

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of West Linn-Wilsonville)
School District 3J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-011

I. BACKGROUND

On April 12, 2010, the Oregon Department of Education (Department) received a letter of complaint from legal counsel for the parents of a student residing in the West Linn-Wilsonville School District (District). The complaint requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010).

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(12); 34 CFR §§ 300.151-153 (2009). On April 16, 2010, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On April 30, 2010 the District timely submitted a narrative *Response* to the allegations by e-mail. The District also mailed supporting documents on April 30, 2010, and the documents were received by the Department’s complaint investigator on May 3, 2010. The District provided a copy of the narrative response and supporting documents to legal counsel for the parents. On May 7, 2010, legal counsel for the parents provided a *Reply* to the District’s Response by e-mail.

The Department’s complaint investigator reviewed the information submitted by the District and the parents, and determined that on-site interviews were needed. On May 25, 2010, the investigator interviewed the District’s assistant director of student services, a high school principal, a regular education teacher, and two special education teachers. On May 26, 2010, the investigator interviewed the parent and the parents’ legal counsel, and interviewed members of the staff at the District’s Adult Transition Services Program (ATSP), including that program’s principal, an instructional coordinator (who provides Assistive Technology consultation) and two special education teachers. The Department’s investigator reviewed and considered all of the documents and interviews.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR 300.151-153. 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	Conclusions
(1)	<p>Content of IEP</p> <p>(a) The complaint alleges that the District failed to identify appropriate postsecondary goals for the student based upon age appropriate transition assessments. Specifically, the complaint alleges:</p> <p>(1) That the student’s IEP failed to include a vocational goal; and</p> <p>(2) That the District failed to conduct vocational, training, or independent living skills assessments.</p> <p>(b) The complaint alleges that the District failed to provide appropriate services based on the student’s individual needs. Specifically, the complaint alleges that the decision to reduce the amount of special education and related services, including specially designed instruction that the student received was not based on student-specific needs.</p>	<p>Not Substantiated.</p> <p>1(a)(1) The Department finds that the vocational postsecondary goals is sufficiently stated in the student’s January 27, 2009 and October 27, 2009 IEPs.</p> <p>1(a)(2) The Department does not substantiate the allegation that the District failed to conduct appropriate vocational, training, or independent living skills assessments.</p> <p>1(b) The level of services provided to the student in the ATSP appears appropriate to allow progress towards the student’s goals. Therefore, the District does not substantiate the allegation that the decision to reduce the SDI and related services was not based on student-specific needs.</p>
(2)	<p>When IEPs Must Be In Effect</p> <p>The complaint alleges that the District failed to implement the student’s IEP. Specifically, the complaint alleges that, from September 9, 2009 to October 27, 2009, the student did not receive the specially designed instruction described in the student’s January 27, 2009 IEP.</p>	<p>Stipulated.</p> <p>The District stipulates that from September 9, 2009, when the student began classes in the ATSP, to October 27, 2009 the student did not receive the SDI described in the student’s January 2009 IEP. The District proposes corrective action of “District training about parental participation at IEP meetings and when to proceed with meetings without the parent.” The Department believes this is appropriate, under the circumstances of this case. <i>See Corrective Action.</i></p>
(3)	<p>Prior Written Notice</p> <p>The complaint alleges that the District failed to provide prior written notice of changes to the student’s receipt of special education services. Specifically, the complaint alleges that the parents were</p>	<p>Not Substantiated.</p> <p>The Department finds that the District did provide the parents prior written notice of the changes to the student’s educational program that took place between the 2008-09 and 2009-10</p>

No.	Allegations	Conclusions
	never notified of the reduction in special education services that occurred when the student began attending the Town Center program.	school years and following the October 2009 IEP meeting. The Department does not substantiate this allegation.
	<p>The parents request the following corrective action:</p> <ul style="list-style-type: none"> (1) Appropriate transition assessments of the student by the District; (2) An IEP Team meeting upon completion of the assessments to: reconsider the student's goals in light of the assessments, discuss and add vocational goals to the student's IEP, and discuss and add appropriate transition services to the student's IEP; (3) Compensatory education; (4) Training of District staff, as appropriate. 	The Department concludes that training of District staff is appropriate as concerns allegation (2), above. See <i>Corrective Action</i> .

