

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School District )  
No. 24J )  
)  
)  
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AMENDED FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 10-054-026

I. BACKGROUND

On September 21, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in the Salem-Keizer School District (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on September 22, 2010. The parent provided the District a copy of the complaint letter on September 21, 2010 via facsimile transmission.

Under federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or for exceptional circumstances related to the complaint.<sup>2</sup>

On September 24, 2010, the Department's complaint investigator 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 October 8, 2010. The District submitted its timely *Response* to the Department and to the parent on October 8, 2010. The District's *Response* included a narrative response and a thoroughly indexed and chronologic documentary file containing IEPs, incident reports, witness statements, meeting notices and minutes, discipline records, and other related student records.

The Department's complaint investigator determined that phone interviews were required. On October 25, 2010, the Department's complaint investigator interviewed the parent and several days later spoke with two individuals from the group home that houses the student and with an individual from the Oregon Department of Human Services, all of whom were present at the IEP meeting in question.

On October 26, 2010, the Department's complaint investigator interviewed: the elementary school principal, the elementary school assistant principal, a life skills teacher, two student services program assistants, the elementary school nurse, a District school psychologist, a District behavior trainer, a staff member from the Education Resource Center, and the District Student Services Coordinator.

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.

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a) (2010).

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b).

## 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 September 20, 2009 to the filing of this complaint on September 21, 2010.<sup>3</sup>

	Allegations	Conclusions
	<b>Allegations to be investigated.</b> The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b>Parent Participation</b></p> <p>Failing to provide each parent with an opportunity to participate in the September 16, 2010 IEP Team meeting by:</p> <ul style="list-style-type: none"> <li>• failing to provide notice to both of the student's parents;</li> <li>• failing to provide notice of the meeting sufficiently in advance to ensure one or both parents had an opportunity to attend;</li> <li>• failing to accurately identify the purpose of the meeting; and</li> <li>• failing to accurately identify who would attend the meeting.</li> </ul>	<p>Substantiated, in part.</p> <p>The Department concludes that the District did not violate the IDEA by failing to provide written notice to both parents, failing to provide sufficient advance notice, or failing to accurately identify the meeting purpose with regard to the September 16, 2010 IEP Team meeting.</p> <p>The Department does substantiate the parent's allegation that the District failed to provide adequate notice of the District's meeting attendees.</p>
2.	<p><b>Prior Written Notice</b></p> <p>Failing to ensure that the parents were provided with prior written notice of the change in the student's IEP and placement following the September 16, 2010 IEP Team meeting.</p>	<p>Not Substantiated.</p> <p>The Department concludes that the District did not violate the IDEA by changing the student's placement without providing prior written notice to the parent a reasonable amount of time before the change was to be implemented.</p>
3.	<p><b>IEP Team Considerations and Special Factors</b></p> <p>Failing to consider the concerns of the parent for enhancing the education of the child at the September 16, 2010 IEP Team meeting.</p>	<p>Substantiated.</p> <p>The Department concludes that the District violated the IDEA by not adequately considering the parent's concerns with regard to the placement of the student.</p>

<sup>3</sup> OAR 581-015-2030(5) and 34 CFR § 300.153(c).

4.	<p><b>Placement of the Child/Requirements for Least Restrictive Environment</b></p> <ul style="list-style-type: none"> <li>• Failing to place the child in an equivalent program in the school much closer to the student's home at the September 16, 2010 IEP Team meeting; and</li> <li>• Failing to educate the student, to the maximum extent appropriate, with children who do not have a disability by changing the student's placement to home tutoring.</li> </ul>	<p>Unsubstantiated.</p> <p>The Department concludes that the District did not violate the least restrictive environment requirement by changing the student's placement to temporary home tutoring.</p>
	<p><b>Requested Corrective Action.</b></p> <ul style="list-style-type: none"> <li>• Placement of the student in an alternative Life Skills program within the District.</li> <li>• Ensure District staff members are adequately trained in IDEA's notice requirements and that all notices are clear and contain appropriate notice information.</li> <li>• Consider parental concerns as they relate to IEP content and student education.</li> </ul>	<p><i>Corrective Action –</i></p>

