

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Coos Bay School )  
District # 9 )  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 16-054-019

**I. BACKGROUND**

On June 6, 2016, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Coos Bay School District 9 (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District on June 6, 2016.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On June 9, 2016, the Department's Complaint Investigator sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of June 23, 2016.

On June 22, 2016, the District submitted a *Response* indicating they disputed all portions of the allegations in the Parent's Complaint. In total, the District submitted the following items:

Letter responding to each allegation in the Request for Response  
Table of Contents of Documents Provided in Response to RFR

1. Eligibility, 5/29/12
2. IEP, 3/18/15
3. Staffing Report, 2/3/16
4. IEP, 3/16/16 and revision dates 5/17/16
5. Eligibility, 3/18/16
6. Executive Session Board Meeting Minutes 3/28/16
7. Board Letter to Parent 4/12/16
8. Incident reports, response to parent, prior written notices, meeting notices, staffing reports 12/1/14 – 6/3/16
9. Safety Plan 12/1/14
10. Email documentation 7/31/15 – 6/20/16
11. Student Schedules (undated)
12. Adaptive Life Skills Program Service Plan
13. Coos Bay District 9 Process to Enter the Middle Learning Center
14. CBSD 9 Process to Enter the Structured Learning Center
15. Special Education—Participation in Regular Education Programs
16. Special Education—Procedural Safeguards

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

17. Special Education—Free Appropriate Public Education
18. Special Education—Individualized Education Program (IEP)
19. Section 504—Students
20. Middle School master schedule and course code
21. TSPCT ESD Staff License Information
22. List of Staff Knowledgeable About the Circumstances of the Complaint

The Complaint Investigator interviewed the Parent on July 19, 2016 and the Parent submitted materials for consideration at that time, including:

1. Correspondence between Parent & ESD 1/12/15 – 10/31/15
2. Parent letter to ODE Office of Learning/Education Equity Unit 11/9/15
3. Equity Unit response 11/23/15
4. Correspondence between Parent & District 8/27/15 – 1/8/16
5. Parent's complaint to Coos Bay School District 2/18/16
6. IEP 3/16/16
7. District's response to complaint 4/26/16
8. Parent's request for an ODE complaint investigation 6/6/16
9. Email between Parent & Coos Bay EMT/Fire Services 5/25/16 – 7/5/16
10. Email between Parent & Coos Bay Ambulance Services 7/6/16

The Department's Complaint Investigator determined that on-site interviews were needed. On July 19, 2016, the Complaint Investigator toured the school building at issue and interviewed the District's Special Education Director. The Complaint Investigator also interviewed the School Board Secretary, Regular Education Teacher, and South Coast ESD Special Education Director. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 7, 2015 to the filing of this Complaint on June 6, 2016.

	<b><u>Allegations:</u></b>	<b><u>Conclusions:</u></b>
1	<p><b><u>Requirement for Least Restrictive Environment:</u></b></p> <p>The Parent alleges that the Student is educated in a location physically separated from students without disabilities. The Parent alleges that this separation includes separation of the Student from activities, services, and meals, which students without disabilities share in.</p> <p>(OAR 581-015-2240(1) &amp; (2), and 34 CFR 300.114)</p>	<p><b><u>Not substantiated:</u></b></p> <p>Due to facilities limitations, the Student's classroom is physically separated from the main school building. However, the Student's educational placement was determined by the Student's IEP Team, with consideration given to Least Restrictive Environment provisions. The Student participates in activities, services, and meals with students without disabilities to the maximum extent appropriate.</p>

