

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of High Desert ESD &)
Bend-LaPine School District 1)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 18-054-028

I. BACKGROUND

On May 3, 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 Bend-La Pine School District (District), and also receiving services from the High Desert Education Service District (ESD). 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 it 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 an extension in order to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On May 7, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* to the District that identified the specific allegations in the Complaint to be investigated and established a *Response* due date of May 21, 2018.

On May 21 2018, the District and the ESD submitted *Responses*, each indicating they disputed the allegations in the Complaint. In addition, the District and the ESD submitted the following documents:

1. High Desert ESD Response
 - a) Student Service Log
 - b) Occupational Therapy Service Summary
 - c) Service Activity Log
 - d) Occupational Therapy Service Log
 - e) List of Staff knowledgeable about the complaint
2. Bend-La Pine Response
3. Meeting Request, 12/18/2017
4. IEP Meeting Attendance, 1/12/2018
5. IEP Team Meeting Minutes, 1/12/2018

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

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

6. Meeting Request, 11/17/2018
7. Student's schedule as of 11/27/2017
8. IEP Meeting Attendance, 12/18/2017
9. IEP Meeting Minutes, 12/08/2017
10. Written Agreements Between the Parent and the District, 12/08/2017
11. Authorization to Use and-or Disclose Information, 12/08/2017
12. Individual Education Program Amendment, 4/18/2017 (12/08/2017)
13. Prior Notice of Special Education Action, 12/08/2017
14. Letter to Parent re: election to withdraw of Student for partial day 12/11/2017
15. Meeting Request, 10/30/2017
16. Written Agreement Between the Parent and the District, 11/03/2017
17. IEP Meeting Attendance
18. IEP/Step-up Meeting Minutes, 11/03/2017
19. Written Agreement Between the Parents and the District
20. IEP Meeting Attendance, 11/17/2017
21. IEP Meeting Minutes, 11/17/2017
22. Meeting Request, 9/20/2017
23. IEP Meeting Attendance, 9/20/2017
24. IEP Meeting Attendance, 9/20/2017
25. IEP Meeting Minutes, 9/20/2017
26. Individual Education Program Amendment, 4/18/2017 (09/20/2017)
27. Prior Notice of Special Education Action, 09/20/2017
28. Special Education Placement Determination, 09/20/2017
29. Request for Special Education Transportation, 9/20/2017
30. Meeting Request, 05/23/2017
31. IEP Meeting Attendance, 06/02/2017
32. IEP Meeting Notes, 06/02/2017
33. Student Re-Entry/Step-up Plan 07/01/2017
34. Meeting Request, 04/07/2017
35. Prior Notice of Special Education Action, 04/18/2017
36. Individualized Education Program Amendment, 4/18/2017 (06/02/2017)
37. Prior Notice of Special Education Action, 06/02/2017
38. Special Education Placement Determination, 06/02/2017
39. Student Re-Entry/Step-up Plan 07/01/2017
40. IEP Progress Report—Annual Goal, 06/22/2017
41. Meeting Request, 04/24/2017
42. Meeting Request, 05/19/2017
43. IEP Meeting Attendance, 05/11/2017
44. Meeting Notes, 05/11/2017
45. Written Consent to Access Public Insurance, 04/18/2017

46. Meeting Request, 05/19/2017
47. Written Agreements Between the Parent and the District, 02/08/2017
48. Meeting Request, 05/19/2017
49. Meeting Request, 05/23/2017
50. IEP Meeting Attendance, 05/22/2017
51. IEP Meeting Minutes, 05/22/2017
52. Email from Parent to District, 05/22/2017
53. IEP Meeting Attendance, 05/19/2017
54. IEP Meeting Minutes, 05/19/2017
55. Meeting Request, 04/07/2017
56. IEP Meeting Attendance, 04/18/2017
57. IEP Meeting Minutes, 04/18/2017
58. Occupational Therapy Services Summary, 04/18/2017
59. Student IEP, 04/18/2017
60. Special Education Placement Determination, 04/18/2017
61. Prior Notice of Special Education Action, 04/18/2017
62. IEP Meeting Attendance, 02/07/2017
63. IEP Meeting Minutes, 02/07/2017
64. Written Agreement Between the Parent and the District, 02/07/2017
65. Letter from District to Parent, 02/08/2017
66. Parent/Guardian Consent for Individual Evaluation, 02/07/2017
67. Prior Notice of Special Education Action, 02/07/2017
68. Confidential Initial Psychoeducational Evaluation, 04/018/2017
69. Speech/Language Evaluation Report, April 2017
70. Meeting Request, 11/16/2016
71. Special Education Placement Determination, 10/27/2016
72. Prior Notice of Special Education Action, 10/27/2016
73. Behavior Intervention Plan, 10/17/2016
74. Functional Behavior Assessment & Summary
75. Disability Statement, Emotional Disturbance, 04/18/2017
76. Disability Statement, Autism Spectrum Disorder, 04/18/2017
77. Eligibility Summary Statement, 04/018/2017
78. IEP Progress Report—Annual Goal, 02/02/2018
79. Relevant e-mail communications between Parent and District
80. Disciplinary Action Form, 10/21/2016
81. Disciplinary Action Form, 10/13/2016
82. Disciplinary Action Form, 10/11/2016
83. Disciplinary Action Form, 03/10/2016
84. DART—Student Profile
85. 2017-2018 Student Grade Report

