

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego School)
District 1J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-012

I. BACKGROUND

On March 3, 2009, the Oregon Department of Education (“Department”) received a signed written complaint from an attorney representing the parents of a student in the Lake Oswego School District 7J (“District”) alleging violations of the Individuals with Disabilities Education Act (“IDEA”). The Department sent a copy of the complaint to the Lake Oswego School District on March 4, 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 the parents and the District agree to an extension to engage in mediation or exceptional circumstances require an extension.¹

On March 19, 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 17, 2009, the investigator interviewed the parents. On April 20-21, 2009, the complaint investigator interviewed a number of District staff, the special education director, the student’s special education teacher, a physical therapist, a speech and language pathologist, a supported education specialist, and two occupational therapists.²

The parents 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

	Allegations	Conclusions
	The parents allege that the District violated the IDEA:	

¹ OAR 581-015-2030(12)

² Both the parents and District were represented by attorneys who attended the interviews.

	Allegations	Conclusions
1.	<p><u>IEP Team:</u></p> <p>By not appropriately recognizing one of the parents as both a parent and a regular education teacher as per OARs 581-015-2210(1) and 581-021-0029(5)(b)(A).</p>	<p>Not Substantiated</p> <p>Because all evidence indicates that IEP team members gave serious consideration to the parents' requests and suggestions and that the parents actively participated in the meetings, the Department does not substantiate this allegation.</p>
2.	<p><u>Content of IEP:</u></p> <p>By not including current data describing the student's academic achievement and functional performance in the IEP as per OAR 581-015-2200(1) (a).</p>	<p>Not Substantiated</p> <p>Because the District considered all of the information provided by the parents and included the pertinent parts in the student's IEP, the Department does not substantiate this allegation.</p>
3.	<p><u>When IEPs Must be in Effect:</u></p> <p>By not having an IEP in effect at the start of the 2008-2009 school year as per OAR 581-015-2220(1).</p>	<p>Not Substantiated</p> <p>Because the April 3, 2008 IEP was in effect at the start of the 2008-09 school year and the District was prepared to serve the student as soon as the student enrolled, the Department does not substantiate this allegation.</p>
4.	<p><u>Review and Revision of IEPs:</u></p> <p>By failing to hold an IEP meeting to review and, if necessary, revise the IEP after the parents provided additional performance and academic information as per OAR 581-015-2225(1)(b)(C).</p>	<p>Not Substantiated</p> <p>Because the District considered the information the parents provided and held three separate meetings to review the information with the IEP Team, the Department does not substantiate this allegation.</p>
5.	<p><u>Independent Educational Evaluation:</u></p> <p>By failing to provide an Independent Educational Evaluation at public expense as per OAR 581-015-2305(1).</p>	<p>Not Substantiated</p> <p>Because the assessment obtained by the parents was not an evaluation under the IDEA or state statute or rule, the Department does not substantiate this allegation.</p>
6.	<p><u>Free Appropriate Public Education (FAPE) and Age Ranges:</u></p> <p>By not offering the student a free and appropriate public education as per OAR 581-015-2040(1).</p>	<p>Not Substantiated</p> <p>Because the District has maintained the position of standing ready to serve and has offered an IEP that provides a FAPE in conjunction with home</p>

	Allegations	Conclusions
		schooling, the Department does not substantiate this allegation.

Proposed Solutions:

The parents are requesting that the District:

- a) Amend or modify the data contained in the IEP statement of the student’s Present Level of Academic Achievement and Functional Performance to more closely resemble the data provided by the parents;
- b) Amend or modify the goals and objects of the IEP;
- c) Give appropriate consideration to the parent as both the general education teacher and the parent;
- d) Eliminate all data, categories, goals, and objectives in the IEP which are being addressed in the privately developed program;
- e) Provide compensatory services for the services the student has not received since April 3, 2008;
- f) Reimburse the parents for the cost of the independent education evaluation; and,
- g) Reimburse the parents for the cost of attorney’s fees engendered by attending IEP meetings and preparing and assisting with this complaint.

