

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Clackamas School
District 12

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-047

I. BACKGROUND

On November 27, 2018, the Oregon Department of Education (Department) received a Request for Complaint Investigation (Complaint) from the parent (Parent) of a student (Student) residing in the North School Clackamas School District (District). On November 27, 2018, the Department sent a copy of the Complaint to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within sixty days of receiving the complaint unless exceptional circumstances require an extension.¹ The issuance of this order was extended by five days so additional investigation could be conducted.

On December 12, 2018, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On December 26, 2018, the Department received the District's *Response* to the *Request for Response* with accompanying documentation. On January 4, 2019, the Parent forwarded previous email communication between the Parent and the District to the Department's Complaint Investigator (Investigator). The Parent did not submit a written *Reply* to the District's *Response*. On January 5, 2019, the Investigator interviewed the Parent. Thereafter, on January 8, 2019, the Parent forwarded additional email communication to the Investigator.

The District provided the following documents as part of its *Response*:

1. Notice of Team Meeting 12/27/17
2. Prior Written Notice (PWN) 1/8/18
3. Agreement regarding meeting participants 1/8/18
4. Parent Statements 1/8/18
5. IEP Meeting Notes 1/8/18
6. IEP 1/8/18
7. Placement Determination 1/8/18
8. PWN 4/5/18
9. IEP Meeting Notes 4/5/18
10. Agreement regarding meeting participants 4/5/18
11. Notice of Team Meeting 5/8/18
12. PWN 5/24/18
13. Agreement regarding meeting participants 5/24/18
14. IEP Meeting Notes 5/24/18
15. IEP portion 4/26/18
16. Notice of Team Meeting 6/6/18
17. PWN 6/14/18

¹ 34 CFR §§ 300.151-153; OAR 581-015-2030.

18. Agreement regarding meeting participants 6/14/18
19. Meeting Agenda (undated)
20. IEP Meeting Notes 6/14/18
21. Notice of Team Meeting 8/24/18
22. PWN 8/30/18
23. Agreement regarding meeting participants 8/30/18
24. IEP Meeting Notes 8/30/18
25. IEP 8/30/18
26. FBA/BSP Review 8/30/18
27. Notice of Team Meeting 9/17/18
28. PWN 9/24/18
29. Agreement regarding meeting participants 9/24/18
30. Meeting agenda (undated)
31. IEP Meeting Notes 9/24/18
32. Notice of Team Meeting 10/9/18
33. PWN 10/18/18
34. Agreement regarding meeting participants 10/18/18
35. Meeting Agenda (undated)
36. IEP Meeting Notes 10/18/18
37. IEP Goal Progress Monitoring
38. Email communication 5/12/17 to 12/13/18
39. Behavior Support Plan for the Bus 8/28/18
40. Incident Reports 9/25/17, 12/4/17, 6/13/19, 10/4/18
41. Progress Reports/Report Cards
42. Psychoeducational and Specific Learning Disability Evaluation 4/25/18
43. Woodcock-Johnson IV Score Report 1/10/18
44. Reimbursement Requests 10/25/18 to 10/31/18 and 11/1/18 to 11/29/18
45. Daily Attendance Profile 11/6-8/18 and 11/14/18
46. Policy and Request to View Video form 10/19/18
47. List of Knowledgeable Staff

On January 17, 2019, the Investigator interviewed the District's Special Education Director by telephone. On January 29, 2019, Department staff interviewed the District's Special Education Director and a District Special Education Coordinator.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.² The Parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 28, 2017, to the filing of this complaint on November 27, 2018.

	Allegations	Conclusions
1.	<p><u>IEP Implementation</u></p> <p>The Complaint alleges that the District violated the IDEA by failing to implement a</p>	<u>Not Substantiated</u>

² 34 CFR §§ 300.151-153; OAR 581-015-2030.

