BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Estacada School District #108	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 09-054-020

I. BACKGROUND

On June 8, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in the Estacada School District #108 (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on June 9, 2009. The parent provided a copy of the complaint letter to the District.

On June 15, 2009, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of June 29, 2009. The District submitted its timely *Response* to the Department and to the parent on June 29, 2009. The District's *Response* included copies of the student's IEPs, meeting notices, meeting minutes, progress reports, and grades as well as information on the District's grading policy for students in special education.

The Department's complaint investigator determined that on-site interviews were required. On July 20, 2009, the Department's investigator interviewed the parent. On July 20 –21, 2009, the Department's investigator interviewed the following District staff: a high school principal; two special education teachers, one of whom was the student's case manager; a District transition specialist; and the Director of Special Education. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred 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; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.[1] This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from June 9, 2008 to the filing of this complaint on June 8, 2009.[2]

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District	

[1] OAR 581-015-2030(12) (2008)
[2] *See* 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

	violated the IDEA in the following ways:	
1.	**Content of IEP:** The parent alleges that the District failed to provide any progress reports for the student's IEP goals.	Not Substantiated. The District produced photocopies of IEP progress reports which indicate that they were mailed on the appropriate reporting dates. The Department does not substantiate this allegation.
2.	**Free Appropriate Public Education and Age Ranges & When IEPs Must Be in Effect:** The parent alleges that the District failed to provide related services, and that the District failed to implement the IEP as written when it did not notify the parent that the student's grades had dropped as per an accommodation on the IEP.	Not Substantiated. The student's IEPs during the relevant timeframe did not include any related services. Additionally, the Department finds that the student's grades never dropped below the established level in any class during the 2008-2009 school year. The Department does not substantiate either of these allegations.
3.	**Review and Revision of IEPs** The parent alleges that the District failed to consult the parent before it implemented a change in the manner in which the student's coursework was graded.	Not Substantiated. Because the District followed its established and documented practice of giving students an opportunity to improve a low grade, the practice was not a component of the student's IEP. Therefore, the District was not required to confer with the parent prior to implementing the policy with regard to the student. The Department does not substantiate the parent's allegation.
4.	**Parent Participation – General** The parent alleges that, when the parent requested an IEP meeting, the District refused to hold one.	Not Substantiated. Because the District responded quickly and with a reasonable alternative date for a meeting near the beginning of school, the Department does not substantiate the parent's allegation.

	Requested Corrective Action. The parent is requesting that the District: **Structure a new IEP addressing the**	

	student's needs: **a) Back to a former goal;** **b) Develop organizational plan;** **c) Monthly progress reports on IEP goals;** **d) Provide math support; and,** **e) Adult Advocate monthly.** **Provide an on-site case manager.** **Transfer the student to another high school in a different district.**	

III. FINDINGS OF FACT

1. The student is 17 years old, resides in the District, and is eligible for special education as a student with autism.

2. The student has completed the junior year of high school, has earned 22 of 28 credits necessary to graduate with a regular diploma, and has a cumulative grade point average of 3.02. The student is identified as "Talented and Gifted," and has completed all of the basic coursework for a regular diploma with the exception of credits in Electives, Personal Finance, and a Senior Seminar class.

3. The team wrote an IEP for the student on March 18, 2008. This IEP specified that the student:

   a. Would receive specially designed instruction in math, written language, organization, social/educational communications, and transition skills—all in the general education setting;
   b. A supplementary service that the District would "provide information to the home of weekly assignments and due dates," one time per week;
   c. A supplementary service that the student is allowed to turn in work and then make arrangements for due dates on incomplete assignments.

4. The March 18, 2008 IEP contains no specified related services.

5. In the March 18, 2008 Present Level of Academic Achievement and Functional Performance statement, the parent asked for "updates on grades, missing assignments, and how teachers are complying with the IEP." The parent also expressed concern that not knowing about assignments and due dates was a "worry and a frustration."

6. The student took the Statewide Assessment tests during the 2007-2008 year, using the OAKS system in reading, math, and science, and the paper and pencil assessment in writing. The student scored 258 on reading, 240 in math, 258 in science, and a 40 in writing—all of which either meet or exceed the standard at the 10th grade level.

7. During the 2008-2009 year, the District sent progress reports through the US Mail, along with report cards, on November 24, 2008; March 13, 2009; and June 10, 2009.[3]

[3] The District was on a trimester system at that time, but has changed to a semester system for the start of the 2009-2010 school year.

