

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of:
Eugene School District 4J

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)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-015

I. BACKGROUND

On April 24, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Parent (Parent) of a student (Student) who receives special education services from the Eugene School District 4J (District). The Department confirmed receipt of the Complaint and forwarded it to the District on April 25, 2019.

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 of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint is April 25, 2018 through April 24, 2019.

On May 8, 2019, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of May 23, 2019. The Final Order is due to be issued by June 23, 2019.

On May 24, 2019, the District submitted a packet of materials to the Investigator. The packet was incomplete, and on May 30, 2019, the District provided the Investigator with a complete packet of response materials. These materials are listed in the chart below:

- | <u>Document Title</u> |
|--|
| 1. Table of Contents |
| 2. District Response |
| 3. Meeting Records |
| 4. Prior Written Notices |
| 5. Consent Documents |
| 6. Eligibility Evaluations |
| 7. Documentation of Alternative Methods of Communication |
| 8. Assessments to Measure Progress |
| 9. Attendance and Grade Reports/Progress Reports |
| 10. Requests for the Evaluation the Parent Submitted |
| 11. Communications (Emails) |
| 12. Other Documentation |

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

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

The Investigator determined that on-site interviews were necessary. On May 30, 2019, the Investigator interviewed the Principal of Middle School B.³ On May 31, 2019, the Investigator interviewed the Principal of School A, two special education teachers, the Assistant Principal of Middle School A, and an administrator who supervises the District's middle schools.

The Investigator reviewed and considered all these 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 the Complaint.⁴ The Parent's 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. This complaint covers the one-year period from April 25, 2018 through April 24, 2019.

<p>1. Content of IEP and When IEPs Must Be in Effect</p> <p>The Parent alleges the District has not written or implemented an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Parent alleges the Student’s IEPs in effect until April 10, 2019 did not contain goals for behavior and social skills, nor a Behavior Support Plan.</p> <p>In addition, the Parent alleges the District has not included appropriate accommodations that would help the Student be able to work more productively in the Comprehensive Learning Center (CLC). Specifically, the Student is bothered by the bright lights and the noise in the classroom, and the Parent alleges the District has refused to accommodate for these issues.</p> <p>(34 CFR § 300.320; OAR 581-015-2200)</p>	<p>Not Substantiated</p> <p>The District placed the Student in a program that was able to appropriately address the Student’s behavioral needs. The intense level of support provided in this program enabled the child to make appropriate progress.</p> <p>The District responded appropriately to the Student’s complaints about noise and lights at Middle School B.</p>
<p>2. Placements and Least Restrictive Environment</p> <p>The Parent alleges the District violated the IDEA when it decided to change the Student’s placement outside of the IEP process. In addition, the Parent alleges the District</p>	<p>Not Substantiated</p> <p>The District maintained a consistent level of service on the special education continuum for the Student, only changing locations. The Parent requested that the Student participate in</p>

³ The Student attended two different middle schools during the Complaint period, which will be referred to as Middle School A and Middle School B.

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

	<p>shortened the Student's school day outside of the IEP process.⁵</p> <p>(34 CFR §§ 300.114, 300.116 and 300.327; OARs 581-015-2240 and 2250)</p>	<p>an abbreviated school day. Such a change was addressed by the Student's IEP Team, but the Student never actually participated in an abbreviated school day schedule.</p>
<p>3.</p>	<p>General Evaluation and Reevaluation Procedures</p> <p>The Parent alleges the District violated the IDEA when it refused to conduct evaluations requested by the Parent in September and October of 2018. The Parent had asked the District to evaluate the Student for Autism and other issues.</p> <p>(34 CFR §§ 300.304 and 300.305; OAR 581-015-2110)⁶</p>	<p>Not Substantiated</p> <p>The Investigator was unable to uncover any emails, documents, or witness accounts to corroborate the Parent's allegation that a September and October 2018 request for evaluation was made to the District. In December 2018, the Team agreed to evaluations, which the Parent consented to and were conducted in a timely fashion.</p>

Issues Outside the Scope of This IDEA Investigation

The Parent alleges the District repeatedly denied the Student re-entry into the classroom after the Student had used the restroom. The Parent also alleges the District staff unnecessarily followed the Student when the Student was moving between classes in the hallway. Finally, the Parent alleges the District cornered and bullied the Student and unfairly accused the Student of criminal acts without justification. These issues were not investigated as part of this investigation into alleged violations of the IDEA. The Parent may address these issues by filing a complaint with the Eugene School District's Board of Directors.

