

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Corvallis School District	)	FINDINGS OF FACT,
509J	)	CONCLUSIONS,
	)	AND AMENDED
	)	FINAL ORDER
		Case No. 08-054-005

**I. BACKGROUND**

On February 4, 2008, the Oregon Department of Education (Department) received a signed letter of complaint from the parent of a child in the Corvallis School District 509J (District) alleging violations of the Individuals with Disabilities Education Act (IDEA). The Department must investigate written complaints that allege IDEA violations 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 unless exceptional circumstances require an extension.<sup>1</sup> Due to staff unavailability during the regularly scheduled spring break, the Department extended the timeline by two weeks.

On February 19, 2008, the Department sent a Request for Response to the District identifying the specific allegations in the complaint to be investigated. The District submitted its timely Response to the investigator and to the parents. The Department’s complaint investigator determined that on-site interviews were necessary. On March 26, 2008, the investigator interviewed the parents. On March 31, 2008, the investigator interviewed the child’s special education case manager and current classroom teacher, as well as the District’s special education coordinator. On April 7, 2008, the Department’s complaint investigator interviewed the child’s current and previous speech and language therapists, the autism specialist, and one of the child’s fourth grade classroom teachers<sup>2</sup>. On the same day, the complaint investigator interviewed the parents for a second time. Both the parents and the District gave additional documentation to the Department’s complaint investigator during the interview process and shared the additional materials with each other. The Department’s investigator reviewed and considered information from all of the documents and interviews in finding the facts enumerated below in Section III.

The Department issued a Final Order in this case on April 25, 2008. Thereafter, the Department reviewed its Findings and Conclusions as contained in the Order and determined that some of the findings were incomplete or in error. Therefore, the Department withdraws its April 25, 2008 initial order and issues this Amended Order that contains some modifications to the initial order, including the corrective action.

---

<sup>1</sup> OAR 581-015-2030(12)

<sup>2</sup> The fourth grade teachers co-teach, each one teaching half of the week.

## II. ALLEGATIONS AND CONCLUSIONS

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><u>IEP Design and Content:</u></p> <p>The parents alleged the District failed to provide social skills instruction with the same gender peer group in the IEP after the members of the team agreed that such instruction was necessary and appropriate for the student.</p>	<p>Not substantiated.</p> <p>The IEP team considered the option of a social skills instruction with a same-gender peer group, but the team did not agree to implement it.</p>
2.	<p><u>IEP Implementation:</u></p> <p>The parents alleged that the District failed to provide the student with speech and language services at the beginning of the school year.</p>	<p>Substantiated.</p> <p>The Department substantiates the parents' allegation and orders corrective action to include 175 minutes of compensatory speech and language instruction to be provided outside the student's regular school schedule. See Corrective Action.</p>
3.	<p><u>IEP Review and Revision:</u></p> <p>The parents alleged that the District did not revise the IEP to address the lack of expected progress in the student's annual goal of study skills, specifically the use of the homework planner.</p>	<p>Not Substantiated.</p> <p>Data taken in fifth grade so far indicates that although the student is not completely independent in using the planner sheets, the student does complete the majority of assignments.</p>
4.	<p><u>Evaluation Data as a Basis for Instruction:</u></p> <p>The parents alleged that the District did not use data collected in the spring of 2007 to guide the development of social skills instruction written on the September 17, 2007 IEP.</p>	<p>Substantiated.</p> <p>The District agreed to develop and consider social skills assessments for purposes of writing the student's goals and services at the September 17, 2007 annual IEP meeting. The District also failed to provide a written evaluation report to the IEP team as requested by the parents. As a result, the report and data were not considered by the full IEP</p>

	<b>Allegations</b>	<b>Conclusions</b>
		team prior to developing the IEP.
5	<p><u>Parent Participation:</u></p> <p>The parents alleged that the District limited their opportunity for parental participation by not delivering the final copy of the IEP until 70 days after the original IEP meeting.</p>	<p>Substantiated.</p> <p>The District either did not complete the IEP in a timely manner or did not provide the parents with a written copy of the IEP in a timely manner, or both. This failure had the effect of limiting the parents' ability to participate in the IEP process and prevented the parents from knowing what actions the district intended to take with respect to key issues in the student's IEP.</p>
6	<p><u>IEP Implementation (Removal):</u></p> <p>The parents alleged that the District removed the child from the general education classroom for more time than specified in the IEP.</p>	<p>Substantiated.</p> <p>The district removed the student from the general education classroom for a total of 131 minutes more than was specified in the student's IEP.</p>
7	<p><u>Prior Written Notice:</u></p> <p>a. The parents alleged that the District failed to provide prior written notice of its decision not to provide the social skills instruction with a peer group of the same gender.</p> <p>b. The parents alleged that the District failed to provide prior written notice of its decision to deny the parents' request to be provided with written information with specific strategies twice a month to generalize social skills instruction in other settings.</p>	<p>Substantiated.</p> <p>a. The District did not provide prior written notice of its decision not to provide the social skills instruction with a peer group of the same gender.</p> <p>No Violation.</p> <p>b. The District was not required under IDEA to provide written notice of its decision as to whether to provide written information with specific strategies twice a month to generalize social skills instruction in other settings.</p>

