

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Redmond School District 2J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-033

I. BACKGROUND

On November 10, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the Redmond School District (District) requesting a special education investigation under OAR 581-015-2030 (2010). The parents provided a copy of the complaint to the District.

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. OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010). On November 19, 2010, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated.

On December 8, 2010, the District submitted a narrative *Response* to the *Request for Response*. The Department’s contract complaint investigator determined that an on-site investigation would be necessary. On December 15, 2010, the investigator conducted an on-site investigation, and interviewed two District case managers, an Occupational Therapist, an Administrative Assistant, the Special Education Director, an Assistant Director of Student Services, an Assistive Technology (AT) Specialist, and one of the student’s teachers. The investigator also interviewed the parents on December 15, 2010, with the parents’ advocate participating by telephone. Following the on-site interviews, the Department’s complaint investigator required additional information to clarify particular timelines but could not obtain the required information until District staff returned from winter break. The Department thus extended the 60-day timeline in this case by 12 days. The Department’s investigator reviewed and considered all of the documents and the narrative responses received from the parties in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153 (2010). The allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV)

No	Allegations	<u>Conclusions</u>
(1)	<p><u>Access to Records</u></p> <p>The complaint alleges that the District failed to provide the parent with access to the student's education records in response to a request made approximately five months before the filing of the complaint.</p>	<p><u>Not Substantiated</u></p> <p>The Department does not substantiate the allegation that the District failed to provide the parent access to the student's records in response to the parent's request made approximately five months before the filing of the complaint in this case.</p>
(2)	<p><u>General Evaluation and Reevaluation Procedures</u></p> <p>The complaint alleges that the District failed to conduct a comprehensive evaluation intended to identify all of the student's educational needs. Specifically, the complaint alleges that the District failed to conduct occupational therapy (OT) and assistive technology (AT) evaluations.</p>	<p><u>Not Substantiated.</u></p> <p>The Department does not substantiate the allegation that the District failed to conduct appropriate AT or OT evaluations of the student.</p>
(3)	<p><u>IEP Content</u></p> <p>(a) The complaint alleges that the District failed to include in the student's IEP appropriate OT services, including appropriate services related to the student's vision tracking needs, as a result of the failure to appropriately assess the student.</p> <p>(b) The complaint alleges that the District failed to include in the student's IEP appropriate AT services.</p> <p>(c) The complaint alleges that the District has not included in the student's IEP sufficient special education and related services to ensure adequate academic progress by the student.</p>	<p><u>Not Substantiated</u></p> <p>(a) The Department does not substantiate the allegation that the District failed to include in the student's IEP appropriate OT services, including services related to the student's vision tracking needs, as a result of the failure to appropriately assess the student.</p> <p>(b) The Department does not sustain the allegation that the District failed to include in the student's IEP appropriate AT services.</p> <p>(c) The Department's review of the student's IEPs and other records related to the student's progress within the one year period preceding the filing of the complaint in this case reveals that the student appears to be making adequate progress towards the goals identified in the student's IEP. The</p>

		Department does not substantiate the allegation that the District has not included in the IEP sufficient special education and related services..
	<p>The complaint requests the following corrective action:</p> <ul style="list-style-type: none"> (1) Payment by the District for visual tracking therapy and assessments and for a psychological assessment; (2) Compensatory education in reading, writing and math, and test-taking skill courses; (3) Require the District to provide copies of all education records of the student in the possession of the District; (4) Training of District staff, as appropriate. 	<u>No Corrective Action ordered</u>

III. FINDINGS OF FACT

Background:

1. The student in this case is 16 years old and is in the tenth grade. The student is eligible for special education services from the District, with an eligibility of Specific Learning Disability.
2. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the student's current IEP, dated April 15, 2010 and revised October 18, 2010, November 1, 2010, and December 13, 2010, states that the student qualifies for special education as a student with a learning disability, and that the student needs specially designed instruction in the area of reading, writing, and math. The October 18, 2010 revision to the PLAAFP also states that the student's "learning disability is primarily in the area of planning i.e. work completion skills, study skills, and time management." The PLAAFP also states,

"[The student] has demonstrated poor skills in writing and reading. Team agreed that [the student's] reading level will be tested at Redmond High school and skills ... will be taught at Redmond High school three days a week for one hour a day. [The student] will leave the [Redmond Proficiency Academy] and travel to Redmond High school to receive services."

The PLAAFP states that the student "is currently reading at the 3.5-4.5 grade level."