III. FINDINGS OF FACT

Background

The student is a resident of the District, is 11 years old, and is eligible for special education as a student with autism spectrum disorder. The student is home schooled by the parents and appropriately registered with the Education Service District as a home schooled student.

- 1) The District has an administrative rule (IGBAL-AR) that defines special education services for home schooled students with disabilities. Under IGBAL-AR the District must:
 - a) Provide written notice that it stands ready to provide a free appropriate public education if the student enrolls in the District;
 - b) Offer and document an IEP meeting to consider providing special education and related services to the student in conjunction with home schooling;
 - c) Treat the parent as both parent and regular education teacher; and,
 - d) State on the IEP how satisfactory educational progress will be determined for the student.
- 2) Further, as per IGBAL-AR, the District must ensure that students with disabilities who are home schooled are reevaluated at least every three years, unless the

parents and the district mutually waive this evaluation. If the team determines need for a specific evaluation to determine appropriate special education and related services for the student's IEP and the parent refuses consent or refuses to make the student available, the District documents to the parent that it stands ready to conduct the evaluation when the parent gives consent or makes the student available. Likewise, if the District does not have sufficient evaluation information to develop an IEP, the District is not required to complete these activities.

Spring 2008

- 3) On March 11, 2008 and April 3, 2008, the parents and the District met as an IEP team. The purpose of the meeting was to "again consider the appropriate placement for this student."³ Specifically, the District "must determine whether it's 'all or nothing' stance, which represents a substantial change in the District's philosophy as concerns this particular home schooled student, is appropriate."⁴ An outside facilitator conducted both meetings.
- 4) One of the parents noted several times during the meeting that the IEP the team had written in 2006 was appropriate and that the parent believed it provided a free and appropriate public education ("FAPE"). However, District staff disagreed with this statement and noted that they believed the IEP did not provide a FAPE as it did not outline instruction in all areas in which the student needed instruction.
- 5) At the first meeting, the team discussed how an IEP should be written to provide a free, appropriate education program in conjunction with a parents' home school program. The parents stated the belief that if the student was attending school full time then a complete IEP would be written outlining all services and goals. However, the parents contended that because the child was home schooled, the IEP should be written to reflect only supplemental services provided by the District.
- 6) At the March 11, 2008 meeting the team agreed to language in the student's goals for play skills and assistive technology. The parents also agreed to provide additional information about the student's skill levels to be included in the Present Level of Academic Achievement and Functional Performance. The parents defined some areas which they did not want addressed in the school setting. Throughout the discussion of all areas in this meeting, the team mingled discussion of placement with discussion about goal areas and specific ways to deliver the instruction.
- 7) Throughout the meeting, the team also discussed how to provide instruction to the student. The parents noted multiple times that the student had autism but does not have a visual learning style. Meeting notes indicate that members of the team could not reach consensus on how to write specific goals and objectives in multiple

³ *In the Matter of Lake Oswego School District No. 7J*, Findings of Fact, Conclusions and Final Order, Case No. 07-054-047 (Oregon Department of Education, February 25, 2008)

⁴ *Id.*

areas. The parents expressed concerns about a functional behavior analysis that was conducted in June of 2007 and reported and revised in September and October, 2007. The team was not able to reach consensus on a behavioral program and goals.

- 8) The parents stated clearly several times during the meeting that they did not want the District to teach any academic areas or address them in the IEP.
- 9) On April 3, 2008, the team met again and the meeting was conducted by the facilitator. At the beginning of the meeting the parents stated that they had no intention of enrolling the child in school full-time. The parents also expressed the belief that the District had already determined that the child should be placed full time in public school. The District staff disagreed with the parents' interpretation and the Director stated that the purpose of the meeting was to reach consensus on what constitutes a FAPE for the child and then determine where the services would be provided.
- 10) The parents asked the District to write a goal about self-injurious behaviors such as pinching. The District replied that it had never observed such behavior in the school setting but it was willing to observe for such behaviors when the student started school; and, if necessary, to address the behavior as part of the behavior plan.
- 11) Throughout the April 3, 2008 IEP meeting, the team considered a number of options and discussed service time, goals, objectives, accommodations, and strategies for academic areas, as well as PE, behavior, and sensory modifications. Although the parents agreed with individual areas of the IEP, the team still could not reach consensus by the end of the meeting. The parents asked for time to think about the IEP and the team agreed.
- 12) The IEP as written at the March and April, 2008 meetings contained the following:
 - a) PLAAFP statements that described the student's skills and behavior as observed during the spring of 2007 in the school setting;
 - b) PLAAFP statements that described the student's skills and behavior in the home setting from a report written by the private provider and dated September 15, 2007;
 - c) PLAAFP statements about the student's current skills and behavior as reported by the parents;
 - d) Goals with objectives for specially designed instruction in functional math, reading, writing, play skills (1—2), and behavior—each for 100 minutes per week;
 - e) Goals with objectives for specially designed instruction in classroom/school skills—300 minutes per week, speech, and receptive/expressive/social communication—60 minutes per week;