	<b>Allegations</b>	<b>Conclusions</b>
8	<p><u>Proposed Solution:</u></p> <p>1) Training of the relevant staff in procedures and processes regarding:</p> <ul style="list-style-type: none"> <li>a) Timeliness of delivery of IEP's to parents;</li> <li>b) Process of responding to parents' requests for written notice of refusal;</li> <li>c) Strategies for generalization of social skills across settings provided by an outside autism expert;</li> <li>d) Understanding of what constitutes specially designed instruction; and,</li> <li>e) Process of developing compensatory education services, and when letters describing the compensatory education services need to be written.</li> </ul>	<p>Not Ordered.</p> <p>As part of corrective action in Case No. 07-054-026, the District already provided comprehensive training to its staff on November 1, 2007, regarding the development, review and revision of IEP content, guidelines for completing the Oregon Standard IEP, placement, and the requirements for providing prior written notice. The student's case manager and autism consultant participated in this training. This training covered the areas related to the findings of violations in this order. Additional training at this time should not be necessary to avoid similar violations in the future. Therefore, the Department does not order additional training at this time.</p>
	<p>2) Delivery of compensatory services during the summer of 2008 that accommodates the student's schedule.</p>	<p>Ordered in part.</p>
	<p>3) Monitoring of compliance by ODE.</p>	<p>The Department's annual monitoring process already includes all districts.</p>

### **III. FINDINGS OF FACT**

#### **Background**

The child is 11 years old, resides in the District, and attends a District elementary school. She is eligible for special education as a child with autism.

#### **IEP Issues, Design and Content:**

- 1) At the IEP pre-planning meeting on September 11, 2007, the parent requested social skills instruction with a peer group for children with autism of the same gender that might include students from other schools.

- 2) When the entire IEP team met on September 17, 2007, the parents again requested the idea of social skills instruction with a peer group of the same gender, noting that they were concerned about some of the behaviors they felt their child had learned in the previous year's social skills group which contained both boys and girls. The parents suggested that this group might be conducted at the middle school after the school day had ended, and that it would include other students of the same gender who also have autism and attend other school districts.
- 3) The team discussed this idea, but did not reach final consensus. District staff informed the parents at this meeting that they would research the idea and provide additional information at a later date.
- 4) On October 25, 2007, the parents provided written feedback to the District case manager about the first draft of the IEP. In this email, the parents stated, "the student needs to receive a significant portion of social skills instruction in a group with [same gender peers]".
- 5) On November 5, 2007, the parents sent the District a letter responding to the second draft of the IEP, given to them that day. In this letter, the parents comment that "this IEP does not clear (sic) say that the student will get social skills instruction with the same gender in group—we talked about peers, consistent participants in the IEP meeting. Do we need to convene another IEP meeting to come to agreement this is what the student needs."
- 6) On November 8, 2007, the parents wrote and hand-delivered another letter to the District case manager. In the letter the parents stated, "The student's most important goal is to have friends. The student clearly lacks many skills in this area. A recent panel of professionals suggested that employing 'gender and age specific groups of students with social skills deficits' was a 'very effective approach for supporting skills development in these students'". The parents close the letter by suggesting some proposed actions, one of which is that, "A social skills group of same gender peers will be implemented either during or after school, prior to winter break and continuing for the remainder of the school year".
- 7) The possibility of a same gender peer group was discussed at the November 8, 2007 meeting, and the case manager wrote in the minutes that the District special education coordinator would convene a work session to discuss this group.
- 8) On December 7, 2007, the parents again wrote to the District case manager. They informed the District that they did not agree with the way in which their request for a same gender group was worded in the Present Level of Academic Achievement and Functional Performance statement, and asked that the District give them written notice of the District's refusal to provide this service as part of the student's IEP.

- 9) The District did not send the parents a Prior Notice of Special Education Action that explained the District's refusal to provide a girls social skills group.
- 10) The student's IEP contains a goal in social communication.<sup>3</sup> The specially designed instruction to meet this goal is delivered to the student by the speech/language therapist. The student meets with the therapist individually. Occasionally, the therapist invites a peer to meet with the therapist and the student, but this has not occurred very many times.
- 11) The District issued reports during the 2007-2008 school year indicating that the student made progress towards meeting these goals.
- 12) The student's IEP also contains a goal for self-awareness and advocacy<sup>4</sup>. The student's case manager delivers this specially designed instruction to the student, again, meeting individually with the student.
- 13) In the interviews with the Department's complaint investigator, District staff stated that they believed all of the conversations about the peer group instruction with the same gender were in the context of planning for the student's transition to the middle school. Further, staff told the investigator that they believed creating such a group might infringe on other students' rights to confidentiality, or that such a group might be perceived as discriminatory to the students involved.

**IEP Issues, Implementation:**

- 14) The student's IEP specifies that the student will receive 240 minutes per quarter of specially designed instruction in Speech/Language—Social Communication, to be provided by the District.
- 15) When the 2007-2008 school year started, the District had not yet employed a speech/language therapist to provide services to the students at this particular elementary school. The parents knew that no staff was available when the school year started.
- 16) At the IEP meeting on September 17, 2007, the parents told the District that they were concerned that their student would be working with another new specialist on speech, language and social communication goals.<sup>5</sup> The speech/language therapist who had provided services to the student during the 2006-2007 school year attended the IEP meeting and provided a draft goal for social communications.

