

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Dallas School District

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FINDINGS OF FACT
CONCLUSIONS AND FINAL ORDER
CASE NO. 21-054-009

I. BACKGROUND

On May 6, 2021, 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 Dallas School District (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 May 13, 2021, 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 May 27, 2021.

The District submitted a *Response* on May 27, 2021 denying the allegations, providing an explanation, and submitting supporting documents in support of the District's position. In total, the District submitted the following items:

1. District Response, 5/27/21
2. Written Agreement, re: three year re-evaluation, 4/1/21
3. Email, re: eligibility rollover, 4/2/21
4. Notice of Team Meeting, re: eligibility and IEP, 4/9/21
5. Amended IEP, 5/12/21
6. Meeting Notes, 5/12/21
7. Email re: general education teacher not attending IEP meeting, 5/24/21
8. Eligibility Statement for Intellectual Disability, 5/12/21
9. Eligibility Statement for Other Health Impairment, 5/12/21
10. Pictures of meeting participants, 5/12/21
11. Psychoeducational Evaluation, 3/18/19
12. Notice of Team Meeting, 9/17/20
13. IEP, 10/12/20
14. Placement Determination, 10/12/20
15. Meeting Notes, 10/12/20
16. Prior Written Notice, 10/12/20
17. IEP Snapshot, 10/12/20
18. Notice of Team Meeting, 10/9/19

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

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

19. IEP, 10/16/19
20. Meeting Notes, 10/16/19
21. IEP Snapshot, 10/16/19
22. Prior Written Notice, re: changes to annual IEP, 10/16/19
23. Notice of Team Meeting, 10/9/19
24. Amended IEP, 11/7/20
25. Meeting Notes, 11/7/20
26. IEP Snapshot, 11/7/20
27. Amended IEP, re: extended school year, 5/20/20
28. Placement Determination, 5/20/20
29. Meeting Notes, 5/20/20
30. Prior Written Notice, 5/20/20
31. Abbreviated School Day Notice and Acknowledgement, 11/7/19
32. Abbreviated Day Meeting Notes, 11/7/19
33. Abbreviated Day Meeting Notes, 12/5/19
34. Meeting Notes, re: abbreviated day, 1/16/20
35. Distance learning accommodations crosswalk, no date
36. Progress Report, 10/12/20
37. Progress Report, 10/16/19
38. Student Attendance Report, 5/26/21
39. Behavior logs, 10/21/19
40. Incident notes, 3/3/20
41. Communication log, dates vary
42. IEP Analysis and Planning for Comprehensive Distance Learning/Hybrid 2020-2021
43. Crisis Cycle Profile, 5/12/21
44. Crisis Cycle Profile, 10/12/20
45. Crisis Cycle Profile, 10/15/19
46. Events (documentation log), 5/25/21
47. Notice of Team Meeting, 2/26/19
48. IEP, 3/18/19
49. Meeting Minutes, 3/18/19
50. Written Agreement, re: IEP team attendance not required, 3/18/19
51. Prior Written Notice, 3/18/19
52. Meeting Notes, 10/12/20
53. Message history (contact log), dates vary
54. Physical Restraint Debriefing Report, 11/6/19
Physical Restraint Debriefing Report, 12/4/19
55. Dallas Police Department Response Report, 3/3/20
56. Written Agreement, re: content area of excused member discussed at meeting, 11/1/19
57. Amended IEP and placement determination, 11/7/19
58. Meeting Notes, 11/7/19
59. Prior Written Notice, 11/7/19
60. Amended IEP and placement determination, 11/7/19 (duplicate)
61. Prior Written Notice, 5/25/21
62. Prior Written Notice, 5/12/21
63. Notice of Team Meeting, 4/9/21
64. Prior Written Notice, 1/6/21
65. Prior Written Notice, re: LIPI, 12/2/20
66. Prior Written Notice, re: LIPI, 10/12/20
67. Prior Written Notice, re: changes to annual IEP, 10/12/20
68. Notice of Team Meeting, re: develop IEP, 10/5/20
69. Notice of Team Meeting, re: develop IEP, 9/17/20

