

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer)	FINDINGS OF FACT,
School District No. 24J)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 09-054-010

I. BACKGROUND

On March 2, 2009, the Oregon Department of Education (“Department”) received a letter of complaint from the Parent (“Parent”) of a student attending school and residing in the Salem-Keizer School District No. 24J (“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 and this final order is issued within 60 days of the receipt of the complaint.

On March 5, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint the Department would investigate. The District submitted a timely *Response* to the allegations, and made a copy available to the Parent. On March 31, 2009, a Department complaint investigator conducted an on-site investigation and interviewed the Parent. The Department’s complaint investigator also discussed the District’s response and the issues in this complaint by telephone with the District’s Student Services Coordinator.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-300.153 and OAR 581-015-2030. The 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).

#.	Allegations	Conclusions
(1)	<p><u>Parent Participation and Procedural Safeguards</u></p> <p>The written complaint alleged that the District violated the IDEA by failing to provide the Parent with written notice of a January 5, 2009 IEP meeting, and/or by failing to</p>	<p>Substantiated in part:</p> <p>The District erred by not providing adequate written notice of the January 15, 2009 IEP meeting. The District provided the Parent Prior Written Notice, together with notice of procedural</p>

#.	Allegations	Conclusions
	provide the Parent with Prior Written Notice with notice of procedural safeguards.	safeguards, at the January 15, 2009 meeting.

III. FINDINGS OF FACT

1. The student resides within the District and is enrolled in the ninth grade.¹ The student is identified as eligible to receive special education and related services as a child with an “Other Health Impairment,” related to several diagnosed medical conditions.

2. The Parent withdrew the student from his placement at a District middle school on approximately January 3, 2008 and began home schooling the student. The District held an IEP meeting on April 24, 2008 and developed an IEP and placement for the student. The District invited the Parent to participate at the April 24, 2008 meeting, but the Parent did not attend. The District provided the Parent with Prior Written Notice of its proposal to provide a free appropriate public education to the student consistent with the April 24, 2008 IEP and placement. The Parent continued to home school the student for the remainder of the 2007-08 school year and from the beginning of the 2008-09 school year through December 2008.

3. On January 5, 2009, the Parent re-enrolled the student at a District high school. The Parent requested an IEP meeting prior to re-enrollment due to additional health concerns for the student. The District’s Student Services Program Assistant contacted the Parent by telephone on January 8, 2009, to discuss scheduling an IEP meeting and the student’s new health concerns. The program assistant contacted the Parent again on January 9, 2009, and they agreed on the IEP meeting date of January 15, 2009. On January 12, 2009, the program assistant called the Parent and confirmed the location for the meeting. On January 14, 2009, the program assistant called the Parent and confirmed the meeting time and informed the Parent of the meeting participants.

4. The District created a written notice for the Parent concerning the January 15, 2009 IEP meeting and reports hand-delivering the meeting notice to the Parent at the beginning of the meeting. The Parent asserts that he did not receive a written notice before the meeting and that he did not receive a written notice at the meeting either. The District and Parent agree, however, that the District offered to re-schedule the meeting in response to the Parent’s expressed concern at the meeting that he did not receive a written meeting notice in advance. The Parent agreed to continue the meeting in order not to delay returning the student to school.

¹ The Parent was home schooling the student until January 2009, when the Parent re-enrolled the student. The student attended school in the District during part of the 2007-08 school year.

5. The team reviewed and revised the student's April 24, 2008 IEP, discussing the student's strengths and needs, the particular classroom where the District intended to place the student, and some concerns the Parent had regarding the student. The District provided the Parent with a Prior Written Notice concerning the action the District took with respect to changing the student's April 24, 2008 IEP, and a Procedural Safeguards Notice.² The Parent also stated that the District provided a written "Prior Notice of Special Education Action" and a copy of the parent rights brochure.

