

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls
City Schools

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-003

I. BACKGROUND

On January 24, 2018, 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 Klamath Falls City Schools district (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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.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.

On January 30, 2018, the Department's Complaint Investigator (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 February 13, 2018.

On February 12, 2018, the District submitted a *Response* indicating that it disputed the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. District's Response in 18-054-0002
2. Student IEP, 04/18/2016
3. Student IEP, 04/11/2016
4. Notice of Team Meeting, 04/11/2017
5. Prior Notice of Special Education Action, 05/30/2017
6. Extended School Year IEP Team Decision, 05/30/2017
7. Notice of Team Meeting, 11/14/17
8. Authorization to Use and/or Disclose Educational and protected Health Information, for county mental health organization
9. Student IEP, 01/11/2017
10. Student Amended IEP, 01/05/2018
11. Student Functional Behavioral Assessment & Behavior Intervention Plan, 05/03/2016
12. Functional Behavioral Assessment Summary and Behavior Intervention Plan, 07/07/2016

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

13. Statement of Eligibility for Special Education (Communication Disorder 50), 04/08/2015
14. Statement of Eligibility for Special Education (Other Health Impairment 80), 04/08/2015
15. Psychometric-Academic Test Report, 04/07/2015
16. Occupational Therapy Sensory Motor Evaluation, 04/07/2015
17. Medical Statement or Health Assessment Statement, 04/01/2015
18. Special Services Evaluation Report, 02/03/2015
19. Speech Language Pathologist Report, 01/16/2015
20. Prior Notice About Evaluation/Consent for Evaluation, Evaluation Planning 02/06/2018
21. Prior Notice of Special Education Action, 03/08/2016
22. Prior Notice of Special Education Action, 09/26/2016
23. Prior Notice of Special Education Action and Notes, 05/18/2016
24. Prior Notice of Special Education Action, 11/04/2016
25. Prior Notice of Special Education Action, 12/14/2016
26. Student's Amended IEP, 2/1/2017
27. Prior Notice of Special Education Action, 03/22/2017
28. Prior Notice of Special Education Action, 10/23/2017
29. Notice of Team Meeting, 11/07/2017
30. Summary of Disciplinary Referrals at former school district
31. Behavior Duration Data Sheets
32. ABC (Attendance, Behavior, Consequences) Chart Forms
33. Implementation Checklist
34. Physical Restraint and/or Seclusion Incident Reports from previous district, 1/28/2016-10/30/2017
35. Discipline Referral Forms from Prior District,
36. Current District Disciplinary Documentation, 12/13/2017-02/01/2018
37. Disciplinary Referrals, 04/18/2016-02/06/2018
38. Student's former district Progress Notes, 04/18/2016-02/01/2017
39. District/Parent Contact Log 1/11/2018-1/22/2018
40. Student Schedule & Behavior Chart
41. District/Parent Communication Log, 1/23/2018-02/01/2018
42. District/Parent Communication Log, 1/16/2018 & 02/07/2018
43. Consent forms for Applied Behavior Analysis Assessment and Treatment
44. CRT Agenda and meeting notes
45. Email communications relevant to Student
46. District notes regarding communications with Parent
47. List of staff knowledgeable staff

The Parent submitted additional information on March 1, 2018. The Investigator interviewed the Parent on February 23, and March 1, 2018, and collected additional documentation from the Parent at those times. The Investigator determined that onsite interviews were not necessary. On March 2, 2018, the Investigator interviewed the Special Education Director by phone. The 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. 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 January 25, 2017 to the filing of this Complaint on January 24, 2018.