3. The PLAAFP also indicates that, as of October 18, 2010, the student was attending the Redmond Proficiency Academy (RPA), a charter school, and receiving his special education services at Redmond High School.
4. The student's three year reevaluation date is February 7, 2011. The student's IEP team plans to meet again at that time to discuss further accommodations and skills the student may need to be successful in the regular education setting at RPA. Concerning transition, the PLAAFP states that the student would like to attend college after high school and obtain a degree in the Arts with an emphasis in dance and music. The PLAAFP also states,

"[The student] will need assistance with spelling, writing, and reading to be successful in academic courses. [The student] has recently obtained a computer via Assistive Technology through the High Desert ESD to assist with reading and writing. [The student] is currently attending the Redmond Proficiency Academy and receiving ... special education services."
5. The "Service Summary" in the student's IEP provides for specially designed instruction (SDI) in "Transition services" for "100 min – Trimester" at "Regular Ed/SRC". Various "Supplementary Aids/ Services; Modifications; Accommodations" are also listed in the Service Summary, including: "Extended time on reading, writing, and math assignments", "Access to Audio Books", "Alternative assessment to demonstrate proficiency on standards", "Written instructions/checklists for long term/multi-step projects", "Use of notes on exams after one attempt w/o notes", "Access to SRC room and staff for academic assistance", "Use of Calculator for math and science", "[the student] may have exams read to him, upon his request", and "Access to Assistive Technology devices" (for "spelling, grammar, text-to-speech application for reading"). The student's goals include "Transition – Reading", "Transition – Written Language" and "Transition – Math" goals.
6. During the on-site investigation, the District noted that the student receives his SDI from two special education teachers (one of whom is the student's current case manager) at the high school on Mondays, Wednesdays and Fridays, for one to one and one-half hours each session.

Access to Records

7. On April 29, 2010 the parent requested in writing a copy of the student's "CUM file, IEP file and including all test and assessments before and after IEP." In response to this request, the District provided the student's special education records, but not the student's cumulative file, to the parent on May 4, 2010. On June 9, 2010, the parent wrote the District a letter stating that he had not yet received a full copy of the student's file. On June 10, 2010, the District provided both the student's "special education file" and the student's cumulative file. With the verbal permission of the parent, the file was given to the student's grandparent. During the on-site investigation, the parent stated the District has not yet provided a complete record but provided no additional information concerning what records have been withheld.

General Evaluation and Reevaluation Procedures

8. During the on-site investigation, the parents stated their concern that the student has not received a full psychological evaluation by a third party. The records provided by the District,

including meeting notes from an IEP team meeting on October 18, 2010, do not reveal a request by the parent for an independent psychological examination. A District school psychologist conducted a psycho-educational evaluation. The evaluation report, dated April 29, 2008, reflects an assessment of the student's cognitive skills using the "Cognitive Assessment System (CAS), which is a standardized test that measures the cognitive/neuropsychological functioning of children and adolescents. The test is administered individually and student performance is compared to his or her same age peers. The test is organized into four scales: Planning, Attention, Simultaneous, and Successive processes." The records provided by the District also included psycho-educational assessments three years previously, in 2005, and three years prior to that, in 2002.

9. The records provided by the District show that as of May 7, 2009, the District made an AT referral to the regional ESD, and the ESD was to evaluate in the fall of 2009. The student's May 5, 2009 IEP includes "access to audio books" in the Service Summary. The student's April 15, 2010 IEP includes the use of some AT, including access to audio books and use of a calculator. The District's AT Specialist took the initial steps for an AT evaluation beginning on September 23, 2010, following a referral for AT evaluation on June 18, 2010, at the end of the 2009-2010 school year. The AT Specialist first met with the student on October 14, 2010 after returning from an extended leave. The AT Specialist, in the process of conducting an ongoing AT evaluation, has since employed several AT devices, including a "text-to-speech program", a "word prediction" program, a "voice recognition program" (referred to as "Dragon Naturally Speaking), a "keyboarding program", "screen reading" software, and a "Mac laptop" with the student. The laptop took a while to obtain, but the student's charter school (RPA) prefers Macintoshes. The AT Specialist is continuing to meet with the student, and tries to do so every other week, as part of the ongoing AT evaluation of the student.

10. The October 18, 2010 revisions to the PLAAFP section of the student's IEP state:

"Team agreed that the Assistive technology [the student] will receive will provide him with the necessary tools to access the general curriculum [at RPA]. [The student] will have a computer to write papers while checking spelling and grammar, speak to the computer as it writes what he is saying, and organize the information and assignments on his calendar in the computer."

The Service Summary of the student's IEP, as updated on October 18, 2010, states that the student will receive "Access to Assistive Technology devices", "for spelling, grammar, text-to-speech application for reading".

