

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Central Point School
District 6

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 08-054-021

I. BACKGROUND

On May 30, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school in the Central Point School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030.

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.¹ On June 12, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On July 3, 2008, after the Department allowed the District's extension request, the District submitted its *Response* to the allegations and sent the parents a copy.

The Department's complaint investigator reviewed the information submitted by the District, and determined that on-site interviews were needed. However, due to unavailability of District staff, the Department extended the time-line for the investigation by a total of 63 days. On September 10, 2008, the investigator conducted on-site interviews with the District's staff, including two special education teachers, a transition specialist, a speech language pathologist, an audiologist and the special education director. The investigator also met with the parents and the student on September 10, 2008. The Department's investigator reviewed and considered all of the documents and interviews.

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).

¹ OAR 581-015-2030 (12); 34 CFR §§300.151-153.

| No. | Allegations | Conclusions |
|-----|--|--|
| | <p><u>School District Jurisdiction</u></p> <p>The District challenged the Department's jurisdiction over this complaint on the basis that no interdistrict transfer agreement existed allowing the student to attend school in the Central Point School District.</p> | <p>The Department finds that the residence of the student was not concealed by the parent or the student, and that the student did apply for transfers for at least part of her high school years. The District and the parent should have assured that the written consent of the affected districts was obtained. The District counted the student in its Special Education Child Count (SECC).</p> <p>The Department finds that the student should have been considered a resident of the Medford School District and that Central Point submitted an inaccurate special education child count in December 2007.² The Department does not sustain the District's challenge to the Department's jurisdiction over this complaint.³</p> |
| (1) | <p><u>Evaluation, Placement, and IEP Services:</u></p> <p>The parent alleges that evaluations of the child did not accurately identify the child's deficits and needs (inflating the child's IQ by some 20 points), resulting in an inappropriate IEP that does not provide Free Appropriate Public Education (FAPE). The parent further alleges that a recent "psychodiagnostic" evaluation obtained through Vocational Rehabilitation accurately identified the child's deficits and needs, including cognitive abilities within the Mildly Deficient to Borderline range.</p> | <p><u>Not Substantiated</u></p> <p>The Department finds that the discrepancies in the November, 2005 and March, 2008 evaluations may be attributed to differences in the evaluation tools used by the administering psychologists. The student's IEP goals, objectives, accommodations and modifications addressed the student's intellectual abilities and were designed to allow the student to make progress and to receive educational benefit.</p> <p>The Department does not substantiate the allegation that the student's IEPs did not provide FAPE. The Department does not substantiate the allegation that the November, 2005 evaluations inaccurately identified the child's deficits and needs.</p> |

² The Department requires the District to submit a correction of its December 2007 SECC immediately by contacting Alex Toth, Data Analyst at alex.toth@state.or.us.

³ OAR 581-015-2030

| No. | Allegations | Conclusions |
|-----|---|---|
| | | |
| (2) | <p><u>Graduation and Placement</u></p> <p>The parent alleges that as of November of 2007 the child's IEP provided for graduation with a regular high school diploma, despite the absence of the basic academic skills for a regular high school diploma.</p> | <p><u>Not Substantiated</u></p> <p>The Department finds the District was not required to change the student from a regular to a modified diploma track until it did so, in November 2007, early on during 12th grade. The Department does not substantiate the allegation that from May 20, 2007 to November 19, 2007 the student was inappropriately on a regular diploma track.</p> |
| (3) | <p><u>IEP Content: Transition Services</u></p> <p>The parent alleges that the child's IEP did not contain an adequate transition plan. The parent further alleges that the child is graduating with a modified diploma and does not know how to register for school in the fall, and that the District has planned no activities for the future. The parent further alleges that the child does not have the skills the child should have learned during transition to prepare the child for adulthood.</p> | <p><u>Not Substantiated</u></p> <p>The Department does not substantiate the allegation that the student's IEPs did not contain an adequate transition plan, nor does the Department substantiate the allegation that no activities are planned for the future.</p> |
| (4) | <p><u>Evaluation and Reevaluation</u></p> <p>The parent alleges that, based upon the recommendation of the child's psychologist, she requested a speech language evaluation approximately seven weeks prior to the filing of the complaint in this case and that the evaluation has not been done and has not been scheduled, as of June 2, 2008.</p> | <p><u>Substantiated, in part.</u></p> <p>The District did fail to provide notice to the parent of this refusal in a timely fashion. The Department finds that the parent, the District, and the child's psychologist did not communicate clearly with each other about the type and extent of the speech language evaluation being requested or refused. While a district is not compelled to complete a requested evaluation, it</p> |