### III. FINDINGS OF FACT

1. The student is a resident of the District, is 13 years old, and is eligible for special education services as a student with autism and other health impairments.
2. A Prior Notice of Special Education Action form from the District elementary school dated February 10, 2009 indicates that the student was previously in a home tutoring placement. The form indicates that the team discussed continued tutoring but rejected the option at that time because the "[s]tudent is ready to have more opportunities for socialization with age appropriate peers."
3. Meeting notes dated September 10, 2009 reflect a discussion of the student's progress, an occupational therapy evaluation, possible next steps regarding transition, and tutoring progress.
4. Meeting documentation from an October 19, 2009 IEP meeting and the IEP Placement Determination page reflect that the team selected a self-contained classroom for more than 60% of the day as the most appropriate setting.

5. Discipline records from February 25, 2010 indicate that the student was suspended for one day as the result of a physical altercation. (D47)
6. Discipline records from March 10, 2010 indicate that the student was suspended for one day as the result of threats and intimidation. (D47)
7. Discipline records from April 6, 2010 indicate that the student was suspended for one day due to fighting. (D47)
8. Meeting documentation from April 22, 2010 indicates a discussion related to reviewing a plan for the student to return to school.
9. Discipline records from May 12, 2010 indicate that the student was suspended for two days as the result of insubordination. (D47)
10. On September 8, 2010, an incident report reflecting a physical assault was completed.
11. On September 9, 2010, an incident report was completed related to a physical assault against a teacher and a security guard.
12. On September 9 and 10, 2010, the parent communicated with District staff by phone concerning a proposed IEP Team meeting on September 15, 2010. The parent communicated that the parent would be unable to attend on that date and established a meeting date for the next day, September 16, 2010.
13. On Monday, September 13, 2010, an incident report was completed due to the student's physical altercation and aggression that resulted in minor injuries to a teacher, a security guard, and the vice principal. This resulted in a three-day suspension that began on Tuesday, September 14, 2010. The Physical Restraint/Seclusion Incident and Debriefing Report suggest a future action as "holding a meeting with student's parents and teachers."
14. On Monday, September 13, 2010, the District sent a Notice of Team Meeting to review and revise the student's IEP regarding the Thursday, September 16, 2010 IEP Team meeting. The meeting notice was sent to only one of the child's parents and listed eight District staff members that would be in attendance at the meeting.
15. On Tuesday, September 14, 2010, the parent received the meeting notice.
16. On Thursday, September 16, 2010, the District convened an IEP Team meeting to consider the review and revision of the student's IEP and determine the student's placement.
17. The meeting was attended by eleven District staff members. The parent attended the meeting along with the student's other parent, the student's guardian, two individuals from the group home, and a representative from the Oregon Department of Human Services.
18. On Thursday, September 16, 2010, a Prior Notice of Special Education Action was sent regarding the change in the student's educational placement to home tutoring.
19. On Monday, September 27, 2010, tutoring began for the student.
20. On September 21, 2010, the parent filed a complaint on behalf of her child.

## IV. DISCUSSION

### 1. Parent Participation

The parent alleges that the District violated the IDEA by failing to provide each parent with an opportunity to participate in the September 16, 2010 IEP meeting by providing notice to only one parent, failing to provide notice sufficiently in advance of the meeting, failing to identify the meeting's purpose, and failing to provide a complete roster of the IEP meeting attendees.

Under Oregon law, School districts must provide the parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child and the provision of a free appropriate public education to the child.<sup>4</sup> The meeting notice from school districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.<sup>5</sup> Furthermore, the written notice must state the purpose, time and place of the meeting, and who will attend.<sup>6</sup> In addition to the parental notification content requirements, school districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place.<sup>7</sup>

Records from the District and the parent's complaint letter corroborate each other in reflecting that there were a series of phone calls on September 9 & 10, 2010 attempting to coordinate a meeting to discuss the student's behavioral issues and the annual review and revision of the student's IEP. The parental complaint letter references a District offer to schedule the meeting on September 15, 2010. The parent indicated to the District via voice mail that she could not attend on September 15, 2010 but that she could attend on September 16, 2010. The District Contact log reflects a voice mail message to the parent confirming the meeting date of September 16, 2010.

