

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lincoln County School)
District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 11-054-005

I. BACKGROUND

On February 17, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Lincoln County School District (District) requesting a special education investigation under OAR 581-015-2030 (2011). The Department provided a copy of the complaint to the District.

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; 34 CFR §§ 300.151-153 (2010). On February 22, 2011, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated.

On March 7, 2011, the District submitted a narrative *Response* to the *Request for Response*. The parent did not provide a written *Reply* in this case.

The Department's contract complaint investigator determined that telephone interviews would be sufficient in this case and that an on-site investigation would not be necessary. On March 14, 2011, the investigator conducted a telephone interview of the parent. On March 17, 2011, the investigator conducted a telephone interview of the District's Special Education Director. The Department's investigator reviewed and considered all of the documents and the narrative response received from the District 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 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><u>Review and Revision of IEPs</u></p> <p>The complaint alleges that, despite a request for an IEP meeting made by the parent during a parent-teacher conference call on or about October 25, 2010, the District failed to convene an IEP team meeting to review and revise the student's IEP until February 15, 2011 to address:</p> <p>(a) the results of an OT evaluation of the student completed on September 23, 2010; and,</p> <p>(b) the student's anticipated needs based on the results of the September 2010 OT evaluation.</p> | <p><u>Substantiated</u></p> <p>The Department substantiates the allegation that the District failed to convene an IEP meeting to discuss the OT evaluation within a reasonable time. <i>See Corrective Action.</i></p> |
| (2) | <p><u>IEP Content</u></p> <p>The complaint alleges that the District failed to timely include in the student's IEP appropriate OT services.</p> | <p><u>Substantiated</u></p> <p>The Department concludes that the District did not timely include in the student's IEP the OT evaluator's recommendations eventually included in the student's February 15, 2011 IEP. Additionally, the Department concludes that the student's IEP failed to include goals and specially designed instruction in the area of written language following the September 2010 OT evaluation. <i>See Corrective Action.</i></p> |
| | <p>The complaint requests the following corrective action:</p> <p>Compensatory services, including "private writing instruction for a period of 1 year, <u>Handwriting Without Tears</u> instructional workbooks for grades 2-5, slant board for home practice."</p> | <p><i>See Corrective Action.</i></p> |

II. FINDINGS OF FACT

Background:

1. The student in this case is eight years old and is in the third grade. The student is eligible for special education services from the District with an eligibility of Communication Disorder.
2. On September 23, 2010, the District's Occupational Therapist completed an Occupational Therapy (OT) Evaluation, following a referral at the end of the previous school year due to the student's difficulty in writing and cutting. The OT evaluation noted that the student's scores on a Bruininks – Oseretsky Test of Motor Proficiency 2nd Ed. (BOT2) were age appropriate, but also noted that student scored well below average on the Test of Visual Motor Integration (VMI). The Summary/Recommendation paragraph in the OT Evaluation states:
 - “1. BOT2 composite scores were age appropriate.
 2. VMI scores were below average. Since [the student's] finger-hand control seems functional, it suggests that other visual-perceptual systems are involved: visual memory, object constancy, figure ground perception for example.
 3. Attention control issues: Distracted from tasks. It may be a challenge for [the student] to maintain focus and attention. Some students compensate with study carrels or working in a quiet, low distraction environment. Other support: keep voices down, high degree of structure, preferential seating, a second alternate seat in the room [the student] can move to when needed, positive behavior support, scheduled mini-breaks.
 4. Alternative Seating: [The student] may benefit from using a therapy ball, or disk sit for classroom work. The added motion on the ball or disk sit fosters equilibrium reactions and may help with alertness.
 5. Handwriting - intervention needed. Reteach or review letter formation. [The student] needs to practice making consistently sized letters. Assign [the student] to a small writing group. Provide...an alphabet strip at [the student'] seat. Correct errors, and demonstrate letters as needed until [the student] can copy or write without a model.
 6. Use wide ruled paper, or try double line paper. See online: (www.hwtears.com). Try alternating/skipping lines.
 7. Visual Plane – Try a slant board to tilt the writing surface up into view. This will also address correcting the wrist position. Try to reinforce that the pinky side of the hand should stay down and the thumb side up as [] writes. Student services had slant boards.
 8. I'll provide several pencil grips of different styles to correct [the student's] pencil grip.”
3. In the District's *Response* in this case, the District acknowledges their failure to convene an IEP team meeting to review and revise the student's IEP after completing the OT evaluation. The District's *Response* states,