- f) Related services in communication—30 minutes per week, fine and gross motor skills for 120 minutes per week each, and assistive technology for 30 minutes per week;⁵
 - g) Supplementary services of adult assistance—6.5 hours per day; Behavior support plan—daily, Behavior Support plan review after eight consecutive weeks in school and Assistive Technology Review one time before March 2009;
 - h) Supplementary services of a home/school communication log, visual systems, simple and concise instructions, rewards with social praise, signs and gestures, sensory activities—as described in a list written by the occupational therapist, a weighted blanket on lap and recorded books, modified activities in PE, autism and other specialists to share strategies with parents and prompting from most dependent to least dependent ;
 - i) Supports for School Personnel included ten hours per year of consultation from the autism specialist, meetings with the autism specialist three hours per year, consultation from the occupational therapist two hours per year, consultation from the physical therapist five hours per year, consultation from the behavior specialist ten hours per year, and consultation from the speech pathologist 60 minutes per month;
 - j) The non-participation justification statement noted that the student was home schooled and would attend public school for at least 680 minutes per week in a small group environment where distractions could be minimized. The student would be taught in a 1:1 setting and introduced to small and large group learning as appropriate; and,
 - k) Two placement options were considered — full-day district special class with mainstreaming opportunities and 680 minutes per week in the special class combined with the home school program that included 300 minutes per week of instruction in functional reading, math, and writing. The whole team rejected the first option; the district team selected the second option and the parents rejected it.
- 13) On April 10, 2008, the parents sent the District Director an email. In the email, the parents stated that they did not consent to the IEP written at the March and April meetings for the following reasons:
- a) Behavioral needs not adequately addressed in the IEP;
 - b) District refused to write a self-management behavioral goal for self-injurious behavior;
 - c) Behavior goals and objectives were not appropriate;
 - d) Classroom/school skills were not appropriate;
 - e) The use of pictorial prompts should be written as a goal to learn skills and decrease dependence on prompts;
 - f) There was no need to use a visual prompt to initiate the use of the bathroom as the student had been potty trained since the age of two and,
 - g) The parents would send the District a report written recently by the private speech/language pathologist.

⁵ Each of the related services also included goals with objectives.

- 14) On April 24, 2008, the District sent the parents a prior written notice proposing to initiate changes the provision of a FAPE to the student. This notice informed the parent of the following:
- a) The team met on two separate occasions to consider whether or not a FAPE could be provided in conjunction with home schooling and the District reached the conclusion on April 3, 2008 that it could be done;
 - b) The parents have declined the services as offered on the April 3, 2008 IEP, and the District stands ready to serve;
 - c) The parents declined the IEP and the team as a whole could not come to agreement on the amount of behavior consultant time, the type of specially designed instruction needed to address self-management skills (the District did agree to observe for and address such skills in the Behavior Service Plan), behavior goals and objectives, classroom/school skills, and the reading and written language goals and objectives;
 - d) The District noted that the Functional Behavior Assessment and Behavior Service Plan needed to be updated when the student returned to the school setting;
 - e) The District also noted that state and district assessment, ESY, and non-participation needed to be addressed and that the District was ready to do so when the student enrolled in public school;
 - f) The District also noted that it offered the IEP services and placement in conjunction with home schooling;
 - g) The District described the options that had been considered and the reasons why those options had been rejected; and finally,
 - h) The District noted that it stood ready to serve the IEP dated April 3, 2008 and that it would set up a meeting as soon as the parents enrolled the student in school.
- 15) On April 30, 2008, the parents sent the District several emails. In the first email the parents asked that the word “visual” be deleted from the supplementary services statement on prompting. In a second email the parents objected to the use of visual picture icon symbols as part of the strategy to teach steps of routines, activities, or other skills. In a third email, the parents asked for a Prior Written Notice explaining why the District rejected the parents’ proposals about the amount of time for behavior consultation and about the behavior, classroom/school skills, functional reading, and writing goals. The parents also stated that the parents would not implement goals written in the IEP with which the parents disagreed. In a fourth email, the parents asked for clarification of a statement in the Prior Written Notice (“PWN”) dated April 24, 2008. The parents objected to the District’s comments in the PWN that the parents wanted to choose from a “menu of services”.

