

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the  
Redmond School District 2J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 19-054-043

**I. BACKGROUND**

On November 19, 2019, 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 Redmond School District 2J (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of the Complaint and forwarded it 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.<sup>1</sup> 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.<sup>2</sup>

On November 25, 2019, the Department's Complaint Investigator (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 December 9, 2019.

Due to the District's winter break schedule, the District asked for an extension to respond, and on December 12, 2019, the District submitted a *Response* denying the allegations and providing explanation and supporting documents in support of the District's position. In total, the District submitted the following items:

1. District written response in 19-054-043
2. Student Services Procedural Checklist
3. Notice of Team Meeting, 12/20/2018
4. Prior Notice about Evaluation/Consent for Evaluation, 01/25/2019
5. IEP Meeting, Attendance and Agenda, 01/25/2019
6. Prior Notice of Special Education Action, 01/25/2019
7. Student IEP 01/25/2019
8. Progress notes for Student, 02/06/2018
9. Notice of Team Meeting, 01/26/2018
10. IEP Meeting Minutes, 02/06/2018
11. Prior Written notice about Evaluation/Consent for Evaluation, 02/06/2018
12. Student IEP, 04/10/2018

<sup>1</sup> 34 CFR § 300.152(a); OAR 581-015-2030(12).

<sup>2</sup> 34 CFR § 300.152(b); OAR 581-015-2030(12).

13. 3-Year Reevaluation File Review Report, 01/25/2019
14. IEP Team Meeting Minutes, 01/25/2019
15. IEP Team Meeting Minutes, 06/06/2019
16. Student Behavior Support Plan, 01/25/2019
17. Student Functional Behavioral Assessment, 01/31/2018
18. Computer communication log Parent/District
19. Emails between Parent/Teacher
20. Emails between Parent/Special Education Teacher
21. Emails between Parent/Principal
22. Emails between Parent/Student Services
23. Emails between Parent/Special Education Director
24. Student Progress Notes

The Investigator interviewed the Parent on November 24, 2019 and December 17, 2019. The Parent provided relevant materials on December 17, 2019. The Investigator determined that onsite interviews were not necessary. On December 18, 2019, the Investigator interviewed the District's Director of Student Services and a special education teacher regarding this matter by phone. The Investigator reviewed and considered the previously-described 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.<sup>3</sup> 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 November 20, 2018, to the filing of this Complaint on November 19, 2019.

	<u>Allegations</u>	<u>Conclusions</u>
1.	<p><b><u>When IEPs Must Be In Effect (IEP Implementation)</u></b></p> <p>The Parent alleged that the District violated the IDEA when the District did not educate the Student in conformity with specially designed instruction, provide specific interventions outlined in the Student's IEP, or provide evaluation data to the Parent as outlined in the Student's IEP (or alternately as the result of prior agreements).</p> <p>The Parent specifically alleged that the District failed to provide math instruction in the manner outlined in the Student's IEP,</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District provided math instruction in accordance with the Student's IEP. Also, the District followed the Student's behavior support plan and attempted to work with the Parent to find strategies to encourage and redirect the Student's tendency to sometimes refuse to engage with the learning environment. Finally, the District and Parent have an existing agreement on the delivery of progress data. That agreement is not as specific as to cover the issues complained about in this matter. The</p>

<sup>3</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>failed to properly follow behavior interventions in the Student's Behavior Support Plan, and that these failures led to escalating behaviors resulting in punishments such as separating the Student from peers. Finally, the Parent alleged that the District failed to provide progress data as required by the Student's IEP and/or by previous agreement.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p>Department does not substantiate this allegation.</p>
<p><b>2.</b></p>	<p><b><u>Review and Revision of IEPs</u></b></p> <p>The Parent alleged that the District modified the way the Student's math instruction was delivered without convening an IEP team meeting, and without the input of the Parent or the Student's IEP Team.</p> <p>(34 CFR § 300.324; OAR 581-015-2225)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student's IEP was not modified. The Student's teacher delivered math instruction in accordance with the Student's IEP.</p>

