

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Beaverton School District 48J )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 08-054-044

**I. BACKGROUND**

On December 11, 2008, the Oregon Department of Education (Department) received a signed written complaint from the parent of a child in the Beaverton School District 48J (District) alleging violations of the Individuals with Disabilities Education Act (IDEA). The Department sent a copy of the complaint to the Beaverton School District 48J on December 11, 2008. The Department must investigate written complaints which allege that violations of IDEA 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.<sup>1</sup>

On December 19, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. The District timely submitted responding documents to the complaint investigator. On January 21, 2009, following local resolution efforts, the parent withdrew all allegations except one. In response to the parent’s withdrawal, the Department dismissed the withdrawn allegations; this order addresses only the one remaining allegation.

The Department’s complaint investigator determined that on-site interviews were necessary. On January 26, 2009, the investigator interviewed the individual who was the District case manager at the time the events occurred<sup>2</sup>; a District Special Education Facilitator; and the Assistant Director of Special Education. On January 27, 2009, the investigator interviewed the parent by telephone.

The Department’s investigator reviewed and considered information from all of the documents and interviews in finding the facts enumerated below in Section III.

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

<sup>2</sup> As part of the local resolution efforts, a new case manager was recently assigned.

## II. ALLEGATIONS AND CONCLUSIONS

	<b>Allegations</b>	
1.	<p><b><u>Parental Participation</u></b></p> <p>The parent alleges that the District violated IDEA when it did not notify the parent of the purpose of a meeting held on November 25, 2008. The meeting notice states that the meeting would be held to “develop or review an individualized education program (IEP) and placement for your child,” but the parent alleges the real purpose of the meeting was to conduct a manifestation determination.</p>	<p><b>Substantiated.</b></p> <p>The District failed to provide the parent with notice of the purpose of the November 25, 2008 meeting. The purpose of the meeting stated on the notice to the parent failed to inform the parent that the District planned to conduct a manifestation determination at the meeting.</p>

## III. FINDINGS OF FACT

### **Background**

1. The student is currently seven years old, in the first grade, and resides in the District. The student is eligible for special education as a child with mental retardation.
2. The student’s current IEP was written on June 2, 2008, and revised on October 14, 2008, October 23, 2008, and November 25, 2008. The June 2, 2008 IEP did not contain any references to behavioral issues or a behavior intervention plan.
3. The student attended kindergarten for 2.5 hours per day during the 2007 – 2008 school year and then transitioned to first grade at the start of the 2008 – 2009 school year. The student currently attends full-day and is placed in the general education setting with support. In addition, the student is removed from the general education setting to receive “specially designed instruction for language, adapted P.E. and fine motor skills for no more than two hours per week which is less than 10% of the school day.”
4. At the beginning of the school year the District distributes the Parent Student Handbook<sup>3</sup> to each parent. The parent received this handbook and read “part, but not all” of the handbook.

### **Parent Participation:**

5. During the kindergarten year and during the first month of first grade, the student did not exhibit any “hitting behavior.”

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<sup>3</sup> This handbook outlines many important issues for each school, including the “Consistent Discipline Handbook.

6. On September 25, 2008, the student hit one of the instructional assistants. The staff attempted to use a Time-Out system to address the behavior, but the student did not respond positively. The school principal telephoned the parent and informed the parent that the student would be suspended from school for the following day. In addition, the principal sent a letter to the parent explaining the suspension.
7. On September 30, 2008, the team met to conduct a Functional Behavior Assessment (FBA). The parent, the parent's support person, the student's first grade teacher, the resource teacher/case manager, the speech/language pathologist, and the school psychologist all attended the meeting and participated in the FBA process. The District obtained written consent from the parent to conduct the FBA. The team members identified precipitating events to the behavior, functions of the behavior, and times when the behavior was most likely to occur. Additionally, the team designed an intervention plan to be used when the behavior occurred. The District sent the parent a meeting notice for this meeting and kept minutes of the discussion at the meeting. The District also sent a Prior Written Notice to notify the parent of its intention to complete the FBA.
8. At the IEP meeting held in June 2008, the team had agreed to meet again in the fall to consider the use of educational assistants to support the student. On September 30, 2008, the District sent the parent a meeting notice for a meeting on November 5, 2008 so that the team could have this discussion.
9. On October 2, 2008, the student again hit one of the educational assistants, and was suspended out of school for a day. The principal called the parent and sent a follow-up letter as well.
10. On October 14, 2008, the team met to review the student's Intervention Plan. Specifically, the team met to address the negative behaviors of "noncompliance with teacher's first requests; and, responding physically when frustrated by communication difficulties." The District sent the parent a meeting notice for this meeting, and the parent, first grade teacher, resource teacher/case manager, speech/language pathologist, school psychologist, and special education facilitator attended the meeting. The team added some additional strategies to the behavior plan, revised the IEP to include some language in the Present Levels of Academic Achievement and Functional Performance Statement to describe the behavioral issues, and added the Intervention Plan as a supplementary aid and service. The District took minutes at the meeting and sent the parent a Prior Written Notice to describe the above changes.
11. On October 31, 2008, the District sent a reminder notice to the parent about the meeting scheduled for November 5, 2008. The parent notified the District that the parent would be unable to attend on the 5<sup>th</sup> of November and the meeting was scheduled for and held on November 18, 2008. The team decided to continue the level of adult support for the student as described on the original IEP.
12. On Thursday, November 20, 2008, the student again hit an instructional assistant. The principal called the parent to inform the parent that the student would be suspended for the following day and sent a follow-up letter. During the phone call, the parent asked if the IEP team could meet the next day to review the situation and find some other solutions than suspension for the hitting behavior. The principal told