- 70. Prior Written Notice, re: ESY, 6/10/20
- 71. Prior Written Notice, re: ESY, 5/20/20
- 72. Notice of Team Meeting, re: develop IEP, 5/12/20
- 73. Prior Written Notice, re: COVID impact, 4/22/20
- 74. Director letter, re: COVID response, no date
- 75. Notice of Team Meeting, re: develop IEP, 3/4/20
- 76. Notice of Team Meeting, re: develop IEP, 2/19/20
- 77. Prior Written Notice, re: increase in school day, 1/16/20
- 78. Notice of Team Meeting, re: review information, 1/7/20
- 79. Prior Written Notice, re: parent request for FBA, 12/9/19
- 80. Prior Written Notice, re: abbreviated school day, 12/5/19
- 81. Notice of Team Meeting, re: abbreviated school day, 11/15/19
- 82. Prior Written Notice, re: IEP revisions, 11/7/19
- 83. Notice of Team Meeting, re: develop IEP, 11/1/19
- 84. Prior Written Notice, re: IEP revisions, 10/16/19
- 85. Notice of Team Meeting, re: develop IEP, 10/9/19
- 86. Verizon messages, re: parent contact, 5/21/21

The Complaint Investigator interviewed the Parent on May 31, 2021. On June 7, 2021, the Complaint Investigator interviewed the District’s Director of Special Education and the Student’s Special Education Case Manager regarding this matter. Virtual meetings were held instead of on-site interviews due to the COVID-19 pandemic. The Complaint Investigator reviewed and considered all of 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 May 7, 2020, to the filing of this Complaint on May 6, 2021.

The written Complaint alleges that the District violated the IDEA in the following ways:

Allegations	Conclusions
<p>Free Appropriate Public Education (FAPE)</p> <p>The Parents alleged that the District violated the IDEA in ways that amounted to a denial of FAPE. The Parents alleged such violations include: Ssuspending the Student from school; and Not providing the Student with full school days of instruction.</p> <p>(OAR 581-015-2040 and 34 CFR § 300.101)</p>	<p>Not Substantiated</p> <p>There is no evidence that the Student was denied a FAPE due to suspensions from school or not receiving a full day of instruction. Additionally, the period during which the Student attended school for an abbreviated day is outside the time period addressed in this complaint.</p>

III. FINDINGS OF FACT

Background

1. The Student is 14 years old and in the eighth grade. The Student attends a local middle school and will be transitioning to high school in the fall of 2021.
2. The Student is eligible for special education and related services due to two (2) eligibilities: Other Health Impairment, due to a seizure disorder, with an eligibility due date of March 18, 2019; and Intellectual Disability, with an eligibility due date of March 18, 2019.
3. The Student is incredibly social and loves to talk with peers and trusted adults. The Student enjoys completing office jobs and is interested in crafts, especially crafts with clay and dough. The Student has a good imagination and loves to read stories about superheroes.
4. The Student benefits from a visual schedule, preferred seating, movement options, presenting work in small chunks, having a quiet work space, and implementation of a behavior support plan and protocol for seizures and shunt.
5. The Student needs intensive, small-group and one-to-one instructional in foundational skills. Prior to the Spring 2020 Extended School Closure, the Student received most academic instruction in the Life Skills Center. Depending on behavior and willingness to attend, the Student attended some specials, recess, lunch, and special activities, such as assemblies.
6. During the Spring 2020 Extended School Closure, the Student received instruction remotely. During the 2020-21 school year, the Student received instruction through a combination of remote and on-site instruction.
7. The Student receives Specially Designed Instruction (SDI) in the areas of reading, written language, math, behavior, and social skills. Related services for transportation are provided. The Student has supplementary aids and services that include nursing/health care protocol, behavior support plan, and modified curriculum. Supports for school personnel that are provided include consultation to teaching staff and parents, and health plan management.
8. The Student's special education placement determination for the most recent IEP is that the Student will participate for less than 40% of the day in the general education setting.

