

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Creswell School
District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-019

I. BACKGROUND

On June 23, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a child who attended school and resided in the Creswell School District (District) during the 2009-2010 school year. The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint and sent the District a copy of the complaint and enclosures on June 24, 2010.

On June 25, 2010, the Department sent a *Request for Response* (“RFR”) to the District identifying the specific allegations in the complaint to be investigated. The RFR established a Response due date of July 12, 2010. On July 12, 2010, the Department extended the complaint Order deadline by 49 days due to exceptional circumstances present in this case. In compliance with the Department’s extension, the District submitted its timely *Response* to the Department and to the parent on August 27, 2010. The District’s *Response* included three pages of narrative explanation and approximately 67 pages of documents requested in the RFR. The parents submitted their Reply on September 2, 2010, which included three pages of narrative discussion.

The Department’s complaint investigator determined that on-site interviews were required. On September 7, 2010, the Department’s investigator interviewed the District’s former case manager/special education teacher who worked with the student. On September 9, 2010, the Department’s investigator interviewed the student’s parents and the following District staff: a District elementary school principal where the student attended, a District speech and language pathologist and the Special Education Director. The Department’s complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint.¹ This timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.² 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

¹ 34 CFR §300.151 (2010).
² OAR 581-015-2030(12) (2010)

set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one year period from June 24, 2009 to the filing of this complaint on June 23, 2010.³

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>Special Education Transfer Student:</u></p> <p>Not providing a free and appropriate public education (FAPE) including comparable services to those described in the child’s IEP from the previous district, and not holding an IEP meeting to develop, adopt and implement a new IEP.</p>	<p>Substantiated, in part.</p> <p>The District did not provide services comparable to those in the student’s prior IEP between the student’s enrollment in the District on October 1, 2009 and the development of an Oregon IEP on November 17, 2009.</p>
2.	<p><u>Parental Participation:</u></p> <p>Not providing one or both parents with an opportunity to participate in IEP meetings in October 2009, November 2009 and February 2010;</p> <p>Not providing the parent with written notice sufficiently in advance to ensure that one or both parents have the opportunity to attend; and,</p> <p>Not scheduling the IEP meeting at a mutually agreed on time and place.</p>	<p>Unsubstantiated.</p> <p>The District did not hold an IEP meeting in October 2009 or on November 2, 2009.</p> <p>The District did provide the parent an opportunity to participate in the November 2, 2009 eligibility meeting by providing prior notice of the meeting.</p> <p>The District did hold a valid IEP meeting on November 17, 2009, which was properly noticed, sufficiently in advance, at a mutually agreed upon time to provide the parent an opportunity to participate.</p> <p>One of the student’s parents attended and participated in the February 2010 IEP meeting.</p>

³ See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

3.	<p><u>Procedural Safeguards:</u></p> <p>Not providing the parent with a copy of the Procedural Safeguards Notice at least once per year and upon the initial referral of the child for special education.</p>	<p>Not Substantiated</p> <p>The District did provide the parent with the required annual copy of the Procedural Safeguards Notice when they met in February 2010.</p>
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1.	<p><u>Requested Corrective Action.</u></p> <p>The parents are requesting that the District:</p> <ul style="list-style-type: none"> A) Provide staff training on conducting IEP meetings; B) Provide for independent review of all IEP meetings held during the 2009-2010 school year; C) Review IEPs of all District's special education eligible students for regulatory compliance; and, D) Provide compensatory education services for those services the District did not provide to the student. 	<p>See Corrective Action</p>
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III. FINDINGS OF FACT

Background

1. The child is currently 10 years old. The child attended school within the District during the 2009-10 school year but no longer resides within the District. The student is presently eligible for special education under the category of Autism Spectrum Disorder (ASD). The student was found eligible for school age special education services beginning in 2005 and previously had received services in ECSE.

2009-2010 School Year

2. The student's parent enrolled the student in a District elementary school on September 28, 2009. The student transferred from an out-of-state school district, which had drafted an IEP on September 3, 2009 (September 2009 IEP). The parent provided a copy of the student's out-of-state IEP to the District at the time of enrollment.

