

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lebanon Community)
School District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 08-054-037

I. BACKGROUND

On October 28, 2008, the Oregon Department of Education (Department) received a signed, written complaint from the parent of a child in the Lebanon Community School District (District) alleging violations of the Individuals with Disabilities Education Act (IDEA). The Department sent a copy of the complaint to the Lebanon Community School District on October 29, 2008. The Department must investigate written complaints that allege violations of IDEA which occurred within twelve months prior to the Department’s receipt of the complaint; the Department also must issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹

On November 12, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint that would be investigated. Following clarification of the complaint by the parent, the Request for Response was revised and resent to the District on November 19, 2008. Both the District and the parent timely submitted responding documents to the complaint investigator.

The Department’s complaint investigator determined that on-site interviews were necessary. On December 11, 2008, the investigator interviewed the parent. On December 12, 2008, the investigator interviewed the school principal, the District assessment specialist, the District Director of Special Education, and a District data specialist.²

The parent gave additional documentation to the Department’s complaint investigator during the interview process and shared the additional materials with the District. The Department’s investigator reviewed and considered information from all of the documents and interviews in making the finding the facts enumerated below in Section III.

II. ALLEGATIONS AND CONCLUSIONS

	Allegations	
(1)	<u>Parent Participation:</u>	Not substantiated.

1 OAR 581-015-2030(12).

2 The case manager is no longer employed by the District.

	Allegations	
	<p>The parent alleges that the District violated IDEA when it failed to implement an eligibility decision. The parent alleges that, after a February 2008 eligibility meeting, during which all team members agreed that the student was eligible as a student with a specific learning disability impacting the areas of reading, written language, and math, the District changed the areas impacted by the student's specific learning disability to math only, depriving the parents of full participation in the eligibility process.</p>	<p>While the parent alleges that the District changed the student's eligibility after the IEP meeting by falsifying the eligibility statement, this is not an IDEA issue. Clearly, the parents had an opportunity to participate fully in the discussion on whether or not the student continued to be eligible for special education and did so. The team used appropriate procedures and found the student eligible for special education. All evidence indicates that the entire team agreed with this conclusion. It is also clear that there was some misunderstanding about the areas which the student's specific learning disability most impacted. Nonetheless, the Department substantiates this allegation.</p>
(2)	<p><u>Content of IEP and Review and Revision of IEPs:</u></p> <p>The parent alleges that the District violated IDEA by writing an IEP in May 2008 that does not reflect the student's needs in reading and written language. The parent further alleges that even after the parents informed the District that the IEP was incorrect, the District did not convene a meeting to revise the IEP.</p>	<p>Substantiated.</p> <p>The District staff said several times in both the IEP and eligibility meetings that the District would provide appropriate services for the student regardless of the student's area of eligibility. The team also clearly agreed on a number of accommodations to assist the student in the areas of reading and written expression. However, when the parents expressed their dissatisfaction with the IEP by stating in the email that they looked forward to receiving an "accurate IEP" for the student, the District should have consulted further with the parent and possibly re-convened the team to determine what the parent perceived to be inaccurate about the IEP and attempt to resolve the problem.</p>

	Allegations	
(3)	<p><u>When IEPs Must Be In Effect:</u></p> <p>The parent alleges that the District violated IDEA when it failed to have an appropriate IEP in place for the student at the start of the 2008-2009 school year.</p>	<p>Substantiated.</p> <p>Although the IEP was finished when the school year started, that IEP was the result of a flawed process that did not provide for informed parental participation. Because the student began the academic year with an IEP that did not adequately reflect the student's needs, the Department substantiates this claim.</p>
(4)	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings:</u></p> <p>The parent alleges that the District violated IDEA when it failed to provide the parent with copies of the student's eligibility and IEP paperwork in a timely fashion.</p>	<p>Substantiated.</p> <p>There is no concrete evidence to indicate that the District gave the parents copies of the documents in a timely fashion.</p>
(5)	<p><u>Content of IEP: Alternate Assessment for State and District Testing:</u></p> <p>The parent alleges that the District violated IDEA when it did not provide appropriate alternative forms of assessment for state and district testing for the student to take.</p>	<p>Substantiated.</p> <p>The parents made numerous requests over the year under investigation, in person and in writing, that the District present them with some alternative forms of assessment for discussion so that the team could choose the most appropriate manner in which the student would demonstrate proficiency in reading, writing, and math. The District chose instead to approach this topic in an informal manner. The parents made a reasonable request to have the team discuss this issue, but the District made the decision unilaterally, without the full participation of the IEP team. Therefore, the Department substantiates this allegation.</p>

