

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls City Schools

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-032

I. BACKGROUND

On June 4, 2018, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing and attending school in the Klamath Falls City School District (District). The Parent requested a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided a copy of the Complaint to the District on June 5, 2018.

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 sixty days of receiving the complaint unless exceptional circumstances require an extension.¹

On June 22, 2018, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On June 26, 2018, the Department granted the District's request for an extension of time to provide its *Response*. On July 11, 2018, the District provided the Department's Contract Complaint Investigator (Investigator) with its *Response* and documents that are listed below. The Parent did not submit a written *Reply* to the District's *Response*, nor did the Parent respond to the Investigator's communications offering an opportunity to discuss the Complaint. This order is timely.

The District provided the following documentation in its *Response*:

1. Prior Written Notice 3/23/18
2. Notice of Team Meeting 3/6/18
3. IEP 3/22/18
4. Meeting Minutes 3/22/18
5. Prior Written Notice 11/9/17
6. Amendments to IEP 11/9/17
7. IEP 4/9/17
8. Special Services Meeting minutes 6/6/18
9. Notice of Team Meeting 6/7/18
10. Prior Written Notice 6/15/18
11. Student File Review 2018
12. High School Credit Check Worksheet 6/12/18
13. Modified Diploma Credit Check Worksheet 6/14/18
14. Comparison of regular vs modified diploma 6/14/18
15. Meeting minutes 6/14/18
16. Email communication 3/22/18 to 3/23/18
17. Prior Written Notice 4/10/18
18. Email communication 5/17/18
19. Prior Written Notice 5/1/18
20. Email communication 5/23/18

¹ 34 CFR §§ 300.151-153; OAR 581-015-2030.

21. Email communication 5/30/18 and 5/31/18
22. Prior Written Notice 5/30/18
23. Prior Written Notice 5/31/18
24. Email communication 6/12/18
25. Email communication 6/14/18 & 6/15/18
26. Email communication 6/19/18
27. Email communication 5/23/18
28. Email communication 5/24/18 and 5/25/18
29. Email communication 5/29/18 and 5/30/18
30. Agenda for 6/6/18 meeting
31. Email communication 6/6/18
32. Email communication 6/7/18
33. Student gradebook summary - Grade 10, 2017-18 school year
34. Attendance history - Grade 10, 2017-18 school year
35. Report card 6/15/17
36. Report card 1/26/18
37. Grades By Student - Grade 10, 2017-18 school year
38. Course Assignments Change History 1/17/17 - 4/10/17
39. Assessments list - 5/23/16, 5/6/16 and 3/18/16
40. Assessment Summary 4/20/16
41. Assessment Summary 4/18/16
42. Summary Psychological Report 2/13/14
43. Medical statement 9/12/18
44. Official transcript - Grade 10
45. Letter from District 3/8/18
46. "Response/information" from District 3/8/18
47. List of Knowledgeable Persons

On June 14, 2018, after a telephone interview with the Investigator concerning a prior complaint filed by the Parent against the District (Case No. 18-054-001), the Parent provided the following documents to the Investigator, each of which relate to this matter:

Email communication - forwarded to Investigator on 6/14/18 and 6/15/18.

The Investigator determined that an on-site investigation was not necessary in this matter. The Investigator reviewed and considered all of the previously described documents received 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.² The Parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 5, 2017, to the filing of this complaint on June 4, 2018.

² 34 CFR §§ 300.151-153; OAR 581-015-2030.

Allegations	Conclusions
<p data-bbox="167 205 760 275">Parent Participation Requirements for IEP and Placement Meetings</p> <p data-bbox="167 310 781 480">The Complaint alleges that the District violated the IDEA by failing to hold an IEP team meeting in response to the Parent's requests. The Parent alleges the District refused to convene an IEP team meeting to address:</p> <ul style="list-style-type: none"> <li data-bbox="167 516 711 615">a) changes made to the Student's class schedule without being notified by the District; <li data-bbox="167 615 781 684">b) refusal to change the Student's diploma "to regular from modified;" and <li data-bbox="167 684 751 783">c) "refusal of communication/delaying response or not answering my questions about [the Student]." <p data-bbox="167 819 776 953">(34 CFR §§ 300.322, 300.324, 300.327, 300.328, 300.500, 300.501(b)-(c); OAR 581-015-2190; OAR 581-015-2195; OAR 581-015-2225.)</p>	<p data-bbox="816 205 1073 233">Not Substantiated</p> <p data-bbox="816 306 1422 705">On March 22, 2018, the Student's IEP Team convened for an annual IEP Team Meeting. There, the Student's IEP Team unanimously agreed to move the Student from a regular diploma track to a modified diploma track. On March 23, 2018, the Parent called the District and expressed concerns with the meeting the previous day's meeting. Subsequent to that, the District and Parent communicated by telephone and email regarding changes to the Student's schedule to align with the Student's modified diploma track.</p> <p data-bbox="816 741 1422 942">On May 23, 2018, the Parent and the Parent's Advocate wrote emails to the District requesting an IEP team meeting. Four school days later, on May 30, 2018, the District responded and proposed a meeting date of June 6, 2018.</p> <p data-bbox="816 978 1433 1213">The District reviewed the Student's IEP appropriately and in conformity with the IDEA. The District did not improperly decline the Parent's request for an IEP team meeting. The Parent meaningfully participated in the IEP process. The Department does not substantiate the Parent's allegations.</p>