<p>2. <b><u>Nonacademic Services:</u></b></p> <p>The Parent alleges that the Student receives nearly all nonacademic and extracurricular services and activities including meals in a manner that does not afford the Student an equal opportunity for participation as students without disabilities.</p> <p>(OAR 581-015-2070(1) &amp; (2); and 34 CFR 300.107)</p>	<p><b><u>Substantiated:</u></b></p> <p>The Student was not initially assigned a regular education teacher or classroom at the beginning of the school year; the assignment occurred October 12, 2015.</p>
<p>3. <b><u>Placement of the Child:</u></b></p> <p>The Parent alleges that the District:</p> <ul style="list-style-type: none"> <li>(a) made the determination regarding the Student's placement without regard to the Least Restrictive Environment provisions of OAR 581-015-2240 to 581-015-2255;</li> <li>(b) did not consider the potential harmful effects on the Student or the quality of services which the Student needs; and</li> <li>(c) determined the setting based solely on needed modifications to the general education curriculum.</li> </ul> <p>(OAR 581-015-2250(1), (4) &amp; (5); and 34 CFR 300.116, 34 CFR300.327)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The Student's IEP Team considered the continuum of placement options available in the District and chose the Student's education placement after a variety of considerations. Recently the Student's placement was reassessed and determined to be appropriate. Unfortunately, the District's facilities necessitate the specific physical location of the classroom in which the Student receives services to be in a building physically separated from the main school building.</p>
<p>4. <b><u>When IEPs Must Be In Effect/Content of the IEP:</u></b></p> <p>The Parent alleges that:</p> <ul style="list-style-type: none"> <li>(a) for a portion of the school year the Student's safety plan was not included in the Student's IEP, or in the alternative that the Student's safety plan was not implemented;</li> <li>(b) staff assigned to carry out duties with regard to the safety plan were unable to fulfill those duties;</li> <li>(c) some staff assigned to teach the Student were unqualified;</li> <li>(d) the District did not provided staff with access to the Student's IEP; and</li> <li>(e) staff responsible for implementing portions of the IEP were not instructed regarding their responsibilities.</li> </ul> <p>(OAR 581-015-2220(1)(b), (2)(b), (3)(a) &amp; (3)(b), OAR 581-015-2200(1)(d), and 34 CFR 300.323, &amp; 34 CFR 300.324)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>Some of the events offered in support of this allegation are outside the June 7, 2015 to June 6, 2016 timeline for the investigation.</p> <p>There is insufficient evidence in the record to conclude that the Student's ability to elude the educational assistant was a failure to implement the IEP and that staff members assigned to the Student were physically incapable of carrying out their duties under the IEP. All teachers assigned to the Student were properly licensed. The Student's IEP was available to other staff members who worked with the student.</p>

### III. FINDINGS OF FACT

#### Background

- 1) The Student in this case is ten years old and resides in the Coos Bay School District. The Student will attend 5th grade during the 2016-2017 school year.
- 2) The Student is eligible for Special Education services as a student with Autism Spectrum Disorder. The Student's disability impacts the Student's educational performance, specifically in the areas of communication, daily living, socialization, motor skills, and body awareness. The Student was found eligible for Specially Designed Instruction (SDI) and was placed in the District's Adaptive Life Skills (ALS) classroom, a highly structured environment with close adult support. The Student's disability manifests in running behavior and the Student has a safety plan in place in case the Student runs from adults monitoring the Student. Staff members assigned to the Student need to be physically capable of intercepting the Student.
- 3) The Student receives SDI in the areas of community instruction, functional academics, functional skills, and behavior. The Student receives augmentative communication services, transportation services, and nursing services as well as a modified curriculum, adult assistance throughout the day, visual schedule and visual supports throughout the day, seizure protocol, sensory diet, medications administered by a nurse, and a safety plan. The Student's IEP also calls for supports for school personnel in the form of consultation between general education and Special Education teachers, nursing in-service to ALS classroom staff, Speech Language Pathologist Consultation, Nursing Re-evaluation, Autism Consultation, and Occupational Therapy Consultations. The Student is largely non-verbal, although the Student can speak a few words and is working on signing others. The Student uses the bathroom frequently. The Student requires close adult supervision to stay on task and to avoid placing inappropriate items in Student's mouth. The Student also displays aggressive behaviors toward staff members at times.
- 4) The Student's IEP Team determined that the Student would be removed from participating with nondisabled students in order to receive SDI, related services, or supplementary aids or services. This determination was made due to the Student's need for a highly structured environment with access to sensory breaks. The Student would "push in" to general education for such activities as lunch, recess, library visits, computer lab time, special activities, and physical education.

