

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eagle Point
School District 9

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-014

I. BACKGROUND

On April 28, 2016, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing and attending school in the Eagle Point School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on April 29, 2016.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On May 4, 2016, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On May 18, 2016, the District timely provided its narrative *Response* to the *Request for Response* by email, with accompanying documentation.

The District provided the following documentation in its *Response* and during the on-site interview:

1. Functional Behavioral Assessment 9/6/13
2. Confidential Information Sheet 10/25/13
3. IEP amendment 10/15/14
4. Summer School information 2015
5. School-Wide Information System (SWIS) reports, ending 3/12/15
6. Amendment to IEP 5/19/15
7. IEP Attendance Form 5/19/15
8. Attendance Records, ending 5/20/15
9. Eligibility statements 10/13/15
10. IEP 10/13/15
11. Meeting Minutes 10/13/15
12. Meeting Agenda 10/13/15
13. Crisis Intervention/Safety Plan 11/25/13, reviewed 10/13/15
14. Behavior Support Plan 1/14/14 and 10/13/15
15. IEP 10/13/15
16. Student Contact Log 12/9/15
17. Referral to Office 2/8/16
18. Email communication 1/6/16 to 2/10/16
19. Medical office visit notes 2/16/16
20. Authorization concerning educational and protected health information 2/16/16
21. Referral to Office 2/17/16
22. Referral to Office 2/18/16

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

23. Physical Restraint Incident Report 2/18/16
24. Physical Restraint Incident Debriefing Notes 2/18/16
25. Email communication 2/22/16
26. Email communication 2/22/16 and 2/23/16
27. Office Referral 2/22/16 and 2/4/16
28. Notice of Team Meeting 2/23/16
29. Email communication 2/24/16
30. Notice of Team Meeting 2/24/16
31. Prior Written Notice 2/24/16
32. Placement Determination 2/24/16
33. Prior Written Notice 2/24/16
34. Manifestation Determination and Review 2/24/16
35. Office Referral 2/26/16
36. Office Referral 2/29/16
37. Crisis Intervention/Safety Plan 3/2/16
38. "ABC Log" 2/29/16 to 3/3/16
39. Email Communication 3/6/16
40. Functional Behavioral Assessment/Behavior Support Plan 3/7/16
41. Data re behavior 3/8/16
42. Email Communication 3/9/16
43. IEP Amendment 3/10/16
44. Meeting Minutes 3/10/16
45. Behavior Support Plan 3/10/16
46. Prior Written Notice 3/10/16
47. IEP attendance form 3/10/16
48. Amendment to IEP 3/10/16
49. Step-Up Plan 3/14/16
50. Office Referral 4/27/16
51. Student Dashboard 4/27/16
52. Email communication 4/28/16
53. Daily Attendance Profile 4/28/16
54. Period Student Attendance Profile 4/28/16
55. Student Discipline Profile 4/28/16
56. Debriefing Notes 4/29/16
57. Prior Written Notice 5/2/16
58. Email communication 5/2/16
59. Email communication 5/5/16
60. Observation Notes, ending 5/11/16
61. Email Communication 6/14/16
62. Progress Reports and Report Cards 2015-2016 school year
63. Service Logs
64. District Policies concerning discipline
65. Light's Retention Scale
66. Staff List

The Parent did not provide a written *Reply* in this case.

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On June 13, 2016, the Complaint Investigator interviewed the District's Director of School Improvement, who oversees Special Education services in the District, and the Complaint Investigator also interviewed the Parent by telephone on June 14, 2016. The Complaint Investigator reviewed and considered all of the documents received 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 OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from April 29, 2015, to the filing of this complaint on April 28, 2016.²

