

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Silver Falls School District)
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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 15-054-006

I. BACKGROUND

On February 9, 2015, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Silver Falls School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District.

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 in order to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On February 13, 2015, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of ten business days from the date of issuance.

On March 2, 2015, the District submitted a *Response* indicating that it disputed all portions of the allegations in the Parent's complaint. The District submitted the following items:

- A. List of Student's 2014-2015 IEP Team
- B. Narrative Response regarding complaint issues
- C. WESD Speech logs 10/8/14 to 1/28/15
- D. WESD Speech logs 2/5/14 to 6/4/14
- E. WESD Therapist- Teacher Consult log 9/25/14 to 12/12/14
- F. WESD Speech logs 9/25/14 to 1/15/15
- G. WESD Occupational Therapy logs 11/21/13 to 12/19/14
- H. WESD Aug/Com logs 1/15/14 to 5/21/14
- I. IEP dated 3/4/14 with progress notes
- J. IEP dated 4/4/13 with progress notes
- K. IEP dated 3/4/14
- L. IEP dated 4/4/13
- M. District Policy and Procedures for Special Education: 2007-2008 section 8
- N. Policy and Procedures for Special Education: 2007-2008 section 13
- O. Education Records Management Code: JO-AR
- P. Education Records/ Records of Students with Disabilities Code: IGBAB/JO
- Q. Education Records/ Records of Students with Disabilities Code: JO/ IGBAB
- R. E-mail correspondence between Advocate and District and District and Parent
- S. Speech logs dated 9/1/09 to 1/13/15

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

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

- T. Speech logs dated 2/5/14 to 6/4/14
- U. Speech Consult Log dated 9/25/14 to 12/12/14
- V. Speech Consult logs dated 9/18/14 to 1/15/15
- W. Augmentative Communication Logs dated 9/1/09 to 1/13/15
- X. Occupational therapy logs dated 9/1/09 to 1/13/15
- Y. Autism logs dated 9/1/09 to 6/7/12
- Z. Doernbecher Psychological Report dated 2/5/15
- AA. Doernbecher Child Development and Rehabilitation Center report dated 2/5/13
- BB. Doernbecher Progress notes dated 2/5/13
- CC. Initial concerns shared by Parent along with notes from meeting dated 12/11/14
- DD. District Special Education Manual- foundations
- EE. Policy and Procedures for Special Education: 2007-2008 Procedural Safeguards
- FF. More email correspondence between District and Parents/ Advocate
- GG. Finalized IEP dated 2/19/15
- HH. List of Staff knowledgeable of the complaint

The Parents and Advocate submitted materials for consideration via email and during the in-person interviews held March 16, 2015. The Parent's materials submitted for consideration included:

- A. Narrative Complaint
- B. Email to the Department from the Advocate dated 3/17/2015
- C. Statement of Eligibility for Special Education (Communication Disorder 50) dated 4/5/2012
- D. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82) dated 4/5/2012
- F. Copy of Willamette ESD Language and Speech assessment dated 3/21/12
- G. Email from Parent to District dated 2/5/2013
- H. Permission to Obtain and Release Information form signed and dated 12/11/2014 which gives the Advocate the ability to obtain information from District
- I. Email from District to Parent/ Advocate dated 12/9/2014
- J. Email from District to Parent/ Advocate dated 11/18/2013
- K. Emails from Advocate to Parent and District dated 1/7/2015
- L. Emails dated 1/8/2015
- M. Email dated 12/30/2014 and responses dated 1/5/2015 and 1/7/15
- N. Emails dated 1/15/15
- O. Emails dated 2/3/2015
- P. Email dated 12/14/2014

All materials were provided to all parties. The Department determined that on-site interviews were needed. On March 16, 2015, the Department's Legal Specialist interviewed one Parent and the Advocate. On March 16, 2015 the Department also interviewed District staff including: the Special Education Director, the Superintendent, the Student Records Coordinator from the Educational Service District (ESD), and the ESD Director for Special Education. The Department reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

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 the Discussion in Section IV. This complaint covers the one-year period from February 5, 2014 to the filing of this complaint on February 5, 2015.

