

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Astoria School
District 1

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-020

I. BACKGROUND

On May 27, 2022, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing and attending school in the Astoria School District (District). The Complaint requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on May 31, 2022.

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 Parent 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 6, 2022, 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 June 15, 2022, the District timely remitted its *Response* via email to the Complaint Investigator (Investigator). The *Response* included a narrative, and the following documents upon which the Investigator relied:

1. IEP dated March 7, 2021, as amended October 1, 2021 (25 pages)
2. Sp Ed Placement Determination dated May 17, 2021 (1 page)
3. Prior Written Notice (PWN) dated May 17, 2021 (1 page).
4. PWN dated September 27, 2021 (1 page)
5. PWN dated October 1, 2021 (1 page)
6. Meeting Notes of May 17, 2021 (8 pages)
7. Meeting Notes of September 27, 2021 (5 pages)
8. Contact Log September 16, 2016 to April 8, 2022
9. Email communication November 4, 2021 to November 17, 2021 (6 pages)
10. Statement of Eligibility dated January 29, 2020 (4 pages)
11. Case Manager Summary (undated – 2 pages)
12. Autism Spectrum Disorder Triennial Evaluation dated January 29, 2020 (5 pages)
13. Occupational Therapy Assessment Report dated January 29, 2020 (4 pages)
14. Report of Speech/Language Assessment dated January 24, 2020 (3 pages)
15. Social Communication Assessment dated January 29, 2020 (4 pages)
16. PWN and Consent for Initial Provision of Sp Ed Services dated October 7, 2016 (1 page)
17. Email communication September 27, 2021 (1 page)
18. "IEP @ A Glance" (undated – 2 pages)
19. Class schedule (undated – 1 page)

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

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

On June 18, 2022, the Investigator received, via email, a written *Reply* from the Parent. This *Reply* included the following documents upon which the Investigator relied:

1. IEP dated April 11, 2022 (19 pages)
2. Text messages dated November 4, 2021 and November 12, 2021 (screen shots – 1 page)

Thereafter, upon the request of the District and with permission of the Investigator, on June 27, 2022, the District submitted via email what the District characterized as a *Rebuttal*. The *Rebuttal* did not include any additional materials. Later that day, the Parent submitted via email a *Surrebuttal*. This *Surrebuttal* included one document, a 22-page IEP dated May 17, 2021, with portions highlighted by the Parent. The Investigator relied upon these communications from the parties and reviewed the portions of the IEP highlighted by the Parent. The Investigator determined that additional information was required in this matter. Therefore, the Investigator scheduled and, on July 11, 2022, conducted a telephone interview with the Student's Orchestra Teacher. Additionally, the Investigator requested additional information from the District via an email dated July 11, 2022, and the District provided the following information via email dated July 13, 2022:

1. Report Card for quarter 4 of 2021-22 school year (1 page)
2. Class schedule for 2021-22 school year (1 page)
3. Daily Attendance Profile for 2021-22 school year (4 pages)
4. Detailed Progress Report for quarter 1 of the 2021-22 school year (2 pages)
5. Detailed Progress Report for quarter 2 of the 2021-22 school year (2 pages)
6. Detailed Progress Report for quarter 4 of the 2021-22 school year (1 page)

Additionally, the Investigator requested additional information from the Parent, via an email dated July 12, 2022, and the Parent provided, via email that day, answers to the several questions posed by the Investigator. The Parent also provided the following documents:

1. Communication through the Remind Me program between the Parent and the Orchestra Teacher, dated September 2, 2021, October 14, 2021 and October 21, 2021 (4 pages).

The Investigator forwarded all email communications between the Investigator and each party that had not been provided to the other party. The Investigator reviewed and considered all of these documents, the telephone interview, and the email communication in reaching the findings of facts and conclusions of law contained in this Order.

The Department has jurisdiction to resolve this Complaint.³ 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 May 28, 2021 and May 27, 2022. The Department must issue a final order within sixty days of receiving the Complaint. 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
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³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

<p>When IEPs Must Be In Effect</p> <p>The Complaint alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP, in October of 2021. Specifically, the Complaint alleges that despite a provision in the Student’s IEP stating the Student “needs reminding of instruction”, the Student received a failing grade in an Orchestra class when the Student failed to bring their violin to class after not being reminded to do so.</p> <p>(OAR 581-015-2220; 34 CFR §300.323 & 300.324)</p>	<p>Not Substantiated</p> <p>The Student’s IEP stated that the Student’s general education teachers were to remind the Student of needed “materials” for each class. Accordingly, the Student’s Orchestra Teacher reminded the Student to go get the Student’s instrument when the Student arrived to class without the instrument. Additionally, the Orchestra Teacher entered the Student’s score each day in the District’s “Gradebook,” which the Parent was able to access and which adequately documented the Student’s progress for the Parent to see.</p>
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<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • The only corrective action requested in the Complaint involved an allegation that the Department is not investigating

