

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Brookings-Harbor School)
District 17C)
)
) FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-022 and 10-054-027

I. BACKGROUND

On September 9, 2010, the Oregon Department of Education (Department) received a letter of complaint from an individual (Complainant) requesting a special education investigation under OAR 581-015-2030 (2010) into special education practices in the Brookings-Harbor School District (District) on behalf of nine students enrolled in the District.¹ The Complainant provided a copy of the complaint to the District. The Department assigned case number 10-054-022 to this complaint.

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 September 17, 2010, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated.

On September 22, 2010, the Department received a letter of complaint from the parent of a student residing and attending school in the District, also requesting a special education investigation under OAR 581-015-2030. The parent provided a copy of the complaint to the District. The Department assigned case number 10-054-027 to this complaint. On September 29, 2010, the District submitted a narrative *Response* to both complaints. Because the parent's complaint involves the same issues as those identified in complaint number 10-054-022 and involves one of the same students, the Department did not require from the District an additional narrative response in case number 10-054-027 (the District's narrative response referenced both case numbers), and consolidated these cases for purposes of investigation and issuance of a final order.

The Department's contract complaint investigator determined that an on-site investigation would be necessary. On October 14, 2010 and October 15, 2010, the investigator conducted an on-site investigation and interviewed the District's Superintendent and Special Education Director, the high school principal, an autism specialist (employed by the local Education Service District), and a regular education teacher. The investigator also interviewed the Complainant from case number 10-054-022 and the parent from case number 10-054-027. On October 19, 2010, the investigator also interviewed an individual who, in June of 2010, facilitated an IEP meeting for the student at issue in case number 10-054-027. The Department's investigator reviewed and considered all of the documents and narrative responses received from the parties in reaching the findings of fact and conclusions of law contained in this order.

¹ For purposes of confidentiality, the nine students are identified as Students 1 through 9 throughout this order. Appendix A to the Request for Response in this case identifies the specific students and their corresponding number.

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>IEP Implementation:</u></p> <p>The Complainant and parent allege that the District failed to implement the transition services described in the students' IEPs.</p>	<p><u>Substantiated</u></p> <p>The Department substantiates the allegation that the District failed to provide adequate transition services to the nine students. <i>See Corrective Action.</i></p>
(2)	<p><u>Content of IEP</u></p> <p>In case number 10-054-027, the parent additionally alleges that the June 1, 2010 IEP of Student 3 does not contain reference to the Snack Shack program. The parent also alleges that the meeting minutes of the June 1, 2010 IEP inaccurately include no reference to discussions at the meeting concerning the Snack Shack program.</p>	<p><u>Not Substantiated.</u></p> <p>The Department does not substantiate the allegation that the IEP should have included specific reference to the Snack Shack program.</p> <p>The Department does not address the parent's allegation as it concerns the content of the June 1, 2010 IEP meeting notes.</p>
	<p>Both complaints request the following corrective action:</p> <p>(1) Require the District to continue the Snack Shack program and provide the transition services as required in the students' IEPs.</p>	<p><i>See Section V - Corrective Action.</i></p>

III. FINDINGS OF FACT

Background

1. Each of the nine students identified in the complaints in this case are eligible for special education and related services under the IDEA and are residents of the District. All nine of the students are of sufficient age to require appropriate transition services. The IEPs of all nine students include a transition statement and include services designed to address the students' transition needs
2. The IEPs of Students 1, 2, 5, 6, and 9 include annual goals or services that indicate that the students will participate in an authentic vocational experience by including objectives which could only be obtained in a vocational setting or specifying that services will be provided at a work site.
3. The IEPs of Student's 3, 4, 7, and 8 do not clearly indicate that those students will participate in an authentic vocational experience.
4. During the 2009-10 school year, the District provided transition services to each of the subject students through the Snack Shack program. This program was open each school day from 11:55 a.m. to approximately 12:30 p.m. Generally, the program required the students to plan menu items, purchase and prepare food, and sell the products in the "Snack Shack". The students were accompanied by instructional assistants or a special education teacher.