<p>particular provision of the Student's IEP. Specifically, the Complaint alleges:</p> <p>(a) that the District failed to implement the Student's IEP when it stopped providing transportation on October 25, 2018; and</p> <p>(b) that the District failed to implement the Student's IEP when it failed to provide "safe and accommodating transportation to and from child's out of district school placement per [the Student's] IEP . . ." between November 28, 2017 and October 25, 2018.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p>After an October 25, 2018 transportation-related behavior incident involving the Student, the District offered the related service of transportation be provided by a contracted third party to promote the safety of the Student, other students, and staff. The Parent refused this transportation. Instead, the Parent transported the Student and the District provided the Parent with reimbursement. The District did not stop offering the Student transportation between October 25, 2018 and November 27, 2018. The Department does not substantiate this allegation.</p> <p>The District timely developed a bus plan for the Student and consistently and appropriately implemented it during the Complaint period. The Department does not substantiate this allegation</p>
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Proposed Corrective Action

The Parent requests the following Proposed Solutions concerning the allegations being investigated in this matter:

"For North Clackamas Transportation to immediately reinstate providing transportation for the student on district transportation with appropriate accommodations. Additionally, to have their staff trained, as offered by * * * the school the [S]tudent attends, to help prevent future conflicts with drivers and better educate their drivers on the student[']s needs and how to appropriately interact with the [S]tudent."

III. FINDINGS OF FACT

1. The Student is nine years old and attends third grade in an out-of-district therapeutic placement. The Student enjoys drawing, dancing, and interacting with adults.
2. The Student is eligible for special education under the categories of Other Health Impairment, Emotional Disturbance, and Specific Learning Disability. The Student demonstrates need in the areas of emotional regulation, social skills, and academics. The Student engages in behaviors that are disruptive to the learning environment such as yelling, grabbing, and leaving assigned areas.

3. The Student's Individualized Education Program (IEP) calls for 60 minutes per day of "Transportation Service" as a related service, provided by a Bus Driver.
4. During the 2017-2018 school year, the Student was involved in three transportation-related behavior incidents, occurring on September 25, 2017, December 4, 2017, and June 13, 2018.
5. On September 25, 2017, the Student refused to wear a seatbelt, confronted a student, and threw the student's personal property out of a bus window. On December 4, 2017, the Student received a "Bus Referral" arising from a driver's observation that the Student was obsessing over a particular bus route that was being taken.
6. On December 5, 2017, the Parent sent an email to District staff requesting an "emergency IEP meeting" to "discuss the triggers and where the aid may have failed to provide accommodations to assist with safety and coping/emotional regulation." The Parent goes on to state that "it is my strong belief the aids and drivers providing transportation need to be more educated on the FBA that school uses as antagonizing, laughing, taunting, or acting in a very strict manner towards my student are in no way therapeutic or going to help DE-escalate a situation."
7. An IEP Team Meeting was scheduled for December 13, 2017, however the Student was hospitalized for a medical issue, the Parent cancelled the meeting, and one did not convene until January 8, 2018—after the District's Winter Recess.
8. The Student's IEP Team convened on January 8, 2018. The Parent expressed a desire "to see [the Student] have successful and consistent transportation." The January 8, 2018 IEP Meeting Notes reference a "[d]iscussion regarding transportation and transportation plan." The Team discussed the Parent's requests for accommodations during transportation and the intersection with the out-of-district therapeutic placement rules (e.g., whether the Student could possess a backpack or electronics during transportation.)
9. At various times throughout the 2017-2018 school year, the District placed an adult bus monitor during the Student's round-trip transportation if an observed need was demonstrated. The adult bus monitor was not assigned to the Student, nor any other particular student.
10. The third incident occurred on June 13, 2018. The Student got out of an assigned seat, hit the bus monitor, pulled the bus monitor's hair, assaulted other students, and attempted to reach the front of the bus.
11. The next day—June 14, 2018—the Student's IEP Team met to address some of the Parent's concerns, including transportation. In a Prior Written Notice issued on June 14, 2018, the District stated that "[t]he team will meet in the summer to discuss bus plan for transportation." The June 14, 2018 IEP Team Meeting took place on the last day of school.
12. On August 30, 2018, the Student's IEP Team met. The IEP contains language from an August 15, 2018 email from the Parent in the "Concerns of the parent(s) for enhancing the education of the student" section of the IEP. The Parent's email narrative proposes that "utilizing 1-1 behavior aid . . . would give [the Student] the security and safety needed during transportation to avoid many of the problems we encountered last year."
13. The August 30, 2018 IEP Team agreed to add a "Bus Plan" to the Student's IEP under the section of "Supplementary Aids/Services; Modifications; Accommodations." The Bus Plan describes how the Student's anxiety can manifest, behaviors of concern, and also describes a prevention plan and an intervention plan for the bus.

