

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Portland Public School District 1J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 18-054-048

I. BACKGROUND

On November 28, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the 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 the Complaint and forwarded it to the District on November 28, 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.¹ This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On December 3, 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 December 17, 2018.

On December 14, 2018, the District submitted a *Response* in which the District disputed the allegations and asserted that the District was fully implementing the Student's IEP. In total, the District submitted the following items:

1. District Response Letter
2. District Exhibit List, 18-054-048
3. Student IEP, 09/27/2018
4. IEP Team Meeting Minutes, 09/27/2018
5. Student IEP, 09/28/2017
6. Prior Written Notice of Eligibility, 10/01/2018
7. Eligibility Summary Statement, 09/27/2018
8. Special Education Placement Determination, 09/27/2018
9. Parent/Guardian Consent for Individual Evaluation, 09/27/2018
10. Prior Written Notice, 09/27/2018
11. Disability Statement, Communication Disorder (50) 09/13/2008
12. Speech-Language Pathology Short Form Report, 09/27/2018
13. List of Student's collected assignments, 12/04/18
14. Written Communication between District and Parent 08/27/2018—11-28-2018
15. List of District staff knowledgeable about the complaint
16. Student Grade Reports

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

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

The Investigator interviewed the Parent. The Investigator determined that on-site interviews were not necessary. On January 9, 2019, the Investigator interviewed by phone the District Speech-Language Pathologist, Special Education Teacher, District Legal Counsel, and Special Education Administrator. The Investigator reviewed and considered all the above-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.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 November 29, 2017 to the filing of this Complaint on November 28, 2018.

	Allegations	Conclusions
1.	<p>Least Restrictive Environment</p> <p>The Parent alleges that the District violated the IDEA by not educating the Student with non-disabled peers to the maximum extent appropriate. The Parent alleges that the District failed to select a placement for the Student that is less restrictive and better accommodates the Student's specific disability.</p> <p>(34 CFR § 300.114; OAR 581-015-2240)</p>	<p>Not Substantiated</p> <p>The Parent requested a change in the Student's schedule, which the District noted could potentially result in a more restrictive environment than the Student's current placement. The District expressed willingness to convene an IEP Meeting to consider the Parent's concerns and the Student's needs stemming from the Student's disability. The Department does not substantiate this allegation.</p>
2.	<p>IEP Implementation</p> <p>The Parent alleges that the District violated the IDEA when it neglected to electronically post assignments such that they were available to the Parent and the Student. The Parent alleges that the District's failure to promptly post assignments and materials electronically deprived the Parent and the Student the ability to seek timely clarifications when needed to support the Student's education. The Parent further alleges that this resulted in delayed communication between the District and the Parent, which had the effect of lowering the Student's grade.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p>Not Substantiated</p> <p>Online posting of assignments is not provided for in the Student's IEP. The Student's IEP was implemented without use of the online posting system. The District is willing to convene an IEP Team Meeting to discuss adding this accommodation to the Student's IEP. The Department does not substantiate this allegation.</p>

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

III. FINDINGS OF FACT

1. The Student is in the tenth grade and attends school in the Portland Public School District (District). The Student is bilingual and speaks a different language at home. The Student is described as humorous and insightful. When needing extra help with school work, the Student reaches out to District staff.
2. The Student receives special education services under the primary eligibility category of Communication Disorder. The Student demonstrates expressive and receptive language delays that adversely impact the Student's educational performance.
3. The Student spends one period per day removed from the general education environment, attending an Academic Support class. The Student receives academic support in the area of mathematics, reading arts/language and communication.
4. On September 27, 2018, the District reevaluated the Student to determine the Student's eligibility. The District's Speech-Language Pathologist noted that the Student has met the eligibility criteria for Communication Disorder since 2006 and that evaluations have previously explored eligibility for other disabilities such as Autism Spectrum Disorder and Specific Learning Disability—none of which resulted in the Student meeting any other eligibility criteria.
5. The District Speech-Language Pathologist noted that the Student's communication delays create an obstacle to the Student accessing classroom information in the following areas: (1) Classroom-based discussion; (2) Learning and utilizing novel, academic vocabulary; (3) Understanding abstract concepts like theme, symbolism, motif, and technical concepts in science and math; (4) Summarizing complex information; (5) Organizing thoughts into coherent framework to present what the Student knows in writing and speaking; (6) Following complex directions.
6. On September 27, 2018, the Student's Individualized Education Program (IEP) Team met to develop the Student's annual IEP and determine the Student's placement. The Team determined that the Student would be placed in general education more than 80% of the time.
7. The IEP Team wrote four goals in the following areas: (1) Reading/Language Arts; (2) Math; (3) Writing Skills; and (4) Self Advocacy. One of the Student's Parents expressed a concern about the Student's social skills and was desirous that the Student spend time with friends.
8. The IEP Team agreed the Student would receive accommodations such as alternate locations for exams, checks for understanding of directions and assignments, preferential seating, visual aids, and access to graphic organizers.
9. On October 30, 2018, the Student sent a teacher an email to clarify an assignment. On October 31, 2018, the Parent sent a follow-up email inquiring whether the Student had received the requested assistance, and also asked whether one of the Student's classroom-based classes should be replaced with an online class offered by a District virtual learning program.
10. On November 1, 2018, the teacher responded, noting that the District's online system for posting assignments, "doesn't pair well with the proficiency grading and communication." In response to the Parent's inquiry as to whether the Student should take a class through a District virtual learning program, the teacher responded that it was something the Parent could pursue if the Parent believed it was a better option.
11. The Parent responded the same day, noting that there was no way "to know how [the Student] was

doing all first quarter.” The Parent stated that the lack of posted assignments and timely updates to grades resulted in a lower grade for the Student at the end of the quarter. The Parent went on to detail how posting assignments and grades sooner would have afforded the Parent the opportunity to assist the Student with assignments. As part of that same email, the Parent requested that the Student be moved to the District’s virtual learning program so that he could “track [the Student’s] assignments during the term.”

