

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Oregon City  
School District

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 08-054-030

**I. BACKGROUND**

On August 7, 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 August 14, 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*<sup>1</sup> to the allegations, and made a copy available to the parent. On September 10, 2008, the Department’s complaint investigator and a specialist from the Department conducted an on-site investigation with the parent. On September 12, 2008, the Department’s complaint investigator and Department specialist conducted an on-site investigation and interviewed the District’s Special Education Director and the Clackamas County ESD LEEP coordinator.

**II. ALLEGATIONS AND CONCLUSIONS<sup>2</sup>**

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

<sup>1</sup> The District’s *Response* included over 500 pages of documents and contained a copy of a document with personally identifiable confidential information regarding students not the subject of this complaint investigation. A copy of the District’s *Response* was provided to the parent who submitted this complaint. School districts must protect the confidentiality of personally identifiable information about students with disabilities. See OAR 581-021-0265. The Department concludes that the District improperly released confidential information to this parent concerning these other students. The Department referred this issue to the District’s Special Education Director for further action related to maintaining confidentiality of personally identifiable information.

<sup>2</sup> The written complaint also contained additional allegations that, if true, would be violations of IDEA. These additional allegations of violations of IDEA were not investigated because the Department determined that these allegations were the subject of a due process hearing under OAR 581-015-2345 and should be set aside until the conclusion of that hearing. The parent also alleged that the District’s failure to provide her with documents in large print as an accommodation to her disability constituted discrimination. This issue was not investigated because it does not state a violation of IDEA. The parent was informed of other options for pursuing her discrimination complaint.

#.	Allegation	Conclusion
(1)	<p><u>Access to Records:</u></p> <p>The parent alleged that the District unnecessarily delayed providing her with access to her son's educational records. Specifically, the parent alleged that the District did not timely respond to her June 9, 2008 request for access to her son's educational records, including records from June 6, 2008 assessments completed for her son.</p>	<p><u>Not Substantiated:</u></p> <p>The District provided the parent with access to her son's educational records within 45 days of her request, providing copies of education records, except test protocols, from the June 6 assessment, and making the test protocols available for the parent to review.</p>
(2)	<p><u>Notice of Procedural Safeguards:</u></p> <p>The parent alleged that the District did not take appropriate steps to ensure that it provided her with notice of procedural safeguards in the mode of communication she uses. Specifically, the parent alleged that she has a visual impairment and requires large print in order to read written materials.</p>	<p><u>Not Substantiated:</u></p> <p>The District was not required to provide the parent with Notice of Procedural Safeguards and, therefore, did not violate the IDEA by not providing access to the notice in large print.</p>
(3)	<p><u>Retaliation:</u></p> <p>The parent alleged that the District retaliated against her for filing a previous complaint.<sup>3</sup> Specifically, the parent alleged that the District retaliated against her for filing the previous complaint by:</p> <p>(a) Delaying providing her with access to her son's educational records; and</p> <p>(b) Not accommodating her need for large print written materials.</p>	<p><u>Not Substantiated:</u></p> <p>The Department did not find substantial evidence that the District retaliated against the parent for filing the previous complaint, because:</p> <p>(a) The Department concluded that the District did not delay providing the parent with access to her son's educational records and therefore did not take this adverse action alleged by the parent;</p> <p>(b) The Department did not find a causal connection between the lapses by District staff in providing the parent with large print written materials, and the filing of a previous complaint.</p>

<sup>3</sup> See ODE 08-054-026 (Filed 6/13/08)