No	Allegations	Conclusions
1.	<p><u>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive); Parent Participation – General; Prior Written Notice (PWN)</u></p> <p>The Complaint alleges that the District violated the IDEA by failing to properly provide notice of the Student's suspension from school on April 28, 2016 and by proceeding with the suspension, which constituted a change in placement because the Student had been suspended more than ten days during the current school year, without including the Parent and the IEP Team in the decision. The Complaint further alleges that the District violated the IDEA by failing to conduct a Manifestation Determination Review concerning the Student's suspension from school on April 28, 2016 and by failing to issue a Prior Written Notice (PWN) reflecting the decision to change the Student's placement by suspending the Student from school on April 28, 2016.</p> <p>OAR 581-015-2190, OAR 581-015-2415, OAR 581-015-2310; 34 CFR 300.504(a)(3), 300.530, 300.531, 300.532, 300.533, 34 CFR 300.500, 300.327, 300.501(b), 300.503.</p>	<p><u>Substantiated, in Part</u></p> <p>The District has conceded that the District should have treated the Student's exclusion from school on April 28, 2016 as a suspension and should have provided notice of the suspension. The District has provided the Student compensatory services and instruction for the services and instruction not provided on April 28, 2016; and the District scheduled an in-service session to provide training to appropriate District staff to address this issue.</p> <p>The District's suspension of the Student on April 28, 2016 did not constitute a change in placement since the Student had not been suspended for ten days during the 2015-2016 school year, therefore, the District was not required to make a Manifestation Determination, nor was the District required to provide Prior Written Notice to the Parent indicating that the Student's placement was being changed.</p>

² OAR 581-015-2030(5)

Proposed Corrective Action

The Parent's proposed solutions which are related to the allegations being investigated include:

"1. We propose the school, nor district make any future phone calls to notify the parent of a suspension or an attempt to disallow [the Student] to come to school, based on code of conduct violations, without providing appropriate notice first. 2. We propose the school, nor district, change [the Student's] educational placement in the future without appropriate prior written notice, without a consensus of [the Student's] IEP team and without parent participation. * * * * 6. We propose the school and/or the district provide us with a written apology for their failure to follow, and the denial of, our state and federal rights relating to the above allegations. 7. We propose district staff, educators and administrators, inclusive of [a particular district staff person], attend training pertaining to state and federal regulations surrounding the above allegations. 8. We propose the school and/or district be required to develop written policies and procedures, inclusive of timelines, pertaining to state and federal regulations surrounding the above allegations. 9. We propose the district provide notification with access to, and/or a copy of, the above noted to be developed written policies and procedures to all parents in the district with a child receiving special education services. 10. We propose the district provide [the Student] compensatory education hours equal to the time [the Student] missed school on April 27th and April 28th, 2016."

III. FINDINGS OF FACT

1. The Student in this case is presently twelve years old and has now completed the sixth grade in the District. The Student is eligible for Special Education as a student with Autism Spectrum Disorder (ASD), Intellectual Disability (ID) and Other Health Impairment (OHI) (Attention Deficit Hyperactivity Disorder, Bi-Polar Disorder).
2. The Student's IEP in effect at the time of the filing of the Complaint is dated October 13, 2015. The "Educational Placement Discussion and Decisions" page of the October 13, 2015 IEP indicates that the Student was to attend three classes of general education with support and four classes of Special Education each day. The IEP was amended on March 10, 2016.
3. On February 24, 2016, the District held a Manifestation Determination due to the pattern of violent and aggressive behaviors being exhibited by the Student, and the Director's belief that based on the Student's behavior a change in the Student's services and placement would be likely. During the Manifestation Determination Meeting, the Student's IEP Team, including the Student's Parent and the Parent's Advocate, determined that the Student's behaviors were a manifestation of the Student's disabilities. A "Manifestation Determination and Review" document was completed at that time. A "Notice of Team Meeting" was sent to the Parent on February 23, 2016.

The IEP Team shortened the Student's school day to four hours and fifteen minutes per day and determined that at 1:1 aide would be provided for the Student. The IEP Team also determined that when the Student exhibited behavior harmful to the Student or others or presented an imminent threat of harm to self or others, the District would send the Student home, but that the Student would return to school the next day without an intake meeting and the absence would not be counted as a suspension. A Prior Written Notice provided at this time states that the Parent may keep the Student home "due to disability/medical reasons and it will be an excused absence." However, there is no evidence that the Student's IEP itself was revised to reflect this change in placement.

