

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Junction City School District 69)

FINDINGS OF FACT,
CONCLUSIONS,
AND AMENDED¹
FINAL ORDER
Case No. 19-054-018

I. BACKGROUND

On April 29, 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 lives in and receives special education services from the Junction City School District 69 (District). The Department confirmed receipt of the Complaint and forwarded it to the District on April 29, 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.² This timeline may be extended if the Parent and the District agree to an 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.³ Based on the date the Department received the Complaint, the relevant period for this matter is April 30, 2018 through April 29, 2019.

On April 30, 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 14, 2019.

On May 14, 2019, the District submitted a packet of materials for the Investigator. These materials are listed below:

1. Table of Contents
2. Student IEPs in effect during the 2018-2019 school year
3. Meeting notices, meeting minutes during the 2018-2019 school year
4. Prior Written Notices during the 2018-2019 school year
5. District-approved calendar, 2018-2019
6. All documents relating to incidents of restraint and/or seclusion 2018-2019
7. Functional Behavioral Assessments/Behavior Support Plans 2018-2019
8. All communications between the Parent and District relevant to the investigation
9. Sample point cards/schedules, including 1/7/19 and 1/8/19
10. Student schedule and placement percentages
11. Apology letters sent to Parent

¹ On July 23, 2019, the District filed a request for reconsideration of the Department's findings in its Final Order, originally issued on June 20, 2019. The District made assertions about "inaccurate/incomplete factual information/conclusions" in the Order and objected to the Department's legal conclusion as to whether the District's failure to implement the Student's Individualized Education Program constituted a material failure under current law.

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

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

12. General education teacher plan book/schedule for 12/21/19

13. De-escalation input from Parent

The Investigator determined that on-site interviews were necessary. On May 22, 2019, the Investigator interviewed the Parent and the District's Special Education Director.

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 this 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 30, 2018 through April 29, 2019.

1.	<u>Placement of the Child</u> The Parent alleges that the District violated the IDEA when it changed the Student's placement on December 21, 2018 without a meeting and without parental knowledge or input. (34 CFR §§ 300.116; 300.327, and 300.501(b); OAR 581-015-2250)	<u>Not Substantiated</u> The District did not change the Student's placement. The District changed the Student's schedule for one day prior to winter break.
2.	<u>IEP Implementation</u> The Parent alleges that an accommodation of "Visual Supports, including timers" was not implemented following the change in placement. (34 CFR §§ 300.323, 300.324; OAR 581-015-2220)	<u>Not Substantiated</u> The District failed to provide the Student with visual support accommodations that were part of the Student's IEP. However, the District's failure does not rise to a material violation of the IDEA.

Requested Corrective Action
The Parent has not requested specific corrective action.

III. FINDINGS OF FACT

1. The Student is ten years old and in the fourth grade. The Student is eligible for special education services under the category of Autism Spectrum Disorder. During the Complaint

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

period, the Student wore a parentally-provided special watch that is programmed by the Student's Parents to alert the Student about transition times.

