

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Beaverton School District 48J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-044

I. BACKGROUND

On November 13, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student residing in the Beaverton School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030 (2008). The Department confirmed receipt of this complaint on November 16, 2009. The parents provided a copy of the complaint letter to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) 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.

On November 20, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of December 4, 2009. The District submitted its timely *Response* to the Department and to the parents on December 2, 2009. The District’s *Response* included a narrative response and a documentary file containing previous and current years Individualized Educational Programs (IEPs), meeting notices, meeting minutes, student records and progress reports, as well as email communications between the parties. On November 19, 2009 the Department’s complaint investigator briefly spoke with the student’s father to obtain some clarifying information regarding the complaint and to discuss the interview process.

The Department’s complaint investigator determined that on-site interviews were required. On December 15, 2009, the Department’s investigator interviewed the following District staff:

- 1) the Assistant Director of Special Education, 2) the Assistant Principal of Beaverton High School, 3) the student’s special education facilitator, 4) the student’s special education teacher, 5) the student’s social studies teacher, 6) the student’s science teacher, 7) the student’s advisory teacher, 8) the student’s physical education teacher, 9) the student’s literature teacher, 10) the student’s special education case manager, 11) another physical education teacher of the student, and 12) the student’s art teacher.

Initially scheduled to meet with the investigator in person at the District offices on December, 16, 2009, the parents cancelled and agreed to a phone interview that was conducted on December 18, 2009.

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.

¹ OAR 581-015-2030(12).

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR § 300.151-153 (2009) and OAR 581-015-2030. The parents' 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 November 14, 2008 to the filing of this complaint on November 13, 2009.³

	Allegations	Conclusions
	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p>When IEPs Must Be In Effect</p> <p>Parents allege that District violated the modifications and accommodations criteria of the student's IEP when:</p> <p><u>Implementation:</u> The District failed to provide accommodations regarding grading and reporting of grades as noted in the student's IEP.</p> <p><u>Accessibility of IEPs:</u></p> <ol style="list-style-type: none"> 1. The District failed to ensure all education service providers access to the student's IEP. 2. The District failed to inform each education service provider of their responsibilities for implementing the IEP and providing the accommodations noted on the IEP. 	<p>Stipulated. The District acknowledges in its response that there was an incident in which a listed IEP accommodation was not implemented.</p> <p>Unsubstantiated. The District has in place a reliable mechanism for providing all appropriate personnel with access to student's IEPs.</p> <p>Unsubstantiated. The District had in place and utilized a reliable mechanism for informing all of the student's services providers of their specific responsibilities in implementing the student's IEP.</p>
2.	<p>IEP Content</p> <p>Parents allege the District failed to include specific accommodations provided for the student to be involved and progress in the general education curriculum.</p>	<p>Unsubstantiated. The student's IEP contained specific accommodations and modification requirements intended to promote the student's progress in a general education curriculum.</p>

³ See 34 CFR § 300.153(c); OAR 581-015-2030(5).

3.	<p>Review and Revisions of IEP</p> <p>Parents allege that the District failed to review and revise the student's IEP to address the student's anticipated needs for specific accommodations necessary for the student to be involved and progress in the general education curriculum.</p>	<p>Unsubstantiated.</p> <p>The District made numerous attempts to convene IEP meetings to re-calibrate the student's IEP to revise the content and facilitate implementation in the high school setting.</p>
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	<p>Requested Corrective Action. The parents are requesting that the District:</p> <ol style="list-style-type: none"> 1. Relocate student to Sunset High School. 2. Ensure that all District staff involved with student from this point forward be made aware of the IEP's modification and accommodation requirements. 	<p><i>See Section V. – Corrective Action.</i></p>
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III. FINDINGS OF FACT

Background Information on Student

1. The student is a resident of the District, is 15 years old, and is eligible for special education services as a student with autism.
2. The student entered high school in the District beginning in September 2009.
3. The 2009-2010 IEP was developed while the student was in the final year of middle school within the District and is scheduled for review and revision in January 2010. In addition, the student is scheduled for the triennial special education reevaluation in January 2010. The current IEP indicates that the student performs better when the student feels successful.
4. Listed within this student's IEP are accommodation and modification requirements that include, but are not limited to: tasks are broken into small steps; homework progress reports are to be returned to the Social Communication Center teacher if graded D or F; modified grades and assignments when grades fall below a C; modified assignment length while retaining content; Pass/No Pass as a grading option; and lengthy assignments broken into smaller parts.
5. Student has mostly good grades despite a significant amount of absences. Additionally, the student is extremely well-liked by teachers and other classmates.

