

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Hillsboro School District )  
 1J )  
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FINDINGS OF FACT,  
 CONCLUSIONS,  
 AND FINAL ORDER  
 Case No. 09-054-009

**I. BACKGROUND**

On February 27, 2009, the Oregon Department of Education (“Department”) received a signed written complaint from the parents of a student in the Hillsboro School District 1J (“District”) alleging violations of the Individuals with Disabilities Education Act (“IDEA”). The Department sent a copy of the complaint to the District on March 2, 2009. The Department must investigate written complaints that allege IDEA violations within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup>

On March 6, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. The District timely submitted its *Response* to the complaint investigator.

The Department’s complaint investigator determined that on-site interviews were necessary. On April 9, 2009, the investigator interviewed the parents. On March 10<sup>th</sup>, the complaint investigator interviewed a number of District staff, the clinical psychologist, two behavior specialists (for clarity, referred to as behavior specialist A and B hereinafter), two special programs coordinators (hereinafter coordinators A and B), a special education classroom teacher, an elementary office staff person, a special education director, and the Executive Director of Special Education.

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

**II. ALLEGATIONS AND CONCLUSIONS**

	<b>Allegations</b>	
1.	<p><b><u>Transfer Students</u></b></p> <p>The parents allege that the District violated IDEA when it failed to implement the student’s IEP as</p>	<p><b><u>Substantiated, in part:</u></b></p> <p>The Department finds that, with the exception of transportation</p>

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

<b>Allegations</b>	
<p>written or provide the student with services comparable to the child's IEP from the previous district after the student moved into the District.</p> <p>Specifically, the parents allege that the District:</p> <ul style="list-style-type: none"> <li>(a) failed to provide transportation, counseling, and speech services as described on the IEP;</li> <li>(b) mainstreamed the student more than the 40% as described on the IEP; and,</li> <li>(c) did not allow the student to attend school full-days, as described on the IEP, on February 17-18, 2009.</li> </ul>	<p>services, the District provided the student with services comparable to those included on the student's previous IEP after the student transferred into the District. Additionally, the Department finds that the District, within a reasonable amount of time after the student's transfer, adopted and implemented the student's previous IEP.</p>

**Proposed Solutions:**

The parents are requesting that the District implement the IEP as written.

**III. FINDINGS OF FACT**

**Background**

1. The student is a resident of the District and is 8 years old and in the 2<sup>nd</sup> grade. Prior to April 14, 2009, the student attended a self-contained classroom located in a District elementary school that is not the student's neighborhood school.<sup>2</sup>
2. The student was found eligible for special education by the student's previous Oregon school district on March 22, 2006 as a student with an emotional disturbance. In addition, that same district added an eligibility of Communication Disorder in the fall of 2008. The previous district wrote an IEP for the student on February 11, 2009. That IEP describes a placement in "a special education classroom with mainstreaming as behaviors allow." Further, the IEP outlines that the child receives services in social skills, behavior, communication, and speech. The IEP indicates that the child needs to be removed from the general education setting for "up to 60%." The February 11, 2009 IEP is substantially the same as the previous IEP. In the previous district, the student attended a self-contained classroom located in a non-neighborhood school.
3. The February 11, 2009 IEP outlines specially designed instruction in social skills (150 minutes daily); Behavior (125 minutes daily); and Communication/Speech (90

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<sup>2</sup> For purposes of clarity, the child's neighborhood school will be referred to as "Neighborhood School," and the school which houses the student's self-contained classroom will be referred to as "Attending School."

minutes monthly). It also outlines related services of transportation (two times daily), Counseling (Individual and Small Group) (30 minutes weekly<sup>3</sup>), and SLP (Speech Language Pathologist) consult (two hours yearly).