---

<sup>3</sup> "The student will demonstrate increased use of social communication skills related to understanding her own and other's perspective and her impact on others with achievement determined by the criteria listed below."

<sup>4</sup> "The student will demonstrate the skills to effectively interact with peers and adults to create a positive learning environment for self and others through September 2008".

<sup>5</sup> Parents told the Department's complaint investigator that the student has had six speech/language providers in 5.5 years in the District.

- 17) The District hired a speech/language therapist in mid October, 2007, and the individual began providing services to the student on October 17, 2007.
- 18) The parents expressed their concerns to the District staff about this issue at every meeting held during the fall of 2007.
- 19) At the November 8, 2007 meeting, the team agreed that the new speech/language therapist would calculate the amount of service the therapist had provided to the student since the middle of October, 2007.
- 20) The parents hand-delivered a letter to the District case manager on November 8, 2007 and asked for District "Documentation of Specially Designed Instruction in Social Communication and Speech Language provided year to date with options for compensatory services provide (sic) by 11/15/07".
- 21) The parents sent the District a letter on December 7, 2007, and reiterated their request for information about how much specially designed instruction had been provided and what plans the District was making for compensatory services.
- 22) On November 20, 2007, the case manager sent the parents a letter with information about the amount of services the team had provided to the student. From October 17 to November 6, 2007, the end of the first quarter, the speech/language therapist provided 135 minutes<sup>6</sup> of specially designed instruction to the student. This was 105 minutes short of the amount of time specified on the student's IEP.
- 23) Both parties agreed that District staff stated verbally they were developing a plan to provide compensatory services for the time the student did not receive at the beginning of the year. However, no such plan was ever put into writing, and the parents were not given a Written Prior Notice of Special Education Action acknowledging the fact that the District owed the student additional service time.
- 24) The District documented that it provided Speech/Language specially designed instruction for 230 minutes in the second quarter of the year.<sup>7</sup>
- 25) During the third quarter, as of April 1, 2008, the student received a total of 190 minutes of specially designed instruction in speech/language. Staff was available for 210 minutes of instruction, but again, the parent has taken the student out of school early several times.

---

6 The Department's complaint investigator asked for additional documentation on the amount of services provided. The second document showed an amount of 125 minutes provided in the first quarter.

7 The District notes that during the second quarter, staff was available for 9 sessions of 30 minutes each. However, on five of these sessions, the parent took the student out of school earlier than regular dismissal time. Consequently, the student received four sessions of 30 minutes each; four sessions of 20 minutes each; and one session of 25 minutes for a total amount of service time of 230 minutes.

- 26) The District delivered 545 minutes of specially designed instruction in social communication and speech language skills since the beginning of the school year. This was 175 minutes less than the amount specified on the IEP<sup>8</sup>.

**IEP Issues, Review and Revision (study skills and the use of a planner):**

- 27) The student's previous IEP, written on September 28, 2006, contained a goal for Study Skills. The goal was: "The student will demonstrate an increased level of independent work and study habits as noted by staff observation of work behaviors during informal observation through September 2007." This goal contained several objectives that specified the student would "demonstrate use of a planner/homework notebook to:
- a) write down daily homework assignments with all the details provided by the teacher;
  - b) carry homework papers to/from school in a neat manner;
  - c) identify when work was completed; and,
  - d) identify when work was returned to school and turned in at the appropriate location."
- 28) The District sends progress reports to parents two times per year. On February 1, 2007, the District reported that on the homework goal the student was making "satisfactory progress". In the progress report the case manager stated that, "Even though this work skill is an area of difficulty, the student is doing well getting required work in."
- 29) The District sent the parents another progress report on June 15, 2007. In this progress report, the case manager wrote that the student was again making "Satisfactory Progress" toward the goal. The case manager also wrote, "The student has improved with these skills. The student needs encouragement and reminders regarding organization and homework details".
- 30) One of the student's classroom teachers told the Department's complaint investigator that during the student's 4<sup>th</sup> grade year, "when the student could not find the homework planner sheet or book, the student would come to the teacher a little 'frantically' and ask for it. When the teacher located the page or book, the student would immediately return to work".
- 31) In September, 2007, when the IEP team met, the parents expressed their concern that the student still was not independent in the ability to track missing assignments and turn them in to the teacher.
- 32) The parents asked that a goal for homework organizational skills be included and that the implementation of the goal be centered on using a system that was similar to and would transition well to the middle school system. During this discussion, the

---

<sup>8</sup> This calculation does not include one 30 minute session scheduled for April 8, 2007, the last day of the third quarter.

parents reported that according to their calculations, the student had only used the planner 46% of the time during the 4<sup>th</sup> grade year. District staff disagreed with this assessment, stating that the student had used a variety of homework planner formats. Staff stated they believed that while the student was not independent in this skill, the student had made good gains.

