

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Estacada School District No.)
108)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 11-054-023

I. BACKGROUND

On July 13, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parents of a child attending school and residing in the Estacada School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The parents provided a copy of the complaint 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) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On July 15, 2011, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On July 27, 2011, the ESD submitted its timely *Response* to the *Request for Response*. The parent did not provide a written *Reply* in this case. 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.² The Department extended the investigation timeline in this case by 14 days, due to the complexity of the investigation and the District's inability to access some documents due to a computer-related problem.

The Department's contract complaint investigator determined that an on-site investigation would be necessary in this case. On August 22, 2011, the complaint investigator interviewed some of the District's staff, including a former principal, a learning specialist, a classroom teacher, a speech language pathologist (SLP) and the special education director. On August 26, 2011, the complaint investigator interviewed the parents by telephone. On August 31, 2011, the complaint investigator conducted telephone interviews with the special education director, a school nurse and a former classroom teacher. On the same date the District provided additional documents to the complaint investigator electronically. On September 2, 2011, the complaint investigator obtained further information from two members of the District's staff, by telephone. The parents also provided information by email following the telephone interview of the parents. On September 12, 2011, the complaint investigator conducted another telephone interview of the parents and of two of the District's staff. The Department's investigator reviewed and considered all of the documents and interviews in reaching the findings of fact and conclusions of law contained in this order.

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010).

² OAR 581-015-2030(12)

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153 (2010). The parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from July 10, 2010 to the filing of this complaint on July 12, 2011.³

No.	Allegations	Conclusions
(1)	<p><u>Child Find, Free Appropriate Public Education (FAPE), IEP Content</u></p> <p>The parents allege that the District violated the IDEA by failing to complete an IEP for the student following the student's return to school at the District during the 2010-2011 school year, despite several requests by the student's parents.</p>	<p><u>Substantiated</u></p> <p>The Department substantiates the parent's allegation to the extent that the parents allege that the District failed to complete a proper IEP following the student's return to school in the District. The District was obligated, with or without requests by the parents, to follow appropriate procedures to change the placement in the student's IEP once the student returned to school in the District. See <i>Corrective Action</i>.</p>

III. FINDINGS OF FACT

Background:

1. The student in this case is ten years old and attended school in the District during the 2010-2011 school year, beginning November 29, 2010. From June 15, 2010 until November 29, 2010, the parents home-schooled the student. The student also attended school in the District prior to the 2009-2010 school year.
2. The student is eligible for special education services as a student with a specific learning disability and a communication disorder. The District provided Notice of IEP Team Meeting and held an IEP meeting on September 17, 2010 while the student was being home-schooled. The IEP team, including one of the student's parents, developed the student's IEP, and the District continued to offer Specially Designed Instruction (SDI) for the student in "Speech/Language Services" for a minimum of 90 minutes each month. The parents transported the student to the District's Speech-Language Pathologist for these services. The parents declined continuation of additional Specially Designed Instruction (SDI) in Language Arts while the student was being home-schooled. The student reenrolled in the District on November 29, 2010, and the District continued implementing the provisions of the student's September 17, 2010 IEP.

³ OAR 581-015-2030(5)

3. On December 15, 2010, the District modified the student's IEP to reflect that the student's placement had changed from home-schooling to an in-District placement. This occurred at an IEP meeting on December 15, 2010. District staff reported that the parents did not attend this IEP meeting, but believed that the parents were notified of the December 15, 2010 meeting. However, District staff could not recall any specifics concerning the notification of the parents of the meeting, nor could they recall any verbal notification to the parents of the meeting; and District staff could not locate any documents showing that the District provided written notice of the meeting, possibly due to computer-related problems experienced by the District at the time of the investigation in this case. The District could not advise the Department precisely how the District addressed the failure of the parents to attend the December 15, 2010 IEP meeting. The parents report that they did not receive any notice, written or verbal, of the December 15, 2010 meeting, and that the parents made several verbal requests from January of 2011 to April of 2011 that the student's IEP be modified to reflect the correct placement. District staff report that the parents did not request any additional meetings following the December 15, 2010 meeting. During the December 15, 2010 meeting, the IEP team (without the parents) reviewed the student's September 17, 2010 IEP as though the student were a new student, reviewing the continued appropriateness of the services provided in the IEP. The District concluded that the provisions of the student's previous IEP were appropriate, except for the necessity of changing the placement from "home-schooled" to an in-District placement. District staff reported that staff mailed a copy to the parents of a document entitled "Special Education Placement Determination", dated December 15, 2010, a document which reflects the change in placement. Additionally, the document indicates that the parents were provided with a copy of the placement determination. A District staff person stated that no Prior Written Notice (PWN) was sent to the parents because the responsible staff person was unable to locate the appropriate form. The parents report that they did not receive the Special Education Placement Determination document, and this is why they continued to verbally request that the student's IEP be revised to reflect the appropriate placement.

