

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Greater Albany School)
District 8J)

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 20-054-014

I. BACKGROUND

On November 17, 2020, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from Legal Counsel for the parents (Parents) of a student (Student) residing and attending school in the Greater Albany School District (District). The Complaint requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. Legal Counsel for the Parents provided a copy of the Complaint and attachments to the District on November 16, 2020. The Department provided the District with a copy of the Complaint on November 17, 2020.

The Complaint included the following attached documents:

1. "Exhibit One": *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007) (3 pages)
2. "Exhibit Two": Emails between Parents and District Staff from September 2019 to January 2020 (8 pages)
3. "Exhibit Three": Confidential Student Incident Report 7/1/2019 to 6/30/2020 (4 pages)
4. "Exhibit Four": Police Report Dated January 9, 2020 (3 pages)
5. "Exhibit Five": March 2020 IEP (16 pages)
6. "Exhibit Six": April 2020 IEP (15 pages)
7. "Exhibit Seven": *Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County Sch. Dist.*, 71 IDELR 68 (EDU 2017) (8 pages)

On November 25, 2020, the Department sent a Request for Response ("RFR") to the District identifying the specific allegations in the Complaint to be investigated and establishing a response timeline.

On December 8, 2020, the District timely remitted its response via email and first class mail to the Complaint Investigator ("Investigator"). The *Response* included a narrative, and the following documents upon which the Investigator relied:

1. Statement of Eligibility dated March 21, 2018 (initial eligibility - 1 page)
2. IEP dated April 26, 2019 (25 pages)
3. Progress Report on Communication-social goal January 24, 2020 (1 page)
4. Confidential Student Incident Report September 1, 2019 to June 16, 2021 (4 pages)
5. Office Discipline Referrals September 11, 2019 to January 9, 2020 (16 pages)
6. Email Communication September 10, 2019 to September 15, 2020 (120 pages)
7. IEP dated April 27, 2020 and amended October 9, 2020 and November 6, 2020 (33 pages)
8. Intervention Planning November 6, 2020 (22 pages)
9. Notice of Team Meeting on September 16, 2020 (2 pages)
10. Meeting Notes of March 11, 2020 meeting (1 page)
11. Documents regarding April 26, 2020 meeting (20 pages)
12. Notice of Team Meeting on March 11, 2020 (1 page)
13. Prior Written Notice dated March 11, 2020 (3 pages)
14. Progress Report on self-management goal June 8, 2020 (1 page)
15. Progress Report on Communication-social goal June 8, 2020 (1 page)
16. Student Grade Reports January 29, 2020 and June 8, 2020 (2 pages)

17. Language Use Survey August 19, 2029 (1 page)
18. Benchmark Assessment (Kindergarten) September 12, 2019 (1 page)
19. Kindergarten Assessment Book October 21, 2019 (18 pages)
20. Student Benchmark Assessment History 2019-2020 school year (1 page)
21. Occupational Therapy Sensory Evaluation November 30, 2020 (6 pages)
22. Draft Safety Plan December 1, 2020 (3 pages)
23. Functional Behavior Assessment (13 pages)
24. List of Knowledgeable Staff (1 page)

On December 15, 2020, the Investigator received, via email, a written *Reply* from Legal Counsel for the Parents. This *Reply* did not include any additional materials.

The Investigator determined that telephone interviews were required. On December 17, 2020, the Investigator interviewed Legal Counsel for the Parents by telephone. On January 5, 2021, the Investigator interviewed District personnel by telephone.

The Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

The Department has jurisdiction to resolve this Complaint.¹ Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department’s receipt of the complaint. This Complaint covers the one-year period from November 18, 2019 to November 17, 2020. The Department must issue a final order within sixty days of receiving the Complaint, not counting the time period during which the investigation was paused for the parties to pursue mediation. This Order is timely.

II. ALLEGATIONS AND CONCLUSIONS

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 the Discussion in Section IV.

