

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the
Beaverton School District 48J

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 20-054-008

I. BACKGROUND

On June 24, 2020, 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 Beaverton School District 48J (District). The Parent requested that the Department conduct a special education investigation under OAR 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 the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On June 30, 2020, the Department's Complaint 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 July 14, 2020.

Due to the District's holiday schedule, the District asked for an extension to respond, and on July 21, 2020, the District submitted a *Response* denying the allegations and providing explanation and supporting documents in support of the District's position. In total, the District submitted the following items:

1. District written response to Department's RFR
2. Prior Written Notice of Special Education Action, 05/27/2020
3. Student IEP, 04/15/2020
4. Student Special Education Progress Notes, 04/11/2019
5. Student Inclusion Plan, 04/15/2020
6. Statement of Eligibility for Special Education, 04/15/2020
7. Medical Statement or Health Assessment Statement, 04/27/2017
8. Special Education Evaluation, 04/9/2020
9. Student Behavior Support Plan, 04/15/2020
10. IEP Meeting Minutes, 04/15/2020
11. Notice of Team Meeting, 04/05/2020

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

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

12. Prior Notice about Evaluation/Consent for Evaluation, 04/06/2020
13. Prior Notice about Evaluation/Consent for Evaluation, 02/24/2020
14. IEP Evaluation Planning Meeting,
15. Notice of Team Meeting, Evaluation Planning, 02/03/2020
16. Notice of school location for 2020-21 school year, February 2020
17. Prior Notice of Special Education Action, 12/20/2019
18. Student IEP, 04/11/2019, Amended 12/20/2019
19. Student Supervision Plan, 12/20/2019
20. IEP Meeting Minutes, 12/20/2019
21. Written Agreements between the Parent and the District, 12/20/2019
22. Notice of Team Meeting, 12/16/2019
23. Prior Notice of Special Education Action, 11/04/2019
24. Student IEP, 11/04/2019
25. Email: Revised Special Education Complaint – new filing under OAR 581-015-2030, 06/24/2020
26. Email: Special Education Complaint, 06/23/2020
27. Email: ODE Special Education Complaint and request for mediation, 06/18/2020
28. Email: Re: Numbers, 06/03/2020
29. Email: Re: Numbers, 06/03/2020
30. Email: Numbers, 06/02/2020
31. Email: Fwd: (Student) Parent Request for Change in Program Location Fall 2020, 05/28/2020
32. Email: Re; High School Placement, 05/14/2020
33. Email: Discrimination, 06/02/2020
34. Email: Re: ODE Special Education Complaint and request for mediation, 06/22/2020
35. Email: Re: Follow up, 02/25/202
36. Email: Re: High School Placement, 02/11/2020
37. Email: Revised Special Education Complaint – new filing under PAR 581-015-2030, 06/24/2020
38. Email: Special Education Complaint, 06/23/2020
39. Email: Re: ODE Special Education Complaint and request for mediation, 06/22/2020
40. Email: Number, 06/02/2020
41. Email: Discrimination, 06/02/2020
42. Email: Re: ODE Special Education Complaint and request for mediation, 06/18/2020
43. Email: Fwd (Student) Parent Request for Change in Program Location Fall 2020, 05/28/2020
44. Email: Re: High School Placement, 05/14/2020
45. Email: Re: ODE Special Education Complaint and request for mediation, 06/22/2020
46. Email: Re: phone call, 06/02/2020
47. Email: Now?!, 06/02/2020
48. Email: Re: High School Placement, 05/13/2020
49. Email: Checking in, 03/31/2020
50. Email: Re: HS Placement, 02/10/2020

The Complaint Investigator interviewed the Parent on June 26, 2020. The Parent provided additional materials on July 23, 2020. Virtual meetings were chosen instead of onsite interviews due to the Coronavirus pandemic. On July 30, 2020, the Complaint Investigator interviewed the District's Director of Student Services and Assistant Director for Special Education, and

District Legal Counsel, regarding this matter. The Complaint 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 under 34 CFR §§ 300.151-153 and OAR 581-015-2030. 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 June 24, 2019, to the filing of this Complaint on June 25, 2020.

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Parent Participation</u></p> <p>The Parents alleged that the District violated the IDEA when the District failed to afford the Parents with the opportunity to participate in a meeting where the District determined the educational placement of the Student.</p> <p>(OAR 581-015-2190, 34 CFR 300.500, 200.327 & 300.501(b))</p>	<p><u>Not Substantiated</u></p> <p>The Parents attended and participated at all meetings during the last year regarding the Student's IEP review, development, and placement determination.</p>
2	<p><u>Placement of the Child</u></p> <p>The Parents alleged that the District violated the IDEA when it failed to determine the Student's educational placement by:</p> <ul style="list-style-type: none"> (a) Utilizing a group of person, including the Parents; (b) Considering a location as close as possible to the Student's home; and (c) Considering the possible harmful effects on the Student. <p>(OAR 581-015-2250, 34 CFR 300.116, 300.327)</p>	<p><u>Not Substantiated</u></p> <p>The District determined the Student's educational placement with the Student's IEP Team, and considered the proximity of that educational program's physical location to the Student's home, and the possible harmful effects of alternative locations.</p>

