

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Dallas School) FINDINGS OF FACT, CONCLUSIONS,
District 2 and the Oregon) AND FINAL ORDER
Department of Education) Case No. 18-054-017

I. BACKGROUND

On February 27, 2018, the Oregon Department of Education (Department) received three written requests for Special Education complaint investigations (Complaint) from parents of students (Students) residing in the Dallas School District (District) and an attorney (Complainant, collectively Complainants) representing a statewide advocacy group. The Complainants requested that the Department conduct a Special Education investigation under Oregon Administrative Rule (OAR) 581-015-2030, alleging violations of the Individuals with Disabilities Education Act (IDEA). The Complainants requested that the individual complaints be incorporated into a separate, systemic complaint against the District and the Department. The Department confirmed receipt of the Complaints and forwarded them to the District on March 2, 2018.

Under state and federal law, the Department must investigate written complaints that allege violations of the IDEA and issue an order within sixty days of receipt of the Complaint. This timeline may be extended if the Complainant(s) and the respondents agree to an extension to engage in mediation or local resolution, or for extenuating circumstances. The Complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.¹ Based on the date the Department received the Complaint, the relevant period for this Complaint is February 28, 2017 through February 27, 2018.²

On March 13, 2018, the Department’s Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District and to the Department, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 28, 2018. The District and the Department asked for and received a 10-day extension due to the complex and systemic nature of the complaint. On May 22, 2018, the issue date for this Order was extended once more, to June 4, 2018, due to a family medical emergency experienced by Department staff responsible for the orders’ issuance. The Department notified the Complainants and the District of the extension.

In addition to providing the Investigator with documents related to the individual complaints, on several different dates, the District and the Department submitted materials for the Investigator to review. These materials are listed below:

District Documents:

1. Letter of Response
2. Two Emails which provided answers to various questions. Multiple Dates.

¹ OAR 581-015-2030(5).

² Complainants requested the Department extend the investigation period further back based on improper conduct by the District. The Investigator did not find such wrongdoing. As such, the investigation period will reach back one year, to February 28, 2017.

ODE Documents:

1. Letter of Response, April 10, 2018
2. Five Emails which provided answers to various questions, Multiple Dates
3. Copy of the System Performance Review & Improvement (SPR&I) form

The Investigator determined that on-site interviews were necessary. Between April 16, 2018 and April 20, 2018, and on May 1, 2018, the Investigator interviewed the Students' Parents, Complainants' Attorney, and District staff. On April 30, 2018, the Investigator interviewed the Department's Assistant Superintendent, Special Education Legal Specialist, and IDEA General Supervision Specialist.

The Investigator reviewed and considered the previously described documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order.

I. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.³ The Complainants' 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 on the Discussion in Section IV.

<p>1. Free Appropriate Public Education (FAPE)⁴</p> <p>The Complainants allege that the District systemically violated the IDEA in several areas (as outlined below); and that because of these systemic violations, Students with Disabilities in the District have been denied FAPE;</p> <p>a) Placed Students on reduced day schedules in lieu of providing appropriate behavioral services and support when the Students struggled with behavioral issues in the educational setting,⁵</p> <p>b) Did not consider a full continuum of placements as possibilities when the District decided to shorten the Students' school days. Instead, the District considered a narrow range of placements,⁶</p>	<p>Substantiated</p> <p>The Department substantiated findings across the three individual complaints in the areas of parent participation, prior written notice, placements and least restrictive environment, and IEP content.</p> <p>Parents of different Students across District school sites and different grade levels had their opportunity to meaningfully participate in IEP team meetings impeded when the District unilaterally abbreviated the Students' school days without giving serious consideration to other, less restrictive alternative placement options.</p> <p>The Department also found that the District issued prior written notices after implementing changes in placement, and at various times the content of Student IEPs</p>
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³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

⁴ 34 CFR § 300.101; OAR 581-015-2040.

⁵ 34 CFR §§ 300.114, 300.115, 300.116, 300.327; OAR 581-015-2240-2250.