#### Nonacademic Services

- 5) The Student's IEP calls for removal from the regular classroom for approximately 75% of the school day. The Student receives SDI and related services in the ALS classroom. The Student participates with students in the regular education classroom for meals, recess, library use, computer lab use, art class, assemblies, special activities, physical education and field trips.
- 6) At the beginning of the 2015-2016 school year, the Student did not have a desk assigned in the Student's regular education classroom, was not included in class events, celebrations, and was not afforded the opportunity to socialize with peers. The Student's Special Education teacher informed the regular education teacher that the Student could be disruptive or a danger to other students. The Special Education teacher voiced a preference to keep the Student in the ALS classroom. The Student's regular education teacher deferred to the Special Education teacher at that time. The District did not assign the Student to a regular education classroom until the week of October 12, 2015.

## **Requirement for Least Restrictive Environment / Placement of the Child**

- 7) The District has a continuum of alternative placement options. These include the Structured Learning Center (SLC), Middle Learning Center (MLC), and the Adaptive Life Skills (ALS) classroom. The IEP Team, including the Student's Parent, determined that the ALS classroom was the most appropriate educational placement for the Student due to the Student's unique needs.

The South Coast Education Service District (SCESD) oversees the implementation of the program throughout the District. The ALS program features a mix of small group instruction and inclusion in regular classroom settings. The emphasis is on communication skills and everyday living. Skills range from learning how to cross streets to managing budgets to employment opportunities.

- 8) The District is part of a consortium of school districts that utilize services through the SCESD. SCESD provides Special Education services to the District in the form of equipment and staff. Although staff are hired and managed by SCESD, the District is responsible for a free appropriate public education (FAPE).
- 9) SCESD provides the teachers and aides to staff the ALS classroom. The District provides the Autism Consultant.
- 10) The District's ALS classroom is located in a building physically separate from the main intermediate school building. This building houses the ALS classroom as well as one of the school's computer labs.
- 11) The Parent voiced concerns to the District regarding the physical location of the ALS classroom. The District asked the Oregon Department of Education's Office of Learning/Education Equity Unit for technical assistance regarding accessibility and location of the classroom.
- 12) The Department's Civil Rights Education Specialist toured the school and made a number of observations and recommendations regarding the classroom, its placement, accessibility, and the challenges faced by the District. On November 23, 2015, the District's Civil Rights Education Specialist sent a letter to the District recommending that all students utilizing the ALS classroom receive an immediate formal re-evaluation of their existing placements for the school year. This re-evaluation resulted in a change of placement for some, but not for the Student. The letter also recommended that the ALS classroom be relocated, but noted that an immediate move would be premature.
- 13) On March 28, 2016, the Parent appeared before the District's School Board to voice concerns regarding the Student, including the location of the ALS classroom. The District considered moving the ALS classroom, but ultimately decided not to do so for a variety of reasons. On April 12, 2016, the School Board sent a letter to the Parent. The letter noted that the District would continue to work with the Department and follow the suggestions made. The District noted that, "...the evidence does not support directing the relocation of the program....the ALS program serves a variety of students with different needs, including medically fragile students..." and that "...the ALS classroom is only one of a continuum of services available at (the school) to meet the needs of each student, as appropriate."

### **When IEPs Must Be In Effect/Content of the IEP:**

- 14) The Student exhibits self-injurious behaviors that include pinching the inner thighs and ears. This behavior is documented in the Student's IEP. The behavior can result in the Student leaving

bruises on the inner thigh.