	<u>Allegations:</u>	<u>Conclusions:</u>
I.	<p><u>Failure to Comply with Request for Educational Records</u></p> <p>The complaint alleges the District violated IDEA by failing to provide records for the Student as requested by e-mails dated December 30, 2014 and January 15, 2015.</p> <p>OAR 581-015-2300 and 34 CFR 300.501</p>	<p><u>Not Substantiated</u></p> <p>The District did comply with the Parent's email request for information dated December 30, 2014. The Advocate's questions in the email dated January 15, 2015 were also addressed. Finally, District did provide all requested records to the Parents and Advocate within the required 45 days.</p>
II.	<p><u>Evaluation and Eligibility Process</u></p> <p>The complaint alleges the District violated the IDEA when it did not review assessments and evaluations provided by the Parent.</p> <p>Specifically, that the District did not review the OHSU report dated February 5, 2013 and the WESD report dated March 21, 2012 after they were sent to the District on December 9, 2014.</p> <p>OAR 581-015-2110(3)(a) and OAR 581-015-2115(1)(a) and 34 CFR 300.305(a)(1) and 34 CFR 300.304(b)(1) and (2)</p>	<p><u>Not Substantiated</u></p> <p>There is no indication that District received a copy of the OHSU/ Doernbecher report until February 18, 2015. The record shows that District reviewed the evaluation materials upon receipt of them from the Advocate.</p>
III.	<p><u>Parent Participation/ IEPs Held at a Mutually Agreeable Time and Place</u></p> <p>The complaint alleges that the District failed to ensure parent participation for the Student's IEP meetings, because the meetings were not held at a mutually agreeable time and place. Also, the complainant argues that the meeting should be held in a "normal conference room setting" rather than in the child's classroom.</p> <p>OAR 581-015-2190 and OAR 581-015-2195(1)(b) and 34 CFR 300.322(a)</p>	<p><u>Not Substantiated</u></p> <p>Both Parents attended the 2013, 2014, and 2015 IEP meetings. Even though one Parent works until 5:00 pm, there is no evidence that the other Parent could not attend IEP meetings held prior to 3:30 pm. Additionally, the District was not aware of Parents' displeasure with the use of the elementary school room for meetings until the filing of this state complaint. District accordingly held the February 19, 2015 IEP meeting at the District administrative offices.</p>
	<p><u>Requested Corrective Action:</u></p> <p>None requested with the filed complaint</p>	<p>No Corrective Action</p>

III. FINDINGS OF FACT

- 1) The Student in this case is 11 years old and attends school in the Silver Falls School District.
- 2) Student is currently eligible for special education services under the category of autism.
- 3) Student's 2013 annual IEP is dated April 4, 2013. It shows that both Parents attended the IEP meeting and Parents were given a copy of the Procedural Safeguards. This IEP shows the Student needs Assistive Technology (AT) devices or services and that Student has communication and behavior needs. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) section includes Parent input and concerns related to Student's communication and functional skills. The PLAAFP goes on to state that the Student was given the Childhood Autism Rating Scale, Second Edition (CARS) on February 10, 2012 and that Student was also given the Autism Diagnostic Observation Schedule (ADOS) and the Preschool Language Scale (PLS-3) and that the Student will be given the third grade Extended Reading and Mathematics State Assessment. This 2013 annual IEP includes measurable annual goals/objectives in Math, English Language Arts, Social Skills, Writing, and Social Communication. The Service Summary page shows that Student will receive specially designed instruction (SDI) in math, reading, social skills, motor skills- fine, and functional skills. The Related Services for the Student are transportation by bus two times a day, augmentative communication ten hours a year, and speech language pathology/ therapy thirty minutes per week. The supplementary aids/services, modifications, and accommodations include: a visual schedule in the school setting, sensory breaks, augmentative communication devices communication book, initial health protocol/ evaluation development, direct nurse services - health protocol revised, delegated health care services provided by staff, direct nurse services provided by nurse, and transportation two trips per day. The 2013 IEP shows eight supports for school personnel and shows that Student does not need ESY. The nonparticipation justification portion of the document indicates that Student needs to be removed from participating with nondisabled students in the regular classroom for 90% of the school day because the Student needs to have curriculum presented in a small group or 1:1 setting.
- 4) The Special Education Placement Determination form dated April 4, 2013 further shows that both Parents were present during the placement meeting. This form states the placement selected for Student is Structured Self-Contained class with small group instruction providing opportunities for specially designed instruction focusing on development of functional Reading, Math, Written Language and Life Skills with mainstreaming opportunities available based on Student's instruction level and ability to interact in the general education classroom in an age appropriate manner.
- 5) The written meeting notice dated April 2, 2013 states that the IEP meeting would be held on April 4, 2013 at 2:30 pm at the elementary school and it was sent to Parents via US Mail. The meeting notice indicates that the purpose of the meeting is to develop an IEP and placement for the Student based on information from a variety of sources, including the most recent evaluation, progress reports, test results and information from the Parent. Both Parents are listed as attendees on this document. The District further reported its policy for IEP meeting scheduling and notice is to contact a parent at least three times when scheduling an IEP meeting. The policy includes two phone conversations with a parent and one written notice sent to a parent via US Mail and additionally via email if a parent desires to receive notice in this way.
- 6) The Student's 2014 annual IEP is dated March 4, 2013. It shows that both Parents attended the IEP meeting in addition to the Special Education Teacher/ provider, regular education teacher, District representative, and one other District attendee with knowledge of the Student. For special