4. The parents did not request, prior to or after the meeting, specific revisions to the services provided in the student's IEP. The Department did not find evidence of written requests by the parents for an IEP meeting after the student's return to school in the District. It is inconclusive if any verbal requests for an IEP meeting were made, as both the District and the parent disagree on this matter, so the Department cannot conclusively find that verbal meeting requests were made by the parents in this case.

IV. DISCUSSION

The parents allege that the District violated the IDEA by failing to complete an IEP for the student following the student's return to school at the District during the 2010-2011 school year, despite several requests by the student's parents.⁴ The Department did not find evidence that the parents made written requests for an IEP meeting, and the evidence concerning whether the parents made verbal requests is inconclusive, and thus the Department cannot find that the parents made repeated requests for IEP meetings, as alleged. The Department notes that there is no evidence that the parents made any requests, written or verbal, for specific IEP provisions

⁴ Neither Oregon law nor IDEA require districts to provide IEP services to children with disabilities who are home schooled. Oregon law does require districts to consider if special education services can be provided to home schooled students and permits districts to provide IEP services, as described in Fact 2 above. Under IDEA and OAR 581-015-2220 a district has an affirmative obligation to have an IEP in effect at the beginning of each school year for each child with a disability within the district's jurisdiction. The school year for this student began when the student re-enrolled on November 29, 2011.

or services. Under IDEA and OAR 581-015-2220 a district has an affirmative obligation to have an IEP in effect at the beginning of each school year for each child with a disability within the district's jurisdiction. The school year for this student began when the student's re-enrolled on November 29, 2011. The September 17, 2010 IEP remained in place, ostensibly modified only by the change in placement occurring at the December 15, 2010 meeting.

The Department finds that the District changed the placement to reflect the student's return to school at the District without proper participation by the parents. The Department thus substantiates the parent's allegation to the extent that the parents allege that the District failed to complete a proper IEP following the student's return to school in the District. The District was obligated, with or without requests by the parents, to follow appropriate procedures to review and revise the IEP once the student returned to school in the District.

The Department finds that the procedural violations concerning the December 15, 2010 meeting resulted in a procedurally improper IEP and the September 17, 2010 IEP is inaccurate in that it describes the student's placement as home-school.⁵ The District cannot demonstrate that it provided proper notice of this meeting to the parents and although it appears that after the meeting District staff probably mailed a copy to the parents of the document concerning the change of placement from home-school to an in-District placement, the District did not provide a PWN to the parents after the meeting. Failure to properly provide notice of a meeting, failure to ensure participation of the parents, failure to document the absence of the parents and the steps taken in light of their absence and failure to provide a PWN after the meeting constitute significant procedural violations. The Department concludes that the appropriate remedy is that the District must properly notice and convene a new IEP meeting for the student. Additionally, the District must obtain staff training on the proper procedures for noticing IEP meetings, ensuring parent participation and proper PWN of actions taken at meetings. See *Corrective Action*

V. CORRECTIVE ACTION

In the Matter of Estacada SD
Case No. 11-054-023

#	Action Required	Submissions ⁶	Due Date
(1)	<u>IEP Meeting</u> The District must convene an IEP meeting for this student, and ensure that all parent participation requirements are met, including, but not limited to, providing notice of IEP team meeting and providing, as required, prior written notice	Evidence of completed IEP meeting, including: Copies of IEP team meeting notice(s) and related documentation;	October 10, 2011

⁵ORS 339,030 (1) (e) exempts children who are home schooled from full time enrollment in public schools. Home schooling is thus not a "placement" under IDEA and State law. This is distinguished from children who continue to be enrolled in public education who are placed, for purposes of FAPE, in home instruction.

⁶ 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: raeann.ray@state.or.us; fax number (503) 378-5156.

	of IEP team decisions.	<p>Copy of completed IEP document;</p> <p>Copy of any notes or minutes related to the meeting; and</p> <p>Copies of any prior written notices resulting from the meeting.</p>	
(2)	<p><u>Training:</u></p> <p>The District must provide appropriate training to all District special education staff and other staff who may be involved in scheduling IEP and placement meetings regarding requirements related to parent participation and notification according to OAR 581-015-2190 (Parent Participation - General, 581-015-2195 Additional Parent Participation Requirements for IEP and Placement Meetings, and OAR 581-015-2310 Prior Written Notice. The District may contact the Department for assistance in compiling information for this training.</p>	<p>Evidence of completed training, to include:</p> <p>Dated Agenda;</p> <p>A copy of the training materials; and</p> <p>A signed attendance roster identifying name and position of attendees.</p> <p>If district distributes information electronically, include ODE staff on distribution list.</p>	October 17, 2011

Dated: September 15, 2011



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

Mailing Date: September 15, 2011

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.

Additionally, the Department of Education will not reconsider complaints after a Final Order has been issued pursuant to OAR 581-015-2030(14)(b).