

	Allegations	Conclusions
	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p><u>Procedures for Complaints as Required by IDEA Regulations</u></p> <p>The parent alleges that the District failed to comply with the corrective action orders relating to special education complaint number 06-054-042 and due process number DP 06-111.</p>	<p>Not Substantiated</p> <p>The Department concludes that the District had no obligation provide compensatory educational services to the student during the period of time under investigation.</p>
2.	<p><u>Procedures for Complaints as Required by IDEA Regulations</u></p> <p>The parent alleges that the Department failed to require the District to comply with the corrective action orders relating to special education complaint number 06-054-042, the amended final order in complaint number 06-054-042, and due process complaint number DP 06-111. The parent alleges that the District failed to comply with the corrective action orders relating to special education complaint number 06-054-042 and due process number DP 06-111.</p>	<p>Not Substantiated</p> <p>The Department concludes that the Department had no obligation to supervise the provision of compensatory educational services to the student during the period of time under investigation.</p>
3.	<p><u>Procedures for Complaints as Required by IDEA Regulations and Reconsideration – Orders in Other than Contested Case</u></p> <p>The parent alleges that the Department violated the IDEA by altering the District’s obligation to provide the student with compensatory educational services pursuant to earlier orders of the State Superintendent of Public Instruction.</p>	<p>No Finding</p> <p>Because this item concerns a violation of the IDEA that is alleged to have occurred more than one year prior to the filing of this complaint, the Department has no authority to issue findings related to this allegation.</p>
4.	<p><u>Procedures for Complaints as Required by IDEA Regulations</u></p> <p>The parent alleges that the District failed to comply with the corrective action orders relating to the amended final order in special education complaint number 06-054-042.</p>	<p>Not Substantiated</p> <p>The Department concludes that the District had no obligation provide compensatory educational services to the student during the period of time under investigation.</p>

5.	<p><u>Determination of Eligibility and Parent Participation – General</u></p> <p>The parent alleges that the District violated IDEA with regard to a series of meetings in the spring of 2007 that the parent contends were procedurally non-compliant because:</p> <ul style="list-style-type: none"> a) the meetings did not involve the required District participants; b) the parent was denied full participation in the meetings; and, c) the District did not utilize appropriate methods or facts in determining that the student was no longer eligible for special education and related services under IDEA. 	<p>No Finding</p> <p>Because this issue was previously decided in a due process hearing, the Department has no authority to issue findings related to this allegation.</p>
6.	<p><u>Procedures for Complaints as Required by IDEA Regulations</u></p> <p>The parent alleges that the District has engaged in a pattern of harassing and retaliatory behavior with regard to the parent.</p>	<p>No Finding</p> <p>Because this issue was previously decided in a due process hearing, the Department has no authority to issue findings related to this allegation.</p>
<p>Requested Corrective Action.</p> <p>The parents are requesting that the District and/or the Department:</p>		<p>Create for the parent a monetary fund, in the form of a trust, sufficient to cover the costs of obtaining compensatory educational services from a private provider.</p>

III. FINDINGS OF FACT

1. In June 2003, an eligibility team found the student eligible for special education as a child with a specific learning disability. At the same time, the team determined that the child did not meet the eligibility criteria for communication disorder.
2. On May 1, 2006, the parent filed a request for due process hearing with the State Superintendent of Public Instruction. The request alleged that the District failed to comply with the IDEA; the due process hearing was assigned number DP 06-111.
3. On May 26, 2006, the parent and District staff members met to determine the student's continuing eligibility status under the IDEA. The meeting was also attended, at the invitation of the parent, by Jay Lucker, Ph.D. Dr. Lucker is a licensed speech language pathologist and audiologist.

