

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Sheridan
School District 48J

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 17-054-030

I. BACKGROUND

On December 12, 2017, the Oregon Department of Education (Department) received a written request for a special education complaint investigation (Complaint) from the parent (Parent) of a student (Student) residing in the Sheridan School District 48J (District). The Parent requested that the Department conduct a special education investigation pursuant to Oregon Administrative Rule (OAR) 581-015-2030. On December 15, 2017, the Department confirmed receipt of the Complaint by correspondence to the District and Parent. A contractor with the Department (Investigator) investigated this Complaint.

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 60 days of receipt of the complaint.¹ 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.² This Order is timely.

On December 19, 2017, the Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 1, 2018. The District requested and received additional time to complete its *Response* due to the District's winter break.

On January 5, 2018, the District submitted a *Response* indicating it did not dispute the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. Copy of the Request for Response in 17-054-030
2. District's Written Response
3. District's List of Knowledgeable Staff
4. Current IEP Section Document List
5. Student's Current IEP, 05/05/2017
6. Current Eligibility Section List
7. Statement of Eligibility for Special Education (Other Health Impairment 80)
8. Confidential Statement of Eligibility for Special Education (Emotional Disturbance 60)
9. Developmental History: Parent Interview, 05/09/2011
10. Confidential Report: Behavioral Summary, 04/08/2015

¹ 34 CFR § 300.152(a); OAR 581-015-2030(12).

² 34 CFR § 300.152(b); OAR 581-015-2030(12).

11. Prior Notice about Evaluation/Consent for Evaluation, 02/03/2015
12. Student Assessment List, 02/03/2015
13. Medical Statement or Health History, 02/03/2015
14. Meeting Notes, 02/03/2015
15. Special Education Notice of Team Meeting, 02/03/2015
16. Medical Statement or Health Assessment, 02/03/2015
17. Prior Notice of Special Education Action, 04/26/2015
18. Special Education Notice of Team Meeting, 04/24/2015
19. Meeting Notes, 04/24/2015
20. Old IEP's Section List
21. Student's IEP, 04/28/2016
22. Meeting Notes, 04/28/2016
23. Prior Notice of Special Education Action, 04/28/2016
24. Sensory Assessment and Recommendations, 04/26/2016
25. Special Education Placement Determination
26. Special Education Notice of Team Meeting, 09/14/2016
27. Meeting Notes, 09/16/2016
28. Manifestation Determination, 11/23/2015
29. Meeting Notes, 11/23/2015
30. Prior Notice of Special Education Action, 11/23/2015
31. Request for Regional Services and/or Evaluation for Eligibility, 2/25/2016
32. Prior Notice about Evaluation/Consent for Evaluation
33. Manifestation Determination, 11/23/2015
34. Prior Notice about Evaluation/Consent for Evaluation, 02/03/2015
35. Special Education Notice of Team Meeting, 02/03/2015
36. Special Education Notice of Team Meeting & Meeting Notes, 04/24/2015
37. Special Education Notice of Team Meeting & Meeting Notes, 05/01/2017
38. Email: Placement Options, 09/12/2016
39. Email: Meeting Availability, 09/09/2016-09/12/2016
40. Email: IEP Response, 09/28/2017
41. Email: Check-in, 12/06-12/12/2017
42. Text Message, 08/20-08/24/2016
43. Text Message, 09/11-09/13/2017
44. Text Message, 10/04-10/23/2017
45. Text Message, 12/02/2017
46. Letter from Student's Psychologist, 09/14/2017
47. Tutor Search Timeline
48. Tutoring Service Minutes Summary

The Parent submitted a Response on January 9, 2018. The Investigator interviewed the Parent on January 9, 2018 and collected additional documentation from the Parent. The Investigator determined that on-site interviews were not needed. On January 12, 2018, the Investigator

interviewed the District's Special Education Director by phone. The Investigator reviewed and considered all information provided by the parties, including information obtained through interviews, in reaching the Findings of Fact and Conclusions of Law contained in the Order.

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. The 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 December 13, 2016, to the filing of this Complaint on December 12, 2017.³

	<u>Allegations</u>	<u>Conclusions</u>
1.	<p><u>Placement and Requirement for Least Restrictive Environment</u></p> <p>The Parent alleges that the District proposed to change the Student's placement,</p> <p>(a) in contravention of an existing IEP placement determination,</p> <p>(b) without the input of persons knowledgeable about the Student, and</p> <p>(c) without consideration of the least restrictive environment for the Student.</p> <p>(34 CFR §§ 300.116 & 300.327; OAR 581-015-2250)</p>	<p><u>Substantiated</u></p> <p>The District acknowledges that after forming the Student's IEP, it proposed a change in the Student's placement without convening the Placement Team.</p>
2.	<p><u>Denial of Free Appropriate Public Education (FAPE)</u></p> <p>The Parent alleges that the District violated the IDEA when the Student received no educational services during the 2017-2018 school year until October 31, 2017.</p> <p>(34 CFR §§ 300.101; OAR 581-015-2040)</p>	<p><u>Substantiated</u></p> <p>The District acknowledges that for a period during the 2017-2018 school year, the Student did not receive educational services as indicated in the Student's IEP. The District further acknowledges that once services began, the required service hours described in the IEP were not delivered because of the assigned tutor's scheduling conflicts.</p>

³ The Order includes some facts that are relevant to the matter and occurred before December 13, 2016. These facts are provided for background informational purposes only.

