

## BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eagle Point  
School District 9

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 16-054-017

### I. BACKGROUND

On May 23, 2016, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing and attending school in the Eagle Point School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on May 23, 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.<sup>1</sup> On May 25, 2016, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On June 8, 2016, the District timely provided its narrative *Response* to the *Request for Response* and accompanying documentation.

The District provided the following documentation in its *Response*, during the on-site interviews, and by email:

1. Daily Attendance Profile 4/28/16
2. Period Student Attendance Profile 4/28/16
3. Student Dashboard 4/27/16
4. Student Discipline Profile 4/28/16
5. Student Contact Log 12/9/15
6. Email communication 1/6/16 to 2/10/16
7. Prior Written Notice 2/24/16
8. Manifestation Determination and Review 2/24/16
9. Notice of Team Meeting 2/23/16
10. Email communication 5/5/16
11. Referral to Office 2/18/16
12. Physical Restraint Incident Report 2/18/16
13. Physical Restraint Incident Debriefing Notes 2/18/16
14. "ABC Log" 2/22/16 to 3/3/16
15. Referral to Office 2/17/16
16. Referral to Office 2/8/16
17. Email communication 4/28/16
18. Email communication 2/22/16 to 2/24/16
19. Prior Written Notice 3/10/16
20. IEP Amendment 3/10/16
21. IEP attendance form 3/10/16
22. Notice of Team Meeting 2/24/16

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<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153

23. Email Communication 3/9/16
24. Data re behavior 2/25/16 to 3/8/16
25. Email communication 2/25/16
26. Prior Written Notice 2/24/16
27. Email communication 2/24/16
28. Email communication 5/5/16
29. Medical office visit notes 2/16/16
30. Progress Reports and Report Cards 2015-2016 school year
31. IEP 10/13/15
32. Prior Written Notice 5/25/16
33. Prior Written Notice (handwritten) 5/25/16
34. Email communication 5/26/16
35. Service Summary 5/25/16
36. Meeting Agenda 5/25/16
37. Notice of Team Meeting 5/17/16
38. Prior Written Notice 5/2/16
39. Step-Up Plan 3/14/16
40. Amendment to IEP 3/10/16
41. IEP Attendance Form 3/10/16
42. Prior Written Notice 3/10/16
43. Notice of Team Meeting 2/24/16
44. Prior Written Notice 2/24/16
45. Meeting Minutes 10/13/15
46. Meeting Agenda 10/13/15
47. Amendment to IEP 5/19/15
48. IEP Attendance Form 5/19/15
49. Behavior Support Plan 3/10/16
50. Crisis Intervention/Safety Plan 3/2/16
51. Functional Behavioral Assessment/Behavior Support Plan 3/7/16
52. Crisis Intervention/Safety Plan 11/25/13, reviewed 10/13/15
53. Behavior Support Plan 1/14/14 and 10/13/15
54. Functional Behavioral Assessment 9/6/13
55. District Policies concerning discipline
56. Email Communication 5/26/16
57. Email Communication 5/17/16
58. Transfer Request 5/25/16
59. "Supervisor's Accident/Illness Analysis" 4/28/16
60. "Supervisor's Accident/Illness Analysis" 4/27/16
61. "Supervisor's Accident/Illness Analysis" 2/22/16
62. Observation Notes, ending 5/6/16
63. Office Referral 4/27/16
64. Debriefing Notes 4/29/16
65. Office Referral 2/29/16
66. Office Referral 2/26/16
67. Office Referral 2/22/16 and 2/4/16
68. Authorization concerning educational and protected health information 2/16/16
69. Summer School information 2015
70. Attendance Records, ending 5/20/15
71. Confidential Information Sheet 10/25/13
72. "SWIS Report" ending 3/13/15
73. Email Communication 3/6/16
74. Letter from Dist 6/3/16
75. Authorization concerning educational and protected health information 6/8/16

- 76. IEP amendment 10/15/14
- 77. Service Logs
- 78. Special Education Placement Determination 2/24/16
- 79. Staff List

The Parent did not provide a written *Reply* in this case.

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On June 13, 2016, the Complaint Investigator interviewed the District's Director of School Improvement, who oversees Special Education services in the District, and the Complaint Investigator also interviewed the Parent by telephone on June 14, 2016. 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. This order is timely.

