

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
School District 1J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-016

I. BACKGROUND

On March 26, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (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 Complaint and forwarded the Complaint to the District by email on March 26, 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 April 9, 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 April 23, 2024.

The District timely submitted a *Response* on April 23, 2024. The District submitted documents with its *Response*. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 4/23/24
2. IEP, 4/26/21
3. Progress Reports, 6/11/21
4. Prior Written Notice (PWN), 6/10/20
5. Placement Determination, 4/26/21
6. Meeting Minutes, 4/26/21
7. PWN, 4/26/21
8. Nursing Assessment, 4/26/21
9. Email Communication, 3/25/23 to 3/26/24
10. Progress Reports, 1/30/24
11. Eligibility Summary Statement, 5/1/20
12. Meeting Minutes, 9/28/23
13. Parent Consent for Individual Evaluation, 9/28/23
14. PWN, 3/22/24
15. Delegated Health Care Logs, 12/4/23 to 2/19/24
16. Student Enrollment Profile, 10/22/14 to 3/19/24

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. Staff List, 4/23/24

The Parent did not submit a written Reply. The Complaint Investigator interviewed the Parent by telephone on May 6, 2024. The Complaint Investigator interviewed a District Special Education Teacher, who is also the Student’s Case Manager, virtually, on May 7, 2024. 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 March 27, 2023 to the filing of the Complaint on March 26, 2024.

Allegations	Conclusions
<p>1. When IEPs Must Be in Effect (Implementation)</p> <p>The Complaint alleges that the District violated the IDEA by not providing the Student, who has a disability, “the care [the Student] needs. No one changes [the Student] every two hours, [the Student] stays in urine infested wheelchairs for hours on end. When they bring home, [the Student] is cold, wet and often shivering out of cold.”</p> <p>(OAR 581-015-2220; 34 CFR § 300.323 & § 300.324).</p>	<p>Not Substantiated.</p> <p>There is no evidence that the IEP was not implemented as written.</p>

REQUESTED CORRECTIVE ACTION
<p>The Complainant requested corrective action as follows:</p> <p>1. “I want the state to take responsibilities for the neglect that [the Student] has gone through. The school thinks that they don’t need to follow up with IDEA clauses and there are no ramifications for their action. I am afraid that if someone removes the tube that keeps him alive, [the Student] would die immediately.”</p>

III. FINDINGS OF FACT

1. The Student in this case is currently 17 years old and enrolled in the 11th grade within the District, attending school from December 3, 2023 to February 19, 2024. The Student is eligible for special education as a child with Orthopedic Impairment and Visual Impairment. The Student “is non-verbal, wheelchair dependent and dependent for all personal care as well as for accessing [the Student’s] education.” The Student’s Statement of Nonparticipation Justification in the Student’s April 26, 2021 IEP states that the Student “has a reduced school day as per request from [the Student’s] parents. [The Student] joins the class during 3rd period and stays to the end of the day.” The Student’s April 26, 2021 IEP includes, in the Supplementary Services portion of the IEP, “Delegated care per nursing procedures (G-Tube feeding, seizures, diapering/skin monitoring”); and “Abbreviated day due to medical/feeding needs. To be reviewed quarterly.”

2. Prior to the 2023-24 school year, the Student last attended school in the District in May of 2019. The Student did not attend a District school during the 2021-22 and 2022-23 school years. The District's *Response* provided a summary of the Student's re-enrollment with the District:

"The current school year began on August 29, 2023. A few days earlier, on August 23, the Parent visited [a District high school] to enroll [the Student] there. Relevant school, District, and ESD staff began coordinating the steps to gather current medical and other information about [the Student's] needs to have the necessary support in place for [the Student] at school. A large group met for an IEP and evaluation planning meeting on September 28[, 2023]; in attendance were the Parent, ... [the Student's] case manager, ... a school psychologist, ... a physical therapist, ... a complex needs nurse, ... [an] occupational therapist; ... [a] vision specialist, ... [a] speech language pathologist, ... [a] feeding team speech language pathologist; ... [an] adapted PE teacher; [a] vice principal,... [a] special education program administrator; and a French-speaking interpreter."

3. At the August 29, 2023 meeting, the team collected updated information since the Student's previous enrollment in the District. This included information about the Student's mobility, sensory, and communication needs. The team also discussed the needs for staff training from the Special Needs Nurse regarding the Student's feeding and seizure protocols. It was determined that the Student required updated evaluations. The Parent signed several Releases of Information to allow District staff members to communicate with the Student's medical providers. It was also determined that the Student would begin attending school at approximately 10:45 a.m. each morning.
4. Following this meeting, staff members worked to obtain current information and medical orders from the Student's private providers to ensure that the Student's medical needs could be addressed at school. The District also planned transportation services for the Student, including the provision of a wheelchair-accessible bus and an aide to ride the bus with the Student. Due to the extensive planning and coordination required, the team determined that the Student would start attending school around November 1, 2024.
5. On November 1, 2024, PPS teachers went on strike. The Student began attending school on December 4, 2023. Typically, the Student arrived at 10:45 a.m., during one of their electives. At 11:30 a.m., the Student's feeding began. This required the use of a G-tube and took approximately two hours. During this time, the Student was in the Special Education Teacher's classroom, along with their peers. From 12:15 p.m. – 1:30 p.m., the Student attended PE class. The Student's participation was limited to tasks requiring limited motion, as G-tube feeding was still occurring during this time. At 1:30 p.m., the Student transitioned back to the Special Education Classroom to conclude the G-tube feeding process. The Student was usually toileted at around 2:30 p.m., which could take up to 30 minutes. At 3:30 p.m., school was dismissed. The Student typically returned home between 4:00 p.m. – 4:15 p.m., depending on when transportation arrived at the school.
6. The District scheduled a meeting for February 22, 2024 to review evaluation results and develop a new IEP for the Student. However, the Student stopped attending school as of February 20, 2024. One of the Student's Parents informed the District that they preferred to wait until the Student's other Parent returned from an overseas trip prior to holding any IEP meetings.
7. This Parent also informed the Special Education Teacher that, on two or three occasions, the Student arrived home in wet clothes. The Special Education Teacher suggested that the IEP team meet to address this issue and discuss potential changes, such as moving the Student's