- 15) On January 4, 2016, there was a substitute teacher in the ALS classroom. The substitute teacher helped students with toileting. The substitute teacher observed a mark high on the Student's inner thigh. There are differing accounts of the substitute teacher's conversation with classroom aides familiar with the Student's self-injurious behavior. The substitute teacher made a report to Child Protective Services regarding the mark.
- 16) The mark was the result of the Student's self-injurious behavior. South Coast ESD investigated the matter as the Parent was concerned about how the substitute teacher was able to see the mark given its location, the differing accounts the Parent heard regarding the incident, and the fact that the incident was being investigated by State authorities when the Parent felt that these were known behaviors about the Student.
- 17) On May 25, 2016, the Parent informed the District that the copy of the IEP that the Parent received in the mail following the IEP Meeting did not include a copy of the Student's safety plan, which included protocols to address the Student's propensity to run away from staff members.
- 18) The Adaptive Life Skills classroom was originally staffed during the 2015-2016 school year by a teacher who worked from September 2015 through December 2015. That teacher did not return after Winter Break. Substitute teachers were utilized until a permanent teacher was hired. When the new teacher was assigned to the classroom, the Parent heard that he/she had not yet completed an educator preparation program, and expressed concern that the teacher was not properly qualified to teach in the ALS classroom. Said teacher had a restricted teaching license effective February 10, 2016 and valid through June 30, 2016. The teacher was properly licensed through the Oregon Teacher Standards and Practices Commission during the teacher's service in the ALS classroom. The previous teacher was also properly licensed.
- 19) The Parent voiced concerns with regard to the degree the staff, specifically the building Principal and substitute teachers, may have knowledge and access to the IEP.
- 20) The District states that all staff members are trained regarding the safety plan, and that the Student's IEP and safety plan are available in the ALS classroom.
- 21) On June 6, 2016, the Parent filed this Complaint.

#### IV. DISCUSSION

##### 1. Requirement for Least Restrictive Environment:

The Parent alleges that the District violated the IDEA when the District located the ALS classroom in a building physically separated from the majority of regular education students. The Parent alleges that the physical separation results in the Student not benefitting from interaction with regular education students. The Student is allegedly not receiving the benefit of interaction with regular education students during school activities, meals, assemblies, and similar activities which students without disabilities share in.

The educational placement of a child with a disability must be determined by a group of persons, including the parents, and other persons knowledgeable about the student.<sup>3</sup> Placement decisions must be made in conformity with the student's IEP, and made in conformity with the Least Restrictive

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<sup>3</sup> OAR 581-015-2250(1)(a)

Environment provisions.<sup>4</sup> In selecting the Least Restrictive Environment, consideration is given to any potential harmful effect on the child or on the quality of services, which the student needs.<sup>5</sup> Districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability.<sup>6</sup> Separate classes, separate schooling or other removal of children with disabilities from the regular educational environment should occur 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.<sup>7</sup>

The Student's most recent IEP Meeting occurred on March 16, 2016. The Student's IEP Team included the Parent, a SCESD Administrator, a District representative, the Student's Occupational Therapist, the Student's general education teacher, a registered nurse, the Student's Autism Consultant, the Student's Special Education Teacher, and the Student's Speech Pathologist. The IEP Team, including the Parent, agreed that the Student would be removed from participating with nondisabled students in order to receive SDI in the ALS classroom for approximately 75% of the school day.

The District notes that the ALS classroom was located at the separate building on the middle school campus because the fire station that served the school where the ALS classroom was previously located was scheduled to be closed; potentially leaving the school cut off from fire and ambulance services in the event of a bridge lift. The program requires accessibility for potentially frequent ambulance calls for medically fragile students, Americans with Disabilities Act (ADA) accessibility, a kitchen area, laundry facilities, bathrooms in the classroom, and room for the required spaces and equipment utilized by students and the program.

The Parent asserts that the physical location of the ALS classroom reduces the Student's interaction with nondisabled peers and the Student's access to nonacademic services such as the library, cafeteria, general education classroom, and time with nondisabled peers, art class, assemblies, class events and similar activities. The Student's IEP includes participation in these activities. The District notes that there is no suitable space within the school that is capable of accommodating the needs of the students in the ALS classroom. The ALS classroom provides physical accessibility in conformity with the 1991 Americans with Disabilities Act standards. The current classroom provides services to medically fragile students and therefore requires appropriate ramps, restrooms, and accessibility to the main building elevator.