14. The bus prevention plan includes such components as assigning the Student to a front seat, seating the Student away from others, engaging the Student in positive conversation and praising the Student for successful bus rides. The bus intervention plan begins with check-ins with the Student, providing the Student with reassurances that assistance will be provided to solve upsetting problems, then contemplates escalated behaviors, which instructs the interventions of calling 911, then the Parent, and preventing the Student from disembarking the bus.
15. On September 26, 2018, the Student was involved in a physical confrontation with another student while the other student exited the bus after school. The Student grabbed another student's belongings, then bit, kicked, and punched the other student. Following the September 26, 2018 incident, the Student's transportation shifted from a bus to a van to reduce the likelihood of the Student being around other students who might provoke unsafe behaviors.
16. On October 4, 2018, the Student got out of an assigned seat, hit the van driver, and attempted to shift the van's gears. The Student proceeded to call the van driver names and use profanity.
17. In each of the preceding incidents, the Student's driver was a substitute. The District took efforts to have a District transportation supervisor drive the Student. The two have developed a positive relationship and no behavior incidents occurred when the District transportation supervisor drove the Student. However, the transportation supervisor's work schedule does not allow for consistent driving in the field.
18. Each of the Student's drivers, including substitute drivers, had access to and were familiar with the Student's bus plan. The drivers also each received training in de-escalation techniques. In both the September 26, 2018 and October 4, 2018 incident, the bus driver implemented strategies described in the Student's bus plan.
19. On October 25, 2018, another incident occurred during transportation. The Student left an assigned seat and attacked the driver. The driver implemented the Student's bus plan and attempted to de-escalate the Student, but the Student continued to strike the driver and attempted to leave the bus. The driver called the police and both the driver and the Student were taken to the hospital.
20. The same day, the Parent agreed to transport the Student. District staff agreed to reimburse the Parent for expenditures associated with round-trip transportation. At the same time, the District initiated the process to obtain the services of a third party contractor to provide secure transport for the Student to "start ASAP." The District later communicated to the Parent that November 6, 2018 would be the earliest date that secure transport would be in place for the Student.
21. On October 26, 2018, the District sent the Parent the necessary mileage reimbursement forms to process payment for the Parent transporting the Student to and from school.
22. The Parent transported the Student to and from school and submitted reimbursement requests for the following dates: October 25-26, 29-31 and November 1-2, 5, 13-16, 26-29. The Student was absent from school November 6-8, 2018. The school was in recess on November 9, 12, 19-23, 2018. The District processed each of the Parent's transportation reimbursement requests.
23. On November 1, 2018, the Parent sent an email to the District refusing the District's proposal to implement transportation by the third party contractor. The Parent alleged that the third party

contractor had previously allowed a student and a driver to assault the Student. On November 5, 2018, the third party contractor called the Parent to discuss potential pick-up and drop-off times for the Student. The Parent responded that if the third party contractor attempted to perform a pick-up that the Parent would call the police.

24. The Parent and the third party contractor agreed to meet on November 14, 2018 to discuss transportation. However, the third party contractor had to cancel the meeting to address an emergency transportation situation. A meeting did not reconvene before November 27, 2018.

25. On November 27, 2018, the Parent filed this Complaint.

IV. DISCUSSION

IEP Implementation

The Parent alleges that the District violated the IDEA after it stopped providing transportation to the Student after October 25, 2018. The Parent also alleges that the District failed to implement the Student's IEP between November 28, 2017 and October 25, 2018 when it failed to provide "safe and accommodating transportation" in conformity with the Student's IEP.

School districts are responsible for developing IEPs for students with disabilities that include a statement of special education and related services to be provided to the child, along with a statement of the program modifications or supports for school personnel that will be provided so that a child can advance appropriately toward attaining annual goals and participate in nonacademic activities.³ Transportation qualifies as a "related service."⁴ A school district and parent can agree that the parent will provide transportation on condition of reimbursement from a school district.⁵

A. Provision of Transportation After October 25, 2018

The Student's IEP calls for "Transportation Service" as a related service, provided by a bus driver for 60 minutes per day. While heading home on October 25, 2018, the Student left an assigned seat and physically assaulted the driver. Law enforcement was called and both the Student and the driver were taken to the hospital. Soon after the incident, the Parent and the District agreed that the Parent would transport the Student and District staff would reimburse the Parent for transportation expenditures. At the same time, the District initiated the process to obtain the services of a third party contractor to provide secure transport for the Student. By November 1, 2018, the District had arranged for a third party contractor to provide secure transportation to the Student in a way that promoted the safety of the Student, other students, and school staff. The Parent rejected the District's offer of transportation services to be provided by the third party contractor. Instead, between October 25, 2018 and November 27, 2018, the Parent provided the Student's transportation and the District reimbursed the Parent for those associated expenses.