The parent has also alleged that the District falsified meeting minutes and the eligibility form after the February 2008 meeting to reflect a different conclusion than the one that had been agreed on at the meeting.³ The following conclusion from a recent complaint investigation⁴ is instructive in this circumstance:

“Regarding the parent allegation that documents were falsified, a complaint investigation is an informal process, not a judicial process, and does not include witnesses, sworn statements, the ability to cross-examine witnesses, or other aspects of a due process hearing in which the ‘credibility’ of witnesses might be a factor. The appropriate mechanism for dealing with issues of professional behavior is through the district’s own compliant processes or the Oregon Teacher Standards and Practices commission (TSPC).”

This is not an issue covered by IDEA, and therefore it was not included in this investigation.

The parent also alleges that the District utilized the student’s scores on a standardized test in determining the student’s graduation status. Even if proven, this allegation would only constitute a violation of IDEA to the extent that it is inconsistent with the student’s IEP. The Department investigated this allegation only to the extent necessary to determine if the District’s testing program violated the provisions of the student’s IEP.

The parent requested that the District provide the following proposed solutions:

- a.) an accurate IEP for the student reflecting decisions made by the IEP team; and,
- b) full implementation of IDEA across the District.

III. FINDINGS OF FACT

Background

The student is currently 16 years old, in the eleventh grade, and resides in the District. The student is eligible for special education as a child with a specific learning disability.

1. The student’s current IEP was written on May 19, 2008. The IEP contains the following elements:
 - a.) Specially designed instruction in math (15 minutes one time per week in the regular class/LRC) and transition (15 minutes one time per week in the regular class/LRC);
 - b.) Goals in transition (explore and research postsecondary career options), math skills (increase math skills to an 8.5 grade level), and building a transition portfolio;
 - c.) No state or district assessment will be given during the IEP period, but the explanation section of the state assessment page contains this statement:

³ See allegation number one above.

⁴ Complaint No. 08-054-028 – Three Rivers/Josephine County School District, p.26.

“[student]’s parents have requested that [student] not participate in Statewide assessments to meet grade proficiencies. They prefer that the high school use [student]’s work samples to show [student] has met proficiencies.” This statement is in the explanation box in the reading/literature, math, writing, and science sections;

- d.) No such statement is on the District assessment page;
- e.) The student’s placement will be in “All classes in the mainstream;”
- f.) Supplementary Aids/Services: Modifications and Accommodations as follows:
 - i. Frequent check for understanding,
 - ii. Access to word processor/spelling aid,
 - iii. Given evidence of starting, 1—2 extra days for assignment completions,
 - iv. Access to hand held calculator on request,
 - v. Shorten assignments as appropriate,
 - vi. Notes on request,
 - vii. Preferential seating when appropriate,
 - viii. Access to audio books when available,
 - ix. Tests read aloud on request,
 - x. Allow laptop computer from home for note-taking,
 - xi. Important vocabulary provided ahead of major assignments on request,
 - xii. Extended time on tests,
 - xiii. Tests taken in alternate location on request,
 - xiv. Student will have access to classes deemed most appropriate to [student]’s educational needs by the IEP Team including all extended options, and
 - xv. Access to econnection courses online classes as related to educational portfolio.

The student’s current eligibility in the area of specific learning disability was re-established on February 13, 2008.

Parent Participation:

- 2. The IEP team met on February 13, 2008 to consider whether or not the student continued to be eligible for special education.
- 3. At that meeting, the assessment specialist presented the results of the evaluation to the IEP team. The assessment specialist had tested the student using the Woodcock Johnson III and the Key Math tests. On the Woodcock Johnson, the student achieved a Broad Reading standard score of 89 (GE: 7.7), Broad Math standard score of 71 (GE: 8.3), and Broad Writing standard score of 92 (GE: 8.3).