- 33) Even though members of the team disagreed about how successful the student had been in using a homework planner during 4<sup>th</sup> grade, they did agree that the goal area needed to be continued. Staff stated at this meeting that they thought the student should start the year using the generic homework planner system that all students in that particular classroom use. However, in the first draft of this goal on the IEP, there is no reference to any objectives that specify the use of a homework planner.
- 34) When the team finished the IEP in November, 2007, it contained the following goal:

“The student will demonstrate independent classroom work and active participation habits as noted by staff observation of work behaviors in classroom settings through September, 2008.” The goal includes objectives to provide the student with staff guidance and support, so that the student uses the planner efficiently. The objectives are written to guide staff so that eventually the support fades away and the student is using the planner independently.
- 35) On October 9<sup>th</sup>, the parent told the District case manager that the parents felt the generic homework system was not working satisfactorily. The parent gave the case manager a page the parent had designed for the student to use.
- 36) The student used the parent-designed system from October 15 through November 13, 2007.
- 37) On October 25, 2007, the parent sent the case manager a letter in which the parent outlined the parents’ belief that the student was using the homework planner inefficiently and inconsistently. The parent again provided month by month data showing that the student had used the planner on average 46% of the time during the 4<sup>th</sup> grade year. The parent asked the District to provide monthly feedback on the planner objectives outlined in the Study Skills goal.
- 38) On November 6, 2007, the parent again wrote a letter to the District case manager expressing concern with the homework planner system, and asking that the student be able to re-take a test, and that the planner goal be re-written to be more clearly measurable.
- 39) During the time period from October 15, 2007 to December 21, 2007, the District data indicates that the student completed the homework planner independently 9 of 33 opportunities; 9 of 33 opportunities with teacher assistance; and, on 15 of 33 opportunities, the teacher completed the planner for the student.

- 40) During the time period from January 7 - March 21, 2007; the District data indicates that the student completed the homework planner 11 of 35 opportunities independently; and that the teacher and the student completed the planner 7 of 35 opportunities times together. On 13 of the 35 opportunities the teacher completed the planner, and four of the opportunities are not notated.
- 41) From September 5, 2007, through the week of March 17, 2008, the classroom teacher's records document that the student turned in all assignments required, unless excused by the teacher.

### **Evaluation Data as a Basis for Instruction**

- 42) In the fall of 2006, the parent asked the District case manager to obtain copies of two social skills assessments that had been used to measure the student's social skills in the second grade, so the team could use the same measures for comparison at the end of fourth grade.
- 43) The case manager found the social skills assessments. In the spring of 2007, the parents, two fourth grade teachers, the speech/language therapist, and the student provided information to be used for a current assessment.
- 44) The District arranged for the same ESD school psychologist, who had scored the original assessments, to score the new assessments completed in the spring of 2007. The psychologist scored them, wrote a report analyzing the data on the new assessments—but not comparing the data to that previously developed in the second grade assessments.
- 45) The parents and district personnel held a preliminary IEP planning meeting on September 11, 2007. At that time, the parents requested that the IEP team consider the assessments and data at the September 17, 2007 annual IEP meeting. The District failed to bring these reports to the September 17 meeting.
- 46) On November 8, 2007, the District gave the parents copies of the reports. On November 16, 2007, the parent sent the case manager an email asking for clarification on the data in the two reports. The District did not discuss the results of the reports with the parents until the eligibility meeting held in March, 2008.

### **Parent Participation Requirements:**

- 47) The student's previous IEP was written on September 28, 2006. The annual review was due September 28, 2007.<sup>9</sup> In developing this IEP, the District and the parent mutually agreed to hold as few meetings as possible, and instead to use a process in which they met once and then completed the IEP by communicating via emails and conversations.

---

<sup>9</sup> OAR 581-015-2225 Review and Revision of IEPs.

- 48) In early September, 2007, one of the parents noted that she was scheduled to be out of town during the week of September 24 - 28, 2007, and asked the case manager if the District would agree to meet to write the new IEP during the week of October 1, 2007. The District sent the parent a Prior Written Notice acknowledging that although the parents had requested an IEP meeting later in the month, the District had scheduled the meeting for September 17, 2007.
- 49) The full IEP team met on September 17, 2007. The team discussed a number of issues, goals and possible services for the student but did not complete a written IEP.
- 50) On September 17, 2007, after the meeting, the parent sent the case manager an email reviewing some of the issues the team had discussed in the IEP meeting.
- 51) One of the parents and the case manager conversed on both October 1<sup>st</sup> and 9<sup>th</sup>, 2007, about issues from the September 17<sup>th</sup> IEP meeting. The parents stated that these conversations involved clarification of notes to be used in developing the IEP and how the parents could assist in the student's use of the homework planner.
- 52) On October 15, 2007, the parent emailed the case manager and asked for an update on the status of the drafted IEP.
- 53) On October 24, 2007, the parent and the case manager met again and reviewed the first written draft of the IEP. This IEP document contains drafted information in all areas of the IEP, with handwritten notes in many of the sections of the document. The placement page of the IEP is completely filled out and has typed names of team members who attended the IEP meeting.
- 54) On October 26, 2007, the parent sent notes taken at the October 24<sup>th</sup> meeting to the case manager via email.
- 55) On November 1, 2007, the District sent the parents a prior written notice of special education action in which the District stated that "adjustments have been made to the IEP document based on parent and case manager post-meeting conversations and review of the draft IEP document".
- 56) The District delivered a second draft of the IEP to the parents on November 5, 2007.
- 57) On November 5, 2007, the District case manager asked the parent to sign the "Written Agreements between the Parent and the District form, Section 3, Revisions to IEP Other Than at an IEP Meeting", in order to reflect the changes the parent and the case manager made at the October 24, 2007 meeting.