Background Information about District Programs and Services

6. The District uses an electronic Student Information System (eSIS) to make IEPs available to parties with a need to know. A system flag on a student's electronic record serves to call attention to the fact that a student has requirements under an IEP.
7. Generally, the case manager assigned to a special education student provides a summary report of the accommodations and modifications included on the student's IEP to each of the student's general education teachers. This is often sent via email and is provided as a hard copy directly to the teacher. This occurs during the week immediately prior to the students return to classes.
8. A special education facilitator provides support to the District related to issues such as case load, compliance related matters, and issue resolution. The facilitator also served as a liaison between instructional staff and special education administration. The facilitator is available to answer questions by instructional staff regarding the implementation of IEPs and specific accommodations and modifications contained therein.
9. All District certified staff are provided with an annual update, through a district video presentation or staff meeting, regarding their responsibilities as documented in the IDEA. This training serves as a continuing reminder of the requirements and responsibilities under IDEA and the importance of compliance with IEP implementation, as well as any accommodations and modifications
10. Each instructor utilizes a unique, non-standardized method of keeping track of each student's IEP requirements. The District does not have a policy regarding the documentation of IEP implementation by District staff.

Chronology of Events

11. The student's IEP was drafted on January 19, 2009, while the student was still in middle school, with parent participation and was still in effect when the student commenced classes at a District high school in early September 2009.
12. Near the end of the first grading period, on Friday, October 16, 2009, the student's art teacher publically posted grades indicating that the student had received or was about to receive a failing grade for incomplete or missing assignments. The District made no efforts to notify the parents of the student's incomplete/missing assignments.
13. The student informed the student's parents of the posting and the student's mother immediately contacted the case manager to notify her of the error, escalate the complaint within the District, and request that the student be removed from the art class.
14. The Case Manager approached the student in an attempt to develop a plan to complete the missing assignments and receive an "I" grade until the incomplete/missing assignments could be completed. Upon notification of the error, the Case Manager contacted the art teacher and the report containing grades was removed from the classroom wall on the next school day, Monday, October 19, 2009.
15. The student's father emailed the case manager the same day, October 16, and indicated that educational decisions would be made by the student's parents, not the District.
16. Shortly thereafter, beginning on October 19, 2009, the District made numerous attempts to convene an IEP team meeting, many of which were cancelled by the parents. A meeting

finally took place on November 16, 2009. The meeting minutes indicate the discussion was acrimonious and resulted in the parent leaving the meeting and terminating the discussions.

17. Somewhere around November 13, 2009, the parents filed a transfer request to move the student to Sunset High School where most of the student's friends currently attend classes.
18. On November 19, 2009, the District sent a Prior Notice of Special Education Action rejecting the parents' purported request that the student only receive Pass/No Pass Grades in all classes. This statement is inconsistent with the meeting notes from the November 16, 2009 meeting where the parents indicate a desire for Pass/No Pass only in instances where grades are D or F.

IV. DISCUSSION

1. When IEPs Must Be In Effect

School districts must provide special education and related services to a child with a disability in accordance with an IEP.⁴ Regarding the accessibility of IEPs, each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation and inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.⁵

The parents allege that the District failed to provide the accommodations regarding grading and reporting of grades as required by the student's IEP. Alternatively, the parents assert that the District failed to ensure that all of the student's education service providers had access to the student's IEP and that the District failed to inform each education service provider of their responsibilities for implementing the IEP and providing the listed accommodations.

The District acknowledges an instance wherein a teacher posted the student's grades, along with the grades of other students in the class, in public by using a portion of the student's identification number. In response to the incident, the District has proposed to conduct training for all general education teachers reinforcing the importance of knowing the accommodations and modifications on a student's IEP and their responsibilities for correctly implementing the IEP and its required accommodations and modifications.

Concerning the accessibility of the IEP, the District's Electronic Student Information System (eSIS) provides a reliable method of making the requirements of each student's IEP, including specific accommodations and modifications, known to the case managers. Additionally, the process by which a summary is provided via e-mail to all teachers prior to the official start of classes permits all of the general education teachers to familiarize themselves with the requirements and prepare the records that enable them to comply with the requirements of a student's IEP.

The District also provides annual video presentations that serve as a periodic reminder of the requirements and responsibilities under the Individuals with Disabilities Education Act (IDEA) and the importance of consistent implementation of IEPs, including accommodations and modification. In addition, the professional contract signed by each teacher contains a

⁴ OAR 581-015-2220(1)(b)

⁵ OAR 581-015-2220(3)

certification section related to the requirements and importance of IDEA compliance serving as an additional reminder of the Act's importance.