4. The IEP team discussed the definition of a specific learning disability in the context of the discrepancy model and a strengths and weaknesses model.
5. At this meeting, the members of the team agreed that the student's scores clearly indicated a discrepancy between ability⁵ and performance in math skills.
6. The assessment specialist stated that the student did not demonstrate such a clear discrepancy in the areas of writing and reading comprehension. The parents expressed concern that, while the student's skills in these areas had clearly improved over the years, the student still was not at grade level in reading comprehension and writing. After a lengthy discussion, the team agreed that the student has a specific learning disability in the areas of basic reading skills, reading comprehension, mathematics calculation, mathematics problem-solving, and written expression.
7. The team discussed the fact that, once eligible for special education, the student could receive whatever services the IEP team deemed appropriate. However, at one point in the discussion the case manager noted that, if the student was eligible in reading and written expression as well, the district would be obligated to write goals for specially designed instruction in those areas. Later in the discussion, the assessment specialist noted that once the student was eligible for special education the District would provide whatever services were appropriate for the student.
8. All members of the team signed the eligibility statement and checked the boxes next to their signatures noting agreement with the conclusion that the student was eligible for special education as a student with a specific learning disability. The original copy of this form has typed X's in the boxes next to the areas of mathematics calculation and mathematics problem-solving. The boxes next to the areas of basic reading skills, reading comprehension, and written expression are filled in with ink. The parents stated that when the form was completed at the end of the meeting, before all members of the team signed it, someone on the team hand wrote X's in the boxes next to the areas of basic reading skills, reading comprehension, and written expression. The assessment specialist stated that perhaps he was the one who colored in these boxes instead of writing an X there but no one else on the team remembers how the boxes were filled in.⁶
9. The parents were not given a copy of the eligibility paperwork at the close of the meeting.

5 The team used an IQ assessment conducted in February 2005 on which the student achieved a full scale IQ score of 88 and a verbal comprehension index score of 110. The assessment instrument is not named in the report in which the scores are given. (District, p.90)

6 While the issue of falsifying the paperwork was not investigated per se, the fact that team members disagree on what the paperwork looked like at the close of this meeting is pertinent; it illustrates the lack of District coordination that likely precipitated the second allegation in this complaint.

Content of IEP and Review and Revision of IEPs:

10. The team met on May 19, 2008 to conduct the annual review of the student's IEP.
11. The parents stated that the first thing on the agenda at this meeting was that the case manager presented the eligibility conclusion and stated that the student was eligible for services as a student with a specific learning disability in the areas of math calculation and problem-solving. The parents also stated that they disagreed with this and reminded the team that the student was also eligible in the areas of basic reading skills, reading comprehension, and written expression.
12. When the parents disagreed with District staff, as noted above, the District special education director asked the parents to review the tape of the February 2008 eligibility meeting. The parents agreed, and the discussion of the student's IEP continued.
13. The team developed the IEP after discussing the student's needs in a wide variety of areas. The IEP contains the elements as described in the background facts above. Throughout the discussion, the parents continued to note that the student was not just eligible in the area of math. The parents also stated that they were so upset by the District's apparent change of the eligibility decision that they were distracted during most of the meeting and found it difficult to concentrate on most of the discussion.
14. The parents did not make a formal request during the meeting for specially designed instruction in reading or written expression.
15. The case manager and other members of the District team took notes on a copy of the previous IEP about the changes, additions, and deletions in and to the IEP.
16. The parents were not given a copy of the revised IEP at the end of the meeting.
17. On May 28, 2008, the District Special Education Director sent the parents an email. The Director noted that the case manager was trying to finish the IEP paperwork but that the District wanted to confirm the eligibility areas before doing so. The Director also noted that: "Our minutes and documents indicate that [student] continues to be eligible for Special Education under the Specific Learning Disability category based upon [student] performance on mathematics assessments. If we do not hear back from you by June 3rd, we will assume that this eligibility statement stands as (sic) reflected in the meeting notes and collective memory of the majority of the team."

18. On June 30, 2008, the parents replied to the Director's email. In this email the parent states that "I am 100% certain that the team finds [student] qualified in Reading, Writing and Math. In fact, the direct quote from the assessment specialist at the time was, 'We've got her qualified in reading, writing and math.' We look forward to receiving an accurate IEP for [student] in the near future."
19. There were no further communications between the District and the parents until the start of the school year.