Allegations	Conclusions
<p>1. Failure to Evaluate</p> <p>The Complaint alleges that the District violated the IDEA because it failed to evaluate the Student in all areas of need during the 2019-2020 school year. Specifically, the Complaint alleges that “despite a serious elopement from school grounds, as well as fifteen other disciplinary reports, District failed to conduct a Functional Behavior Assessment and/or develop a Behavior Intervention Plan for Student during the 2019-20 academic year.”</p> <p>(34 CFR § 300.301, OAR 581-015-2105; OAR 581-015-2000(11)).</p>	<p>Not Substantiated.</p> <p>The Student exhibited behaviors that impeded their learning or that of others during the first semester of kindergarten, and the District utilized a number of interventions to address the behaviors. The Student’s behavioral incidents were varied in nature and did not place the Student and/or others at risk of imminent serious bodily injury until the Student eloped from school grounds on January 9, 2020. At that time, the Parents removed the Student from school and enrolled the Student in an online charter school in a different school district. Upon the Student’s reenrollment, the District convened an IEP meeting, which</p>

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

	<p>occurred on March 11, 2020. During this meeting, the IEP Team discussed the need for a Functional Behavior Assessment. However, on March 12, 2020, Oregon schools were closed under an executive order due to COVID-19, and in-person instruction was not possible during the remainder of the school year and into the 2020-21 school year. Therefore, the FBA was not completed until November 2020. The District completed the FBA as soon as practicable after the January 9, 2020 incident.</p>
<p>2. Denial of FAPE</p> <p>The Complaint alleges that the District violated the IDEA because it did not provide a "meaningful educational benefit" to the Student and thus failed to provide the Student a free appropriate public education (FAPE) when during the complaint period the District failed to appropriately address the Student's behavior and ensure Student's safety, resulting in the Student's inability to regularly attend school.</p> <p>(34 CFR § 300.101, OAR 581-15-2040)</p>	<p>Not Substantiated.</p> <p>The Parents did not return the Student to school after the January 9, 2020 elopement. When contacted by the District, the Parents informed the District that they were going to homeschool the Student. The Parents were informed that the District "stood ready" to serve the Student. On January 21, 2020, the Parents emailed the District requesting documents necessary to enroll the Student in an online school, which the District provided. The Parents enrolled the Student in an online charter school sponsored by another school district on February 7, 2020. The Parents reenrolled the Student in the District on March 9, 2020, and the District held an IEP meeting on March 11, 2020. During that meeting, plans were made to move forward with an FBA, which was subsequently completed.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ol style="list-style-type: none"> 1. The Department should require training for District special education staff regarding IEPs, evaluations, and behavior services. 2. The Department should order compensatory education for Student's lost educational opportunities. 3. The Department should order a facilitated IEP meeting.

III. FINDINGS OF FACT

Background Facts

1. The Student is six years old and is currently in the first grade. The Student is eligible for special education services under the category of Developmental Delay ("DD").
2. From the beginning of the 2019-2020 school year, the Student attended kindergarten. Prior to kindergarten, the Student received ECSE (Early Childhood Special Education) services through an IFSP (Individualized Family Service Plan), under an eligibility of DD

(Developmental Delay), with an initial eligibility date of March 21, 2018. The Student's IEP team developed an IEP on April 26, 2019, the Spring before the Student began kindergarten in the Fall of 2019. The Student's IEP included 2 goals: "Self management" and "Communication-social." The Student's IEP provided for regular education with "90 minutes a month of Specially Designed Instruction (SDI) in the Speech Room and 75 minutes of SDI in the General Education Classroom."

