

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eugene 4J School District)	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 22-054-022
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I. BACKGROUND

On June 15, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Eugene 4J 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 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 20, 2022, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of July 5, 2022.

The District submitted a late *Response* on July 11, 2022 denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted additional information on July 13, 2022. The District submitted the following relevant items:

1. District Response, no date
2. Email, re: info requested for KB investigation, 7/11/22
3. Intergovernmental Agreement, no date
4. Student Transcripts, 6/17/22
5. School Permanent Record, 7/11/22
6. Report Card, 7/11/22
7. Student Attendance Report, 7/11/22
8. Meeting Notes, re: high school transition meeting, 6/10/22
9. Letters of Guardianship, 5/9/22
10. Part B: Oregon Standard IEP, 10/29/20
11. Special Education Placement Determination, 10/29/20
12. Special Education Notice of Team Meeting, 10/21/20
13. Prior Notice of Special Education Action, 10/29/20
14. Meeting Notes, re: IEP annual review, 10/29/20
15. Notice of Transfer of Parent Rights, 10/29/20
16. IEP Snapshot, re: 11th grade, 6/27/22

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

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

17. Part B: Oregon Standard IEP, 10/27/21
18. Special Education Placement Determination, 10/27/21
19. Special Education Notice of Team Meeting, 10/15/21
20. Prior Notice of Special Education Action, 10/27/21
21. Meeting Notes, 10/27/21
22. Notice of Transfer of Special Education Rights, 10/27/21
23. IEP Snapshot, re: 12th grade, 6/27/22
24. Email, re: initial letter of receipt, 6/15/22
25. Special Education Complaint Resolution Process, 1/2018
26. Email, re: no subject, 6/14/22
27. Email, re: complaint, 6/14/22
28. Meeting Notes, re: guardianship documentation, 5/5/22
29. Meeting Notes, re: high school transition meeting, 6/10/22
30. Confidential Health Plan, created 11/18, updated 9/21

The Parent submitted information in support of the Parent’s position on June 20, 2022, June 29, 2022, and July 12, 2022. The Parent submitted the following relevant items:

1. Email, re: regarding Student, no date
2. Email, re: no subject, 6/14/22
3. Email, texts documents, 5/26/22
4. Email, re: schedule interview, 6/21/22
5. Email, re: no subject, 5/24/22
6. Email, re: parent reply, 7/12/22

The Complaint Investigator interviewed the Parent on July 16, 2022, and the District’s Special Education Administrators on July 21, 2022. Virtual interviews were conducted instead of on-site interviews due to the Coronavirus 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 June 16, 2021, to the filing of this Complaint on June 15, 2022.

Allegations	Conclusions
<p>Content of the IEP</p> <p>The Parent alleges that the District violated the IDEA by not providing transportation services to the Student.</p> <p>(OAR 581-015-2200, OAR 581-015-2000; 34 CFR §300.320)</p>	<p>Not Substantiated</p> <p>The Student’s IEP team determined that transportation was not necessary to provide FAPE to the Student.</p>
<p>Placement of the Child</p>	<p>Not Substantiated</p>

<p>The Parent alleges that the District violated the IDEA by not paying for (providing) the Student to have a placement in a certain special education program.</p> <p><i>(OAR 581-015-2250; 34 CFR §300.116)</i></p>	<p>The District had an appropriate program within District boundaries to implement the Student's IEP.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Parent alleges that the District denied the Student a FAPE and violated the IDEA by not providing the Student with a needed specialized program and transportation to the program.</p> <p><i>(OAR 581-015-2040; 34 CFR §300.101)</i></p>	<p>Not Substantiated</p> <p>The District was prepared to provide special education services to the Student and offered an IEP meeting to discuss the Parent's concerns. The Parent refused the offer of an IEP meeting.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • Pay for the mutually agreed transition program and provide transportation to the program.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before June 16, 2021. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is 18 years old and had just completed the twelfth grade at the time the Complaint was filed. The Student completed high school with an alternative certificate in June of 2022.
2. The Student lives within the boundaries of the District and has been attending another school district (District B), on an inter-district transfer. The Student has attended the same high school, in District B, since the 2018-19 school year.
3. The Student is eligible for special education as a child with an Intellectual Disability and has a re-evaluation due date of November 18, 2022.
4. The Student's IEP team describes the Student as "friendly and happy...has a good sense of humor...is good at keeping track of class schedule, dates and times...when called upon to contribute to class conversation, the Student fully participates...the Student primarily socializes with student and staff in District B's Transition Network classes."
5. The Student's IEP, dated October 27, 2021, includes a transition planning page that incorporates all the required elements and describes the transition services and activities the Student needed as, "participate in community and school-based work experiences, develop a

resume, continue to re-assess career interests, and continue studies at [redacted] if needed/preferred.”