III. FINDINGS OF FACT

Background

1. Student is in the sixth grade in the Sheridan School District (District). The Student is eligible for special education services under the disabilities of Other Health Impairment and Emotional Disturbance.
2. After a 2015 evaluation, the District determined that the Student met the eligibility criteria for special education services under the categories of Other Health Impairment and Emotional Disturbance. The Student's disability affects the Student in areas of impulsivity, attention problems, learning problems, rule-breaking behavior, defiance and aggression. The Student is also impacted emotionally, often externalizing emotions, and displaying a lack of adaptability. The Student showed an inability to establish or maintain relationships, resulting in withdrawal and social anxiety.
3. In November 2015, the Student was involved in a disciplinary incident in school. The District conducted a Manifestation Determination Review and found that the conduct in question was caused by or had a direct and substantial relationship to the Student's identified disability. Following this incident, the IEP Team convened to discuss alternative placements for the Student.
4. During the 2016-2017 school year, the Student was placed in the general education environment 80% of the time with supports and consideration for making up missed assignments. The Student's placement in the general education environment was modified to 40-79% during the school year. The IEP Team noted that the Student's eligibility of Emotional Disturbance was hindering the Student's academic stamina in the general education environment.
5. The IEP Team noted that the Student was displaying more challenging behaviors over the school year, and as a result agreed to draft additional IEP goals to help build the Student's tolerance for engaging in academic activity.
6. During the Student's most recent IEP Team Meeting on May 5, 2017, the Placement Team determined that home instruction with 1:1 tutoring was the placement that best met the Student's needs.
7. The Student's May 5, 2017 Special Education Placement Determination document states that the Student's placement is "one on one instruction at home or school." Student was allotted five hours of 1:1 home tutoring each week.
8. At the beginning of the 2017-2018 school year, the District began planning for the Student's home tutoring. Meanwhile, a District administrator indicated a preference that the Student be educated in the general education environment and opined that this was better for the Student than home tutoring.
9. On August 23, 2017, the District notified the Parent that a District administrator preferred the Student be placed in a general education environment rather than home tutoring. This resulted in the District delaying implementation of previously agreed upon home tutoring services for the Student. The Student did not begin receiving home tutoring until October 31, 2017.
10. Following the District administrator noting a preference that the Student to be placed in a general education environment instead of receiving home tutoring services, the Parent provided the District with a copy of a letter from the Student's Psychologist. In the letter, the Psychologist explained that the Student has made meaningful academic and behavioral gains through home tutoring, and also noted that an alternative placement outside of home tutoring would be problematic and premature for the Student's current developmental and

psychiatric conditions.

11. Following receipt of the letter from the Student's Psychologist, the District began to move toward implementing the Student's May 5, 2017 IEP as written.
12. The District administrator who previously objected to home tutoring eventually approved hiring an in-home tutor on October 4, 2017. Tutoring began on October 31, 2017. The Student's unique needs required that the assigned tutor be someone who had previously built a rapport with the Student. The tutor assigned to the Student is a District employee. However, due to the tutor's other work responsibilities, scheduling conflicts arose and the Student did not receive all of the tutoring hours required in the Student's IEP.
13. On December 12, 2017, the Department received the Complaint.

IV. DISCUSSION

1. Placement and Requirement for Least Restrictive Environment

The Parent alleges that the District violated the IDEA when the District proposed to change the Student's placement in contravention of the Student's IEP. The Parent indicated that the Student's Placement Team had previously determined that the placement most appropriate for the Student was in the home with a tutor. The Parent alleges that despite the Student's Placement Team having made this determination, the District refused to provide a tutor for the Student.

School districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have disabilities.⁴ Districts must ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes cannot be achieved satisfactorily.⁵ Moreover, Districts must ensure that placement decisions are made by a group of persons, including the parents, and other persons who are knowledgeable about: (1) the child; (2) the meaning of evaluation data relied upon; and (3) the placement options.⁶

The Student's May 5, 2017 Special Education Placement Determination document states that the Student's placement is "one on one instruction at home or school." The Student's Placement Team decided that the Student would receive five hours of 1:1 home tutoring each week. The Placement Team consisted of the Student, the Parent, and District staff who were knowledgeable about the Student and placement options. The Placement Team relied on evaluation data in arriving at its decision. The Placement Team determined that despite being more restrictive than other placement options, home tutoring best met the needs of the Student. As the beginning of the 2017-2018 school year drew near, the District's Special Education Director communicated to the Parent that a District administrator objected to the Student's home tutoring placement due to an opinion that placement in a general education environment was preferable for the Student.