| No. | Allegations | Conclusions |
|-----|--|---|
| | | must provide a timely prior written notice of its decision. ⁴ In accordance with the requirements of consent, when the student seeks enrollment in the resident district, the District must forward the information regarding the requested evaluation(s) to the student's resident district. See corrective action. |
| (5) | <p data-bbox="289 579 797 611"><u>Nonacademic services: Transportation</u></p> <p data-bbox="289 646 862 743">The parent alleges that the District failed to provide transportation for the child for transition activities, such as a job search.</p> | <p data-bbox="898 579 1130 611"><u>Not Substantiated</u></p> <p data-bbox="898 646 1419 1010">The District provided transition opportunities within walking distance of the school. The District provided assistance in making outside employment or work experiences available to the student, and ensured that the student could take advantage of the public bus system, if needed. The District was not required to provide further transportation assistance under the circumstances of this case.</p> |

III. FINDINGS OF FACT

Background:

1. The student is presently nineteen years old and completed 12th grade during the 2007-2008 school year. The student obtained a modified diploma from the District in June 2008. The student is eligible for special education as a student with a learning disability, with initial eligibility determined in September of 1995.
2. Evaluations performed by the District's school psychologist in November 2005 reveal a full scale score in the low average range. The psychologist administered a "Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV)." The November 2005 evaluations included an Adaptive Behavior evaluation, with the student's former special education teacher (during 9th, 10th and 11th grades) as respondent. The adaptive behavior evaluation shows an "Adaptive Skills Quotient SS of 85". The evaluation states that the student's "communication skills, her ability to take care of herself and her basic needs, and her social skills fall within the average range when compared with others of her age. Work ethic and attitude, self-direction, and [the student's] ability to organize her leisure time, fall into the low average range, i.e. these areas are more in keeping with [the student's] overall ability level. Areas of concerns are [the student's] concepts of health and safety, her ability to function

⁴ OAR 581-015-2110(2)(C)

adequately in the larger community including the understanding of money, time, and transportation, and her ability to apply academic skills to her overall functioning.”

Graduation and Placement

3. During 9th, 10th and 11th grades, the student participated in regular education coursework, with no modifications and with accommodations (included in the student’s IEPs) such as extra time, provision of class notes, and taking tests in the resource room. The student also participated in the Youth Transition Program, which consisted of the student coming to the resource room for two or three periods each semester for academic and transition support. During 9th, 10th and 11th grades, the student spent most of her time in the resource room receiving academic support for her regular classes. The student achieved passing grades in all of her coursework during 9th, 10th and 11th grades, except for one semester of pre-algebra during the first semester of 11th grade. The student’s November 21, 2006 IEP notes that the student “has not met district and/or state assessments” and that the student “has passed all of her classes in high school” and has “earned 27 credits (a minimum of 48 are required for graduation. She has an accumulated grade point average of 2.24.” The student remained on a regular diploma track through 11th grade.
4. Early on during 12th grade, the student’s difficulties in math and her inability to pass math even with accommodations, led the team to discuss placing the student on a modified diploma track. At the student’s November 19, 2007 IEP meeting the team determined, with the agreement of the parent, that the student would be placed on a modified diploma track. The PWN issued following the November 19, 2007 IEP meeting stated that the student would now work towards obtaining a modified diploma and stated that “the team determined that [the student] would benefit from additional academic and transition support until she is 21.” The Present Levels of Academic Achievement and Functional Performance portion of the student’s IEP states “Her writing and reading skills have improved but they are still far below those of her same age peers. [The student] takes a long time to understand a process in math and then her skill level may vary from day to day. She is repeating her pre-algebra class and still struggles with concepts that have been taught in class and then covered again in her academic support class. She works best in small groups or even in a one on one situation when material is very difficult. She uses a calculator in math and comes to the resource room to take tests given in her regular classes.” The IEP continued to provide for transition and academic support in the resource room for two classes per day.