Fall and Winter 2008

- 16) On September 8, 2008, the parents emailed the District and said that they had new information and asked for an IEP meeting. The District and the parent agreed to meet on September 16, 2008.

- 17) At this meeting, the parents presented a report from an independent evaluation the parents had commissioned from Behavior Analysts, Inc. in California. Two staff from this program had conducted a three day, six hour per day learner profile appointment with the student in early August 2008. The consultants noted that the parents had requested the consultation to “determine how to implement language training into the student’s daily program, to determine language training priorities and to learn the effective teaching strategies and techniques utilized by Behavior Analysts, Inc.”⁶
- 18) The parents asked the District team to abandon the then-current IEP and develop a new one using information from the Behavior Analysts, Inc. report, the spring report from the private speech pathologist, and the progress report from the private service provider outlining the progress the student had made in the summer of 2008.⁷ The parents further stated that they wanted academics in the home school program and social, fine, and gross motor instruction in the school setting. Both the District and the parents were accompanied by attorneys at this meeting.
- 19) The District team asked for a 15 minute break during the meeting so that members of the team could review the report.⁸ The parents left the meeting and returned. When the parents returned the District asked the parents for a couple of days so that team members could review the report more completely. The District team told the parents they would schedule another meeting and send a draft IEP to the parents for review by September 26, 2008.
- 20) After this meeting, the District Director met with the rest of the team. The Director distributed copies of the report to each member of the team and asked them to analyze the report and compare it to the IEP written in the spring of 2008. Specifically, the Director asked the team to note areas already included on the April IEP and new information about the student’s academic achievement and functional performance.
- 21) On September 19, 2008 the District’s attorney emailed the parents’ attorney with a response to the reports the parents had provided at the September 16, 2008 meeting. In the email, the attorney informed the parents that the District staff had reviewed the reports and had found that much of the information in the reports appeared to be consistent with the current IEP goals and objectives. The District offered to reference or incorporate the information from the report into the PLAAFP. The attorney also noted that several of the reports contained discussion on methodology but that identifying specific methodologies and teaching approaches in the IEP was not appropriate. Finally, the attorney asked the parents’ attorney to send written notes on changes the parents wanted in the IEP so that the District team could review them.

⁶ Report from James Partington, Ph.D., Director, and Nissa Intarachote, M.A., Consultant, Behavior Analyst Inc., to parents, *Learner Profile Report 1* (August 2008) (copy on file with the Department).

⁷ This individual provides academic instruction to the student in the home for four hours per week

⁸ The report is 14 pages long.

