

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls City SD)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-026

I. BACKGROUND:

On November 27, 2017, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation (Complaint) from the parent (Parent) of a student (Student) residing in and attending the Klamath Falls City School District (District). The Parent requested that the Department conduct a Special Education investigation pursuant to Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email on November 28, 2017. A contractor with the Department (Investigator) investigated the Complaint.

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 Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances.² A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.³ Based on the date the Department received the Complaint, the relevant period for this Complaint is November 28, 2016 through November 27, 2017.

On December 4, 2017, the 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 December 18, 2017.

On December 8, 2017, the District and the Parent jointly agreed to extend the time for investigation of the Complaint to no later than January 19, 2018 so they could engage in local resolution. The District and the Parent engaged in local resolution, and after a January 8, 2018 IEP Team Meeting, the Parent requested that the Complaint investigation resume. The Department sent the Parent and the District another *Request for Response*, establishing a due date of January 23, 2018. The District provided a response to the Investigator on January 25, 2018. After accounting for the time spent by the District and the Parent toward local resolution, the Final Order issuance date is February 21, 2018. This Order is timely.

¹ 34 CFR § 300.152(a).

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

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

On January 23, 2018 and February 1-2, 2018, the District submitted materials for the Investigator to review. These materials are listed in the chart below:

District Response Letter	1/25/18
Parent/Student Contact Log	1/15/18
Email to Schedule IEP meeting	1/8/17
Email about Parent's copy of IEP	12/5/17
Emails about January IEP meeting	January 2018
Meeting Notice for 9/18/17 IEP meeting	9/12/17
Meeting Minutes IEP meeting 9/18/17	9/18/17
Evaluation Planning Form	9/18/17
Assessment Summary	9/16/17
Eligibility Statement	9/18/17
IEP	9/18/17
Student's Transcript	9/18/17
Prior Written Notice	9/19/17
Meeting Notice for 12/8/17 IEP meeting	12/4/17
Meeting Minutes for 12/8/17 IEP meeting	12/8/17
Prior Written Notice	12/8/17
Contact Log	11/28/17 to 12/5/17
Meeting Notice for 1/8/18 IEP meeting	1/2/18
IEP Abstract	1/8/18
Meeting Notice for 1/8/18 IEP meeting	1/2/18
IEP	1/8/18
Information Exchange Authorization	12/8/17
Klamath Youth Development Center Progress Report	2016-2017
Meeting Minutes from IEP meeting 1/8/18	1/8/18
Prior Written Notice	1/8/18
Meeting Notice for 9/20/16	9/16/16
Prior Written Notice	4/13/17
Goal Progress Reports	2016-2017
Prior Written Notice	9/20/16
IEP	9/20/16
Transcript	2/2/18
Student Class Schedule 2017 -- 2018	2/2/18

On February 1, 2018, the Parent provided the Investigator with copies of four IEPs: two dated September 18, 2017, one dated September 19, 2017, and one dated December 8, 2017.

The Investigator determined that on-site interviews were necessary. On February 1, 2018, the Investigator interviewed the Parent and one of the Parent's Advocates.⁴ On the same day, the Investigator interviewed a Special Education Coordinator and two Special Education Teachers. On February 2, 2018, the Investigator interviewed the Case

⁴ The Parent and the Student have a team of four advocates and mentors from several community organizations, each of which provide support to families in the community.

Manager, the Principal and the Counselor, in addition to a General Education Teacher and another Special Education Coordinator.

The Investigator reviewed and considered all these documents, interviews, and exhibits 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 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 in Section III and on the Discussion in Section IV.

	Allegations	Conclusions
1.	<p><u>Parent Participation – General:</u></p> <p>The Parent alleges the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. Gave the Parent very short notice about a scheduled IEP meeting; and, b. Would not agree to reschedule the meeting when the Parent asked to do so. <p>(34 CFR §§ 300.322(a), 300.501; OAR 581-015-2190(1)-(2))</p>	<p><u>Substantiated in Part:</u></p> <p>School districts must take steps to ensure that parents of a child with a disability are afforded the opportunity to participate in an IEP team meeting, including: (1) Notifying parents of a meeting early enough to ensure they have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.</p> <p>The District made multiple scheduling calls to the Parent and provided the Parent with sufficient notice of the September 18, 2017 IEP Team Meeting. However, the District deprived the Parent of the opportunity to participate when it refused to reschedule the IEP Team Meeting, despite the Parent’s request. The Department substantiates this allegation in part.</p>
2.	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings:</u></p> <p>The Parent alleges that the District violated IDEA when it:</p> <ul style="list-style-type: none"> a. Gave the Parent very short notice about a scheduled IEP 	<p><u>Substantiated:</u></p> <p>The District did not comply with its own practice of delivering a copy of the Student’s IEP to the Parent within ten days. The Parent did not receive a copy of the completed September 18, 2017 IEP until</p>