“Several attempts were made to set up a parent teacher conference with the general education teacher and Speech Language Pathologist, although they were sent to the parent via the student. After these failed attempts to have a parent teacher conference in October, the general education teacher talked with the parent by phone and remembers that they talked about getting together to talk about the student’s progress. During the phone call, the general education teacher mentioned how well the student was doing and that at sometime in the near future it was possible the student would no longer need speech services. Just prior to the IEP meeting on February 15, 2011, it was brought to the school’s attention that the student was not delivering messages. Messages from that time forward have been mailed to the parent. No District employee remembers a direct request for an IEP meeting until February 2, 2011.”

4. The District’s *Response*, in responding to the allegation concerning IEP content, states: “Although it is true that the District failed to timely include in the student’s IEP the recommended services from the OT; 1) the recommendations for preferential seating, mini-breaks (with a trampoline), handwriting intervention (within small group reading instruction), wide ruled paper, slant board, and pencil grips were started within a week of the O.T.s report; 2) when the IEP meeting did occur on February 15, 2011, the parent did not want to add any specially designed instruction time for Handwriting Without Tears small group instruction. All O.T. recommendations ultimately adopted by the IEP team were actually implemented within a week of the OT’s report.
5. The District’s *Response* proposes eight hours of compensatory handwriting instruction using the Handwriting Without Tears instructional workbooks for grades 2-5 and a slant board.
6. During the investigator’s telephone interview of the parent, the parent stated that the main concern was that for four months (from the September 23, 2010 OT evaluation to the February 15, 2011 IEP meeting), the parent was not aware of the content of the OT evaluation, and that as a result what the parent characterizes as the student’s “executive functioning/processing issues” and organizational needs were not addressed. The parent agreed that many of the recommendations contained in the OT evaluation were implemented shortly after the completion of the OT evaluation, but asserts that the recommendations of mini-breaks and use of a slant board were not implemented until after the February 15, 2011 IEP meeting.
7. During the IEP meeting on February 15, 2011, the parent opposed increasing the amount of SDI in the student’s IEP. The parent explained in the telephone interview with the Department’s investigator that the parent did not want the student to be pulled out of regular education class for any additional time, and the parent was concerned that the student would miss the group writing time in the student’s regular education class. The parent also stated that six months of compensatory education outside of regular class hours, through the use of a tutor, would be the appropriate remedy for the failure to provide the student with services related to what the parent characterizes as the student’s “executive functioning” and “organizational” needs

from the date of the OT evaluation of September 23, 2010 to February 15, 2011, the date of the IEP meeting. The parent does not know how many hours of tutoring would be appropriate. The District characterizes the tutoring the parent seeks as tutoring relating to the student's written language goal in the student's IEP. The District is willing to provide compensatory services to the student in written language, to assist the student in progress on the student's written language goal in the student's IEP. The District believes a rational calculation of the appropriate tutoring is based upon 50 minutes of instruction each week for the approximately 16 weeks between the date of the OT evaluation and the February 15, 2011 IEP meeting. The District reports that tutoring by a certified teacher costs the District \$24.84 per hour. The District is willing to pay the cost of 13 hours of tutoring for compensatory services to the student, because the student now resides out of the state of Oregon (see next finding). The District added a written language goal to the student's IEP during the February 15, 2011 IEP meeting.

8. During the telephone interview the parent stated that the parent and the student are relocating to a city out of Oregon, and that this move should occur by April 1, 2011. On April 5, 2011, the investigator received confirmation from the District that the student has withdrawn from the District as of April 2, 2011, but no records request has yet been received by the District.

