

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Multnomah Educational Service District) FINDINGS OF FACT,
) CONCLUSIONS, FINAL ORDER AND
) STIPULATED CORRECTIVE ACTION
) Case No. 08-054-002

I. BACKGROUND

On January 16, 2008, the Oregon Department of Education (Department) received a letter of complaint from an individual which requested that the Department conduct a special education investigation under OAR 581-015-2030 into special education practices and procedures by the Multnomah Educational Service District (ESD) for its program at Donald E. Long School. The individual did not provide the ESD a copy of the complaint; however, the Department provided a copy to the ESD on January 17, 2008. On January 25, 2007, the individual provided an amendment to the complaint, alleging additional violations and including additional students. The Department’s investigator provided a copy of the amendment to the ESD on January 28, 2007. On January 28, 2008, the Department sent a *Request for Response* to the ESD identifying the specific allegations in the complaint which the Department would investigate.

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. This order is timely.

The ESD submitted its timely *Response* to the allegations on January 30, 2008, and provided a copy to the complainant. The Department’s complaint investigator determined that on site interviews were not necessary to resolve the issues in the complaint. The Department’s investigator conducted telephone interviews with ESD staff on February 26, 2008. The Department’s complaint investigator interviewed, by phone, the following ESD staff: the ESD Chief Program Officer and the ESD special education consultant. The Department’s complaint investigator interviewed the complainant, by phone, on February 26, 2008. The Department’s complaint investigator reviewed the submissions by the ESD dated April 27, 2007 to the Department from the corrective action in Case No. 07-54-004. The Department’s complaint investigator considered all of the interviews, documents and submissions provided to the Department by the parties.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-300.153 and OAR 581-015-2030. 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).

The written complaint alleges that the ESD violated the IDEA in the following ways:

#.	Allegations	Conclusions
(1)	<p><u>IEP Team Composition:</u></p> <p>Not having a properly constituted IEP team at any IEP meeting for all students listed on Exhibit A.</p>	Not Contested
(2)	<p><u>Parent Participation:</u></p> <p>Not taking steps to ensure that one or both parents of a student with a disability are present at each IEP or placement meeting or are afforded an opportunity to participate including notification early enough to ensure the parents have an opportunity to attend and scheduling a meeting at a mutually agreed upon time and place, or ensuring alternative methods of parental participation for all students on the attached Exhibit A.</p>	Not Contested
(3)	<p><u>Review and Revision of IEPs:</u></p> <p>a) Not ensuring that the student's IEP team reviews the student's IEP periodically, at least every 365 days, to determine whether annual goals for the student are being achieved and to revise the IEP, as appropriate, for all students listed on the attached Exhibit A.</p> <p>b) Not accurately describing the child's present levels of academic achievement and functional performance, including how a child's disability affects the student's involvement and progress in the general curriculum for all students listed on the attached Exhibit A.</p>	Not Contested
(4)	<p><u>IEP Content:</u></p> <p>a) Not assessing progress on the student's annual goals; and</p> <p>b) Not reporting progress on annual goals for all students listed on Exhibit A.</p>	Not Contested
(5)	<p><u>IEP Implementation:</u></p> <p>Not providing the services listed in Supports for School Personnel for all students listed on Exhibit A</p>	Not Contested

#.	Allegations	Conclusions
(6)	<p><u>Notice of Procedural Safeguards:</u></p> <p>Not providing the student's parents or the student a copy of the Notice of Procedural Safeguards at least once a year, upon initial referral or parent request for evaluation, upon request and to the student at least one year before the student's 18th birthday, for all students listed on the attached Exhibit A.</p>	Not Contested
(7)	<p><u>Prior Written Notice:</u></p> <p>Not providing Prior Written Notice to the parents and adult student after rights have transferred, and within a reasonable period of time before the ESD proposes to initiate or change, or refuses to change, the identification, evaluation or educational placement of the student, or the provision of FAPE, for all students listed on Exhibit A.</p>	Not Contested

III. FINDINGS OF FACT

Background

1. The ESD, as per contract with the Department, provides the educational program, including the special education program, at the juvenile justice facility located within the ESD's boundary. The Department investigated a complaint, received on January 11, 2007, filed by a student against the ESD titled, *In the Matter of Multnomah Education Service District*, Case No. 07-054-004.
2. The Department issued a Final Order in Case No. 07-054-004 on March 23, 2007, substantiating the allegations in the complaint and ordering corrective action. The corrective action included training, holding another IEP meeting to address the specific issues in that student's special education program at the facility, and submission of documentation to the Department in an effort to verify compliance.
3. The ESD conducted trainings at the facility with the two staff members responsible for administering the special education program.¹ The trainings were held on February 21, 2007 (2 hours); April 12, 2007 (2 hours) and April 17, 2007 (1 hour).

¹ The ESD represents that neither staff member involved in the trainings will be at the facility after June 2008.