III. FINDINGS OF FACT

Background

- 1) The Student in this case is an 8th grade student preparing to begin high school. The Student qualifies for special education services under the category of Autism Spectrum Disorder.
- 2) The Student displays needs in the areas of reading in the general education setting and higher-level thinking skills related to abstract thought. The Student received specially designed instruction in reading, writing, mathematics, and communication, as well as social emotional needs and behavior. The Student also received host of additional services and supports.
- 3) Due to the nature of the instruction, the Student's IEP Team determined that the Student would be best served by removal from the general education setting in favor of smaller classes and with more specially designed instruction to include visual, communication, academic, and social/emotional support.
- 4) The Student enrolled in the District during the 2014/2015 school year after transferring from out of state.
- 5) Since enrolling in the District, the Student was continuously placed in the Academic Learning Center (ALC). The ALC is a special class with a focus on academics, social emotional skills and life skills.
- 6) The Student's Parents noted that the Student specifically struggles with transitions, especially transitions to new environments. The Student's IEP parent concerns section documents the Parents' concern regarding transitioning to high school given challenges the Student faced transitioning to the District from out of state.
- 7) The Student has a Supervision Plan. The Supervision Plan addresses some concerns with possible lagging social skills, maturity, and physical development. The supervision plan addresses appropriate physical touch and personal space. Part of the plan indicates appropriate seating during group events, and suggests the Student's sibling as an appropriate seat-mate.
- 8) In February of 2020, the District sent the Parents a letter regarding school assignment for the following school year. The District's letter noted that, "In an effort to effectively serve students who receive their special education services in a Specialized Program within the District, the Special Education Department conducts an annual internal audit and determined school locations for student for the following year." The letter informed the Parents that that the Student would be assigned to School 2. The Student's neighborhood school is School 1.
- 9) On February 24, 2020, the District held an evaluation planning meeting ahead of the Student's upcoming three-year IEP reevaluation date.
 - a) The District noted that the Student would receive instruction in the ALC at the proposed school building location while receiving general education instruction in

such areas as electives.

- b) During this meeting, the Student's Parents discussed their concerns around the Student's transition to high school and referred to the Student's struggles transitioning to middle school, especially if the Student was to attend a school other than the neighborhood school for high school. Among the concerns raised was that the Student would attend a school different than their sibling one grade behind them.
- 10) On February 10, 2020, the Parents sent an email to the District expressing displeasure with the Student's assignment to School 2 rather than School 1 and mentioned such impacts as the family having children in two different schools. On February 11, 2020, the District responded that they would document the request and consider the request as the District worked to manage class sizes.
- 11) On February 25, 2020, the District sent an email to the Parents informing them that several families had requested reconsideration of student building assignments, and that decisions would be made in May.
- 12) On April 5, 2020, the District sent the Parents a Notice of Team meeting for the Student's scheduled IEP Team meeting. The District proposed to hold the meeting by virtual meeting due to Covid-19. The meeting, scheduled for April 15, 2020 was to develop and review the Student's IEP.
- 13) The Student's IEP Team met on April 15, 2020 to review the IEP. The Parents were present for this meeting. The IEP Team indicated that due to state-wide school closures brought on by Covid-19 the IEP Team had completed a combined report and file review ahead of the meeting. The Student's Case Manager noted that the Student has been in the ALC program with the same peers that would be attending School 2, and is likely quite comfortable with them.
- 14) On May 14, 2020, the District sent an email to the Parents indicating that all parent requests for changes to District building assignments would be reviewed in early June.
- 15) On May 27, 2020, the District provided the Parents with a Prior Written Notice declining to change the Student's assignment from School 2 to School 1. The District indicated that the change in program location from School 2 to School 1 was not possible due to the number of students in the ALC programs at both locations.
- 16) On June 3, 2020, the Director of Special Education responded to an email sent by the Parents requesting projected enrollment numbers for the ALC programs at the two schools. The Director of Special Education projected that School 1 would have 23 students in the ALC, while School 2 would have 17 students in the ALC at that location. The Parent was told during a phone conversation on the previous day that if the Student attended the ALC at School 1, the Student would be the only 9th grader in the program.
- 17) On June 18, 2020, the Parents filed an IDEA complaint with the Department. The Department rejected this complaint for failure to state a violation of the IDEA.
- 18) On June 24, 2020, the Parents filed this Complaint.

- 19) On June 26, 2020, the Department's Complaint Investigator interviewed the Parents by phone. During that interview the Parent alleged in part that the District verbally reported that the change in school building assignment was made for the administrative convenience of case managers in each building.
- 20) On July 30, 2020, the Department's Complaint Investigator interviewed the District's Director of Special Education, Assistant Administrator for Special Education, and District Legal Counsel regarding these issues.