Free Appropriate Public Education (FAPE) - Suspensions

9. The Student was suspended from school during the 2019-20 school year for 2.5 days in a former school district.
10. Attendance records from the current District indicate the Student was suspended for one school day during the 2019-20 school year.
11. The 2019-20 attendance record comments note that for two (2) school days the "Parent chose to keep student home; school will document as a suspension." The attendance records do not indicate these days were recorded as suspensions.

Free Appropriate Public Education (FAPE) - Abbreviated School Day

12. During the 2019-20 and a portion of the 2020-21 school year, the Student attended school on

an abbreviated day. The Student had the following proposed school schedule:

- a) October 21 - Nov 8, 2019: Attend school for 4th and 5th periods
- b) November 22 - December 9, 2019: Attend school for 3rd - 5th periods
- c) December 9 - January 10, 2020: Attend school for 2nd - 5th periods
- d) Beginning January 13, 2020: Attend school for a full day

13. Due to medical and behavior concerns, the Student did not begin attending school for a full day on January 13, 2020 as the proposed schedule called for.
14. The IEP team met on November 7, 2019, December 5, 2019, and January 16, 2020 to review the Student's progress and abbreviated school schedule. A meeting was scheduled for March, 2020 but later cancelled due to the pandemic.
15. The District has on file a copy of a signed Abbreviated School Day Notice and Acknowledgement form dated November 7, 2019. Meeting notes, dated December 5, 2019, indicate a second Abbreviated School Day Notice and Acknowledgement form was to be mailed to the Parents. The District has not received a signed copy of this form.
16. At the end of March 2020, the District moved from on-site instruction to Distance Learning for All because of the Extended School Closure due to COVID-19. From that point forward, the Student has followed the same schedule as all other students during the emergency status.
17. The Student's IEP dated October 19, 2019 includes a non-participation statement that states, "The Student will be in a personal learning environment (PLE) all day due to safety concerns. Due to the Student's need for intensive small group and one-one-one instruction in foundational skills, the Student currently receives academic instruction in a PLE."
18. The October 19, 2019 IEP does not include a statement as to the reason the Student is not attending a full school day.
19. The District issued a Prior Written Notice on October 16, 2019 that referenced the abbreviated school day, as other factors considered by the team.
20. IEP meeting notes, dated October 16, 2019 indicated the IEP team discussed an abbreviated school schedule, as described in fact #13.

IV. DISCUSSION

Free Appropriate Public Education (FAPE)

The Parents alleged that the District violated the IDEA in ways that amounted to a denial of FAPE. The Parents alleged such violations include: Suspending the Student from school; and Not providing the Student with full school days of instruction.

Suspensions

The Parents alleged that the District violated the IDEA in ways that amounted to a denial of FAPE when the District suspended the Student from school.

The District must provide a free appropriate public education for all school-age children with

disabilities for whom the District is responsible.³ The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school.⁴ The District may suspend a child with a disability who violates a code of student conduct from the child's current educational placement for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.⁵

The District is not required to provide access to special education or the general education curriculum during disciplinary removals that are not considered a change in placement unless students without disabilities are provided access during this time.⁶ The District is not required to determine whether the child's behavior, resulting in such a disciplinary removal, is a manifestation of the child's disability.⁷ For the purpose of counting days of suspensions and for children who move from one school district to another school district in Oregon, any days of suspensions from the former district carry over to the new school district unless the school district does not have actual knowledge of the previous suspensions.⁸

During the 2019-20 school year, the Student was suspended for 2.5 school days in a former district. The Student was suspended for one school day in the current District during the 2019-20 school year. The Student was suspended for a total of 3.5 school days during the 2019-20 school year. There have been no suspensions of the Student during the 2020-21 school year. The District did not exceed 10 school days of suspension of the Student within a school year, nor was there a pattern of behavior that resulted in disciplinary removals, including suspension.

The Department does not substantiate this portion of the allegation.