### III. FINDINGS OF FACT

1. The Student in this case is in the sixth grade and is eligible for special education services under the category of Other Health Impairment. The Student has a medical diagnosis of Down Syndrome.
2. The Student receives specially designed instruction in the areas of reading, writing, math, speech/language, and behavior.
3. The Student shows academic strengths in math and also enjoys it. The Student participates in general education science and math courses. The Student generally shows strengths when completing work in a group setting.
4. The Student's Individualized Education Program (IEP) includes additional adult support, school/home communication, peer socialization, and accommodations for the Student's unique medical needs. In addition, the Student uses a variety of assistive technology including an iPad with educational applications, and math supports such as touch and counting patterns and TouchMath.
5. The Student's January 25, 2019 IEP includes specially designed instruction in the area of behavior. The Student's IEP indicates that the Student "struggles to follow directions the

first time they are given and is working on following directions and routines without additional prompts.” Transitions between preferred and non-preferred activities are areas of difficulty for the Student. When directed to do things, the Student may refuse to comply with requests. When younger, the Student would often respond by running away, but recently the Student has not exhibited this behavior.

6. The Student’s January 25, 2019 IEP includes math goals in the areas of double digit subtraction (with the use of math tools such as touch points, manipulatives, counting backward), money calculation, and telling time.
7. The Student participates in class-wide and small group math instruction in the general education classroom, which works toward fifth grade common core standards. The District uses Ready/iReady Curriculum for core instruction as well as intervention and diagnostic assessments. The Student’s January 25, 2019 IEP notes the Student would receive small group instruction to work on IEP goals with “teacher made curriculum.”
8. For each goal, the Student’s January 25, 2019 IEP provides for progress reporting, stating, “Written progress notes sent home monthly.”
9. The Student’s IEP also provides for adult support for new routines, new transitions, and emotional regulation.
10. The Student has a behavior support plan (BSP). Some of the BSP’s strategies/interventions include the following: (1) “After times when [the Student] becomes escalated, staff should continue with ‘amnesia’ and simply return to [the Student’s] schedule;” (2) “Present an unemotional response to challenging behaviors. [The Student] likes big responses;” (3) “Staff approach should be authoritative or confident, not passive or frustrated by [the Student’s] behavior. If [the Student] senses this in the adult, [the Student] will likely escalate. If this approach is not successful offering choices is another option, same tone used;” and (4) “Utilize Ready/Not Ready, Big Deal/Little Deal, You Job/My Job, and Easy/Hard scripts.”

The Parent reported to the District concerns that the District was not following the Student’s IEP. Specifically, the Parent reported that rather than using the touch points math curriculum, the Teacher utilized another curriculum. The Parent reported that the District’s failure to utilize a specific curriculum resulted in the Student feeling frustrated and withdrawing from the learning environment.

11. The Parent also described visiting the Student’s classroom and observing the Teacher not utilizing a specific math curriculum with the Student. The Parent raised concerns that the frustration this caused led the Student to disengage from the learning environment and resulted in the Teacher removing the Student from completing group work with peers.
12. The Parent further reported to the Investigator that they learned of, and witnessed during visits to the classroom, the Teacher not following the Student’s BSP. The Parent provided examples such as removing the Student from group work and giving the Student non-preferred components of group activities.

13. The Parent and the District had for some time agreed to provide progress updates on the Student for the Parent in the form of a communication log. The agreement provides for the following relevant considerations regarding the communication log: (1) "The teacher will use the current communication log to indicate when [the Student] runs...;" (2) "The teacher will contact the parent by telephone if there is a pattern of a new challenging behavior that occurs over several days;" (3) "If there is an instructional strategy that is working or that the educators are exploring on a trial basis and that would be helpful to have reinforced at home, the teacher will request the parent call so it can be discussed;" and (4) "In general, if it is not an emergency, the response time to a request for contact will be within 24 hours of the initial request."
14. During the Complaint period, the District sent the Parent progress notes on a monthly basis, with two exceptions. The first exception was February 2019, where the Student's IEP Team had convened for an annual review on January 25, 2019. The second exception was June 2019, where the school year ended mid-month. The District and the Parent were in regular communication throughout the 2018-2019 school year.
15. On September 12, 2019, the Teacher sent an email to the Parent regarding the Student's classroom behavior. The Teacher solicited the Parent's feedback on proposed consequences for the Student's failing to participate in activities. The Teacher wrote, "I have looked at [the Student's] behavior plan and I did not see anything related to accountability for [the Student]. Please share any ideas you have."