factors, the IEP states the Student needs AT devices or services and the Student has communication needs. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) Section states the Student is in the 4th grade and in the Basic Skills Program at the elementary school. This statement goes on to note that academically, the Student's instructional level is three or more grades behind typically developing peers in all core academics so the Student needs specially designed instruction (SDI) presented in a small group and 1:1 setting. The Student has measurable annual goals/ objectives related to beginning Math skills, Reading and Language Arts, communication skills, functional and fine motor skills, greeting and responding to others and actively participating in group activities by following routines/ imitating movements and following directions. This IEP states the Student will receive SDI in Math, Reading, communication- social, fine motor skills, and social skills. The related services on this IEP are transportation twice per day by bus, and Speech Language Therapy sixty minutes per month in the special education classroom. The supplementary aids/ services; modifications and accommodations for this Student include: a visual schedule at the school setting daily, sensory breaks thirty minutes daily, augmentative communication devices communication book daily, initial health protocol evaluation/ development for 180 minutes maximum per year, delegates health care services provided by staff, instructional materials and individual curriculum daily; augmentative communication devices daily; special room for sensory/ behavioral support thirty minutes per day, reduced amount of work daily as needed, pencil/pen grip daily, and label makers for worksheets daily. The IEP also includes five different supports for school personnel. The Nonparticipation Justification portion of the IEP states that the Student will need to be removed from nondisabled students in the regular classroom for 60% of the school day due to a learning style that requires a modified curriculum presented in a smaller group setting or 1:1 setting. The IEP notes that the Student does not require ESY.

- 7) The Placement Determination dated March 3, 2014 indicates that both of the Student's Parents attended the meeting along with the District staff. The placement selected at this time was the Basic Skills Class because it meets the Student's needs by providing small group instruction and specially designed instruction opportunities that would match Student's needs.
- 8) The IEP meeting notes dated March 4, 2014 further indicate that both Parents attended the IEP meeting held March 4, 2014. The notes show Parent shared concerns about academic, communication and fine gross motor skills.
- 9) The meeting notice for the March 4, 2014 IEP is dated February 21, 2014. It states that the meeting will be to develop or review an IEP and placement for the Student and that the IEP will be based on information from a variety of sources including the most recent evaluation, progress reports, test results, and information from the Parents. The written notice indicates which District staff will attend the meeting and states that the meeting will be held at the elementary school at 3:00 pm in a classroom. The District reported that this was sent to Parents via US Mail.
- 10) An IEP team meeting was also convened in December 2014 to address Parents' concerns for the Student. The Notice for this team meeting was developed on December 18, 2014 and sent to both Parents via US mail. This meeting was attended by both Parents and an Advocate and District reported it convened the team quickly in order to address Parents' concerns right away. One of these concerns dealt with occupational therapy (OT).
- 11) District stated it received the Father's new address at the December 2014 IEP meeting. District further reports that the District policy is for parents to report any changes of address to District. However, the Father's previous address is the Mother's current address, so any mail sent to that address would have been obtained by Student's Mother.