Districts must provide a free appropriate public education (FAPE) to students with disabilities residing in the district.<sup>8</sup> Specifically, districts must have in effect policies and procedures ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and that special classes, 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.<sup>9</sup>

In *Board of Education v. Rowley*, the United States Supreme Court noted that,

"By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the states any greater substantive educational standard than would be necessary to make such access meaningful. Indeed, Congress expressly 'recognized that in

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<sup>4</sup> OAR 581-015-2250(1)(b)

<sup>5</sup> OAR 581-015-2250(4)

<sup>6</sup> OAR 581-015-2240(1)

<sup>7</sup> OAR 581-015-2240(2)

<sup>8</sup> OAR 581-015-2040(1), 34 CFR 300.101

<sup>9</sup> OAR 581-015-2240

many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome.' S. Rep. No. 94-168, supra, at 11. Thus, the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside."<sup>10</sup>

The court in *Rowley* further noted that, "...it did not intend to achieve strict equality of opportunity or services for handicapped and non-handicapped children, but rather sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education. The Act does not require a State to maximize the potential of each handicapped child commensurate with the opportunity provided non-handicapped children."<sup>11</sup> The District is required to provide a "basic floor of opportunity...consisting of access to specialized instruction and related services which are individually designed to provide education benefit to handicapped" children.<sup>12</sup>

The Parent's allegation is that while the Student's placement is proper, the removal of the Student and all other students with similar levels of disability from the main school building to the separate structure on school grounds is discriminatory. In order for the location of the educational placement to be discriminatory, the District procedures would have to be discriminatory.<sup>13</sup> At the middle school, all students are evaluated and those found eligible for Adaptive Life Skills access those services, which for the reasons enumerated above, are located in a classroom that is physically separate from the main building. The District is required to educate the Student with students who do not have disabilities "to the maximum extent appropriate," not in every case or at all times.

The location of the ALS classroom being separate from the main school building is regrettable. There is currently no classroom within the main building that is large enough, has access to proper bathroom facilities, water, and the other requirements of students in the ALS classroom. Furthermore, the District is required to ensure that the Student's placement is appropriate to allow the Student to access SDI and supplementary aids and services. The District is required to ensure that to the maximum extent possible that this placement allows the Student to be educated with children who are not disabled. The Student's IEP provides for such a placement. The District is currently planning a bond measure to raise funds for reconstruction of school facilities, and anticipates addressing this situation in the future.

The Department does not substantiate this allegation.

## **2. Nonacademic Services**

The Parent alleges that the Student receives nearly all nonacademic and extracurricular services and activities including meals in a manner that does not afford the Student an equal opportunity for participation with non-disabled peers. Specifically, the Parent alleges that for the first two months of school during the 2015-2016 school year, the Student did not have an assigned general education teacher, a desk in the regular education classroom, access to events or activities in the main building with the Student's general education peers, and had not been provided with information regarding activities or events in the school.

School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner that affords children with disabilities an equal

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<sup>10</sup> Board of Educ. v. Rowley, 458 U.S. 176, 177 (1982)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 201

<sup>13</sup> Johnston by Johnston v. Ann Arbor Public Schools, 569 F. Supp 1502, 1505 (E.D. Mich 1983)

opportunity for participation in those services and activities.<sup>14</sup> Nonacademic and extracurricular services and activities include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district.<sup>15</sup>

The Student was not assigned a regular education teacher at the start of the year. At the middle school, the regular education teacher relied on the Special Education teacher to coordinate Special Education students' utilization of the regular education classroom from the ALS classroom. Such coordination would involve the Special Education teacher explaining the times and manner in which students would be escorted between the two classes as well as any required accommodations in the classroom.

At the start of the 2015-2016 school year, the Special Education teacher voiced concerns that the Student was not ready to utilize the regular education classroom and may pose a significant disruption or even a danger to the Student's regular education peers. The Special Education teacher determined that the Student would not then access services in the building due to these concerns. The Parent became aware of this issue and brought it to the District's attention. The Student was assigned to a regular education classroom on October 12, 2015, and at a meeting on October 19, 2015 a plan to integrate the Student into the classroom was developed. Until that time, the Student had not had access to regular education services included in the IEP. This was a violation of OAR 581-015-2070 as well as OAR 581-015-2220 (When IEPs Must Be In Effect).

The Department substantiates this allegation.

### **3. Placement of the Child**

The Parent alleges that the District made the Student's placement determination without regard to the Least Restrictive Environment provisions of OAR 581-015-2240 to 581-015-2255. The Parent also alleges that the District did not consider the potential harmful effects on the Student or the quality of services that the Student needs in making the placement determination. Finally, the Parent alleges that the District made the placement determination based solely on needed modifications to the general education curriculum.