Jurisdiction

5. The student and her family have not resided within the boundaries of the Central Point School District for several years. This fact was not kept secret from the District and at least one District staff member (the transition specialist) was aware of the student residing out-of-District since the student’s sophomore year. This District staff member understood that when the student moved the parents did an out-of-District transfer request. The special education director was personally not aware the student resides outside of the District until April of 2008. The special education director stated there are no transfer requests for the student for her junior and senior years. The parents reported completing transfer forms beginning with 9th grade for the student. The District included the student in its Special Education Child Count (SECC) as a resident student.

Evaluation, Placement and IEP Services

6. In March 2008, the student underwent a psychodiagnostic evaluation, following a referral from Vocational Rehabilitation in Medford. The psychologist administered the “Wechsler Adult Intelligence Scale, Third Edition (WAIS-III)” and the “Wechsler Individual Achievement Test, Second Edition (WIAT-II)”. The WAIS-III evaluation revealed a full scale intelligence score in the borderline average range. The evaluation states: “Full Scale IQ scores were in the bottom half of the Borderline range, while her Performance IQ score was slightly higher, on the dividing line between the Borderline and Low Average ranges. Overall, her performance on the WAIS-III clearly suggested that she has Borderline Intellectual Functioning.” The evaluator addressed the discrepancy between this evaluation and the student’s November, 2005 evaluation, stating “Overall, [the student’s] scores were somewhat lower than had been seen in testing with the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), from November 2004. In part, these decrements might be due to psychometric differences between the WISC-IV and the WAIS-III, particularly since the WAIS-III was designed for use in adults, and [the student] remains somewhat delayed in her development.”
7. During the on-site investigation, the school psychologist who administered the November 2005 evaluation agreed with the evaluator who administered the March, 2008 evaluation concerning the reasons for the discrepancies in the evaluations. The school psychologist noted that the Weschler Intelligence Scale for Children (WISC) is designed for children up to age 17 and that the Weschler Adult Intelligent Scale (WAIS) is designed for persons 16 of years or over, and that the WAIS is designed more for an adult student. The school psychologist stated that this sort of a discrepancy is not unusual and noted that the subtests are different in the two evaluations.
8. The student’s IEPs⁵ have consistently included information about the student’s evaluations and classroom performance levels. The student has received academic support in the resource room since 9th grade, for at least one class period.

IEP Content: Transition Services

9. The student’s November 22, 2005 IEP (adopted during 10th grade, after the student turned age 16) provides the following transition goal: “[The student] will complete credits toward a regular high school diploma and continue volunteering at CATS. [The student] will complete Job Council application process. [The student] will complete cooking projects such as brownies and pancakes”. This goal provides the following evaluation procedures: “Student Interviews, Teacher Observations, Report Cards, Progress reports and Transcripts.”
10. The student’s November 21, 2006, IEP (adopted during 11th grade) provides the following transition goal: “Vocational/Career Education. [The student] will complete credits toward a regular high school diploma and explore post secondary opportunities”. The goal page includes the following Activities or Strategies: “[The student] will schedule one hour of school and/or recreational reading each day after school. [The student] will attend RCC Academy day. “

⁵ Statements of Present Levels of Academic and Functional Performance (PLAAFP) addressed below grade level performance and formal assessments of cognitive abilities.