The District fulfilled its obligation to provide transportation to the Student after October 25, 2018. The District consistently provided the Student with transportation during the Complaint period. Soon after the October 25, 2018 incident, the District and the Parent agreed to an arrangement where the Parent transported the Student and received reimbursement until the District initiated an alternative District-provided transportation plan. The District did so within one week, but the Parent

³ 34 CFR § 300.320; OAR 581-015-2200(1)(d).

⁴ 34 CFR § 300.34(a); OAR 581-015-2000(29).

⁵ *Letter to Hamilton*, 25 IDELR 520, September 12, 1996.

refused the District's proposal. Instead, the Parent continued to transport the Student and the District continued to reimburse the Parent for those efforts. The District did not deny the Student the related service of transportation after October 25, 2018. The Department does not substantiate this allegation.

B. Implementing the Student's IEP Between November 28, 2017 and October 25, 2018

The District developed and implemented appropriate interventions to address the Student's behavior while on school transportation between November 28, 2017 and October 25, 2018. When developing, reviewing, and revising the IEP for a student whose behavior impedes the child's learning or that of others, the IEP Team must "consider the use of positive behavioral interventions and supports, and other strategies to address that behavior."⁶ This includes during transportation, as "the school day begins at the bus stop."⁷ The IEP must include special education, related services, and supplementary aids and services, along with program modifications or supports that will be provide to enable a student to participate in nonacademic activities.⁸

The Student engages in disruptive behaviors such as yelling, grabbing, and leaving assigned areas. During the 2017-2018 school year, the Student was involved in three bus incidents: (1) On September 25, 2017, the Student refused to wear a seatbelt, confronted a student, and threw the student's personal property out of a bus window; (2) On December 4, 2017, the Student received a "Bus Referral" arising from a driver's observation that the Student was obsessing over a particular bus route that was being taken; and (3) On June 13, 2018, the Student got out of an assigned seat, hit the bus monitor, pulled the bus monitor's hair, assaulted other students, and attempted to reach the front of the bus. The events that transpired on June 13, 2018 prompted the Student's IEP Team to convene the next day. The District issued a Prior Written Notice the day of the IEP Team Meeting indicating that "[t]he team will meet in the summer to discuss bus plan for transportation."

As planned, on August 30, 2018, the Student's IEP Team met and added a "Bus Plan" to the Student's IEP. The Bus Plan provided details about how the Student's anxiety can manifest, behaviors of concern, and also described a prevention plan and an intervention plan during transportation. The bus prevention plan included such components as assigning the Student to a front seat, seating the Student away from others, engaging the Student in positive conversation, and praising the Student for successful bus rides. The bus intervention plan included check-ins with the Student, providing the Student with reassurances that assistance will be provided to solve upsetting problems, then contemplated escalated behaviors, which included calling 911, calling the Parent, and preventing the Student from disembarking the bus.

Three incidents occurred during the two-month period the bus plan was in place. In each of the incidents, the drivers were aware of and implemented the Student's bus plan. After the September 26, 2018 incident, the Student's transportation shifted from a bus to a van. No behavior incidents occurred on the van for a week. Then, after the October 4, 2018 incident, no incidents occurred for three weeks until the October 25, 2018 incident. Based upon the severity of the October 25, 2018 incident, the District promptly communicated to the Parent the need for the Student to receive secure transport from a third party contractor to promote the safety of the Student, other students, and school staff. When the Parent declined the District's offer, the District promptly arranged for the Parent to receive reimbursement for Parent-provided transportation. The District timely developed the Student's bus plan and consistently and appropriately implemented it during the Complaint period. The Department does not substantiate this allegation.

⁶ 34 CFR § 300.324(a)(2)(i); OAR 581-015-2205(3)(a).

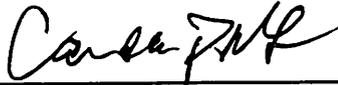
⁷ *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268, November 1, 2009.

⁸ 34 CFR § 300.320; OAR 581-015-2200(1)(d).

CORRECTIVE ACTION⁹
In the Matter of North Clackamas School District
Case No. 18-054-047

The Department does not order corrective action in this matter.

Dated this 30th Day of January 2019



Candace Pelt, Ed.D.
Assistant Superintendent
Office of Student Services

Mailing Date: January 30, 2019

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).)

⁹ 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)).