2. The Student's November 8, 2017 IEP (2017 IEP) identifies that the Student has behaviors that impede the Student's learning and/or the learning of others. The 2017 IEP contains annual goals relating to Social Skills (titled Social Emotional and Behavioral). The IEP notes the Student is to receive specially designed instruction (SDI) for academics in math, reading and writing. It also provides Social Skills SDI of 185 minutes per day. Among the accommodations in the IEP were "Visual supports - throughout the day for transitions, choice and schedules." Other accommodations in the 2017 IEP emphasize the Student's need for safe transitions, clear and consistent expectations, as well as tools to help manage the Student's sensory needs.
3. The 2017 IEP notes that the Student's participation in the general education environment and non-academic activities depends on the Student's "tolerance for the more unpredictable and uncontrolled stimuli in that setting." It also notes that the Student struggles with transitions and demonstrates inflexibility and agitation when a transition is not the Student's idea.
4. The Student's Team decided placement as, "Separate class - less than 40% in the general education class."
5. A physical copy of the 2017 IEP was kept in the Student's school's office and was available to District staff.
6. The Student's annual IEP review occurred on November 2, 2018 (2018 IEP). The 2018 IEP contained SDI in the same areas as the previous IEP, including Social Skills in the amount of 120 minutes per week. One of the accommodations was "Visual supports including timers-throughout the school day for transitions, choices, schedules and boundaries". Placement was changed to "Regular class 40-79% of the day."
7. The 2018 IEP describes the Student's need for interventions through the IEP to promote safe transitions, notice of schedules, structured routines, and a consistent environment.
8. On December 19, 2018, during lunch recess, the Student left a designated playground area through an open gate and walked to the front of the school, then entered the school through the front door.⁵ Later that day, in the school hallway, a District Instructional Assistant asked the Student to go to class. District staff reported that the Student responded by pulling on the Instructional Assistant's arms and sitting on her.
9. After school on December 19, 2018, two District administrators (a school principal and behavior specialist) met to discuss the day's events involving the Student. They reviewed the Student's out-of-date 2017 IEP and placement information. The District administrators developed a plan and decided that the Student needed more supervision for the two remaining days before winter break. District staff designated a different classroom—the Structured Learning Center (SLC)—as the Student's "home base," anticipating that the Student would attend lunch and recess with the SLC class and would be supported by SLC staff if the Student attended general education classes. The Student was familiar with the SLC.
10. A District employee left a voice message for the Student's Parents regarding the plan for the two remaining days of school before winter break.

⁵ The Student did not attempt to leave campus.

11. On December 20, 2018, the Student was absent from school.
12. On December 21, 2018, the last day before the District's winter break, the school employed a "Holiday Rotation Schedule," which is different than a typical school day schedule. The District was short-staffed and did not have the usual number of instructional assistants working that day. The District did not provide the Student with visual support accommodations on December 21, 2018.
13. On December 21, 2018, the Student's morning was unremarkable. At lunch recess, the Student played wallball. When recess ended, a District staff member asked the Student to go to the SLC, a classroom the Student's did not typically go to after lunch recess. The Student became dysregulated, hit staff, and tried to leave the playground. Staff initiated at least one physical restraint on the Student.
14. After school on December 21, 2018, the District convened a post-restraint debrief meeting. One of the Student's Parents attended the meeting. Notes from the meeting indicate that, based on the Student's level of escalation, the District staff's interventions "made sense."
15. In its response to this Complaint, the District asserts that it treated the December 21, 2018 schedule change as a disciplinary removal in response to the Student's December 19, 2018 code of conduct violation.
16. Between December 19, 2018 and December 21, 2018, the District did not inform the Parent that it would be carrying out a disciplinary removal on December 21, 2018.
17. No documents produced by the District in connection with this Complaint indicate that the Student was disciplinarily removed on December 21, 2018.
18. When school resumed after winter break, the Student's schedule returned to what it had been on December 19, 2018. The Student's placement did not deviate from the 2018 IEP Team determination and the District resumed delivering visual support accommodations to the Student.
19. There is no indication that the Student's visual support accommodations were not provided in conformity with the Student's IEP prior to December 21, 2018.
20. The 2018 IEP was later revised on February 9, 2019 to include a Behavior Support Plan as an accommodation for the Student.
21. The Parent filed this Complaint on April 29, 2019.

III. DISCUSSION

A. Placement of the Child

The Parent alleges the District violated the IDEA by changing the Student's placement without a meeting and without the Parent's knowledge or consent. 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.⁶ A change in placement occurs when there is a substantial or material alteration to a student's educational program."⁷

On December 19, 2018, the Student violated the school's code of conduct by leaving a designated playground area, then later pulling on an Instructional Assistant's arms and sitting on her. On the afternoon of December 19, 2018, District staff (a school principal and behavior specialist) decided to change the Student's schedule for the next two days to increase supervision of the Student and respond to anticipated staff shortages. However, District staff did not convene a meeting with the Parent to make such a decision. District staff reviewed the Student's out-of-date 2017 IEP and placement determination, and decided the Student would attend school in a different classroom for the balance of the pre-winter-break school sessions—December 20-21, 2018. The Student did not attend school on December 20, 2018, but did attend the following day. On the morning of December 21, 2018, the Student attended school in the SLC, a different classroom but one that was familiar to the Student.