4. The March 10, 2016 amendment to the Student's IEP states "60 min in sp ed (out of 60) for reading/writing, math, and social skills. Speech/OT push in." The PWN dated March 10, 2016 states that the IEP Team met and determined that the Student "needs further modification of [the Student's] schedule at this time." The PWN also states that the Student will attend school "one hour per day in a separate setting. Time is to be determined by the school district. IEP was amended to reflect new placement. SDI minutes and service times were updated. SDI in math, reading/writing, social skills will be 15 minutes per day. OT and speech will do push in services 15 minutes per week." This meeting was held at the request of the Parent and the Parent's Advocate following an incident in which the Student "Eloped a couple blocks off campus today. Need to discuss change of placement for health and safety. ASAP."
5. The Meeting Minutes of the March 10, 2016 IEP Meeting show that the Parent and an advocate for the Parent participated in the meeting. The minutes also state that the IEP Team, including the Parent and the Parent's Advocate, "agreed to placement of 1 hour per day in a separate location. 15 minutes built in after one hour to provide reward. SDI updated to reflect new placement. [Student] will start tomorrow (3/11) 7:45. Requested for [teacher] to send work home each day. Transportation will be set up for [the Student] to leave school at 9 am on Monday. Increase in time will be based on behavior each week. If [the Student] has appropriate behavior, the district will determine an increase in [the Student's] time on campus. [The Student] will have the possibility of an immediate behavioral reward such as access to a classroom or friend, at the aide/tutor's discretion. Any behavior incidents will revert time back to one hour/day."
6. On April 27, 2016, the Student "became defiant with staff requests. [The Student] then became physically violent with multiple staff members." A Physical Restraint Incident Report concerning the April 27, 2016 incident states that the Student "attempted to stick bobby pins and a pen in the electrical socket. [The Student] became physically aggressive with [District staff]. [The Student] tried to bite, spit, and stab adults with pencils. [The Student] kicked [the Principal] several times." The Student "was receiving speech services from [a particular staff member] when [the Student] became agitated and upset. [The Student] regularly receives services from [the particular staff member] and has not behaved this way before or after speech services."

The restraint form also states that "After the restraint, [the Student] crawled under the desk. [The Student] hit [the Student's] head against it once and kicked the desk repeatedly until the desk broke. Next [the Student] crawled to the bookcase and repeatedly kicked it and attempted to rip the phone and internet cords off the wall." The restraint form also states "No injuries to student or adults."

7. The Office Referral Form completed for this incident notes "Parent Contact" on April 27, 2016. During the on-site interview, District staff reported that on April 27, 2016 the Parent arrived at school during the restraint and that at that time the District notified the Parent in person of a debriefing meeting concerning the restraint scheduled for the next morning, April 28, 2016, at 8:30 a.m.
8. Prior to the beginning of school on April 28, 2016, the Principal called the Parent and asked that the Parent not bring the Student to school at the regularly scheduled time on that morning. The Parent recalls that during the telephone call the Principal stated that the student is "suspended"; however, the Principal recalled asking the Parent to not bring the Student in at the regular time because the Principal felt the team "needed time to meet, debrief the restraint and come up with a plan" for the Student.