- 58) On November 8, 2007, the parents attended parent conferences at their child's school. After the conference, the parents met with the District special education coordinator, the case manager, and the autism specialist. Although this was not an official IEP meeting, the group discussed the newest draft of the IEP.
- 59) Also on November 8, 2007, the parents hand-delivered a seven-page letter to the District case manager. In this letter, the parents expressed concerns about a number of issues on the draft IEP and analyzed the IEP section by section.
- 60) The parents sent comments about the IEP to the case manager by email on November 16, 2007.
- 61) The District hand delivered the final copy of the IEP to the parents on November 26, 2007. This version of the IEP remained in effect until the team developed a new annual IEP on May 13 and June 3, 2008.

**Removing student from general education placement:**

- 62) The student's IEP, written on September 17, 2007, stipulates that the student will be removed from the general education environment. Specifically, the nonparticipation justification statement in the IEP reads as follows:
  - a) Yes, the child will be removed from participating with non-disabled student in the regular classroom, extracurricular, or nonacademic activities for the provision of special education services, related services, or supplementary aids and services.
  - b) The justification for this removal is "individual or small group instructional format to teach or reteach that will meet unique learner needs at this time."
- 63) The IEP team did not state the extent of removal for these services in the nonparticipation justification statement as required and referenced the general services summary instead.
- 64) The services section of the IEP specifies that the student will receive specially designed instruction in the anticipated locations of the LRC/School, regular class/LRC for:
  - a) 240 minutes per quarter (speech/language services)
  - b) 60 minutes per month (self-awareness and self-advocacy skills)<sup>10</sup>
  - c) 105 minutes per month (self-awareness and self-advocacy skills)<sup>11</sup>
  - d) 15 minutes per week (work and study habits)
  - e) 50 minutes per week (math skills)
  - f) 50 minutes per week (written language skills)

---

<sup>10</sup> This was specified for September 17, 2007—October 25, 2007

<sup>11</sup> This was specified for October 26, 2007 – September 16, 2008

- 65) The student has a “Student Support Plan” that is part of the IEP. The support plan specifies that the student will be able to leave other settings and go to the LRC if the student needs “calm down/cool down” time. The plan notes that a timer will be set when the student arrives at the LRC for 5 - 10 minutes, and that the time can be repeated as necessary.
- 66) LRC staff worked in the general education classroom to assist the student for 30 minutes during math instruction, 40 minutes during written language instruction, and 15 minutes for homework planner and study skills instruction.<sup>12</sup>
- 67) From the beginning of the school year through the end of March, 2008, the student left the general education classroom for specially designed instruction in self-awareness and self-advocacy for a total of 951 minutes; as compared to the amount specified on the IEP of 645 minutes.
- 68) From the beginning of the school year through April 1, 2008, the student left the general education classroom for specially designed instruction in speech and language for a total of 545 minutes, 175 minutes less than the amount specified on the IEP.
- 69) The District has documented that from September 21, 2007 to April 3, 2008, the student has gone to the LRC for “calming and problem-solving time, as per the behavior support plan, a total of 39 times. The District has documented when the student arrived at the LRC, but did not always document how long the student stayed. In addition, the District has documentation that shows that the student went to the LRC for an additional 13 times in this time period; generally to take a test in the quieter environment.

### **Procedural Issues—Prior Written Notice**

- 70) The District did not give or send a Prior Written Notice of Special Education Action form to the parents after the IEP meeting on September 17, 2007, when it did not include a gender specific social skills group in the student’s IEP.
- 71) On December 7, 2007, the parents sent the District a letter asking, among other things, that the District send the parents prior written notice of the District’s refusal to provide a gender specific social skills group.
- 72) At the IEP meeting on September 17, 2007, the parents asked the District to send them information twice a month on “strategies introduced and concepts being developed,” The parents were especially interested in getting information on how the District was teaching the student to generalize social skills across settings.
- 73) District staff sent the parent notes about “key concepts for generalization of skills”, on six dates.<sup>13</sup> A few samples of the statements are noted below:

---

12 The staff does not spend all of that time with this student only, but is available to help the student when needed.

- a) Acquire skills to overcome difficulties that ASD creates;
  - b) Understanding another's perspective, positive/negative impressions;
  - c) Played a perspective game;
  - d) Choosing the best solution;
  - e) Snow day—no school;
  - f) Talked about the student's new friend; and,
  - g) Relaxation strategies.
- 74) The parents' definition of what they had requested is "a specific strategy we can use at home with the student, such as specific verbal cues for a certain behavior".
- 75) The District did not send the parents a Prior Written Notice of Special Education Action either confirming or denying the parents' request for twice monthly information on generalization strategies.
- 76) On November 6, 2007, the parents sent a letter to the District and asked that by November 15, 2007, the District send them documentation of the specially designed instruction in social communication and speech/language the District had provided to the student since the start of the year. The parents also asked for written information on the options for compensatory instruction for the speech/language services the District had not provided when it did not have a speech/language therapist at the beginning of the year.
- 77) On November 20, 2007, the District case manager sent the parent a letter documenting the amount of time the case manager, autism specialist, and speech language specialist had spent with the student since September 17, 2007.
- 78) On December 7, 2007, the parents sent the District another letter asking the District to confirm that the documents sent on November 20, 2007, were the documentation of the amount of specially designed instruction the District staff had delivered.
- 79) On December 18, 2007, the case manager sent the parents another letter reiterating the information on specially designed instruction sent to the parents in the November 20<sup>th</sup> letter. The case manager did not add additional information, but explained it in a different way.
- 80) The District did not send the parent a Prior Notice of Special Education Action form either confirming or denying the parents' request for information on specially designed instruction.