4. At the conclusion of the May 26, 2006 meeting all participants, other than Parent and Dr. Lucker, concluded that Student was not eligible for special education under either the specific learning disability or communication disorder categories.
5. By agreement of the parties, the hearing regarding DP 06-111 was held on August 8-11, 2006; August 21-23, 2006; September 28, 2006; and October 4 and 6, 2006.
6. On October 12, 2006, the parent filed a request for complaint investigation with the State Superintendent of Public Instruction. The request alleged that the District failed to comply with the IDEA; the complaint investigation was assigned number 06-054-042.
7. On January 16, 2007, the Superintendent of Public Instruction issued a final order in DP 06-111. The final order identified a number of violations of the IDEA and required the District to initiate corrective action to remedy those violations. The order of corrective action required the District to provide the student with compensatory educational services.
8. On February 13, 2007, the Superintendent of Public Instruction issued a corrected final order in DP 06-111. The corrections did not alter the nature of the corrective action ordered in that case.
9. On March 20, 2007, the Superintendent of Public Instruction issued a final order addressing the allegations made in complaint investigation 06-054-042. The final order identified multiple violations of the IDEA and required the District to initiate corrective action to remedy those violations. The order of corrective action required the District to provide the student with compensatory educational services.
10. On April 9, 2008, the parent filed a request for due process hearing with the State Superintendent of Public Instruction. The request alleged that the District failed to comply with the IDEA; the due process hearing was assigned number DP 08-110.
11. On July 8, 2007, The Superintendent of Public Instruction amended the final order in complaint investigation 06-054-042 by increasing the amount of compensatory educational services that the District was required to provide.
12. On August 8, 2008, the Superintendent of Public Instruction issued an amended final order in complaint investigation 06-054-042. The amended final order concluded that the District had conferred with the parent regarding the compensatory education plan and had made reasonable efforts to accommodate the preferences of the parent in developing that plan. The amended order also concluded that implementation of the District's July 7, 2007 proposal for providing compensatory education would satisfy the corrective action requirements of complaint number 06-054-042.
13. On July 29, 2009, the Superintendent of Public Instruction issued a final order in DP 08-110. The order included findings of fact and conclusions of law with respect to a number of alleged violations of the IDEA. Among other issues, the final order addressed the parent's allegations that the District violated IDEA with regard to the eligibility team's determination that the student was no longer eligible for special education and related services and that the District engaged in a pattern of harassing and retaliatory conduct towards the parent. The hearing officer found that the 2006 and 2007 determinations that the student was not eligible for special education and related services complied with the requirements of the IDEA and that the District had not engaged in a pattern of retaliatory or harassing behavior directed at the parent.

14. On August 11, 2009, the parent filed a request for complaint investigation with the State Superintendent of Public Instruction. That request forms the basis of this final order. The request alleged that the Department and the District failed to comply with the IDEA; the complaint investigation was assigned number 09-054-031.

IV. DISCUSSION

1. and 4. Procedures for Complaints as Required by IDEA Regulations

The parent alleges that the District violated the IDEA by failing to comply with the corrective action ordered in special education complaint 06-054-042 and due process hearing DP 06-111. Pursuant to OAR 581-015-2030(11), the Department may investigate allegations that a school district's failed to implement a due process decision. In this case, the Department concludes that the District was not obligated to provide the student with compensatory educational services at any time during the time period under investigation.

Under OAR 581-015-2030, the Department is authorized to investigate alleged violations of the IDEA that occurred in the calendar year prior to the filing of the complaint. The parent's signed complaint is dated August 10, 2009; the complaint arrived at the Department via email after the close of business on August 10 and is considered received on August 11, 2009. Therefore, the Department is authorized to investigate alleged violations of the IDEA that occurred between August 12, 2008 and August 11, 2009. The Department concludes that the District has no obligation to provide special education and related services to the student during that time period.

On May 26, 2006, a team including the parent and qualified District staff determined that the student was no longer eligible for special education under the IDEA. This determination was upheld in the final order issued by an impartial hearing officer in due process hearing DP 08-110.