III. FINDINGS OF FACT

Background:

1. The student is presently 19 years old and attends the District's Adult Transition Services Program (ATSP). The student is eligible for special education under disability codes 70 (orthopedic impairment) and 40 (visual impairment). The student was initially found eligible for special education services in 1991, at age one. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the student's current IEP (dated October 27, 2009) states that the student:

“receives special education services as a student with orthopedic impairment. [The student] has Cerebral Palsy, a seizure disorder and also a visual impairment. [The student] has a bachlofen pump and a g-tube. [The student] needs assistance with eating foods orally and ... receives venting throughout the day to relieve excess gas. [The student] also receives daily help with bathrooming, which requires two staff and a hooyer lift. On our current school schedule, bathrooming is required once a day and more often when there is an emergency. [The student] has access to an Easy Stander from CROS and a specific rocking chair that [the student] can sit in for position change. [The student] will be able to use one of these pieces of equipment 2 to 3 times a week unless the class is out on field trips. [The student] has ankle-foot orthotics for standing. [The student] is non-ambulatory and uses a manual wheelchair. [The] communication device is mounted to [the student's] chair. J [The student] uses a head toggle switch to activate [the student's] Vanguard. Due to [the student's] visual impairment, the Vanguard is equipped with a speaker so [the student] is able to listen to choices rather than visually select them.”

2. The PLAAFP in the student's current IEP also states that the student "has the ability to communicate on a basic level using [the student's] Vanguard and /or responding to 'yes/no' questions. [The student] enjoys music and being a part of an active environment." The Vanguard is an assistive technology or augmentative device with a screen that shows rows of options for different situations and which a student uses to make choices by activating a head switch., The rows and choices on the screen are identified by the device audibly through a speaker mounted behind the student on the wheelchair.

3. The PLAAFP in the student's current IEP also states:

"[The student's] orthopedic impairment and visual impairment affects all areas of ... education. All materials must be modified and adapted to match [the student's] skill levels and current augmentative communication system. [The student] does not use [a] communication device to access activities, curriculum or interact with others on a consistent basis. In the adult transition program, [the student] does not communicate ... needs, preferences or actively engage in social interactions in an effective manner. [The student] is often hesitant to respond, which impacts [the student's] ability to access curriculum and interact with others in new and unfamiliar environments. In the community and home settings, [the student] does communicate ... needs and preferences on a consistent basis when [the student] chooses."

4. The student attended a District high school and graduated with a certificate of attainment after the 2008-2009 school year. The PLAAFP in the student's current IEP, referring to the student's last year at the high school, summarizes the student's progress towards the goals and objectives in the student's IEP in place during the 2008-2009 school year as follows:

"Data presented from last year's teacher are as follows: Identify months/special activities: 0%; Ask meaningful questions about reading: 0%; initiate reading opportunities: 0%; Use of [the student's] Vanguard (all with prompting): Make food selections: Daily; Write emails 0-10%; Initiate communication: 0-10%; Make requests for activities: 10%."

5. The student's current IEP identifies the student's postsecondary goals as:

"Following completion of the Adult Transition Program, regarding independent living skills, I will live in a fully supported environment outside of the home with assistance accessing community activities. Following completion of the Adult Transition Program, regarding employment, I will participate in a fully supported experience in the community."

The student's current IEP identifies the course of study to assist the student in reaching the postsecondary goals as "Adult Transition Program focusing on communication and social skills that promote independence and personal decision making." Additionally, the student's current IEP contains three goals, including the ability to use the augmentative device to effectively communicate the student's needs and wants, the ability to give clear consistent yes/no responses, and the ability to make choices concerning lunch and activities.