11. The student's November 19, 2007, IEP (adopted during 12th grade) provides the following transition plan: "[The student] will complete required credits for a modified diploma needed to graduate and prepare her for post secondary success". The course of study (to assist the student in reaching post-secondary goals provides: "[The student] will take courses of interest in C.A.H.P.S. that will assist her in making decisions about post secondary jobs or future training needs. This will include an internship at Head Start every Wednesday during her senior year. [The student] will also access community resources for vocational experiences through the help of the transition specialist. She will also be exposed to English/Math transition classes that focus on life skills applications." The November 19, 2007 IEP includes four transition goals, adopted with the agreement of the parent, as follows: 1. "[The student] will demonstrate academic knowledge and skills required for successful employment by demonstrating understanding of a resume, cover letter and different types of applications as well as time concepts relating to arrival/departure times and how it pertains to interactions/schedules throughout her day. This will also include appropriate responses and interactions in the work force." 2. "Mathematical Problem Solving: [the student] will apply and adapt a variety of appropriate strategies to solve problems relating to everyday life situations including: learning how to balance a checkbook, calculate hours to \$ paid per hour, and successfully recognize correct change up to \$20.00." 3. "Reading: [The student] will listen to, read, and understand a wide variety of informational and narrative text across the subject areas, applying comprehension strategies as needed. She will focus on identifying different elements of the newspaper and how they relate and can be used in her life along with how to manipulate a phone book to find necessary information. It will also include brochures and manuals found in different work sites [the student] is introduced to." 4. "Writing: [The student] will communicate supported ideas across the subject areas, including relevant examples, facts, and details appropriate to audience and purpose that engage reader interest; organize information in clear sequence, making connections and transitions among ideas, sentences, and paragraphs; and use precise words and fluent sentence structures that support meaning. This will focus on resumes, cover letters, e-mails and other forms of writing involved in the workforce."
12. During the on-site investigation, the transition specialist provided a timeline that reveals: " In September of 2007 the student and transition specialist discussed an internship at Head Start; In October 2007 the student participated in a day of job shadowing at local businesses (part of local activities during October's National Disability Awareness Month); In November of 2007 the transition specialist discussed the student's opportunity to apply for Vocational Rehabilitation services, a good resource for finding a job after graduation; In December 2007 the student applied for Vocational Rehabilitation services through the high school's Youth Transition Program; in January 2008, discussed increasing the student's hours at Head Start. In January 2008, the student attended Rogue Community College's Academy (a six-hour tour designed to guide students with disabilities through the college registration process). In January 2008, the student states she wants to look for another work experience as the Head Start position is like a baby-sitting job. In January 2008, the transition specialist discussed with Vocational Rehabilitation staff short-term and long-term supports for the student. In February 2008 the transition specialist evaluated the student's Head Start work experience. In February 2008 the student's transition needs were discussed and the meeting participants, including the parent, agreed to further evaluation of the student. In February 2008 to March 2008, the student is dissatisfied with her Head Start work experience and arrangements are made for a work experience at a local veterinarian clinic, and the student does this for six week, one day each week for two hours. In April 2008 the student completes the veterinarian clinic work experience. The supervisor thinks the

student could benefit from a paid summer position and tells the student to call in June if interested, but the student does not call despite reminders from the transition specialist. In April 2008 the student attended a Goodwill work assessment tour. In May 2008, the student stated she has not decided whether to participate in a paid work assessment at Goodwill, and the student is still undecided every time the transition specialist contacts the student. In June 2008, the transition specialist is informed by the student that the student's parent called a month earlier and said she was not interested in the paid work assessment for the student. In June 2008, the transition specialist contacted the parent by e-mail to discuss the importance of the work assessment and the transition services available the following school year. The e-mail discusses the student's lack of follow through with the summer job possibility at the vet clinic in June and July 2008, the transition specialist, by e-mail, telephone and in person, provided job leads and assistance with a cover letter and updated resume, and transportation training.

13. The transition specialist's also reported assisting the student by registering and accompanying her to a "Work Readiness Alternative Workshop", and that the student called the transition specialist and left a message about an upcoming interview for a vet assistant job in Jacksonville and asked if the transition specialist would drive her to and from work on the weekends. The transition specialist left a message asking for the day and time of the interview so they can work out the bus route. The transition specialist also left a message with the parent explaining that transportation on weekends is the responsibility of the student or her family and that during the week the public bus can be used. The transition specialist again offered to assist the student with the bus route to and from the job site, but the student provides only vague further communication about the vet interview. In July 2008, the student and parent requested another Goodwill work assessment tour, but this did not occur for several reasons, including that the student wanted to take the summer off. In July 2008, the parent determines that the student should close with Vocational Rehabilitation and Vocational Rehabilitation closes the student's file with them on this date.
14. The transition specialist also stated that from January 2008 through mid-June 2008, the student attended hour long transition skills instruction three times a week, was provided with instruction on budgeting, career planning, community work experiences, mock job interviews, resume and cover letter writing, social skills, scholarship application assistance and post-secondary education information.