IV. DISCUSSION

School districts must provide one or both parents with an opportunity to participate in meetings with respect to their child's identification, evaluation, IEP development and implementation, and education placement.³ A school district must provide written notice "sufficiently in advance to ensure that one or both parents will have an opportunity to attend."⁴ The written notice must include specific information about the meeting, including the purpose, the scheduled time and place, and who will be in attendance.⁵ It also must inform the Parents that they may invite other individuals whom they believe to have knowledge or special expertise regarding the child, inform the Parent of who will attend, and inform the Parent of whom to contact within the District if they are unable to attend.⁶ The District's failure to provide the Parent with a written meeting notice sufficiently in advance of the meeting denied the Parent an opportunity to adequately prepare for the meeting.

The Parent alleged that the District did not provide him with written notice in advance of the January 15, 2009 IEP meeting.⁷ The District correctly asserts that it took the necessary steps to ensure the participation of the Parent at the meeting, arranging the meeting after consulting with the Parent by telephone. The District also asserts that there was limited time to contact the necessary team members and schedule the meeting at a mutually agreeable time and location, with the District's Student Services Program Assistant making several calls, and confirming all of the details of the meeting in advance with the Parent.

The Department agrees with the District's assertions with respect to participation by the Parent at the meeting: the Parent was aware of the meeting, attended and participated in the meeting, and could have rescheduled the meeting to obtain written notice in advance. However, the Department finds that the Parent's actual participation in the meeting does not abrogate the District's obligation to provide written notice of the meeting in advance. In this case, the District should have provided the Parent with

² The District's tracking form has a check box to indicate whether the notice of procedural safeguards given included "Parent Rights" or "Student Rights." In this instance, the box is checked for "Parent Rights."

³ OAR 581-015-2190(1).

⁴ OAR 581-015-2190(2).

⁵ *Id.*

⁶ *Id.*

⁷ The actual written complaint mistakenly identified the date of the meeting as January 5, 2009; however, the Department later determined that the actual date of the meeting was January 15.

written notice in advance of the January 15, 2009 meeting. The Department concludes that the District violated the written meeting notice requirement, and the Department substantiates the Parent's allegation with respect to the District's failure to properly notify the Parent of the February 15, 2009 IEP Team meeting. See *Corrective Action*.

The Department does not substantiate the Parent's allegations that the District (1) failed to provide the Parent with a Prior Written Notice detailing the changes in the student's educational program resulting from the February 15, 2009 IEP Team meeting and (2) failed to provide the Parent with a copy of the Procedural Safeguards Notice. The Department does not substantiate either of these claims.

Prior Written Notice must be delivered to a parent within a reasonable period of time before a school district initiates a change to the provision of a free appropriate public education to the student.⁸ The notice must include a description of the proposed action along with additional information intended to inform parents of the decision-making processes that led to the IEP Team's decision to change the provision of FAPE to the student. In this case, the Department finds that the District sent the Parent a Prior Written Notice concerning the changes to the April 24, 2008 IEP.

Upon parent request, school districts must provide a Notice of Procedural Safeguards that conforms to the requirements of the Oregon Administrative Rules.⁹ The record shows that the District provided the Parent with a Procedural Safeguards Notice at the February 15, 2009 IEP Team meeting. Therefore, the Department does not substantiate the Parent's allegation that the District failed to provide the Parent with the notice.

V. CORRECTIVE ACTION¹⁰

In the Matter of Salem-Keizer School District No. 24J
Case No. 09-054-010

#	Action Required	Submissions ¹¹	Due Date
1.	<u>Review and Revision of District Procedures</u> Consistent with this Final Order and the applicable Oregon Administrative Rules, the District shall review and, if needed,	Submit to the Department a copy of the policies, procedures, and	May 31, 2009

⁸ OAR 581-015-2310(1).

⁹ OAR 581-015-2315.

¹⁰ 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).

¹¹ Corrective action 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 ¹¹	Due Date
	revise its policies, procedures, and FAQs concerning the District's obligation to provided parents written notice of IEP Team meetings.	FAQs showing any revisions.	

Dated: April 23, 2009

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