86. 2017-2018 Student Daily Attendance Profile
87. 2017-2018 Student Daily Discipline Profile
88. Physical Restraint/Seclusion Incident Reporting Forms, 1/25/18, 1/29/18, 1/30/18, 1/31/18, 2/1/18, 2/8/18, 2/21/18, 2/23/18, 6/16/17, 6/2/17, 5/24/17, 5/26/17, 5/12/17, 5/15/17, 5/1/17, 5/2/17, 4/27/17, 4/28/17, 4/24/17, 4/20/17, 4/17/17, 4/18/17, 4/13/17, 4/14/17, 4/5/17, 4/7/17, 3/15/17, 3/10/17, 3/14/17, 3/2/17, 2/21/17, 2/22/17, 1/25/17, 1/24/17, 1/25/17, 1/26/17, 1/23/17, 12/12/16, 12/16/16, 12/9/16, 12/2/16, 12/1/16, 11/28/16, 11/30/16, 11/15/16, 11/14/16, 11/9/16, 10/26/16, 10/25/16, 10/24/16
89. Special Education Contact Log
90. Proposed behavior plan, 11/30/17
91. Updated behavior plan. 1/30/18
92. Student's proposed schedule for 1/18
93. Student attendance and incident report
94. Proof of mailing materials to Parent
95. Procedural Safeguards Notice
96. Email communication re: complaint follow-up

The Parent did not respond to requests for interviews in this matter. The Investigator determined that on-site interviews with the District and ESD were not necessary. The Investigator reviewed and considered all of the previously described documents 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.³ 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 May 4, 2017 to the filing of this Complaint on May 3, 2018.

	<u>Allegations</u>	<u>Conclusions</u>
1.	<p><u>When IEPs Must to Be In Effect (Failure to Implement IEP)</u></p> <p>The Parent alleged that the Districts violated the IDEA when the Student was not educated in compliance with the Student's IEP then in effect, resulting in:</p>	<p><u>Not Substantiated</u></p> <p>The Student was placed in a 100% self-contained Life Skills classroom that included such features as hygiene, social skills, and eating, in the Student's education. The</p>

³ 34 CFR §§ 300.151-153 and OAR 581-015-2030.

	<p>(a) assigning the Student non-educational activities such as domestic chores;</p> <p>(b) the Student being given educational assignments that were not appropriate; to the Student's academic ability, and</p> <p>(c) having non-academic staff supervise or educate the Student.</p> <p>(34 CFR §§ 300.323 & 300.324; OAR 581-015-2220)</p>	<p>Student's IEP was properly implemented and the Student made progress toward IEP goals. No information was presented to support the allegation that non-academic staff supervised the Student.</p>
<p>2.</p>	<p><u>Requirement for Least Restrictive Environment</u></p> <p>The Parent alleges that the Districts violated the IDEA when the Student was unnecessarily kept from general education peers—specifically the general education classroom—in favor of a Life Skills classroom.</p> <p>(34 CFR § 300.114; OAR 581-015-2240)</p>	<p><u>Not Substantiated</u></p> <p>During the 2016-2017 school year, the Student participated in the general education classroom environment. The Student's behavior needs necessitated a change in placement to the self-contained Life Skills classroom. The Student's progress was frequently monitored following the change in placement and adjusted to ensure the placement remained appropriate.</p>
<p>3.</p>	<p><u>Parent Participation</u></p> <p>The Parent alleges that the Districts denied the Parent the ability to meaningfully participate in IEP Team Meetings through a variety of methods, including but not limited to bullying and coercion.</p> <p>(34 CFR §§ 300.500, 300.327, and 300.501(b); OAR 581-015-2190)</p>	<p><u>Not Substantiated</u></p> <p>The Parent received notice and attended all but one of the Student's several IEP Meetings that were convened during the Complaint period. Near the end of the 2017-2018 school year, the Parent told the District to cease communications with the Parent regarding scheduling of IEP Team Meetings.</p>