### 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. In May 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.<sup>4</sup> 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.
2. On May 14, 2008, the parent sent an email to the District's Special Education Director requesting that he: "provide all written correspondent to me in large format, as I have vision handicaps that make it impossible for me to read standard text size. That is why I have stated multiple times that I prefer email communication (I can enlarge the text to a size I can actually see)." The Special Education Director responded to the parent via email that same day, stating: "I will continue to send letters, via US Mail, to those questions that require expanded discussion. I will type them in larger type if you will tell me what size font your visual impairment requires you to have." The parent responded via email May 14, 2008 that: "A font of 14 is acceptable (with 16 being preferred)."
3. The Special Education Director reported that the District has a policy concerning providing accommodations such as the large font requested by the parent. The Special Education Director describes the policy as requiring an accommodation plan be developed upon receipt of medical documentation regarding the need for disability-related accommodation, and a determination regarding the effectiveness of any mitigating devices. The Special Education Director indicated that he did not follow this policy in agreeing to provide the parent with a large font size because he was trying to act in a cooperative manner and facilitate communication with the parent, and viewed the accommodation of a large font size as relatively easy.
4. On May 15, 2008, the parent received a fax of a letter dated May 14, 2008 written in a standard font size. The parent responded that day by writing to the Special Education Director and District superintendent informing them that she could not read the fax because of the small print, and expressing her frustration that she received a letter in small print the day after it was agreed that letters would be sent in larger font. On May 15, 2008, the Special Education Director wrote a letter to the parent in large font informing her that the District would continue to communicate with her on various issues by email, but that communication on issues pertinent to the due process hearing would be by US Mail. The Special Education Director also stated in his letter that the District would fax copies of these letters to expedite the communication. Further, the Special Education Director informed the parent that the

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<sup>4</sup> 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.

May 14, 2008 letter he had mailed to her was written and mailed to her before she requested the larger font, and that he would resend it in larger font. A May 16 letter the Special Education Director wrote to the parent was also in a large font.

5. On May 22, 2008, a District examiner administered standardized assessments to the student as part of the District's evaluation of his eligibility for services under IDEA. On May 23, 2008, the parent sent the Special Education Director a request for a copy of the results from the May 22, 2008 assessments, including the independent scores on all subtests used.
6. On May 28, 2008, the Special Education Director mailed the parent a copy of the parent's report for the standardized test results. In a letter accompanying the report, the Special Education Director informed the parent that the parent's report provided comparisons of her son's scores with other student's his age, and other student's in his grade, but did not include the subtest raw scores. He also offered to give the parent copies of the raw scores, asking the parent to contact staff at the District to schedule an appointment to review the raw and standard score reports with a qualified examiner.
7. On June 3, the parent requested copies of all records relating to both of her children. The Special Education Director responded to the parent's request for copies of educational records for both of her children that same day, sending directions to staff to copy the records, and sending an email to the parent stating that the records would be ready for her within 10 days, or sooner.
8. On June 6, 2007, the parent brought her son to the District's school psychologist for assessments. On June 7, 2008, she sent the Special Education Director an email informing him that there were problems encountered during the assessment process with this particular school psychologist, and requesting that arrangements be made for another qualified examiner to complete the testing. The parent also requested that an eligibility determination meeting be scheduled if another qualified examiner was not available to complete the testing. On June 9, 2008, the parent sent an email to the Special Education Director requesting "copies of any testing results from our session with [the school psychologist]."
9. On June 10, 2008, the Special Education Director wrote a letter to the parent using large font. In this letter he asks the parent to: "clarify what your intentions are in regard to allowing the District to complete the evaluation you requested" noting that the District's "assessment specialists are nearly through with the school year." The Special Education Director's June 10, 2008 letter also refers to the parent's request for copies of assessment results, stating that the: "test booklets are clearly printed with copyright notice and date of the copyright. I will reiterate that you are welcome to review those materials here in the office but we will not photocopy them and distribute those copies to you. The other records you have requested are nearly collated and we will let you know when those are available this week."