- 12) An email to the Parents from District dated February 15, 2015 from District states the meeting notice for the February 19, 2015 IEP meeting is attached. The email states the IEP will be the annual IEP meeting. It further inquires if there is any other party who should receive a copy of the notice. The message asks both Parents if there is anything they would like to add to the agenda.
- 13) Both Parents and the Advocate attended the February 19, 2015 IEP meeting.
- 14) District reported that it sent both Parents IEP meeting notices via US Mail and email.
- 15) The December 18, 2014 IEP meeting was held at the elementary school but the February 19, 2015 IEP was held at the District office. District reports the team meeting was moved to District office in order to accommodate the Parents' request for a different location from the elementary school.
- 16) District reported that one Parent wanted the IEP team to meet after the Parent's work hours, but District cannot accommodate this request easily due to the contract hours of required staff on the IEP team. These staff have a contract day of 7:30-3:30. The occupational therapist (OT) is only at the school on Thursdays. The Speech Therapist is at the school Mondays and Thursdays.
- 17) District reported that when planning for parent participation at IEP meetings, it plans ahead six weeks before an annual IEP due date. The first steps taken with parents is to call the family on the phone to discuss the meeting. Next, the District talks about times that are good for parents. If the meeting date is around Parent Conference nights the meeting can be as late as 8 pm around the Conference Night times. District does not recall seeing the Parents at Conference Night during fall 2014. The District reports it strives to get parents at meetings whenever possible and can go as late as 4 pm. District further reports doing skype or phone conference for parent participation.
- 18) Parents reported the IEP team members always want to end the meeting at 3:30 and will not go past 5:00 pm. Advocate reported wanting the state to tell the District to break the IEP meeting into chunks.
- 19) Father reports having moved to a different city in August. Father reported he did not get a notice for the December 2014 IEP meeting, and only found out about the meeting from the Student's sister. However, Father reported that he did get emails from District. One Parent reported a knee problem which requires the use of regular adult sized chair as opposed to an elementary school student sized chair. The Advocate stated the classroom chairs were too small and District should use the library or a "conference room" instead for IEP meetings.
- 20) The Advocate stated that Student's mother works in another neighboring town and does not get off of work until 5:00 pm. The Student's Father reported having a variable work schedule with flexibility at this time. Advocate reported that participating at an IEP meeting via Skype or conference call prior to 5:00 pm still would not work for the Student's Mother. Parent reported that he attended the 2014 fall Parent Conference. Advocate and Parent reported Student's mother was also at the fall 2014 Parent Conference. Neither Advocate nor Parent recalls being offered to have an IEP meeting during Parent Conference night. However, District reported it was not aware of concerns in this area until the state complaint was filed on February 9, 2015.
- 21) The Speech Therapist received an email from Parent on December 30, 2014 requesting information about Speech services. The specific questions asked were: what dates were services contracted to begin and how long were they schedule to last? Also, were there specific evaluations before Speech services began, and if so, which reports are those? Parent also requested copies of any evaluations done for Student.