## IV. DISCUSSION

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives a free appropriate public education (FAPE).<sup>5</sup> A school district meets its obligation to provide FAPE by complying with the procedural requirements of the IDEA and providing the student with an IEP that is “reasonably calculated to enable [the student] to receive educational benefit.”<sup>6</sup> An IEP must be in effect for each eligible child at the beginning of each school year.<sup>7</sup>

A student’s IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.<sup>8</sup>

In addition, school districts must provide the special education and related services listed on the IEP.<sup>9</sup> Furthermore, school districts must ensure that: (a) the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation, and (b) inform each teacher and provider of his or her specific responsibilities for implementing the child’s IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.<sup>10</sup>

### 1. IEP Design and Content

The parents alleged that the District failed to include social skills instruction for the student with a peer group of the same gender in the IEP after the members of the team agreed that such instruction was necessary and appropriate for a student with autism. The parents noted that during the IEP meeting on September 17, 2007, and subsequent meetings on October 1, October 9, and November 8, 2007 the IEP team discussed the need for the student to have social skills instruction with a peer-aged group of students of the same gender and the different ways these services could be delivered. The parents expressed concern about the student’s interaction with opposite gender peers.

The District agreed to research the peer group idea but did not agree to provide such services. District team members expressed concern about creating a situation that might be considered discriminatory or that might violate confidentiality rights.

In this case, the parents and the District could not reach a consensus about the student’s need for receiving social skills instruction with a peer group of the same gender. As discussed below, the parents were understandably confused about what

---

<sup>6</sup> *Board of Educ. v. Rowley*, 458 U.S. 176,192 S.Ct. 3034, 72 L.Ed. (1982).

<sup>7</sup> OAR 581-015-2220.

<sup>8</sup> OAR 581-015-2200(d).

<sup>9</sup> OAR 581-015-2220.

<sup>10</sup> OAR 581-015-2220.

decision was reached for three reasons: (1) District officials did not clearly tell the parents “yes” or “no” to their request for a peer group. Instead the District continued to discuss the issue and look for a compromise for several weeks following the September 17, 2004 IEP meeting. This process would have been appropriate if the District had timely issued the written annual IEP and then followed up with continued negotiations about how the IEP might be revised. (2) The District did not timely provide a copy of the written IEP to the parents that would show whether the peer group would be provided as a special education service. (3) The District did not issue a prior written notice to inform the parents of the District’s decision to refuse the parents’ request for the peer group.

These procedural defects do not necessarily require a conclusion that the student was denied a FAPE or was denied appropriate services in the area of social skills. The student’s IEP requires individualized instruction on social skills, specifically self-awareness and self-advocacy skills and social communication. The District’s decision to provide social skill instruction to the student on an individualized basis rather than with a same gender peer group was within the district’s discretion. The Department does not substantiate the parent’s allegation.

## **2. IEP Implementation**

The parents alleged that the District failed to provide the student with speech and language services at the beginning of the school year. The student’s IEP requires that the student receive 240 minutes of services per quarter from the speech language pathologist. The parents further alleged that the District failed to provide them with a clear plan either in writing or verbally detailing how the district will provide for compensatory services. The parents expressed concern that the District would make up the missed time by providing additional services over the course of the year, which would result in the student missing more time in the general education program.

In this case, the District did not dispute the need for compensatory services. Due to an inability to fill the speech language pathologist position at the beginning of the 2007-2008 school year, the student did not begin to receive speech and language services until October 17, 2007. However, the District maintained that staff has communicated verbally with parents numerous times including in a meeting on February 4, 2008, concerning its plan for providing compensatory services. The District and parents also have disagreed about the amount of time required to make up for loss of services. Parents disagreed with data provided by the District on November 20, 2007, showing that the speech language pathologist had delivered 110 minutes of instruction. Subsequently, the District noted in its Response letter to the Department dated March 3, 2008 that the speech and language pathologist determined that the District needed to provide 175 minutes of compensatory services to make up for the delay in starting services.

In its initial April 25, 2008 order, the Department ordered the District to provide 150 minutes of compensatory services, and the District informed the Department on

September 17, 2008, that the District has complied with this requirement. After additional review, the Department determines that it should have ordered a total of 175 minutes of services. Therefore, the Department orders the District to provide an additional 25 minutes of compensatory speech and language instruction, and that these services are to be provided outside the student's regular school schedule.

### **3. Review and Revision of the IEP**

The parents alleged that the District did not revise the IEP to address the lack of expected progress in the student's annual goal of study skills, specifically the use of the homework planner. The District disputed this allegation and stated that homework planner objectives written on the IEP reflected the student's needs.

The IEP team agreed to start with the standard homework planner at the beginning of the fifth grade year. When the student was not completing the planning sheets as well as expected, the District revised the goal and increased instruction and support. Data taken in fifth grade so far indicates that although the student is not completely independent in using the planner sheets, the student does complete the majority of assignments. The Department does not substantiate the allegation.