The Department does not find that the District failed, on a system-wide level, to ensure access to the IEP by all appropriate education service providers or to inform them of their specific responsibilities for implementing the IEP. However, the District has acknowledged a violation of this student's IEP, and during the course of the investigation, there was some uncertainty by District staff regarding the specific wording used within IEP and the circumstances under which it would apply. Therefore, the Department orders corrective action. See *Section V. – Corrective Action*.

2. IEP Content

As specified by federal and state special education law and implementing regulations, a child's IEP must include a statement of the specific special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child.⁶

The student's IEP, which was drafted with parental involvement in January 2009, contained a number of accommodations and modifications intended to assist the student succeed academically. Among those listed were 1) Modified grades and assignments any time a grade fell below a C; 2) Mailing progress reports home instead of giving directly to the student; 3) and Pass/No Pass as a grading option anytime the grade fell below a C.

Though these accommodations and modifications were implemented at the student's middle school without difficulty, the grading accommodations of the student's IEP did not align with the policies and procedures in place at the student's high school. Specifically, the accommodations list indicates that a Pass/No Pass grading option should be available to the student under some circumstances, but the information on the IEP is insufficient to properly implement this accommodation. During interviews with District staff, most indicated some uncertainty as to when this option should be employed and how long such a grading scale should be utilized.

While this uncertainty is due in part to insufficient detail, it is also due to the fact that No Pass is not a grading option within the high school environment. A review of the report card grading legend does not list No Pass as an option and indicates that a failing grade will ultimately be reflected as an F at the conclusion of district grading periods.

An IEP meeting was held on November 16, 2009 for the purpose of addressing some of these issues, but the meeting ended abruptly when the parent left the meeting. It should be noted that the parent's frustration is not entirely unwarranted. The District made a number of potentially confusing statements to the parents, once phoning the mother and asking her to tell her child to not make noises in class and on other occasions seeming to not comprehend the Pass/No Pass grading option request. In fact, the Prior Notice of Special Education Action issued on November 19, 2009 rejects the parents' purported request for Pass/No Pass as a grading option for all classes when the meeting notes quite clearly indicate that the parents only wanted this option when grades fell below a C. Similarly, an email communication from the parents is quite succinct in requesting that the 'student see no grade below a C...which is why we asked for Pass/No pass.'

⁶ OAR 581-15-2200(1)(d).

Although the District's approach to discussing particular aspects of the IEP with the parents was not exemplary, the IEP contained appropriate accommodations and modifications intended to facilitate the student's success in the general education curriculum, and the District afforded the parents an opportunity to participate in the development and refinement of this IEP. Therefore, the Department does not find that the District's actions surrounding IEP content violated the IDEA.

3. Review and Revisions of IEP

Each school district must ensure that an IEP Team reviews the child's IEP periodically, but at least once every 365 days, to revise the IEP as appropriate to address the child's anticipated needs.⁷

The parents allege that the District failed to review and revise the student's IEP to address the student's anticipated needs for specific accommodations necessary for the student to be involved and progress in the general education curriculum upon the student's transition to high school.

The District's response and documentary file point to numerous attempts to discuss the student's IEP with the parents at the outset of the 2009-2010 school year. Evidence of phone calls, meeting notices, and email communications demonstrate that the District made reasonable efforts to engage the parents in a discussion related to the IEP's review and revision and the student's required reevaluation in January 2010.

For example, the District's call records from October 19, 2009 indicate an attempt to contact the parents to discuss the student's IEP and the same log from October 27, 2009 indicates that the parents requested cancellation of the meeting. Similarly, District email communications from November 10, 2009 stated that the District high school team would be meeting to develop the student's evaluation plan, as well as to review and revise the current IEP, and offered three prospective dates as potential meeting times.

Given the findings above, the Department does not conclude that the District's actions violated the IDEA or the requirements of the OARs as they relate to the review and revision of IEPs.

⁷ OAR 581-15-2225(1).

<p>Training</p> <p>If District procedures are revised, provide training regarding the procedures mentioned in (1a) above and/ or distribute this information to all staff, contractors, and administrators at the student's school who are, or who may be, responsible for ensuring IEPs are accessible and implemented.</p>	<p>Submit to ODE a copy of the materials presented or distributed, agenda(s), and a signed list of education service providers, receiving the training and the date of the training.</p>	<p>March 12, 2010</p>
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Dated: January 7, 2010

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

Mailing Date: January 7, 2010

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.