

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Wasco County School)
District 21)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 19-054-021

I. BACKGROUND

On May 17, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the North Wasco County School District 21 (District). The Parents requested that the Department conduct a special education investigation under Oregon Administrative Rule 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request 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 Parents and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.² This order is timely.

On May 24, 2019, 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 June 7, 2019.

On June 7, 2019, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Parents' Complaint. In total, the District submitted the following items:

1. District Response in 19-054-021
2. Meeting Agenda: 05/31/2109
3. Student IEP, 05/31/2109
4. Special Education Placement Determination, 05/31/2019
5. Written Agreements between the Parent and the District
6. Behavior Intervention Plan, 05/27/2109
7. Functional Behavior Assessment, 05/23/2019
8. Student's Daily Schedule, 05/31/2019
9. Special Education Notice of Team Meeting, 05/29/2019
10. Special Education Notice of Team Meeting, 05/29/2019
11. Special Education Notice of Team Meeting, 05/24/2019
12. Meeting Notes, 05/31/2019
13. Prior Notice of Special Education Action, 05/31/2019
14. Meeting notes, 05/31/2019
15. Student IEP documents received upon 1st request from District,
16. Special Services IEP Abstract, 02/12/2018
17. Functional Behavior Assessment, 05/23/2019

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

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

18. Behavior Intervention Plan, 05/27/2019
19. Statement of Eligibility for Special Education (Communication Disorder)
20. Speech-Language Evaluation Report, 05/31/2019
21. Prior Notice and Consent for Initial Provision of Special Education Services, 05/31/2019
22. Occupational Therapy Evaluation, 05/30/2019
23. Psychoeducational Evaluation Report, 05/21/2019
24. Request for Psycho-educational Evaluation, 05/10/2019
25. Student Initial Evaluation Report, 12/15/2017
26. Letter from District to Parents, 06/03/2019
27. Parent's letter included in Student education record, 05/31/2019
28. Prior Notice of Special Education Action, 05/17/2019
29. Text messages between District and Parents
30. Email: Re: Fwd: (Student) and, 05/06/2019
31. Email: Meeting tomorrow, 05/16/219
32. Email: This Friday, 05/20/2019
33. Email: Functional Assessment Interview, 05/21/2019
34. Email: Meeting Agenda and FBA Report, 05/27/2019
35. Email: Message from "CWESRICHO6503" 05/28/2019
36. Email, BIP typed created from FBA 5/2019
37. Email: Message from "CWESRICHO6503" 05/30/2019
38. Email: conference call instructions 5/31
39. Seesaw messages sent to [Parent] from [District Staff]
40. Request for Student Records, 03/20/2019
41. SpEd Teacher Meeting Notes, 05/08/2019, 05/17/2019
42. Teacher Notes
43. Behavior Documentation: (Student)
44. Meeting notes, 05/17/2019
45. Meeting notes from SpEd teacher, 05/17/2019
46. List of Staff knowledgeable about the Student

The Investigator interviewed the Parents on June 22, 2019. The Parents provided additional documentation at that time. The Investigator determined that onsite interviews were not necessary. On June 28, 2019, the Investigator interviewed the District's Special Education Director by phone. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.³ The Parents' 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 18, 2018, to the filing of this Complaint on May 17, 2019.