Matters Not Being Investigated

The Complainant also alleged that the District promised the Parent “district wide autism training for [the Student]” and that this training would occur in “all schools in the district by 12/21,” but failed to provide this training. The Department did not investigate this allegation as there was no allegation that the Parent made any request of the IEP team related to staff training needs. Rather, it appears to be an allegation that a District staff member failed to follow through on a commitment to the Parent, instead of an allegation that the IDEA had been violated. As this allegation does not pertain to the IDEA, the Parent can utilize the District’s complaint process to address this issue.

III. FINDINGS OF FACT

Background Facts

1. The Student is twelve years old and is currently in the sixth grade. The Student is eligible for special education services under the category of Autism Spectrum Disorder.

When IEPs Must Be In Effect

2. The Student transitioned as a sixth-grade student to in-person learning from the District’s online academy on September 29, 2021. The Student’s class schedule included a “Wellness/Beginning Orchestra” class.
3. Within the Present Level of Functional Performance section of the IEP, there is a sentence that states, “[The Student] is provided the following accommodations to help [them] be ready for the next subject:

- a. Teacher verbally announces five minute change of subjects
- b. Teacher has calendar on front white board
- c. Teacher has large icons of needed materials next to calendar
- d. Teacher goes to the front of the classroom and gains students' attention
- e. Teacher will remind students who do not have material out to get their material's [sic] out.
- f. Teacher starts teaching."

This section also states the following:

- a. "[The Student] is ready for new subject with the required material out 20% of the time. [The Student] attempts or completes (sic)
- b. [The Student] needs to have required materials out so [they] can follow along with lesson and participate in class.
- c. [The Student's] disability prevents [them] from being aware of the requirements needed to be ready for the lesson."

There is also a section addressing communication needs, specifically that "[The Student] needs strategies to improve [their] social communication skills and [their] ability to express wants, needs, opinions, emotions, and share information with peers, caregivers, and educators in a variety of environments."

4. The Student's social skills goal stated that "Given instruction on how to interact with peers and adults within the classroom, [the Student] will join a group 75% of the time during team activities will perform individual tasks 75% of the time." [sic] The Student's communication goal said, "By May 16, 2022, given moderate verbal, visual and written support, [the Student] will demonstrate increased functional language skills to support semantic relationships and prosocial interactions by meeting the following objectives with 80% accuracy." The objectives included drawing, writing, and then talking about connected basic relationships, at least one extended/expanded relationship, and answering at least one inferential question connected to an event. This was to occur during 80% of opportunities. The IEP also provides several accommodations, including "Visual Schedule," "check for understanding," "social coaching," and "Visual binder (schedule, supplies)," all of which were to be provided by the "Gen Ed Teacher."
5. On September 27, 2021, the Student's Case Manager sent an email to all District staff scheduled to work with the Student, including the Student's Orchestra Teacher, informing them of the Student's transition to in-person learning from the District's online academy. This email also included the Student's class schedule and an attached "IEP @ A Glance" which summarized the Student's accommodations and goals. Additionally, the Orchestra Teacher knew of the Student's disability and that the Student has an IEP, having worked with the Student previously.
6. During the 2021-22 school year, the Orchestra Teacher entered grades daily for every student into the District's "Gradebook" program, a program that all parents may access at any time to view a student's grades in all of their classes. The Orchestra Teacher would enter a "2" in the gradebook for each day that a student "brought their instrument and tried", a "1" if a student brought their instrument but did not try or had a bad attitude, and a "0" if a student did not bring their instrument to class. The Parent reported to the Investigator that with the change from elementary to middle school as well as the COVID-19 pandemic, the Parent did not sign up for access to the gradebook until November 18, 2021.
7. The Orchestra Teacher recalled that at the beginning of the 2021-22 school year (which began on September 9, 2021) the Orchestra Teacher sent an initial communication through

the District's "Remind Me" program to all parents of students in the orchestra class. The Parent promptly responded and advised that the Student would be continuing in an online instruction program and not attending school in person. Based on this, the Orchestra Teacher was not sure the Parent received the "Remind Me" messaging communications sent to parents by the teacher at the beginning of the school year. However, the Parent confirmed receipt of messages through the "Remind Me" messaging program, on September 2, 2021, October 14, 2021, and October 21, 2021. The October 14, 2021 "Remind Me" message stated that the "Gradebook" program was updated daily.