The District asserts that no change in placement occurred because it treated the December 21, 2018 schedule change as a disciplinary removal in response to the Student's December 19, 2018 code of conduct violation.⁸ School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to another setting for up to ten school days in a school year and such removals are not considered a change in placement.⁹ Besides its written assertion in response to this Complaint, the District has not provided the Department with documentation indicating the Student's December 21, 2018 schedule change was a disciplinary removal to another setting. The District also did not produce documentation to indicate it informed the Parent that it would be carrying out a disciplinary removal on December 21, 2018. Rather, the documentation provided by the District refers to what the Student experienced on December 21, 2018 as a "schedule change."

It appears that the one-day change in the Student's schedule was not a disciplinary removal, but rather a unique, discrete, and best-intentioned response to the District being short staffed, combined with a concern that the Student was in need of close supervision the day before winter break. The evidence does not show that this schedule change rises to a change in placement. It is unfortunate that the Student's Parents were not closely involved in the District's schedule change decision-making, particularly because the change in schedule seems to have contributed to the December 21, 2018 behavioral incident involving District staff employing a physical restraint. But the change in schedule was not planned to continue for more than one day, and indeed it did not. The educational program set out in the Student's IEP was not revised, nor were any opportunities for the Student to participate in nonacademic or extracurricular activities curtailed. In large part, the Student retained the same opportunity to be educated with non-disabled children. The Department does not find the District's one-day change to the Student's schedule to be a change in placement, and thus does not substantiate this allegation.

B. IEP Implementation

The Parent also alleges the District violated the IDEA when it did not implement the Student's accommodation of "Visual Supports, including timers." A school district is obligated to provide special education and related services in accordance with the Student's IEP.¹⁰ Not every instance of a school district failing to implement a student's IEP constitutes a violation of the IDEA. Rather,

⁶ OAR 581-015-2250(1).

⁷ Letter to Fisher, 21 IDELR 992 (OSEP 1994).

⁸ OAR 581-015-2405.

⁹ OAR 581-015-2405.

¹⁰ OAR 581-015-2220(1).

it is a “material” failure to implement a student’s IEP that violates the IDEA.¹¹ A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”¹² A student’s “educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.”¹³ When applying the materiality standard, courts have “focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the service that was withheld.”¹⁴

The Student’s 2018 IEP Team decided that the accommodation of visual supports such as timers were appropriate. This accommodation was part of a broader theme in the 2018 IEP that emphasized the Student’s need for safe transitions, notice of schedules, structured routines, and a consistent environment. During at least a portion of the day on December 21, 2018, the District did not provide the Student with visual supports such as timers. The Student was involved in an incident after refusing to go to the Structured Learning Center, a classroom the Student did not typically visit after recess. The Student became dysregulated, hit staff, and attempted to leave the playground. Staff initiated at least one physical restraint on the Student.

For part of the day on December 21, 2018, the District failed to provide the Student with visual support accommodations that were an important part of the Student’s IEP. However, there is no indication that the Student’s visual support accommodations were not provided in conformity with the Student’s IEP prior to, or after, December 21, 2018. Furthermore, it does not appear that the failure to deliver the Student’s visual support accommodations on December 21, 2018 impeded or impacted the Student’s overall educational progress. The District did not implement the Student’s visual support accommodation in accordance with the IEP, but this failure does not rise to a material violation of the IDEA. The Department does not substantiate this allegation.

CORRECTIVE ACTION¹⁵

In the Matter of Junction City School District 69
Case No. 19-054-018

The Department does not order corrective action in this matter and relieves the District of any outstanding corrective action previously ordered.

Dated: this 18th day of September 2019



Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: September 18, 2019

¹¹ *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007).

¹² *Id.*

¹³ *Id.*

¹⁴ *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 276 (D.D.C. 2011).

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)).

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).)