Behavior Incidents and Response

3. The Student's first documented behavior incident occurred on September 11, 2019, when the Student said the Student was going home and ran outside. The response in the incident report is "document information" and "Individual Instruction/Re-Teach." On September 19, 2019, the Student "refused to follow PE teacher instructions and ran around the gym. The student left the gym 2x without telling PE teacher or (staff member). Refusal to come back into gym and participated for maybe 5 minutes of entire PE time." The response indicated in the incident report is "Document information" and "Individual Instruction/Re-Teach."
4. On September 26, 2019, another student reported the Student had wrapped a jump rope around the other student's neck and pulled; and Student reported that he did this because the other student made the Student mad. The response indicated in the incident report is "Document Information", "Individual Instruction/Re-Teach", and "Loss of Privilege - Structured recesses."
5. On October 2, 2019, the Student ran down the hall on the way back to class, ignoring staff requests to walk. Upon reaching the classroom and being reminded of hallway expectations, the Student walked away, ignoring instructions to stop, and went out the playground doors, across the playground, and stopped on the porch outside of the kindergarten playground doors because the doors were locked. The response indicated in the incident report is "Document information" and "Individual Instruction/Re-Teach."
6. On October 3, 2019, the Student pushed another student. The response in the incident report is "Document information", "Individual Instruction/Re-Teach", and "Parent Contact, Call, teacher talked to parents."
7. On October 9, 2019, the Student left the classroom without permission and walked into the other kindergarten classroom to "find my friends." Staff followed the Student and tried to get him to return but the Student continued to walk down the hall, out the doors, across the playground, and stopped to talk with a recess aide. Staff then walked the Student back to class. The response in the incident report is "Document information" and "Individual Instruction/Re-Teach."
8. On November 13, 2019, the Student dropped a marker cap and, as he was bending down to grab it, said to himself "give me that f***** lid." The response in the incident report is "Document Information" and "Individual Instruction/Re-Teach."
9. The behavior incidents in the previous paragraphs all occurred more than one year before the filing of the Complaint in this matter, and were set forth to provide context. The following behavior incident reports were issued within one year of the filing of this Complaint, as follows:
10. On December 3, 2019, at 11:00 a.m., the Student "stabbed a student with a pencil." The response in the incident report is "Conference with Student", "Document Information" and "Individual Instruction/Re-Teach - during lunch recess." During an interview with the Investigator, the staff member who reported this incident stated that the pencil did not break

through the skin and that the student who was “stabbed” did not seem to be in any pain. The Student was apparently upset that the other student would not return a book to the Student. The same day, beginning at 12:00 p.m., the Student “refused to answer questions/follow directions, ran across the top of a table multiple times, turned a chair upside down, moved furniture around the room, made noises while [the teacher] was reading a story, [and] dumped soap on bathroom floor.” The response in the incident report is “Document Information”, “Loss of Privilege” and “Parent Contact.”

11. On December 4, 2019, at 10:50 a.m., the Student “and another child were using a sensory bin together. [The Student] picked up a handful of dried beans and poured them over the other child’s head. [Staff] talked to [the Student] about this being unkind, etc. [The Student] said the ‘F’ word 2x. We talked about using those words being inapprop. [The Student] went and sat [with the teacher], remainder of time.” The response in the incident report is “Conference with Student” and “Document Information.” Later that day, the Student was “running around the room, loud, slid things (jar, basket of papers) off [the teacher’s] desk and it landed on another student’s head, hiding under desk, refusing to do work.” The response in the incident report is “Document Information”, “Individual Instruction/Re-Teach”, “Loss of Privilege - discovery time”, “Parent Contact” and “Time Out: Office.”
12. On December 6, 2019, “At recess [the Student] pushed another student to the ground and held him down while the other student was crying.” The response in the incident report is “Lose Recess.”
13. On January 7, 2020, at 2:10 p.m., the Student “was very disruptive during instructional time. When [staff] asked [the Student] to sit out [the Student] remained disruptive & then left the gym without permission.” The response in the incident report is “Conference with Student w/ teacher” and “Document Information.” Later that day, the Student “punched another student during PE.” The response in the incident report is “Document Information”, “Individual Instruction” and “Time Out: Focus Room.”
14. On January 9, 2020, at 11:40 a.m., “During structured recess in the [focus room], [the Student] continually said unkind things and called another student by a silly, made up name. [The Student] resisted redirection. When [staff] told [the Student] to put the Legos away (consequence for defiance), [the Student] walked out of the [focus room] & went to the office. [The Student] came back about 5 mins. Later.” The response in the incident report is “Conference with Student”, “Document Information” and “Individual Instruction/Re-Teach.” Also on January 9, 2020, at 1:30 p.m., the Student “said [the Student] was upset with [the Student’s] teacher, [and] also said [the] classroom was too noisy, so [the Student] walked out. The office received a call that [the Student] was at [an automobile dealership], across Pacific Hwy. Principal and beh. Support drove to pick [the Student] up. The man at [the automobile dealership] said he saw [the Student] running across the highway. [The Student] said [the Student] wanted to check out old cars.” The response in the incident report is “Document Information”, “Individual Instruction/Re-Teach”, Time Out: Focus Room.” The Student managed to cross four lanes of a busy highway during this elopement.
15. The staff member who completed five of the eighteen “Office Discipline Referral” forms reviewed in this matter stated that the staff member did not determine how behavior referrals were classified, but that the staff member’s supervisors, primarily the Principal, made that determination. Thirteen of the eighteen referrals classified the incidents as “minor” and four referrals included no classification. The only referral classified as “major” was for the incident involving the jump rope that was mentioned in Finding of Fact 4.
16. District staff reported to the Department’s Complaint Investigator that from September of 2019

