

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
School District 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-006

I. BACKGROUND

On January 23, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an attorney for the parents (Parent) of a student (Student) attending school in the Portland Public School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this original complaint and forwarded the request to the District by email on January 23, 2024.

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 February 5, 2024, 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 February 19, 2024.

The District timely submitted a *Response* on February 16, 2024. The *Response* included a narrative, and the following relevant documents upon which the Investigator relied:

1. District's Written *Response* to Complaint, 2/16/24
2. Individualized Education Program (IEP), 11/7/22
3. Disability Statement, 11/7/22
4. Eligibility Summary Statement, 11/7/22
5. Placement Determination, 11/2/22
6. Prior Written Notice (PWN), 10/13/21
7. PWN, 11/7/22
8. Notice of Team Meeting, 11/2/22
9. Parent Consent for Individual Evaluation, 4/7/22
10. PWN and Consent for Initial Provision of Special Education Services, 11/7/22
11. Parent Consent for Individual Evaluation, 10/13/21
12. PWN, 3/1/22
13. PWN, 2/25/22
14. Authorization re-educational and Protected Health Information, 1/14/22
15. PWN, 10/13/21
16. Permission to Release or Exchange Information, 11/23/22

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. Eligibility Summary Statement, 11/3/22
18. PWN and Consent for Initial Provision of Special Education Services, signed 11/23/22
19. Disability Statement, 11/7/22
20. Special Education Placement Determination, 11/2/22
21. Notice of Team Meeting, 11/2/22
22. PWN, 11/7/22
23. Meeting Minutes, 5/15/23
24. Special Education Placement Determination, 5/15/23
25. PWN, 5/15/23
26. PWN, 6/12/23
27. Email Communication (191 pp), 1/1/23-1/24/24
28. Confidential Psychological Assessment, 10/13/22
29. Discharge Summary, 10/16/22
30. IEP, 1/4/24
31. Permission to Release or Exchange Information, 2/15/23 (signed 3/24/23)
32. Review Notes, 2/1/23, 3/1/23, 4/1/23

On February 26, 2024, Parent timely submitted a *Reply* via email. The Parent submitted the following documents:

The Complaint also included 18 exhibits, as follows:

1. Email, 1/23/23
2. Emails, 1/25/23, 1/29/23
3. Emails, 2/13/23, 2/14/23, 3/1/23
4. Emails, 2/14/23, 2/15/23
5. Emails, 2/25/23, 3/13/23
6. Emails, 3/15/23, 3/24/23
7. Email, 3/28/23
8. Email, 4/18/23
9. Google Invite for 4/24/23 meeting, email, 2/21/23
10. Emails: 4/21/23, 4/24/23, 2/21/23
11. Email, 5/3/23
12. Emails, 5/1/23, 5/2/23, 5/3/23
13. Email, 5/23/23
14. Emails, 5/24/23, 6/2/23, 6/12/23
15. Documents Regarding Expenses Incurred by Parent (174 pp)
16. Communication Log
17. 10-day Notice Email from Parent to PPS, 5/11/21
18. Emails, 5/21/21, 6/4/21, 6/5/21

The Complaint Investigator interviewed the Parents, with their legal counsel, by telephone on February 29, 2024. On March 4, 2024, the Complaint Investigator interviewed the District's legal counsel by telephone. On March 7, 2024, the Complaint Investigator interviewed the District's Special Education Director by telephone. 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 January 24, 2023 to the filing of the Complaint on January 23, 2024.

Allegations	Conclusions
<p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleges that the District violated the IDEA by failing to pay for the Student’s placement of a private residential facility after a change in location from one private residential facility to another private residential facility occurred on January 31, 2023. Specifically, the Complaint alleges that the District denied the Student FAPE when the District determined it would not pay for the Student’s placement following the change in location on January 31, 2023 until an IEP meeting that occurred on May 15, 2023 during which the IEP team addressed the change in location.</p> <p>(OAR 581-015-2040, OAR 581-015-2515; 34 CFR 300.101)</p>	<p>No Determination Made.</p> <p>The unilateral withdrawal of the Student from the Residential Treatment Center at which the Student’s IEP team placed the Student under authority of the Student’s November 7, 2022 IEP, without the consent or referral of the District, may result in reimbursement to the parents only if the court or an administrative law judge finds that the District “had not made a free appropriate public education (FAPE) available to the child in a timely manner before that enrollment and that the private placement is appropriate.” The Department lacks the legal authority to make either of these determinations.’</p>
<p>Review and Revisions of IEPs</p> <p>The Complaint alleges that the District violated the IDEA by failing to timely revise the Student’s IEP following the change of location of the Student’s special education services, a change which occurred on January 31, 2023, until an IEP meeting occurred on May 15, 2023.</p> <p>(OAR 581-015-2225; 34 CFR 300.324(a)(4), (a)(5), (a)(6) & (b)(1)).</p>	<p>Substantiated.</p> <p>The District determined that an IEP meeting could not be conducted with records from the previous and current treatment centers. However, the Parents provided the records within ten days of the District informing them of the specific records needed.</p>