Proposed Corrective Action	
<p data-bbox="167 1346 756 1415">The Complaint offers the following Proposed Solutions:</p> <p data-bbox="167 1451 781 1614">"I would like to have proper communication, all of my questions/concerns to be answered/addressed, and I would like for my child to be on a regular diploma, and assistance w/ credit recovery."</p>	<p data-bbox="816 1451 1433 1509">The Department does not order any Corrective Action in this case.</p>

III. FINDINGS OF FACT

1. The Student is seventeen years old and completed tenth grade during the 2017-2018 school year. The Student is eligible for special education under the category of Other Health Impairment (OHI). The Student experiences anxiety in educational settings, requires additional time to complete assignments, and benefits from adult assistance to maintain focus in school.
2. On March 22, 2018, the Student's Individualized Education Program (IEP) Team met and decided to move the Student from a regular diploma track to a modified diploma track.³ The Parent was present at the meeting, accompanied by an advocate. The Student was also present and participated in the meeting. The IEP Team Meeting notes from March 22, 2018 indicate that the Parent "wants [the Student] on a modified diploma." District staff reviewed the modified diploma plan with the Student at the meeting and described the credits necessary for the Student to obtain a modified diploma.
3. On March 23, 2018, the District issued a Prior Written Notice (PWN) stating that, "[a]fter reviewing [the Student's] grades and progress, the team moved [the Student] to a modified diploma . . . [The Student's] day was adjusted, so that [the Student] is no longer attending math and English in the regular classroom."
4. The March 23, 2018 PWN notes that "all team members unanimously agreed" that the Student be moved to a modified diploma track" and that "[the Student] expressed a desire to be on a modified diploma track."
5. The PWN provides the following reasoning as to why the Student's IEP Team rejected keeping the Student on a regular diploma track: "While reviewing the data including input from parents and student, the team considered [the Student's] disability in terms of the affects (sic) in general education classroom setting. Without modifying [the Student's] course work, specifically in ELA [English and Language Arts] and mathematics, [the Student] will continue to struggle meeting grade level standards. Additionally, the anxiety [the Student] faces makes it difficult[] for [the Student] psychologically to meet grade level standards without the appropriate modifications."
6. The March 23, 2018 PWN notes that the Student's IEP Team decision to place the Student on a modified diploma was based on a "[r]eview of progress towards previous goals, current academic progress and transcripts, recent standardized achievement assessments, previous statewide testing, parent and student input, and input from counseling providers."
7. On March 23, 2018—the day after the IEP Team Meeting and the same day the District issued the PWN—the Parent called the District and expressed concerns with the meeting the previous day. The Parent spoke with a District administrative assistant, who forwarded the Parent's concerns on to the District's Special Services Director. With respect to the Student's educational program, the Parent stated that upon reflection, the Parent did not agree with the decision to place the Student on a modified diploma track.
8. Later that same day, the District's Special Services Director wrote an email to the Parent and asked that the Parent "please tell me what questions you still have" and stated "I want to make sure we can answer them for you or perhaps set up another meeting to discuss in more detail." The Parent did not respond to this email.

³ The modified diploma is a high school completion document that may be earned by students who have demonstrated an inability to meet the full set of academic content standards required for a non-modified high school diploma.

