each month to go over scheduled events for the upcoming month. Staff members also provide verbal notice to the Student prior to each daily transition. There is no evidence that the District has not complied with this IEP requirement.

This portion of the allegation is not substantiated.

c. The District Failed to Consistently Provide Transportation to the Student in a Timely Fashion.

Transportation is a Related Service included in the Student's IEP. There have been at least five occasions when a Request for Special Transportation has been sent to the District's Transportation Department to change transportation arrangements for the Student. Each of these requests was processed and implemented no later than five school days from the date of the request. The Request for Special Transportation Form states that these requests generally take from one to five school days to implement. The IDEA does not specify a timeframe in which transportation changes have to be implemented. The Student has refused to get on the school bus from one location to the other on numerous occasions despite staff members and the Parent trying a variety of methods to get the Student to get on the bus.

This portion of the allegation is not substantiated.

d. The District Has Physically Restrained the Student in Violation of the Student's Behavior Plan.

The Student's Behavior Plan does not prevent restraint when necessary to ensure the safety of the Student or others. The checklists completed during each restraint incident indicate that the interventions listed in the Student's Behavior Plan were followed in each instance, as indicated in paragraph (a) above.

This portion of the allegation is not substantiated.

2. General Evaluation and Reevaluation Procedures

OAR 581-015-2210(5)(b) states: "A reevaluation must occur within sixty days from the date of parental consent to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs."

The IEP Team first discussed the possibility of obtaining an OTE on May 21, 2015; however, there was no decision made at this time. The issue was once again discussed on September 24, 2015. A decision was made to speak with the Occupational Therapist to determine if a referral was appropriate. The District obtained the Parent's consent for this evaluation on October 28, 2015. The OTE was completed and the IEP Team met on January 14, 2016 and Occupational Therapy was added to the Student's IEP. This was thirty-seven school days after the District obtained the Parent's consent, and falls within the timeline specified in OAR 581-015-2110.

This allegation is not substantiated.

CORRECTIVE ACTION³
In the Matter of Redmond School District
Case No. 16-045-006

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

Dated this 10th day of May 2016



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

Mailing Date: May 10, 2016

³ 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)).