When IEPs Must Be In Effect:

20. Both of the student's parents are teachers in the District, and one of the parents teaches the student in a general education content area class.
21. At the beginning of each term, the District case managers at the high school distribute an "IEP Confidential Information Sheet" to all general education teachers who have students with IEP's in their classes. This sheet is a form which notes whether the student has a medical plan or behavior plan, what the nature of the student's "learning difference" is, the IEP goals (areas impacted), and the modifications and accommodations written into the IEP.
22. The parent who teaches the student received one of these forms at the beginning of the 2008-2009 school year. The form states that the student has a "learning disability in math" and lists all of the modifications and accommodations written on the IEP. While some of the accommodations clearly address reading and written language, nothing on the form specifically states that the student may need additional support in these areas.
23. The parents were upset by the form and decided at that time to file the complaint rather than asking for any additional meetings with District staff. After the complaint was filed, the District special education director contacted the parents and asked for an IEP meeting, but the parents refused, stating that they wanted to finish the complaint process first.

Additional Parent Participation Requirements for IEP and Placement Meetings:

24. The parents stated that they did not receive copies of the IEP or eligibility paperwork until they received the District's response to the complaint.
25. The data clerk in the District office stated that the District office did receive a copy of the eligibility paperwork sometime between February 2008 and the close of the 2007-2008 school year but does not know specifically when the paperwork arrived in the office.

26. The District does not time or date stamp special education documents when they arrive in the District office.
27. The District Director stated that the case manager had not had problems with distributing paperwork in a timely fashion in the past. Neither the District Director nor any other members of the team who were interviewed knew for certain that the paperwork had been sent to the parent, although all assumed that it had.

Content of IEP: Alternate Assessment for State and District Testing:

28. The District has several policies which are pertinent to this allegation. They are outlined below:
 - a.) The first is Policy IKH, adopted on August 1, 2005 and entitled Credit for Proficiency. This policy states that the District may require a student to pass a competency or skills assessment or to provide samples of work or other documentation or evidence of learning before it grants credit toward graduation.
 - b.) The second is Policy IKE-AR, adopted on January 23, 2008 and entitled Location of Students for Instruction. This policy outlines three benchmark levels and how students will demonstrate they have met each benchmark. It also states that “alternative methods of demonstrating proficiency may be considered in consultation with the district Student Achievement Office assessment specialists.” To meet Benchmark Three, students must achieve a score of 231 in Reading on the OSAT or “other district designated multiple choice test,” a score of 230 in Math on the OSAT or “other district designated multiple choice test,” and scores of four or higher in all traits except conventions on a “classroom district approved Benchmark III work sample in writing, double-scored.” Further, it outlines how students move from location to location when they have met a benchmark. It states that a “parent or guardian may petition through their current school in order to have a student who has not completed present Benchmark Progress Indicators considered for a different school as location of instruction.”
 - c.) The third is Policy IKF, adopted on October 6, 2008 and entitled Graduation Requirements Class of 2007-2008. It outlines the number of credits a student must earn in specific curriculum areas in order to graduate. It outlines the requirements for the standard diploma, an expanded diploma, a modified diploma, and alternative certificates. The policy states that in order to be granted a standard diploma a student must earn 27 credits and “meet the indicated proficiencies in reading, writing and mathematics.” The policy specifically addresses the graduating classes of 2007 and 2008 and freshmen who entered high school in 2008

but does not specifically outline the requirements for students who will graduate in 2010.

- d.) The fourth policy is Policy ILBA, adopted on August 20, 2001 and entitled Assessment Exemption. This policy states that, while the District intends to include every student in the Oregon Statewide Assessment Program, it recognizes that “a few students may be exempted from this assessment as provided by OAR 581-022-1910.”
29. The student’s IEP states that the student will graduate in June of 2010 with a regular diploma.
30. The student’s parents have requested that the student be exempted from state and district assessment throughout the student’s school career and that the District provide an alternate form of assessment for the student to take.
31. The parents have requested an alternate assessment multiple times in writing over the last several years.
32. On January 31, 2008, the parents’ attorney wrote a letter to the District requesting that the District respond to the parents’ previous requests for a written explanation of the District’s policy on alternate assessment. The attorney also stated that the parent had specifically asked if the District “intended to deny [student] the right to receive a regular education diploma due to the fact that [student] will have no Student Achievement System (SAS) test scores.” The attorney included copies of two previous letters the parents had sent to the District.
33. The District’s attorney replied on February 25, 2008. In the reply, the attorney for the District responded specifically to two questions but did not address all of the issues the parent had raised in the letters. The first question the attorney responded to was, “What are the alternate assessment options that the District has available?” In short, the attorney stated that the District has the same “alternate assessment options for testing which are mandated by federal and state law.” The attorney outlines the issue of alternate assessment as described in IDEA and the extended assessments available to students in Oregon. The attorney states that for students such as [student], there are accommodation decisions that can be made by the IEP team and that if a “method of testing has been determined be (sic) an inappropriate test for that student based on the student’s disability, the IEP team can determine an alternate method of assessment.” The attorney refers the parent to Policies on Credit for Proficiency and Juried Assessment. The second question that the attorney answers is the question about whether or not the District intends to award the student a regular diploma in the absence of test