Out-of-State September 2009 IEP⁴

3. The September 2009 IEP included the following special education subject areas, with the number of minutes per week of specially designed instruction in parenthesis: Math (300 minutes/week); Occupational Therapy (15 minutes/week); Reading (600 minutes/week); Social/Emotional/Behavioral (50 minutes/week); Speech/Language, two areas with nine annual goals (45 minutes/week) and Written Expression (150 minutes/week). The Service Summary listed the total number of minutes of specially designed instruction per week all of which was delivered in a "Special Education Setting." The September 2009 IEP lists "adult assistance will be available as needed throughout the day. Additional support will be available on the playground at all times." Additional supports and suggestions to assist the student in P.E., music, library, computer, choir, lunch, science, social studies and assemblies, where the student was to be included with his non-disabled peers, are listed, including additional adult support on field trips. The student's IEP also listed two special factors impacting the student: the student's behavior impedes his/her learning or that of others, and the student has communication needs.

Enrollment in Creswell School District

4. The student began school within the District on October 1, 2009.⁵ Within three days of the student's first day of attendance, the District established the following schedule for the student, all of which was provided on a daily basis in the resource room by his special education teacher and/or aide:

Time	Subject	Amt of Time/Day	Amt of Time/Week
8:30-9:30 am	Math	60 min	300 min
9:30-9:45 am	Recess		
9:50-10:50 am	Reading	60 min	300 min
10:50-11:20 am	Writing Group	30 min	150 min
11:20- 12:00	Varied: Individual Reading, Written Language and Keyboarding	40 min	200 min
Afternoon	General Education Classroom		

5. The District held a Child Study Team meeting on October 13, 2009 and discussed the student's special education eligibility and the revision of the

⁴ The September 2009 out-of-state IEP is organized in a different format than Oregon's standard IEP. After general information and consideration of special factors, each area of special education or related service includes a specific description of the student's Present Level of Academic Achievement and Functional Performance (PLAAFP) in that specific area of special education (e.g. math, occupational therapy, etc.). The subject area PLAAFP is immediately followed by a measurable annual goal with short-term objectives in that specific subject area of special education. This organization links the PLAAFP with the annual goals and short term objectives by subject area.

⁵ District staff reported that all students, both general education and special education students, begin school two days after enrollment to allow the student to be assigned to a teacher, to allow the teacher to arrange for a desk for the student, and to complete other preparatory tasks. (Interview principal and sped director)

student's out-of-state IEP. The parent was not invited and did not attend this meeting. The team noted that the student had been involved in "a couple of behavior incidents on the playground and in the lunch room," but staff explained that the incidents did not indicate aggressive behaviors and that the notable behaviors were not present in the classroom.

6. Speech and language specially designed instruction (SDI) was scheduled in 25 minute periods, six times per month. The student should have received speech and language SDI on October 5, 2009, but due to District staff personal emergencies, the first scheduled meeting was set for October 19, 2009. Therefore, the student missed two SLP sessions of 25 minutes per session.
7. District staff called the parent in mid-October to schedule an eligibility and IEP meeting, ultimately suggesting Friday, October 23, 2009 at 7:30 am. District staff indicated to the parent that since the occupational therapist (OT) was in-district only on Tuesdays and Thursdays, she may not be able to attend. District staff told the parent that she was "almost positive" the meeting would go forward on the proposed date but that she would need to confirm with the rest of the team. Certain District staff were not present for the next week due to family emergencies and personal illness. When staff returned on October 22, 2009, the meeting notice was sent to the parent.
8. On October 23, 2009, the IEP team, without the parent, met but did not take any formal action relating to the student.
9. On October 26, 2009, District staff sent the parent a meeting notice for a meeting on Monday, November 2, 2009 after leaving a phone message on the parent's phone. The message indicated that the speech and language pathologist would be late for the meeting and that the OT may or may not be present. District staff made additional phone message/calls to the parent on October 29 and 30, 2009 to confirm the upcoming meeting but were never able to speak directly with the parent to confirm the meeting.
10. On November 2, 2009, District staff met to draft the student's IEP. When the parent did not attend, District staff called the parent. The parent reported that she had returned the earlier messages informing the District that she would not attend since the entire team would not be present. The District reported that it did not receive the parent's message.
11. On November 2, 2009, the District IEP team members determined that the student was eligible for special education services as a student with Autism Spectrum Disorder (ASD). The District used evaluations completed in 2005 by a different Oregon school district which found the student eligible under ASD. The District did not utilize evaluations from an out-of-state school district in determining the student eligibility under ASD although there were more recent evaluations completed by the out-of-state school district.
12. On November 3, 2009, the District offered the parent two 25 minute SLP sessions as compensatory services due to the late start of SLP services. The

District reported that the parent declined this offer. The parent denied that the offer was made.

