

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of )  
Brookings Harbor School District ) FINDINGS OF FACT,  
) CONCLUSIONS, FINAL ORDER, AND  
) STIPULATED CORRECTIVE ACTION  
) Case No. 10-054-009

**I. BACKGROUND**

On March 26, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Brookings-Harbor School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on March 29, 2009. The parent provided the District with a copy of the complaint letter.

Under 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. OAR 581-015-2030. This timeline may be extended for exceptional circumstances related to the complaint.

The District submitted its timely *Response* to the allegations on April 1 and 2, 2010 and provided a copy to the complainant. The District’s submissions included a two-page narrative response and 111 pages of student related documents (paginated as 76 pages but totaling 111 pages). The Department’s complaint investigator determined that on site interviews were not necessary to resolve the issues in the complaint. The Department’s complaint investigator considered all of the documents and submissions provided to the Department by the parties.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-300.153 (2009) and OAR 581-015-2030. 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).

The written complaint alleges that the District violated the IDEA in the following ways:

#.	Allegations	Conclusions
(1)	<p><b><u>Parental Participation:</u></b></p> <p>A. Not providing the parent notice of the December 17, 2009 IEP meeting and therefore denying the parent an opportunity to participate in the student’s IEP meeting;</p> <p>B. Not properly listing the meeting participants.</p>	<p>Not Contested.</p> <p>The District asserts that it contacted the parent before the meeting and sent a copy of the meeting notice; however, the District did not confirm that the parent received the notice. The notice did not list the student’s special education teacher.</p>

#.	Allegations	Conclusions
(2)	<p><b><u>IEP Content (Dec. 17, 2009 IEP):</u></b></p> <p>A. Not including an accurate Present Level of Academic Achievement and Functional Performance statement;</p> <p>B. Not identifying how or when the student's Annual Goals will be reported;</p> <p>C. Not accurately describing related service on the service summary section of the IEP;</p> <p>D. Not accurately describing the extent to which the student would not participate with non-disabled peers in the Non-Participation Justification Statement;</p> <p>E. Not accurately describing the student's participation in statewide assessments;</p> <p>F. Not describing the student's transition services; and</p> <p>G. Not accurately describing the date that the student was informed that the parental rights afforded under the IDEA would transfer to the student upon reaching the age of majority.</p>	<p>Not Contested.</p> <p>The December 17, 2009 IEP was essentially copied, without update or revision, from the March 9, 2009 IEP and did not reflect changes that occurred from one school year to the next.</p>
(3)	<p><b><u>IEP Team:</u></b></p> <p>Not having a properly composed IEP team at the December 17, 2009 IEP Team meeting.</p>	<p>Not Contested.</p> <p>The District did not have a properly composed IEP team at the December 17, 2009 IEP meeting.</p>
(4)	<p><b><u>Oregon Standard IEP Content:</u></b></p> <p>Not utilizing the Oregon Standard IEP form and instructions, or not using an alternative approved form, accurately describing:</p> <p>A. The student's reevaluation date; and,</p> <p>B. The December 17, 2009 IEP meeting participants.</p>	<p>Not Contested.</p>

#.	Allegations	Conclusions
(5)	<p><b><u>Prior Written Notice:</u></b></p> <p>Not accurately describing the student's placement on the December 17, 2009 placement page.</p>	Not Contested.

### III. FINDINGS OF FACT

#### **Background**

1. The student is a sixteen year old, eleventh grade student who is eligible for special education services under the eligibility of "Other Health Impaired."
2. The student's parent has consistently attended IEP meetings throughout the student's special education eligibility.
3. The District conducted an IEP meeting, attended by a properly composed IEP team including the parent, on March 9, 2009; the meeting resulted in the creation of a new IEP for the student.
4. The District prepared a notice of an IEP meeting for December 17, 2009; however, the information was not received by the parent. The District did not directly confirm with the parent that she had received the notice. As a result, the parent neither attended nor participated in the meeting.
5. The notice for the December 2009 IEP meeting did not list a special education teacher of the student as an "IEP team member required to attend" nor did one attend the meeting.
6. At the December 17, 2009 meeting, the District special education director and one of the student's regular education teachers "conducted a staff meeting reviewing the student's progress, and ... did not take any special education action regarding the contents of the IEP other than changing the date on the front page showing that a meeting did occur."
7. The December 17, 2009 IEP did not describe a current or updated Present Level of Academic Achievement and Functional Performance compared to the March 9, 2009 IEP. It did not include information on how or when the student's progress towards Annual Goals would be reported. It did not accurately describe the student's related services. It did not accurately describe the extent of the student's participation with non-disabled peers. It did not accurately describe the student's participation in Statewide Assessments. It did not describe the student's transition services. It did not accurately describe the date that the student was informed that the parental rights afforded under the IDEA would transfer to the student upon reaching the age of majority. It did not include a date for the student's three year re-evaluation. It did not accurately identify who attended the meeting. The placement page did not accurately describe the student's placement.
8. The District has proposed, and the parent has consented to, various evaluations in anticipation of the student's triennial reevaluation due June 6, 2010.

9. The date for the eligibility meeting has not yet been set.

#### IV. DISCUSSION

The complaint alleges a number of IDEA violations which the District acknowledges. The District does not dispute any of the allegations in the present complaint except that they contacted the parent before the December 2009 meeting and sent her the notice of the December 17, 2009 meeting.

The Department does not make a determination on whether the notice of the December 2009 meeting was or was not sent by the District and/or was or was not received by the parent. The notice was deficient in not listing the required team members. Additionally, the District did not confirm with the parent that she did not intend to participate in the meeting nor did they call her to confirm her receipt of the notice or knowledge of the meeting when she did not appear at the noticed time and place.

The Department acknowledges that an IEP or placement meeting may take place without a parent in attendance but requires a District to have a record of attempts to arrange a mutually agreeable time and place for the meeting. The Department will consider a school district's attempts to convince parents to attend sufficient if the school district communicates directly with the parent to arrange a mutually agreeable time and place and sends a written notice to confirm the arrangement. Alternatively, the Department will consider a school district's attempts sufficient if the notice proposing the time and place specifies that the parent may request a different time and place and confirms that the parent received the notice. OAR 581-015-2195(3). In this case, the District did neither, and the parent was effectively denied an opportunity to participate in the meeting.

Based on the District not contesting the allegations of this complaint, the Department orders and the District stipulates to the following Corrective Action.

#### V. STIPULATED CORRECTIVE ACTION<sup>1</sup>

*In the Matter of Brookings Harbor School District*  
Case No. 10-054-009.

#	Action Required	Submissions <sup>2</sup>	Due Date
1.	<b>IEP Meeting:</b>  The District shall hold an IEP meeting to review and revise the student's IEP,	Submit to ODE and the parent, a complete	<b>June 10, 2010</b>

<sup>1</sup> 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).

<sup>2</sup> Corrective action plans 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.



#	Action Required	Submissions <sup>2</sup>	Due Date
	<p>ensuring the implementation of students' IEPs as written;</p> <p>G. District procedures for ensuring that IEPs are implemented as written, including informing teachers and service providers of their specific responsibilities for implementation; and,</p> <p>H. Progress reporting related to IEP goals.</p> <p>The District shall confer with ODE staff on developing the content for this training.</p>	(name, position, date, assignment location).	

Dated: 4th day of May 2010

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

Mailing date: May 4, 2010

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.