scores. The attorney states that “in other words, if your [student] has no statewide assessment scores, [student] can demonstrate proficiency by the scored work samples, or [student] can apply to demonstrate proficiency by other means on the basis that [student] needs accommodations or alternate methods of testing as on [student]’s IEP in order to earn a regular diploma.” The attorney refers the parent to the “next IEP meeting” and states that the team can make the decisions about accommodations or any alternate methods of assessment which may be appropriate.

34. At the beginning of the 2007-2008 school year, the District Special Education Director asked special education staff to begin working on the issue of alternate assessment for students with disabilities.
35. Subsequently, the District assessment specialist did some research and proposed that the Woodcock Johnson III subtests in Broad Reading and Broad Math correlated well enough with the OSAT that they could be used as alternate assessments to meet the District requirement for graduation.
36. Late in the fall of 2007, the District Special Education Director took this proposal to the District Director of Student Achievement and received approval to use the Woodcock Johnson III subtests in this manner. The test was then given to two other students as an alternate assessment to the OSAT.
37. At the eligibility meeting on February 13, 2008, the district assessment specialist informed the parent that the student’s scores on the Woodcock Johnson III could be used to demonstrate that the student had met the proficiency in reading comprehension. The parents stated that they did not want to discuss this during the eligibility meeting.
38. At the IEP meeting in May 2008, the District staff again suggested that the Woodcock Johnson III subtests be used as an alternate assessment for the student. The parents again disagreed with this. The District staff suggested that work samples be used as alternate assessments, and, although the parents were not pleased with this, work samples were written in the state assessment section of the student’s IEP.

IV. DISCUSSION

1. Parent Participation:

The parent alleges that the District violated IDEA when it failed to implement an eligibility decision. The parent alleges that, after a February 2008 eligibility meeting during which all team members agreed that the student was eligible as a student with a specific learning disability impacting the areas of reading, written language, and math,

the District changed the areas impacted by the student's specific learning disability to math only and deprived the parents of full participation in the eligibility process.

OAR 581-015-2170(2) (Specific Learning Disability) specifies that in order to establish a student's eligibility as a student with a specific learning disability, the eligibility team must include:

- “(a) A group of qualified professionals and the parent;
- (b) The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or, for a child of less than school age, a preschool teacher; and
- (c) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.”

The team must consider existing information about the student (including an assessment of the student's academic achievement toward Oregon grade-level standards) an observation of the student in a regular classroom, an evaluation of the student's strengths and weaknesses, a developmental history and other information deemed necessary by the team. The team must draw conclusions on whether or not the student is adequately achieving in basic reading, math and written language, and must rule out factors that might be causing the student's lack of achievement. The team must identify the specific areas of the student's learning disability (i.e., basic reading, reading fluency, reading comprehension, math calculation, math problem solving, written expression, oral expression, and listening comprehension). Finally, the team must determine whether or not the student's disability has an adverse effect on the student's educational performance and whether or not the student needs special education services as a result of the disability.

In this case, the team met all of these requirements in re-establishing the student's eligibility for special education. Although there was some disagreement among the parties at the eligibility meeting regarding how severe the student's discrepancy was in the areas of reading comprehension and written expression, it is clear that, by the time the meeting ended, the team was in agreement. While the parents allege that the District changed the student's eligibility after the IEP meeting by falsifying the eligibility statement, this is not an IDEA issue. Clearly, the parents had an opportunity to participate fully in the discussion on whether or not the student continued to be eligible for special education, as a student with a Specific Learning Disability, and did so.