⁶ (OAR 581-015-2240 – 2250 and 34 CFR 300.114, 300.115, 300.116 and 300.327)

	<p>c) Told parents that the District could not consider other placements due to budget and staff constraints,⁷</p> <p>d) Not providing to Parents the incident reports of many serious behavioral incidents in which the Students were involved. The Complainants allege that District Team Members used these reports to make decisions about Students' IEPs or placement decisions. Because the District had not provided Parents with copies of all of these incident reports, Parents were unable to fully participate in the decision-making at the meetings.⁸</p> <p>e) The Complainants allege the District violated the IDEA when it failed to provide Parents with Prior Written Notice after it changed placement and/or refused a Parent's request to change placement.⁹</p> <p>f) Changed Students' educational placements by removing students from school for more than 10 school days (pattern or consecutive) without determining whether the Student's behavior that caused the removals was a manifestation of the Student's disability.¹⁰</p> <p>g) The Complainants allege the District violated the IDEA when it failed to include additional Specially Designed Instruction, Related Services and Supplementary Aids and Services that might have supported students to the extent that Students were able to attend for a full day of school.¹¹</p>	<p>did not accurately depict the services and placement the District was providing to a Student.</p> <p>The Department substantiates the allegation of a systemic FAPE violation against the District and orders corrective action.</p>
<p>2.</p>	<p>State General Supervision¹²</p> <p>The Complainants allege the Oregon Department of Education (Department) violated the IDEA and therefore did not guarantee FAPE to Students in small or</p>	<p>Not Substantiated</p> <p>The Department fulfilled its monitoring and supervision responsibilities to the District. The Department had no notice that these Students were being denied a FAPE.</p>

⁷ (OAR 581-015-2240 -- 2250 and 34 CFR 300.114, 300.115, 300.116 and 300.327)

⁸ (581-015-2190 (1) (3) and 34 CFR 300.500, 300.327, 300.501 (b)).

⁹ (OAR 581-015-2310 and 34 CFR 300.503)

¹⁰ (OAR 581-015-2405 (3)(a)(b) and OAR 581-015-2415 and 34 CFR 300.504, 300.530,300.531,300.532, and 30.533)

¹¹ (OAR 581-015-2200 and 34 CFR 300.320).

¹² (OAR 581-015-2015 and 34 CFR 300.101)

<p>rural districts in Oregon (with behavioral difficulties) when it:</p> <ul style="list-style-type: none"> a) Did not provide the necessary supervision and monitoring to ensure that Students in the District received FAPE; even though Students evidence behavioral and other challenges in the school setting; b) Did not provide access to a comprehensive educational system of supports and services so that small or rural school districts provide FAPE to Students who struggle with behavior in the school setting. 	<p>The Department does not substantiate the allegation that it did not provide appropriate general supervision of the District.</p>
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Requested Corrective Action (District)

The systemic violations alleged the District are related to each of the three attached individual complaints.¹³ The relief requested for each individual student is outlined in each complaint.

Requested Corrective Action (Department)

The Complainants request the following actions be implemented by the Department as resolutions to the Complaint:

1. Issue a finding that it has failed to meet its responsibility under 34 CFR 300.101 to create and oversee a comprehensive educational system capable of ensuring that students with disabilities and serious behavioral problems receive a FAPE when they reside in rural districts far from behavioral experts and suitable day treatment programs;
2. Create a data collection system that accurately records the number and location of Oregon students who receive less than a full day of educational services for more than one month during any school year because of behavior; and,
3. Pursuant to C.F.R 300.149 *et. seq.*, complainants additionally request that ODE create a network of behavioral support experts sufficient to serve all rural students with severe behavioral issues that cannot be addressed by local resources or programs, such that those experts will be available for up to one semester and numerous enough to be available within two weeks of establishing that the needs of a particular student qualified for network services. In requesting this relief, complainants note that 300.151 provides that:
 - a. “(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address –
 - b. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and,
 - c. Appropriate future provision of services for all children with disabilities.”

¹³ 18-054-014, 18-054-015, 18-054-016.

4. Any and all other relief that may be necessary to ensure that the Department provides and operates a comprehensive educational system that provides FAPE to every Oregon student who experiences behavioral difficulties that are the result of a disability.

