

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Gresham-Barlow SD 10J)	
)	FINDINGS OF FACT,
)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 11-054-027

I. BACKGROUND

On October 12, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parent of a child attending school in the Gresham-Barlow 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 October 20, 2011, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On November 9 2011, following an extension request allowed by the Department, the District submitted its timely *Response* to the *Request for Response*. The parent provided a written *Reply* in this case. 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's contract complaint investigator determined that an on-site investigation would be necessary in this case. On November 17, 2011, the complaint investigator interviewed the parent by telephone. On November 22, 2011, the complaint investigator interviewed some of the District's staff, including two regular education teachers, a special education teacher, a program director and the Director of Student Services. 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.

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 October 13 2010, to the filing of this complaint on October 12, 2011.³

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

² OAR 581-015-2030(12)

³ OAR 581-015-2030(5)

No.	Allegations	Conclusions
(1)	<p data-bbox="298 272 683 306"><u>When IEPs Must Be In Effect</u></p> <p data-bbox="323 342 873 478">The complaint alleges that the District violated the IDEA by failing to implement the student's IEP. Specifically, the complaint alleges that the District failed to:</p> <ul style="list-style-type: none"> <li data-bbox="323 512 878 715">(a) implement the student's IEP during the student's 2011 summer school U.S. History class by failing to read the test aloud to the student and also by failing to communicate to the parent that the student was failing. <li data-bbox="323 751 878 921">(b) implement the student's IEP during an October, 2010 typing class by failing to communicate weekly homework and failing to check to see the student's progress. <li data-bbox="323 957 878 1330">(c) implement the student's IEP in the student's keyboarding class by failing to check the student's understanding of directions, penalizing the student for taking a break, not allowing additional time to complete tasks, not allowing the student to go to a quiet area, not allowing the student to do work at home as requested, and failing to complete a homework log to track missing assignments. <li data-bbox="323 1366 878 1502">(d) implement the student's IEP by failing to report the student's 2011 summer school grade, and failing to adequately explain the student's progress in class. 	<p data-bbox="906 272 1143 306"><u>Not Substantiated</u></p> <p data-bbox="906 512 1414 783">The Department finds that the student's IEP did not require reading of tests to the student. Additionally, the District offered to read anything to the student that the student needed to be read. Thus, the Department does not sustain the allegation concerning the reading of the test.</p> <p data-bbox="906 819 1414 1502">The Department does not substantiate the allegation that the District failed to implement the student's IEP during the keyboarding class. The District adequately communicated the assignments to the student, with weekly progress on assignments in the keyboarding class reported to the parent by the student's new case manager beginning on November 8, 2010. There is no indication that additional reports of the student's progress on the keyboarding assignments before November 8, 2010 would have resulted in the student's completion of additional assignments, since the student failed to complete the assignments after implementation of weekly reports by the student's case manager.</p> <p data-bbox="906 1538 1414 1908">Two of the remaining allegations generally concern the allegation that the District failed to adequately communicate the student's progress to the parent. However, during this 13-day summer class the teacher discussed the student's progress with the parent on two occasions, expressing that the student had not turned in assignments. The teacher also reported the student's scores on</p>

		<p>chapter work regularly in the District's electronic grading program. The Department does not sustain the allegations that the District failed to communicate to the parent that the student was failing and that the District failed to adequately explain the student's progress in class.</p> <p>Finally, the Department has not found any basis for concluding that the District's method of reporting the student's failing grade in the summer credit recovery class violates the IDEA. The District reported the student's grade by the usual method, and nothing in the student's IEP required otherwise.</p>
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III. FINDINGS OF FACT

Background:

1. The student in this case is 16 years old and attended school in the District during the 2010-2011 school year, on an inter-district transfer⁴. The student also attended a credit recovery class during the summer of 2011. The student returned to the student's home district at the beginning of the 2011-2012 school year.
2. The student is eligible for special education services as a student with other health impairment (specifically, ADHD). The student's IEP goals are in the areas of mathematics and behavior. The behavior goal provides that the student "will increase her ability to meet classroom expectations by taking responsibility for her learning. She will demonstrate that she can maintain responsible classroom behavior by earning all passing grades (C or better)." The short-term objectives in the behavior goal include "Employ problem solving skills when [the student] is overwhelmed or frustrated by using one or more of the following strategies: requesting assistance from teacher or assistant, taking a time-out to help [the student] regain focus, asking to go to a quieter location to complete work, requesting a break."