On September 16, 2019, the Parent sent an email to the District Director of Special Education expressing concern about the Student's success in the Teacher's classroom and inquiring whether the Student was punished for not doing schoolwork.

16. On September 16, 2019, the Teacher sent an email to the Parent explaining that the Student was not exhibiting concerning behaviors. Rather, the Teacher was looking for strategies to gain the Student's participation on occasions when they refuse to complete work in class.
17. On September 17, 2019, the Parent acknowledged in an email their personal concerns regarding the Student's past behaviors and the potential for recurrence of concerning behavior.
18. On September 19, 2019, the Parent observed the Student for a portion of the school day. Later that day, the Parent sent an email to the District summarizing their concerns around the Student's escalating behaviors. The Parent also raised concerns about the Student's inability to follow newly introduced math concepts on the day they observed class. In the email, the Parent explained their understanding of the curriculum required by the Student's IEP, and that what they observed was curriculum different from that specified by the IEP.
19. On September 23, 2019, the Parent, Teacher, Director of Special Education, Principal, and others met to discuss concerns raised by the Parent. The Parent understood that this was an IEP team meeting. The District described this as a status meeting.
20. On October 10, 2019, the Parent withdrew the Student from the District.

21. The District reports that beginning September 2019, the Teacher began adding Connecting Math Concepts to the Student's math instruction to assess the Student's understanding of basic math operations and concepts. The Parent raised the concern that the Teacher's use of Connecting Math Concepts was an impermissible deviation from the Student's IEP and was not effective for the Student.

## IV. DISCUSSION

### A. When IEPs Must Be In Effect (IEP Implementation)

The Parent alleges that the District violated the IDEA when it failed to provide math instruction in the manner outlined in the Student's IEP, failed to properly follow behavior interventions in the Student's Behavior Support Plan, and that these failures led to escalating behaviors, resulting in punishments such as separating the Student from peers. Also, the Parent alleges that the District failed to provide the Parent with progress data as required by the Student's IEP and/or by previous agreement.

School districts must have in effect at the start of each school year an IEP for each child with a disability within its jurisdiction.<sup>4</sup> School districts must provide special education and related services to a child with a disability in accordance with the Student's IEP.<sup>5</sup> School districts have flexibility in deciding on teaching methodologies, "because there [is] not a single methodology that would always be effective."<sup>6</sup> The choice of methodology however, must be appropriate to the child. The choice of methodology must be tailored to the individual needs of the child and be reasonable calculated to confer educational benefit.<sup>7</sup> "Provided an appropriate methodology which meets the Student's unique needs" the student should be capable of making progress on goals.<sup>8</sup> To the extent practicable, a district must use a methodology to provide special education and related services based upon peer reviewed research.<sup>9</sup>

#### 1. Math Instruction

The District provided math instruction to the Student in accordance with the Student's IEP. The Student's IEP provides illustrations of methodologies that could be used, including the TouchMath. The Student's IEP further specifies that the Student would work in the general education environment toward common core goals in mathematics, with specially designed instruction created and delivered by the Student's teacher. During interviews, the Teacher explained that while the Student could perform math calculations, utilization of different methodologies showed that the Student did not understand the concepts taught and was instead performing rote counting with the TouchMath method. The Teacher further explained that the use of different methodologies was important to better understand the Student's capabilities and inform the IEP Team in determining how best to update the Student's IEP. The Teacher and Special Education Director further observed that TouchMath was likely

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<sup>4</sup> OAR 581-015-2220(1)(a).