III. FINDINGS OF FACT

- The Department investigated three different complaints from parents of students (Students) residing in the Dallas School District (District) and an attorney (Complainant, collectively Complainants) representing a statewide advocacy group. The Complainants requested that the individual Complaints be incorporated into a separate, systemic complaint against the District and the Department.
- The Investigator interviewed each Parent from each of the individual complaints, along with District staff from the three schools attended by the respective Students. The Investigator also interviewed District Administrators. The facts and analyses of these three Students' situations are contained in Department Final Order 18-054-014, Final Order 18-054-015, and 18-054-016, and are incorporated by reference. The findings are outlined in the chart below:

Allegation	Finding
Parent Participation - General	<p>18-054-014 - Substantiated. 18-054-015 - Substantiated. 18-054-016 - Substantiated.</p> <p>In each case, the District changed the Student's placement to an abbreviated school day, then informed the Parent of its decision rather than providing the Parent with a meaningful opportunity to participate in the IEP team decision-making process.</p>
Prior Written Notice	<p>18-054-014 - Substantiated. 18-054-015 - Substantiated. 18-054-016 - Not Substantiated.</p> <p>In two instances, the District did not issue a prior written notice to the Parent until after it implemented the change of abbreviating a student's school day. In one case, the District implemented the transfer of a Student to a behavioral intervention program special school, but did not develop a prior written notice reflecting this change until approximately eight weeks later.</p>
Placements and Least Restrictive Environments	<p>18-054-014 - Substantiated. 18-054-015 - Substantiated. 18-054-016 - Substantiated.</p> <p>The District abbreviated the school day of students who exhibited significant behaviors in school and did so without giving thorough consideration to less restrictive</p>

	alternative placements on the continuum of potential placements and services.
Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive).	18-054-014 – Not Substantiated. 18-054-015 – Not Substantiated. 18-054-016 – Not Substantiated. In each case, the students had not been removed for disciplinary purposes for more than ten school days in a given school year.
Content of the IEP	18-054-014 - Substantiated. 18-054-015 - Substantiated. At various times, the content of the Student’s IEP did not accurately depict the services and placement the District was providing to the Student.
General Evaluation and Reevaluation	18-054-015 – Not Substantiated. The Department found that the District used an appropriate system to evaluate the Student’s eligibility for special education.
Free and Appropriate Public Education (FAPE) and Age Ranges	18-054-014 - Substantiated. 18-054-015 - Substantiated. 18-054-016 - Substantiated. In each case, the District committed procedural errors that led to substantive violations. Each of the three students were deprived of a free and appropriate public education.

3. The District's reported student enrollment, as of February 1, 2018, is 3,191 students.¹⁴
4. The District reported a child count of 501 students with disabilities. Of these, twenty-six students eligible for special education in the District are currently attending school on an abbreviated school day schedule. Among those twenty-six, seven students have an abbreviated school day schedule for medical reasons, three students have an abbreviated school day schedule to accommodate receiving specialized therapies outside of the school setting, five students are eighteen years of age or older and are on abbreviated school day schedules so they can work, and eleven students are on a reduced schedule for behavioral reasons.
5. In 2017, the Oregon State Legislature passed Senate Bill 263, which was subsequently signed by Governor Kate Brown. Effective July 1, 2017, Senate Bill 263 (SB 263) set forth requirements relating to the placement of students on abbreviated school day programs. On or about September 17, 2017, the Department issued Executive Numbered Memo 004-2017-18 outlining SB 263 and included a sample acknowledgement form. The form notes that if a student has an IEP, the District may only place the student on an abbreviated school day

¹⁴ <http://www.oregon.gov/ode/reports-and-data/students/Pages/Student-Enrollment-Reports.aspx>

after the IEP team has: (1) Determined that the student should be placed on an abbreviated school day program based on the student's needs; (2) Provided the student's parents with an opportunity to meaningfully participate in a meeting to discuss the placement; (3) Documented in the IEP the reasons why the student was placed on an abbreviated school day; and (4) Documented that the team considered at least one option that includes appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school.