III. FINDINGS OF FACT

1. The Student in this case is eight years old and resides within the Bend-La Pine School District (District) boundaries. The Student is eligible for special education under the categories of Autism Spectrum Disorder and Emotional Disturbance.
2. The Student has considerable difficulty with emotional regulation, anxiety, social communication, social interaction, and behavior. These difficulties impede the Student's learning. Specifically, the Student has difficulty following agendas set by others and frequently insists that things be done the way the Student wants. The Student has difficulty focusing attention and following verbal instructions, which results in limited task initiation and completion. The Student has significant sensory needs that impact the Student's learning.
3. When overwhelmed or dysregulated, the Student may leave an assigned area, hide, or leave the school building. The Student's difficulties with emotional regulation and anxiety lead to severe meltdowns three to ten times per week. The Student has difficulty interacting with peers in large and small groups, requiring behavior interventions, especially during transitions and interactions with other children. The Student's behavior is marked by temper tantrums and significant aggression.
4. The Student receives Specially Designed Instruction (SDI) in the areas of Reading, Behavior Skills, Emotional Skills, Social Skills, Speech Language Therapy, Motor Skills, and Mathematics. In addition, the Student receives transportation and Occupational Therapy as related services.
5. The Student receives instructional assistant (IA) support throughout the day, particularly to assist with transitions, lunch, recess, and to help with calming and re-direction strategies.
6. On April 18, 2017, the District convened an IEP Team Meeting to amend the Student's IEP. The Parent participated in the meeting. The IEP Team reviewed a psychoeducational report of the Student. The Student was shown to have considerable difficulty with emotional regulation, anxiety, social communication, social interaction, and behavior. The Student reportedly engages in a variety of maladaptive behaviors, including marked temper tantrums and significant aggression. The Student is easily dysregulated, resulting in a strong fight or flight response. The evaluator concluded the Student met the criteria for special education eligibility in the areas of Autism Spectrum Disorder and Emotional Disturbance.
7. At the April 18, 2017 IEP Team Meeting, the High Desert Education Service District (ESD) shared an Occupational Therapy Services Summary of the Student. The ESD was providing the Student with sensory equipment and implementing strategies to develop hand dominance, writing skills, and behavior regulation.

8. Following the IEP Team Meeting, the District sent the Parent a prior written notice (PWN) of special education action regarding amendments to the Student's IEP that had been decided upon at the meeting.
9. On May 11, 2017, the Student's IEP Team met again to discuss the Student's needs. The Parent participated, sharing aspects of the Student's medical history with the Team, including potential psychiatric diagnoses and the Parent's attempts with medicating the Student. The District described the Student's reluctance to access the general education classroom.
10. On May 19, 2017, the Student's IEP Team met to discuss the Student's specific behaviors and possible interventions, including reducing the Student's day. The Parent participated in the meeting, provided input, and asked for time to think about an abbreviated school day program.
11. On May 22, 2017, the Student's IEP Team reconvened to discuss abbreviating the Student's school day program. The placement team decided to abbreviate the Student's school day, over the Parent's objections. The IEP Team agreed to reconvene on June 1, 2017.
12. On June 1, 2017, the District formulated goals and protocols as part of a "Re-Entry/Step-Up Plan" to facilitate the Student's return to a full school day program. The plan called for "consistent negotiating and adjustments" to the Student's schedule to maintain safety. The plan aimed toward increasing the Student's school day by thirty minutes if, after ten days, the Student demonstrated safe behavior and followed directions. The plan proposed progress meetings every two weeks.
13. On June 2, 2017, the Student's IEP Team met to discuss the abbreviated school day plan and the Parent's concerns and observations regarding the Student's behaviors. The IEP Team reviewed and discussed a recent incident where the Student struck a teacher. The placement team proposed and ultimately accepted a change of placement to a self-contained Life Skills classroom to accommodate the Student's demonstrated behavior needs.
14. The District developed a detailed daily schedule for the Student with two adults working with the Student at all times. The Student attended a Life Skills classroom between 9 a.m. and 1 p.m., daily.
15. On September 20, 2017, the Student's IEP Team met to discuss the Student's Re-Entry/Step-Up Plan and data District staff had compiled. The Parent participated in the meeting, expressing a preference for the Student to return to school for a full school day. The District stressed the importance of having sufficient supports for the Student to return successfully to a full day schedule. The District noted that the Re-Entry/Step-Up Plan agreed to at the end of the 2016-2017 school year included a practice of adding thirty minutes to the Student's school day as the Student showed progress. The Student's placement team also determined that the Student would be

placed less than 40% of the time in general education environment based on the Student's needs and safety concerns.