On September 13, 2010 the District mailed the required Notice of Team Meeting, which was received on September 14, 2010. This notice was addressed only to one parent and listed eight District staff that would be in attendance and accurately reflected the meeting's purpose as an IEP and placement discussion. On September 16, 2010 the parent arrived to the meeting with the student's other parent, the student's guardian, two individuals from the group home, and a representative from the Oregon Department of Human Services. The District was represented by 11 members of District staff, three more than listed on the notice.

Oregon law is clear in that it requires written notice sufficiently in advance of a meeting to ensure one or both parents will have an opportunity to attend. Here, the meeting was verbally scheduled and later confirmed after the fact via written notice. Although the written notice was received only two days before the meeting, the parent was successful in securing the attendance of the other parent, the student's guardian, two representatives from the child's group home, and a representative from the Oregon Department of Human Services. The circumstances of this meeting indicate that, despite the District's delay in providing written notice, the parent was able to arrange and coordinate attendance from the other individuals she believed to be necessary. Therefore, the Department does not substantiate the allegations that

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<sup>4</sup> OAR 581-015-2190.

<sup>5</sup> OAR 581-015-2190.

<sup>6</sup> OAR 581-015-2190.

<sup>7</sup> OAR 581-015-2195.

the District failed to send the notice sufficiently in advance of the meeting or failed to provide notice to both parents under these circumstances.

Furthermore, the Department does not substantiate the allegation that the written notice provided by the District failed to inform the parent of the purpose of the meeting. The Department concludes that the phone calls on September 9 and 10, 2010 along with the written notice dated September 13, 2010 provided the parent with adequate notice of the purpose of the September 16, 2010 IEP Team meeting.

The Department does substantiate the parent's allegation that the District failed to provide adequate notice of which district staff members would attend the September 16, 2010 IEP Team meeting. The District's written notice of the meeting listed eight participants; however, eleven District staff members attended the meeting. Therefore, the Department concludes that the attendance of these additional staff members violated the meeting notice and parent participation requirements of the IDEA.

## 2. Prior Written Notice

Under Oregon law, prior written notice must be given to the parent of a child within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child.<sup>8</sup> Additionally, prior written notice must be given after a decision is made and a reasonable time before that decision is implemented.<sup>9</sup> The content of the prior written notice must include a description of the action proposed or refused by the school district; an explanation of why the district proposes or refuses to take the action; a description of any other options that the IEP team considered and reasons why those options were rejected; a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action; and, a description of any other factors that are relevant to the school district's proposal or refusal.<sup>10</sup> The parent contends that the District violated the prior written notice requirement by failing to ensure that each parent was provided with prior written notice of a change in the student's IEP and placement.

The District, in their Response, suggests that they met the regulatory requirements because "the prior written notice must be given 'within a reasonable period of time before a school district proposes to initiate or change' the provision of special education services." The notice was dated on September 16, 2010 and presumably it was mailed and received before the tutoring start date of September 27, 2010. The District similarly contends that there "is no specific length of time required between the decision and the provision of services, it is what is 'reasonable'."

Here, the District focuses on the requirements of notice before there is a change. As correctly stated by the parent in the complaint letter, the requirements also demand a reasonable time to elapse between the time the decision is made and before that decision is implemented.

The placement decision was made at the meeting on September 16, 2010 and the prior written notice was dated the same date. Tutoring began on September 27, 2010, six school days after the notice was dated and presumably mailed out to the parent.

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<sup>8</sup> OAR 581-015-2310.

<sup>9</sup> OAR 581-015-2310.

<sup>10</sup> OAR 581-015-2310.

Based on the circumstances of this particular complaint, the Department does not substantiate the allegation that the District failed to provide adequate prior written notice of the change of placement.

### 3. IEP Team Considerations and Special Factors

Under Oregon law, in developing, reviewing and revising the child's IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.<sup>11</sup>

The parent alleges that the District violated the IDEA by failing to consider the concerns of the parent for enhancing the education of her child. Specifically, the parent alleges that the District did not meaningfully consider parental concerns about the placement of the student at the September 16, 2010 IEP meeting.