Failure to Implement Transition Services

5. The Complainant in case number 10-054-022 and the parent in case number 10-054-027 stated during on-site interviews that the problem with the provision of transition services to the nine students named in the complaints began at the start of the 2010-11 school year, when the District discontinued the Snack Shack program. The District cancelled the Snack Shack program prior to the beginning of the 2010-11 school year after determining that transition services could be provided without the Snack Shack program. Prior to the beginning of the 2010-11 school year, the District also learned of legal concerns about providing food items in the Snack Shack in competition with the District's cafeteria. The District's *Responses* in both cases indicate that the District is presently developing a new "on-site business," a copy center located in the Brookings Harbor School High. At the time of the on-site investigation, the District had purchased a copier and had reserved a room for operation of the new copy center.
6. In its *Responses*, the District did not demonstrate that it had provided transition services during the current school year to any of the nine students listed in the complaints. The District's *Response* states that the Snack Shack is not necessary to address the students' transition needs, but the *Response* does not indicate what services the District provided to meet the students' transition needs. During the on-site investigation, the District conceded that the District did not provide transition services to the nine students listed in the complaints from the start of the 2010-11 school year to the date of staff interviews in connection with these complaints.

Content of IEP (case number 10-054-027):

7. In complaint number 10-054-027, the parent alleges that the June 1, 2010 IEP of Student 3 contained no reference to the Snack Shack program despite discussion of how that program would be utilized to meet the student's transition needs. The parent understood that the Snack Shack program would allow the student to develop social skills by interacting with peers and adults and to gain experience with money handling, budgeting, cost comparison analysis, use of a food handler's card, and using bookkeeping software ("Quicken").
8. The June 1, 2010 IEP for Student 3 does not specifically mention the Snack Shack program. The student's goal entitled "Number, operation and quantitative reasoning" provides that the goal will be pursued in "authentic contexts." The student's postsecondary goals reflect the student's interest in a vocation related to music, music performance, and instrument repair or construction.
9. The June 1, 2010 IEP meeting for Student 3 ran in excess of three hours. The individual in charge of taking minutes at the meeting stated that, during the meeting, District staff projected the IEP for all to see using a computer program and that changes were immediately recorded so all could see them. The note-taker acknowledged that due to the projection of the IEP and, more importantly, the length of the meeting, the notes were less detailed than they otherwise would have been. Those present at the June 1, 2010 IEP meeting and interviewed during the on-site interviews all acknowledge discussion of the Snack Shack program during the June 1, 2010 IEP meeting. All interviewees also agree that the parent expressed the student's desire to no longer be involved in actual sales in the Snack Shack due to comments made by the student's regular education peers. The special education teacher indicated at the meeting that the student's role in the Snack Shack program could shift to purchasing and inventory and that the student would not be required to sell food items in the Snack Shack.
10. The services page of the June 1, 2010 IEP for Student 3 states that transition services are to be provided "55 min. 1 day per week" in the "Special Ed. Classroom." The IEP includes academic goals including writing, reading comprehension, number operation, and quantitative reasoning. The student's postsecondary goal related to transition states that after completing the course requirements to earn a modified diploma, the student "will work in a vocation related to music that interests him."

IV. DISCUSSION

1. Failure to Implement Transition Services

The Complainant and parent, as clarified during the on-site investigation, allege that beginning with the 2010-11 school year, the District has failed to implement the transition services provided in the IEPs of nine students due to cancellation of the Snack Shack program. The parent and Complainant seek reinstatement of that program.

OAR 581-015-2220 provides, in part:

- (1) General:

- (a) At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.
- (b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.

The Department acknowledges that the IDEA allows school districts substantial discretion in determining the appropriate methods for providing resident students a free and appropriate public education. In this case, the complainants allege that the District violated the IDEA by failing to provide transition services consistent with the students' IEPs. Generally, such allegations would require the Department to determine whether the District provided services consistent with the students' IEPs and, if not, whether the District's failure to implement the IEP denied the student a free and appropriate private education.