- 22) The Speech Therapist responded to this message on January 1, 2015 in email. The message from District notes that the Speech Therapist would provide all of the information when back at school. The ESD Special Education Supervisor and District Special Education Director were also included on this message and it was noted that they have helped the Speech Therapist gather information.
- 23) On January 7, 2015 the Speech Therapist wrote back to Parent providing the information regarding services that Student received as well as the detailed reflection of the services that had been outlined in the Student's IEP since attending the District in the 2009-2010 school year. In this message, the Speech Therapist also said they would sit down with Parent and Advocate to explain the information if needed. In this message Therapist also offered to go to the ESD to look through past service summaries in order to "get to the more specific questions about past therapy approaches..." The Therapist also said in this message that she would "scan all of my service logs tomorrow..."
- 24) The Advocate responded to the Therapist's reply to the Parent on January 7, 2015 by stating "...you are fabulous~!~!~!" There are then a few questions to the Therapist related to when the Student was no longer "qualified" for individual instruction for Speech/Language and why services were "discontinued so abruptly".
- 25) The Special Education Director then responded to this email message with the new questions from the Advocate on the same day, January 7, 2015, and explained that communication, augmentative communication, and autism support for Student had never stopped. The message further explained there was a change of staff, but speech services themselves had not ceased. The Special Education Director clarified she could help with any further questions in this message.
- 26) On January 11, 2015 the Special Education Director wrote to the ESD in order to get the Student's service logs from 2009 to the present. The ESD staff indicated some records would be retrieved electronically and others would need to be handwritten.
- 27) The Advocate sent another email to the Speech Therapist on January 15, 2015 which said that in the Therapists' email thread to Parent she had stated she would have Student's reports ready "likely [by] next Monday" and asked if they could be sent home with Student. Advocate instead asked the Therapist to send the materials electronically via email to the Advocate. This message also includes a pasted quote that is allegedly from the Speech Therapist's prior email sent to Parent on January 7, 2015.
- 28) The Advocate sent another message to the Speech Therapist dated January 15, 2015 which says "if it is difficult for you to scan them electronically you could just send them home with Student. Either way is fine but please let us know..."
- 29) On January 15, 2015 the Speech Therapist wrote back to the Advocate and indicated that his request was forwarded to the Special Education Director, because the Student's cumulative file was at the District office. The Speech Therapist clarified that on an email from Advocate sent on January 6, 2015; the Advocate stated Parents had some of the documents already. She also clarified that she was not sure about the release of information situation with this third party/ non-parent advocate, and she clarified the Special Education Director would know about this.
- 30) From January 11, 2015 to February 18, 2015 District SPED worked with the ESD to obtain all of the Student's records for the Parents and Advocate. The records were provided to both the Department and to the Parents/ Advocate in response to this state complaint on February 20,

2015. Parent and Advocate confirmed the records were received during the state complaint process.

- 31) District submitted a written notice for the 2015 annual IEP meeting which was dated February 17, 2015. This notice indicates the IEP meeting will be held on February 19, 2015 in a conference room. It states the time of the meeting and the purpose of the meeting along with all attendees of the meeting. This notice indicates the Parents' advocate, District's legal counsel, and a mediator or facilitator would also attend the meeting.

IV. DISCUSSION

1. Failure to Comply with Request for Educational Records

The complaint alleges the District violated IDEA by failing to provide records for the Student as requested by e-mails dated December 30, 2014 and January 15, 2015.

The Family Educational Rights and Privacy Act (FERPA) defines an education record as a record that is directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution.³ Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days following its receipt of a request.⁴ IDEA adds the additional requirements that education records be provided without unnecessary delay and before any IEP meeting or any Due Process or Resolution Session.⁵

The first portion of this allegation deals with the email request for records sent by a Parent to District on December 30, 2014. The specific questions asked in this email from the Parent were: what dates were services contracted to begin for Student and how long were they scheduled to last? Also, were there specific evaluations before Speech services began, and if so, which reports are those? Parent also requested copies of any evaluations done for Student in this email. This message did not indicate a formal records request was being made, nor did it inquire as to the Student's cumulative District file. This message was promptly responded to by the Speech Therapist on a school holiday, January 1, 2015. The Therapist explained that staff were out of the office due to the winter holiday, but would be able to provide the information as soon as they were back in the office. Then on January 7, 2015 the Speech Therapist wrote back to Parent providing the information Parent requested regarding services that Student had received as well as the detailed reflection of the services that had been outlined in the Student's IEP since attending the District in the 2009-2010 school year. In this message, the Speech Therapist also said she would sit down with Parent and Advocate to explain the information further if needed. In this message the Speech Therapist also offered to go to the ESD to look through past service summaries in order to "get to the more specific questions about past therapy approaches..." The Therapist also said in this message that she would "scan all of my service logs tomorrow..." It is important to note here that this Speech Therapist did answer all of the Parent's questions within five business days. The Parent did not request all of the Student's educational records in the message dated December 30, 2014 nor did Parent ask for all service logs and past Speech Therapy approaches in the initial email message. The Speech Therapist offered to provide that information as a means to further collaborate with Parent and Advocate. In the reply email from the Advocate to the Speech Therapist dated January 7, 2015 there was evidence of appreciation for the Therapist and no further indication that Parent or Advocate were waiting for additional information related to records. Instead, Advocate posed some loaded questions to the Speech Therapist which were outside of that realm of expertise. Accordingly, the District Special Education Director wrote back to the Advocate on January

