

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Portland  
Public School District 1J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 18-054-021

**I. BACKGROUND**

On March 20, 2018, 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 Portland Public School District 1J (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 on March 20, 2018.

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 March 23, 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 April 6, 2018.

On April 6, 2018, the District submitted a *Response* explaining the District's understanding of the allegation and the District's efforts to address the issues raised in the Parent's Complaint. In total, the District submitted the following items:

1. District's Exhibit List
2. District's Response to RFR
3. Copies of Student's IEPs in effect 2016-2017 and 2017-2018
4. Evaluation Reports
5. Written or electronic communications between the District and the parents during the 2016-2017 and 2017-2018 school years
6. Meeting notices, meeting minutes and prior written notices for 2017-2017 and 2017-2018 List of knowledgeable persons

The Parent did not submit a Response. The Investigator was unable to interview the Parent in this matter due to the Parent not responding to requests for information. The Investigator determined that onsite interviews were not necessary. On April 27, 2018, the

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

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

Investigator interviewed the District's Legal Counsel regarding this matter by phone. Following the interview, the District provided additional information regarding the case. 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. 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 March 21, 2017 to the filing of this Complaint on March 20, 2018.

	<u>Allegations</u>	<u>Conclusions</u>
1.	<p><b><u>IEP Implementation</u></b></p> <p>The Parent alleges that the District violated the IDEA when the District neglected to provide special education to the Student in accordance with the IEP then in effect.</p> <p>(34 CFR §§ 300.323 &amp; 300.324; OAR 581-015-2220)</p>	<p><b><u>Substantiated</u></b></p> <p>The IEP Team did not anticipate the impact a change in school and class structure between elementary and middle school would have on the Student's IEP implementation. As a result, the Student was removed from the general education environment in an amount that exceeded the agreed upon limits in the April 13, 2017 IEP.</p>

## III. FINDINGS OF FACT

1. The Student in this case is enrolled in the sixth grade in the Portland Public School District. (District). The Student was diagnosed with Down Syndrome and is eligible for special education services under the primary categories of Intellectual Disability and Other Health Impairment.
2. The Student is emergent bilingual and also communicates in Sign Language. The Student uses a combination of the three languages in communicating with others. The Student receives specially designed instruction in the areas of Reading, Writing, Math, classroom/school skills, Speech/Language and adapted Physical Education.
3. The Student's Individualized Education Program (IEP) documents the IEP Team's consideration of supplementary aids, services, modifications, and accommodations. The Student's IEP anticipates the need to remove the Student from the general education environment 20-59% of the time during each school day. The purpose of

the removal is to help the Student benefit from instruction at the proper skill level and give consideration to the Student's multilingual needs, as well as provide the Student with sensory breaks.

4. During the Student's April 13, 2017 IEP Team Meeting, the Parent expressed concern regarding the Student's transition from elementary to middle school due to an anticipated change in support for the Student between the educational environments.
5. On March 20, 2018, the Department received this Complaint. The Parent, through an advocate, alleged that the Student was not accessing the general education environment in conformity with the Student's IEP. Rather, the Parent alleged the Student was only accessing the general education environment during lunch and a single "unified" class period when general education peers joined a class the Student regularly attended.
6. In response to the filing of this Complaint, the District noted that middle school staff did not attend the April 13, 2017 IEP Team Meeting to participate in discussions about the anticipated transition. There was no coordinated hand-off between the elementary and middle school IEP Teams.
7. At the time the *Response* to the Complaint was submitted, the District was planning an IEP Team Meeting to determine whether changes to the Student's IEP needed to be made to appropriately address the Parent's concerns.
8. On April 27, 2018, the Investigator interviewed the District's Legal Counsel regarding this Complaint. The District had recently completed an IEP Team Meeting to fully ascertain the issues underlying the Parent's concerns and were moving to adjust the Student's IEP to give appropriate consideration to general education placement in light of the middle school environment. The District did not refute the Parent's allegation that the Student's access to the general education environment was limited to lunchtime and a single "unified" class period where general education students joined a class the Student regularly attended.

## IV. DISCUSSION

### **IEP Implementation**

The Parent alleges that the District violated the IDEA when it neglected to provide special education to the Student in accordance with the Student's current IEP. The Parent indicated that the IEP Team formulated an IEP with the elementary school environment in mind, but the transition to a middle school environment resulted in the Student being removed from the general education environment in an amount that exceeded what was permitted in the Student's current IEP. The Parent alleges the District's failure to appropriately adjust the Student's IEP in anticipation of the change in school environment resulted in a failure to appropriately implement the Student's IEP.