16. After the IEP Team Meeting, the District sent the Parent a PWN proposing to increase the Student's school day by one hour, moving the Student's dismissal time from 1:00 p.m. to 2:00 p.m.
17. The Student's IEP Team amended the IEP to reflect the addition of an hour per day to the Student's school day schedule.
18. On November 3, 2017, the Student's IEP Team met to discuss the Student's progress on the Re-Entry/Step-Up Plan and data collected regarding the Student's progress. The Team agreed to not add more time to the Student's school day, but to reconvene on November 17, 2017. The Parent participated in this meeting.
19. On November 17, 2017, the Student's IEP Team met for a ten-day review and noted that the Student was making progress toward academic and behavior goals.
20. On December 8, 2017, the Student's IEP Team met to discuss the Student absences and obtain an update regarding some of the Student's special medical needs that the Parent reported. The Student's IEP was amended to include strategies for increasing the length of the Student's school day and health needs. District staff shared their view that the Student was ready to return to a full day of school. However, the Parent requested that the Student's schedule remain abbreviated until the Student's health improved, and that the Student not be returned to a full school day until after the District's Winter Break.
21. On December 11, 2017, the District sent a notice to the Parent confirming that the Parent had elected to abbreviate the Student's school day due to ongoing health problems, and that the District stood ready to offer the Student a free, appropriate, public education on a full day schedule.
22. The District's Winter Break took place between December 23, 2017 and January 7, 2018.
23. On January 12, 2018, the Student's "Step Up" team met to discuss the Student's health and potential to return to a full school day, as well as strategies to aid the Student's academic and behavioral success. The Parent did not attend this meeting. District staff called the Parent and left voice messages, then proceeded to review concerns the Parent had sent previously by email.
24. On March 13, 2018, the Parent requested a meeting to make "a couple slight adjustments to [the Student's] day." On March 14, 2018, the District responded that it was agreeable to convening a meeting and asked for details regarding whom the Parent wanted in attendance. The Parent did not respond to the District's email.

25. On April 3, 2018, the District documented its attempts to schedule an annual IEP meeting with the Parent and the Parent's refusal to cooperate with scheduling a date for the meeting.
26. Between March 19, 2018 and April 6, 2018, the Student did not attend school. After ten days, the District withdrew the Student from District enrollment.
27. On April 4, 2018, the District sent the Parent a letter offering a free, appropriate, public education (FAPE) to the Student and documented the Parent's choice to withdraw the child from school. The District's letter goes on to offer the Student's reenrollment at any time.
28. On May 3, 2018, the District and Parent exchanged emails. The District welcomed the Student's reenrollment in the District. The Parent expressed a preference for homeschooling the Student. The District offered direction and support for the Parent in this decision.
29. On May 3, 2018, the Department received this Complaint.

IV. DISCUSSION

A. When IEPs Must Be In Effect (Failure to Implement IEP)

The Parent alleges that the District and ESD violated the IDEA when the Student was not educated in compliance with the Student's operative IEP. Specifically, the Parent alleges the District and the ESD failed to comply with the Student's IEP in the following ways: (1) Assigning the Student to non-educational activities such as domestic chores; (2) Giving the Student assignments that were not appropriate to the Student's academic ability; and (3) Assigning non-academic staff to supervise the Student.

At the start of each school year, the District must have an IEP in effect for all students with disabilities.⁴ Special education services must be provided to students in conformity with the Student's IEP.⁵ Any teacher or service providers responsible for providing services outlined in the IEP must be provided with a copy or be informed of their responsibilities under the IEP.⁶

1. Non-educational Activities

Based upon the Student's behavioral needs in the educational environment, the Student was placed in a 100% self-contained Life Skills classroom. The Student's schedule in the Life Skills classroom includes having breakfast. Following breakfast, the Student helps with cleanup. During the last thirty minutes of the day, the Student had classroom

⁴ OAR 581-015-2220(1)(a).

⁵ OAR 581-015-2220(1)(b).

⁶ OAR 581-015-2220(3)(a) & (3)(b).

responsibilities that include wiping down surfaces in the classroom and library. These classroom responsibilities were included in the Student's written Re-Entry/Step-Up Plan schedule, which was shared with the Parent. The Department does not substantiate this allegation.

2. Classroom Assignments

The Parent was involved in the development of the Student's schedule as a participating member of the IEP Team. In the Life Skills program, classroom work includes—in addition to academic subjects—lessons covering hygiene, social skills, and eating. The Student's behavior needs were a key component of the instruction delivered to the Student. The Parent agreed to the Student's placement in the Life Skills classroom at various IEP Team Meetings, and the Student made progress on IEP goals put in place during the Complaint period. The Department does not substantiate this allegation.