11. The District completed an OT evaluation on October 11, 2010, following contact with the Occupational Therapist on September 7, 2010 and a referral "approved" on October 6, 2010. This evaluation was performed by an Occupational Therapist with the regional ESD. The OT evaluation notes that "subtests indicate a delay in [the student's] visual-motor integration. Some of the usual methods of addressing these issues would be to work on activities that become progressively more difficult such as mazes, matching shapes, word search, figure ground activities such as hidden pictures or find the difference. Although the student may benefit from these activities there is some question regarding these activities being age appropriate and how rapidly would the benefits accrue."

The Occupational Therapist also stated that the student might benefit “from a pencil grip on his mechanical pencil to improve his pencil grasp, which may decrease fatigue. Working in an environment with reduced visual stimulation may also be beneficial. [The student] may benefit from a touch typing program. Once the skill is developed, the amount of vertical scanning would decrease and also the motor and cognitive requirements of forming each individual letter as when handwriting) would decrease. The student should experience decreased fatigue and then be able to express his thoughts and ideas with greater clarity.” The IEP team discussed the OT evaluation at the student’s October 18, 2010 IEP meeting, including the specific recommendations in the evaluation. The parent indicated that he would look over the evaluation and may have questions later. The records provided by the District in this case do not reveal a previous OT evaluation.

IEP Content – OT Services

12. As noted above, the IEP team discussed the OT evaluation at the student’s October 18, 2010 IEP meeting. The team did not take any action specific to the OT evaluation, and the parent did not request implementation of the recommendations contained in the OT evaluation. The parent stated he would review the OT evaluation and might have questions later about the OT evaluation.
13. The parent has not requested an additional evaluation of the student’s “vision tracking needs” and has not provided the IEP team with information demonstrating the student’s “vision tracking needs” and what services the student needs to allow the student to access his education.

IEP content – AT Services

14. As noted in paragraph six, the student’s IEP, as revised on October 18, 2010, includes in the Service Summary that the student is to receive access to AT devices. The District is conducting an AT evaluation of the student, including observing the student’s use of various AT devices, at the conclusion of the investigation in this case. Also, the District has now memorialized the conversations at the October 18, 2010 IEP meeting with an “Assistive Technology Evaluation & Support Plan” for the student.

IEP Content – Special Education and Related Services

15. The parent has provided no specifics concerning additional special education and related services that the District should be providing to the student, other than that the student needs “visual therapy” and independent educational and psychological evaluations. In interviews, the parent indicated that the student has made “lots of progress” in the three months prior to the filing of this complaint.

IV. DISCUSSION

1. Access to Records

The parent alleges that the District failed to provide the parent with access to the student’s education records in response to a request made approximately five months before the filing of the complaint. OAR 581-015-2300 provides that school districts must allow parents to examine

all student education records in accordance with OAR 581-020-0220 through 581-021-0440. OAR 581-021-0270(2)(c) requires school districts to comply with a request for access to records “within a reasonable period of time” and “[i]n no case no more than 45 days after it has received the request.”

In this case, the District responded to the parent’s first written request within five days but inadvertently failed to provide the student’s cumulative file, providing only the student’s special education records. Following the parent’s second written request, the District provided both the student’s special education file records and the remainder of the student’s cumulative file. The time between the first request, made on April 29, 2010, and the provision of the student’s cumulative files on June 10, 2010 is less than 45 days. Additionally, the parent’s assertion that not all records have been received is not supported by the facts. Despite the District’s error, the Department does not sustain the allegation that the District failed to provide the parent access to the student’s records in response to the parent’s request made on April 29, 2010.

2. General Evaluation and reevaluation Procedures

The parent alleges that the District failed to conduct a comprehensive evaluation intended to identify all of the student’s educational needs. Specifically, the complaint alleges that the District failed to conduct occupational therapy (OT) and assistive technology (AT) evaluations. Under OAR 581-015-2110(4), school districts must ensure that evaluations are “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.”

The records provided by the District in this case do not show that the parent has specifically requested an independent psychological evaluation of the student. A District school psychologist conducted a psycho-educational assessment of the student in a report dated April 29, 2008. Additionally, the District’s school psychologists had performed psycho-educational assessments in 2002 and 2005. If the parent disagrees with the psychological evaluations performed on the student, it is incumbent upon the parent to inform the District precisely what type of evaluation the parent wants and to make a request for an IEE under OAR 581-015-2305, and the applicable procedures outlined in that regulation will then apply.