- 22) In their analysis of the reports, District staff identified a number of items in the reports that were included in goals and objectives on the April 3, 2008 IEP. For example, in the Behavior Analysts, Inc. report the consultants noted that “one objective for the student is to approach an adult and spontaneously mand (request) for preferred items more frequently.”⁹ This is described in objective number one of the expressive communication goal on the April 3, 2008 IEP. In addition, District staff noted that there were many strategies which could be incorporated into the student’s program once the student was enrolled in school.
- 23) On November 11, 2008, the parents’ attorney sent an email with reports from the private speech/language pathologist and the private occupational therapist attached. The speech/language report was dated October 6, 2008, and the OT report was dated November 10, 2008. Both reports provided information on the student’s current activities in each of the respective skill areas.
- 24) The IEP team met on November 13, 2008. At this meeting, the team reviewed the concept of special education in conjunction with home schooling. The team also discussed the October speech and OT reports. The parents asked the District to return to goals written in a 2005 IEP. The team discussed a variety of goals and objectives including the behavior goals and plans. The parents presented some new information on the student’s gross motor skills. By the end of the meeting, the team had agreed to develop a possible time schedule for the student to return to school for services as outlined on the IEP. Once the student was attending the District agreed to observe and evaluate and collect data so that the IEP could be edited to reflect current information.
- 25) The District scheduled another IEP team meeting for November 24, 2008. The parents canceled this meeting and the team rescheduled for December 17, 2008. This meeting had to be canceled because of a snow day and the cancelation of all District activities.
- 26) The IEP team met again on January 20, 2009. In this meeting, the team reviewed and discussed the following:
 - a) Use of visuals as part of skill teaching or prompts;
 - b) Starting the student in school for a limited amount of time daily so that the District staff could observe the student;
 - c) Having the district staff meet with the private service providers to edit academic goals and objectives;
 - d) Possible placement options for the student in the public school setting;
 - e) Inclusion of specific behavior, math, reading and writing goal language presented by the parents; and,
 - f) Information from two reports written on January 6, 2009 by the private speech/language pathologist.

⁹ Report from James Partington, Ph.D., Director, and Nissa Intarachote, M.A., Consultant, Behavior Analyst Inc., to parents, *Learner Profile Report 3* (August 2008) (copy on file with the Department).

- 27) The team agreed that the program could be set up for the student to start school in approximately 2-3 weeks from the date of the meeting, and, once the student started school, the specialists would observe and evaluate the student to establish baseline data that could be incorporated into the IEP.
- 28) On January 21, 2009, the parents sent an email to the District speech/language pathologist with an edited copy of the Receptive Communication goal. Also on that date, the parents sent a revised copy of the play goal the parents had given the team at the meeting the day before. The parents stated that they had distributed the goal prematurely.
- 29) On January 22, 2009, the parents emailed the occupational therapist and asked to change the second objective on the gross motor goal.
- 30) On February 6, 2009, the District sent a Prior Written Notice proposing changes to the student's IEP, placement, and a free appropriate public education ("FAPE".) The notice specified that the District agreed to change the wording of visuals to cues or prompts throughout the IEP. The notice also stated that because the parents disagreed with the play skills goals, behavior goals and support plan, communication goals and the use of visuals throughout the IEP, the team could not reach consensus on any of those areas. The District noted that the parents disagreed with the placement at the end of the meeting. Finally, the notice specified that the team agreed to meet with the parents' private consultant to review the academic goals.
- 31) On February 20, 2009, the parents' attorney sent the District a letter in which the attorney informed the District that the parents wanted their child to participate in the school setting within the District but that they were not willing to do so with the condition or understanding that they agree to the current IEP, placement and BSP as written with no changes or modifications.
- 32) The District scheduled a meeting with the parents for February 24, 2009. The parents did not attend, and the parents' attorney explained that the parents did not intend to enroll the student in public school. The District sent the parents a letter informing them that the District stood ready and willing to provide special education services as determined by the IEP team.

IV. DISCUSSION

Under OAR 581-021-0029, a district meets its responsibility to a home schooled student when it offers and documents to the parent:

- (A) An opportunity for the child to receive special education and related services if the child were enrolled in the district; and,
- (B) An opportunity for an IEP meeting to consider providing special education and related services to the child with a disability in conjunction with home schooling.

The IEP shall only be developed for a child with a disability if the team determines that a FAPE can be provided in conjunction with home schooling. The services may be provided in the home only to the extent that special education or related services would be provided in the home if the child were not home schooled. The team shall meet and develop an IEP, consistent with the requirements in OAR Division 15. However, the child's parent shall be treated as both parent and regular education teacher unless the parent designates another individual as the regular education teacher. In the section of the IEP that defines the extent to which the student will not participate in the regular education setting, the IEP shall state that the child is exempt from compulsory school attendance and regular education is provided through home schooling. The IEP shall state how "satisfactory educational progress" will be determined for the student.