Evaluation and Reevaluation

15. The March 2008 evaluation included an auditory processing evaluation referred to as a "SCAN-A". The evaluating psychologist stated that the student "seems to have an auditory processing deficit that may be contributing to her difficulties with reading and writing. She should be evaluated by a speech-language therapist who is well experienced in this area, since it is possible that remedial efforts could prove helpful." At an IEP meeting on April 17, 2008, the IEP team, including the parent, agreed to follow the recommendation and agreed to evaluate the student for a "speech and auditory processing evaluation". During the on-site investigation, it was made clear that the District and the parent intended only an auditory processing evaluation, and not a more general speech/language evaluation. On the day following the meeting (April 18, 2008), the District's speech language pathologist (SLP) provided a copy of the March, 2008 evaluation to an audiologist as part of the referral process for the auditory processing evaluation. Also on April 18, 2008, the audiologist responded to the SLP by e-mail noting that the SCAN-A is the test the audiologist would give and that should only be given annually. The audiologist stated an appointment would

not be scheduled for the student. The SLP was under the impression that the audiologist would contact the parent concerning the inappropriateness of administering the SCAN-A again, but the audiologist did not understand that she was to contact the parent. The audiologist also expressed concern, to District staff and during the on-site interview that the student's low intellectual functioning would make it difficult to perform well on the test and the audiologist would thus be concerned about the reliability of the auditory processing evaluation. On July 1, 2008, the District provided notice to the student of the refusal to initiate the auditory processing evaluation.

Nonacademic services: Transportation

16. During the on-site investigation, the parent clarified that they worked with Vocational Rehabilitation to ensure that the student had a bus pass and knew how to use it. The records provided by the District shows that Vocational Rehabilitation issued bus passes to the student in April, May and June 2008. The parent stated that the dispute concerning transportation arose about transportation during evenings and weekends to apply for and go to jobs. In an e-mail message on February 29, 2008, the transition specialist noted that "no transportation is offered by the school" and that "any job sites farther than reasonable walking distance requires the student to figure out the transportation details."
17. The issue of transportation appears to have come up only as concerned an interview for a possible job in Jacksonville and in discussing transition/work opportunities generally. The transition specialist stated in an e-mail to the parent and during the on-site investigation that she would not sign an insurance waiver in order to transport students in her private vehicle.

IV. DISCUSSION

Jurisdiction

In its Response in this case, the District "challenges the jurisdiction of the Superintendent to levy this complaint against Central Point School District No. 6", and argues that the District "only has an obligation to provide services to student's who are residents of the District, citing

OAR 581-015-2040. This regulation provides:

Free Appropriate Public Education (FAPE) and Age Ranges

(1) School districts must provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-015-2045. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.

(2) An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year.

(3) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to 581-015-2440.

(4) For purposes of this rule, residency is determined in accordance with ORS chapter 339.”⁶

The District also asserts in its Response that the student and parent’s residence changed about August 2007. However, the District is mistaken, in that it appears the residence changed no later than the student’s freshman year in high school. The student has continually attended school in the District since that time. The Department finds that the residence of the student was not concealed by the parent or the student, and that the student did apply for transfers for at least part of her high school years. Although the District and the parent should have assured that the written consent of the affected districts was obtained, the District counted the student in its Special Education Child Count (SECC). The Department sustains the District’s challenge to the Department’s jurisdiction over this complaint.

Evaluation, Placement and IEP Services

The parent alleges that the student’s deficits and needs were not accurately identified in the evaluations of the child and that this resulted in an inappropriate IEP that does not provide FAPE.