⁴ The student was on an inter-district transfer from Reynolds School District for the 2010-2011 school year. Under the existing laws at this time, ORS 339.133 and ORS 339.134, when an inter-district agreement has been signed between two districts, the resident district retains all responsibility for ensuring provision of FAPE. While the resident district may delegate some or all of its responsibilities for providing special education to the attending district, it may not delegate its FAPE responsibilities. However, due to the unsubstantiated nature of these allegations; and the allegations concerning tuition based nonextended school year summer school program, residency is a moot issue for this particular complaint.

3. The "Inter-District Consent Agreement for Admission of Non-Resident Students" signed by the District and the resident district for the 2010-11 school year provides both that the resident district "shall retain all responsibility for ensuring that the parents and the child are afforded all special education rights and procedural safeguards under state and federal law, including, but not limited to: * * * (e) Provision of a free appropriate public education", and that the District "shall * * * provide the student(s) with an appropriate public education as well as the same educational rights and services as are provided to its own resident students."

4. The student transferred into a keyboarding class during early October of 2010, a semester which began in early September of 2010 and ended in January of 2011. The teacher of the keyboarding class was aware of and received a copy of the student's IEP. The teacher believed that although the student began the class late the student could work with the self-tutorial program to progress in the class and obtain the skills necessary to complete the assignments in the classroom. The teacher provided all students in the keyboarding class with a packet that indicated the work to be completed. Initially, the student began working in the wrong part of the keyboarding program and completed the wrong lessons. Upon learning of this by the end of October, 2010, the teacher gave the student credit for the completed lessons and directed the student to the correct portion of the program. During the student's first month in the class, the parent called and e-mailed the teacher regularly, to the point that it was difficult for the teacher to respond to all of the parent's communications. On November 8, 2010, the District assigned a new special education case manager to the student, and developed a plan to funnel all communication through the case manager. As part of this plan, the case manager created a form that all of the student's teachers updated weekly and that the case manager shared with the parent. The parent was satisfied with this level of communication.

5. The keyboarding teacher attempted to keep the student on track on the keyboarding assignments. The teacher sat next to the student and would help the student open up the computer program used in the keyboarding class, and would check the student's understanding of directions. The teacher expressed frustration with the student's behaviors in the class, consisting of not working on the keyboarding assignments during class. The teacher reminded the student that the work for the keyboarding class could be done before or after school or any other time during the school day when the student had access to the computer lab. The teacher did not penalize the student for taking a break and understood that the student's IEP provided that the student might need a quiet area to work and that the student needed additional time to complete work, although the keyboarding class is a "self-paced" class. The teacher provided additional instruction to the student daily, by working with the student directly during class and assisting the student with opening and using the keyboarding computer program. In an attempt to assist the student in completing the keyboarding class work, the teacher deviated from the general rule that all work must be done in the keyboarding classroom when the teacher allowed the student to take the textbook home over the winter holiday break in December of 2010. The teacher reported that although some of the assignments were completed, many did not follow the assignment requirements, and some were not formatted correctly. The teacher gave the student partial credit for this work. The teacher reported the student's progress on the keyboarding assignments weekly, through the report provided to the student's case manager which the case manager provided to the parent.

6. The student enrolled in a "credit recovery" class taught for 13 days during the summer of 2011. This is a tuition-based class. The student's IEP team determined that the student did not qualify for ESY during the summer of 2011. The IEP in effect at the time of the summer credit recovery class did not provide for reading assignments to the student. However, one of the District's special education staff informed the teacher of the credit recovery class that the

student was on an IEP and that the special education staff person was available to read anything to the student that the student needed read. The teacher informed the student that this was available at the beginning of the class and reminded the student of this on several occasions.