	<p>meeting and refused to let the Parent reschedule the meeting;</p> <p>b. Waited until the very last day before the IEP annual review was due to hold the meeting; and,</p> <p>c. Did not give the Parent a copy of the IEP.</p> <p>(34 CFR § 300.322; OAR 581-015-2195(1),(5))</p>	<p>December 6, 2017. The Department substantiates this allegation.</p>
<p>3.</p>	<p><u>3. IEP Team:</u></p> <p>The Parent alleges that the District violated the IDEA when it:</p> <p>a. Held the IEP meeting without all appropriate members in attendance for the entire meeting.</p> <p>(34 CFR § 300.321; OAR 581-015-2210(1),(3),(4))</p>	<p><u>Not Substantiated:</u></p> <p>The Parent had the opportunity to invite other individuals who the Parent determined to have knowledge or special expertise regarding the child. The District did not interfere with the Parent's right to invite advocates to the September 18, 2017 IEP Team Meeting. The Department does not substantiate this allegation.</p>
<p>4.</p>	<p><u>IEP Team Considerations and Special Factors:</u></p> <p>The Parent alleges that the District violated the IDEA when it did not include the Parent's concerns in the IEP.</p> <p>(34 CFR §§ 300.320, 300.324; OAR 581-015-2205)</p>	<p><u>Not Substantiated:</u></p> <p>Although the Parent did not receive a copy of the September 18, 2017 IEP containing "Parent Concerns" until December 6, 2017, the District did meet its obligation that the IEP Team consider the Parent's concerns in developing the IEP itself. The Department does not substantiate this allegation.</p>

<p><u>Requested Corrective Action:</u></p>
<p>1) I am trying to set up another IEP meeting;</p> <p>2) Not wait until the last day IEP is due--give me ample notice so that I and my support team can attend, I want my support team to be able to attend;</p>

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| <ol style="list-style-type: none">3) I would like the IEP in front of me during the meeting;4) Would like for my concerns to be addressed, listed on the IEP and what is the plan; and,5) People plan on attending the IEP meeting, they are not that long. |
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III. FINDINGS OF FACT

1. The Student is a seventeen-year-old resident of the District and attends eleventh grade in a District school. The Student is eligible for Special Education services as a student with a Specific Learning Disability.
2. The Student's September 20, 2016 IEP notes that the Parent had concerns about the Student's transition to the next school and that the Student had gained skills in coping with uncomfortable situations. The IEP Team consisted of the Parent, the Student, a Special Education Teacher, a General Education Teacher, a District Representative and a Transition Specialist. The Student had transitioned from a community educational placement to the Student's neighborhood school at the beginning of tenth grade.
3. The Student and the Parent have a support team that includes four advocates from community agencies that provide mentor services to local families. One of these advocates is also a District employee.
4. The Student's Annual IEP Review date was September 19, 2017. When the 2017-2018 school year began, District staff began taking efforts to schedule an IEP Team meeting with the Parent. At different times of day on September 1, 2017, September 7, 2017, and September 8, 2017, District staff called the Parent and left voice mails regarding scheduling an IEP team meeting for the Student. District staff recorded their efforts in a Parent/Student Contact Log. The Parent could not verify receiving the voice mail messages.
5. On September 12, 2017, a District Case Manager spoke to the Parent by telephone and scheduled an IEP Team Meeting for September 18, 2017.
6. After scheduling the IEP Team Meeting for September 18, 2017, the Case Manager sent the Parent a written Notice of Team Meeting. The Notice of Team Meeting lists other Team Members invited to the meeting, including three Special Education Teachers, two General Education Teachers, the District employee/advocate, the School Counselor and two Special Education Coordinators. The Notice of Team Meeting specifies that the IEP Team would discuss the Student's eligibility for special education and the Student's IEP.
7. The Notice of Team Meeting also states that the Parent "may invite other individuals who have knowledge or special expertise about your child. Please contact us if you plan to invite others, not listed on this invitation, to the meeting." It also states the date,

time, and location for the IEP Team meeting, and a statement that “[i]f you cannot attend this meeting, or wish to discuss a different meeting location or time, or would like to participate through alternate means, please contact” followed by the name and telephone number of a District employee.