Under the IDEA, school districts must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a Free Appropriate Public Education (FAPE). 34 CFR §300.341 defines FAPE as “special education and related services” that are: provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and are provided in conformity with an IEP. “See 20 USC Sect. 1402(3). A school district meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefit. See *Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 US 176, EHLR 553:656(1982). A written IEP must be in effect for each eligible child at the beginning of each school year, and school districts must implement the services, modifications and accommodations identified on each student’s IEP. OAR 581-015-2220.

In this case, the Department finds that the discrepancies in the November, 2005 and March, 2008 evaluations may be attributed to differences in the evaluation tools used by the administering psychologists. The student’s IEPs since the beginning of high school have recognized the student’s low intellectual abilities, and the IEPs have provided, at first, accommodations to allow the student to succeed in the regular program, and during the student’s 12th grade, modifications to the student’s academic curriculum, all designed to allow the student to receive educational benefit. The Department does not substantiate the allegation that the student’s IEPs do not provide FAPE, nor does the Department substantiate the allegation that the November, 2005 evaluations inaccurately identified the child’s deficits and needs.

Graduation and Placement

The parent alleges that as of November 2007 the student’s IEP provided for graduation with a regular high school diploma, despite the absence of the basic academic skills for a regular high school diploma.

Generally, the District may provide a modified diploma track, under OAR 581-015-2040 and OAR 581-015-2045.

⁶ ORS 339.133 discusses residency of students for school purposes.

The Department finds that the IEP team, with the agreement of the parent, placed the student on a modified diploma track on November 19, 2007, in recognition of the need to modify the student's math requirements and the need to continue academic and transition services until age 21. The Department may only address matters from May 30, 2007 (one year prior to the filing of the complaint in this case), thus, the issue of the student inappropriately being on a regular diploma track is limited to the time period from May 30, 2007 to November 19, 2007. The Department finds that the student's inability to pass the requisite math course did not become apparent until 11th grade (the 2006-2007 school year). Additionally, the student's November 21, 2006 IEP notes that the student "has not met district and/or state assessments" and that the student "has passed all of her classes in high school" and has "earned 27 credits (a minimum of 48 are required for graduation. She has an accumulated grade point average of 2.24." The student remained on a regular diploma track through 11th grade. Some school districts tally credits in terms of "semester credits". Half of one credit equals one semester of successful completion of a course's requirements. If 48 "semester credits" are required, then that would equate to 24 regular credits which are the requirements of the Central Point SD diploma. Districts, like Central Point, may require more credits than the Oregon Diploma in OAR 581-022-1130. The Department finds the District was not required to change the student from a regular to a modified diploma track until it did so, in November 2007, early on during 12th grade. The Department does not substantiate the allegation that from May 20, 2007 to November 19, 2007 the student was inappropriately on a regular diploma track.

IEP Content: Transition Services

The parent alleges that the student's IEP did not contain an adequate transition plan, and that the student does not know how to register for school in the fall and that the District has planned no activities for the future.

OAR 581-015-2200(2) provides

581-015-2200

Content of IEP

* * * * *

(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.

(b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first."

The Department finds that the transition plans and goals provided in the student's November 21, 2006 and November 19, 2007 IEPs constitute appropriate measurable postsecondary goals and transition services as required by OAR 581-015-2200(2). The transition goals were written with the approval of the parent, and appear appropriate to help the student obtain skills to assist with her transition to adult life, including skills to engage in seeking employment. The investigation also revealed that transition services, as set forth in the transition plan in the November 19, 2007 IEP, were provided by the District with the assistance of the transition specialist, who provided various resources for the student to obtain work experiences and paid employment. The fact that the student or the parent determined at times to not follow through on certain work experience or employment opportunities, despite repeated reminders from the transition specialist, does not provide a basis for finding that the District failed to provide adequate transition services in that regard. The Department does not substantiate the allegation that the student's IEPs did not contain an adequate transition plan, nor does the Department substantiate the allegation that no activities are planned for the future.

Evaluation and Reevaluation

The parent alleges that, base upon the recommendation of the child's psychologist, she requested a speech language evaluation approximately seven weeks prior to the filing of the complaint in this case and that the evaluation has not been done and has not been scheduled, as of June 2, 2008.