10. On June 13, 2008, the parent filed a complaint with the Department alleging 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 session. The Department immediately notified the District of its investigation of this complaint, provided a copy of the complaint to the District's Superintendent and Special Education Director, and provided a *Request for Response*.
11. On June 13, 2008, the Special Education Director sent the parent an email stating that the records she requested were available for her to pick up, and the parent picked up these records shortly afterwards.
12. The Special Education Director sent the parent a June 25, 2008 letter in standard font size. The parent responded asserting that she could not read the letter, requesting that further communication be provided in a size 18 font. In the letter the Special Education Director provided responses to the parent on several issues, and requested that she make her son available for the same school psychologist to complete the testing for her son.
13. On June 26, the parent sent the Special Education Director an email stating that she had picked up the copies of her children's education records that the District had made, and had gone through them. She noted that she found copies of email and fax exchanges, but did not find copies of her son's academic/educational records. The Special Education Director responded by email that same day, stating that he had the student's school make another copy of his cumulative file, and that this file would be mailed to her from his office that afternoon. The parent responded further, stating she would prefer to pick it up. The parent and Special Education Director disagree concerning whether the original copy of records provided included a copy of the student's cumulative file.
14. On July 1, 2008, the Special Education Director wrote to the parent using large font. The parent responded by email pointing out that she had requested a size 18 font, and must: "wait for a neighbor or friend to get home in order to know what these communications are or relate to." In the July 1 letter, the Special Education Director wrote to the parent on several subjects, and offered the services of an outside evaluator in completing the assessments of her son.
15. On July 1, 2008, the parent sent an email to the ESD LEEP coordinator concerning documents she had requested, and noting that she needed large print for written material. The ESD LEEP coordinator responded to the parent by email on July 2, 2008, stating: "Thanks for the heads up on your vision needs. In the future I will write any emails and letters to you in 14 point font." The parent responded to the email on various subjects, and requested that further communication be provided in a size 18 font as it: "enables me to read ALL of the information without asking my neighbors to read things to me." [Emphasis in original]

16. The Special Education Director wrote to the parent again on July 10, 2008 using a large font, providing her with an email copy of the letter on July 14. The school psychologist did not complete his assessments of the student, did not create a report, and did not score the results of the assessments that were completed before the summer break. The Department did not find evidence that the parent requested a copy of the Notice of Procedural Safeguards at any time.

## IV. DISCUSSION

### Access to Records

School districts must give parents of children with disabilities “an opportunity to examine all student education records . . .”<sup>5</sup> Districts must comply with a records request from the parent without unnecessary delay and “in no case more than 45 days after the request has been made”.<sup>6</sup> State administrative rules outline very clearly that educational agencies must have policies describing how a parent can review the student’s records, and the rules also specify what a permanent record contains.<sup>7</sup> Under state public records laws, at parent request, a district “shall give the parent . . . a copy of the student’s educational records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in ORS 192.501(4) shall be provided unless authorized by federal law.”<sup>8</sup>

On June 13, 2008, the District responded to the parent’s June 9 request for a copy of her son’s educational records, making a copy available for her to pick up that included various educational records, but no records from the June 6 assessments by the school psychologist. Although there is a disagreement concerning whether the original copied records included a copy of the student’s cumulative file, the Special Education Director made a copy of the student’s cumulative file available to the parent June 26. The remaining issue concerns whether the District should have provided copies of documents from the school psychologist’s June 6, 2008 assessments. These documents consisted of test protocols from the incomplete June 6 assessment of the student, with no report from the school psychologist. Thus, there was no “record” other than, perhaps, the test protocols the school psychologist used in conducting the (incomplete) assessments. The Special Education Director informed the parent that the District could not make copies of these test protocols for her, offered that she review them at the District’s offices, and asked her to schedule an appointment with staff qualified to assist her. The Department concludes that the District provided the parent with access to her son’s educational records within 45 days of her request.

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<sup>5</sup> OAR 581-015-2300(1); OAR 581-021-0270.

<sup>6</sup> OAR 581-021-0270(2).

<sup>7</sup> OAR 581-021-0250(1).

<sup>8</sup> OAR 581-021-0270(4). Districts may charge a fee for a copy of an educational record “unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student’s educational record.” OAR 581-021-0289(2).

## B. Notice of Procedural Safeguards

School districts are required to provide parents with a copy of the Notice of Procedural Safeguards that meets certain regulatory requirements.<sup>9</sup> IDEA also includes specific requirements for providing the required information to parents in a manner that the parents can understand.<sup>10</sup> A school district must give parents a copy of the Notice of Procedural Safeguards at a minimum one time per year. There are also two specific times when a school district must give parents a copy of the Notice of Procedural Safeguards: 1) upon initial referral or parent request for evaluation; and 2) upon request by a parent for a copy of the notice.<sup>11</sup>

On May 13, 2008, the parent requested a due process hearing, and the Department responded to the request by, among other things, providing the parent with a copy of the Department's Procedural Safeguards Notice, October 2007.<sup>12</sup> On May 14, 2008, the parent communicated by email with the Special Education Director requesting larger font for written communication, and the Special Education Director agreed to provide letters in a size 14 font. The parent filed this complaint on August 7, 2008. The Department concludes that the District was not required to provide the parent with Notice of Procedural Safeguards and, therefore, did not violate the IDEA by not providing access to the notice in large print.