IV. DISCUSSION

1. Parent Participation

The Parents alleged that the District violated the IDEA when the District failed to afford them the opportunity to participate in a meeting where the District determined the educational placement of the Student. The Parents note that the IDEA requires that the educational placement of a child be determined by a team that includes the Parents. The Parents alleged that the District determined the educational placement without their input.

Districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child.³ Districts must provide written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.⁴ Such notice must include the purpose of the meeting, and the proposed date, time, location, and list of attendees.⁵

During the relevant period, the District held three meetings to review the Student's IEP, December 20, 2019, February 24, 2020, and April 15, 2020. The Parent received advance notice and attended all three meetings. At the meetings, the Student's IEP team discussed the Student's educational placement in the District's Academic Learning Center (ALC) classroom. Given the specialized instruction the Student requires, the Student's IEP Team, including the Parents, agreed that the ALC was the appropriate setting for the delivery of instruction.

The Department does not substantiate this allegation.

2. Placement of the Child

A school district is responsible for ensuring that the IEP Team for each student with a disability includes specific participants.⁶ A student's IEP is reviewed annually, and as needed to address any lack of expected progress toward the annual goals.⁷ Changes to the IEP may be made

³ OAR 581-015-2190(1)

⁴ OAR 581-015-2190(2)(a)

⁵ OAR 584-015-2190(2)(b)

⁶ OAR 581-015-2210.

⁷ OAR 581-015-2225(1)(b)

either by the entire IEP team at an IEP team meeting, or by amending the IEP.⁸ When determining the placement of the student, the district must ensure that the placement is as close as possible to the student's home.⁹ Unless the student's IEP requires some other arrangement, the student should be educated in the school that they would attend if not disabled.¹⁰ The physical location where a student attends school is not the same as their educational placement.¹¹ "Placement does not mean a 'particular school,'" rather it refers to the "setting" and "general education program of the student."¹² The educational placement of a student with a disability is determined by a group of people, including the parents, and others knowledgeable about the child.¹³ The district must ensure the student's educational placement is based on the child's current IEP, and consideration must be given to any potential harmful effect on the child.¹⁴ An offer of FAPE is generally the IEP developed by a district. To "meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁵

The Student's current educational placement was in the ALC classroom of the middle school the Student attended during the 2019-2020 school year. The ALC provides a higher student teacher ratio and greater support for the delivery of the specially designed instruction called for in the Student's IEP. Near the beginning of February 2020, the District sent the Parents a letter informing them that the Student would attend School 2, rather than School 1 at the start of the 2020/2021 school year. On February 24, 2020, the District held a meeting with the Student's IEP Team members to review the Student's IEP in advance of the Student's three-year IEP reevaluation. At that meeting there was no disagreement that the Student would continue to receive the bulk of their instruction in the ALC classroom, while accessing general education electives. On April 15, 2020, the Student's IEP Team met to review the IEP. During the meeting, the IEP Team discussed the Student's comfort level with ALC classmates. The IEP Team also discussed the added support for the specialized services the Student required that the ALC provides.

The District determined that were the Student to attend School 1, the Student would be the only 9th grade student in the ALC classroom there. Given the lack of a 9th grade cohort, the District assigned the Student to School 2. During the Department's interview with the District, the District highlighted that it was important that the Student have classmates from the ALC when they attended general education classes. The District denied the school assignment was made for the convenience of staff, rather the determination was made to ensure the Student had grade level ALC peers in the ALC and general education environment.

The District maintained the Student's educational placement while changing the Student's school assignment. There are six high schools in the District. School 2 is the next closest school to the Student's neighborhood school, School 1. The District determined that attendance at

⁸ OAR 581-015-2225(3)

⁹ OAR 581-015-2250(1)(e)

¹⁰ OAR 581-015-2250(3)

¹¹ R.M. v. Gilbert Unified School District, 119 LRP 16384 (2019)

¹² N.D. v. Hawaii Department of Education, 600 F.3d 1105, 1116 (9th Cir. 2010)

¹³ OAR 581-015-2250(1)(a)

¹⁴ OAR 581-015-2250(1)(c), and OAR 581-015-2250(4)

¹⁵ Endrew F., v Douglas County School District Re-1, 137 S. Ct. 988, 999 (2017)

School 1 would be detrimental to the Student give that there were no other 9th graders set to attend the ALC classroom at School 1. School 2 would provide the Student the opportunity to attend school with grade levels peers in the ALC classroom as well as ALC classroom peers in the general education environment. As explained above, a change in physical location does not equate to a change in placement that requires the input of the Student's IEP team. Furthermore, in making the determination to assign the Student to School 2, the District did consider the potential negative effects of the placement and the location's proximity to the Student's home.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁶

*In the Matter of Beaverton School District #48J
Case No. 20-054-008*

The Department does not order correction action in this matter.

Dated: this 5th Day of August 2020

Candace Pelt, Ed.D

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

Mailing Date: August 5, 2020

¹⁶ 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)).