## 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 May 24, 2015, to the filing of this complaint on May 23, 2016.<sup>2</sup>

No	Allegations	Conclusions
1.	<p><b><u>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive); Requirements of an Interim Alternative Educational Setting; Requirements for Least Restrictive Environment (LRE); and Free Appropriate Public Education (FAPE)</u></b></p> <p>The Complaint alleges that the District violated the IDEA by changing the Student's placement due to disciplinary reasons by twice modifying the Student's IEP, on February 24, 2016 and on March 10, 2016. Specifically, the District shortened the Student's school day, first to four hours and fifteen minutes and then to one hour in a self-contained classroom with no other students present, while failing to modify the Student's IEP in any other manner. The Complaint further alleges that the District violated the IDEA because the placements resulting from the modifications to the Student's IEP are not the Least Restrictive Placement</p>	<p><b><u>Not Substantiated</u></b></p> <p>In this case, the Student's IEP Team, including the Parent and the Parent's Advocate, met on February 24, 2016 and agreed to shorten the Student's school days to four hours and fifteen minutes each day. This decision was based upon the needs of the Student due to a "bipolar relapse." The District also adopted a new Crisis Intervention/Safety Plan on March 2, 2016, and conducted a new Functional Behavioral Assessment (FBA) which was completed on March 7, 2016.</p> <p>Due to the Student leaving campus without permission, the IEP Team, including the Parent and the Parent's Advocate, met on March 10, 2016, and decided to change the Student's</p>

<sup>2</sup> OAR 581-015-2030(5)

<p>(LRE) and because the Student is not receiving a Free Appropriate Public Education (FAPE) under the placements resulting from these IEP modifications.</p> <p>Relevant Law: OAR 581-015-2415 and 34 CFR 300.504(a)(3), 300.530, 300.531, 300.532, 300.533; OAR 581-015-2435 and 34 CFR 300.530; OAR 581-015-2240 and 34 CFR 300.114; OAR 581-015-2040 and 34 CFR 300.101.</p>	<p>placement to one hour of school attendance per day in a “separate setting”, with Occupational Therapy (OT) and speech services 15 minutes per week. The IEP Team agreed this instruction would not occur at the Student’s home, but at the Student’s home school. The District adopted a Behavior Support Plan (BSP) on March 10, 2016 and a “Step-Up Plan”, also dated March 10, 2016, that was a plan suggested by the Parent and the Parent’s Advocate.</p>
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**Proposed Corrective Action**

The Parent requests the following solutions:

- “1. We propose the IEP team be convened as quickly as possible and an IEP be developed which will allow for a full day of school for the student in the least restrictive environment and a FAPE to be delivered.
- 2. We propose the district provide student compensatory education hours equal to the time [the Student] missed school due to truncated hours attending beginning with the February 24<sup>th</sup> 2016 PWN through and until a new IEP is developed and student is in school for a full day.”

**III. FINDINGS OF FACT**

1. The Student in this case is presently twelve years old and has now completed the 6th grade in the District. The Student is eligible for Special Education as a student with Autism Spectrum Disorder (ASD), Intellectual Disability (ID) and Other Health Impairment (OHI) (Attention Deficit Hyperactivity Disorder, Bi-Polar Disorder).
2. The Student’s IEP in effect at the time of the filing of the Complaint is dated October 13, 2015. The “Educational Placement Discussion and Decisions” page of the October 13, 2015 IEP indicates that the Student was to attend three classes of general education with support and four classes of Special Education each day.
3. Following winter break during the 2015-2016 school year, the Student experienced what the Student’s Medical Doctor characterized, in an email to the District on February 24, 2016, as a “bipolar relapse.” The Student’s Doctor noted that the Student “usually takes a couple of months to settle back down when [the Student] has a relapse.” The Student’s doctor also opined in the email that “the combination of changes (new school, moving from [the Student’s] home, potential big move and then cancelled) was the likely trigger for [the Student’s] relapse this time.” The Doctor stated that the Student’s current placement seems too stressful for the Student and that the Student may need a different placement for the rest of the school year. During the telephone interview of the Parent in this case by the Complaint Investigator on June 14, 2016, the Parent acknowledged the Student’s relapse.
4. On February 24, 2016, the District held a Manifestation Determination due to a pattern of violent and aggressive behaviors exhibited by the Student. During the Manifestation Determination Meeting, the Student’s IEP Team, including the Student’s Parent and the

Parent's Advocate, determined that the Student's behaviors were a manifestation of the Student's disabilities. A "Manifestation Determination and Review" document was completed at that time. A "Notice of Team Meeting" was sent to the Parent on February 23, 2016.

During this meeting, the Student's school day was shortened to four hours and fifteen minutes per day and it was decided that a 1:1 aide would be provided for the Student. The IEP Team also determined that when the Student exhibited behavior harmful to the Student or others or presented an imminent threat of harm to self or others, the District would send the Student home, but that the Student would return to school the next day without an intake meeting and the absence would not be counted as a suspension. A Prior Written Notice (PWN) provided at this time states that the Student "will have a 1:1. Schedule is from 8:00-12:15", and stated that the Parent may keep the Student home "due to disability/medical reasons and it will be an excused absence. Follow up on 3/10 at 12:00 at [the school]. FBA and BSP will be completed and reviewed as well as criteria for extending day." Additionally, the District made a placement decision and documented this on a new form stating "33-Less than 40% of the day in regular class" and "Shortened day from 8:00-12:15. SDI time does not change."

