

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Grants Pass School)
District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 14-054-010

I. BACKGROUND

On February 21, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parents) of a student (Student) residing and attending school within the Grants Pass School District (District) during the 2013-14 school year. The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the complaint and forwarded the request to the District by email on February 25, 2014.

On February 27, 2014, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint that the Department would investigate. The District mailed its timely *Response* to the Department's contract complaint investigator which was received on March 13, 2014, and to the Parents. In addition, the District provided 152 numbered pages of documents as well as District policies and procedures in support of its *Response* and pursuant to the request contained in the RFR. On March 21, 2014, the Department extended the 60 day complaint timeline by fourteen (14) days based on a stipulation of the parties and due to the exceptional circumstance that the Independent Educational Evaluation (IEE) would not be completed until April 2014 and including the possibility that the parties could resolve the IEE allegation on a local resolution basis. The District provided a supplemental email to its narrative on April 1, 2014.

The Department's complaint investigator determined that on-site interviews were not required. On March 19, 2014, the Department's investigator interviewed the Parent by phone. On March 19, 2014, the Department's investigator also interviewed the District's Director of Special Services. The Department's complaint investigator reviewed and considered all of these documents, exhibits, and interviews.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint.¹ The Department may extend the timeline if the District and the parent agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present.² This order is timely.

¹ 34 CFR §300.151 (2010)
² OAR 581-015-2030(12) (2010)

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. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one-year period from February 22, 2013 to the filing of this complaint on February 21, 2014.³

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>IEP Implementation:</u></p> <p>Not providing speech language pathology services to the Student at any time during the 2013-14 school year when such speech services were specified in the Student's IEP.</p> <p>(Relevant Law and Regulations: OAR 581-015-2040 and 34 CFR 300.101; OAR 581-015-2220 and 34 CFR 300.323 and 300.324).</p>	<p>Not Contested</p> <p>The District did not provide speech language pathology services to the Student until early February 2014. The District is voluntarily providing compensatory education services, outside of the regular school day, to the Student for the services that were not provided for five months (300 minutes total).</p> <p>See Corrective Action</p>
2.	<p><u>Transfer Students</u></p> <p>Not providing comparable services identified in an Oregon, out-of-district, IEP until the new district either adopts the student's IEP from the previous school district or develops, adopts and implements a new IEP for the student.</p> <p>(Relevant Law and Regulations: OAR 581-015-2230 (1) and 34 CFR 300.323)</p>	<p><u>Not contested, as it relates to speech language services in the Student's IEP</u></p> <p>The District substantially provided all specially designed instruction identified in the Oregon out-of-district IEP to the Student, with the exception of speech services.</p> <p>See Corrective Action</p>
3.	<p><u>Independent Educational Evaluation</u></p> <p>Not responding to the Parents' February 12, 2014 emailed request for an Independent Educational Evaluation, (IEE) by either providing the Parents with</p>	<p><u>Withdrawn</u></p> <p>The District responded to the Parents' request for an IEE without unnecessary delay and the IEE was completed during the investigation process. As such, the Parent</p>

³ See OAR 581-015-2030(5)(2008); 34 CFR § 300.153(c).

<p>information to obtain an IEE and the District criteria applicable for IEEs; or without unnecessary delay, ensuring that an IEE is provided at public expense, or initiating a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.</p> <p>(Relevant Law and Regulations: OAR 581-015-2305 and 34 CFR 300.502)</p>	<p>requested that this allegation be withdrawn from the complaint. Accordingly, this allegation is not discussed in the Final Order as it was withdrawn prior to the issuance of the order.</p>
--	---

<p><u>Requested Corrective Action.</u></p> <p>The Parents requested that:</p> <ol style="list-style-type: none"> 1. Compensatory speech services for the Student be provided outside of the regular school day; 2. ODE conduct an investigation to determine the extent, if any, that other students within the District did not receive the services identified in each student's IEP; 3. A district policy to inform parents when services identified in a student's IEP are not provided; 4. Training of District staff on IDEA requirements; 5. Ordering an Independent Educational Evaluation (IEE) of the Student to address the Student's eligibility under Communication Disorder and the need for speech services. 	<p>See Corrective Action</p>
---	------------------------------

III. FINDINGS OF FACT

Background

1. The Student is currently fifteen years old and attends eighth grade within the District during the 2013-14 school year. The Student attended school in a different Oregon school district for the 2012-13 school year. When the Student entered the District for the 2013-14 school year, the Student's special education eligibility was based on Specific Learning Disability (SLD) and Communication Disorder (CD).