III. FINDINGS OF FACT

1. The Student in this case is 15 years old and has completed ninth grade. The Student was placed into residential treatment by their Parents on February, 2021, and has suffered from significant mental health issues for several years. The Student was determined to be eligible for special education as a child with Emotional Behavior Disability (EBD) on November 7, 2022. Previously, the Student was on a 504 Plan. The Parent enrolled the Student in a private school in September of 2023 and the Student no longer attends a District school.

2. On September 26, 2022, the Student enrolled in a different private residential facility (PRF #1). The Student was placed in this facility by the IEP team on November 23, 2022. The Student's November 7, 2022 IEP describes the Student as "a very academically gifted student who exhibits no issues with learning" and as "very bright and very capable in all academic areas."
3. A "Confidential Psychological Assessment Report", dated October 13, 2022, diagnosed "Generalized Anxiety Disorder", "Major Depressive Disorder, Recurrent, Moderate" and Emerging histrionic and borderline personality traits". The psychological assessment concluded that the Student: "struggles with several significant issues. These include emotional dysregulation, depression, limited coping skills, anxiety, impulsivity, and emerging features of histrionic and borderline personality disorders. Of significant concern also is [the Student's] longstanding, and especially recent talk of suicide. Given these test results, [the Student] criteria for special education with the classification of Emotional Disturbance (ED). As such, it is necessary that [the Student] remain in a highly contained, clinically intensive residential treatment program that can address each of these issues. [The Student] will need a high degree of psychiatric oversight and work with a pediatric psychiatrist for medication management. [The Student] will need regular intensive individual, group, and family therapy. [The Student] should be provided specialized treatment that include Dialectical Behavior Therapy (DBT) that can assist with the noted concern with borderline personality, emotional dysregulation and suicidal ideation."
4. The discharge summary completed by PRF included "Recommendations for Treatment after Discharge" that stated: "Ongoing care at another facility within a structured environment with a broad range of opportunities for recreation, socialization, and supported academics." Regarding "Education" the PRF #1 discharge summary stated the Student "has shown signs of improvement recently but needs to continue educational and social growth. In particular, [the Student] will need oversight to maintain appropriate behavior in the classroom when [the Student] is feeling anxious or overwhelmed."
5. The Parent removed the Student from PRF #1 on January 23, 2023, without providing prior notice of this decision to the District. The Parent emailed the District that same day, January 23, 2023, stating "We are writing to let you know that [the Student] will be moving from [PRF #1] to a new RTC on 1/31/2023. This is a good move for [the Student] and we are happy [the Student] is able to move to a less restrictive environment. As you might remember, [the Student] had to move to [PRF #1] from [a previous school] in September 2022 due to behaviors [they] did not feel they could safely manage. [The Student's] progress over the past 4 months has enabled [the Student] to move to a new RTC that will meet [the Student's] current needs. The new RTC is called [PRF #2] and it is located outside of Salt Lake City, Utah. At [PRF #2], [the Student] can continue [the Student's] therapeutic treatment and also attend a full school day. [PRF #2] is also significantly less expensive than [PRF #1]. We will send a separate email to connect you all to arrange payment/contracts. We hope you will join us in celebrating this step toward bringing [the Student] home!". In a separate email to the District, also on January 23, 2023, the Parent stated "Per our previous email, [the Student] is moving RTCs at the end of January and will no longer be attending [PRF #1]. Please DO NOT pay [PRF #1] for February. Can you help us get this message to the right group within PPS? We will send another email to connect you with the new RTC [the Student] will attend, [PRF #2], (in Utah)."
6. An attorney for the District called the Parent's Attorney on January 25, 2023 and requested information from both PRF #1 and PRF #2, regarding the Student's academic and treatment services and needs and progress on therapeutic interventions to allow the IEP team to determine FAPE and an appropriate placement. The District initially tentatively scheduled an

IEP meeting for January 30, 2023, and the Parent arranged for the Student's Therapist at PRF #1 to participate in that meeting. However, on January 25, 2023, the District cancelled the January 30, 2023 IEP meeting and requested "in the meantime" any information from both PRF #1 and PRF #2.