<sup>5</sup> OAR 581-015-2220(1)(b).

<sup>6</sup> *R.E.B. v. State of Hawaii Dept. of Educ.*, 74 IDELR 125 (9th Cir. 2019)

<sup>7</sup> *I.S. by Sepiol v. School Town of Munster*, 64 IDELR 40 (2014)

<sup>8</sup> *City of Chicago School District 299*, 62 IDELR 220 (2013)

<sup>9</sup> *Id.*; 20 U.S.C. § 1414(d)((1)((A)(i)(IV)); 34 CFR § 300.320.

appropriate at a lower grade level, but without exploring additional methodologies, the Student's abilities could not be adequately measured. The District further noted that the Student's IEP did not limit the curriculum applicable to the Student, rather it left curriculum design and delivery up to the Teacher. The inclusion of "touch points" as a math tool in the Student's IEP does not prohibit the use of other tools and methodologies. The Department does not substantiate this allegation.

## **2. Behavior**

The Parent alleges that the District violated the IDEA by not utilizing behavior supports specified in the Student's IEP. The Parent's examples of these alleged violations were formed on occasions when the Parent visited the classroom—or heard from others present in the classroom—that when the Student did not comply with directions, they were required to perform a different task, or take part in some other portion of group activity. As explained by the Teacher, the BSP's strategy to "act with amnesia" did not immunize the Student from facing consequences. On occasions when the Student refused to take part in group activities, the Student lost their ability to be among the first to choose preferred portions of the group work. The Student continued to be involved in the group activities. The Teacher's employment of accountability in response to the Student's conduct was not in conflict with the Student's Behavior Support Plan. Additionally, the Teacher sought the Parent's input on approaches to accountability/consequences for the Student's non-participation. The Department does not substantiate this allegation.

## **3. Progress Data**

The District demonstrated that it provided progress notes to the Parent on a monthly basis in accordance with the Student's IEP. According to the Parent, progress reports were due at the first of each month and that on one occasion the progress report was eight days late. The Student's IEP includes progress reporting and indicates, "written progress notes sent home monthly." The District denied failing to provide progress reports, with two exceptions. In each, the District demonstrated that it reported out to the Parent, either through regular informal communications with the Parent, or through the convening of an annual IEP team meeting, which occurred on January 25, 2019. The Department does not substantiate this allegation.

## **B. Review and Revision of IEPs**

The Parent alleges that the District modified the way the Student's math instruction was delivered without convening an IEP meeting, and without the input of the Parent or the Student's IEP Team. The Parent contends that the District's use of curriculum or teaching methodologies in mathematics other than TouchMath was done in contravention of the Student's IEP. The Parent also reports meeting with members of the Student's IEP Team to discuss these concerns.

Districts must ensure that the IEP team reviews a child's IEP periodically but at least annually.<sup>10</sup> IEPs are reviewed to determine whether annual goals for the child are being achieved and

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<sup>10</sup> OAR 581-015-2225(1).

revising the IEP as appropriate to address any lack of expected progress toward annual goals.<sup>11</sup>

The District did not revise the Student's IEP without convening an IEP team meeting. The Student's IEP does not specify the curriculum to be used in mathematics. The Student's IEP states that the Student is to receive instruction in the general education environment in the form of curriculum designed and delivered by the Teacher. As described above, the IEP's mention of math tools such as touch points did not prohibit the District to use other math tools or develop its own curriculum. The District provided math instruction in accordance with the Student's IEP and did not revise the Student's IEP without an IEP team meeting. The Department does not substantiate this allegation.

## **V. CORRECTIVE ACTION<sup>12</sup>**

*In the Matter of Redmond School District #2J  
Case No. 19-054-043*

The Department does not order corrective action in this matter.

Dated: this 14th Day of January 2020

*Candace Pelt, Ed.D*

Candace Pelt  
Assistant Superintendent  
Office of Enhancing Student Opportunities

Mailing Date: January 14 2020

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<sup>11</sup> OAR 581-015-2225(1)(b) and (1)(b)(A).

<sup>12</sup> 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)).