8. The Parent did not contact the District by telephone between September 12 and September 18, 2017.
9. When the IEP Team convened on September 18, 2017, the Parent protested the fact that the IEP Team meeting was being held. The Parent expressed concern that the Parent’s advocates were not in attendance. The Parent stated the District had not given the Parent sufficient notice to coordinate the availability of the advocates and asked that the meeting be rescheduled. The District did not agree to reschedule the meeting.
10. During the September 18, 2017 IEP Team Meeting, District staff explained that the meeting was necessary to re-establish the Student’s eligibility special education services before the end of the Student’s three-year eligibility period, which would expire on September 25, 2017. Also, District staff stated the IEP Team needed to develop the Student’s IEP before the annual review deadline of September 19, 2017.
11. The Parent construed the District’s explanation for developing the Student’s September 18, 2017 IEP and not agreeing to reschedule the meeting to mean that the Student would lose all special education services without completing the IEP at the meeting that day. Because the District did not agree to reschedule the IEP Team meeting despite the Parent’s request, and that the Student’s services were at stake, the Parent and Student remained at the meeting and both signed the IEP and the eligibility document.
12. At the September 18, 2017 IEP Team Meeting, the Parent noted concern that the Student becomes overwhelmed and does not ask for help. The Parent also expressed concern over the Student earning enough credits at school.
13. On September 19, 2017, the Parent visited the Student’s school and requested a copy of the IEP that was developed at the previous day’s meeting. The District Case Manager made a copy of a draft IEP that contained handwritten notes from the meeting and gave it to the Parent. In the Present Levels of Academic Achievement and Functional Performance section of the IEP provided to Parent on September 19, 2017, the “Parent Concerns” section was blank.
14. The District contends that the Case Manager sent a finalized copy of the September 18, 2017 IEP home with the Student on or about September 26, 2017. The Parent contends that no such copy was received.
15. On December 6, 2017, a final copy of the September 18, 2017 IEP was sent to the Parent by U.S. Mail. The District’s practice is to deliver final copies of IEPs to parents within ten days.

16. The Parent filed the Complaint on November 27, 2017.

IV. DISCUSSION

1. Parent Participation – General

The Parent alleges that the District violated the IDEA when it gave the Parent very short notice about a scheduled IEP Team meeting and refused to reschedule the IEP Team meeting when the Parent requested that it be rescheduled.

School districts must take steps to ensure that parents of children with disabilities are afforded the opportunity to participate in IEP Team meetings. This includes notifying parents early enough to ensure they will have an opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. A district may proceed with an IEP Team meeting without a parent in attendance, but only if it is unable to convince the parent that they should attend.⁵ No specific timeline exists for IEP Team meeting notice. Rather, a standard of reasonableness is applied in determining whether a notice is timely.⁶

The Student's Annual IEP Review date was September 19, 2017. When the 2017-2018 school year began, District staff began attempts to schedule an IEP Team meeting with the Parent. At different times of day on September 1, 2017, September 7, 2017, and September 8, 2017, District staff called the Parent and left voice mails regarding scheduling an IEP Team meeting for the Student. District staff entered their efforts in a Parent/Student Contact Log.

Timely Notification of an IEP Team Meeting

On September 12, 2017, a District Case Manager spoke to the Parent by telephone and scheduled an IEP Team meeting for September 18, 2017. When the IEP Team convened on September 18, 2017, the Parent protested the fact that the IEP Team meeting was being held. The Parent expressed concern that the Parent's advocates were not in attendance. The Parent requested that the meeting be rescheduled, but the District refused to reschedule the meeting.

The District began efforts to schedule an IEP Team meeting for the Student more than two weeks before the meeting was held. The District called the Parent over three days at different times of day, and entered its efforts in a Parent/Student Contact Log. Once the District contacted the Parent by telephone, an IEP Team meeting date was scheduled for six days from the date of the phone call. During the telephone call, the Parent did not

⁵ 34 CFR § 300.322(a), (d); OAR 581-015-2195(1)

⁶ *Letter to Constantian*, 17 IDELR 118 (OSEP 1990).

protest or object to the proposed IEP Team meeting date. The District's actions were reasonable with respect to providing the Parent with notice of the September 18, 2017 IEP Team Meeting. The Department does not substantiate this allegation.

