

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eugene School District 4J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-009

I. BACKGROUND

On April 17, 2017, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing in the Eugene 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 April 18, 2017.

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 sixty days of receiving the complaint unless exceptional circumstances require an extension.¹ On April 25, 2017, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On May 9, 2017, the District timely submitted its *Response* to the *Request for Response*, both by email and by providing a hard copy of the *Response*, with accompanying documentation. On May 10, 2017, the Parent timely provided a *Reply* to the District's *Response*, by email. This order is timely.

The District provided the following documentation in its *Response*:

1. Student Profile 2016-2017 school year
2. Statements of Eligibility 12/7/16
3. IEP 12/7/16
4. Meeting Notes 12/7/16
5. Notice of Team Meeting 1/8/17
6. Prior Written Notice 1/10/17
7. IEP 1/10/17
8. Placement Determination 1/10/17
9. Prior Written Notice 1/17/17
10. Daily Schedule 2/28/17
11. Email communication (77 pages) 2/27/16 to 3/7/17

The Department's Complaint Investigator determined that onsite interviews of District staff were not necessary in this case. However, the Complaint Investigator interviewed the Parent by telephone on May 20, 2017. 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 Parent's allegations and the Department's conclusions are set out in the chart

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

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 April 18, 2016 to the filing of this Complaint on April 17, 2017.

	Allegations	Conclusions
(1)	<p><u>Placement of the Child; Parent Participation – General, Additional Parent Participation Requirements for IEP and Placement Meetings; Review and Revision of IEPs; Prior Written Notice (PWN)</u></p> <p>The Complaint alleges that the District violated the IDEA in mid-February of 2017, by removing the Student’s “general education time” from the Student’s IEP, without an IEP meeting and without participation by the Parent, and without a Prior Written Notice (PWN) documenting the decision to change the Student’s placement by removing the Student from “general education time”.</p> <p>Relevant Law: OAR 581-015-2250 and 34 CFR 300.116, 300.327; OAR 581-015-2190 and 34 CFR 300.500, 300.327, 300.501(b); OAR 581-015-2195 and 34 CFR 300.322, 300.500, 300.327, 300.328; OAR 581-015-2225 and 34 CFR 300.324(a)(4), (a)(5), (a)(6), (b)(1); OAR 581-015-2310 and 34 CFR 300.503.</p>	<p><u>Not Substantiated</u></p> <p>The District did not remove the Student from “general education time.” The District confirmed that the Student attends lunch and Choir with regular education peers, and noted safety issues made it difficult for the Student to participate in PE classes. The District is addressing this issue, consistent with the goal in the Student’s IEP which states that by January of 2018 the Student will participate in class activities, including PE and other whole group instruction opportunities with peers or adults.</p> <p>The District did issue two PWNs, one on January 10, 2017 and one on January 16, 2017, concerning the decision to implement the Student’s IEP. The District did not issue a PWN documenting a decision to change the Student’s placement by removing the Student from general education time, as the Student was not removed from “general education time.” There was no IEP meeting in which the Student’s general education time was reduced; the Parent did participate in the January 10, 2017 IEP Meeting.</p>
(2)	<p><u>Proposed Corrective Action:</u></p> <p>The Parent requests the following Corrective Action:</p> <p style="padding-left: 40px;">“Please stop discrimination related incidents to child welfare, retaliation and harassment. Follow the IDEA law.”</p>	<p>The Department does not order any Corrective Action in this case.</p>

III. FINDINGS OF FACT

Background

1. The Student in this case is presently eleven years old and is in the 6th grade in the District. The Student transferred into the District in January of 2017, with the first day of school for the Student on January 17, 2017, at the request of the Parent.

Placement of the Child; Parent Participation – General; Additional Parent Participation Requirements for IEP and Placement Meetings; Review and Revision of IEPs; Prior Written Notice (PWN)

2. The Student's previous school district adopted an IEP for the Student dated December 7, 2016 under a primary eligibility of Other Health Impairment (the Student has Batten Disease and is blind), along with eligibility under Autism Spectrum Disorder (ASD) and Intellectual Disability (ID). During the telephone interview with the Complaint Investigator, the Parent stated that the Student is not able to speak or communicate in writing, and thus, is unable to communicate with the Parent concerning the Student's participation in regular education.
3. The placement in the Student's December 7, 2016 IEP is stated as "Life Skills Classroom." The placement page of the IEP includes a statement that the Student "needs instruction in self help skills to address [the Student's] educational and visual needs." The Nonparticipation Justification statement describes the extent of removal from general education as "[The Student] attends general education P.E. and Choir. [The Student] can eat in the lunchroom and attend assemblies as appropriate"; and the explanation provided is that the Student "is removed from the general education population for more than 60% of [the Student's] day. [The Student] requires an enhanced curriculum based on self help skills due to [the Student's] specialized academic and visual needs."
4. The Student's December 7, 2016 IEP also states that the Student will participate in "Alternative: Extended Assessment" in both "English Language Arts/Literacy" and "Mathematics" and that the Student is "two or more grade levels behind same age peers and visually impaired." The Student's former IEP also provided significant Specially Designed Instruction in "Speech/Language", "Functional Skills", "Functional Academics" and "Adaptive PE".
5. After the Student's transfer into the District, the IEP Team, including the Parent (who participated by phone), met on January 10, 2017 and wrote an IEP for the Student, which was largely based on the Student's previous IEP. The placement in this IEP is stated as "Life Skill classroom with access to regular classroom <40% of the day." The Nonparticipation Justification statement describes the extent of removal from general education as "[The Student] will be removed from general education for academics, motor skills and specially designed instruction"; and the explanation provided is that the Student's "current skill level is significantly below grade-level expectations and requires specially designed instruction at [the Student's] current level to help [the Student] retain learned skills and prevent regression as much as possible."
6. The Student's January 10, 2017 IEP includes the following "Social/Pragmatic" goal: "By January 2018, [the Student] will participate in class activities including PE and other whole group instruction opportunities with peers or adults for 20% of class time in 2 of 4 opportunities as measured by teacher observations/data collection". The Student's January 10, 2017 IEP provides significant Specially Designed Instruction (SDI), in "Life Skills", "Functional academics" and "Social Skills".
7. The District issued a PWN dated January 10, 2017, which stated the following: "The IEP team is proposing to adopt and implement the recently developed IEP," which determined that the least