1) Content of IEP

6. The student's current IEP appropriately lists vocational postsecondary goals, as set forth above in finding 5. The three additional goals in the student's current IEP, noted above in finding 5, are goals that are necessary to allow the student the opportunity to progress towards the student's postsecondary goals. These goals concern basic communication and are based upon the student's present level of ability. The student's previous IEP, dated January 27, 2009, also identified the student's postsecondary goals, stating that "[the student] will live in an assisted living environment outside of the home [and] will have assisted access to community recreation and leisure opportunities and fully supported vocational community experience."
7. The District conducted informal transition assessments of the student, based on direct observations over time, on an ongoing basis. The District does not believe the student is a candidate for formal age appropriate transition assessments because the student's level of disability prevents the student and staff from accessing the formal transition assessments. The District recorded observational data concerning the student, including IEP progress notes, present levels of performance statements, and a summary of performance. The District relied upon this data to assess the student's transition needs during the student's 2008-2009 school year (the last year at high school) and during the present school year (2009-2010) while the student is enrolled in the District's ATSP. The parents have not requested, prior to the *Reply* to the District's *Response* in this case, independent transition assessments of the student.
8. The student's January 27, 2009 IEP, in effect during the last months of the student's final year in high school, included SDI in reading, writing, and math. The parents contend that, during the January 27, 2009 meeting, District staff advised that the student's IEP resulting from that meeting (dated January 27, 2009) could be implemented as written in the student's post-graduation placement in the District's adult transition services program (ATSP). However, the Department finds that the January 27, 2009 IEP Team agreed that the student would attend the ATSP for the 2009-10 school year and that District staff communicated that operation of that program could differ from year to year based on the student population in the class. District staff also briefly discussed with the parents some of the particulars of the District's ATSP as that program existed during the 2008-09 school year. At that meeting, it was the understanding of the IEP Team, including the parent, that the student would attend the District's ATSP at the beginning of the 2009-2010 school year. At the time of the January 2009 IEP Team meeting, the ATSP met four days each week.
9. District staff also advised during the January 27, 2009 IEP meeting that the goals in the ATSP would be different than in high school and would focus on the student's goals beyond the ATSP or at age 21. The IEP Team discussed possible participation by the student in three social and vocational settings, including participation in a "Meals on Wheels" program, a grocery delivery service at the local Safeway, and the "auditing" of a class at a local community college. District staff and the parents were to check on these possibilities and report back at the next meeting.
10. The District scheduled for the parents to visit the ATSP program on April 15, 2009, and the parent visited the program that day. On April 24, 2010, three District staff members and the parent met to share what had been learned concerning the vocational settings discussed at the January 27, 2009 IEP meeting, and to further discuss the ATSP. District staff advised that they were not sure how many days the ATSP class would meet the following school

year. Concerning the possible vocational and social experiences, the team members reported that generally the student could participate in these vocational and social experiences if accompanied by a care giver. The ATSP staff and current IEP Team members are continuing to work in the classroom on the basic communication skills necessary to allow and enhance these potential vocational experiences. These vocational experiences are still available to the student but the District's focus is on assisting the student in developing the skills to enhance this participation, rather than staffing the vocational experiences.

11. On June 16, 2009, consistent with the understanding of the District and parents reflected during the January 27, 2009 and April 24, 2009 meetings, the District issued a prior notice of special education action stating that "[The student] will be attending the Adult Transition Program starting in the fall of 2009."
12. The student's current IEP, dated October 27, 2009, includes service time of 2 hours and 20 minutes each school day. The service levels in the current IEP are based on the student's IEP goals and the time spent in the ATSP by the student, of six hours a day for three days each week, actually exceeds the service time reflected in the IEP. At the October 27, 2009 IEP meeting the parents' attorney stated there were no evaluations to show that the reduction in SDI times were warranted. The progress reports from the ATSP show that the District is monitoring the progress of the student on the student's goals and short term objectives and that some progress is being made. The District contends that there is no indication that additional service time in the classroom would result in improved progress.