OAR 581-015-2105 provides:

581-015-2105

Evaluation and Reevaluation Requirements

(1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:

(a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;

(b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;

(c) Changing the child's eligibility, or

(d) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.

“* * * *

(4) Reevaluation:

(a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection

(b) and OAR 581-015-2110(2):

(A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(B) If the child's parents or teacher requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

(5) Summary of Achievement and Performance: For a student whose eligibility terminates due to graduation with a regular diploma or exceeding the age of eligibility, a school district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals."

OAR 581-015-2110(5)(b) provides that "A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2095(3)(c)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

In this case, at the April 17, 2008 IEP meeting, the IEP team, including the parent, agreed to follow the recommendation of the March, 2008 evaluation that the student be evaluated for an auditory processing deficit. The student (who is over age 18) signed a consent for a "speech and auditory processing evaluation". However, when the audiologist to whom the request for evaluation was referred reviewed the psychologist's evaluation and learned that the psychologist had already performed the very evaluation the audiologist would have performed, she advised the District's SLP of this fact and stated it would be inappropriate to repeat the "SCAN-A" auditory processing evaluation. At that time, the District's SLP believed the audiologist would contact the parent about not scheduling the evaluation, but the audiologist did not know she was expected to contact the parent. The District did not issue a PWN concerning the audiologist's belief that it would be unproductive to conduct another auditory processing evaluation at this time until June 30, 2008. The District also wrote a letter to the student on July 1, 2008, also advising of its refusal to initiate the auditory processing evaluation.

The Department finds that under the circumstances the failure to conduct another, identical auditory processing evaluation to the evaluation performed in March, 2008 is reasonable. The Department also notes that only an auditory processing evaluation was envisioned by the IEP team, not a full speech/language evaluation. The Department does not substantiate the allegation that the District violated the IDEA by failing to conduct the evaluation. However, the District did fail to provide notice to the parent of this refusal in a timely fashion. See Corrective Action.

Nonacademic services: Transportation

The parent alleges that the District failed to provide transportation for the child for transition activities, such as a job search.

OAR 581-015-2070(2) provides:

581-015-2070

Nonacademic Services

* * * * *

(2) Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.”

The Department finds that the District provided adequate transportation services in conjunction with transition services. The District assured that the student received a bus pass (from Vocational Rehabilitation) and the student received training in how to use the bus, along with offers from the transition specialist to assist with mapping bus routes for the student in support of her transition activities. The above-quoted regulation does not appear to require actual District transportation to job interviews and employment in other cities in support of transition services. The District provided transition opportunities within walking distance of the school. The District provided assistance in making outside employment or work experiences available to the student, and ensured that the student could take advantage of the public bus system, if needed. The District was not required to provide further transportation assistance under the circumstances of this case.

V. CORRECTIVE ACTION⁷

In the Matter of Central Point SD 6
Case No. 08-054-021

| # | Action Required | Submissions ⁸ | Due Date |
|---|-----------------|--------------------------|----------|
|---|-----------------|--------------------------|----------|

⁷ 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).

⁸ Initial Verification: The Department will review the submitted documents. Corrective action 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) 947-5752, Ext. 2311; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156

| | | | |
|-----|--|---|--|
| (1) | <p>The District did fail to provide notice to the parent of this refusal in a timely fashion. The Department finds that the parent, the District, and the child's psychologist did not communicate clearly with each other about the type and extent of the speech language evaluation being requested or refused. While a district is not compelled to complete a requested evaluation, it must provide a timely prior written notice of its decision.⁹</p> <p>In accordance with the requirements of consent, when the student seeks enrollment in the resident district, the District must forward the information regarding the requested evaluation(s) to the student's resident district.</p> | <p>Submit evidence to the Department that</p> <ul style="list-style-type: none"> a. the student has sought enrollment in the resident District; and b. Central Point has forwarded the information regarding the parent's requests for evaluation.¹⁰ | <p>Within 20 days of the receiving information that the student has sought enrollment in the resident district.</p> |
|-----|--|---|--|

Dated: September 30, 2008

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

Mailing date: September 30, 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.

⁹ OAR 581-015-2110(2)©

¹⁰ The District may use this order as part of the information concerning the request for evaluation.