The educational placement of a child with a disability is determined by a group of persons, including the parent, and other person knowledgeable about the child, the meaning of the evaluation data, and the placement options and is made in conformity with the Least Restrictive Environment provisions of the IDEA.<sup>16</sup> In selecting the Least Restrictive Environment, the District must consider any potential harmful effect on the child or on the quality of services that the child needs.<sup>17</sup> The District should not remove a child with a disability from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

The Parent was a member of the IEP Team and participated in the selection of the Student's educational placement. The IEP Team considered such downsides of the placement as reduced time with typically developing peers. Placement in the general education classroom was rejected because it did not best meet the needs of the Student, specifically the pace of instruction in the general education curriculum was too fast, and the setting would not provide for small group instruction. While the regular education classroom would provide exposure to more academically rigorous curriculum, the IEP Team determined that the Student is working below grade level content standards and needs a placement where the Student can have smaller group and functional based curriculum. The IEP

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<sup>14</sup> OAR 581-015-2070(1)

<sup>15</sup> OAR 581-015-2070(2)

<sup>16</sup> OAR 581-015-2250(1)(a) & (b)

<sup>17</sup> OAR 581-015-2250(4)

Team determined that The Student would receive educational services in a separate classroom where the Student can access SDI as outlined in the IEP. During the investigation the Parent expressed agreement with the placement, but displeasure with the physical location of the ALS classroom, because it is physically separated from the main school building.

The Department does not substantiate this allegation.

#### **4. When IEPs Must Be in Effect/Content of the IEP**

The Parent alleges that the District violated the IDEA when;

- (a) for a portion of the school year the Student's safety plan was not included in Student's IEP, or in the alternative that Student's safety plan was not implemented;
- (b) staff assigned to carry out duties with regard to the safety plan were unable to fulfill those duties;
- (c) some staff assigned to teach the Student were unqualified;
- (d) the District did not provide staff with access to the Student's IEP; and
- (e) staff responsible for implementing portions of the IEP were not instructed regarding their responsibilities.

The District is responsible for providing Special Education and related services to a child with a disability in accordance with an IEP.<sup>18</sup> The Special Education and related services specified in the IEP must be made available to the child in accordance with the IEP as soon as possible following the creation of the IEP.<sup>19</sup> The District must ensure that the IEP is accessible to each regular education teacher, Special Education teacher, related service provider and other services providers responsible for implementing the IEP.<sup>20</sup> The District must also inform each teacher responsible for implementing the IEP, of their specific responsibilities for implementing the child's IEP, and the specific accommodations, modifications, and supports provided in accordance with the IEP.<sup>21</sup>

(a) The Parent received a copy of the Student's March 16, 2016 IEP in late May, 2016. This copy did not include a copy of the Student's safety plan. On May 25, 2016, the Parent requested that the District include the safety plan with the IEP. On Jun 6, 2016, the Parent included this concern in the present Complaint. The District disputes this allegation and asserts that the safety plan was always part of the Student's IEP. The Student's safety plan was initially written in December 2014. The safety plan was revised for the 2015-2016 school year, and was revised again and discussed during the March 16, 2016 IEP Meeting.

(b) The Parent alleges that some staff assigned to carry out duties with regard to the Student's safety plan were physically incapable of fulfilling those responsibilities. The Student's safety plan calls for the assigned instructional assistant to maintain visual contact with Student and be within immediate proximity of the Student to prevent the Student from running. On October 1, 2014, Student eluded the assigned instructional assistant, left school grounds, and ran into traffic. The Student was unharmed but the incident did trigger a call to police. The Student's safety plan was written and included the requirement that the instructional assistant be physically capable of catching up to the Student if the Student runs as well as other safeguards and precautions. The District has since made modifications to staffing around educational assistants assigned to the Student to ensure the staff person is physically capable of performing his/her duties. This specific incident is outside of the June 7, 2015 to June 6, 2016 timeline for this Complaint Investigation.