9. A meeting to debrief the regarding the restraint incident on April 27, 2016 was held the next day. During this meeting, the Principal encouraged the Parent to bring the Student to school for "[the Student's] one hour of instruction" and the Parent "declined and said [the Parent] would not bring [the Student] in because it would mess with [the Student's] routine." The Principal again asked the Parent to bring the Student in but the Parent refused. The Parent stated that the Student would come in the next day, April 29, 2016, at the Student's "regular 9:30 am time". At the end of the meeting, the Parent's Advocate noted the absence of one of the District staff members involved in the restraint, the "disciplinarian", and the District held another debriefing meeting on April 29, 2016.
10. During the on-site interview, the District conceded that it did not provide notice of a suspension for April 28, 2016, but should have done so. The Director of School Improvement reported that the Principal did not believe this to be a suspension and believed the Student would come in later on April 28, 2016. The Director noted that the exclusion from school on April 28, 2016 represented the ninth suspension or exclusion of school during the 2015-2016 school year, requiring no Manifestation Determination.
11. During the on-site interview, the District reported that additional speech services and instruction had been provided to the Student to make up for the speech services and instruction not provided on April 28, 2016. Following the on-site interview, the District provided documentation that these services had been provided. These logs show that on April 29, 2016, the District provided the Student's regular sixty minutes of instruction, along with an additional ninety minutes of tutoring instruction; and that the District had provided to the Student one hundred minutes of speech services and one hundred minutes of occupational therapy since April 28, 2016, which exceeds the amount of OT and speech services required during this time frame.
12. During the 2015-2016 school year, the Student's "Daily Attendance Profile" reflects that "Disability" has been listed as the reason for the Student's absence from school on sixteen occasions. All of these occasions were between February 4, 2016 and April 28, 2016. A review of the file indicates that on the vast majority of these occasions, the Parent elected to keep the Student home from school due to issues associated with the Student's medication, although on at least one occasion, the Student's aunt was called to pick the Student up from school due to being "uncontrolled in choir."
13. During the on-site interview, the District also reported that the District scheduled a four-hour staff training for June 17, 2016. This training is to be provided to every District administrator, including building-level administrators. Topics will include "Exclusions and suspensions, due process procedures, notification to parents, and manifestation determinations". The training is to be provided by the District's attorneys and will include "question-and-answer sessions and review School Board policy and district procedures."

IV. DISCUSSION

The Complaint alleges that the District violated the IDEA by failing to properly provide notice of the Student's suspension from school on April 28, 2016 and by proceeding with the suspension, which constituted a change in placement because the Student had been suspended more than ten days during the current school year, without including the Parent and the IEP Team in the decision. The Complaint further alleges that the District violated the IDEA by failing to conduct a Manifestation Determination concerning the Student's suspension from school on April 28, 2016 and by failing to issue a PWN reflecting the decision to change the Student's placement by suspending the Student from school on April 28, 2016.

OAR 581-015-2405 provides "School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement . . . for up to ten 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." The District has conceded that the District should have treated the Student's exclusion from school on April 28, 2016 as a suspension and should have provided notice of the suspension.

The Department substantiates this portion of the allegation.

There was no change of placement in this situation, as the Student was not removed for ten consecutive school days, nor was the Student removed for ten cumulative school days. The Student was actually suspended out of school for four days, not including one occasion that the Student's aunt was called to pick the Student up from school. The other days that the Student was not at school appear to be the result of the Parent's decision not to send the Student to school due to the Student's difficulty in adjusting to changes in medication. Therefore, the District was not required to issue a PWN for a change in placement nor any requirement that the Parent and the remainder of the IEP Team be involved in the decision to suspend the Student. There was also no requirement that a Manifestation Determination be conducted in this situation.

The Department does not substantiate this portion of the allegation.

CORRECTIVE ACTION³
In the Matter of Eagle Point School District
 Case No. 16-054-014

The Department orders the following Corrective Action resulting from this investigation:

No.	Action Required	Submissions ⁴	Due Date
1.	Provide to ODE, for review, the training materials developed for the professional development in-service held by the District on June 17, 2016, as well as the list of participants (including positions) in the training.	Provide materials used for the in-service training on June 17, 2016. Provide a list of District staff and their positions, who participated in the training. Should ODE determine that the training and/or materials were not sufficient to address the issue of disciplinary suspensions of students with IEPs, a follow-up in-service	July 13, 2016 July 13, 2016

³ 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)).

⁴ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

		training will be scheduled by September 16, 2016 to provide additional information to staff. ODE will make this determination by July 20, 2016.	
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Dated this 27th Day of June, 2016



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Student Services

Mailing Date: June 27, 2016