The Department finds that the District has appropriately performed AT and OT evaluations of the student. To the extent that the parent is alleging that these evaluations should have been performed previously, the Department finds that the District has adequately evaluated and addressed the student’s AT and OT needs for the one year period preceding the filing of this complaint. The District is currently evaluating the student’s AT needs and the student’s May 5, 2009 IEP reflects the use of at least one AT device and prior AT evaluation. The District is in the process of an ongoing AT evaluation of the student, an evaluation that began on September 23, 2010. Additionally, the Department has found no request for an AT evaluation by the parent prior to the AT evaluation that began in September of 2010. Therefore, the Department does not substantiate the allegation that the District failed to conduct a timely and appropriate AT evaluation of the student.

The Department also finds that the District has appropriately conducted an OT evaluation, beginning the process on September 7, 2010, producing an OT evaluation report dated October 11, 2010, and discussed the report at the student’s October 18, 2010 IEP meeting. The student’s education records do not show a prior request for an OT evaluation or demonstrate a

prior need for an OT evaluation. Therefore, the Department does not substantiate the allegation that the District failed to conduct a timely and appropriate OT evaluation of the student.

3(a). IEP Content – Occupational Therapy Services

The parent alleges that, as a result of the failure to appropriately assess the student, the District failed to provide the student with appropriate OT services, including appropriate services related to the student’s vision tracking needs.

OAR 581-015-2200 provides, in part:

“(1) The individualized education program (IEP) must include:

* * *

(d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

- (A) To advance appropriately toward attaining the annual goals;
- (B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- (C) To be educated and participate with other children with disabilities and children without disabilities”

The student’s IEP team discussed the OT evaluation at the October 18, 2010 IEP meeting. The team did not take any action specific to the OT evaluation, and the parent did not request implementation of the recommendations contained in the OT evaluation. The parent stated he would review the OT evaluation and might have questions later about the OT evaluation. The parent has not requested an additional evaluation of the student’s “vision tracking needs” and has not provided the IEP team with information showing precisely what the student’s “vision tracking needs” are and what services the student needs to allow the student to access the curriculum. The Department does not sustain the allegation that the District failed to include appropriate OT services, including services related to the student’s vision tracking needs, in the student’s IEP as a result of the failure to appropriately assess the student’s OT needs.

3(b). IEP Content – Assistive Technology Services

The parent alleges that the District failed to include in the student’s IEP appropriate AT services. The parent has not specified to the District precisely what required AT devices or services are not included in the student’s IEP. OAR 581-015-2055(1) requires school districts to “ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child’s special education, related services or supplementary aids and services.”

The District has been addressing the student’s assistive technology needs since 2005. The student’s current IEP, as revised on October 18, 2010, includes in the Service Summary that the student is to receive access to AT devices at the Redmond Proficiency Academy. Additionally,

the District was engaged in an AT evaluation of the student at the time of this investigation, observing and evaluating the student's use of various AT devices. The District has now memorialized the conversations at the October 18, 2010 IEP meeting with an "Assistive Technology Evaluation & Support Plan" for the student.

Based on the foregoing, the Department does not substantiate the allegation that the District failed to provide appropriate AT services for the student.

3(c). IEP Content - Special Education and Related Services

The complaint alleges that the District has not included in the student's IEP sufficient special education and related services to ensure adequate academic progress by the student. OAR 581-015-2000(34) defines "specially designed instruction" as "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction...[t]o ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

The parent has provided no specifics concerning additional special education and related services that the District should be providing to the student, other than that the student needs "visual therapy" and independent educational and psychological evaluations addressed above. The parent believes that the student has made significant progress during the past three months but believes more should have been done for the student earlier. The Department's review of the student's IEPs and other records related to the student's progress within the one year period preceding the filing of the complaint in this case reveals that the student appears to be making adequate progress towards the goals identified in the student's IEP but that the student faces significant challenges and progress has been slow. The Department does not sustain the allegation that the District has not included in the IEP sufficient special education and related services.

Corrective Action Requested

The parents requested several corrective action items, including:

- (1) "Payment by the District for visual tracking therapy and assessments and for a psychological assessment";
- (2) "Compensatory education in reading, writing and math, and test-taking skill courses";
- (3) "Require the District to provide copies of all education records of the student in the possession of the District; and
- (4) Training of District staff, as appropriate."

However, the Department has not sustained any of the allegations in this case, and finds no basis for the foregoing requested correction action.

V. CORRECTIVE ACTION¹

In the Matter of Redmond SD 2J
Case No. 10-054-033

No Corrective Action is ordered in this case.

Dated: January 21, 2011

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing date: January 21, 2011

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

¹ 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).