	<u>Allegations:</u>	<u>Conclusions:</u>
1.	<p><u>Parent Participation</u></p> <p>The Parent alleges that the District violated the IDEA when the Parent was not included in the IEP Team Meeting where the Team decided to move the Student to an abbreviated school day.</p> <p>(34 CFR §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)</p>	<p><u>Not Substantiated</u></p> <p>The District held two IEP meetings. The Parent was invited and confirmed the intent to attend. Just prior to the commencement of each meeting, the Parent called to cancel. At the second meeting, due to the needs of the Student, the District, with the permission of the Parent, proceeded with the IEP Team Meeting with the caveat that any decisions be affirmed by the Parent afterward. The meeting was held, the Parent was informed of the decision of the Team, and agreed with the Team's decision.</p>

III. FINDINGS OF FACT

Background

1. The Student attends fourth grade in the Klamath Falls City Schools (District). The Student is eligible for special education services under the primary disability of Other Health Impairment and Communication Disorder, and is diagnosed with ADHD (hyperactivity type).
2. During the 2016-2017 school year, the Student's IEP Team at the Student's prior district met on April 11, 2017 to review the Student's IEP. The IEP Team noted that the Student was particularly impacted by a lack of focus, an inability to remain in the assigned area, short attention span, impulsivity, and overreaction. The Student typically engaged in running, sliding and crawling on the floor during assigned work time. The IEP Team speculated that the Student would benefit from small group instruction, as larger classroom groups may prove too distracting.
3. There were 32 incidents of restraint and/or seclusion involving the Student in the calendar

year preceding the filing of this Complaint in the prior district. Four of these incidents occurred during the 2017-2018 school year.

4. The Student had been suspended three times during the 2017-2018 school year.
5. On October 30, 2017, the Student was suspended for unsafe behaviors.
6. Following this incident, the previous district called an IEP meeting and informed the Parents of the date and location. The IEP Team met on November 7, 2017 to discuss the Student's behavior. At this meeting the IEP Team discussed the increasing frequency of the Student's behaviors. The school district reported that behavioral data suggested a strong correlation with increased behaviors and time, noting that concerning behaviors dramatically increased in the afternoon. The IEP Team considered several placement options including continuing the full day placement, therapeutic day treatment, and a special classroom in a different elementary school.
7. The Parent rejected therapeutic day treatment placement for the Student. The IEP Team determined that the Student's placement would be modified from a full school day to an 8:00 am to 11:25 am abbreviated school day schedule, with the addition of ten hours of one-on-one home tutoring. This decision was made in part because the Student's behavior impeded the learning of other students.
8. During the November 7, 2017 meeting, the Parent asserted that the school district staff did not appropriately implement the behavior plan. Rather, the Parent stated that staff was rough with the Student, which contributed to the Student's behavior. The Parent raised other concerns such as whether a change to an abbreviated school day placement would negatively impact the Student's academic advancement. The Parent further suggested that the problem was the teacher and not the Student. The Parent asked for a Functional Behavior Assessment (FBA) to revise the Student's Behavior Intervention Plan (BIP). The Parent ultimately disagreed with the decision to change the Student's placement to an abbreviated school day.
9. Following a third suspension and the previous school district's plan to abbreviate the Student's school day, the Parent transferred the Student to the District.
10. Once enrolled, the District began to observe in the Student similar behaviors as the previous school district. An IEP Team Meeting was scheduled for January 2, 2018. The Parent indicated that they could not attend, and a new meeting was scheduled for January 5, 2018.
11. On January 5, 2018, the IEP Team convened as scheduled. The Parent contacted the IEP Team minutes before the meeting was scheduled to start, and reported an inability to attend due to a family emergency. The Parent gave verbal consent to the IEP Team to proceed with the meeting. The District agreed that it would review with the Parent the findings of the IEP Team and obtain the Parent's agreement before implementing any new recommendations.
12. On January 5, 2018, the IEP Team met without the Student's Parents and determined that,

based on the Student's behavior data and tendency to display elevated behaviors in the afternoon, an abbreviated school day was an appropriate placement for the Student. Specifically, the IEP Team noted that a full academic day had "a detrimental effect on [the Student's] progress, and has resulted in heightened anxiety and anger issues that are not being met with accommodations/modifications listed on [the Student's] IEP.