6. The Student’s IEP includes special education services for math, reading, written language, social skills, transition, nursing services, modified curriculum, and a healthcare plan for toileting.
7. On October 27, 2021, the Student’s IEP team determined the special education placement for the Student to be in the “regular class for more than 40% of the day, primarily in general education classes with support.”
8. On May 5, 2022, the Parent was awarded limited guardianship of the Student by the Circuit Court of Lane County, State of Oregon, to arrange for appropriate training and education of the Student.
9. On May 24, 2022, the Parent contacted the District’s Special Education Administration via email with a request for an update on the Parent’s proposal “for the spot in District B due to the difficulties I’ve had with the District and wanting to keep the Student with friends.” The District responded that the District “will be checking in this week to let us know if it will work out for the District to pay for a transition slot for the Student. I expect a clear answer this week.”
10. On May 26, 2022, the Parent requested transportation services from the District in order for the Student to attend District B’s program. The Special Education Administrator communicated with the Parent via text message that the District would not provide transportation services to District B’s transition program.
11. On June 10, 2022, District B held a ‘High School Transition Meeting’ and “presented a slide show that explains all the details about District B’s [transition program]...The family is interested in and would like to have their student participate in the program next fall.”
12. On June 10, 2022, the Parent contacted the Special Education Director with a concern that transportation services to District B’s transition program would not be provided by the District. The Parent had the understanding that a District Special Education Administrator informed the Parent that a transition program in District B was to be paid for by the District and this would necessitate transportation services being provided. The Special Education Director realized there was a misunderstanding about the transfer process to District B’s program and “informed the Parent that the District would reach out to District B to clarify the intent of both of the school districts involved.”
13. On June 13, 2022, the District conferred with District B to clarify, “if the Student would be able to attend District B on an inter-district transfer (IDT), or if District B was only considering a tuition-basis for the 2022-23 school year.” The District was informed by the other district that it “would not be accepting IDT transfers for students of transition age, so if the Student was going to attend District B’s transition program, it would need to be on a tuition-basis (i.e., the District paying District B for a slot in the transition program).”
14. On June 14, 2022, the Special Education Director responded to the Parent and clarified that there had been a misunderstanding and District B did not accept transfers for their transition program. The communication to the Parent also included, “we will not be able to support the Student going to District B for transition services. The District offers a transition program here in district that can and will provide services that will assist the Student on next steps as they enter into young adulthood.” The District offered to “convene the Student’s IEP team to discuss placement options for transition services for the Student.” During interviews, the

Parent confirmed that they declined the District's offer of an IEP meeting and continues to not be interested in meeting with the District.

15. On June 15, 2022 the Parent filed this Complaint.

IV. DISCUSSION

Content of the IEP

The Parent alleged that the District violated the IDEA by not providing transportation services to the Student.

The individualized education program (IEP) must include a statement of the specific special education and related services to be provided to the child to advance appropriately toward attaining annual goals, to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and children without disabilities.³ Related services, including transportation, are services that assist a child with a disability to benefit from special education.⁴

During interviews, both the District's Special Education Administrator and District B's Special Education Administrator stated that the transition services and programs between the two districts were comparable. There was nothing in the educational records or gathered during the investigative interviews to suggest that the Student required transportation to benefit from the special education services described in the Student's IEP. Based on the information the District had at the time the Parent made the request for transportation services, the District was able to implement the Student's IEP in a District-based program and was not required to include transportation as a related service in the Student's IEP. Further, the District offered to schedule an IEP meeting to discuss this issue, and the Parent declined this offer.

The Department does not substantiate this allegation.

Placement of the Child

The Parent alleged that the District violated the IDEA by not paying for (providing) the Student to have a placement in a certain special education program.

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child the meaning of the evaluation data, and that the placement decision is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255. The educational placement of a child must be based on the child's current IEP, be determined at least once every 365 days, and be as close as possible to the child's home. School districts must ensure that the alternative placements under OAR 581-015-2245 are available to the extent necessary to implement the IEP for each child with a disability. Unless the child's IEP requires some other arrangement, the child is educated in the school that they would attend if not disabled. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which they need. A child

³ OAR 581-015-2200

⁴ OAR 581-015-2000

with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modification in the general curriculum.⁵

The Student's October 27, 2021 IEP, indicated that the special education placement selected to implement the special education and related services, as described in the Student's IEP, was primarily in general education classes with support and the Student would participate in regular classes between 41-79% of the school day. The District did not attend the October 27, 2021 IEP meeting or the June 10, 2022 meeting, initiated by District B, in which transition services and the program located in District B were discussed. The District had a transition program that could implement the Student's IEP and meet the Student's needs.

The Student's IEP does not indicate that the transition program located in District B was the selected program for the Student to attend. The District is required to implement IEP services in the school that the Student would attend if not disabled or as close to the Student's neighborhood school as possible. "An educational agency does not commit a per se violation of the IDEA by not specifying the anticipated school where special education services will be delivered within a child's IEP."⁶ The Parent declined the District's offer to schedule and hold an IEP meeting to discuss placement options for transition services to be provided in the Student's resident District and did not provide information to indicate the request for the IEP to be implemented in District B's transition program was due to the Student's disability-related needs.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District denied the Student a FAPE and violated the IDEA by not providing the Student with a needed specialized program and transportation to the program.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.⁷

Based on the October 27, 2021 IEP, the District had a transition program available within the District's boundaries that could implement the Student's IEP. The Parent made the request for the Student to attend another program in District B based on a preference for the Student to remain with friends and the difficulties the Parent has had with the District. The District offered to convene an IEP meeting to discuss transition services and placement and the Parent refused the offer.

The Department does not substantiate this allegation.

Dated: this 8TH Day of August 2022



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

⁵ OAR 581-015-2250

⁶ Rachel H. v. Dept. of Educ. Hawaii, 868 F. 3d 1085 - Court of Appeals, 9th Circuit 2017.

⁷ OAR 581-015-2040

E-mailing Date: August 9, 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).)