6. The District reported that it provided training to special education staff on the abbreviated day requirements in October 2017 after receiving forms and information from the Department. The District also noted it provided training to special education staff on IEP writing, with emphasis on a number of different topics, including prior written notice and non-participation justification.
7. The Department carries out monitoring and supervision of District compliance with the IDEA. The Department completes its monitoring and supervision in part through the System Performance Review & Improvement System (SPR&I). This includes an annual review of District performance across various indicators, as well as District review and reporting of individual student IEP files. The District satisfactorily completed its SPR&I review process for the 2016-2017 school year by the deadline established by the Department. None of the three individual complainants' files was among those selected for District procedural compliance review.
8. The District fulfilled its SPR&I responsibilities for the 2016-2017 school year by submitting complete information to the Department by the established deadlines.
9. For the 2016-2017 school year, the District met previously established State standards regarding data reported in the indicator area related to disciplinary removals of students with disabilities. For indicator areas where the District was found below previously established State standards, the District developed a written consolidated plan, the content of which was submitted to, and accepted by, the Department.
10. The Investigator did not substantiate the allegation that the Department violated the IDEA by not providing necessary supervision and monitoring to the District, or that it failed to provide the District with access to a comprehensive educational system of supports and services.

IV. DISCUSSION

A. Free Appropriate Public Education (FAPE)

The Complainants allege that the cumulative result of their allegations is representative of a systemic denial of FAPE to District Students. Procedural violations of the IDEA do not automatically require a finding of a denial of FAPE. However, when procedural inadequacies "result in the loss of educational opportunity, or seriously infringe the Parents' opportunity to

participate in the individualized education program formulation process," a FAPE denial is the clear result.¹⁵

The three individual complaint investigations revealed a systemic denial of FAPE to Students with Disabilities—particularly those who exhibit significant behaviors—when placed on abbreviated school day schedules. At different school sites involving Students at different grade levels, the District impeded the Students' right to FAPE when it abbreviated their school days without availing Parents of the opportunity to meaningfully participate in IEP Team and placement team decision-making. Instead, the District decided upon an abbreviated school day schedule, then informed the Parents of the District decision. The investigations also revealed the District narrowly considered alternative, less restrictive placements for Students before placing them on a restrictive abbreviated school day. In addition, the District's practice of selecting an abbreviated school day placement for a Student before revisiting other parts of the Student's IEP to address behavior issues, such as revising IEP goals, updating behavior support plans, increasing specially designed instruction, or changing a Student's supplementary aids and services. The District opted to place Students on abbreviated school days without first attempting to satisfactorily provide a Student with a FAPE in a less restrictive setting.

In some cases, the District impeded the Parents' ability to participate in IEP Team decision-making process by not providing the Parents with meaningful information about the Students' severe behaviors at school, or by implementing placement for a Student, and only afterward developing a prior written notice. Finally, at various times the content of Student IEPs did not accurately depict the services and placement the District was providing to the Student.

The Department substantiates the allegation that the District denied a FAPE to Students placed on abbreviated school day schedules for behavioral reasons. The individual complaint investigations reveal that this FAPE denial occurred at different school sites and at different grade levels. The Department orders corrective action to address this systemic issue.

B. State General Supervision

The Complainants allege the Department violated the IDEA when it: (a) did not provide the necessary supervision and monitoring to ensure that Students in the District received FAPE even though certain Students evidenced behavioral and other challenges in the school setting; and (b) did not provide access to a comprehensive educational system of supports and services so that the District could provide FAPE to this District's Students.

The Department is responsible for general supervision and monitoring of special education programs for children with disabilities.¹⁶ The Department carries out its general supervision and monitoring responsibilities in various ways, including facilitating district self-assessment, data collection, analysis and reporting; as well as on-site visits, review of district policies and procedures, review of the development and implementation of IEP's, improvement planning and auditing use of federal funds.¹⁷ The Department's obligation to directly provide FAPE to a District student with disabilities arises when a school district refuses or wrongfully neglects to serve a student, provided that school district's failure is significant, and state agency officials are given

¹⁵ *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

¹⁶ ORS 343.041; OAR 581-015-2015.