⁴ OAR 581-015-2240(1)

⁵ OAR 581-015-2240(2)

⁶ OAR 581-015-2250(1)(a)

As a result, the District did not retain a tutor to provide home instruction to the Student for the beginning of the 2017-2018 school year. The Student did not receive any educational services between August 23, 2017 and October 31, 2017. The Parent provided the District with a letter dated September 14, 2017 from the Student's Psychologist. The letter, in support of the Student's home tutoring placement, stated in pertinent part, "[g]iven the success of [the Student's] program, I am quite concerned about changing a very successful intervention while it is still greatly needed. There are significant risks, at this point, of considering the alternative placements listed . . . Following another year of home tutoring with [the Student's] further benefit from [this] safe home environment . . . [the Student] will be much better situated to start a behavioral program." Following receipt of the letter, the District moved to implement the Student's IEP in the home placement as agreed upon by the Placement Team on May 5, 2017.

The District does not dispute that despite the Student having an agreed upon IEP and placement that indicated the Student would be educated at home by a tutor as early as May 5, 2017. The District did not provide such services in the home placement. The District's failure to provide the tutor indicated in the IEP was reportedly due to the objection of a single individual within the District and not the decision-making of the Student's Placement Team.

The Department substantiates this allegation and orders corrective action.

2. Denial of Free Appropriate Public Education

The Parent alleges that the District violated the IDEA when the Student received no educational services between August 23, 2017 and October 31, 2017. The Student's IEP called for the delivery of educational services by way of 1:1 home tutoring. The Parent alleges that the District did not provide a tutor for the Student until October 31, 2017.

School districts must provide special education and related services to all resident, school-aged students with disabilities.⁷ To provide a student with a free appropriate public education, school districts must develop IEPs in accordance with the IDEA's procedural requirements. Furthermore, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁸ The IEP must address the unique special education and related service needs that arise from a student's qualifying disabilities.⁹ While harmless procedural errors do not constitute a denial of FAPE, such a violation can result in a denial of FAPE if the result is a loss of educational opportunity or infringe the parents' opportunity to participate in the IEP formulation process.¹⁰

The Student is eligible for special education services under the disability categories of Other Health Impairment and Emotional Disturbance. Due to the behaviors that manifest as part of the Student's disability, including withdrawal and social anxiety, the Student's Placement Team determined on May 5, 2017 that education in a general education classroom was counterproductive to achieving the Student's IEP goals. Instead, the Student's Placement Team determined that the appropriate placement for the Student would be at home with a tutor

⁷ OAR 581-015-2040(1).

⁸ *Andrew F. v. Douglas County Sch. Dist. Re-1*, 137 S. Ct. 988, 999 (2017).

⁹ *North St. Paul-Maplewood Indep. Sch. Dist. #622*, 110 LRP 40253 (SEA MN 06/07/10).

¹⁰ *L.M v Capistrano Unified Sch. Dist.*, 556 F.3d 900, 910 (9th Cir. 2008).

provided by the District.

At the beginning of the 2017-2018 school year, without consulting with the Placement Team and without notice, the District administrator objected to the Student's home tutoring placement. The District communicated such objection to Student's Parents, which resulted in a delay in initiating home tutoring services for the Student. Home tutoring services for the Student did not begin until October 31, 2017. After home tutoring services began on October 31, 2017, the District did not provide the full number of required weekly tutoring hours, chiefly because the tutor assigned to the Student has other conflicting work responsibilities as a District employee.

The District and Parent agree that the Student's Placement Team determined that the appropriate placement for the Student was home tutoring. The District did not provide home tutoring to the Student between August 23, 2017 and October 31, 2017, depriving the Student of approximately eight weeks of educational services that the Placement Team had agreed the District would deliver. After home tutoring services began, because of the tutor's work conflicts, the Student did not receive the agreed upon number of home tutoring hours. When the District failed to deliver agreed upon home tutoring services, the Student was denied a FAPE.

Therefore, the Department substantiates this allegation and orders corrective action.

V. CORRECTIVE ACTION¹¹

In the Matter of Sheridan School District 48J
Case No. 17-054-030

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

	Actions	Submissions¹²	Due By
1.	Compensatory Education Services. In consultation with the Parent's schedule, provide forty (40) hours of compensatory 1:1 tutoring educational services based on the Students current IEP and placement.	Submit a copy of the plan and the schedule, signed by the Parent and the District. Submit a copy of the compensatory education service logs monthly, throughout the scheduled time period to ODE and the Parent. If revisions are	February 23, 2018 Total hours to be completed by June 1, 2018

¹¹ 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)).

¹² 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; fax number (503) 378-5156.

		needed, submit a copy of any revised plan and/or schedule, signed by Parent and District within a week of the change.	
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Dated: this 9th Day of February 2018

Sarah Drinkwater

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

Mailing Date: February 9, 2018