With regard to the decision to place the student in home study, the Department concludes that the District failed to consider the concerns of the parent. As discussed above, school districts are required to provide notice of which District staff members will attend IEP Team meetings. In this case, the District's notice failed to identify several staff members who participated in the meeting. The District's failure to provide prior notice of the meeting attendees denied the parent the opportunity to adequately prepare for the meeting. Therefore, the Department finds that the District erred by not informing parent of several staff members that attended in the September 16, 2010 IEP Team meeting.

The parent also alleges that the District did not meaningfully consider parental input at the meeting. To support this claim, the parent references her inquiry regarding a change in placement at the start of the IEP meeting on September 16, 2010, when she entered the room and noticed the unexpectedly large group of District representatives. The parent alleges that she was assured that the team had not made up its mind and that there would be a full and open discussion. According to the parent, once the placement page was reached and after a few brief statements, the District informed her that they believed tutoring was the best option. The District counters that the IEP discussion lasted over three and one half hours and that there was considerable discussion. The District also claims in its *Response* that the parents had the opportunity to fully participate in the placement discussion; during interviews similar statements were offered by the District staff. However, it is often the chain of events and participant actions rather than their words that lend the most credence to a disputed issue.

When the district representative was asked whether the Tutoring Services Request form was in the document package at the outset of the meeting, he unequivocally stated that the form was at the meeting and they did not have to retrieve the document. However, when the Life Skills teacher was interviewed a short while later, she stated, without being asked, that the tutoring packet had to be retrieved during the meeting. This statement was reiterated by a program assistant. However, doubt was cast upon both of these statements when the school psychologist, who had signed the form, believed the form was brought to the meeting and not retrieved during the meeting.

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<sup>11</sup> OAR 581-015-2205.

Because there was some inconsistency in statements about whether the form was at the meeting or whether it had to be retrieved, two members of District staff were asked a slightly different question. When asked whether anyone had left the meeting, a behavior trainer and another program assistant did not recall anyone leaving the meeting to retrieve a tutoring packet. By itself, this is not dispositive of the District's predetermination of the student's placement into a home tutoring environment.

However, there were three other individuals at the meeting that were also interviewed. Two members were from the group home where the student lives and a representative from the Oregon Department of Human Services (DHS). The statements of the group home representatives affirm the parent's statement that there was virtually no discussion regarding placement options. Their impression was that the District had decided upon home tutoring prior to the meeting. These statements have to be qualified to some extent since home tutoring places a supervision burden upon the group home that doesn't exist if the student is at school. However, the representative from the Oregon DHS has no reason or basis to distort the discussion regarding placement that occurred during the meeting. In the interview, the DHS representative indicated that there was only a brief discussion about tutoring and that the meeting was basically as the parent had alleged. No meaningful discussion was held on placement options other than tutoring, and the District exhibited a clear unwillingness to consider or discuss the parent's suggestions.

Based on these statements and the disagreement concerning the tutoring placement form, the Department concludes that a full discussion of the placement issue did not occur at the September 16, 2010 IEP Team meeting. In *H.B. v. Las Virgenes Unified Sch. District*, 48 IDELR 31 (9<sup>th</sup> Cir. 2007), the court found that "[p]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." The Department finds that the District's actions prior to and at the meeting indicate that the District had already identified home study as the appropriate placement for the student and that the District allowed for little meaningful discussion of other placement options.

Based on the District's failure to provide notice of all District meeting attendees and failure to provide the parent an opportunity to meaningfully participate in the placement discussion at the September 16, 2010 IEP Team meeting, the Department concludes that the District failed to consider the concerns of the parent with regard to the placement determinations made at that meeting.

#### **4. Placement of the Child /Requirements for Least Restrictive Environment**

Although the Department has concluded that the parent was denied meaningful participation in the decision to change the student's placement to home study, the Department does not substantiate the allegation that the home placement did not conform to the requirements of least restrictive environment. Under Oregon law, school districts must ensure that the educational placement of a child with a disability is made in conformity with the requirements of least restrictive environment.<sup>12</sup> The law also requires the placement to be as close as possible to the child's home and requires school districts to ensure that, to the maximum extent appropriate,

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<sup>12</sup> OAR 581-015-2250.

children with disabilities, including children in care facilities, are educated with children who do not have a disability.<sup>13</sup>

The parent alleges that the District failed to place the child in an equivalent program in a school much closer to the student's home and failed to educate the student, to the maximum extent appropriate, with children who do not have a disability by changing the student's placement to home tutoring.