In this case, the District has acknowledged that the Snack Shack program did not operate during the 2010-11 school year. The District attributed the discontinuation of the program in part to the fact that the District is in the process of evaluating and improving its transition programs with the assistance of the Department. To this end, the District has hired a new transition specialist to work with the District's new special education director and is developing a new on-site business at the District's high school. Nonetheless, the District has not demonstrated that, in the absence of the Snack Shack program, the five students whose IEPs include goals or services directly related to an authentic vocational experience received any services in that area.

Because no services were provided related to the vocational transition goals or service summaries of five of the nine students (identified as Students 1, 2, 5, 6, and 9 in Appendix A to the Request for Response), there is no need to examine the transition service provided for those students in this case. Therefore, the Department substantiates the allegation that the District has not provided transition services to those five students consistent with their IEPs during the 2010-11 school year.

With regard to Students 3, 4, 7, and 8, the Department concludes that the transition components of the IEPs in effect for those students at the start of the 2010-11 school year contained insufficient information to determine what, if any, transition services the students were to receive. Based on those IEPs, the Department is unable to determine whether the discontinuation of the Snack Shack program and the District's failure to provide other vocational experiences to the students constituted a material failure to implement the students' IEPs.

OAR 581-015-2200 provides, in part:

- (2) For the purposes of transition, the IEP must include:
 - (a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:
 - (A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
 - (B) The transition services (including courses of study) needed to assist the child in reaching those goals.

Because the IEPs for the students 3, 4, 7, and 8 do not satisfy the requirements of OAR 581-015-2200, the Department concludes that the District has denied these four students a FAPE without consideration of whether the discontinuation of these students' participation in the Snack Shack program constituted a material failure to implement the students' IEPs.

The Department will thus order in the *Correction Action* portion of this order that the District conduct new IEP meetings specifically addressing anew appropriate transition services for each of the nine students and that the District address the failure to provide adequate transition services during September and October of 2010.

2. Content of IEP (Specific to Case Number 10-054-027)

The parent alleges that the June 1, 2010 IEP for Student 3 contains no reference to the Snack Shack program despite discussion of how that program would be utilized to meet the student's transition needs. Specifically, the parent understood that this program would allow the student to develop social skills by interacting with peers and adults and to gain experience with money handling, budgeting, cost comparison analysis, use of a food handler's card, and the use of computer bookkeeping software. The student's goal of "Number, operation and quantitative reasoning" provides that the goal will be pursued in "authentic contexts," and the student's postsecondary goals identify the student's interest in a vocation related to music, music performance, and instrument repair or construction. Review of the student's IEP does not reveal any specific mention of the Snack Shack.

Regardless of whether the Snack Shack program was discussed at the June 1, 2010 IEP meeting, the Department does not substantiate this allegation. The District is not required to list a specific program in which the student's transition services are to be provided as long as the description of the student's transition service program adequately describes the nature of the services to be provided to the student. Therefore, the Department is unable to substantiate the specific allegation that the IEP should have included a direct reference to the Snack Shack program. The Department notes that the goal statement and service summary for this student failed to meet the transition requirements of OAR 581-015-2200 and that the District is required to reconvene the student's IEP team and review and revise the student's IEP as a result of the corrective action ordered with respect to the other allegation in this complaint.

Additionally, the Department does not address the parent's allegation as it concerns the content of the June 1, 2010 IEP meeting notes. The IDEA does not require school districts to take notes at IEP meetings and does not set standards for note-taking at IEP meetings.

	services as necessary to deliver the required transition services to the students.	Department: <ul style="list-style-type: none"> • assurances that the compensatory education services identified in the plans were provided; and, • any logs or attendance forms documenting the students' receipt of the compensatory educational services. 	
(2)	<u>Training</u> The District shall provide training to all special education staff, case managers, and administrators concerning the development and implementation of transition services for transition-aged students.	Evidence of completed training, including: <ul style="list-style-type: none"> • a copy of the training materials; and, • an attendance roster or distribution list identifying name and position of attendees. 	August 31, 2011

Dated: November 5, 2010

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

Mailing Date: November 5, 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.