¹⁷ OAR 581-015-2015.

adequate notice of the school district's noncompliance, and the state agency is afforded reasonable opportunity to compel local compliance.¹⁸

The Department fulfills its monitoring and supervision responsibilities through a variety of procedures. These include overseeing District self-assessment of compliance with specific IDEA requirements based on a sample of student special education files¹⁹ and the collection of data related to indicators of program effectiveness (e.g., graduation rates, dropout rates, statewide assessment, discipline, least restrictive environment placement, disproportionate representation in special education, etc.) The data the Department collects from the District and every other school district in the State do not focus on individual children. Rather, the data depicts a school district's system-wide progress toward achieving defined goals. Little, if any, of the data obtained through the Department's monitoring and supervision processes yields information that could put the Department on notice of any issues related to a specific student.

The Department timely and completely fulfilled its monitoring and supervision responsibilities with respect to the District. There is no indication that the Department does not distribute funding to the District in compliance with law in the same manner it does all other school districts in the State.

Until this Complaint was filed, the Department was unaware of the District refusing or wrongfully neglecting to adequately serve the any of the Student Complainants. In light of the Department not having any adequate notice of the Students' circumstances, it follows that the Department was not afforded any reasonable opportunity to compel local compliance. The Department does not substantiate this allegation.

CORRECTIVE ACTION²⁰

In the Matter of Dallas School District 2 and the Oregon Department of Education
Case No. 18-054-017

No.	Action Required	Submissions ^[2]	Due Date
1a.	<p>Policy and Procedure Review/Revision</p> <p>With ODE / County Contact assistance, review existing District Special Education Policies, Administrative Regulations (AR), and District implementing</p>	<p>Submit to ODE copies of reviewed documents, with proposed edits showing,</p>	<p>September 28, 2018</p>

¹⁸ *Doe v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986).

¹⁹ The compliance program algorithm did not select any of the student complainants' special education files for District self-review in 2016-2017 or 2017-2018.

²⁰ 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)).

^[2] 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: raeanrray@state.or.us; fax number (503) 378-5156.

	procedures, forms, and materials to determine the need for revisions, with special attention to areas of noncompliance identified in this order.	Submit to ODE a copy of Dallas School Board procedures and timelines for amending Board-adopted policies.	
1b.	Upon approval of proposed special education policy/procedure edits, initiate the change processes within the District, referring Board-adopted information to the Board for adoption.	Provide evidence of referral to District Board. Upon completion of adoption process, submit copy of Board Agenda(s) and official minutes of meeting in which the Board acted upon the proposed revisions.	October 30, 2018 December 15, 2018
2.	<p>Professional Development</p> <p>Conduct a review and planning session with District administrators and ODE to discuss the findings of this investigation and to develop a series of trainings that will occur between October 2018 and April 2019 regarding –</p> <ul style="list-style-type: none"> • Procedural Safeguards, including parent participation requirements; • Coordinating the sequential processes and parent involvement from pre-referral to evaluation/re-evaluation to IEP implementation and placement, including revisions between annual meetings; • Special considerations in IEP development and implementation for students with complex needs, including students who may meet criteria for more than one disability; • Provision of FAPE in the Least Restrictive Environment (LRE), the relationship of non-participation justification, 	For each meeting, submit evidence of completion, including copies of Agenda, signed attendee list, including name and position,/role of each attendee. presenter(s), materials used, and any meeting notes or minutes.	Seven (7) work days after each scheduled session

	<p>revising each IEP, the District will ensure special attention to the areas of noncompliance^[4]. Each IEP meeting will be followed by a meeting to review, and revise as necessary, the placement decision.</p>	<p>meetings, a complete copy of the IEP, and separate placement determination, any meeting notes or minutes, and copies of any prior written notices.</p>	
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Dated: this 4th Day of June 2018



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

Mailing Date: June 4, 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).)

^[4] Parent Participation – General; Prior Written Notice ; Placements and Least Restrictive Environments; Content of the IEP; Free and Appropriate Public Education (FAPE)