2013-14 School Year

2. Before classes began, the Student's Parent enrolled the student in the District and provided, among other things, a copy of the Student's Oregon IEP from the prior district. The out-of-district IEP, dated February 6, 2013, included specially designed instruction in language arts for 270 minutes per week and related services of "speech/language" for 60 minutes per month.⁴
3. At the District's new student orientation meeting, one of the Student's Parents inquired of one District administrative staff member why the Student's schedule did not include speech services. The staff member informed the Parent that the Student was not on the list for speech services, but that the District administrator staff member would research the issue.
4. The District reported that when the District received the Student's IEP from the Parent, the special education department clerical staff did not review the IEP thoroughly and therefore did not identify that the Student's IEP contained speech services. In addition, the Student's special education teacher did not review the Student's IEP thoroughly and therefore did not identify that the Student's IEP contained speech services.
5. On September 6, 2013, the District office received internal email notification that the Student was eligible under two IDEA eligibility categories: Specific Learning Disability (Coded 90) and Communication Disorder (Coded 50). The District office failed to activate the Student on the speech language pathologist's caseload after receiving notice of the Student's Communication Disorder eligibility.
6. The District did not issue a Prior Written Notice to the Parents for its adoption of the Student's out-of-district Oregon IEP. The District represents that it did implement substantially all of the Student's IEP's specially designed instruction identified in the prior district's IEP, with the exception of the speech services.
7. On February 5, 2014, the Student's IEP team met for the annual review of the February 6, 2013 IEP. The District acknowledged its failure to provide speech services for the previous five consecutive months (September 2013 through and including January 2014) at a rate of 60 minutes per month. The District's February 5, 2014 IEP reduced the Student's "Reading" specially designed instruction from 270 minutes per week to "125 minutes/week minimum" and included "speech/language" as specially designed instruction, and not as a related service, of 60 minutes per month. In addition, to make up for the five months of failing to provide speech services earlier in the school year, the IEP included "Compensatory speech" of 300 minutes. The District continues to provide this compensatory education in the area of speech after school, outside of the regular school day.
8. On February 12, 2014, one of the Student's Parents emailed the District requesting an Independent Educational Evaluation. The Parent had previously received a copy of the District's speech evaluation, to be presented at the February 13, 2014 eligibility meeting. The Parent believed "the test results that were recently done by the school staff to be inconsistent with other data related to [Student's] specific disabilities."

⁴ The IEP included also modifications and accommodations and supports for school personnel, which are not relevant to the complaint allegations.

9. On February 13, 2014, the District IEP/eligibility team met for the Student's three year reevaluation, due on February 17, 2014, to review the results of the evaluations and determine whether the Student continued to be eligible for special education services. The team met and all members agreed that the Student continued eligibility under Specific Learning Disability in reading comprehension. The team also considered continuing eligibility under Communication Disorder, but the District team members determined that the Student was no longer eligible under this eligibility category based on information gained from the three year re-evaluation. The Parent member of the team attending the reevaluation meeting did not sign the Statement of Eligibility for Special Education and disagreed with the team decision to find the Student ineligible under Communication Disorder.
10. On February 18, 2014, the Parents provided the District with a copy of their complaint filed with the Department, although the Department did not receive its copy of the complaint until February 21, 2014.
11. On February 19, 2014, the District responded to the IEE request by providing a list of potential evaluators to the Parents. On February 25, 2014, the Parents informed the District of their choice for an IEE evaluator.
12. The District has continued to provide speech services to the Student during the pendency of the IEE and the pendency of this complaint.
13. On April 1, 2014, the IEE was completed.

IV. DISCUSSION

A. IEP Implementation

The Parents allege that the District failed to implement the Student's IEP by failing to provide speech language pathology services from the beginning of the school year until the IEP meeting on February 5, 2014.

School districts must provide special education and related services to a child with a disability in accordance with the Student's IEP.⁵

The District does not contest this allegation, and admits that it failed to provide speech services to the Student for five months beginning in September 2013 until the February 5, 2014 IEP meeting. Not less than four District staff, including administrators, failed to thoroughly review the prior district's IEP for the Student and therefore failed to schedule the Student's speech services. When the Parent asked about the failure to schedule speech services at the new student orientation/back to school night, the Parent was told that the District would research the issue and get back to her, which never occurred.

At the February 5, 2014 IEP meeting, the IEP was revised to reflect that the Student would receive 300 minutes of speech services as compensatory education for the required speech language services that were not previously provided. The Student would also continue to

⁵ OAR 581-015-2220

receive speech services as specially designed instruction on an on-going basis in accordance with the current IEP.

The District is currently providing the compensatory education speech services to the Student after the regular school day. The District is currently offering compensatory education for Speech Language Pathology (SLP) in the amount of 300 minutes which is appropriate to remedy the amount of services the Student did not receive. See corrective action.

B. Transfer Students

The Parents allege that the District did not provide services comparable to those described in the Student’s IEP from the previous district in violation of Transfer Student rules which require the District to adopt the student’s IEP from the previous school district, or develop, adopt and implement a new IEP for the student.⁶

The District has admitted that it did not timely provide speech services to the Student based on the prior district’s IEP in effect when the student transferred into District, nor did it issue a Prior Written Notice relating to the adoption of the prior district’s IEP.⁷ The District represents that it provided substantially equivalent services in language arts in accordance with the previous IEP, Based on the District’s admission that it did not provide the speech services in the District, the Department substantiates this allegation. See Corrective Action.

CORRECTIVE ACTION⁸

*In the Matter of Grants Pass School District
Case No. 14-054-010*

Actions	Submissions ⁹	Due By
Compensatory Education of 300 minutes (5 months @ 60 minutes/month) provided outside of the regular school day with credit for the amount of compensatory education already provided by the District;	Documentation of all compensatory education for SLP services that are provided to Student along with the dates and times of instruction. This should total 300 minutes and should indicate who provided the instruction to Student.	September 12, 2014

⁶ OAR 581-015-2230 (1)

⁷ OAR 581-015-2310- A Prior Written Notice must be given to the parent of a student when a school district proposes to initiate of change, or refuses to initiate or change, the identification, evaluation or educational placement or the provision of a free and appropriate public education.

⁸ 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)).

⁹ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

<p>Training to all District staff who work with transfer students with IEPs on the implementation of transfer students' IEPs from other Oregon districts until the adoption of the previous district's IEP, or the development, adoption and implementation of a new IEP.</p>	<p>Documentation of all training materials and a sign in sheet for all District employees who attended the training. Please include the date, time, and location of the training along with the name and relevant special education credentials of the trainer.</p>	<p>September 12, 2014</p>
---	---	----------------------------------

Dated this 21st day of April, 2014



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Learning/Student Services

Mailing Date: April 21, 2014