2) When IEPs Must Be in Effect - Implementation

13. The student did not receive ESY services during the summer of 2009, and the ESY determination is not disputed by the parents. On August 26, 2009, the District sent a letter to all parents and ATSP students, inviting them to an open house on September 3, 2009, and the parent in this case attended the open house. The letter also advised of some staff changes and that classes would run from 9:00 a.m. to 3:00 p.m. three days each week. The student began class on September 9, 2009 in the ATSP.
14. The District's *Response* in this case does not dispute the allegation that from September 9, 2009 to October 27, 2009 the student did not receive the SDI described in the student's January 21, 2009 IEP. The District's *Response* also sets forth a chronology concerning the District's attempt to schedule an IEP meeting beginning September 2, 2009. The District first offered an IEP meeting on September 2, 2009, and the parents agreed to an IEP meeting at the ATSP open house on September 3, 2009. On September 11, 2009, the District and parents scheduled a meeting for September 24, 2009. The parents cancelled that meeting. On September 25, 2009, the parent indicated to District staff that she would not meet and wanted everything to stay the same until the parent contacted District staff in a couple of weeks. The District then scheduled an IEP meeting for October 20, 2009, and the parents stated that day would not work and asked for a meeting on October 27, 2009. The IEP meeting took place on October 27, 2009, at which time the parent was accompanied by an attorney.
15. Upon enrollment in the District's ATSP program on September 9, 2009, the District did not provide the SDI in reading, writing, and math provided in the student's January 27, 2009 IEP. The SDI in those subjects during the 2008-2009 school year at the high school primarily involved the student being present in the classroom and participating in the class at

a minimal level. For example, during the entire school year the student was present at a regular education class of senior English. The student, who was always in the classroom with an instructional assistant, apparently observed the class but the regular education teacher observed that the student did not interact at all with the teacher or the student's peers, and that the teacher did not present any modified instruction because the student would not have been able to access any SDI provided by the teacher.

3) Prior Written Notice

16. The District issued a PWN on June 16, 2009, notifying the parents that the student would be attending the ATSP in the fall of 2009 and advising of the proposed change in the student's placement. Additionally, the District issued a PWN on October 27, 2009, following the student's October 27, 2009 IEP meeting, again advising the parents of a change in the student's placement and stating that the student's "IEP has been changed in amount and type of services and goals to reflect the core of [the student's] transition skills needs (social, behavioral, and communication) towards [the student's] post-school goals."

IV. DISCUSSION

1) Content of IEP

a. Postsecondary Employment Goal and Transition Assessments

The parents allege that the District failed to identify appropriate postsecondary goals for the student based upon age appropriate transition assessments. Specifically, the parents allege that the student's IEP does not include a vocational goal and that the District failed to conduct vocational, training, or independent living skills assessments. For students 16 years of age or older, Oregon law requires IEPs to include "[a]ppropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills." OAR 581-015-2200(2).

The Department does not substantiate the allegation that the student's IEP does not include a vocational goal. The Department finds that both the January 2009 and October 2009 IEPs include a postsecondary goal addressing the student's access to a "fully supported vocational community experience." The transition goal in the January 27, 2009 IEP states that the student "will work on functional social and behavioral skills" in order to assist the student in reaching postsecondary goals. The transition goal in the October 27, 2009 IEP states that the student will participate in an "Adult Transition Program focusing on communication and social skills that promote[s] independence and personal decision making" in order to assist the student in reaching postsecondary goals. Both IEPs include goals and short term objectives relating generally to communication and social skills but intended to help the student access the postsecondary goals.

In the parents' *Reply*, the parents argue that the transition goal is merely a transition statement in the front section of the IEP, is not stated as a measurable goal, and does not focus on employment. The Department concludes that the postsecondary employment goal is sufficiently stated in the student's January 2009 and October 2009 IEPs. The vocational goal is supported by a general statement of the course of study designed to help the student reach the goal and by additional, measurable goals and short term objectives. These additional goals and objectives are sufficiently related to the student's attainment of postsecondary vocation and

employment. Therefore, the Department does not substantiate the allegation that the student's IEP does not include a vocational goal.