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

	Allegations	Conclusions
1.	<p>Transfer Students</p> <p>The Parents allege that the District violated the IDEA when it failed to implement the Student's IEP from the previous district in which the Student was enrolled. The Parents specifically allege that despite requesting documents on or about March 20, 2019 and the Student beginning school on April 8, 2019, that as of the date of the Complaint, the District had not implemented the Student's IEP from the prior district, nor had the District conducted an initial evaluation or developed and implemented a new IEP.</p> <p>(34 CFR § 300.323; OAR 581-015-2230)</p>	<p>Substantiated in Part</p> <p>The District took reasonable steps to promptly obtain the Student's records. However, after receiving the Student's February 12, 2018 IEP on or about April 30, 2019, the District did not provide comparable services to those described in the IEP. The Department substantiates this allegation in part.</p>
2.	<p>Placement of the Child</p> <p>The Parents allege that the District violated the IDEA by not making placement determinations for the Student based on the Student's current IEP. Specifically, the Parents allege that the District unilaterally changed the Student's placement without regard to the Student's current IEP and without regard to requirements for least restrictive environment.</p> <p>(34 CFR §§ 300.116, 300.327; OAR 581-015-2250)</p>	<p>Substantiated</p> <p>The District's failure to provide comparable services is addressed above. With respect to the District's May 17, 2019 decision to change the Student's placement to home tutoring, there is no indication that the District convened an IEP Team Meeting, or obtained the Parents' consent. The former is required if the District characterized the Student as eligible for special education, the latter if the District characterized the Student as a general education student. The Department substantiates this allegation.</p>
3.	<p>Removal to an Interim Alternative Educational Setting by School District</p> <p>The Parents allege that as of May 17, 2019, the District removed the Student to an interim alternative placement without having conducted a manifestation determination, or reviewing the Student's behavioral intervention plan, modifying it as necessary to address the behavior.</p> <p>(34 CFR §§ 300.504(a)(3), 300.530, 300.533, & 300.536; OAR 581-015-2425)</p>	<p>Not Substantiated</p> <p>The record does not show that the District's May 17, 2019 placement change was a disciplinary action. Thus, the District was not required to conduct a manifestation determination review.</p>

III. FINDINGS OF FACT

1. The Student is five years old and at the time of the Complaint attended kindergarten in the North Wasco School District (District).
2. The Student previously resided and attended school in another state.
3. The Parents are in the process of adopting the Student. In the Fall of 2018, the Parents informed the District of their potentially adopting the Student and potentially enrolling the Student in the District. The Parents had traveled to visit the Student to consider foster-parenting and adoption. At that time, the Parents learned that the Student may present with behaviors of concern in the school environment.
4. On March 19, 2019, the Student was formally placed with the Parents through foster care. The Parents report having not received education documents for the Student through the foster care system.
5. On March 20, 2019, the Parents provided the District with a signed release so the District could obtain special education documents from the Student's previous out-of-state school district.
6. On March 22, 2019, the Parents completed the District's registration information for the Student, which they understood completed the District's enrollment process.
7. Between March 25 and 29, 2019, the District recessed for Spring Break. School resumed on April 1, 2019.
8. On April 3, 2019, the District faxed the Parent-executed release form to the Student's previous school district in an effort to obtain the Student's records.
9. The District reports that the Student first enrolled in the District on April 8, 2019—this being the first day the Student attended classes in the District.
10. The District reports that on April 13, 2019 it received education records related to the Student from the Student's previous school district. The District noted in its *Response* to this Complaint that the "cumulative file information was included but no special education records."
11. On April 29, 2019, the Student's building principal called the Student's previous school district in an attempt to obtain a copy of the Student's Individualized Education Program (IEP).
12. The District reports that the previous school district promised to send the requested documents that same day.
13. On April 30, 2019, the District received from the Student's previous school district an IEP-styled document titled "Status: Working Draft." The document did not include any service or placement information, nor did it include any proposed behavior interventions for the Student. It was essentially a blank IEP.
14. The District also received a "Review of Existing Data Documentation Form" that contained information about the Student in the areas of fine motor skills, sensory processing, behavior, social skills, phonological processing, and school readiness. The form is dated February 14, 2019 and

ends with a “Team Conclusions and Decision” page that suggests additional data is needed for reevaluation.