7. On February 5, 2023, the District's Senior Director of Special Education (Director) emailed a request to PRF #1's Head Therapist requesting "the progress notes, discharge summary, and recommendations for [the Student]." Also on February 5, 2023, the Director called and spoke with a teacher at PRF #1, who could only provide academic information regarding the Student, and stated there were no academic concerns regarding the Student at PRF #1. The Teacher also told the Director that the Parent made the decision to withdraw the Student from PRF #1 and came and picked the Student up on or about January 23, 2003. On February 15, 2023, the District emailed the Parent a Release of Information (ROI) for both PRF #1 and PRF #2. On February 25, 2023, Parent emailed the District a ROI regarding PRF #1 that the Parent had previously signed, on November 23, 2022. On March 14, 2023, PRF #1 emailed the Director their discharge summary. PRF #1's discharge summary did not contain information regarding transition or services available from PRF #2.
8. Between February 15, 2023 and March 24, 2023, the Parent and the District communicated by email regarding the content of the ROI for PRF #2. The Parent signed the ROI for PRF #2 on March 24, 2023 and provided it to the District that day. On March 28, 2023, the District scheduled an IEP meeting for April 24, 2023. However, on April 21, 2023, the District sent an email canceling the April 24, 2023 IEP meeting "due to having limited information from the former programs and no information from the current program despite [the Director's] multiple efforts to get this information. The team is unable to proceed with the meeting."
9. On May 2, 2023, the District scheduled an IEP meeting for May 15, 2023, and on May 11, 2023, the District emailed a link for the meeting and an agenda. On May 11, 2023 and May 12, 2023, PRF #2 communicated with the Director by email and provided information concerning PRF #2 and the requested additional information regarding the Student's services and progress at PRF #2.
10. The IEP meeting occurred on May 15, 2023 as scheduled, but the District did not complete and email the Meeting Minutes, PWN, and Placement Determination until May 24, 2023. The day before, on May 23, 2023, the Parent had emailed the Director stating "We are checking in on the follow up item from [the Student's] IEP meeting last week. You committed to sending us your decision on [PRF #2] placement by yesterday, May 22. Can we expect that today?" The PWN dated May 15, 2023 states: "District proposes that [PRF #2] is an appropriate Residential Treatment Center (Step down from Secure Center) from May 15, 2023 moving forward. Review of current information from [PRF #2]." The PWN dated May 15, 2023 also stated: District refuses to approve Payment for placement at [PRF #2] from 1/31/2023 – 5/15/2023. Family removed [the Student] from [PRF #1] RTC and placed [the Student] at [PRF #2] in Utah unilaterally and outside the IEP process. PPS was notified after parents had already withdrawn the student from [[PRF #1]." The PWN also listed, in the "Description of the factors relevant to the actions proposed or refused" are, verbatim:
 - a. Family agrees with placement at [PRF #2] moving forward from 5/15/2023
 - b. Family disagrees that District refuses to pay for placement from 1/31/2023-5/15/2023
 - c. Family and District desired to meet earlier than May 15, 2023.
 - d. District had difficulty obtaining discharge information from [PRF #1] and current information from [PRF #2]
 - e. Parents notified PPS student was moving to [PRF #2], 1/23/2023
 - f. Requested records from [PRF #1], 2/6/2023

- g. Shared contract that PPS was paying for [PRF #1] and requested records again, 2/14/2023
- h. Met with [Parent] to share struggle getting records, 2/15/2023
- i. Received [PRF #1] Discharge report, 3/14/2023
- j. Sent Release of Information for [PRF #2] to [Parent] for signature, 3/15/2023
- k. Called [PRF #2] to request records – left message, 3/21/2023
- l. Called [PRF #2] to request records – left message, 4/7/2023
- m. Called [PRF #2] to request records – left message, 4/12/2023
- n. Called [PRF #2] to request records – left message, 4/18/2023
- o. Cancelled IEP meeting scheduled for 4/24 as records not received from [PRF #2], 4/21/2023
- p. Reached [PRF #2] and sent release of information, 5/2/2023
- q. Spoke to Admissions Director at [PRF #1], 5/2/2023
- r. Waiting on Therapist to return my call for update, 5/3/2023
- s. Received records from [PRF #2] 5/4/2023
- t. Sent questions via email to therapist (per parent request) 5/8/2023
- u. Received email response to questions from therapist, 5/12/2023