Abbreviated School Day

The Parents alleged that the District violated the IDEA in ways that amounted to a denial of FAPE when the District did not provide the Student with full school days of instruction.

The District must provide a free appropriate public education for all school-age children with disabilities for whom the District is responsible.⁹ IEPs must contain a statement of the specific special education and related services that will be provided to the student to enable the child to be educated and participate with other children both with and without disabilities, and must also contain an explanation of the extent to which the child will not participate with children without disabilities in the regular class.¹⁰ School districts must ensure that "removal from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."¹¹ School districts must also ensure that the educational placement "is determined by a group of persons, including the parents, and other persons knowledgeable about the child[.]"¹²

³ OAR 581-015-2040(1)

⁴ OAR 581-015-2040(3)

⁵ OAR 581-015-2405(1)

⁶ OAR 581-015-2405(2)(a)

⁷ OAR 581-015-2405(2)(b)

⁸ OAR 581-015-2405(4)(b)

⁹ ORS 343.161(1)(a)(b)

¹⁰ OAR 581-015-2200

¹¹ OAR 581-015-2240(2)

¹² OAR 581-015-2250(1)(a)

In addition to the requirements cited above, ORS 343.161 puts forth provisions for the use of abbreviated school days. Abbreviated school day means any school day during which a student received instruction of educational services for fewer hours than other students who are in the same grade within the same school.¹³ Abbreviated school day program means an education program in which the district restricts a student's access to hours of instruction or educational services; and that results in a student having an abbreviated school day for more than 10 school days per year.¹⁴

The District may not unilaterally place a student on an abbreviated school day program regardless of the age of the student.¹⁵ The District may provide an abbreviated school day program to the student only if the student's individualized education program team determines that the student should be placed on an abbreviated school day program, is based on the student's needs, and after the opportunity for the student's parents to meaningfully participate in a meeting to discuss the placement. The district must document that the team considered at least one option that included appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school.¹⁶

If the student is placed on an abbreviated school day program, the district shall, at least once each term provide the following information in writing to the parent of the student: the district's duty to comply with the requirements of this section; the prohibition against the district unilaterally placing the student on an abbreviated school day program; and the student's presumptive right to receive the same number of hours of instruction or educational services as other students who are in the same grade within the same school.

The parents have the right to request, at any time, a meeting of the individualized education program team to determine whether the student should no longer be placed on an abbreviated school day program. Further, the district is required to obtain a signed acknowledgement from the parent of the student that the parent received the information described above. The district shall include in the student's individualized education program a written statement that explains the reasons the student was placed on an abbreviated school day program.¹⁷

The Student was on an abbreviated school day for more than 10 school days when the Student was on an abbreviated school day from October 17, 2019-March 16, 2020. The Student's IEP team determined the need for an abbreviated school day at the October 16, 2019 IEP meeting. There were three additional meetings to discuss the Student's abbreviated school day. Meeting notes indicate the Parents were in agreement with the decision for the Student to attend an abbreviated school day. The Parents had an opportunity to meaningfully participate in meetings to discuss the abbreviated school day. The District documented at least one option that would allow the Student to attend school a full day in the Special Education Placement Determination.

Additionally, once the District moved to online instruction due to the COVID-19 pandemic, the Student began receiving instruction in the same manner as other students. This Complaint was filed on May 6, 2021; therefore the one-year complaint period goes back to May 7, 2020, which is after the period in which the Student was on an abbreviated day.

The Department does not substantiate this portion of the allegation.

¹³ ORS 343.161(1)(a)

¹⁴ ORS 343.161(1)(b)

¹⁵ ORS 343.161(2)

¹⁶ ORS 343.161(3)

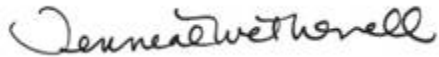
¹⁷ ORS 343.161(4)

V. CORRECTIVE ACTION¹⁸

*In the Matter of Dallas School District
Case No. 21-054-009*

The Department does not order corrective action in this matter.

Dated: this 1st Day of July 2021



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: July 1, 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).)

¹⁸ 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)).