<p>Requested Corrective Action</p>
<p>The Parent requests the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> 1. An IEP that looks at who my child is, strengths and weaknesses. And then to actually implement the IEP. 2. I'm not sure if there is a resolution to how my child was wrongly accused and treated. 3. Due Process. 4. I am having a difficult time coming up with proposed resolutions for the repeated educational, emotional, physical and social injustices that took place, by staff and administrators, at [] Middle School [A]. 5. Math Tutor. To be treated with dignity and respect.

⁵ The Parent acknowledges suggesting the abbreviated school day program, but alleges that the decision was not made during an IEP meeting with a complete IEP team in attendance.

⁶ The Parent alleges the District violated the IDEA by not convening a manifestation determination review after the student was suspended for 9.5 days during a school year. This allegation is not being investigated here because if true, it would not rise to a violation of IDEA at the present time.

III. FINDINGS OF FACT

1. The Student is fourteen years old and in the eighth grade. The Student attended District Middle School A from October 18, 2017 until December 13, 2018. The Student then transferred to Middle School B on December 14, 2018, and still attends this school.⁷ The Student is artistic, polite and helpful, and is able to advocate for personal needs.
2. At the outset of the Complaint period, the Student attended Middle School A as a seventh grader. At that time, the Student was eligible for special education services as a student with a Specific Learning Disability, established on November 5, 2017.
3. On November 6, 2017, the Student's Individualized Education Program (IEP) Team wrote a new IEP. In the Present Levels of Academic Achievement and Functional Performance (PLAAFP) section of the IEP, the Team noted the Student had adapted well to the school environment, was able to follow a daily schedule, and had made many friends.
4. The Team reported the Student's skill levels in Reading (Very Low), Math (Low), and Writing (Very Low), as tested on the Kaufman Test of Educational Achievement, 3rd Edition.⁸ The Team also noted the Student scored in the "Clinically Significant" range on Internalizing Behaviors⁹ on the Behavior Assessment System for Children (BASC-3). Finally, the Team reported the Student would benefit from a classroom with a low student-to-staff ratio to access and succeed in obtaining an education.
5. The Student's November 6, 2017 IEP contained goals in Reading, Math, and Writing. The IEP Team decided the Student needed 50 minutes of daily Specially Designed Instruction in each of these three academic goal areas, and that instruction would be provided in the general education environment and the Comprehensive Learning Center (CLC),¹⁰ with the Student being removed from the general education environment for 110 minutes per day. Finally, the Team considered and determined the Student did not need any behavioral intervention strategies other than those that would assist the Student in completing academic assignments.¹¹
6. The Student started school on September 5, 2018, as an eighth grader with the November 6, 2017 IEP still in effect, including placement in the general education environment with removal to the CLC. On September 13, 2018, the Parent called the Assistant Principal at Middle School

⁷ The District has a policy that allows students to attend a school other than the student's home school. Students with IEPs must select an alternate school that can provide the same level of support prescribed by their IEP. In this case, the Student was allowed to attend Middle School A, which is not the Student's home school, because Middle School A offers a Comprehensive Learning Classroom (CLC) program.

⁸ The Student had begun sixth grade at a third, different District middle school. This was the Student's home school, but after attending for less than a month, the Student withdrew, and was out of school for the remainder of the 2016-2017 school year. After the Student expressed interest in attending school at the beginning of the 2017-2018 school year, the Parent worked with the District to obtain a placement for the Student in a different middle school (Middle School A).

⁹ The Internalizing Problems composite measures depression, anxiety, and similar difficulties that are not marked by acting-out behaviors. This data was consistent with a medical statement provided to the District that stated the Student is diagnosed with Obsessive Compulsive Disorder, Anxiety, and Depression.

¹⁰ The District describes the Comprehensive Learning Centers as follows: "This option provides more intensive services for students with more significant needs. *Comprehensive Learning Center (CLC)* includes more structure and provides curriculum that is reduced in depth and complexity in order for students to receive more intensive engagement with the curriculum. Typically, students in a CLC placement require significant accommodations and/or modifications in order to access grade-level work."