restrictive environment “will be to continue in the life skills class.” The District also issued a document titled “Prior Written Notice Transfer or Move-In” dated January 16, 2017, which describes the actions of the District as “Implement the existing Oregon IEP dated 12/7/16 from [the Student’s former] School District.” It is unclear why the District issued the January 16, 2017 PWN, since the District developed a new IEP on January 10, 2017, largely based on the previous IEP, which the District has been implementing.

8. During the telephone interview with the Complaint Investigator, the Parent reported that on two occasions, one on February 27, 2017 and the other indeterminate, the Parent visited the Student at school and observed the Student in the Life Skills classroom on both occasions. This resulted in the Parent’s concern that the Student is not participating in general education activities. The Parent expressed this concern in an email to the District on February 27, 2017. The District attached the Student’s daily schedule to an email sent to the Parent on February 28, 2017. The Student’s daily schedule indicates that the Student’s schedule includes lunch and Choir.
9. In additional email communication between the Parent and District staff on March 3, 2017, the Parent stated they would like to have an IEP meeting and that it “was brought to my attention [the Student] has “zero gen ed time” on the Student’s IEP, and that “I did not agree nor was this discussed in [the Student’s] transition meeting.” In an email from the District to the Parent on March 3, 2017 the District notes that the Student is receiving general education time during both lunch and Choir, “and they have tried PE, but are having safety concerns with that class. It will be good to get together to discuss.”
10. In an email communication dated March 7, 2017 and March 8, 2017, the Parent notified the District of the Parent’s intent to remove the Student from the Life Skills classroom and would be “revoking” the Student’s IEP in writing, after the teacher of that classroom made a report to Child Protective Services concerning a bruise on the Student’s leg. On March 8, 2017, the Parent sent an email to the District requesting cancellation of the IEP meeting. The District reports in its *Response* that the Student is still attending school in the District, after the District arranged attendance by the Student in an “alternative classroom, within the same level of placement...”

IV. DISCUSSION

Placement of the Child; Parent Participation; Review and Revision of IEPs; PWN

The Complaint alleges that the District violated the IDEA in mid-February of 2017, by removing the Student’s “general education time” from the Student’s IEP, without an IEP meeting and without participation by the Parent, and without a PWN documenting the decision to change the Student’s placement by removing the Student from “general education time.”

The District’s *Response* states that “the District did not change [the Student’s] educational placement on [the Student’s] IEP after January 10, 2017. Further, the District continued to implement a schedule that complied with the placement from the last agreed upon placement determination.

The Department finds that the District did not, in mid-February of 2017 or thereafter, modify the Student’s January 10, 2017 IEP to remove the Student from participation in regular education. The Department also finds that the Parent participated in the January 10, 2017 IEP Meeting. The fact that the Parent did not observe the Student engaging in regular education activities during the two occasions the Parent visited the classroom does not allow the Department to conclude that the District did not follow the Student’s daily schedule, which includes regular education activities daily.

The District confirmed that the Student attends lunch and Choir with regular education peers. Safety issues have made it difficult for the Student to participate in PE classes. The District is addressing this, consistent with the goal in the Student's IEP stating that by January of 2018 the Student will participate in class activities including PE and other whole group instruction opportunities with peers or adults. The District issued a PWN on January 10, 2017 concerning the decision to implement the Student's IEP developed on that date. Despite the issuance of another PWN on January 16, 2017, which indicated that the IEP developed on December 6, 2016 was going to be implemented; this did not affect the Student's placement, as the placement in the two IEPs was the same. The District did not change the Student's placement at any time following the January 10, 2017 IEP Meeting, therefore there was no meeting for the Parent to participate in nor any reason for the District to issue a PWN with respect to a change in placement.

The Department does not substantiate these allegations.

CORRECTIVE ACTION²
In the Matter of Eugene School District
Case No. 17-054-009

The Department orders no Corrective Action in this matter.

Dated this 6th Day of June, 2017



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

Mailing Date: June 6, 2017

² 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)).