9. On April 10, 2018, the District sent a PWN to the Parent noting the following action: "On 3/23/18 our department received a phone call from [the Parent] requesting an additional IEP meeting.⁴ At this time, the district does not have information that would indicate the need for an additional IEP meeting be held, given that an IEP was conducted on 3/22/18 (the day prior to this request). No new information has been shared from any party that would suggest a different outcome. At this time the district is refusing [the Parent's] request."
10. The April 10, 2018 PWN goes on to state that the District is taking the action of refusing another IEP team meeting because, "[a]n IEP meeting was held the day before this request and [the Parent] had the opportunity to participate and engage with the contents of the IEP. At that time, [the Parent] engaged with the IEP process fully and fairly." The PWN notes that the District rejected the option of holding another IEP team meeting because "[n]o new information [was] presented to the team that would suggest a meeting [was] needed."
11. On or about April 27, 2018, District staff and the Parent spoke on the telephone to discuss changing the Student's class schedule. The Parent agreed to the proposed class schedule changes. On or about April 30, 2018, the same District staff member spoke to the Parent on the telephone and reviewed the Student's new class schedule.
12. On May 17, 2018, the District's Special Services Director received an email from District staff noting that the Parent had written an email with an understanding that the Student was "not on a modified diploma at this time . . ."
13. The next day, on May 18, 2018, the District mailed to the Parent a PWN declining the Parent's request for an IEP team meeting.⁵ The District explains that the Parent "has not provided the District with information that was not previously considered at the 3/22/18 meeting. With no new information provided to the team, the District is refusing the request to hold an IEP team meeting."
14. The PWN also states that, "[t]he District and parents met on 3/22/18 and had a robust and full conversation regarding [the Student's] educational needs. The team included all relevant team members and the IEP was finalized." The PWN also rejects the option of holding an IEP team meeting and states: "At any time, if [the Parent] provides the district with new information that the team did not consider on 3/22/18, we stand ready and willing to reconvene an IEP team meeting."
15. On May 23, 2018, the Parent sent an email to the District stating the Parent was making a "second attempt to call an IEP meeting . . ." Less than one hour later, the District's Special Services Director responded to the Parent, stating "[i]f you have any IEP related questions, please direct them to me and I will respond within 48 hours or sooner." The Parent replied by email, clarifying that the Parent "would like to have an IEP meeting as soon as possible!!" Later the same day, the Parent's Advocate⁶ emailed the District and the Parent. The Parent's Advocate requested an IEP team meeting and listed various issues for discussion at the meeting (e.g., the Student's modified diploma plan, behavior, class changes, diet, absenteeism, transportation, grades, and missed assignments).
16. On May 25, 2018, the District's Special Services Director sent an email to the Parent and proposed convening for a "planning meeting," which was described as different from an IEP team meeting.

⁴ It is not evident that on March 23, 2018 the Parent requested another IEP team meeting. The Parent called the District expressing concerns about the previous day's IEP team meeting. Specifically, the Parent had a change of mind with respect to the IEP team's decision to place the Student on a modified diploma track. A District administrative assistant wrote the Parent's concerns in an email and forwarded it on to the District's Special Services Director. That email does not state that the Parent was requesting an IEP team meeting. However, on April 10, 2018, the District issued a PWN that stated "[o]n 3/23/18 . . . [the Parent] request[ed] an additional IEP meeting." For purposes of this Order, the Department will treat the Parent's March 23, 2018 communication as a request for another IEP team meeting.

⁵ The May 17, 2018 email from District staff does not indicate that the Parent was requesting an IEP team meeting.

17. On May 30, 2018, the District sent an email to the Parent, proposing a June 6, 2018 meeting to discuss the following issues: (1) Summer school; (2) Accommodations and modifications; (3) the Student's eating habits; (4) Missing assignments; and (5) the Student's modified diploma plan.⁷

IV. DISCUSSION

A. The Parent Meaningfully Participated in the March 22, 2018 IEP Team Meeting

The District did not violate the IDEA by impeding the Parent's opportunity to meaningfully participate in the development of the Student's IEP. School districts must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.⁸

The Parent was an active participant in the Student's annual IEP Team Meeting on March 22, 2018. The Parent attended the meeting in person and was accompanied by an advocate. The Student, who is seventeen years old, was also present and participated in the meeting. Notes from the meeting demonstrate that the Parent provided input and asked questions of the IEP Team. The Parent expressed a desire that the Student be moved to a modified diploma track. The IEP Team, including the Parent, unanimously agreed to the modified diploma decision. The District provided the Parent an opportunity to meaningfully participate at the March 22, 2018 IEP Team Meeting.

B. The District Was Not Required to Convene an IEP Team Meeting Between March 23, 2018 and June 4, 2018

The District did not violate the IDEA when it did not convene an IEP team meeting between March 23, 2018 and June 4, 2018—the date of this Complaint's filing. School districts must ensure that each student's IEP is reviewed "periodically, but not less than annually . . ."⁹ School districts are responsible for appropriately revising a student's existing IEP to address a lack of expected progress toward annual goals and the general curriculum as appropriate, the results of any conducted reevaluations, information about the child related to evaluation or reevaluation, the child's anticipated needs, or other matters.¹⁰ The IDEA does not require that a school district schedule an IEP team meeting upon parental request, however, it should grant a reasonable request for such a meeting.¹¹

1. March 23, 2018 IEP Team Meeting Request

On March 22, 2018, the Student's annual IEP was developed and agreed upon. On March 23, 2018, the Parent requested another IEP team meeting. Later in the day on March 23, 2018, the District's Special Services Director wrote an email to the Parent in response to the Parent's phone call and asked that the Parent "please tell me what questions you still have" and "I want to make sure we can answer them for you or perhaps set up another meeting to discuss in more detail." The Parent did not respond to this email.