8. On March 16, 2009, the IEP team met to write the student's annual IEP. This IEP specified:

   a. Specially designed instruction in communication, organizational skills, and transition—all to be provided 30 minutes per month in the general education classroom;
   b. A supplementary service of "anytime the grade drops below 65% in a class, contact is to be made with [the parent]".

9. The March 16, 2009 IEP contains no provision of related services.

10. During the interviews the parent maintained that the student was to receive additional support in math and defined this as a related service. However, neither IEP contained any reference to additional support in math on the services summary page.

11. There are no parental concerns listed in the Present Level of Academic Achievement and Functional Performance statement on the March 16, 2009 IEP nor are any mentioned in the minutes of the meeting.

12. The District uses an on-line system called Power School, by which parents can access a real-time grading system and view their student's up-to-date grades. The active grade page lists the student's assignments, missing assignments, and associated grades. It shows the running and current percentage the student has for a grade at that time.

13. Over the course of the 2008-2009 school year, the parent logged onto the Power School program 76 times, with an average of 47.5 minutes per time.

14. From the start of the school year in September 2008 until the March 16, 2009 IEP meeting, the case manager sent written weekly updates home to the parent for a period of time until the student and the case manager began calling the parent weekly and providing information about the student's progress in classes.

15. The March 16, 2009 IEP was written just days after the third trimester began. During that trimester the student took four classes and worked as an aide to a teacher during one class period. The classes were: The Short Story, Foreign Language (Spanish), Advanced Algebra B, and the History of American Music. The student earned a grade of B- (82%) in The Short Story; a grade of B- (80%) in the History of American Music; a grade of Pass (66%) in Advanced Algebra; and a grade of Pass as an Aide.

16. The student took the Spanish class not as a graduation requirement, but to fulfill a requirement for college entrance. The pace of the class was difficult for the student, given some of the manifestations of autism, so the case manager arranged that the student would work on a computer program (Rosetta Stone) to continue the Spanish studies. The student worked independently and was not graded at the end of the school year.

17. A calculation review of the student's grades in the language arts, math, and music classes during the third trimester substantiates that the student's grade never dropped below a 65% in any of the classes during that time.

18. The District has a practice for grading students who are eligible for special education. The practice has been used in the District for ten years and is used at all grade levels. It is

printed on report cards and in District handbooks which are given to parents. It reads as follows:

> "The Special Services Student (IEP, 504, ESL) will receive an "Incomplete grade" if the student has not received a "C" or better in class at the end of the Trimester. The Incomplete will be removed and replaced by a "regular education" "C" or better once the teacher of record determines that the student has mastered the course's essential concepts, processes, skills, and applications at a level appropriate to the stipulations in the student's personal plan (IEP, ESL, 504). If the student's Incomplete grade is removed, but only because a significant portion of the course's essential elements were not required or not mastered, the Incomplete may be changed to modified A-D grade or to a regular ed. "D" grade, or to an NG (no grade). If the student has not achieved the required mastery level by the Incomplete deadline, the teacher may extend the Incomplete or award a "D" or "Pass" or require the student to repeat all or part of the class to earn credit. Also, if the student has not met the above standards, an "NG" or "No Grade" shall be awarded. For the purpose of uniformity, K-12, the District Grading Scale (including Teacher weighting for major & less vital assignments/assessments) will be: 90% - 100% =A; 80% - 89% =B; 70 – 79% = C; 60% - 69% =D; Below 59% = Inc. or NG."

19. The student struggled in the Advanced Algebra class throughout the third trimester. Many days during the third trimester the student went to a special education teacher during the first period aide assignment and asked for and received help with the math assignments. By the end of the trimester, the student's grade was in the "D" range, so the math teacher conformed to District practice and, after the student submitted some extra work, gave the student a Pass as a final grade. On the Power School on-line program, the grade would have been reflected as a "D" up until the point when the teacher decided to change it to the Pass.

20. On June 4, 2009, the parent sent an email to the case manager and stated the following: "I am really disappointed in this situation, Plan on an IEP during the week before school starts. I am not happy with the content of the last IEP and plan on going back to the previous one." The case manager replied the next day, June 5, 2009, and stated: "The week before school starts will be very difficult for holding a meeting but we can certainly do one at the start of the year." In interviews, District staff stated that it was their intention to hold an IEP meeting during the first week of the school year.