Home schooled students with disabilities shall be reevaluated at least every three years in accordance with OAR 581-015-2100 through 581-015-2120. If the team determines that a specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the child's IEP and the parent refuses consent for such evaluation or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available. If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. The district shall provide prior written notice under OAR 581-015-2310 if the district terminates eligibility or services under these circumstances.

Additionally, if the district permits partial enrollment of home schooled children in its regular education program, the district shall permit children with disabilities to participate to the same extent as non-disabled children, if appropriate, whether or not the child is receiving IEP services from the district. Finally, parents of home schooled children with disabilities have the same procedural safeguards as children with disabilities enrolled in the district, except that the parent is not entitled to an independent educational evaluation at public expense under OAR 581-015-2305 if the parent disagrees with an IEP team evaluation regarding satisfactory educational progress under this rule

In this case, the parent is alleging a number of issues. The parent alleges that the District violated IDEA when it:

1. Failed to appropriately recognize one of the parents as both a parent and a regular education teacher;
2. Failed to include current data describing the student's academic achievement and functional performance in the IEP;
3. Failed to have an IEP in effect at the start of the 2008-2009 school year;
4. Failed to hold an IEP meeting to review and, if necessary, revise the IEP after the parents provided additional performance and academic information;
5. Failed to provide an Independent Educational Evaluation at public expense; and,
6. Failed to provide the student with a free and appropriate public education.

The parents are requesting that the District:

- a) Amend or modify the data contained in the IEP statement of the student's Present Level of Academic Achievement and Functional Performance to more closely resemble the data provided by the parents;
- b) Amend or modify the goals and objects of the IEP;
- c) Give appropriate consideration to the parent as both the general education teacher and the parent;
- d) Eliminate all data, categories, goals and objectives in the IEP which are being addressed in the privately developed program;
- e) Provide compensatory services for the services the student has not received since April 3, 2008;
- f) Reimburse the parents for the cost of the independent education evaluation; and,
- g) Reimburse the parents for the cost of attorney's fees engendered by attending IEP meetings and preparing and assisting with this complaint.

Underlying the parents' allegation is the disagreement between the District and the parents regarding the District's reading of the Oregon special education rules regarding home schooling. The issues in this complaint arose as the District and the parents met in two IEP meetings to resolve IEP issues that were the subject of a previous complaint. The parent maintains that only those services which are to be provided in the school setting should be written on the IEP. In contrast, the District maintains that all services which constitute the specially designed instruction, related services, supplementary aids and services, and supports for school personnel the student needs to receive a free and appropriate public education must be outlined on the IEP. Once the team has defined these services, it can then consider placement, thus establishing how a FAPE will be provided in conjunction with home schooling. This difference of opinion between the District and the parents is significant because it is the underpinning of all of the issues in this case.

Under OAR 581-021-0029(5)(a)(B), Oregon school districts are required to create an IEP for students who are home schooled if the IEP Team determines that a FAPE can be provided in conjunction with home schooling. In order to provide a student with a FAPE, school districts must provide special education and related services and supplementary aids and services that allow the student to advance towards identified goals, progress in the general education curriculum, and participate with other children with disabilities and without disabilities.¹⁰ In this case, the IEP Team determined which services and supplementary aids were necessary to provide this student with a FAPE in conjunction with home schooling. The parents objected to the inclusion of services that the IEP Team had determined were necessary to provide the student with a FAPE. Therefore, removal of those services would have resulted in an IEP that did not provide the student with a FAPE. The District is not required to provide special education and related services to the student under the federal or state statutes and regulations unless those services, in conjunction with the student's home schooling, provide a FAPE. Here, the IEP Team determined that the parents' proposals to revise or recreate the student's IEP would have resulted in an IEP that did not provide the student with a

¹⁰ OAR 581-015-2200(1)(d)

FAPE. As such, the District was not required to accept the parents' proposals or to implement an IEP that did not provide a FAPE.¹¹