A home study placement constitutes one of the most restrictive environments available for the educational placement of a student. However, such a restrictive placement can be an appropriate option if necessitated by the needs of the student.

In this case, the student's deteriorating behavior at the end of the 2009-10 school year and the apparent continuation of violent behavior at the start of the 2010-11 school year warranted a change in the student's educational program. The student's IEP Team could reasonably have concluded that the student's aggressive behavior was negatively impacting the student's ability to access the curriculum in his current setting.

Additionally, the IEP Team could have reasonably concluded that continuing the student's life skills placement or a similar placement would have posed a risk of harm to the student or others. Based on those considerations, the Department concludes that the home study placement complied with the requirements of least restrictive environment. Therefore, the Department does not substantiate the parent's allegation that the student's home study placement was more restrictive than necessary to implement the student's IEP.

**V. CORRECTIVE ACTION<sup>14</sup>**

*In the Matter of Salem-Keizer School District 24J*  
Case No. 010-054-026

Action Required	Submissions <sup>15</sup>	Due Date
<p><b>Staff Training:</b></p> <p>Provide training for administrators and staff members participating in the student's IEP meeting and for those in like positions in the district, on:</p> <ul style="list-style-type: none"> <li>• Meeting Notice, including identification of participants;</li> <li>• Prior Written Notice, including consistency between IEP documentation and prior written</li> </ul>	<p>Evidence of completed training including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Agenda, including names of presenters</li> <li>• Verification of participation, including signature, position and dated</li> </ul>	<p><b>January 31, 2011</b></p>

<sup>13</sup> OAR 581-015-2240.

<sup>14</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. OAR 581-015-2030(15). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. OAR 581-015-2030(17), (18).

<sup>15</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: racann.ray@state.or.us; fax number (503) 378-5156.

<p>notice content;</p> <ul style="list-style-type: none"> <li>• Parent participation in IEP Team meetings, including information about ensuring parental participation in IEP Team decisions.</li> </ul>	<ul style="list-style-type: none"> <li>• Copies of any materials and presentations used in presentations or distributed to staff in conjunction with training</li> </ul>	
<p><b>Compensatory Education Services:</b></p> <p>In consultation with the parent, the District shall develop a plan for the provision of 8 hours of compensatory education services based on the student's most recent IEP.</p> <p>The plan shall identify how the services will be provided, the schedule for services (including when services begin), and the contact person for the District for oversight of these services.</p> <p>Compensatory education services must be provided by qualified staff</p> <p>The District shall maintain a log of services provided, identifying date, type of service, provider, and amount of time.</p> <p>The District and parent may agree in writing to modify any of the provisions of the compensatory services plan except the qualifications of providers</p>	<p>The District and the parent shall submit a copy of the compensatory services provision plan signed by the parent and a District official.</p> <p>Upon completion of the compensatory education services, the District shall submit to ODE, with a copy to the parent, a copy of the log and a statement of assurance of completion.</p> <p>The District shall submit to ODE any written agreement, signed by both parties, to modify the provisions of the compensatory education services plan</p>	<p><b>December 17, 2010</b></p> <p><b>February 14, 2011</b></p> <p><b>Within 7 working days of such an agreement.</b></p>
<p><b>Placement Meeting:</b></p> <p>The District will hold a new placement meeting to review placement options and determine placement based on the student's most recent IEP.</p> <p>If the District has held a new placement meeting, with appropriate notices and review of options, prior to the date of this order, the District does not need to reconvene the team again but will submit the documentation related to this meeting.</p>	<p>Submit to ODE, copied to the parent, copies of:</p> <ul style="list-style-type: none"> <li>• any meeting notices;</li> <li>• the completed IEP and placement determination documents;</li> <li>• meeting notes; and</li> <li>• any prior written notices resulting from the meeting.</li> </ul>	<p><b>December 2, 2010</b></p>

Dated: ~~June 12, 2012, 2010~~ September 4, 2012

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