Present complaint

4. The complainant in Case No. 08-054-002 filed the complaint on behalf of sixteen individuals² who received services by the ESD while in the facility in the previous 12 months immediately preceding the Department's receipt of the complaint.
5. The ESD stated that it does not "deny any of the allegations addressed in the second complaint [Case No. 08-054-002], but believe[s] that they are the same issues we corrected last year".
6. The ESD represented that "none of the students referenced in the most recent complaint [Case No. 08-054-002] are in attendance" at the facility.
7. The ESD states that it "complied with the corrective plan given to us by [the Department in Case No. 07-054-004] and still following this plan due to the systemic concerns in this program."
8. The ESD admitted, and facility staff confirmed, that IEP placement determinations have continued to be non-compliant based on the lack of a properly constituted placement meeting, team composition and completion of appropriate documentation.
9. ESD staff trained one facility staff member again, immediately prior to the Department's investigator conducting interviews on February 26, 2008, regarding placement issues which continue to be non-compliant.
10. The ESD states that they have instituted IEP file re-organization so that student specific information could be quickly and meaningfully accessed by staff on a particular student. Utilizing a court appointed special advocate as an ongoing educational surrogate for students, IEP meetings are now being held with an appropriately constituted IEP team. The ESD has initiated efforts to obtain approval from the correctional facility to install speakerphones to allow communications with IEP participants who are unable to be physically present at an IEP or placement meeting.

IV. DISCUSSION

The complaint alleges a broad spectrum of IDEA violations which the ESD acknowledged existed and which were identified during the investigation *In the Matter of Multnomah Education Service District*, Case No. 07-054-004. The ESD does not dispute any of the allegations in the present complaint.

The ESD initiated training sessions for the facility staff to correct the "systemic concerns in this program" after the Final Order in Case No. 07-054-004. By the ESD and facility staff's own admission, the facility continues to demonstrate fundamental IDEA non-

² The students identified in the RFR are not identified in this Order to maintain their confidentiality.

compliance issues, although the non-compliance has been reduced since the systemic problems were identified in Case No. 07-054-004.

The Department recognizes some of the difficulties with IDEA compliance within an incarceration facility; however that difficulty does not excuse the facility's obligation to comply with IDEA. Nor does it lessen the obligation of the ESD to adequately and professionally supervise staff at the facility to ensure its obligations to comply with IDEA.

Based on the admissions by the ESD, and based on the continuing IDEA violations, the Department orders, and the ESD stipulates to the following Corrective Action.

V. STIPULATED CORRECTIVE ACTION³

In the Matter of Multnomah Education Service District
Case No. 08-054-002.

#	Action Required	Submissions	Due Date
1.	<p><u>Verification:</u>⁴</p> <p>The ESD must provide the Department with copies of seven randomly selected entire case files, in the condition those files existed on February 26, 2008, and any additional documentation associated with those files created prior to submission to the Department, for review. Depending on the review of the seven files, the Department may order additional training in specific areas.</p>	<p>Submit copies of the entire student's file for seven randomly selected files.</p>	<p>April 10, 2008</p>
2.	<p><u>IEP and Placement Meetings Policies and Procedures:</u>⁵</p> <p>The ESD shall verify annually, for two years, that the facility is utilizing appropriate practices to ensure:</p> <ul style="list-style-type: none"> • Appropriate IEP and placement meeting team composition, including the extent of use of 	<p>The ESD shall submit a written policy and procedure guide outlining the manner in which it obtains special education related information for incoming students; the procedures for holding an IEP or placement meeting with a properly</p>	<p>Policies Submitted by June 1, 2008</p> <p>Annual review due June 15, 2008 and 2009</p>

³ 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).

⁴ Initial Verification: The Department will review the files for IDEA regulatory compliance.

⁵ Initial Verification: The Department will review the Department submissions.

#	Action Required	Submissions	Due Date
	<p>educational surrogates, and general education staff opportunities to participate in IEP meetings;</p> <ul style="list-style-type: none"> • Appropriate review, revision and updating of IEPs including, but not limited to, interview techniques with the student to obtain an educational history, copies of current IEPs, present level statements, and annual goals. If the IEP requires a revision based on a change in placement, services or Supports for School Personnel, those changes are obtained through the IEP revision process. Minutes of any IEP or placement meetings shall be maintained in each student's file, reflecting meeting participants/attendees, subject areas addressed, and outcomes. 	<p>constituted team, the procedures for determining when an IEP requires review, revision or updating; the procedures and content when issuing prior written notice of change or refusal to change placement or the provision of FAPE.</p> <p>The ESD shall submit a plan that identifies the evidence of change expected in each training area, how the ESD will identify these changes have occurred, and specified dates for reporting sustained evidence of change.</p> <p>Submit final report of evidence of change.</p>	

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; or fax number (503) 378-5156.

Dated this 3rd day of March, 2008

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

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.