1. Recognizing the parent in the dual role of general education teacher and parent

The parents allege that the IEP team members representing the District did not recognize and honor one of the parents in the dual role of general education teacher and parent at the student's IEP team meetings. However, over the course of five meetings, many of which lasted several hours, from March 2008 to January 2009, there is ample evidence to indicate that District staff worked hard to recognize and work with the parent in the dual roles. Meeting minutes indicate that team members listened, asked multiple questions, paraphrased, and asked for clarification. Team members also read the materials and reports the parents distributed and analyzed them to gain the pertinent information. In McGovern vs. Howard County Pub. Schs., 2001 US Dist. LEXIS 13910 (D.Md. 2001), the court held that when a parent's suggestions pertaining to a child's placement are not accepted and incorporated into the IEP, it does not necessarily constitute an IDEA violation. The court further concluded that the parent was not denied an adequate opportunity to participate in the formation of the child's IEP where the parent and school staff communicated frequently, the parent actively participated in meetings, and the parent's suggestions were considered but not implemented in the final IEP. The Department finds that the parents concerns were given similar consideration in this case. Because the evidence indicates that IEP team members gave serious consideration to the parents' requests and suggestions and that the parents actively participated in the meetings, the Department does not substantiate this allegation.

2. Including current data in the Present Level of Academic Achievement and Functional Performance.

The parents allege that the District did not include current data in the present level statement in the IEP. When the process started again in March of 2008, the student had not been in the school setting since June of 2007 and had only attended school in the District, on a part time basis, for approximately six weeks at that point. At the March meeting, the District presented a draft IEP based on the data it had gathered during the student's attendance at school and from the private service providers. Over the course of the next four meetings, the District asked the parents repeatedly to enroll the student in the public school setting so that staff could observe and instruct the student and, in doing so, establish baseline data that could be used to update the IEP. The parents continually refused to enroll the student—saying that the IEP had to be rewritten before the student would enter the public school setting. The parents provided reports from

¹¹ Although OAR 581-021-0029 does not require the District to provide this student with special education and related services that would not provide the student with a FAPE, the District does allow partial enrollment of special education students in the District's regular education program. The District's policy indicates that, "[t]he district permits students with disabilities to participate to the same extent as non-disabled students, if appropriate, whether or not the student is receiving IEP services from the district."
http://spedhandbook.loswego.k12.or.us/home_schooling.htm.

private providers and from an independent evaluation. District staff analyzed this information and incorporated it into the IEP. On multiple occasions the parents asked for wording changes in either the Present Levels statement or in goals and objectives and the District agreed. Additionally, the Department finds that the District adequately considered the information provided by the parents and incorporated the relevant parts into the student's IEP. The home schooling rule is clear that when the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. In this case, the District continued to work with the parents on the IEP, even though the parents did not allow the District access to the student for purposes of observation and evaluation. Therefore, the Department finds no violation and does not substantiate the parents' allegation.

3. IEP in effect at the start of the 2008-2009 school year.

The parents allege that the District did not have an IEP in effect at the start of the 2008-2009 school year. In fact, the team completed the work on an IEP that offered special education in conjunction with home schooling on April 3, 2008. The parents informed the District on April 10, 2008 that they did not agree with or consent to the IEP and that they would not enroll the student in the public school setting. On April 24, 2008, the District sent the parents a Prior Written Notice informing the parents that the District stood ready to serve the student and implement the IEP whenever the parents decided to enroll the student either full or part-time in the public school setting. Because the April 3, 2008 IEP was in effect at the start of the 2008-2009 school year; and the District was prepared to serve the student either in conjunction with home schooling or, if the student re-enrolled, in the public school setting, the Department finds no violation and does not substantiate the parents' allegation.

4. Holding an IEP meeting to review and, if necessary, revise the IEP after the parents provided additional performance and academic information.