¹¹ Shortened or modified assignments, access to manipulatives, access to word processing for writing assignments, opportunity to test in a quiet environment, checks for understanding, and preferential seating.

A, and requested the Student be placed on an abbreviated school day schedule. The Parent stated this was because the Student “struggles to get out the door every day, is overwhelmed by people and the environment, anxiety, and stamina.” The Parent called again on September 20, 2018 and made the same request.

7. The Student’s Case Manager and a District Administrator met with the Parent and the Student on September 26, 2018. The Parent informed the group that another reason for the Parent’s abbreviated school day request was that the Parent was scheduled for surgery soon and felt the Student would cope better if the Student’s school day was abbreviated.
8. On September 26, 2018, the Student’s IEP Team convened and decided to abbreviate the Student’s school day to 9:00 a.m.-12:14 p.m., Mondays through Thursday and 9:00 a.m.-11:31 a.m. on Fridays. The Parent signed the District’s Abbreviated School Day Notice and Acknowledgement form. The Student disagreed with the decision and shared an intent to continue attending full school days. The District updated the Student’s transportation to reflect the agreed-upon abbreviated school day schedule, and on September 26, 2018 sent a Prior Written Notice (PWN) to the Parent.
9. Despite the September 26, 2018 decision, the Student continued to attend school for a full-day. The only evidence indicating the Student attended less than a full days were when the Student left school early without permission. The Student refused to leave school when mid-day transportation arrived. On October 5, 2018, the Parent called the Assistant Principal to discuss the abbreviated school day schedule. According to an email the Assistant Principal sent to the IEP Team later that day, the Parent expressed anger at having received a call changing the Student’s transportation schedule to align with the agreed-upon abbreviated school day. The Parent told the Assistant Principal that the Parent’s understanding was that the Student would remain on a full-day schedule. The District returned the Student to a full-day schedule and rearranged the Student’s transportation.
10. On October 22, 2018, the Student’s IEP Team convened for an annual review of the Student’s IEP. Neither the Parent nor the Student attended the meeting.¹² The IEP Team added information to the PLAAFP, noting that the Student had developed many friendships, is artistic, has become a strong reader, has a strong sense of humor, and is well-liked. The IEP Team revised the Student’s Reading and Math goals, but maintained the existing Writing goal. The Team identified the Student’s placement as the general education environment with removal to the CLC.
11. On October 24, 2018, the Student left campus without permission. After returning to campus, the Student was upset about something and kicked in a restroom stall door, leaving mud on a door. The Student was suspended for three days. Concerned about the disciplinary action, on November 2, 2018, the Parent complained to the District Superintendent’s Office. A District Middle School Administrator organized a meeting with the Parent for November 5, 2018. At that meeting, the Parent expressed extreme dissatisfaction with and distrust of the Middle School A staff and requested the Principal and Case Manager not contact the Parent.
12. On November 16, 2018, Middle School Principal A wrote an email to the District Middle School Administrator and Special Education Director, requesting that Student be returned to the Student’s home middle school. The Middle School Principal A cited reasons such as the

¹² The Middle School A Assistant Principal left voice messages for the Parent on October 8 and 9, 2018, and spoke with the Parent on October 10, 2018, and scheduled the meeting. The District sent a meeting notice on October 11, 2018.

Student's attendance, low assignment completion rate, and recent commission of an act of vandalism at the school.