The District must ensure that each child with a disability has an IEP in effect at the beginning of each school year.<sup>3</sup> The District must provide special education and related services to a child in accordance with the child's operative IEP.<sup>4</sup> As part of this requirement, school districts must ensure that each teacher or service provider responsible for implementing the IEP is informed of their responsibilities.<sup>5</sup>

The Student's IEP Team met on April 13, 2017 to formulate the Student's IEP for the 2017-2018 school year. The Parent alleges that the April 13, 2017 IEP anticipates providing a free appropriate public education (FAPE) to the Student by removing the Student from the general education environment for no more than 20-59% of the school day.

Having observed the Student's struggle to achieve IEP goals during the 2017-2018 school year, the Parent alleged this was due to the Student not having sufficient access to the general education environment. In the course of responding to this Complaint, the District's own investigation found that the Student's April 13, 2017 IEP was formulated without any input or representation from the middle school—the Student's intended placement for the 2017-2018 school year.

The District stated that the Parent's concerns regarding the Student's access to the general education environment were likely due to IEP Teams from the elementary and middle schools not meeting to discuss how the IEP would be implemented in the new environment. The District noted that middle school includes class changes and the Student moving about the school, as compared to the elementary school environment, where the bulk of the Student's education was delivered in a single classroom with pull-out for special services. Indeed, the Student was removed from the general education environment in an amount that exceeded the agreed upon limits in the April 13, 2017 IEP.

During the pendency of this Complaint investigation, the District planned meetings with the Parent to address concerns and explore amending the Student's IEP. The District acknowledges that the Student's April 13, 2017 IEP was not formulated with removal from the general education environment on a middle school campus in mind, nor with the input of the middle school IEP Team. The District further acknowledges the Student's IEP was not changed to address the Student's new schedule during the 2017-2018 school year to adjust the amount of removal from the general education environment the Student would experience. The Department substantiates this allegation and orders corrective action.

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<sup>3</sup> OAR 581-015-2220(1)(a)

<sup>4</sup> OAR 581-015-2220(1)(b)

<sup>5</sup> OAR 581-015-2220(3)(a)

## V. ADDITIONAL FINDINGS

The April 13, 2017 IEP and placement page do not consistently describe the Student's placement. When school districts make clear, formal, written offers of FAPE, it tends to reduce disputes in the future about "when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any."<sup>6</sup> Failure to make clear offers of FAPE can jeopardize a parent's meaningful opportunity to participate in IEP team meetings.<sup>7</sup>

In the Student's April 13, 2017 IEP and placement page, the District inconsistently describes the Student's placement. The Student's placement page describes placement as "Focus Classroom – Intensive Skills – 60% or more," meaning no cap is set on the amount of time the Student may be removed from the general education setting. Meanwhile, the Student's Statement of Nonparticipation Justification notes that the Student may be removed from general education for a range of time, between 20 and 59 percent of each day—effectively setting a cap on removal from the general education setting at 59% of the day. This creates inconsistency within the IEP and potential for confusion with respect to Student's daily removal from the general education setting.

If it has not done so already, it is crucial that the District meet with the Student's Parents to develop and deliver an internally consistent, unambiguous offer of FAPE, including placement.

## VI. CORRECTIVE ACTION<sup>8</sup>

*In the Matter of Portland Public School District #1J  
Case No. 18-054-021*

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

	<b>Actions</b>	<b>Submissions<sup>9</sup></b>	<b>Due By</b>
<b>1.</b>	Convene an IEP and placement team meeting with appropriate staff and parent(s) to address the placement determination in	Provide a copy of the newly developed IEP with the placement determination and justification for removal in alignment. Include	<b>June 12, 2018</b>

<sup>6</sup> *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994).


<sup>7</sup> 34 CFR § 300.327; OAR 581-015-2190.

<sup>8</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>9</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.

	relation to access to the general education environment.	meeting invitation, and Prior Written Notice documents as well.	
2.	In consultation with ODE and County Contact, develop a written guidance document to share with all special education responsible for providing special education services regarding the need to align placement, services and removal from the general education environment.	Provide ODE with a copy of the written guidance document as well as the disbursement to all special education staff. An email disbursement is appropriate.	<b>September 14, 2018</b>

Dated: this 11th Day of May 2018

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

Mailing Date: May 11, 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).)