4. The student was a ward of the court and was approved for adoption by a couple living in the District in early January 2009. On January 9, 2009, one of the adoptive parents spoke to coordinator A in a meeting and informed the coordinator that the family was adopting a child with special needs. The parent briefly described some of the child's needs and stated that the family wanted to have things "in place" before the child arrived in the District. Coordinator A sent an email to other members of the District central office's special education team to alert them that a new student with significant special needs would be enrolling in the District.
5. During the week of January 12, 2009, one of the parents visited Neighborhood School and spoke to a school office staff member. The parent informed this individual that the family was describing a special needs child and asked about getting services for the child. The parent told the office staff person that the family did not think the child would attend the neighborhood school as the child was in a special program in another district.
6. The office staff person explained to the parent that the student could not be enrolled until the student was withdrawn from the other district and was living in the District. The office staff person offered the registration paperwork to the parent and notified the school counselor of the conversation with the parent. The counselor sent an email with the information to behavior specialist B.
7. The parent believed that the District had rejected the student for enrollment and called a District Director whom the parent knows in a professional capacity. The District Director apologized and said the District would be more than happy to enroll the child once the child was in the District but that the registration procedure could begin immediately. On January 14, 2009, the District Director forwarded the parent's name and number to coordinator A and asked the coordinator to contact the parent.
8. Coordinator A talked with the parent late on January 14, 2009. Again, the parent described some of the child's needs and the adoption process and asked for help in getting services. The parent told the coordinator that the parents had some original paperwork describing the child's services. The parent and the coordinator agreed that the parent would bring the materials to the District's central office the next morning so that copies could be made for the coordinator. The coordinator explained that the child could not be enrolled until physically living in the District but stated that the District would be happy to receive the information and start the planning process.

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<sup>3</sup> The parents stated that the previous District had originally agreed to provide counseling for 30 minutes daily in the IEP meeting, but when they received the copy of the IEP, it stated 30 minutes weekly. The parents told the investigator that they tried to persuade the previous District teacher to change this to daily instead of weekly but that the teacher refused.

9. On January 15, 2009, the parent dropped off the student's special education records at the District's central office. Copies were delivered to coordinator A. A completed copy of District registration paperwork was included with the special education paperwork. The coordinator made another copy of the registration paperwork, sent one to the school via courier, and gave the other copy directly to the school principal. The coordinator then gave the rest of the paperwork to behavior specialist B and asked the specialist to begin working on a plan for the student.
10. The District central office special education administrative staff held a meeting every Wednesday to review students who needed a new or changed placement in the District.<sup>4</sup> On January 21, 2009, behavior specialist B presented information on the student at this planning meeting. The members of the team instructed behavior specialist B to review the student's needs with a team of consultants including the clinical psychologist, who support all of the District's self-contained classrooms.
11. On January 28, 2009, District behavior specialist B again reviewed the child's case with the District's central office special education staff at the Wednesday meeting. The group agreed that the program at Attending School was most appropriate for the student. Behavior specialist B informed the parent by phone and, in early February, scheduled a time for the parents to observe the program at Attending School.
12. One of the parents met the clinical psychologist at Attending School on February 13, 2009. Together, they observed the class, talked with the teacher, and the discussed the child. The parent and psychologist planned for the parents to bring the child to the school on February 17, 2009, so that the child could see the classroom and meet the teacher.<sup>5</sup> Also on February 13, 2009, the parent gave a copy of the February 11, 2009 IEP to the District's central office, and District staff formally enrolled the child. Finally, behavior specialist B scheduled an "intake meeting" with the parents for February 17, 2009, at Neighborhood School.
13. The parents met behavior specialist B at Neighborhood School on February 17, 2009. Although behavior specialist B had invited the school special education teacher, the teacher was not in attendance. The parents and the behavior specialist reviewed transportation plans and other paperwork and talked briefly about the child's program.<sup>6</sup> The parents agreed to provide the transportation until the District could make the bus transportation arrangements for the child.
14. Later that same day, the parents and the child visited the program at Attending School. They were at the school from 11:48 a.m. to 1:11p.m. The child met the teacher and briefly participated in some activities, and the parents talked with the

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<sup>4</sup> The District is large and has many programs in varying locations. This meeting is logistical in nature—a way for District administrative staff to balance numbers and students' needs in the many programs.

<sup>5</sup> Monday, February 16, 2009 was a school holiday, President's Day.

<sup>6</sup> The District Executive Director stated that when a student will not attend the neighborhood school but will attend a District program in another District school, these "intake meetings" include the neighborhood school special education staff. However, because of a communication mistake staff from the student's neighborhood school did not attend.

teacher. The group arranged for the child to start the next day, February 18, 2009. The teacher told the parents that the class was going on a field trip in the morning, and because the teacher did not yet know the child very well, the teacher preferred that the student start mid-day on February 18, 2009.