5. Following the February 24, 2016 IEP Meeting, the District completed a "Crisis Intervention/Safety Plan", dated March 2, 2016, and a Functional Behavioral Assessment, dated March 7, 2016.
6. The PWN dated March 10, 2016 states that the IEP Team met and determined that the Student "needs further modification of [the Student's] schedule at this time." The PWN also states that the Student will attend school "one hour per day in a separate setting. Time is to be determined by the school district. IEP was amended to reflect new placement. SDI minutes and service times were updated. SDI in math, reading/writing, social skills will be 15 minutes per day. OT and speech will do push in services 15 minutes per week." This meeting was held at the request of the Parent and the Parent's Advocate following an incident in which the Student "Eloped a couple blocks off campus today. Need to discuss change of placement for health and safety. ASAP."
7. The Meeting Minutes of the March 10, 2016 IEP Meeting show that the Parent and an Advocate for the Parent participated in the meeting. The minutes also state that the IEP Team, including the Parent and the Parent's Advocate, "agreed to placement of 1 hour per day in a separate location. 15 minutes built in after one hour to provide reward. SDI updated to reflect new placement. [The Student] will start tomorrow (3/11) 7:45. Requested for [teacher] to send work home each day. Transportation will be set up for [the Student] to leave school at 9 am on Monday. Increase in time will be based on behavior each week. If [the Student] has appropriate behavior, the district will determine an increase in [the Student's] time on campus. [The Student] will have the possibility of an immediate behavioral reward such as access to a classroom or friend, at the aide/tutor's discretion. Any behavior incidents will revert time back to one hour/day."
8. The District adopted a Behavior Support Plan (BSP) at that time as well as a "Step-Up Plan" for the Student, which was suggested by the Parent and the Parent's Advocate.
9. During the on-site investigation and telephone interview of the Parent, the parties confirmed that the Parent made a "Hardship Transfer Request" on May 25, 2016. The Parent confirmed that the transfer request had been allowed and the Parent does not intend to enroll the Student in the District for the upcoming 2016-2017 school year. District staff also confirmed receipt of a records request from another school district.

#### IV. DISCUSSION

The Complaint alleges that the District violated the IDEA by changing the Student's placement due to disciplinary reasons by twice modifying the Student's IEP, on February 24, 2016 and on March 10, 2016. Specifically, the allegation states that the District shortened the Student's school day, first to four hours and fifteen minutes and then to one hour in a self-contained classroom with no other students present, while failing to modify the Student's IEP in any other manner. The Complaint further alleges that the District violated the IDEA because the placements resulting from the modifications to the Student's IEP are not the Least Restrictive Placement (LRE) and because the Student is not receiving a Free Appropriate Public Education (FAPE) under the placements resulting from these IEP modifications.

OAR 581-015-2240(1) and (2) address the "Requirement for Least Restrictive Environment" and provide that school districts must ensure that to the "maximum extent appropriate" children with disabilities are educated with children who do not have a disability, and the "separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." OAR 581-015-2225(3)(a) addresses "Review and Revision of IEPs" and provides that "Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection (2) by amending the IEP rather than by redrafting the entire IEP."

A memorandum issued by the Department to Oregon school districts on January 27, 2016, "Executive Numbered Memorandum 009-2015-16 – Reduced School Days" states "In some very limited circumstances, it may be appropriate to shorten a school day for a student with a disability who engages in severe behaviors that threaten school safety. For students who receive special education services, a decrease in instructional time likely constitutes a significant change to the Individual Education Program (IEP) and/or a change in placement, triggering the procedural safeguard requirements of the Individuals with Disabilities Education Act (IDEA). It is important to note that a reduction for these students should be reserved only for students with the most severe behaviors, and implemented when a continuum of alternative placements that are less restrictive have failed."

In this case, following aggressive, dangerous behavior by the Student, the Student's IEP Team, including the Parent and the Parent's Advocate, met on February 24, 2016 and decided to shorten the Student's school days to four hours and fifteen minutes each day. The Department finds that this decision was both agreed to by the Parent and appropriate due to the dangerous behavior of the Student in this case. The IEP Team scheduled a prompt review of the Student's shortened school day for March 10, 2016, just fifteen calendar days after the February 24, 2016 IEP Meeting. The District also adopted a new Crisis Intervention/Safety Plan on March 2, 2016, and conducted a new FBA completed on March 7, 2016.

On March 9, 2016, the Parent's Advocate sent an email to the District stating that the Student had left the school campus that day and that the IEP Team "Need to discuss change of placement for health and safety. ASAP." The IEP Team met on March 10, 2016, including the Parent and the Parent's Advocate, and agreed to change the Student's placement to one hour of school attendance per day in a "separate setting", with Occupational Therapy and Speech Services fifteen minutes per week. The IEP Team agreed this instruction would not occur at the Student's home, but at the Student's home school. The District also adopted a Behavior Support Plan and a "Step-Up Plan" suggested by the Parent and the Parent's Advocate at that time.

The Department does not substantiate this allegation.

**CORRECTIVE ACTION<sup>3</sup>**  
*In the Matter of Eagle Point School District*  
Case No. 16-054-017

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

Dated this 19th Day of July 2016



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

Mailing Date: July 19, 2016

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<sup>3</sup> 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)).