13. On November 10, 2009, the District sent the parent an IEP meeting notice for a meeting scheduled for November 17, 2009, which the parent had previously confirmed was an acceptable date and time.
14. District staff called the parent on November 17, 2009 to confirm her attendance at the meeting later that day. The District asserts that the parent informed the District that members of her household were sick, that she could not attend, and that the meeting could go forward without her. The parent denies any knowledge about the meeting of November 17, 2009.

November 2009 IEP

15. The team drafted an IEP on November 17, 2009 (November 2009 IEP) that included the following specially designed instruction: Written Language- 50 minutes/ 5 times per week; Reading- 60 minutes/ 5 times per week; Math- 45 minutes/ 5 times per week; Speech/Language- 25 minutes/ 6 times month; Occupational Therapy- 8 hours/ year. The IEP contained a starting date of October 24, 2009 with all specially designed instruction provided in the special education classroom or the speech room.⁶ The special factors indicate that the student has communication needs but that he does not exhibit behaviors that impede his learning or the learning of others. The front sheet of the IEP indicates that the parent was provided a copy of the "Procedural safeguard" (sic).
16. District staff mailed the parent a copy of the November 2009 IEP, along with a copy of the Procedural Safeguards Notice after the meeting and before the winter break. The parent denies receiving a copy of the November 17, 2009 IEP or a copy of the Procedural Safeguards Notice.
17. District staff reported that there were three behavioral incidents in the classroom between November 2009 and early February 2010 involving the student.

February 2010 IEP (Addendum)

18. On February 3, 2010, the District sent an IEP meeting notice to the parents for a mutually agreed meeting scheduled for February 18, 2010. The IEP team, including one of the student's parents, attended the meeting. The IEP resulting from this meeting (February 2010 IEP) was an Addendum of the November 2009 IEP. It included additional information in the PLAAFP relating to the student's Social Skill Profile as it relates to ASD. It identified a Special Factor that the student's behavior was impeding his, or others, learning. The February 2010 IEP included one additional annual goal, titled "Speech and Language" to increase the student's social skills of: 1) identifying emotions from pictured events and determining the cause and 2) identifying and interpreting facial expressions and

⁶ Apparently, the IEP was initially drafted on October 23, 2009, with the intended start date of October 24, 2009 automatically generated by the IEP software. (Bradford Interview)

body language.” Specially designed instruction time did not increase, since the speech and language pathologist was intending to address the new goal through embedded curriculum during her time with the student. The attending parent was provided a copy of the Procedural Safeguards Notice at the meeting. The parents were mailed a copy of the Addendum on April 7, 2010.

19. The student did not return to District schools for the 2010-11 school year and currently resides in a residential treatment facility not located in the District.

IV. DISCUSSION

1) Implementation of Out-of-State IEP

The parent alleges that the District did not implement the September 2009 out-of state IEP or provide the student with services comparable to those on the out-of-state IEP after the student enrolled in the District and before the District developed a new IEP.

When a child with a disability (who had an IEP in effect in a previous school district in another state) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child’s parents) must provide a free appropriate public education to the child (including services comparable to those described in the child’s IEP from the previous district), until the new district: (a) conducts an initial evaluation (if determined necessary by the new district); and (b) develops, adopts and implements a new IEP, if appropriate, that meets applicable requirements.⁷

In this case, the District tried unsuccessfully to draft a new IEP until the November 17, 2009 IEP team meeting. Earlier efforts to schedule a mutually agreed date for an IEP meeting with the parents were unsuccessful. Therefore, the District should have provided the student with comparable services to those described in the out-of state IEP from October 1, 2009 to November 17, 2009.

As the chart below demonstrates, the District did not provide services comparable to those described in the out-of-state IEP.

Area of Specially Designed Instruction (SDI)	Out-of-State September 2009 IEP	District Services provided by week 10/1/09 and 11/17/09	Difference
Math	300 min/week	300 min/week	0 min/week
Reading	600 min/week	300 min/week + up to 200 min/week	100 min/week
Written Language	150 min/week	150 min/week	0 min/week
Social/Emotional/Behavioral	50 min/week	0 min/week	50 min/week
Speech/Language	45 min/week	37.5 (average)min/week	7.5 min/week
Occupational Therapy	15 min/week	8 hours/year	>5 min/week
Adult Assistance	As needed	Not explicitly addressed	

⁷ OAR 581-015-2230(2).

