

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Oregon City)	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 08-054-026
School District)	
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)	

I. BACKGROUND

On June 13, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in the Oregon City School District (District). The parent requested that the Department conduct a special education complaint 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. There were no exceptional circumstances warranting an extension, and this order is issued within 60 days of receipt of this complaint.

On June 26, 2008, the Department sent a *Request for Response* to the District identifying the specific allegation in the complaint the Department would investigate. The District submitted its timely *Response* to the allegations, and made a copy available to the parent. On July 22, 2008, the Department’s complaint investigator conducted an on-site investigation with the parent. The Department’s complaint investigator determined it was not necessary to conduct interviews with District staff in order to resolve the issue in this complaint.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-300.153 and OAR 581-015-2030. The allegation and the Department’s conclusion are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

#.	Allegation	Conclusion
(1)	<p><u>Parent Participation in Resolution Meeting:</u></p> <p>The parent alleged that the District violated IDEA by not allowing her to participate in the selection of the relevant members of the IEP team to attend a resolution meeting.</p>	<p>Not Substantiated:</p> <p>The Department does not substantiate that the District did not allow the parent to participate in the selection of participants to attend a resolution meeting.</p>

III. FINDINGS OF FACT

1. The student resides within the District, and attended school within the District for part of the 2007-08 school year. The student has a seizure disorder and the District is conducting an evaluation to determine whether the student is eligible to receive special education and related services under IDEA.
2. On May 13, 2008, following a disagreement with the District regarding the provision of educational services to the student, the parent filed a due process hearing request with the Department.¹ The Department responded to the parent's request and provided her with information concerning the due process hearing process, including a copy of the Department's Procedural Safeguards Notice, October, 2007.
3. The parent and the District exchanged several emails concerning scheduling a resolution meeting related to the parent's requested due process hearing. On May 14, 2008, the parent sent an email to the District's special education director asking for "information pertaining to any resolution meeting the district determines it can agree to, as well as meeting participants, once you have had the opportunity to discuss things with [the District's attorney]. Also, please let me know if the district intends to have counsel present at the resolution meeting."
4. On May 15, 2008, the District's special education director responded to the parent's inquiries, clarifying that the date for the resolution meeting was Wednesday, May 21, 2008, and that he would be present at the meeting, together with the District's assistant director of special education. The District's assistant director of special education also served on the evaluation planning team that developed the evaluation plan for determining whether the student is eligible to receive special education and related services under IDEA.
5. On May 21, 2008, the parent participated with the District's director of special education and assistant director of special education in a resolution meeting.
6. The parent asserted in her June 13, 2008 complaint that she did not learn until after the resolution meeting had taken place that she had a right to participate in determining who would participate in the resolution meeting. The parent asserts that she would have included additional persons knowledgeable about her child's disability and the situation giving rise to her due process hearing request, including the nurse and principal at her child's school.

¹ The issue raised in the due process complaint filed by the parent was that the District failed to initiate an evaluation regarding the child's seizure disorder.

IV. DISCUSSION

Resolution Meeting

The parent alleges that the District violated IDEA by not allowing her to participate in the selection of the relevant members of the IEP team to attend a resolution meeting. The District disputes this allegation, noting that the parent did not request participation at the resolution meeting of individuals other than those the District indicated would be present.

IDEA states that: “the parent and the [school district] determine the relevant members of the IEP team to attend the [resolution] meeting.”² The Office of Special Education Programs provided commentary interpreting this regulation, stating that: “the IEP team may include, at the discretion of the parent or the [school district], other individuals who have knowledge or special expertise regarding the child. Therefore, such individuals could attend the resolution meeting if the [school district] or parent determined that such individuals are relevant members of the IEP team.”³

The parent contends that the District should have informed her that she had the right to participate in determining the individuals who would participate in the resolution meeting. The Department notes that the parent was provided a copy of the Procedural Safeguards Notice when she made her request for a due process hearing. Among other things, the Notice provides parents with information concerning due process hearings and the requirement for a resolution meeting. The Procedural Safeguards Notice details the resolution meeting process on page 21 and states:

“You and the school district determine the relevant members of the IEP Team to attend the [resolution] meeting.”⁴

The parent requested specific information concerning scheduling of the resolution meeting and who would participate. The District’s special education director responded to the parent’s questions the next day, informing the parent that he planned to attend the meeting along with the District’s assistant special education director. The student did not have an IEP team, as the student had not been determined eligible for special education and related services under IDEA. The District’s inclusion of the assistant special education director, a participant in the evaluation planning process, is a reasonable interpretation of the application of this provision to these circumstances.

There is no evidence that the District refused to allow the parent to include other participants in the resolution meeting. Rather, the District notified the parent in advance who would be participating for the District in the resolution meeting but did not ask the parent whether she wanted to include additional participants in the meeting or inform the parent of her right to participate in determining who would attend the resolution

² 34 CFR 300.510(a)(4); OAR 581-015-2355

³ 71 Fed. Reg. 46,701 (2006).

⁴ Oregon Department of Education, Procedural Safeguards Notice, pg. 21 (October 2007).

meeting. The parent contends that the District should have done more to ensure that she understood she could participate in the selection of the participants. However, the state and federal regulations on the resolution process do not specify how the parents and school district determine “the relevant members of the IEP team”⁵ to attend the resolution meeting. These regulations also do not expressly require that a district give any specific notice to parents about their right to participate in the determination of the relevant members of the IEP team to attend the resolution meeting. The Department notes that the Procedural Safeguards Notice informs parents of their right to participate in determining the participants for a resolution meeting. Based on these facts, the Department does not substantiate the parent’s allegation that the District did not allow the parent to participate in the selection of the participants for the resolution meeting.

While the Department does not find a violation of IDEA, the Department notes that the purpose of the resolution meeting is to offer school districts and parents an opportunity to resolve due process complaints without having to spend the time and money involved in a due process hearing.

V. CORRECTIVE ACTION

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The Department did not substantiate the allegation. Therefore, no corrective action is ordered.

Dated: August 8, 2008

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

Mailing Date: August 8, 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.

⁵ 34 CFR 300.510(a)(4); OAR 581-015-2355