(c) The Parent alleges that some staff assigned to teach the Student were unqualified. Specifically, the Parent heard that the Student's Special Education teacher, assigned for the second half of the

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<sup>18</sup> OAR 581-015-2220(1)(b)

<sup>19</sup> OAR 581-015-2220(2)(b)

<sup>20</sup> OAR 581-015-2220(3)(a)

<sup>21</sup> OAR 581-015-2220(3)(b)

2015-2016 school year, had not yet completed his/her education. The Special Education teacher at issue held a Restricted Teaching License issued February 10, 2016 and valid through June 30, 2016. The Restricted Teaching License qualifies its holder to teach in a prekindergarten through grade twelve Oregon public school district, education service district, and charter school assignments.

(d) The Parent alleges that the District did not provide staff with access to the Student's IEP. The Parent notes that on January 4, 2016, a substitute teacher staffed the ALS classroom. The substitute teacher observed marks on the upper inside of the Student's thigh and made a report of child abuse. The Parent asserts that had the substitute teacher had access to Student's IEP, which included documentation regarding the Student's documented history of self-injurious behavior, a report to Child Protective Services would not have been made.

Teachers are mandatory reporters of child abuse.<sup>22</sup> They are legally obligated to make a report of abuse if they have reasonable cause to do so.<sup>23</sup> The only exceptions to this rule are if the teacher obtained information about the suspected abuse from an existing report of child abuse, or knows that law enforcement or the Department of Human Services (DHS) already knows the information.<sup>24</sup> The types of physical injuries that are reportable include burns, scalds, extensive bruising or abrasions to the body, head, neck or face, fractures, dislocations, severe cuts, loss of ability to walk, unconsciousness, multiple injuries, etc.<sup>25</sup> The duty to report is personal regardless of the mandatory reporters employment status.<sup>26</sup>

The substitute teacher was unfamiliar with the Student and served in the classroom for only a single day. Copies of all students' IEPs are available in the classroom. The Parent alleges that the substitute teacher would not have made the report to Child Protective Services had the teacher had access to the IEP and been familiar with the Student's documented history of self-injurious behavior. Teachers in Oregon are trained specifically not to make their own investigations over the possible causes of the observed injury and to instead allow DHS or law enforcement to ascertain the cause of the injury. There is no evidence that the teacher in this instance acted out of anything other than an abundance of caution. The District is responsible for informing the teacher of his/her specific responsibilities for implementing the child's IEP and the specific accommodations, modification, and supports that must be provided.<sup>27</sup> The Student's IEP documents the self-injurious behavior, but there are no specific accommodations, modifications, or supports around this behavior, or any resulting injuries that may be observed.

(e) The Parent alleges that at an October 19, 2015 meeting with the District and SCESD staff that the building Principal was unaware of the Student's safety plan. During the investigation the District stated that all staff responsible for implementing the Student's IEP are informed and specifically trained by SCESD administrators of their duties under the IEP.

The Department does not substantiate this allegation.

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<sup>22</sup> ORS 419B.005(5)(c)

<sup>23</sup> ORS 419B.010(1)

<sup>24</sup> ORS 419B.010(2)

<sup>25</sup> ORS 419B.023(1)(b)

<sup>26</sup> ORS 419B.010(3)

<sup>27</sup> OAR 581-015-2220(3)(b)

## V. CORRECTIVE ACTION<sup>28</sup>

In the Matter of Coos Bay School District #9  
Case No. 16-054-019

The Department orders the following Corrective Action resulting from this investigation:

	<b>Actions</b>	<b>Submissions<sup>29</sup></b>	<b>Due By</b>
<b>1.</b>	<b>IEP Implementation</b>  Provide professional development to administrators and staff regarding the timely implementation of all components of each student's IEP at the beginning of the school year, including access to general education, and the notification of teachers and providers of their specific implementation responsibilities.  ODE staff will review and approve materials and agenda and assist with presentation.	Following approval of materials, provide evidence of completed training, including agenda and sign-in sheet with signatures, positions, and date.	<b>October 14, 2016</b>

Dated: this 4th Day of August 2016



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

Mailing Date: August 4, 2016

<sup>28</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)).

<sup>29</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.