IV. DISCUSSION

Review and Revision of IEPs and IEP Content

The complaint alleges that, despite a request for an IEP meeting made by the parent during a parent-teacher conference call on or about October 25, 2010, the District failed to convene an IEP team meeting to review and revise the student's IEP until February 15, 2011 to address: (a) the results of an OT evaluation of the student completed on September 23, 2010; and (b) the student's anticipated needs based on the results of the September 2010 OT evaluation.

The District acknowledges the failure to timely convene an IEP meeting to review and revise the student's IEP following the completion of the OT evaluation on September 23, 2010. Although many of the recommendations contained in the OT evaluation were implemented soon after the evaluation, an IEP team meeting was not held until February 15, 2011. Under Oregon law, school districts must convene a student's IEP team to review and revise the student's IEP to address evaluation results. OAR 581-015-2225. It is not incumbent upon a parent to request an IEP meeting following completion of an OT evaluation. Rather, following completion of an evaluation the District must convene an IEP meeting to address whether the student needs any additions or modifications to special education and related services. See OAR 581-015-2115(1). Therefore, the District was obligated to convene the student's IEP team within a reasonable timeframe after the September 2010 evaluation regardless of whether the parent requested an IEP meeting on October 25, 2010. The Department substantiates the allegation that the District failed to convene an IEP meeting to review and revise the student's IEP following the September 2010 OT evaluation. See *Corrective Action*.

The complaint also alleges that the District failed to timely include in the student's IEP appropriate OT services. As discussed above, the Department agrees that the District did not timely convene the student's IEP team to consider the educational recommendation included in the September 2010 OT evaluation. The Department notes that District implemented a number of the recommended interventions soon after the September 2010 evaluation was completed and eventually included those interventions in the student's February 15, 2011 IEP. However, the Department concludes that the District failed to provide the student measurable annual goals and specially designed instruction in the area of written language, which was recommended in the OT evaluation, from September 25, 2010 to February 15, 2011, when written language goals and services were added to the student's IEP.

The issue then becomes precisely what compensatory services are appropriate in this case. The District concludes that tutoring of the student in written language, outside of regular school hours, is appropriate and that a total of 13 hours (representing tutoring of 50 minutes each week for the approximately 16 weeks between the date of the OT evaluation and the February 15, 2011 IEP) is appropriate. The parent believes that tutoring for "six months" is appropriate but does not know how many hours would be appropriate. The Department concludes that the District's proposal is rational and that 13 hours of tutoring by a certified teacher is appropriate. However, because the student has withdrawn from the District and is residing and attending school outside of Oregon, the District cannot directly provide these compensatory services. Therefore, the Department finds that it is appropriate that the District reimburse the parent for up to 13 hours of tutoring in written language for the student. The amount of reimbursed expenses shall not exceed \$455.00 (13 hours at \$35.00 per hour). See *Corrective Action*.

V. CORRECTIVE ACTION¹
In the Matter of Lincoln County SD
 Case No. 11-054-005

| # | Action Required | Submissions ² | Due Date |
|-----|--|--|---------------------------|
| (1) | <u>Training:</u> Provide training to District staff and administrators responsible for convening IEP meetings regarding: | Copy of the training materials to ODE for review | September 30, 2011 |

¹ 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)

² 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.

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| | <ul style="list-style-type: none"> • The criteria for review and revision of a student's IEP between annual reviews and District responses to requests for such reviews. • Required content of IEP including, but not limited to, developing goals based on the present levels of academic, developmental, and functional needs of the child and the results of the most recent evaluation of the child. | Evidence of completed training, to include: a copy of the training materials and an attendance roster or distribution list identifying name and position of attendees. | September 30, 2011 |
| (2) | <p><u>Compensatory Educational Services</u></p> <p>The District must reimburse the parent the cost of up to 13 hours of tutoring in the area of written language as described in the OT report. The amount of reimbursed expenses shall not exceed \$455.00 (13 hours at \$35.00 per hour).</p> | <p>Provide the parent and ODE copies of any Lincoln County SD business office procedures that the parent must follow to claim reimbursement</p> <p>Submit to ODE proof of payment to the parent.</p> | <p>April 29, 2011</p> <p>September 30, 2011</p> |

Dated: April 14, 2011

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

Mailing Date: April 14, 2011

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.