8. The Orchestra Teacher is now unable to specifically recall how many times the Student did not bring an instrument between the Student's first day of in-person classes on September 29, 2021 and November 4, 2021, when the Parent and the Orchestra Teacher communicated about the Student failing the Orchestra class during the first quarter of the school year (which ended November 4, 2021). The Student's Orchestra teacher did recall that the teacher would tell the Student to get the instrument any time the Student came to class without it.
9. A thread of messages on the "Remind Me" program on November 4, 2021 between the Parent and the Orchestra Teacher, however, show that the teacher responded to the Parent's inquiry asking why the Student is failing the Orchestra class with "[The Student] hasn't been bringing [the Student's] instrument to class. I think I saw it once." In that same message thread, the Orchestra Teacher also provided the Parent a link to the District's "Remind Me" program, which the Orchestra Teacher used to communicate with students and which the teacher used to provide a syllabus and requirements and expectations for course materials.
10. The Parent informed the Investigator that on November 4, 2021, the Parent received in the mail the Student's report card for the first quarter and learned that that the Student received an "F" in the orchestra class. In an email to District staff later on November 4, 2021, the Parent stated they had just learned earlier that day that the Student had not been bringing the Student's instrument to class. In that email, the Parent noted that the Orchestra Teacher had not communicated with the Parent regarding the failure of the Student to bring an instrument to Orchestra class.
11. Review of the reports generated by the District's "Gradebook" program reveal that from September 29, 2021 to November 4, 2021, the Student received two points in the Orchestra class only twice, on October 12, 2021 and October 14, 2021, indicating that during that time period the Student brought the instrument to class and participated only on those days.
12. The Orchestra Teacher recalled that, on November 4, 2021, after the Parent contacted the teacher regarding the Student failing the Orchestra class, the Orchestra Teacher provided a link to a "Google drive document" which contained the syllabus, material list, and expectations for the orchestra class. The Orchestra Teacher also recalled that on November 4, 2021, the Orchestra Teacher told the Parent that the teacher would change the Student's grade from failing to incomplete.
13. The Orchestra Teacher also recalled that the Student fully participated in the Orchestra class after November 4, 2021, and continued in the class until the end of the 2021-22 school year. The Orchestra Teacher recalled that after November 4, 2021, the Student only forgot to bring the instrument "once or twice, if at all." In January of 2022, the Orchestra Teacher moved the Student to a "slower pace" class with a smaller group of students, going from a class with around 22 students to one with eight to 10 students in class. A review of the Student's report cards for the 2021-22 school year revealed that the Student received passing grades after

November 4, 2021, earning an “A” in the orchestra class in the 4th quarter of the school year.

IV. DISCUSSION

When IEPs Must Be In Effect

The Complaint alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP, in October of 2021. Specifically, the Complaint alleges that despite a provision in the Student’s IEP stating the Student “needs reminding of instruction,” the Student received a failing grade in an orchestra class when the Student failed to bring their instrument to class after not being reminded to do so.

OAR 581-015-2220(1)(b) requires school districts provide special education and related services to a child with a disability in accordance with an IEP.

The Student’s IEP, in the Present Level of Functional Performance section, stated that “Teacher will remind students who do not have materials out to get their materials. [The Student] is ready for new subject with the required material out 20% of the time. [The Student] attempts or completes. [The Student] needs to have required materials out so [the Student] can follow along with lesson and participate in class. [The Student’s] disability prevents [the Student] from being aware of the requirements needed to be ready for lesson.” The Student’s IEP also includes an accommodation of “Visual binder (schedule, supplies)”, to be provided by the “Gen Ed Teacher.” The Orchestra Teacher instructed the Student to get their instrument each time the Student arrived to class without it between September 29, 2021 and November 4, 2021.

The Orchestra Teacher entered the Student’s score each day in the District’s “Gradebook,” which the Parent could have accessed at any time, and which adequately documented the Student’s progress for the Parent to see. This was referenced in a “Remind Me” message received by the Parent on October 14, 2021. It is not unreasonable for the Orchestra Teacher to assume that the Parent was accessing the daily progress reports that were entered into the District’s gradebook program. After November 4, 2021, the Student actively participated in the orchestra class and brought the instrument regularly, and not only passed the class after receiving an Incomplete in the first quarter, but received passing grades after November 4, 2021, including an “A” in the class by the fourth quarter report card.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

*In the Matter of Astoria School District
Case No. 22-054-020*

The Department does not order corrective action in this matter.

Dated the 21st day of June, 2022.



Tenneal Wetherell

Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 22, 2022

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).)