³ 34 CFR § 99.3

⁴ Id.

⁵ 34CFR 300.613(a)

7, 2015 to clarify the position of the District with respect to the Advocate's questions about provisions of services. There was no reply from the Parent or Advocate to the Special Education Director on this date that evidenced that any party was dissatisfied with the reply of the Speech Therapist or in need of further information from the Student's file nor evidencing a formal records request. The email message from Advocate to Speech Therapist dated January 15, 2015 evidences the Advocate wanted to obtain the Speech Therapist's service logs. However, again no records were specifically requested in this email nor were a formal records request made at this time.

The District had already begun to compile all of the Student's records in an attempt to work with the family and Advocate. This process included getting information for the Student from the ESD dating back to 2009. The Parents and Advocate were provided all of this information when the Department was given a copy of the complaint materials on February 20, 2015. This is about 36 days from the request, if in fact the email sent from Advocate to Speech Therapist on January 15, 2015 is a formal request for student records. Regardless, it was well within the law's required 45 day period for the production of student records. The records were also provided prior to the IEP meeting. There was no Due Process Hearing Request pending at the time this email was sent and when any potential record request was made.

Finally, the Advocate stated that they still have not received all of the information they requested from District. However, it is unclear in the email messages provided as to exactly what student records were being requested of the District from the Advocate and on what date.

Therefore, the Department does not sustain this allegation. No corrective action is ordered.

2. Evaluation and Eligibility Process

The complaint alleges the District violated the IDEA when it did not review assessments and evaluations provided by the Parent. Specifically, that the District did not review the OHSU report dated February 5, 2013 and the WESD Report dated March 21, 2012 after they were sent to the District on December 9, 2014.

The process for reevaluation is set forth in OAR 581-015-2110, and requires that a district consider information provided by a parent that may assist in determining the content of a student's IEP. This rule specifically states that when conducting an evaluation, a district must use a variety of assessments and tools to gather relevant functional, developmental, and academic information about a child including information provided by the parent that may assist in determining if a child has a disability and the content of the IEP, including information related to enabling the child to be involved in and progress in the general education curriculum.⁶ Additionally, during the evaluation planning process, the IEP team must review existing evaluation data on the child including evaluations and information provided by the parent of the child.⁷

In this case, a variety of assessments and tools were used by District with the Student to gather relevant information including: the Childhood Autism Rating Scale, Second Edition (CARS) on February 10, 2012, the Autism Diagnostic Observation Schedule (ADOS), and the Preschool Language Scale (PLS-3). Student was also given the third grade Extended Reading and Mathematics State Assessment.

Also, the IEP team met with Parents promptly after Parents' request to meet, on December 11, 2014, to address Parents' concerns and to review the privately obtained medical evaluation that Parent and

⁶ OAR 581-015-2110(3)(a)

⁷ OAR 581-015-2115(1)(a)(A)