Scheduling the IEP Team Meeting at a Mutually Agreed Upon Time and Place

The District did not fulfill its obligation to schedule the IEP Team meeting at a mutually agreed upon time and place. When the IEP Team convened on September 18, 2017, the Parent protested the fact that the IEP Team meeting was being held, specifically because advocates the Parent desired to be part of the Team were not present. The Parent requested that the meeting be rescheduled. The District did not agree to reschedule the meeting. There is no indication that the Parent was attempting to obstruct the IEP process. Rather, the Parent made an initial request that the IEP Team reschedule its meeting so that individuals invited by the Parent who possessed knowledge of the child could participate in the meeting. Because the District proceeded with the September 18, 2017 meeting over the protestations of the Parent, it was not held at a mutually agreed upon time. The Department substantiates this allegation.

2. Additional Parent Participation Requirements for IEP and Placement Meetings

The District did not comply with its own practice of delivering a copy of the Student's IEP to the Parent within ten days. A school district must provide parents with a copy of their child's IEP at no cost.⁷ The IDEA does not provide a specific timeline for when parents must be furnished with a copy of the Student's IEP. However, the District's practice is to deliver final copies of IEPs to parents within ten days. A final copy of the Student's September 18, 2017 IEP was not received by the Parent until December 6, 2017—79 days after the conclusion of the IEP Meeting. The Department substantiates this allegation.

3. IEP Team

The District did not interfere with the Parent's right to invite advocates to the September 18, 2017 IEP Team Meeting. A parent on an IEP Team has the discretion to include in the IEP Team "other individuals who have knowledge or special expertise regarding the child."⁸ It is the parent's responsibility to invite such individuals. In this case, the September 12, 2017 Notice of Team Meeting that was sent to the Parent states that "[y]ou may invite other individuals who have knowledge or special expertise about your child. Please contact us if you plan to invite others, not listed on this invitation, to the meeting." The District did not interfere with the Parent's right to invite advocates to participate in the September 18, 2017 IEP Team Meeting. The Department does not substantiate this allegation.

⁷ 34 CFR § 300.322; OAR 581-015-2195(1),(5).

⁸ 34 CFR § 300.321(a)(6); OAR 581-015-2210(1)(g)(A).

4. IEP Team Considerations and Special Factors

When developing the Student's September 18, 2017 IEP, the IEP Team considered the Parent's concerns. For an IEP to conform to the requirements of the IDEA, the IEP Team must consider the "concerns of the parents for enhancing the education of their child" as part of an IEP's development.⁹

At the September 18, 2017 IEP Team Meeting, the Parent expressed concern that the Student becomes overwhelmed and does not ask for help. The Parent also stated concern over the Student earning enough credits at school. These concerns stated by the Parent at the IEP Team Meeting were not immediately reduced to writing in the Present Level of Academic Achievement and Functional Performance section of the IEP. It was not until the Parent received a copy of the IEP on December 6, 2017 that these parent concerns were included in the IEP document.

Although the IEP itself did not reflect the Parent's concerns until December 6, 2017, there is no dispute that the Parent was provided with the opportunity to, and in fact did, express concerns about enhancing the education of the Student at the September 18, 2017 IEP Team Meeting. As such, the Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁰

*In the Matter of Klamath Falls City School District
Case No. 17-054-026*

	Action	Submissions¹¹	Due Date
1.	Review and revise, if necessary, the District's existing procedures for convening IEP Team meetings with appropriate members, including those invited by parents.	Submit the procedures, whether revised or not, to ODE for review and approval.	March 23, 2018

⁹ 34 CFR § 300.324(a)(ii); OAR 581-015-2205(1)(b).

¹⁰ 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).)

¹¹ 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.

2.	Review District's practice of providing the final IEP document within 10 days of the IEP meeting.	Submit the District's guidelines of this practice to ODE for review.	March 23, 2018
3.	Following ODE's review and approval of the District's procedures for convening IEP meetings, and its practice of providing final IEP documents within 10 days of the IEP meeting, develop for staff a guidance timeline of the steps involved, from notice of IEP Team Meeting, through the prior written notice associated with most IEP development, and providing final IEP documents. Include a brief description of the requirements related to each step.	Following approval, submit evidence of distribution of revised procedures and timeline, including a sign-in sheet with names/positions of those receiving the information. Distribution may be completed electronically and/or in face-to face meetings. Distribute to school/District administrators and staff involved in managing and coordinating these special education activities.	April 30, 2018

Dated: this 21st Day of February 2018



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

Mailing Date: February 21, 2018

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).)