

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School)
District)
)

FINDINGS OF FACT
CONCLUSIONS AND FINAL
ORDER
CASE NO. 21-054-025

I. BACKGROUND

On August 19, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) who formerly resided in the Portland School District (District). The Parents 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 August 25, 2021, 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 September 8, 2021.

The District submitted a *Response* on September 8, 2021, agreeing with the Complainants that records were not submitted in a timely fashion, providing an explanation, including Corrective Action the District has taken, and submitting supporting documents in support of the District's position. The Parents submitted supporting documents on or before September 15, 2021. In total, the District submitted the following items:

1. District Response 021-054-025, 9/8/21
2. Exhibit list, no date
3. IEP, 6/7/21
4. Special Education Placement Determination, 6/7/21
5. Letter, stand ready to serve, 10/21/20
6. Notice of Team Meeting, re: annual IEP, 5/3/21
7. Meeting Minutes, re: annual IEP, 5/3/21
8. Meeting Minutes, re: annual IEP, 6/7/21
9. Prior Written Notice, re: annual IEP, 6/7/21
10. Exhibit D4 (email) cover page, no date
11. Email, re: draft IEP for your review, 5/1/21
12. Email, re: medical report for student, 5/3/21
13. Email, re: draft IEP for meeting on 6/7/21
14. Email, re: hybrid data added, 6/7/21
15. Email, re: draft IEP, 6/7/21

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

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

- 16. Email, re: student 5/3/21 documents, 6/7/21
- 17. Email, re: student meeting tomorrow, 6/10/21
- 18. Email, re: documents needed for student, 8/12/21
- 19. Email, re: student records, local resolution, 8/23/21
- 20. Exhibit D5, list of staff knowledgeable about the complaint, no date

In total, the Parents submitted the following items:

- 21. Request for a Complaint Investigation, 8/19/21
- 22. Email, re: documents needed for student, 8/12/21
- 23. Parent’s Reply, 9/9/21
- 24. Email, re: student records, local resolution, 8/30/21

The Investigator reviewed the District and the Parent’s submissions and determined interviews were not necessary. The Investigator reviewed and considered all of these documents 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 August 20, 2020, to the filing of this Complaint on August 19, 2021.

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

Allegations	Conclusions
<p><u>Failure to provide educational records in a timely manner</u></p> <p>The Parents alleged that the District violated the IDEA when the District failed to provide certain educational records to the Parents within the required 45 day timeline.</p> <p>(OAR 581-015-2300(3)(b)) and 34 CFR § 300.613(a))</p>	<p>The District does not contest these allegations.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • The Oregon Department of Education should issue an order finding the District is in violation of IDEA for failure to provide the requested educational records within 45 days after the request has been made. • The Oregon Department of Education should compel the District to provide the Parents with the requested educational records immediately.

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none">• The Oregon Department of Education should require training for District staff regarding timely response to record requests.

III. FINDINGS OF FACT

Background

- 1) The Student is 15 years old and will be in the tenth grade. The Student was attending a District school during the 2020-21 school year and has since transferred to another school district.
- 2) The Student is eligible for special education and related services due to Autism Spectrum Disorder, Emotional Behavior Disability, and an Other Health Impairment with an eligibility due date(s) of February 5, 2023.
- 3) The Student enjoys music and art, and is an expert on local historical architecture and history. The Student is committed to attending school, increasing participation, and overcoming challenges.
- 4) The Student's disabilities manifest in behaviors such as perfectionism, rigidity, defiance, and anxiety.
- 5) The Student received Comprehensive Distance Learning (CDL) and hybrid instruction during the 2020-21 school year.
- 6) The Student receives Specially Designed Instruction (SDI) in the areas of classroom/school skills, and social emotional skills. Related Services for communication are provided. The Student's IEP provides access to numerous accommodations and consultation from specialists to classroom teachers and other IEP team members.
- 7) The Student's special education placement determination for the June 7, 2021 IEP is general education for greater than 80% of the day.

Failure to Provide Educational Records in a Timely Manner

- 8) The Student's IEP team met on May 3, 2021 for an annual IEP meeting. Meeting notes indicate the District committed to providing the Parents with copies of the meeting notes by May 10, 2021.
- 9) The 45-day deadline for the District to provide the documents requested on May 3, 2021 was June 24, 2021.
- 10) The District documented at the June 7, 2021 IEP meeting that the finalized paperwork would be provided to the Parents and their Attorney by June 25, 2021.
- 11) The 45-day deadline for the District to provide the documents requested on June 7, 2021 was July 22, 2021.

- 12) The Parents' Attorney contacted the District August 12, 2021 to make notification that the requested records were not received.
- 13) The Parents, through their Attorney, filed a Request for a Complaint Investigation with the Oregon Department of Education on August 19, 2021.
- 14) The District's Attorney provided the requested records to the Parents' Attorney on August 23, 2021.
- 15) The District's Response, submitted to the Investigator on September 8, 2021, indicated the District is reviewing its internal procedures to ensure timely compliance with the Family Educational Rights and Privacy Act (FERPA) and OAR 581-021-0220 to 0430.

IV. DISCUSSION

Failure to Provide Educational Records in a Timely Manner

The Parents alleged that the District violated the IDEA when the District failed to provide certain educational records to the Parents within the required 45 day timeline.

The school district must comply with a parent's request to inspect and review records without unnecessary delay and, for children over the age of three, before any meeting regarding an IEP, or any due process hearing or resolution session related to a due process hearing and in no case more than 45 days after the request has been made.³

The Parents' Attorney made requests for special education documents and meeting notes on May 3, 2021 and June 7, 2021. The District provided the requested records on August 23, 2021, which was 112 days from the request made on May 3, 2021 and 77 days from the request made on June 7, 2021.

The District does not contest these allegations.

VI. CORRECTIVE ACTION⁴

*In the Matter of Portland School District
Case No. 21-054-025*

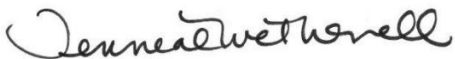
Action Required	Submissions	Due Date
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³ OAR 581-015-2300(3)(b)) and CFR § 300.613(a))

⁴ 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)).

1. The District is to provide training to those building staff responsible for fulfilling records requests concerning statutory requirements and their responsibilities in this regard.	The District shall submit the following: <ul style="list-style-type: none"> • Training Agenda • Training Materials • Sign in Sheets 	January 15, 2022 February 15, 2022
2. The District is to review policies and procedures for records requests and ensure there is a system in place for requests that occur during instructional breaks.	The District shall submit the following: <ul style="list-style-type: none"> • District policy and procedures related to records requests • Updated board minutes and agendas, as needed 	May 15, 2022

Dated: this 12th Day of October 2021

x 

 Tenneal Wetherell
 Assistant Superintendent
 Office of Enhancing Student Opportunities

E-mailing Date: October 13, 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).)