The largest difference between the two service levels relates to the Reading specially designed instruction (SDI). Over the approximate six weeks the student was enrolled before the District developed its IEP, the student received approximately 600 minutes less reading SDI than identified in the out-of-state IEP. The student received approximately 300 minutes less Social/Emotional/Behavioral SDI over that time span than identified in the out-of-state IEP. There were slightly reduced levels in Speech/Language and Occupational Therapy. There was no mention of adult assistance in the District's November 2009 IEP.

The Department orders compensatory education for the District's failure to provide reading and social/emotional/behavioral services comparable to those identified in the out-of-state IEP before drafting its own IEP. The Department also finds that, although some service levels were slightly reduced from the prior IEP, the services provided in those areas were comparable to the services on the prior IEP. While there is no indication of a systemic problem within the District of failing to implement out-of-state IEPs, the Department does order training on providing special education and related services to transfer students with disabilities. See Corrective Action.

2) Parental Participation

The parent alleges that the District did not provide the student's parents with an opportunity to participate in special education meetings in October 2009, November 2009, and February 2010; did not provide the parents with written notice sufficiently in advance to ensure that one or both parents had the opportunity to attend; and, did not schedule the IEP meeting at a mutually agreed upon time and place.

School districts must provide one or both parents with an opportunity to participate in meetings related to identification, evaluation, IEP and educational placement of the child and the provision of FAPE to the child. A parent must be provided with a written notice of the meeting sufficiently in advance to ensure that they may attend.⁸

Additionally, IEP and placement meetings must be scheduled at a mutually agreed time and place and alternative means of participating, including conference calls or home visits, must be considered to ensure parental participation if a parent is unable to attend in person.⁹

An IEP or placement meeting may be conducted without a parent in attendance, but a school district must have a record of attempting to schedule the meeting at a mutually agreed time and place including telephone calls attempted and the results of the calls, copies of correspondence to the parents and any responses, detailed records of visits to the parents home or place of employment, and the results of the contacts.¹⁰

The District held a Child Study Team meeting on October 13, 2009 without the parent. The parent was not invited, nor was there a requirement to do so, since school districts may hold preparatory meetings to develop proposals for discussion at a later meeting.¹¹

⁸ OAR 581-015-2190(1) & (2).

⁹ OAR 581-015-2195(1) & (2).

¹⁰ OAR 581-015-2195(3).

¹¹ OAR 581-015-2190(4).

The District attempted to schedule an IEP and eligibility meeting for October 23, 2009 but did not send a notice to the parent until the day before the meeting. This was insufficient notice of the meeting, even though the date was discussed with the parent ahead of time, because the meeting was never confirmed.

On October 26, 2009, the District sent the parent a notice of a meeting scheduled for November 2, 2009 and followed up with phone calls on the same day and on October 29 and 30, 2009. When the parent did not attend the meeting, the District called and was told that the parent would not attend because she understood the full IEP team could not attend and the parent wanted the entire IEP team present at the meeting. The parent refused to attend. While the District did not hold an IEP team meeting to review the student's IEP on November 2, 2009, it determined that the student was eligible for special education services as a student with Autism Spectrum Disorder (ASD). It based its determination upon another Oregon school district's evaluation, conducted in 2005, which found the student eligible under ASD.

An IEP meeting was convened on November 17, 2009, after the parent agreed to this date and a meeting notice was sent to the parent on November 10, 2009. A District staff member called the parent on the day of the meeting to confirm her attendance, and the staff member was told to go forward with the meeting without the parent since the parent was ill. The District developed and drafted the November 2009 IEP with the balance of the team and without the input from the parent. The District sent the parent a copy of the IEP along with a Procedural Safeguards Notice after the meeting; the parent denies receiving a copy of the IEP or the Notice.

On February 3, 2010, the District sent the parent a notice of an IEP meeting scheduled for February 18, 2010. One of the student's parents attended the meeting and participated in the development of the student's February 2010 IEP Addendum.

Reviewing this chronology, the Department identifies five meetings that took place regarding the student during the timeframe in question. Those meetings were held on October 13 and 23, 2009; November 2 and 17, 2009; and, February 18, 2010.

As discussed above, the October 13, 2009 meeting of the Child Study Team was preparatory and did not require the participation of the parent. Additionally, the Department finds that, due to the failure to issue a timely written notice of the meeting, the District did not hold the tentatively planned October 23, 2009 IEP meeting. Therefore, the Department concludes that the District did not deny the parent the right to participate at meetings on either of those dates.