## C. Retaliation

The parent alleged that the District delayed providing her with access to her son's educational records and failed to accommodate her need for large print written materials in retaliation against her for filing a previous complaint with the Department.

Oregon law prohibits retaliation against any person who files a complaint alleging IDEA violations. OAR 581-015-2030(19) provides that: "No person shall suffer retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has suffered retaliation or discrimination may file a complaint under this rule with the Superintendent."

The Office for Civil Rights of the United States Department of Education has established the elements of a retaliation claim:<sup>13</sup>

- (1) The person alleging retaliation engaged in protected activity.
- (2) The public agency accused of retaliation took an adverse action toward the person. This action must be both "significant" and "adverse":

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<sup>9</sup> OAR 581-015-2315 (2) provides that: "The procedural safeguards notice must include all of the content provided in the Notice of Procedural Safeguards published by the Department..."

<sup>10</sup> OAR 581-015-2315.

<sup>11</sup> OAR 581-015-2315(1).

<sup>12</sup> The Department is required to provide parents with a copy of the Notice of Procedural Safeguards upon receipt of a request for a hearing. OAR 581-015-2360(1)(b).

<sup>13</sup> See: *Racine (WI) Unified School District*, 39 IDELR 76 (OCR 2003); *Redding (CT) Public Schools*, 33 IDELR 37 (OCR, March 28, 2000); *San Mateo (CA) Union High School District*, 26 IDELR 886 (January 14, 1997) For more information about these cases, see: *In the Matter of Lourdes Public Charter School*, Case No. 04-054-036 (ODE, September 2, 2004).

- (3) A causal connection (based on time sequence, knowledge or other factors) exists between the protected activity and the adverse action to infer retaliation.
- (4) If the evidence establishes an adverse action and a causal connection, the agency investigating the claim determines whether there was a legitimate non-retaliatory reason for the adverse action and, if so, whether such a reason could be considered a pretext for retaliation.

**Protected activity.** The parent engaged in protected activity by filing complaints with the Department on June 13, 2008. The District was aware of the complaint, as the Department provided a copy directly to the District's Superintendent and Special Education Director. The Department also provided the District with a *Request for Response* to the allegations in the complaint.

**Adverse action & causal connection.** The parent alleged two specific adverse actions: 1) delaying providing access to her son's educational records; and, 2) not accommodating her need for large print written materials. To be considered an adverse action, it must be both "significant" and "adverse". As discussed above, the Department found that the District did not delay providing the parent with access to her son's educational records. Therefore, the Department concludes that the District did not take this adverse action alleged by the parent.

The parent is correct that the District was not entirely consistent in providing her with the large print materials that the Special Education Director agreed to do, and not all service providers were aware of the agreement as shown by the July 2 email to the parent from the LEEP coordinator. However, the Department notes that the parent requested the accommodation on May 14, with the Special Education Director agreeing to provide size 14 font that same day. The requested accommodation was agreed upon before the complaint was filed, with the Special Education Director using the large font for most (but not all) written correspondence both before and after the complaint was filed. The Department also notes that when the parent alerted the Special Education Director and LEEP coordinator to small print materials she couldn't read, they promptly responded and provided large print copies for her. Although these lapses were frustrating for the parent, the Department is not persuaded that these lapses in the agreement to provide large print materials were either significant or taken as adverse action to the parent. Further, given the fact that there were lapses both before and after the complaint was filed, the Department is not persuaded that there was a causal connection between the parent filing the complaint, and the lapses in providing large print.

## V. CORRECTIVE ACTION

*In the Matter Oregon City School District*  
Case No. 08-054-030

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

Dated: September 29, 2008

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

Mailing Date: September 29, 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.