feeding time earlier in the day or using two diapers. The Special Education Teacher also speculated that the Student might be wetting themselves during the ride home.

8. Upon the other Parent's return, that Parent expressed to the Special Education Teacher that they did not believe staff members were actually changing the Student and did not want to discuss options to address this concern.
9. The Parents filed this Complaint on March 26, 2024.
10. During the Complaint Investigator's interview with the Special Education Teacher on May 7, 2024, the Special Education Teacher confirmed the Student's daily schedule. The Special Education Teacher clarified that the Student would arrive at school at 10:45 a.m. each school day, and that the Student and a paraeducator who rode with the Student were transported by a taxi to and from school. Upon arrival, the Student goes to music class, a general education class; and after music class, a paraeducator initiated the Student's feeding at 11:30 a.m., and the Student would join peers for lunch, in the classroom (referred to as the Intensive Skills Classroom). After lunch, the Student attends an adaptive PE class and then returns to the Intensive Skills Classroom around 1:45 p.m. at which time District staff would unplug the G-tubes. The Student then engages in modified instruction in the classroom, using drums with switches that the Student can squeeze. Around 2:30 p.m., three paraeducators use lift equipment which is housed in the classroom to move the Student to an adjoining room where the three paraeducators complete the diaper and clothing change protocols. This process cannot occur before the feeding is completed because a mechanical lift must be used during this process; which can take up to 30 minutes. The Special Education Teacher can observe the beginning of this process and the return of the Student to the classroom each day. On most days, the change of the Student's diaper and clothing is completed and the Student returned to the classroom by 3:00 p.m. The school day ends at 3:30 p.m., and a paraeducator then accompanies the Student on a taxi ride to the Student's home.
11. The District provided with its *Response* service logs showing when the diaper and clothing changes occurred from December 4, 2023 through February 19, 2024. Of 33 diaper and clothing changes recorded in the service logs, all but three were for changes of the diaper and wet clothing; with three changes for a bowel movement. The Parent was unable to identify the specific number of times or days that the Student arrived home with a wet diaper and clothing.
12. The Student last attended school on February 19, 2024. The Special Education Teacher reported to the Complaint Investigator that the District policy is that if a Student misses 10 days the District initiates an "attendance drop." In this case, the Special Education Teacher reported that they waited a month to request the attendance drop. The District then unenrolled the student on March 19, 2024. The Parent reported to the Complaint Investigator that the Parent did not unenroll the Student, but confirmed the Student last attended the District on February 19, 2024.

IV. DISCUSSION

The Complaint alleges that the District violated the IDEA by not providing the Student, who has a disability, "the care [the Student] needs. No one changes [the Student] every two hours, [the Student] stays in urine infested wheelchairs for hours on end. When they bring [sic] home, [the Student] is cold, wet and often shivering out of cold." The Department construed this allegation as an allegation that the District failed to implement the Student's IEP in this case.

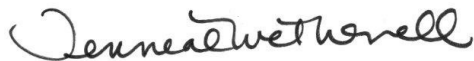
OAR 581-015-2220(1)(b) requires school districts provide special education and related services to a child with a disability in accordance with an IEP. In this case, the Student's April 26, 2021 IEP includes, in the Supplementary Services portion of the IEP, "Delegated care per nursing procedures (G-Tube feeding, seizures, diapering/skin monitoring)", to be provided "throughout the day". The District provided documentation with its *Response* that demonstrates that the District consistently provided daily diaper and clothing changes to the Student, usually completed within an hour of the end of the Student's school day. The Student occasionally arriving home with a wet diaper about an hour later does not mean that the District failed to implement the specific provision in the Student's IEP for "diapering/skin monitoring". Regardless, when the Parent raised the concern, the District offered to convene the IEP team to review and revise as appropriate. The Parent declined to discuss options to address the concern. The Complaint alleges that a diaper change is required every two hours. Additionally, the District provided feeding of the Student through a G-tube, beginning about 45 minutes after the Student arrived at school from approximately 11:30 a.m. until approximately 1:30 p.m. each day; and the paraeducators initiated the diaper and clothing changes within an hour of the completion of the feeding process; the diaper and clothing changes could not begin until the completion of the feeding process.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION³
In the Matter of Portland School District 1J
Case No. 024-054-016

No corrective action is ordered in this case.

Dated: this 22 Day of May 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: May 22, 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).)

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)).