15. Following receipt of these documents, the District contacted the Student's previous school district to obtain a complete copy of the Student's IEP.
16. On either April 30, 2019 or May 1, 2019, the District received a copy of the Student's February 12, 2018 IEP. The document is titled, “The Individualized Education Program.” The February 12, 2018 IEP indicated that the previous school district had scheduled an annual IEP meeting for February 11, 2019.
17. The District called the previous school district to obtain more information but did not receive a returned call or any more information.
18. The February 12, 2018 IEP was the Student's initial IEP. The Student was identified as a child with Developmental Delay in the following areas: cognition, communications, and adaptive behavior. The IEP notes that the Student's most recent evaluation or reevaluation took place on May 18, 2016, and the “Projected Next Triennial Evaluation Date” was set for May 17, 2019.
19. The February 12, 2018 IEP noted that the Student was highly distractible and required a moderate to high level of visual and auditory cues, demonstration, and redirection to attempt tasks. “Avoidance behavior increases when [the Student] doesn't know the answer to a question . . . [the Student] may hit, kick, and bite both adults and peers when [the Student] does not get [their] way . . . When overwhelmed [the Student] will shut down and stop responding.” The IEP also noted that the Student accepted instructions better from females rather than male staff.
20. The Student's IEP included a variety of goals regarding the Student's behavior, task attendance, and following directions and group activity. The IEP also included 7.5 hours per week of adaptive behavioral supports and 7.5 hours per week of specialized instruction. In addition, the Student was scheduled to receive speech therapy, language therapy, and occupational therapy as related services, each for 30 minutes per week.
21. The IEP Team noted that the Student “requires individual and small group instruction; visual and auditory cues; frequent drill and practice; frequent demonstrations; repetition of instructions; instructions given in a variety of ways; frequent checks for understanding; and positive reinforcements.”
22. The February 12, 2018, IEP indicated that the Student may: (1) “bite, hit, and kick at peers and adults especially when [the Student] does not get [their] way;” (2) “leave the classroom or school yard without telling an adult . . .”; (3) “climb and jump off objects;” and (4) “shut down when . . . overwhelmed.”
23. On May 8, 2019, the District convened an evaluation planning meeting. The Parents and the District discussed the Student's needs. The Parents' advocate referenced the Student's previous IEP and different eligibility categories used in the Student's previous state of residence. During the meeting, the Parents expressed concern that certain interventions on the part of the District—specifically room clears—were exacerbating the Student's behavior. District meeting notes indicate that the Parents disagreed with the District decision to begin home tutoring.
24. Between April 8, 2019 and May 17, 2019, the Student did not receive specially designed instruction or related services.

25. On May 17, 2019, the District changed the Student's placement from school to home tutoring. This decision was based largely on the Student's behaviors, which the District felt were unsafe for other students and staff.
26. On May 17, 2019, the Department received this Complaint.
27. On May 31, 2019, the District convened an IEP Team Meeting and developed a new IEP for the Student.
28. During a June 28, 2019 interview between the Investigator and the District's Special Education Director, the Investigator was informed that the Student's previous district delivered more of the Student's IEP documents. Based in part on the fact that these documents were out of date, the District proceeded with evaluations and formulation of a new IEP for the Student.

IV. DISCUSSION

A. Transfer Students

The Parents allege that the District violated the IDEA when it failed to implement the Student's IEP from the previous out-of-state school district in which the Student was enrolled, or alternatively conduct new evaluations, and develop and implement a new IEP in a timely fashion.

1. Reasonable Steps to Obtain Records

The District took reasonable steps to promptly obtain the Student's educational records. When a student transfers to a school district in a new state and enrolls in a new school, the school district into which the student transfers must "take reasonable steps to promptly obtain the child's records . . . from the previous public agency in which the child was enrolled."⁴ The previous school district must likewise take reasonable steps to promptly respond to requests from the new public agency.⁵

On March 20, 2019, the Parents completed a release of records to enable the District to obtain records from the Student's previous school district. On March 22, 2019, the Parents completed the District's registration information for the Student. Between March 25 and 29, 2019, the District recessed for Spring Break. On April 3, 2019, the District sent the Parents' release to the Student's previous school district. On April 13, 2019, the District received the Student's cumulative file, but no special education documents. On April 29, 2019, the District again requested records from the Student's previous school district. On April 30, 2019, the District received a mostly blank IEP titled "Status: Working Draft" from the previous school district. The document contained some preliminary assessment data. This document did not include any services or behavior interventions for the Student. The District reports having made additional inquiries with the previous school district, finally obtaining a copy of Student's February 12, 2018 IEP on April 30, or May 1, 2019.