to December of 2019, the behavior support team individually addressed and supported the Student with the Student's behavior issues.

17. The Parents did not return the Student to school following the incident on January 9, 2020 due to their concerns for the safety of the Student. The Parents, when contacted by telephone by District staff, said that the Student would not be attending school in the District. The Parents kept the Student out of school for approximately two weeks while researching online learning options, during which time the District contacted the Parents on multiple occasions and advised the Parents that the District stood ready to provide services to the Student. The Parents contacted the District on January 21, 2020 and requested documents from the District so that they could enroll the Student in an online charter school, and enrolled the Student in an online charter school sponsored by another school district on February 7, 2020. The Parents withdrew the Student from the online charter school on February 22, 2020.
18. The Parents decided to reenroll the Student in the District, and on March 11, 2020, the Student's IEP team, including one of the Student's Parents, met. The IEP team discussed the Student's elopement behavior. The IEP team discussed looking for specific indicators when the Student was likely to elope and decided to use interventions such as a "special tent for [the Student] to take a break" and social stories when the Student needed a break. The meeting notes also state that a contractor from the regional ESD, "a functional behavior analyst", will come in to observe the Student and "will be looking at [the Student's] behavior and trying to find [the Student's] triggers . . . [and] this will help support the reason for [the Student's] 1:1."
19. A Prior Written Notice (PWN) dated March 11, 2020 states: "The IEP team met to revise the IEP to adjust the placement page to reflect [the Student's] return to [the District elementary school] on a shortened day. The goals were reviewed and adjusted to reflect [the Student's] need for structure and self-regulation. Permission for an FBA and the shortened day agreement was signed. A step up plan was also reviewed." However, the documents provided by the District did not include a signed parental consent for an FBA. District staff reported they did not recall consent being signed at the time of the IEP meeting on March 11, 2020.
20. The District's *Response* aptly summarizes the events beginning the next day and the impact on the FBA process concerning the Student: "On March 12, 2020 (the very next day) Governor Brown ordered schools closed and they have been closed [to in-person learning] in Albany ever since. Because an important part of an FBA is observations in the school setting and the school closure was unprecedented there was uncertainty with how to proceed and the FBA was delayed. The FBA was ultimately completed virtually in November of 2020."
21. During interviews with the Department's Complaint Investigator, staff members reported that the delivery of instruction to District students constantly evolved during April of 2020 through June of 2020. District staff reported that the District did not begin any type of virtual instruction until April of 2020; and that the Parents did not choose to continue SLP services at that time, because the Parents did not believe the Student would do well with telephone and video calls. In mid-April of 2020, District staff sent to the Parents materials for home activities. The District did not provide "live" online instruction until the end of the 2019-2020 school year.
22. The Student's IEP team met on October 9, 2020, after the beginning of the 2020-2021 school year, and the District is delivering all instruction online. At that time, the Parents signed a consent for an FBA and some of the Student's services were adjusted.
23. The FBA was completed in November, 2020, and the District has now implemented a Behavior Support Plan, dated December 1, 2020.