- the parent that such a meeting would be impossible until the following Tuesday when the case manager returned to work.<sup>4</sup> The parent asked if another school resource teacher could attend instead, but the principal told the parent that was not possible. The meeting was scheduled for November 25, 2008. The District sent a meeting notice<sup>5</sup> for a meeting on Tuesday, November 25, 2008.
13. The student returned to school on Monday, November 24, 2008 and again hit an educational assistant. The principal conferred with the special education facilitator and the assistant director of special education and then called the parent to inform the parent that the student was suspended for the day. The principal sent a follow-up letter.
  14. After calling the parent on Monday, November 24, 2008, the special education staff conferred and decided that it would be appropriate to conduct a manifestation determination at the meeting the next day. The special education facilitator stated that “even though the student had only been suspended four times, it appeared there was a clear pattern developing, and we felt it was in everyone’s best interest to step back and to see what we could do differently.” No one on the team called the parent to inform the parent that the District had decided to use the manifestation determination process.
  15. The team met on November 25, 2008 and the parent, parent’s support person, parent’s friend, case manager, speech/language pathologist, school psychologist, principal, special education facilitator, first grade teacher, administrative intern, and interim special education director all attended. When the case manager presented the agenda that listed a manifestation determination as part of the meeting agenda, the parent was shocked and expressed surprise to the team. The parent stated that “I felt blind-sided by the District team because I know that the use of the manifestation determination is very serious and goes in the child’s permanent file.”
  16. Both the parent and the District special education facilitator agree that the facilitator explained the manifestation determination process. However, they disagreed as to whether the facilitator offered the parent the opportunity to cancel the meeting and to meet later so that the parent could prepare for the manifestation determination portion of the meeting.
  17. The team continued the meeting and completed the manifestation determination process, concluding that the District had not failed to implement the student’s IEP but that the “conduct in question was caused by or had a direct and substantial relationship to the student’s disability.” Also at this meeting, the team reviewed the Functional Behavior Assessment and again revised the Behavior Intervention Plan to include additional strategies that could be used in response to the student’s hitting behavior. These strategies included de-escalation techniques, use of a break card, and social stories. In addition, the team added language to a previous goal

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<sup>4</sup> The case manager at the time worked Tuesday through Thursday only.

<sup>5</sup> The District uses the standard meeting notice form as designed by the Oregon Department of Education. The form offers check boxes the case manager can use to describe the purpose of the meeting. The choices are: 1.) Review existing information about your child, and decide whether additional testing is needed; or, decide whether your child is eligible for/continues to be eligible for special education; 2) Develop or review an individualized education program (IEP) and placement for your child; and, 3) consider your child’s transition needs or services for student’s (sic) age 14 or older.

specifying the use of the break card. The District took minutes at the meeting and sent the parent a Prior Written Notice of its intent to continue access to full time adult assistance. All team members agreed with these steps.

18. On December 10, 2008, the District sent the parent a Prior Written Notice of the manifestation determination process conducted on November 25, 2008.

#### IV. DISCUSSION

##### 1. Parent Participation

The parent alleges that the District violated IDEA when it did not properly notify the parent of the IEP team meeting held on November 25, 2008. The meeting notice states that the meeting would be held to “develop or review an individualized education program (IEP) and placement for your child,” but the parent alleges the real purpose of the meeting was to conduct a manifestation determination.