The District issued another PWN, dated June 12, 2023, after the Parent requested the District reconsider its decision regarding payment by the District for the Student’s attendance at PRF #2 from 1/31/23 to 5/15/23. The PWN states: “In response to the parent request: The District declines to pay for education services at [PRF #2] in Utah between the dates of January 31, 2023 and May 15, 2023.” The “Explanation of why the district proposes or refuses to take the action: states “The Family withdrew the student from [PRF #1] Secure Residential Treatment Facility in Idaho and unilaterally placed the student at [PRF #2] in Utah. An IEP meeting was not held to determine a change in placement or location of services. The district was not notified prior to the family withdrawing the student from [PRF #1]. The “Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action” states: “The district was not part of the decision to place the student to [PRF #2] until May 15, 2023.” Finally, the “Description of the factors relevant to the actions proposed or refused are: “Once the district was notified of the placement, the district began collecting records from both [PRF #1] and [PRF #2]. An IEP meeting was held on May 15, 2023 to review all records from both [PRF #1] and [PRF #2] as [the Student] had been attending there since January 31, 2023. The District agreed to pay for [PRF #2] moving forward from the date of the May 15, 2023 IEP meeting.”

11. In the Parent’s email requesting reconsideration of the District’s decision regarding payment for the Student’s enrollment at PRF #2 from January 31, 2023 to May 15, 2023, the Parent provided a list of 44 instances between January 23, 2023 and May 24, 2023 when the parties communicated about this matter.

15. On January 23, 2024, the Parent, through their Attorney, filed this Complaint.

IV. DISCUSSION

Free Appropriate Public Education (FAPE)

The Complaint alleged that the District violated the IDEA by denying the Student FAPE when the District determined it would not pay for the Student’s placement following the change in location on January 31, 2023 until an IEP meeting that occurred on May 15, 2023 during which the IEP team addressed the change in location.

School districts must provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible.³ Additionally, school districts may be ordered to reimburse parents for private placements made without the consent of or referral by the public agency if the court or administrative law judge finds that the agency had not made a free appropriate public education (FAPE) available to the child in a timely manner before that enrollment and that the private placement is appropriate.⁴

Reimbursement in this situation can only be ordered by the court or an administrative law judge; consequently ODE lacks the authority to render a finding with respect to whether or not FAPE was made available to the Student prior to the Parent's decision to place the Student in a different private placement or whether this placement was appropriate.

The Department makes no determination with respect to this allegation.

Review and Revision of IEPs

The Complaint alleged that the District violated the IDEA by failing to timely revise the Student's IEP following the change of location of the Student's special education services, a change which occurred on January 31, 2023, until an IEP meeting occurred on May 15, 2023.

A Student's IEP must be reviewed and revised periodically, but at least yearly, to determine whether the annual goals for the child are being achieved.⁵ A school district must ensure that the IEP Team reviews and revises the child's IEP, as appropriate, to address: (1) any lack of expected progress towards the annual goals and the general education curriculum; (2) the results of a reevaluation conducted; (3) information about the child provided to, or by, the parents; (4) the child's anticipated needs; or (5) other matters.

The Parents and the District began discussing the need for an IEP meeting on January 23, 2023; however, no IEP meeting was held until May 15, 2023. Numerous IEP meetings were scheduled and then cancelled by the District because the District felt that there was insufficient documentation available from both the previous and the current residential facility. However, the District did receive a transcript as well as a discharge summary from the Parents on March 15, 2024. The "Discharge Summary" included three pages of relevant information about the Student gathered since their admission in September 2022. Specifically, the "Recommendations for Treatment after Discharge" section of this document included ongoing care in a facility. While not ideal, this document could have served as a starting point for revising the IEP, which was necessary. Subsequent revisions could have been made, if necessary, based upon additional information gathered or provided. It is also notable that, once the Parents requested specific details about which records the District needed to move forward, they were able to ensure that these records need were provided to the District within ten days.

The Department substantiates this allegation.

V. CORRECTIVE ACTION⁶

³ OAR 581-015-2040

⁴ OAR 581-015-2515(3)

⁵ OAR 581-015-2225

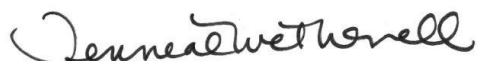
⁶ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has 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)).

In the Matter of Portland School District 1J
Case No. 024-054-006

Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions⁷	Due As Soon As Possible But No Later Than
1. The District will provide training to administrators and teachers regarding the District's obligations to review, and, if necessary revise IEPs when circumstances change under the IDEA's child find provisions and prior written notice provisions.	The District will submit a training plan to the Department, complete the training according to the approved plan, and submit evidence of completed training, materials, agenda, and sign-in sheets.	May 15, 2024 September 15, 2024

Dated: this 21st Day of March 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: March 21st, 2024

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).)

⁷ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310- 0203; telephone – (503) 580-3083; e-mail: mike.franklin@ode.oregon.gov, fax number (503) 378-5156.