FAPE and Progress

24. In the District's *Response*, the District states that it provided the Student with FAPE, as evidenced by Student's progress on the Student's IEP goals. District staff reported that progress reports were due in January and June of each school year. The District staff member responsible for the progress report on the Student's self-management goal did not provide a progress report in late January, because the Student had withdrawn from the District by the January, 2020 report date.
25. The progress reports provided by the District, concerning the Student's goals are as follows:
- a. A progress report dated January 24, 2020, concerning the Student's "Communication-Social" goal. This progress report states the Student met one of the objectives (taking 2-3 turns playing with a peer given adult support); and that the Student is "In progress" on another objective (taking 2-3 turns in conversation with a peer given adult support); with the remaining objective "Not yet targeted."
 - b. Two progress reports dated June 8, 2020, concerning both the Student's "self-management" and "Communication-Social" goals. These progress reports state that the District reported the Student's progress at a meeting on April 27, 2020; and that this meeting was held during the school closure due to COVID-19.
 - c. Report cards from the 2019-2020 school year, which include grades for only the 1st semester of the 2019-2020 school year, as reported in January of 2019. The second semester report card contains only "NA" for grades.
 - d. A "Benchmark Assessment (Kindergarten)" dated September 12, 2019, which reports the Student's beginning levels only.
 - e. A "Kindergarten Assessment Book" erroneously dated October 21, 2011, which likely should have been dated October 21, 2019, since the Student was not born until June of 2014. This assessment book does not indicate progress, since it only reflects scores on a particular date.
 - f. A "Student Benchmark Assessment History" for the 2019-2020 school year. This assessment shows only a score for "First Sound Fluency."

IV. DISCUSSION

1. Failure to Evaluate.

The Complaint alleges that the District violated the IDEA because it failed to evaluate the Student in all areas of need during the 2019-2020 school year. Specifically, the Complaint alleges that "despite a serious elopement from school grounds, as well as fifteen other disciplinary reports, District failed to conduct a Functional Behavior Assessment and/or develop a Behavior Intervention Plan for Student during the 2019-20 academic year."

OAR 581-015-2105(4) requires school districts to reevaluate students if the district "determines that the educational or related services needs, including improved academic and functional performance, of the child warrant a reevaluation, or if the child's parents or teacher requests a reevaluation." In the present case, the District determined that a reevaluation was not warranted. The Student did have a number of behavioral incident reports, but the incidents were somewhat inconsistent in nature and were not atypical for a student in the first semester of kindergarten. Numerous interventions were attempted, and between late October and early December, the Student's behavior improved significantly, as evidenced by a reduction of behavior referrals during this period. At no time did the Parents request a reevaluation prior to

January 9, 2020. The December 6 “stabbing” incident, while concerning, did not rise to the level of a “serious bodily injury” or an imminent risk of such injury as required by ORS 343.154 and OAR 581-015-2181. “Serious bodily injury” is defined in ORS 339.285(4) as “any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.”

The Student’s elopement on January 9, 2020, during which the Student left school grounds and crossed four lanes of a busy highway, did create an imminent risk of serious bodily injury. However, since the Parents, due to safety concerns, chose to enroll the Student in an online charter school served by another school district, the District had no opportunity to determine whether an FBA was required at that time. Upon the Student’s reenrollment, the District immediately held an IEP meeting and the IEP team made plans to move forward with an FBA. However, the closure of schools due to COVID-19 made it impossible to move forward with this at that time. This evaluation was completed in November, 2020.

The Department does not substantiate this allegation.

2. FAPE

The Complaint alleges that the District violated the IDEA because it did not provide a “meaningful educational benefit” to the Student and thus failed to provide the Student a free appropriate public education (FAPE) when, during the complaint period, the District failed to appropriately address the Student’s behavior and ensure Student’s safety, resulting in the Student’s inability to regularly attend school.

OAR 581-015-2040 provides that “school districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible.”

As discussed above, the Student’s elopement did place the Student at imminent risk of serious bodily injury. After the elopement, the Parents did not return the Student to school. For approximately two weeks, the Parents were determining which online school to enroll Student in. During this period, District staff members reached out to the Parents multiple times and informed the Parents that the District stood ready to serve the Student. However, once the Student enrolled in an online charter school sponsored by another school district, the District was no longer obligated to provide services to the Student. Once the Student reenrolled in the District, the District immediately convened an IEP meeting, and the IEP team made plans to conduct an FBA.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

In the Matter of Greater Albany School District
Case No. 20-054-014

The Department does not order corrective action in this matter.

Dated the 15 day of January, 2021



Sara Green
Assistant Superintendent
Office of Student Services

E-mailing Date: January _15_ 2021

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).)