OAR 581-015-2190 describes the school district’s obligation to provide parents with “an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.”

As part of its obligation to provide opportunities for parent participation in the special education decision-making process, school districts are required, pursuant to OAR 581-015-2190(2) to provide parents with adequate notice, as prescribed in the rule, of scheduled IEP team meetings

With regard to school districts’ obligation to provide adequate meeting notice to parents, OAR 581-015-2190(2) states:

*Meeting Notice:*

- (a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.*
- (b) The written notice must:*
  - (A) State the purpose, time and place of the meeting and who will attend;*
  - (B) Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;*
  - (C) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and*
  - (D) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.*

Applying the above provisions to the facts of this case, the Department concludes that the District failed to provide the parent with adequate notice of the November 25, 2008 meeting as required by OAR 581-015-2190 because the District failed to inform the parent of all items that would be addressed at the meeting.

The purpose of a manifestation determination is to establish whether a pattern of behavior exhibited by a child 1) is caused by, or has a direct and substantial relationship to, the child’s disability or 2) was the direct result of the school district’s failure to implement the IEP. OAR 581-015-2420(1). Additionally, the determination must be made following a review of the

student's file by "the school district, the parent, and relevant members of the IEP team." *Id.* Therefore, the Department concludes that the November 25 meeting was a "meeting with respect to the ... IEP ... of the child" under OAR 581-015-2190. The Department's conclusion is supported by the fact that the student's IEP was revised as a result of the meeting.

Because the November 25 meeting concerned the content of the student's IEP, the District was required to provide the parent notice of the meeting as prescribed in OAR 581-015-2190(2).

On November 20, 2008, the District sent a Notice of Team Meeting to the parents regarding the meeting scheduled for November 25. The notice indicated that the purpose of the meeting was to "[d]evelop or review an individualized education program and placement for your child." The letter did not indicate that the District planned to conduct a Manifestation Determination at the meeting.

On November 24, 2008, the student was suspended from school for striking an educational assistant. Following the incident, District staff determined that the student's recent pattern of behavior warranted conducting a manifestation determination. District staff decided to conduct the manifestation determination during the meeting that was scheduled for the following day. The original meeting notice was not amended to reflect the changed purpose of the meeting, and the parents were not otherwise informed in writing of the District's intent to conduct a manifestation determination at the meeting.

OAR 581-015-2190(2)(b)(A) requires school districts to provide parents with a written meeting notice that states the purpose of the meeting. The Department concludes that the District failed to notify the parent of the purpose of the November 25, 2008 meeting. Although the Notice of Team Meeting dated November 20, 2008 indicates that the meeting will deal with the IEP and placement of the students, the Department concludes that this general notice was insufficient to provide the parent with an opportunity to participate in the meeting.

Specifically, the District's failure to properly notify the parent denied the parent the opportunity to collect and present evidence that may bear on the manifestation determination, including evidence that the District had failed to properly implement the student's IEP or that the student's behavior was caused by or substantially related to the student's disability. The inadequate notification also denied the parent the opportunity to consider, with the District, which "relevant members" of the IEP team should attend the manifestation determination pursuant to OAR 581-015-2420(1).

Based on the above findings of fact and conclusions of law, the Department concludes that the Beaverton School District failed to comply with the requirements of the IDEA when it denied the parent an opportunity to participate in the manifestation determination conducted during the November 25 meeting by failing to inform the parent of the meeting's purpose.

## V. CORRECTIVE ACTION<sup>6</sup>

*In the Matter of Beaverton School District 48J*  
Case No. 08-054-044

#	Action Required	Submissions <sup>7</sup>	Due Date
1.	<p><u>Review Practices - Meeting Notices</u></p> <p>The District will review its processes for developing IEP team notices according to OAR 581-015-2190 to determine any barriers to developing accurate descriptions of IEP meeting purposes.</p> <p>The District must ensure that any software or any method used to develop notices of IEP team meetings allows the entry of individualized or customized descriptions of meeting purposes.</p>	<p>Submit, for Department approval, a brief description of the review process, its conclusions, and any changes in district practices, if determined necessary by the district, resulting from the review.</p>	<p><b>Submit to ODE by February 27, 2009</b></p>

Dated: February 2, 2009

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

Mailing Date: February 2, 2009

**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.

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<sup>6</sup> 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).

<sup>7</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.