Within five school days of receiving the Parents' executed release of records, and within three school days of the Parents' completing registration information for the Student, the District took steps to obtain the Student's educational records from the out-of-state school district. The out-of-state school district responded with a cumulative file, but no special education records. The District followed up with the out-

⁴ 34 CFR § 300.323(g); OAR 581-015-2230.

⁵ 34 CFR § 300.323(g); OAR 581-015-2230.

of-state school district and was sent a mostly blank working draft of the Student's IEP. After exerting additional efforts, by April 30, 2019 or May 1, 2019, the District received a copy of the Student's February 12, 2018 IEP. Based on the record, the District took reasonable steps to promptly obtain the Student's educational records. The Department does not substantiate this allegation.

2. Failure to Provide Comparable Services

The District violated the IDEA when it did not provide the Student with comparable special education services to those described in the out-of-state February 12, 2018 IEP. When a student with an IEP in effect from an out-of-state school district transfers to a new school district in Oregon within the same school year, the new school district must provide a free appropriate public education (FAPE) to the child.⁶ That FAPE must include services comparable to those described in the student's previously-held IEP from the out-of-state school district, in consultation with the parents.⁷ The new school district must continue offering FAPE in this manner until it evaluates the student, if determined necessary, and develops, adopts, and implements a new IEP, if appropriate, that meets IDEA's applicable requirements.⁸

On either April 30, 2019 or May 1, 2019, the District received a copy of the Student's previously-held February 12, 2018 IEP.⁹ The IEP included several goals addressing the Student's behavior, task attendance, following directions, and peer relations. The IEP also included 7.5 hours per week of adaptive behavioral supports and 7.5 hours per week of specialized instruction. In addition, the Student was scheduled to receive speech therapy, language therapy, and occupational therapy as related services, each for 30 minutes per week. The IEP noted that that the Student's triennial evaluation date was set for May 17, 2019. There is no indication in the record that the Student had become ineligible for special education services by either team decision or parent revocation of consent.

Despite this, between either April 30, 2019 or May 1, 2019 (the day the District received the Student's February 12, 2018 IEP) and May 17, 2019, the District did not provide the Student with comparable services to those described in the February 12, 2018 IEP. There is no record that the District provided the Student with specialized instruction, adaptive behavioral supports, or related services in the areas of speech, language, or occupational therapy. The Department substantiates this allegation.

B. Placement of the Child

The Parents allege that the District violated the IDEA by not making placement determinations for the Student based on the Student's current IEP. The Parents allege that the Student had an IEP from a previous school district that was disregarded by the District. The Parents also allege that the District unilaterally changed the Student's placement to home tutoring without regard to the Student's current IEP and without regard to requirements for least restrictive environment. A school district must ensure that the educational placement of a child with a disability is determined by a group of persons knowledgeable about the child.¹⁰ Such decisions need to be made in conformity with the least restrictive environment provisions, and with reference to a child's current IEP.¹¹

⁶ OAR 581-015-2230(2).

⁷ 20 USC § 1414(d)(2)(C)(i)(II); 34 CFR § 300.323(f); OAR 581-015-2230.

⁸ OAR 581-015-2230(2)(a)-(2)(b).

⁹ There is nothing in the record to indicate that a new IEP was developed in the out-of-state school district that replaced the February 12, 2018 IEP.

¹⁰ OAR 581-015-2250(1)(a).