However, the law is very clear that the District is obligated to ensure that the parents understand the proceedings at the meeting.⁸ In fact, the law states that Districts must take whatever action is necessary to make sure that parents understand.⁹ While the

⁸ OAR 581-015-2190(3).

⁹ *Id.*

team appeared, on the surface, to come to a consensus about the student's areas of eligibility and need, it is clear that there was a misunderstanding. The District assured the parents that it would provide whatever services the student needed but did not discuss the student's needs extensively enough to reach informed decisions concerning the student's needs in reading comprehension and written expression. However, this miscommunication by the District did not delay the student's eligibility for special education services.

In conclusion, the team used appropriate procedures in determining the student eligible for special education. Although some confusion about services remained after the eligibility meeting, the evidence indicates that the entire team, including the parent, meaningfully participated in the eligibility decision; therefore, the Department does not substantiate this allegation.

2, 3, & 4. Content of IEP and Review and Revision of IEPs, When IEPs Must Be In Effect, Additional Parent Participation Requirements for IEP and Placement Meetings:

The parent alleges that the District violated IDEA by writing an IEP in May 2008 that does not reflect the student's needs in reading and written language. The parent further alleges that even after the parents informed the District that the IEP was incorrect, the District did not convene a meeting to review and, if deemed necessary, revise the IEP. Further, the parent alleges that the District violated IDEA when it failed to have an appropriate IEP in place for the student at the start of the 2008-2009 school year. Finally, the parent alleges that the District violated IDEA when it failed to provide the parents with copies of the student's eligibility and IEP paperwork in a timely fashion.

Although these allegations were listed separately in the Request for Response, and investigated individually, the issues and applicable rules are substantially similar and will be discussed together in this section.

Under 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).¹⁰ 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."¹¹ An IEP must be in effect for each eligible child at the beginning of each school year.

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-

¹⁰ *Board of Educ. v. Rowley*, 458 U.S. 176 (1982).

¹¹ OAR 581-015-2220.

academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.¹²

In addition, school districts must provide the special education and related services listed on the IEP.¹³ 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.¹⁴

The IEP must be revised at least once every 365 days but may be revised as appropriate to address a lack of expected progress, results of reevaluation, information provided by the parents, the student's anticipated needs, or other matters¹⁵. Finally, the District must provide a copy of the IEP as well as the evaluation report and documentation of eligibility determination at no cost and in a reasonable time frame to the parents¹⁶.

Here, the situation with the IEP fell apart when the District did not clear up the misunderstanding about the student's needs in reading comprehension and written expression. The parents came to the IEP meeting expecting a thorough discussion on the student's needs and were immediately presented with paperwork that they believed inaccurately represented the decision made at the eligibility meeting. The District, instead of focusing on the parent's concerns in the area of reading comprehension and written expression, basically set the issue aside and focused on reviewing the previous IEP. They then compounded this by writing to the parents a month later and stating that the student was only eligible as a student with a specific learning disability in math skills. When the parent asked for an "accurate" IEP, this should have sent a signal to the District that something was wrong and needed to be corrected. The question here is not whether the IEP was correct but that the parents believed it was incorrect and asked the District to help revise it and improve the situation. The parents stated that they never received a copy of either the IEP or the eligibility documentation, and there is no evidence to indicate otherwise. This communication breakdown compounded the misunderstanding and increased the parents' skepticism about the accuracy of the IEP.

The District staff said several times in both the IEP and eligibility meetings that the District would provide appropriate services for the student regardless of the eligibility areas listed on the IEP. The team also clearly agreed on a number of accommodations to assist the student in the areas of reading and written expression. However, when the parents expressed their dissatisfaction with the IEP by stating in the email that they looked forward to receiving an "accurate IEP" for the student, the District should have re-convened the team to find out what the parents perceived to be inaccurate about the

12 OAR 581-015-2200 (1)(d).

13 OAR 581-015-2220.

14 *Id.*

15 OAR 581-015-2225.

16 OAR 581-015-2120 and 581-015-2195.

IEP. Therefore, although the IEP was finished when the school year started, it was not the product of a collaborative process as is contemplated by IDEA. The parents had expressed concerns and confusion about the contents of the IEP and the process used to develop it, and the District did not take adequate action to allow the parents to be informed participants in the IEP development process. In addition, the parents did not receive a copy of either the eligibility or IEP paperwork in a timely fashion. The Department finds that this flawed process resulted in an IEP inadequately suited to the student's needs; therefore, the Department substantiates all three allegations.