Advocate mentioned. District asked for a copy of the evaluation at this time, and the record does not show it was provided at the meeting convened December 11, 2014. Both parties disagree about an email message allegedly sent from Parent/ Advocate to District on December 19, 2014 which may have contained information from the Doernbecher evaluation as an attachment. However, the Department is unable to substantiate if that message was in fact received by District as there is no confirmation of a receipt of the evaluation materials. There are numerous emails from District to Parent/ Advocate requesting copies of the materials and indicating District did not have the evaluation report. The last of these messages is dated February 16, 2015. The only email confirming receipt of the Doernbecher Children's Hospital report is from District Special Education Director to Advocate dated February 17, 2015. This email confirms District receipt of the evaluation report materials and states that, "...this is a very comprehensive report that will certainly be helpful as we develop Student's special education plan. This report significantly reduces our desire to conduct additional evaluations." A reply from the Advocate to District dated February 18, 2015 indicates acknowledgement of receipt by District and states that Advocate dropped off the materials in person on the way to work. As such, both parties knew that the Doernbecher materials were received by District for its consideration as of February 18, 2015, and the District reviewed the materials at this time.

Parent further indicates by way of this complaint that the IEP team did not review this evaluation during the annual IEP meeting held on April 4, 2013 or the annual IEP meeting held on March 4, 2014. While the April 4, 2013 IEP meeting is outside of the one year look back period allowed for state complaints under OAR 581-015-2030, it is relevant to mention here that the notes for the April 4, 2013 IEP meeting do not indicate that Parents were concerned with reviewing the Doernbecher Evaluation materials nor that they were presented to the IEP team at this time. The IEP meeting notes dated April 4, 2013 state for Parent Input/ Concerns, "bathrooming [sic], Rhythmic movement, using only two fingers." The Parent Input and Concerns section of the April 4, 2013 IEP is also silent in regard to the Doernbecher materials for Student instead indicating Parent concern in regards to toileting and Student's communication needs related to agitation. Likewise, the IEP dated March 4, 2014 shows that Parent concerns are, "Student's communication skills and fine motor writing skills." The IEP meeting notes dated March 4, 2014 indicate that both Parents were present at this meeting. The notes further indicate that the concerns of the Parents were about academics, communication, and fine gross motor skills. Overall, there is nothing in either the 2013 or 2014 IEP materials to indicate that either Parent provided the District with their privately obtained evaluation materials for Student from Doernbecher for review or discussion with the IEP team. During on-site interviews, one Parent was able to provide the Department with an email from Parent to District dated February 5, 2013 which states, "We are at OHSU, Student is doing great..." in support of the position that District was aware of the existing Doernbecher Evaluation. However, the text of that email alone does not on its face indicate that Student was evaluated by Doernbecher nor that there were evaluation materials for Student that District should review at that time nor that Parent provided those materials to District at that time. District is not required nor able to review privately obtained evaluation materials until they are provided by a parent.

It is important to note that the District's written IEP meeting notice for the IEP meetings held in 2013 and 2014 did note that the team would discuss test results and information provided by parents in developing or revising the IEP and placement for the Student. Therefore, parents were on notice to provide District with materials necessary for review at the IEP meeting upon receipt of the written meeting notice.

Accordingly, the Department does not sustain this portion of the allegation. No corrective action is ordered.

3. Parent Participation/ IEPs Held at a Mutually Agreeable Time and Place

The complaint alleges the District failed to ensure parent participation for the Student's IEP meetings, because the meetings were not held at a mutually agreeable time and place. Also, the complainant argues that the meeting should be held in a "normal conference room setting" rather than in a children's classroom.

The IDEA requires that parents be afforded the opportunity to participate in meetings with respect to the identification, evaluation, IEPs, and educational placement of a child, and the provision of a Free Appropriate Public Education (FAPE) to a child.⁸ The Oregon rule in effect when we consider this particular allegation is OAR 581-015-2190. This rule provides that one or both parents generally must have an opportunity to participate in meetings with respect to identification, evaluation, IEPs, and educational placement of a child. Parents must receive written meeting notice sufficiently in advance to ensure that one or both parents have the opportunity to attend.⁹ Also, a District may convene a meeting without a parent in attendance if the school district has provided the parent with notice and made the additional attempts necessary to gain parent participation at the meeting.¹⁰ These requirements are found in OAR 581-015-2195, which states that meetings should be scheduled at a mutually agreed upon time and place.¹¹ Although the preferred method of meeting is via a face-to-face meeting, the IDEA contemplates parent participation by other means including individual or telephone conference calls.¹² However, districts should not rely on the availability of these alternatives and still must make substantial efforts to schedule the IEP meeting at a mutually agreeable time and place.¹³ A district is not generally required to schedule an IEP meeting on an evening or weekend to suit a parent's schedule, although there could be extenuating circumstances when a district should meet such a request.¹⁴ Nothing in the IDEA or Oregon Administrative Rule requires a district to have an IEP meeting in a room other than a classroom.