13. On December 3, 2018, the District sent the Parent a Prior Written Notice (PWN), explaining that the District had decided to return the Student to the Student's home middle school. In the PWN, the District explained that because the Student's home school also had a CLC program, this was a change in location rather than a change in special education placement.
14. The IEP Team, including the Parent, met on December 6, 2018. The Team discussed the Student's school history and the events of the previous months. The Parent told the team the Student had been diagnosed as having Asperger Syndrome at a young age and that the Student has Post-traumatic Stress Disorder, depression, and anxiety. The Team also discussed revocation of the Student's school choice and options for obtaining updated evaluations. The next day, the Parent signed a consent for the District to evaluate the Student for additional special education eligibility, focusing on the areas of Emotional Disturbance and/or Autism Spectrum Disorder.
15. On December 14, 2018, with the District's agreement, the Student enrolled not at the Student's home middle school, but at Middle School B. Middle School B has a comparable CLC program.
16. District staff began the evaluation of the Student on December 12, 2018 and completed it on March 11, 2019. The District School Psychologist, Speech and Language Specialist, and a School Psychologist Intern completed a file review, observed the Student on three different occasions, obtained a Medical Statement from the Student's physician, and administered various assessments.
17. In the summary of the Psychoeducational Evaluation report, the District School Psychologist noted the Student demonstrated a pattern of strengths and weaknesses in psychological processes related to learning academic skills, as well as significant depressive symptoms that have persisted over time and across settings. The District School Psychologist also concluded that the Student's understanding and use of social communication skills are not significantly below expectations for the Student's age. The IEP Team met on March 18, 2019, and found the Student eligible for special education services as a student with an Emotional Disturbance and a Specific Learning Disability. The Team did not find the Student eligible as a Student with an Autism Spectrum Disorder.
18. The IEP Team met on April 10, 2019 to review and revise the Student's IEP in light of the new evaluation information. The Team increased the goal expectations in Reading, wrote a Social Skills goal for the Student, and added 150 minutes per week of Specially Designed Instruction in Social Skills to be provided in the general education and resource classrooms. In response to the Student's complaints about noise in the CLC, a District Case Manager changed the location of the Student's math instruction to a Resource Room class from the CLC. The Student's Case Manager has tried a variety of other light sources in response to the Student's complaints about the lights in the CLC.
19. On April 24, 2019, the Parent filed this Complaint.

III. DISCUSSION

A. Content of IEP and When IEPs Must Be in Effect

The Parent alleges that: (1) the District did not include goals for behavior and social skills, or a behavior support plan in the Student's November 6, 2017 IEP; and (2) the District did not include appropriate accommodations in the IEP written on April 10, 2019, to address bright lights and loud noises in the CLC at Middle School B.

1. Behavior/Social Skills

While often appearing in IEPs, behavior support plans and/or behavior/social skills are not mandatory components of an IEP for a student who exhibits behavior needs in the classroom.¹³ Similarly, the U.S. Department of Education has declined to require in its regulations that positive behavioral interventions and supports for a child whose behavior impedes a student's learning or that of others be based on a functional behavioral assessment.¹⁴ Rather, a school district meets its responsibility to a student with behavioral needs when it develops an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁵ The appropriateness of a District decision under IDEA is based upon information reasonably available to the parties at the time of the IEP team meeting—the so-called "snapshot rule."¹⁶

When the Student entered Middle School A early in the beginning of the 2017-2018 school year, as a seventh grader, the Student's IEP and eligibility were both out of date. The Student had attended sixth grade for a minimal amount of time. The District re-evaluated the Student, established an eligibility of a Specific Learning Disability, and developed an IEP. The IEP focused on the Student's need for academic instruction in Reading, Writing, and Math. The IEP Team decided to place the Student in the CLC for part of the school day, a setting where the Student received intensive behavioral instruction in a structured environment. When the Student moved from Middle School A to Middle School B, the Student continued attending a CLC at the new location. At each meeting, the Student's IEP Team decided, based on information available at the time, that the Student did not need any behavioral intervention strategies besides those that would assist the Student in completing academic assignments (e.g., shortened or modified assignments, access to manipulatives, access to word processing for writing assignments, opportunity to test in a quiet environment, checks for understanding, and preferential seating).

In this case, the mere absence of behavior/social skills goals and/or a behavior support plan from the Student's November 6, 2017 IEP did not nullify the appropriateness of the Student's IEP. Based on information available at the time, the District developed an IEP where the Student would be placed in a learning environment with a low student-to-staff ratio and intensive behavioral instruction in a structured environment. This was a reasonable decision at the time. The record substantiates many different interventions and instructional strategies the staff of Middle School A used to encourage the Student to attend school, complete assignments, and exhibit positive behaviors in the educational environment. The Department does not substantiate this allegation.

¹³ The IDEA only requires the development of a behavior support plan in one narrow circumstance—after a student is subjected to a disciplinary change of placement and the conduct is found to be a manifestation of a disability. See 34 CFR § 300.530(f); OAR 581-015-2415.

¹⁴ 71 Fed. Reg. 46510, 46683.