The parents allege that the District did not hold an IEP meeting to review and, if necessary, revise the IEP to reflect additional functional and academic performance information. In September 2008, the parents gave the District a report that described an independent evaluation conducted in August 2008. District staff reviewed the report and informed the parents that there was minimal new information in the report but that the District would consider any drafts of changes to the IEP if the parents would send them to the District. The parents did not send any draft changes but did submit additional reports from private providers. The District and the parents met on November 13, 2008 to again review the IEP and consider the information in the reports. At that meeting, the parents asked the team to consider returning to goal language that had been written in 2005. The parent served in a dual capacity as general educator and parent for a home schooled student. Under OAR 581-015-2210(4) the student's regular education teacher must participate as a member of the IEP team in the development, review, and revision of the student's IEP. In practice, this may include helping to write goals for the child. After the parents gave the District these reports in the fall of 2008, the District asked the parents to submit some drafts of goals which would incorporate the information in the reports. The parents chose not to do so; rather, the parents continued to question the current language in the IEP. The team met again in January

2009 to continue the discussion. After initially agreeing with the team at that meeting and after the group had established a tentative start date on which the student would begin attending public school, the parents instead submitted edited goals via email the following day and one month later, informed the District that the parents disagreed with the IEP and would not enroll the student. Because the District considered the information the parents provided and held three separate meetings to do so, the Department finds no violation and does not substantiate this allegation.

5. Providing an Independent Educational Evaluation at public expense.

The parents allege that the District refused to provide an Independent Educational Evaluation at public expense. The student was last evaluated by the District on November 21, 2006. In August 2008, the parents took the student to consultants for an evaluation to “determine how to implement language training into the student’s daily program, to determine language training priorities and to learn the effective teaching strategies and techniques utilized by Behavior Analysts, Inc.”¹² After the school year started, the parents contacted the District and asked for a meeting to “wipe the slate clean” and begin the IEP process again with new information in the report. When the parents presented the report, they asked the District to reimburse them for the cost of the consultation.

Under OAR 581-015-2305(1) a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. The District’s evaluation must be comprehensive and intended to address all areas of suspected disability. In this case, the parents disagreed with the scope of the District’s November 2006 evaluation of the student and sought to have the student evaluated in additional areas. OAR 581-015-2000(10) defines an “evaluation” as “procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.” Under this definition, the assessment that the parents received from Behavior Analysts, Inc., which primarily focused on instructional methodologies, was not an evaluation. Because the purpose of the August 2008 assessment by Behavior Analysts, Inc. was not to [paraphrase OAR], the Department finds that the District is not required to reimburse the costs of that assessment. The Department does not substantiate this allegation.

6. Providing the student with a free and appropriate public education.

The parent alleges that the District failed to provide the student with a free and appropriate public education as per OAR 581-015-2040. This rule states that districts must provide specially designed instruction and related services (i.e., a free, appropriate public education) to all resident school age children with disabilities, including those who are suspended or expelled from school. However, under OAR 581-021-0029(5)(B)(i), an IEP shall be developed for the student only if the team determines that a free appropriate public education can be provided in conjunction with home schooling. As noted at the beginning of this discussion, the parents believe that an IEP written without

¹² Report from James Partington, Ph.D., Director, and Nissa Intarachote, M.A., Consultant, Behavior Analyst Inc., to parents, *Learner Profile Report 1* (August 2008) (copy on file with the Department).

the specially designed instruction provided at the home school constitutes a FAPE. However, the Oregon Administrative Rules indicate that the IEP must include all elements of specially designed instruction and related services in order to ensure that a free appropriate public education can be provided in conjunction with home schooling.¹³ In this case, the District has worked diligently over time with the parents to write such an IEP and has indicated multiple times that it stands ready to provide services if the parents chose to make the student available for the provision of IEP services in conjunction with home schooling or enroll the student in the public school setting. The parents have consistently refused to do so, stating that, until the IEP is appropriate, the parents will not enroll the student. Consequently, the District has had no access to the child and no opportunity to obtain baseline information to use in order to revise the IEP. Because the District has remained ready to serve the student and has offered an IEP that provides a FAPE in conjunction with home schooling, the Department finds no violation and does not substantiate this allegation.

V. CORRECTIVE ACTION

In the Matter of Lake Oswego School District
Case No. 09-054-012

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

Dated: May 4, 2009

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

Mailing Date: May 4, 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.

¹³ OAR 581-021-0029