In this case, there are two concerns related to this allegation: one with respect to the location of the meetings and the other in respect to the time of the meetings being prior to 5:00 pm. First, looking at the issue of the timing of the meetings, the Advocate stated that Student's Mother works in another neighboring town and does not get off of work until 5:00 pm. The Student's Father reported having a variable work schedule with some flexibility in terms of scheduling at this time. Advocate reported that participating at an IEP meeting via Skype or conference call prior to 5:00 pm still would not work for the Student's Mother due to the nature of the Mother's work. However, the Father does appear to have the ability to attend meetings in person or via Skype or conference call prior to 3:30 pm and also within the District's contract hour constraints of its staff. As such, the District could convene meetings with this Parent prior to 3:30 pm which would be at a mutually agreeable time. It is important to note that the rules in respect to parent participation only require the presence of *one* parent. So in situations such as these, where parents share custody or educational decision making abilities, if one parent can attend IEP meetings that is sufficient for IDEA's parent participation purposes. The fact that one team meeting notice did not reach one Parent via US Mail after a move of this Parent that District was not aware of, is not problematic here, because the other Parent still resides at the former address and did in fact receive the written meeting notice sufficiently in advance of the meeting. The District was also able to demonstrate that it made multiple attempts via phone, written notices, and email to arrange meetings with both Parents at a mutually agreeable time and date. Finally, it is noteworthy here that both

⁸ See OAR 581-015-2190(1)

⁹ OAR 581-015-2190(2) and OR 581-015-2195(1)(a)

¹⁰ OAR 581-015-2190(5)

¹¹ OAR 581-015-2195(1)(b)

¹² [34 CFR 300.322](#) (c). See also [34 CFR 300.328](#) and [OAR 581-015-2195\(2\)](#)

¹³ *Drobnicki v. Poway Unified Sch. Dist.*, [53 IDELR 210](#) (9th Cir. 2009, unpublished).

¹⁴ *B.H. v. Joliet Sch. Dist. No. 86*, [54 IDELR 121](#) (N.D. Ill. 2010); and *Letter to Anonymous*, [18 IDELR 1303](#) (OSEP 1992). See *Letter to Thomas*, [51 IDELR 224](#) (OSEP 2008).

Parents were able to attend all IEP and placement meetings in 2013, 2014, and 2015. As such, there is no evidence that at least one Parent cannot attend these IEP meetings held prior to 3:30.

As to the mutuality of the location of the meetings component of this allegation, it is important to note that nothing in the IDEA bars the use of an elementary school classroom for IEP meetings. However, one Parent did express an inability to use the small classroom chairs due to a knee injury and the Advocate stated that the chairs in the elementary room were uncomfortable. As such, District scheduled the February 2015 IEP meeting in the District administrative offices where all parties could sit in adult sized chairs.

The District was also able to produce written meeting notice for each annual IEP meeting from 2013-2015 that clearly indicates to Parents the time, place, and location of the meetings. District relayed this information sufficiently in advance to the parents. Any complaints related to the time or location of the IEP meetings, could be addressed when scheduling the meeting or upon receiving this meeting notice.

Finally, while the Advocate expressed a desire to make the District break IEP meetings into “topical chunks”, there is no legal requirement in the IDEA nor administrative necessity to do so here.

This allegation is not substantiated.

V. CORRECTIVE ACTION¹⁵

*In the Matter of Silver Falls School District
Case No. 15-054-006*

No Corrective Action is ordered.

Dated: this 9th Day of April 2015

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

Mailing Date: April 9, 2015

¹⁵ 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)).