12. On November 13, 2018, the Student’s Case Manager responded to the Parent regarding the Parent’s request for the Student to enroll in the District virtual learning program, writing “[a]s [the Student’s] case manager I can not automatically make schedule changes.” The Case Manager went on to describe options regarding the Student’s education, schedule changes, and the suitability of online course work to meet Student’s needs.
13. The Parent notes that most of the Student’s teachers post assignments online and given the Student’s documented difficulties with communication, it should be an understood accommodation. The Parent also voiced a preference for online classes through the District’s virtual learning program, as this would allow the Parent to track all assignments and ongoing grades.
14. The District does not require teachers use the online system to post all assignments. The District acknowledged that many teachers utilize the resource, and stated that it was willing to explore whether such a practice would be of assistance to the Student. The District was agreeable to convening an IEP Team meeting for that purpose, and to address other concerns raised by the Parent.

IV. DISCUSSION

A. Least Restrictive Environment

The Parent alleges that the District violated the Individuals with Disabilities Education Act (IDEA) when it failed to select a placement for the Student that is less restrictive and better accommodates the Student’s specific disability. The Parent further alleges that the District unnecessarily erected barriers or obstacles to the Parent’s proposal to move the Student to an online class offered by the District’s virtual learning program.

Districts are required to educate children with disabilities, to the maximum extent possible, with children who do not have a disability.⁴ Special classes, or the removal from the general education environment should only occur where the child’s disability is such that education in regular classes cannot be achieved satisfactorily.⁵ A child’s placement is determined by a group of people, including the child’s parents, with reference to a variety of factors.⁶ Those factors include ensuring the placement is based on the child’s IEP, and consideration is given to any potential harmful effect on the child, or the quality of services that the child needs.⁷

In conformity with the Student’s September 27, 2018 IEP, the Student was removed from the general education environment for one period per day to receive specially designed instruction in the areas of study skills, organizational skills, writing, math, and reading/language arts. The Parent requested that one of the Student’s classroom-based courses be replaced with an online class through the District’s virtual learning program. Contrary to the Parent’s allegations, such a change would in fact decrease the

⁴ OAR 581-015-2240(1).

⁵ OAR 581-015-2240(2).

⁶ OAR 581-015-2250(1)(a).

⁷ OAR 581-015-2250(1)(c), (4).

amount of time the Student would interact face-to-face with general education students and District staff. Nevertheless, within seven school days, the Student's Case Manager responded to the Parent that the Student's transition to the District's virtual learning program was being discussed among District staff. The Case Manager referred the Parent to the Student's School Principal to discuss potential enrollment in the program. According to the District, such a change would require a convening of the Student's IEP Team, since the proposed change raised questions about least restrictive environment, potential changes to the Student's class schedule, path to a regular or modified diploma, and other considerations. The District was, and continues to be willing to convene an IEP Team Meeting to engage in these discussions.

The Student was appropriately removed from the general education environment in conformity with the September 27, 2018 IEP and while the District expressed willingness to discuss a placement change, none were made without following appropriate procedures under IDEA. The Department does not substantiate this allegation.

B. IEP Implementation

The Parent alleges that the District violated the IDEA when it neglected to post assignments online such that they were available to the Parent and the Student. The Parent alleges that the District's failure to promptly post assignments and materials deprived the Parent and the Student of the ability to seek timely clarifications when needed to support the Student's education, which negatively impacted the Student's grades.

As soon as possible after developing an IEP, each school district must make available the special education and related services in conformity with the IEP.⁸ The District must ensure that all staff responsible for implementing the IEP have access to the document.⁹ The District is also required to inform each teacher of their specific responsibilities for implementing the child's IEP.¹⁰

The District maintains an online system where District staff can post assignments and grade reports, which students and parent can access. The District does not require that teachers use the online system. The Student's IEP does not require that assignments be posted on the system. In September 27, 2018, it was brought to the IEP Team's attention that the Student has difficulty understanding class assignments and that at times the Student's teachers struggle to break down explanatory language in a way that meets the Student's needs. Based on this information, the September 27, 2018 IEP Team wrote a Self Advocacy goal where the Student would request teacher assistance when the Student needed clarification or questions answered. The IEP Team also added a "checks for understanding of directions and assignments" accommodation to the Student, to be delivered throughout the day in the Academic Support class and in the Student's general education classes.

The District did not violate the IDEA when it did not electronically post assignments for the Student and the Parent, and thus the Department does not substantiate this allegation. It is important to note that the District is willing to discuss this proposed accommodation, and others, to better support the Student in school.

⁸ OAR 581-015-2220(1)(b).

⁹ OAR 581-015-2220(3)(a).

¹⁰ OAR 581-015-2220(3)(b).

V. CORRECTIVE ACTION¹¹
In the Matter of Portland Public School District 1J
Case No. 18-054-048

The Department does not order corrective action in this matter. However, the Department suggests that the District convene an IEP Meeting to determine whether the current supports are sufficient and address such open concerns such as whether a modified diploma, online coursework, or other appropriate supports or modifications are suitable for the Student in light of the Student's documented disability.

Dated: this 25th Day of January 2019

Candace Pelt, Ed.D

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

Mailing Date: January 25, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 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).)

¹¹ 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)).