### **4. Evaluation Data as basis for Instruction**

The parents alleged that the District did not use data collected from social skills inventories to develop measurable goals for social skills instruction for the September 17, 2007 IEP. The parents further alleged that the IEP team did not consider the data from the social skills inventories and how it was relevant to the progress or lack of progress the student made in social skills over the past three years. The District acknowledged that the parents and other members of the team should have received a copy of the evaluation report on the social skills inventories on or before the September 17, 2007 IEP meeting. The District maintained, however, that the staff took into consideration the social skills deficits from the rating scales in the evaluation report when it developed the proposed goals and objectives in the student's IEP.

In this case, the District evaluated the student in second grade using two social skill inventories. The District re-evaluated the student in fourth grade during the spring of 2007 to provide objective data on the student's progress. The ESD psychologist, who scored the original assessments, scored the new assessments completed in the Spring of 2007. At the preplanning meeting for the IEP on September 11, 2007, the parents requested that the District provide the social skills test results at the IEP meeting. The District did not provide the test results to the parents until November 8, 2007—several weeks after the IEP had been developed. At a November 8, 2007 meeting, the parents expressed their concern about the lack of measurability of the social skills goals and requested that data be collected and distributed in November and December, 2007.

The Department substantiates the parents' allegation. The District agreed to do the social skills testing but failed to provide the results to the IEP team at the

September 17, 2007 IEP meeting. The District also failed to provide the evaluation report as requested by the parents. It is not an adequate response that District staff considered these data when they proposed the social skills goals and services to the team. The entire IEP team, including the parents, never had an opportunity to consider and discuss this information before the IEP was developed. The Department is requiring that the District consider the data from these social skills inventories and all subsequently gathered data in all future IEP meetings to ensure that the goals, objectives and services in the IEP are based on measurable data as required under the evaluation procedures in the student's IEP.

Although the District should have considered this information, the Department does not find persuasive evidence that this omission resulted in a loss of appropriate services in the area of social skills instruction. Therefore, the Department does not order compensatory services as corrective action in this case.

## 5. Parent Participation

The parents alleged that the District limited their opportunity for parental participation by not delivering the final copy of the IEP until 70 days after the original IEP meeting. The District disputed this allegation in part, noting that parents made many requests for changes and that, "while making repeated changes to the IEP and having multiple meetings, the final copy of the IEP was delayed".<sup>14</sup> The District also noted that "in retrospect, all of these meetings and changes should have been stated as revisions to the 9/17/2007 IEP and noted on the cover sheet."<sup>15</sup> The Department agrees with this conclusion.

The school district must give the parent a copy of the IEP at no cost to the parent.<sup>16</sup> State and federal regulations do not specify a specific timeline for providing a copy of the IEP to the parent, but the Department has taken the position that there is an implied requirement of timeliness in getting a copy of the IEP to the parents."<sup>17</sup> Aside from this requirement, the District is required to have an IEP in effect at the beginning of the school year<sup>18</sup>, and student's IEP from the previous year had lapsed.

The District and the parents mutually agreed to use a past practice of meeting once to write the IEP and then to complete the IEP using emails, short meetings and multiple conversations. However, it is clear that the process was lengthy and that the multiple changes caused confusion for both the District and the parents. The team discussed a wide variety of issues at the original IEP meeting, agreed immediately on some of the issues, but did not resolve all of them. The District allowed the review and revision process of the IEP to continue beyond a reasonable time period, and consequently, it is difficult to track when and how all of the components of the IEP were written and when

---

<sup>14</sup> District letter of response to allegations, pp. 4, March 3, 2008

<sup>15</sup> District letter of response to allegations, pp. 4, March 3, 2008

<sup>16</sup> OAR 581-015-2195(5)

<sup>17</sup> *Corvallis School District*, Complaint 07-054-026, October 15, 2007.

<sup>18</sup> OAR 581-015-2220(1).

consensus was achieved. The District did not provide or deliver a final copy of the final IEP until November 26, 2007.

The Department substantiates the parent's allegation. The District should have given the parents a written copy of the September 17, 2007 IEP document within a reasonable time and then used the amendment process to revise the IEP. The district's continuing revisions and draft IEPs resulted in failure to have a complete IEP in effect at the beginning of the school year.

## **6. IEP Implementation (removal from general education)**

The parents alleged that the District removed the child from the general education classroom for more time than was specified in the IEP. The District pointed out that staff tried to arrange the student's schedule so that the student did not miss homework planner time in the classroom or other subjects the student particularly liked such as library, computer lab, and art.

The student's IEP must indicate the extent, if any, to which the child will not participate with non-disabled children in the regular class, the general education curriculum, and extra curricular and nonacademic activities and must include an individualized statement explaining why full participation is not possible.<sup>19</sup> In this case, the student's IEP identified the location of services as 'LRC/regular class' rather than quantifying the amount of time the student would spend in the regular classroom versus the LRC. The services summary and the District service logs contained sufficient information to calculate the time the student would spend in the regular classroom versus the LRC.

The Department substantiates the parent's allegation. According to District documentation, the student was removed from the general education classroom for speech, language, self-awareness and self-advocacy from the beginning of the school year through April 1, 2008, for a total of 131 more minutes than specified in the services summary.