3. Assignment of Staff

Instructional assistants (IAs) worked with the Student on a regular basis in the self-contained Life Skills classroom, and also outside of the classroom during lunch, recess, transitions, etc. The Investigator did not uncover any evidence to support the Parent's allegation that unqualified staff educated or supervised the Student. The Student's annual IEP was amended multiple times to reassess the Student's unique needs and monitor the Student's IEP goal progress. The Department does not substantiate this allegation.

B. Requirement for Least Restrictive Environment

The Parent alleges that the District and ESD violated the IDEA when the Student was unnecessarily kept from the Student's general education peers. Specifically, the Parent alleges that the Student was not provided access to the general education classroom, and instead was kept in a Life Skills classroom.

To the maximum extent appropriate, school districts must ensure that children with disabilities are educated with children who do not have disabilities.⁷ School districts should also appropriately consider the use of separate schooling and the removal of children with disabilities from the regular education environment.⁸ Districts should only use these options when the nature and severity of the disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.⁹

During the 2016-2017 school year, the Student participated in the general education environment. While there, the Student displayed behaviors in the classroom that included physical aggression toward others and elopement from the classroom. These behaviors prompted the Student's IEP Team to convene and consider alternative placement options. The IEP Team and the Parent agreed to a change in placement.

⁷ OAR 581-015-2240(1).

⁸ OAR 581015-2240(2).

⁹ *Id.*

On June 2, 2017, the Student's IEP Team met to discuss ways to better support the Student's behavior needs following an incident where the Student struck a teacher, along with other documented behavior issues. The Student's placement team decided to place the Student in a 100% self-contained Life Skills classroom.

The Student's progress in the Life Skills classroom was frequently monitored. The District noted that the Student frequently arrived late or was absent from school during the 2017-2018 school year, but nevertheless made progress when in attendance. From the beginning of the 2017-2018 school year, the Student's IEP Team met regularly to review the Student's progress in the Life Skills classroom. The Student made sufficient progress to lead the District to recommend the Student's abbreviated school day be lengthened, then returned to a full day schedule. No information was offered to show that the Student was not benefiting from the placement or that it was otherwise inappropriate. The Department does not substantiate this allegation.

C. Parent Participation

The Parent alleges that the District and the ESD denied the Parent the ability to participate meaningfully in IEP Team Meetings. The Parent alleges that this obstruction and frustration was accomplished through a variety of methods, including but not limited to District and ESD bullying and coercion.

A district is responsible for providing parents with the opportunity to participate in meetings with respect to the identification, evaluation, IEP, educational placement of their children, and provision of a free appropriate public education.¹⁰ To accomplish this, districts must provide parents with a written notice of a meeting sufficiently in advance to ensure that the parents have an opportunity to attend.¹¹ School districts must ensure that parents are able to understand the proceedings.¹² Meetings may be conducted without the parent in attendance, provided districts give parents appropriate notice.¹³

During the one-year Complaint period, the Student's IEP Team and Step Up Team convened seven times. The Parent received adequate notice and attended all but one of the meetings.¹⁴ On March 13, 2018, the Parent requested a meeting to make "a couple slight adjustments to [the Student's] day. On March 14, 2018, the District responded that it was agreeable to convening a meeting and asked for details regarding who the Parent wanted in attendance. The Parent did not respond to the District's email. On April 3, 2018, the District documented its attempts to schedule an annual IEP meeting with the Parent, and the Parent's refusal to cooperate with scheduling a date for the meeting. The Investigator did not uncover evidence of how the District prevented the Parent from

¹⁰ OAR 581-015-2190(1).

¹¹ OAR 581-015-2190(2)(a).

¹² OAR 581-015-2190(3).

¹³ OAR 581-015-2190(5).

¹⁴ On January 12, 2018, the Student's "Step Up" team met to discuss the Student's health and potential to return to a full school day, as well as strategies to aid the Student's academic and behavioral success. The Parent did not attend this meeting. District staff called the Parent and left voice messages, then proceeded to review concerns the Parent had sent previously by email.

meaningfully participating in IEP meetings, or how the District and/or ESD bullied and/or coerced the Parent. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁵

*In the Matter of High Desert ESD & Bend-La Pine SD 1
Case No. 18-054-028*

The Department does not order Corrective Action in this case against the District or the ESD.

Dated: this 27th Day of June 2018



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

Mailing Date: June 27, 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).)

¹⁵ 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)).