¹¹ OAR 581-015-2250(1)(b) & (1)(c).

On May 8, 2019, the District met with the Parents and relevant District staff to discuss the Student's behavior, needs, possible eligibility criteria for special education, and IEP planning processes. Due to behaviors observed in the school setting, the District indicated that it would likely change the Student's placement to home tutoring. On May 17, 2019, the District provided the Parents with a Prior Written Notice (PWN) documenting the District's proposal to change the Student's educational placement from the school setting to tutoring at home. The PWN indicated that, despite "multiple support options and interventions including break times, sensory pieces, and modified tasks...the general education setting continue(d) to be difficult" for the Student. The PWN referenced the then-ongoing development of a functional behavioral assessment and behavior support plan and further evaluations. The Student was placed on a home tutoring program. The Parents did not consent to the decision.

The District's failure to provide services comparable to those in the February 12, 2018 IEP is addressed above, in Section A. The May 17, 2019 decision to change the Student's placement from the school environment to home tutoring was done unilaterally by the District, without the convening of an IEP and placement team meeting. As discussed above, there is no indication that the Student's three-year eligibility had lapsed, nor that the Parents revoked consent for special education services. Given these circumstances, it was improper for the District to change the Student's placement to home tutoring outside of the placement team.¹² The Department substantiates this allegation.

C. Removal to an Interim Alternative Setting

The Parents allege that as of May 17, 2019, the District removed the Student to an interim alternative placement without having conducted a manifestation determination or reviewing the Student's behavioral intervention plan and modifying it as necessary to address the behavior. The Parents report that the Student was involved in numerous behavior incidents through the spring of the 2018-2019 school year. The Parents report that the District responded with disciplinary measures rather than referring to the Student's behavioral intervention plan or providing additional behavior supports.

School districts may remove children with disabilities from their current educational placements to an appropriate interim education setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days in a school year without regard to whether the behavior is determined to be a manifestation of the child's disability.¹³

Both in its written response to the Department and during interviews, the District noted that the change in placement was not disciplinary. Rather, the District had concerns regarding the Student's behaviors that the District determined were unsafe. The District changed the Student's placement to home tutoring while it conducted evaluations and developed an IEP for the Student. Indeed, at the May 2019 meetings, the District's change in placement was never characterized as a suspension, expulsion, or other disciplinary measure. Because the District's change in placement to home tutoring was not disciplinary in nature, it did not need to convene a manifestation determination review. The Department does not substantiate this allegation.

¹² If on May 17, 2019, the District characterized the Student as a general education student with no IEP team when it decided to place the Student on home instruction, then it ran afoul of ORS 343.161, which prohibits a school district from abbreviating a student's day without obtaining the consent of the student's parent.

¹³ OAR 581-015-2425(2).

V. CORRECTIVE ACTION¹⁴

*In the Matter of North Wasco County School District #13J
Case No. 19-054-021*

	Action Required	Submissions¹⁵	Due Date
1.	With the assistance of the County Contact, review the District's procedures for determining special education services and placement for students with disabilities transferring from out-of-state to ensure alignment with IDEA and OAR 581-015-2230 (2) and develop training materials.	Submit a copy of the procedures and materials, with edits showing,	August 9, 2019
2.	Provide training using ODE-approved materials, to District staff who may be involved in identifying and implementing special education services for students with disabilities transferring from out-of-state.	Copy of presentation, Agenda, including name of presenter, and dated sign-in sheet.	September 9, 2019
3.	Staff Development on Support to Students with Disabilities in inclusive settings. To be determined in consultation with the Department.	Evidence of completion including list of participants and sign-in sheet.	November 1, 2019

Dated: this 16th Day of July 2019

Candace Pelt, Ed.D

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

Mailing Date: July 16, 2019

¹⁴ 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)).

¹⁵ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeannray@state.or.us; fax number (503) 378-5156.

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).)