The District recently completed inservice training on the correct manner to complete the nonparticipation justification provision in an IEP as part of its corrective action for a separate complaint which was contemporaneous with this complaint. As part of corrective action in Case No. 07-054-026, the District provided comprehensive training on November 1, 2007, regarding the development, review, and revision of IEP content, guidelines for completing the Oregon Standard IEP, including nonparticipation justification, placement, and the requirements for providing prior written notice. This training followed filing of this complaint. The Department considers this training sufficient to prevent a recurrence of the violation.

---

<sup>19</sup> OAR 581-015-2200(1)(f).

## 7. Prior Written Notice

School districts must give parents prior written notice when the district “proposes to initiate change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.” Prior written notice must be given after a decision is made and a reasonable time before the decision is implemented.<sup>20</sup> Districts must provide prior written notice of changes made at an IEP meeting, whether or not a parent is in attendance, if the change would be considered a change in the provision of a free appropriate public education to the child. Typically, this would involve a substantial change such as when an area of service is added or discontinued. Minor changes to an IEP are not considered a change in the provision of FAPE to the student.

### Social Skills Instruction

The parents alleged that the District failed to provide notice of refusal to implement suggested peer group instruction. The parents made repeated requests to the District to provide social skills instruction with a peer group of the same gender. On December 10, 2007, the parents requested that the District provide them with a written notice of its refusal to provide the social skills instruction on an individualized basis as outlined in the IEP.

The Department substantiates this allegation. The District told the parents it would research peer group instruction. However, the District failed to communicate to the parent in a timely manner its decision not to implement the peer group instruction. This failure to communicate prolonged the parents’ confusion about the District’s decision and delayed their ability to pursue an appeal of the District’s decision.

### Providing Information on Generalization Strategies

The parents alleged that the District specialist failed to provide written information with specific strategies twice a month for generalizing social skills instruction in other settings to parents and classroom teachers. Parents point out that a characteristic of autism is the inability to generalize across settings. The parents originally requested that the District specialist provide information on generalization strategies twice a month to parents and staff at the September 17, 2007 IEP meeting. On December 7, 2007, the parents requested written notice of the District’s refusal to provide the information.

The Department does not find an IDEA violation as to this allegation. The requirement for prior written notice applies to a district’s initiation or refusal to initiate any action concerning “identification, evaluation, or educational placement of the child or the provision of a free and appropriate public education to the child.” The parents’ request to be provided information about educational strategies does not fit within any of these categories, therefore the District was not under a legal obligation provide prior notice of its refusal.

---

<sup>20</sup> OAR 581-015-2310

## CORRECTIVE ACTION<sup>21</sup>

In the Matter of the Corvallis School District 509J  
Case No. 08-054-005

#	Action Required	Submissions <sup>22</sup>	Due Date
	<p><u>IEP Implementation of speech and language services:</u></p> <p>(a) The District shall confer with the parents to develop a plan for implementation of 25 minutes of speech and language compensatory education services in addition to the 150 minutes of services that the District has already provided. The District shall reasonably accommodate parents' preferences for scheduling these services.<sup>23</sup></p> <p>(b) The District does not have to provide make-up sessions for sessions scheduled but missed due to student absence. The District shall provide make-up sessions for services scheduled but cancelled due to provider illness or unavailability.</p> <p>(c) The District shall complete the provision of compensatory education services by April, 15, 2009.</p> <p>(d) The District and parent may agree in writing to modify any of the provisions (a) through (c).</p>	<p>After consultation with the parent and student, the District shall submit a plan for the provision of compensatory education services to the Department, with a copy to the parent. 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>The District shall notify the Department and parent in writing when compensatory services are completed.</p> <p>The District shall submit to the Department any written agreement to modify the provisions of this</p>	<p><b>Plan due November 21, 2008</b></p> <p><b>Final report due: April 24, 2009</b></p>

<sup>21</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030 (13). The Department requires timely completion. 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).

<sup>22</sup> 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

<sup>23</sup> To “confer” does not necessarily mean to have a meeting – it could be by phone, by exchange of drafts, etc. However, if the parent and District agree, the Department will reimburse the district for the use of a neutral facilitator for a meeting. For more information, contact Steve Woodcock, (503)947-5797.

#	Action Required	Submissions <sup>22</sup>	Due Date
	(e) Compensatory services shall be provided by qualified staff.	compensatory education plan within a week of the agreement.	
	<p><u>Evaluation Data as a Basis for Instruction:</u></p> <p>The District shall fully consider in its next IEP meeting all existing social skills data, including data discussed in this Order that the IEP team failed to consider at the September 2007 IEP meeting and all relevant data developed since that time.;</p> <p><u>IEP implementation (Removal from general classroom)</u></p> <p>Ensure in the IEP developed in the spring of 2008 that the nonparticipation justification in the student's IEP is correctly completed.</p>	<p>Submit to the Department all documents and data considered by the District in developing social skills instruction for the student.</p> <p>Submit a copy of the 2008 IEP to the Department</p>	<p><b>Within 10 days of the IEP meeting date and not later than April 24, 2009</b></p> <p><b>Within 10 days of the IEP meeting date and not later than April 24, 2009</b></p>

Dated: October 9, 2008

---

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

Date Mailed: October 9, 2008

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.