¹⁵ *Andrew F. v. Douglas County School District Re-1*, 580 U.S. __ (2017).

¹⁶ *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017).

2. Accommodations to Address Lights/Noises

The Investigator found the District addressed the issue of loud noises in the CLC classroom by providing the Student with the accommodation of access to an appropriate, quieter workspace. Additionally, District staff have productively experimented with different interventions to mitigate effects of the fluorescent lights reported by the Student.

The IEP Team placed the Student in a program that appropriately addressed the Student's behavioral needs. Also, the District appropriately responded to the Student's complaints about noise and lights. The Department does not substantiate this allegation.

B. Placement and Least Restrictive Environment

The Parent alleges the District violated the IDEA when it made two placement decisions outside of the IEP Team process, namely by: (1) changing the Student's placement from Middle School A to Middle School B; and (2) abbreviating the Student's school day outside of the IEP process.

Each school district must ensure that students with disabilities are educated with students who are not disabled, to the maximum extent appropriate.¹⁷ School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents and others who are knowledgeable about: (1) the student; (2) the meaning of evaluation data; and (3) placement options.¹⁸ A change in placement occurs when there is a substantial or material alteration to a student's educational program.¹⁹

1. Change From Middle School A to Middle School B

The Student underwent a change in location, not a change in placement after moving from Middle School A to Middle School B. The District has several middle schools and has organized a system where varying levels of special education service on the placement continuum are replicated across these schools. The District allows families to choose a school other than the student's home school, as long as all services on the Student's IEP can be provided at the school of choice. This is what occurred in the Student's case.

The Student's IEP Team agreed to place the Student in the general education environment, with removal to the CLC program. When the Parent disagreed with actions by the Student's home school administration, the District permitted the Student to move to Middle School A. Both schools offered a general education environment and CLC classroom that provided the Student with a comparable educational program, comparable opportunities to participate in nonacademic or extracurricular activities, and a comparable opportunity to be educated with non-disabled children. After the commission of an act of vandalism and reports of low attendance, Middle School A exercised its option to revoke the family's school choice, instead offering the Student placement at Middle School B with placement in a comparable general education classroom and comparable CLC program. The Student underwent changes in location, not changes in placement. The Department does not substantiate this allegation.

¹⁷ 34 CFR § 300.114; OAR 581-015-2240.

¹⁸ OAR 581-015-2250(1).

¹⁹ Letter to Fisher, 21 IDELR 992 (OSEP 1994).

2. Abbreviated School Day

The Parent requested that the District abbreviate the Student's day when the Parent was anticipating having surgery. On September 26, 2018, the Student's IEP Team convened and agreed to abbreviate the Student's school day. The Parent signed the District's Abbreviated School Day Notice and Acknowledgement form. The Student disagreed with that request, and even after the District rearranged the Student's transportation, refused to participate in an abbreviated school day program. By October 5, 2018, the Parent changed course and insisted that the Student attend school for a full day. The District returned the Student to a full-day schedule and rearranged the Student's transportation. The District addressed the Parent-raised issue of abbreviated school day placement through the IEP process, but the Student's school day was never actually abbreviated. The Department does not substantiate this allegation.

C. General Evaluation and Reevaluation Procedures

The Parent alleges the District refused to evaluate the Student for special education eligibility in the area of Autism after the Parent made such requests in September and October 2018. Parents may initiate requests for special education evaluations and reevaluations.²⁰ If a school district refuses to evaluate a child, it must provide the parent with Prior Written Notice detailing its refusal.²¹

The Investigator was unable to uncover any emails, documents, or witness accounts to corroborate the Parent's allegation that a September and October 2018 request for evaluation was made to the District. Meanwhile, the Parent and District staff agreed on December 6, 2018 that the Student would be evaluated for additional special education eligibility, focusing on the areas of Emotional Disturbance and Autism Spectrum Disorder. The Parent signed an evaluation consent form the next day, and the Student was thereafter timely evaluated. The Department does not substantiate this allegation.

²⁰ OAR 581-015-2105.

²¹ OAR 581-015-2310.

CORRECTIVE ACTION²²
In the Matter of Eugene School District 4-J
Case No. 19-054-015

The Department does not order corrective action in this matter.

Dated: this 21st day of June, 2019

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: June 21, 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).)

²² 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)).