5. Content of IEP: Alternate Assessment for State and District Testing:

The parent alleges that the District violated IDEA when it did not provide appropriate alternative forms of assessment for state and district testing for the student to take. The District must include an explanation about how the student will meet the state requirement to take state assessment tests and the district assessment tests. This explanation must define whether or not the student will take the regular test with or without accommodations, or whether the student will take an alternate assessment. In this situation, this is an especially important part of the IEP because of the district requirements for graduation with a regular diploma, as well as the fact that students cannot move to the next "location"—in reality grade level—without meeting benchmarks. In this district, students who are chronologically age appropriate for high school, for example, do not automatically enter high school unless they have passed Benchmark III or their parents petition for them to move to high school without passing the Benchmark. Under District policy, an IEP team cannot make a singular decision for the student to move to the high school. The student's parents must go through the petition process as well. Therefore, these assessment tests are very high stakes for students who have a disability and who wish to earn a regular diploma.

Here, even after the District's attorney stated that the IEP team needed to give serious consideration to the assessment issue for the student, the District took a very low key approach. First, they suggested that the tests used to measure the student's skills for eligibility consideration be used, retroactively, to satisfy assessment requirements.. Even though the District Director of Student Achievement had approved the use of the test, the District did not meet with the parents to present this as an option. Then, at the IEP meeting, the District suggested work samples but did not fully explore this option. Finally, on the state assessment page on the IEP, the District wrote that state assessment was not given at the student's grade level. However, the staff included a statement that noted that the parents requested exemption, so work samples would be used. There is no explanation anywhere in the IEP that assessment is so clearly connected to the requirements for earning a regular diploma.

The parents made numerous requests over the year under investigation, in person and in writing, that the District present them with some alternative forms of assessment for discussion so that the team could choose the most appropriate manner in which the student would demonstrate proficiency in reading, writing, and math. The demonstration of such proficiency is a requirement that students in the District must

meet in order to graduate with a regular diploma. The District's own attorney stated that the IEP team needed to meet and determine an alternate form of assessment for the student. However, the District chose instead to approach this issue rather informally; suggesting, for instance, that a test already administered be used to satisfy the requirement. The parents made a reasonable request to have the team conduct a specific discussion on this issue; nonetheless, the District neglected to clearly establish and communicate to the parents how the student would satisfy the assessment requirements for promotion. The student's IEP and the District's actual practice in this case do not reflect a decision made by the entire team as to how the student will be assessed in order to meet the District's advancement requirements. The Department substantiates this allegation.

CORRECTIVE ACTION¹⁷

In the Matter of Lebanon Community School District
Case No. 08-054-037

#	Action Required	Submissions ¹⁸	Due Date
1	<p><u>Training</u></p> <p><u>Provide, to special education and regular education staff and administrators who may be participating in IEP meetings for students of transition age, training in the requirements of IEP development for students of transition age as related to the most recent legislative and State Board of Education diploma options and assessment requirements. The district will develop its training materials in collaboration with ODE's Transition Specialist.</u></p>	<p>Submit copy of materials to be used to ODE.</p> <p>Submit to ODE, agenda, attendance roster and sign-in sheet.</p>	<p>January 20, 2009</p> <p>February 20, 2009</p>
2	<p>By January 16, 2009, review and revise the IEP with a full team or, with the written consent of the parent, and in accordance with the requirements of OAR 581-015-2210, with the written</p>	<p>Submit to ODE and the parent, copies of all IEP team notices, written agreements, if used, completed IEP</p>	<p>January 30, 2009</p>

¹⁷ 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).

¹⁸ 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; fax number (503) 378-5156.

#	Action Required	Submissions ¹⁸	Due Date
	input of excused IEP team members. The team meeting must consider all IEP content, including the student's needs in reading comprehension and written expression. The IEP team must develop an appropriate assessment plan for the student and document its consideration of alternative assessments in determining this plan.	documents with all revisions incorporated, notes, minutes or recordings of the IEP meeting if they are made as part of the District's normal procedures, and any prior written notices that result from the meeting.	

Dated: December 19, 2008

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

Mailing Date: December 19, 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.