⁷ While outside of the Complaint period, it is important to note that on June 6, 2018, District staff convened with the Parent and the Parent's Advocate and discussed the Parent's concerns at a "planning meeting." The Student's IEP team reconvened on June 14, 2018 and decided the Student would remain on a modified diploma track as it was "the district[']s recommendation and all team members including [the Parent] agreed."

⁸ OAR 581-015-2190(1).

⁹ 34 CFR § 300.324(b)(1)(i); OAR 581-015-2225(1).

¹⁰ 34 CFR § 300.324(b)(1)(ii); OAR 581-015-2225(1).

¹¹ See *Adams County School District 50*, 109 LRP 23970 (Colorado SEA June 1, 2008).

Less than one full day lapsed between the Student's IEP Team convening and agreeing on an annual IEP and the Parent's request for another meeting. There is no indication that circumstances arose requiring the District to review and revise the Student's IEP. The Department concludes that the District was not required to initiate plans to revise the Student's IEP one day after the Student's annual IEP was developed and agreed upon.

2. May 23, 2018

On May 23, 2018, the Parent sent an email to the District stating the Parent was making a "second attempt to call an IEP meeting . . ." Less than one hour later, the District's Special Services Director responded to the Parent and the Parent's Advocate stating "[i]f you have any IEP related questions, please direct them to me and I will respond within 48 hours or sooner." The Parent replied by email, clarifying that the Parent "would like to have an IEP meeting as soon as possible!!" Later the same day, the Parent's Advocate emailed the District and the Parent, requesting an IEP team meeting and listed various issues for discussion at the meeting (e.g., the Student's modified diploma plan, behavior, class changes, diet, absenteeism, transportation, grades, and missed assignments). On May 25, 2018, the District's Special Services Director sent an email to the Parent and proposed convening for a "planning meeting," which was described as different from an IEP team meeting. That meeting took place on June 6, 2018. Thereafter, on June 14, 2018, the Student's IEP Team reconvened.

During the relevant period, the Department did not find that the Student demonstrated a lack of expected progress toward annual goals, nor that the Student underwent any evaluations or reevaluations, nor were other factors present that would initiate the District's obligation to convene an IEP team meeting. Nevertheless, the District determined that the Parent and the Parent's Advocate's May 23, 2018 list of issues for discussion were reasonable for reconvening the Student's IEP Team. The IEP Team reconvened on June 14, 2018.

The Department concludes that the District did not violate the IDEA when it did not convene an IEP team meeting between March 23, 2018 and June 4, 2018.

C. District Staff Discussed Student Schedule Changes with the Parent

The Parent contends that the District changed the Student's class schedule without notice. However, a March 23, 2018 PWN sent to the Parent notes that at the March 22, 2018 IEP Team Meeting, "[the Student's] day was adjusted, so that [the Student] is no longer attending math and English in the regular classroom." Also, on or about April 27, 2018, District staff and the Parent spoke on the telephone to discuss changing the Student's class schedule. The Parent agreed to the proposed class schedule changes. On or about April 30, 2018, the same District staff member spoke to the Parent on the telephone and reviewed the Student's new class schedule. The Department does not substantiate a finding that the District changed the Student's class schedule without engaging the Parent's participation.

D. The Parent and the District Communicated Regularly

The Parent contends that the District either refused or delayed communications with the Parent regarding the Parent's questions about the Student. However, between March and June 2018, the Parent communicated regularly with the District. Illustrations of Parent-District communications are as follows:

- The Parent attended and participated in the Student's March 22, 2018 IEP team meeting in person, then shared concerns with a District administrative assistant the following day;

- The District sent three PWNs to the Parent during this period describing its position regarding IEP team and District decision-making;
- The Parent spoke on the phone with District staff between April 27, 2018 and April 30, 2018 regarding the Student's class schedule;
- On May 17, 2018 the Parent and District staff exchanged emails about the Student's modified diploma track and protocols for monitoring the Student's attendance;
- Between May 23 and May 25, 2018, the Parent and District staff exchanged emails about the Parent's IEP-related questions;
- On May 30, 2018, the Parent and District staff exchanged emails regarding the Student's educational program, including the Student's schedule and modified diploma track, and began coordinating a meeting for June 6, 2018;
- On May 31, 2018, the Parent and District staff exchanged emails regarding questions the Parent had about the Student.

The Department does not substantiate a finding that the District refused or delayed communications with the Parent.

V. CORRECTIVE ACTION¹²
In the Matter of Klamath Falls School District
 Case No. 18-054-032

The Department does not substantiate any findings in this matter and does not order corrective action.

Dated this 2nd Day of August, 2018



Rick Crager
 Assistant Superintendent
 Finance and Administration

Mailing Date: August 3, 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).)

¹² 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)).