13. In attendance at the January 5, 2018 IEP Team Meeting was a representative from a community mental health organization. Previously, on November 17, 2017, the Parent had signed an authorization to disclose information with the community mental health organization.
14. On January 8, 2018—the first school day following the January 5, 2018 IEP Team Meeting—District personnel called and spoke with both of Student's Parents individually regarding the IEP Team's recommendation to place the Student on an abbreviated school day. The Student's Parents expressed reservations regarding the IEP Team's decision to move the Student to an abbreviated school day, but ultimately both gave verbal consent to the IEP Team's decision.
15. The District scheduled a follow-up meeting for February 6, 2018 to discuss the Student's progress on the abbreviated school day.
16. On January 24, 2018, the Department received this Complaint.

IV. DISCUSSION

Parent Participation

The Parent alleges that the District violated the IDEA by not including the Parent in the IEP Team Meeting where the Team decided to change the Student's placement to an abbreviated school day. The Parent alleges that they were not in agreement with the District decision. Furthermore, the Parent alleges the District may have been influenced by the presence of the county mental health organization, noting that there was a previous meeting where the organization was present, and the Parent was unaware of the meeting or their participation.

Districts must provide parents with an opportunity to participate in meeting with respect to the identification, evaluation, IEP, and educational placement of their child.² Districts must provide parents with a written notice of IEP team meetings sufficiently in advance to ensure that one or both parents will have an opportunity to attend.³ That written notice must state the purpose, time and place of the meeting as well as who will be in attendance, among other requirements.⁴ Meetings may be conducted without parents in attendance if the district has given the parent appropriate notice.⁵

² OAR 581-015-2190(1).

³ OAR 581-015-2190(2).

⁴ OAR 581-015-2190(2)(b)(A)—(D).

⁵ OAR 581-015-2190(5).

After the Student exhibited behaviors similar to those observed in the Student's previous school district, the District scheduled an IEP Team Meeting to address the documented behaviors. The District provided the Parent with a notice of IEP meetings scheduled to address the Student's behavior. On December 15, 2017, the District sent the Parent a notice of team meeting for a meeting scheduled for January 2, 2018 to develop or review the Student's IEP. On January 2, 2018, shortly before the meeting was scheduled to begin, the Parent called to inform the District the Parent was unable to attend.

On January 2, 2018, the District confirmed with the Parent that the IEP Team would reschedule the meeting to January 5, 2018. On January 3 and January 4, 2018, the District confirmed the meeting time to the Parent by leaving phone messages. On January 4, 2018, the District sent the Parent a notice of the meeting scheduled for January 5, 2018 in a notice in the Student's backpack. On January 5, 2018, the Parent called shortly before the scheduled meeting time to inform the District of their inability to attend. All notices sent to the Parent included the time, date, and location for the meeting, as well as the meeting participants.

Following the second meeting cancellation, the Parent provided verbal permission to proceed with the IEP Team Meeting in the Parent's absence. The District agreed that it would not implement any of the IEP Team's placement decisions without first communicating them to the Parent and seeking parental agreement.

Included on the notice of the meeting sent to the Parent, in the list of meeting participants, was a representative of a community mental health organization. The Parent had previously signed an authorization to allow the sharing of information with the community mental health organization.

The district must provide an opportunity for parents to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of their child. Here, the District provided the Parent with two notices and opportunities to attend IEP Team Meetings that were called specifically to address the Student's behavior. Those notices appropriately identified the meeting participants, including individuals outside the District to whom the Parent had previously authorized to receive information about the Student. The Parent was unable to attend meetings for various reasons. Having given the Parent notice and an opportunity to attend two meetings, the District proceeded with an IEP Team Meeting without the Parent after obtaining parent consent to do so. At the meeting, the IEP Team discussed behavior data that had been gathered and recommended that the Student be placed on an abbreviated school day. The following school day, the District communicated the outcome of the January 5, 2018 IEP Team Meeting to both Parents and obtained their agreement to the placement change.

Because the Student's parents were provided the opportunity to meaningfully participate in IEP Team Meetings and consented that an IEP Team Meeting go forward in their absence, the Department does not substantiate the allegation.

V. CORRECTIVE ACTION⁶

*In the Matter of Klamath Falls City Schools
Case No. 18-054-003*

The Department does not order corrective action in this matter.

Dated: this 23rd Day of March 2018



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

Mailing Date: March 23, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

⁶ 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)).