15. This self-contained class at Attending School is described as a “social learning center.” Students in the class are in kindergarten through third grade and are placed there to receive specially designed instruction in social skills and behavior management. Students are able to attend general education classes as defined on their IEP’s and receive other special education services as appropriate. The program is taught by a special education teacher with the assistance of education paraprofessionals and with consultation from the District clinical psychologist. Two school psychologist interns conduct a social skills group every week for approximately 45 minutes. In addition, students receive individual monitoring and behavioral coaching as appropriate and as needed.
16. The student attended for the second half day on February 18, 2009 and attended full days for the next 21 days – through March 18, 2009. The District calendar indicates that March 19, 2009 was a half day for students, and March 20, 2009 was a grade preparation day; all District students were excused on that day. The student was then hospitalized for a short period. After a hospitalization, the student returned to school on April 7, 2009 and attended until April 10, 2009 before beginning a day treatment program.
17. The student began receiving speech services on February 24, 2009, from the speech language specialist. In addition, the student began attending the social skills group with the school psychologist interns on February 24, 2009. District specialist records verify that the student received both services on all five dates possible during the time the child attended the program.<sup>7</sup>
18. On February 19, 2009, the parents started a communication notebook for the child. They wrote a message to the teacher asking when the speech and counseling services would start. They also noted that the daily behavior sheet stated that the student “went to mainstream” most of the afternoon of the first day (February 18, 2009). They stated they were puzzled by this because they had been assured by behavior specialist B that the child “would not be going out for a while.”
19. The special education teacher noted during the interview that the staff had sent the child to more general education classes than the IEP outlined during the first eight days the child attended the program. An educational assistant accompanied the child to these classes and activities. However, the teacher noted that after the meeting on March 3, 2009, the child attended only general education reading and specials, accompanied by an educational assistant.

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<sup>7</sup> February 24, 2009; March 3, 2009; March 10, 2009; March 17, 2009; April 7, 2009

20. The parents asked about counseling and speech again in the communication book on February 26, 2009. The teacher replied that same day in the book and said that speech services had started on Tuesday (February 24, 2009) and would continue on Tuesdays. The teacher also asked the parents if they were available for an “intake meeting” on March 3, 2009.
21. On March 3, 2009, the parents met with the special education teacher, clinical psychologist, and coordinator B. At that meeting, the team reviewed components of the social learning center, the daily schedule, and the student’s special needs. The parents expressed concern about the amount of time the student was spending in general education classes, and the team agreed to change the daily schedule. The parents also asked about whether or not individual counseling services were being provided, and the clinical psychologist explained how counseling services are provided in the program. Team members also discussed the fact that the child’s eligibility needed to be reconsidered by March 22, 2009 and made plans for various evaluations to be completed. Finally, the team informed the parents that a communication mistake among staff had delayed the implementation of transportation and offered the parents vouchers for reimbursement of transportation costs.
22. The District began transporting the child to and from school on March 5, 2009.
23. On March 8, 2009, the clinical psychologist reviewed the child’s file, and on March 10, 2009, the clinical psychologist met with the social learning center team to develop some behavioral interventions that addressed IEP goals.
24. On March 11, 2009, the clinical psychologist sent the parents an email to share some of the ideas the social learning center team had discussed the previous day. The clinical psychologist outlined some sensory responses, the behavioral interventions, a lunch and candy protocol, and a protocol for the communication log.
25. The parents sent a reply to the clinical psychologist on March 13, 2009. They addressed the sensory issues, candy protocol, and behavioral interventions.
26. On March 18, 2009, the IEP team met, re-established eligibility, adopted the student’s IEP from the previous district and agreed to do additional evaluations in areas relating to autism spectrum disorder and occupational therapy.
27. The District did not send the parents Prior Written Notice that the team had met, accepted, and implemented the IEP from the previous district.

#### **IV. DISCUSSION**

In this case, the parent alleged that the District violated IDEA when it failed to implement the student’s IEP as written or to provide the student with services

comparable to the child's IEP from the previous district after the student moved into the District. Specifically, the parents allege that the District violated the IDEA by: (a) failing to provide transportation, counseling, and speech services as described on the IEP, (b) mainstreaming the student more than the 40% indicated on the IEP, and (c) not allowing the student to attend school full-days, as described on the IEP, on February 17-18, 2009.

OAR 581-015-2230(1) provides:

In state: If a child with a disability (who had an IEP that was in effect in a previous school district in Oregon) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either:

- (a) Adopts the child's IEP from the previous school district; or
- (b) Develops, adopts and implements a new IEP for the child.