Based on the May 26, 2006 determination that the student was no longer eligible under the IDEA, the Department concludes that the District's obligation to provide any special education and related services to the student pursuant to the IDEA terminated on that date. This conclusion is supported by the decisions in a number of court cases from other federal circuits. The United States Court of Appeals for the Second Circuit held that a controversy was moot where the complainant was requesting services but had previously been found ineligible under the IDEA due to age. *Malkentzo v. DeBuono*, 102 F.3d 50, 55 (1996). A federal district court within that circuit recently dismissed, consistent with the *Malkentzo* opinion, a claim as moot based on the prior termination of the student's eligibility for services under the IDEA. *Patskin v. Bd. of Educ. of Webster Cent. Sch. Dist.*, 583 F. Supp. 2d 422, 429 (W.D.N.Y. 2008).

Therefore, the Department determines that during the period extending from August 12, 2008 until August 11, 2009, the District did not violate the IDEA by failing to provide the compensatory educational services ordered in special education complaint 06-054-042 or due process hearing DP 06-111.

2. Procedures for Complaints as Required by IDEA Regulations

The parent alleges that the Department violated the IDEA by failing to require the District to comply with the compensatory service orders resulting from special education complaint 06-

054-042 and due process hearing DP 06-111. The Department did not violate the IDEA during the time period extending from August 12, 2008 to August 11, 2009 by failing to require the District to provide compensatory education services to the student. Consistent with the discussion in the prior subsection, the Department concludes that the District's obligation to provide special education and related services to the student terminated on May 26, 2006. Therefore the District was not required to provide, and the Department was not required to supervise, the compensatory services ordered in complaint 06-054-042 or DP 06-111; the Department does not substantiate this allegation.

3. Procedures for Complaints as Required by IDEA Regulations and Reconsideration – Orders in Other than Contested Case

The parent alleges that the Department violated the IDEA by issuing an amended order in complaint investigation 06-054-042 on August 8, 2008. Because this alleged violation of the IDEA occurred more than one year prior to the filing of this complaint, the Department is not authorized to make determinations related to this allegation. The Department is precluded from issuing findings of facts or conclusions of law with regard to allegations of violations that took place more than one year prior to the filing of the complaint even if the initial noncompliance resulted in an ongoing failure to comply with the IDEA. See 71 Fed. Reg. 46540, 46606 (August 14, 2006).

In this case, the parent is alleging a violation that took place over a year before the filing of the complaint. The parent is also alleging a violation that, given the student's current ineligibility for special education services under the IDEA, does not contribute to any ongoing failure to provide a free appropriate public education to the student. Therefore, the Department does not issue any findings with respect to the allegation that the Department violated the IDEA by issuing the August 8, 2008 amended order in complaint 06-054-042.

5. and 6. Issues Previously Decided in a Due Process Hearing

The parent makes two allegations that we previously heard and decided upon in a contested due process hearing. OAR 581-015-2030(11) states that "if an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent will inform the complainant to that effect."

The parent alleges that the District violated the IDEA by failing to include all required participants, consider all appropriate information, and allow adequate opportunities for parent participation at a series of meetings in the spring of 2007 that concluded with a determination that the student was no longer eligible for special education under the IDEA. The parent also alleges that the District engaged in a pattern of retaliatory or harassing behavior with regard to the parent.

Both of these allegations were previously raised in the parent's April 9, 2008 request for a due process hearing. The Department issued a final order in that case, DP 08-110, on July 29, 2009. In that final order, the Department held that the meetings related to the 2007 eligibility determination were procedurally compliant and that the District properly concluded that the student was no longer eligible for special education. The Department also concluded that the District did not engage in a pattern of retaliation or harassment aimed at the parent. These findings of fact and conclusions of law, previously decided in a due process hearing involving the District and the parent, addressed the same issues and relied on the same facts present in

the two current allegations. Therefore, the Department does not issue any findings with respect to the issues previously decided in DP 08-110.

V. CORRECTIVE ACTION

In the Matter of Oregon Department of Education and Salem-Keizer School District
Case No. 09-054-031

The Department does not order any corrective action as a result of this investigation.

Dated: November 9, 2009

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

Mailing Date: November 9, 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.