IV. DISCUSSION

Content of the IEP:

The parent alleges that the District violated IDEA when it failed to provide any progress reports for the student's IEP goals. A district meets its obligations when it writes an IEP for a student with a disability that contains a statement of the student's current levels of academic achievement and functional performance, measureable annual goals; and a description of how the student's progress toward the goals will be measured and reported to parents. Specifically, the IEP must define when the progress reports will be sent[4].

Many districts choose to send the progress reports at the same time that they send the report cards. In this case, the District did exactly that. During the 2008-2009 school year the District

[4] OAR 581-015-2200(1)(c).

was operating on a trimester system, and report cards and progress reports were sent out in November, March, and June. Progress reports and report cards were sent via US Mail.

The Department is unable to conclude that the District deviated from that standard procedure with respect to the student. The District produced photocopies of the student's progress reports from November 2008 and March and June 2009 marked with the date that each was mailed. Additionally, there is no indication that the parent notified the District during the school year that the progress reports were not received. The Department does not substantiate the parent's allegation that the District failed to send progress reports.

Free Appropriate Public Education and Age Ranges & When IEP's Must Be in Effect:
The parent alleges that the District violated IDEA when it failed to provide related services and that the District failed to implement the IEP as written when it did not notify the parent that the student's grades had dropped as per an accommodation on the IEP. OAR 581-015-2040(1) and OAR 581-015-2220(b) require Districts to provide a student with a disability specially designed instruction and related services in accordance with the student's IEP.

In this case, neither IEP in effect over the time period of the complaint contained any related services to be provided. During the investigation of this complaint the parent maintained that the student was to receive additional support in math and defined this as a related service. However, neither IEP contained any reference to additional support in math on the services summary page. Given that there were no related services included on either IEP in effect during the timeframe in question, the Department does not substantiate the parent's allegation that the District failed to provide related services.

The Department also does not substantiate the parent's allegation that the District failed to notify the parent when the student's grade dropped below a certain point in any class. The student's IEP contained a provision requiring the District to contact the parent if the student's grade dropped below 65% in a class. The Department finds that student's grades did not drop below 65% for any class during the timeframe of this investigation; therefore, the District was never required to make notifications under that provision of the IEP. The Department does not substantiate this allegation.

Review and Revision of IEPs
The parent alleges that the District violated IDEA when it failed to consult the parent before it implemented a change in the manner in which the student's coursework was graded. Under OAR 581-015-2225, a District must meet periodically to determine whether or not the student is progressing adequately towards the annual goals and must revise the IEP to address a lack of expected progress, results of a reevaluation, information about the student provided by parents, anticipated needs, or other matters. Additionally districts must provide parents with an opportunity to participate in meetings concerning the review and revision of IEPs.[5]

The parent alleges that the District should have consulted with the parent before changing the grading system. However, the IEP Team has a clearly defined, written and published practice that outlines how teachers will grade students who have IEPs. The District established this policy in an effort to make sure that students with disabilities have ample opportunity to earn passing grades in all classes. The practice is printed on the report cards and in handbooks. When the student struggled in the Advanced Algebra class, the teacher followed District policy and adjusted the student's grade. This did not require consultation with the parent because it

[5] OAR 581-015-2190(1).

was a generally applicable, District-wide policy, not a component of the student's IEP. The Department does not substantiate the parent's allegation.

Parent Participation – General

The parent alleges that when the parent requested an IEP meeting the District refused to hold one. Under OAR 581-015-2190, Districts must provide parents with an opportunity to participate in meetings to discussion special education matters about the student. This includes an opportunity to request IEP meetings if a parent believes that the child is not making adequate progress or has concerns about the child's IEP.[6] The district should grant any reasonable parent request for an IEP meeting.[7]

In this case, the parent wrote to the case manager on June 4, 2009 and asked for an IEP meeting during the week before school started in August of 2009. The case manager wrote back and noted that a meeting would be hard to arrange during that week but that the team could surely meet during the first week of school. The Department finds that this was a reasonable response to the parent's request, and therefore does not substantiate the parent's allegation.

V. CORRECTIVE ACTION[8]

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Based on the facts provided, the Department did not find violation of the IDEA, and no corrective action is ordered.

Dated: August 4, 2009

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

Mailing Date: August 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.

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[6] *See* 34 CFR Part 300, *Appendix C to Part 300--Notice of Interpretation*, Q11 (1998).
[7] *Id*.
[8] 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).