Under OAR 581-015-2230(1), upon the transfer of the student into the District, the District was required to: (1) adopt and implement the student's previous IEP or develop and implement a new IEP and (2) provide the student with services comparable to those on the previous IEP in the interim. The Department finds that the District complied with the requirements of OAR 581-015-2230(1) by adopting the student's previous IEP on March 18, 2009. However, the Department also finds that, from February 17 to March 5, 2009, the District failed to provide the student with transportation services comparable to those included on the previous IEP. Otherwise, the District provided the student with services comparable to those on the previous IEP prior to adopting and implementing the student's previous IEP.

The Department finds that the District adopted and implemented the student's previous IEP within a reasonable amount of time after the student's enrollment in the District. The student began attending school in the District on February, 17, 2009. On March 18, 2009, the IEP Team adopted the student's IEP from the previous district. The IDEA, federal regulations, and analogous state statutes and rules do not provide a timeline for a new district to adopt a child's IEP from a previous school district. However, a January 2007 question and answer document produced by the Office of Special Education and Rehabilitative Services requires school districts to adopt the student's previous IEP or develop a new one within a reasonable period of time after the student's transfer.<sup>8</sup>

An analogous provision, OAR 581-015-2220(2)(a) provides some guidance on how long a district may reasonably take to initiate the formation of a new IEP for a transfer student. OAR 581-015-2220(2)(a) requires districts to convene a meeting to develop an

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<sup>8</sup> U.S. Department of Education. Office of Special Education and Rehabilitative Services. Questions and Answers on IEPs, Evaluations, and Reevaluations. Washington, DC: U.S. Government Printing Office. Retrieved April 21, 2009 from the World Wide Web: <http://idea.ed.gov/explore/view/p/,root,dynamic,QaCorner,3,>

IEP for students within 30 calendar days of determining that the child needs special education services. Although the District was not required to and did not conduct an eligibility determination for the student, the Department feels that the 30 day timeline, applied in situations where the student is not receiving special education services, also represents a reasonable timeframe for a district to adopt a transfer student's previous IEP. In this case, the District adopted the student's previous IEP within 30 calendar days of the student's initial attendance. Therefore, the Department finds that District implemented the student's previous IEP within a reasonable amount of time after the student began attending school in the District.

The Department also finds that, with the exception of transportation, the District provided the student with services comparable to those on the student's previous IEP prior to adopting that IEP. In this case, the child began attending the social learning center on February 17, 2009. The next week, the student began receiving speech and counseling services as defined on the IEP. Therefore, the Department does not substantiate the allegation that the District failed to provide speech services and counseling services comparable to those on the student's previous IEP.

However, the Department does substantiate the allegation that the District failed to provide transportation services comparable to those on the student's previous IEP. The District admits that, due to a staff miscommunication, transportation services were not implemented quickly enough; the District began transporting the student on March 5, 2009. The District has offered monetary compensation to the parents to cover the parents' costs of transporting the child from February 17, 2009 to March 5, 2009. The Department finds that the District's offer of reimbursement adequately remedied the failure to provide transportation services; no further corrective action is required.

The parents also allege that the District mainstreamed the student more than the amount described in the student's previous IEP. The District acknowledges that it placed the child in the general education setting for more than the amount of time specified in the student's previous IEP. However, once the parents expressed concern about the amount of time that the student was spending in the general education classroom at the March 3, 2009 meeting, the District began adhering to the student's placement page from the previous district. Therefore the Department does not substantiate the allegation that the District failed to provide the student with a placement comparable to that implemented in the student's previous district.

Finally, the District acknowledges that it suggested half-day placements on February 17, and 18, 2009. Because the parents did not object to the District's proposal regarding the student's attendance at the time, including half-day participation on February 17 and no participation in the February 18 field trip, the Department does not substantiate the allegation that the Department failed to implement the student's IEP by requiring the student to attend for half days on February 17 and 18, 2009.

Ultimately, on March 18, 2009, the District IEP Team, including the parents, adopted and began implementing the previous IEP. While the parent agreed with the rest of the

team in the decision to implement the prior IEP, they also requested that the District conduct some additional evaluations. In conclusion, the Department finds that the District complied with the requirements of the IDEA by adopting the student's prior IEP within a reasonable amount of time after the student transferred into the District. The Department also finds that, with the exception of transportation, the District provided the student with services comparable to those on the student's previous IEP from the student's first day on February 17, 2009 until the adoption of the previous IEP on March 18, 2009. Finally, the Department finds that the District has already remedied the failure to provide the student with comparable transportation services by offering the parents reimbursement for the costs they incurred transporting the student to school during that time.

Dated: April 23, 2009

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

Mailing Date: April 23, 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.