With regard to the November 2, 2009 meeting, the Department also concludes that the District satisfied the requirements of the IDEA concerning parent participation. While the November 2 meeting was planned as a combination eligibility determination and IEP meeting, the District chose not to address the student's IEP at that meeting once it was determined that the parent would not attend. As discussed above, the IDEA requires Districts to undertake reasonable efforts (beyond providing prior notice) to ensure parent participation in IEP and placement meetings. However, these safeguards do not apply to eligibility determination meetings. Most notably, districts may hold an eligibility meeting without a parent in attendance without undertaking reasonable efforts to find a

mutually agreeable time and place or to arrange for remote participation for the parents. Therefore, the Department concludes that, because the November 2 meeting consisted of only an eligibility determination, the District complied with the parent participation requirements of the IDEA by providing prior notice of the meeting on October 26, 2009.

Finally, the Department concludes that the District undertook reasonable efforts to ensure that a parent participated in the November 17, 2009 and February 18, 2010 IEP meetings. The District notified the parent of the November meeting a week before it was scheduled to occur. Additionally, the parent authorized the District to hold the November meeting during a phone call on the day of the meeting. With regard to the February 2010 meeting, the District sent notice of the meeting approximately two weeks prior to the proposed date, and at least one parent of the student participated in the meeting. Therefore, the Department concludes that District did not deny the parents an opportunity to participate in meetings with regard to the special education of the student; the Department does not substantiate these allegations.

3) Procedural Safeguards

The parent alleges that the District failed to provide a Procedural Safeguards Notice to the student's parent at least once per year. School districts must give parents a copy of the Procedural Safeguards Notice at a minimum of once per year, except that a copy must be given to the parents upon the initial referral or parental request for evaluation, upon request of the parent, and directly to the child at least a year before the child's 18th birthday.¹²

The November 17, 2009 IEP indicates that the parent was provided with "Procedural safeguards" (sic). Since the parent was not present at the meeting, the Procedural Safeguards Notice was not provided at that meeting. District staff mailed the Notice along with a copy of the finalized IEP after the November 2009 meeting¹³, although the parent asserts that she did not receive either document.

The parent confirmed that the District provided the Procedural Safeguards Notice at the February 18, 2010 IEP meeting. Therefore, the District did provide the Procedural Safeguards Notice at least once per year. This allegation is not substantiated.

¹² OAR 581-015-2315(1).

¹³ OAR 581-015-2195 (5)- Requires a school district to provide a copy of the IEP to the parent if the parent does not attend the meeting.

CORRECTIVE ACTION¹⁴

In the Matter of Creswell School District
Case No. 10-054-019

Action Required	Submissions¹⁵	Due Date
<p>District Training</p> <p>A. Provide to all staff and administrators potentially involved in the implementation of special education and related services for transfer students, training on</p> <ol style="list-style-type: none"> 1. developing and providing comparable services for transfer students prior to the development of a new IEP; and 2. determining eligibility for transfer students. 	<p>The District shall submit evidence of completed training that includes the agenda, materials, and sign-in sheets that include name, position, and date of attendees.</p>	<p>November 3, 2010</p>
<p>Compensatory Education</p> <p>In consultation with the parent, the District shall develop a plan for the provision of compensatory education services in the areas of reading and social/emotional/behavioral skills based on the student's current IEP. The plan shall identify how the services will be provided, the schedule for services (including when services begin), and the contact person for the District for oversight of these services.</p> <p>Compensatory education services must be provided by qualified staff.</p> <p>The District shall maintain a log of</p>	<p>The District and the parent shall submit a copy of the compensatory services provision plan signed by the parent and a District official.</p> <p>Upon completion of the compensatory education services, the District shall submit to ODE, with a copy to the parent, a copy of the log and a statement of assurance of completion.</p> <p>The District shall submit to ODE any written agreement, signed by both parties, to modify the provisions of the</p>	<p>October 20, 2010</p> <p>Feb. 1, 2011</p> <p>Within 7 working days of such an agreement.</p>

¹⁴ 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).

¹⁵ 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.

<p>services provided, identifying date, type of service, provider and amount of time.</p> <p>The District and parent may agree in writing to modify any of the provisions of the compensatory services plan except the qualifications of providers.</p>	<p>compensatory education services plan.</p>	
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Dated: October 8, 2010

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

Mailing Date: October 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.