The parents also allege that the District failed to conduct vocational, training, or independent living skills assessments as required by OAR 581-015-2200(2). However, the Department finds that the District has appropriately used a variety of data sources to assess the student's skills and identify the student's transition goals. During the 2008-09 school year, the student's last year at high school, the student's transition team consisted of the student's special education teacher and other IEP Team members. That team reasonably concluded that the student would not benefit from conventional transition assessments and that the District possessed enough observational data to properly set transition goals and develop a transition plan.

The observational data gathered concerning the student, whether originally gathered for determining the student's progress towards IEP goals or for analyzing the student's present levels of achievement and functional performance, was sufficient to develop the student's postsecondary goals. Additionally, The District's conclusion that the student's disabilities preclude the student from participating in formal, age-appropriate transition assessments is a rational conclusion. Thus, the District's reliance on informal assessments to determine the student's transition needs was reasonable and was likely the only way for the District to assess the student's transition needs.

The parents' *Reply* argues that the data used for the informal assessments does not relate to the student's needs, preferences, or interests. However, it is not clear precisely what assessment would ascertain that information since the student is not able to consistently provide a "yes/no" response and is not able to consistently make basic choices concerning personal preferences such as which music to listen to or which food to eat. The parents have not suggested or requested any specific assessments relating to transition and, until the *Reply* in this case, has not requested that the District provide an outside expert to conduct a transition assessment for the student. The Department concludes that the District conducted informal transition assessments related to training, education, employment, and independent living skills assessments to the extent allowed by the student's disabilities. Therefore, the Department does not substantiate the allegation that the District failed to conduct assessments related to training, employment, and independent living skills.

b. Reductions in Services in the October 2009 IEP

The parents allege that the decision to reduce the amount of special education and related services, including specially designed instruction (SDI) that the student received, was not based on student-specific needs.

The SDI provided for in the student's IEPs changed significantly from the January 2009 IEP, in effect during the spring of the student's last year in high school, to the October 2009 IEP implemented in the ATSP. The student is no longer receiving SDI in academic areas such as math, reading, and writing. Additionally, the student's time in the classroom was reduced from over 30 hours each week while in high school to 18 hours each week in the ATSP; the student attends the ATSP three times a week for six hours each time. The parents contend that the reductions in SDI and hours of attendance were not based on the student's specific needs.

The Department concludes that the changes to the student's educational program that were recorded in the October 2009 IEP were based on student-specific concerns and the shift in focus of the student's program from academic achievement to postsecondary planning. The

District discussed with the parents the change of focus that would occur when the student moved from a high school program to an adult transition program. The ATSP focuses on assisting students attain postsecondary goals focusing on the student's options after school completion.

Although the October 2009 IEP resulted in a reduction in specially designed instruction and class time, the Department finds that the October IEP provided adequate services to allow the student to progress towards the student's goals. The October 2009 IEP provides for SDI for two hours and twenty minutes each school day. Other services, including physical therapy and occupational therapy, are also provided under the October 2009 IEP. The progress reports from the student's time at the ATSP show that the District is monitoring the progress of the student on goals and short term objectives and that some progress is being made.

Additionally, the reduction in classroom hours from the high school to the ATSP is consistent with the purpose of the ATSP, to assist students as they pursue postsecondary goals. The parents, in the *Reply*, note that various vocational experiences were discussed in the spring of 2009, including the "Meals on Wheels" program, a vocational experience at Safeway, and the possibility of "auditing" a class at a local community college. The team members working on those possible vocational experiences reported their findings at the April 24, 2010 meeting. The reports revealed that the student could participate in these vocational and social experiences if accompanied by a care giver. The ATSP staff and current IEP Team members are continuing to work in the classroom on the basic communication skills necessary to allow and enhance these potential vocational experiences. The District reports that these vocational experiences are still available to the student but that the District's focus will remain on assisting the student in developing the skills to enhance participation, rather than on staffing the vocational experiences. Based on the foregoing, the Department does not substantiate the allegation that the decision to reduce the SDI and related services was not based on student-specific needs.

2) When IEPs Must Be in Effect

OAR 581-015-220(1)(b) provides that "[s]chool districts must provide special education and related services to a child with a disability in accordance with an IEP." In this case, the parents allege that the District failed to implement the student's January 2009 IEP and that the student did not receive the SDI described in that IEP from September 9, 2009 to October 27, 2009.

The District does not dispute this allegation in its *Response* and explains the circumstances and the basis for the District's actions. The Department finds that from September 9, 2009, when the student began classes in the ATSP, to October 27, 2009 the student did not receive the services, modifications, and accommodations described in the student's January 2009 IEP. The discussion must then turn to the circumstances of this procedural violation and the appropriate remedy. The District had discussed with the parents, beginning at the January 2009 IEP meeting, that the student's goals and the services provided in support thereof might change significantly as the focus of the student's program shifted to postsecondary goals. Additionally, the District was aware that a new IEP would be required to correctly reflect the services that would be provided in the ATSP, and the District communicated this to the parents. Nonetheless, the District unilaterally changed the student's educational program for the student's September 2010 start in the ATSP without recording the changes on the student's IEP.

In its *Response*, the District proposes corrective action consisting of "training about parental participation at IEP meetings and when to proceed with meetings without the parent." The

Department believes this is appropriate under the circumstances of this case. See *Corrective Action*. The parents additionally request compensatory education as a result of this violation. The Department finds that compensatory education is not an appropriate remedy in this case. Though the services provided during September and October 2010 were inconsistent with the student's IEP, there is no indication that the program that was actually implemented denied the student of a free and appropriate public education. Therefore, the Department concludes that an award of compensatory education is unnecessary and that the corrective action stipulated to by the District is appropriate to ensure that the District does not make program changes without full parental participation in the future..

3) Prior Written Notice (PWN)

The parents allege that the District failed to provide prior written notice (PWN) concerning the reduction in special education services that occurred when the student began attending the ATSP. OAR 581-015-2310 requires districts to send PWNs after a decision is made to change a student's educational program and a reasonable time before that decision is implemented. In this case, the District, consistent with its understanding that the parents supported enrolling the student in the ATSP, issued a PWN on June 16, 2009 stating that the student would attend the ATSP in the fall of 2009.¹ Additionally, the District issued a PWN on October 27, 2009 following the student's October 27, 2009 IEP meeting, accurately advising of the changes in the "amount and type of services and goals to reflect the core of [the student's] transition skills needs (social, behavioral, and communication) towards ... post-school goals." The Department does not sustain the allegation that the District failed to provide PWN concerning the changes to the student's educational program that were made prior to or during the 2009-10 school year.

¹ Consistent with the findings related to allegation two in this complaint, the Department acknowledges that the PWN issued on June 16, 2009 resulted from an improper decision by the District to change the student's educational program without following the parent participation requirements of the IDEA.

V. CORRECTIVE ACTION²

In the Matter of West Linn-Wilsonville SD 3J
Case No. 09-054-011

#	Action Required	Submissions	Due Date
(1)	<u>Training:</u> ^[1] The District will provide training to all special education staff, case managers, and administrators concerning parent participation in the IEP revision process. The training should include the requirements for revising an IEP outside of an IEP Team meeting, the requirements for holding an IEP Team meeting without a parent in attendance, and the requirements for providing adequate notice of an IEP Team meeting to a parent.	A copy of the training materials presented and an attendance roster must be provided to the Department.	September 15, 2010

Dated: 8th of June 2010

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

Mailing Date: June 8, 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.

² 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).

^[1] Initial Verification: The Department will review the written confirmation to District staff and the distribution list.