7. The credit recovery class is individualized and each student is given a checklist of assignments and assessments. The grade is based 50% on chapter work and 50% on assessments. The student needed to complete chapter work and two assessments. The student had access to the chapter work assignments and the assessments during the class. The teacher reported that he seldom saw the student do work in the classroom, and although the class is not intended to allow work to be done outside of the class, the teacher allowed the student to take home the assignments. The teacher discussed the student's progress in the classroom with the parent by telephone on two occasions, and reported to the parent that the student was not turning in assignments. The teacher reported the student's scores on the chapter work on the District's electronic grading program ("eSIS"). The teacher reported that the student completed only the multiple-choice portion of the two assessments the student attempted, and did not complete the essay portions. The teacher returned the incomplete assessments to the student and advised the student that a passing grade was not possible without completing the essay portion of the assessments. The student did not pass the class. The teacher reported the student's final grade on "eSIS", which is the District's usual method of reporting grades for summer credit recovery classes.

IV. DISCUSSION

The parent alleges that the District violated the IDEA by failing to implement the student's IEP during a keyboarding class beginning in the fall of 2010, and during a credit recovery class during the summer of 2011.

The Department will address the District's position in its *Response* in this case that the District is not responsible for providing FAPE, as concerned the keyboarding class. The Department's review of the inter-district transfer agreement does not support this conclusion. Specifically, the inter-district agreement provides that the District (the "non-resident district") still must provide the student with an appropriate public education. Therefore, the Department will address the merits of the allegations concerning the keyboarding class taken by the student.

Also, the District responded that they were not liable under the summer tuition paid credit recovery program. However, due to the nature of this complaint and its associated allegations, the Department will discuss the allegations based purely on their substantive merits rather than the implied legal obligations associated with summer programs and credit recovery under IDEA. Concerning the keyboarding class, the parent specifically alleges that the District failed to implement the student's IEP by failing to communicate weekly homework, failing to check to see the student's progress, failing to check the student's understanding of directions, penalizing the student for taking a break, not allowing additional time to complete tasks, not allowing the student to go to a quiet area, not allowing the student to do work at home, and failing to complete a homework log to track missing assignments.

The Department recognizes that the parent may have been somewhat confused by the absence of homework during the first few weeks of the keyboarding class. However, it appears this was due to the nature of the keyboarding class, a class for which there is no homework per se. Therefore, the allegation of a failure by the District to complete a weekly homework log for the

student when there was no required homework cannot provide a basis for finding a violation. The keyboarding teacher provided all students in the keyboarding class with a packet that indicated the work to be completed. There is no indication that the level of communication with the parent and the student concerning the keyboarding class assignments impeded the student's progress, and the parent was satisfied with the communication shortly after the assignment of a new case manager to the student in early November of 2010. The District went to special lengths to allow the student extra time to complete the keyboarding assignments by allowing the student to take the textbook home over the winter break to work on the assignments. This was in addition to advising the student that the student could work on the keyboarding assignments at school either before or after class or anytime the student had access to the computer lab. The difficulty revealed by review of the facts in this case does not appear to lie with any failure by the District to provide ample opportunities for the student to complete the keyboarding assignments, but rather it appears to lie with the student's failure to complete the assignments after being provided ample opportunities to do so.

The Department does not substantiate the allegation that the District failed to implement the student's IEP during the keyboarding class. The District adequately communicated the assignments to the student and followed protocol for posting grades online. Additionally, weekly progress on assignments in the keyboarding class were reported to the parent by the student's new case manager beginning on November 8, 2010. There is no indication that additional reports of the student's progress on the keyboarding assignments before November 8, 2010 would have resulted in the student's completion of additional assignments, since the student failed to complete the assignments even after implementation of weekly reports by the student's case manager.

Concerning the summer credit recovery class, the parent specifically alleged that the District failed to implement the student's IEP by failing to read the test aloud to the student, by failing to check on the student's progress, by failing to report the student's grade and failing to adequately explain the student's progress in the class. The merits of these claims must be addressed.

The Department finds that the student's IEP did not require reading of tests to the student. However, the District still offered to read anything to the student that the student needed to be read aloud. Thus, the Department does not sustain the allegation concerning the reading of the test in the summer credit recovery program.

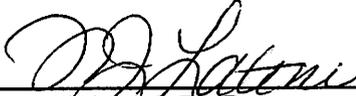
Two of the remaining allegations generally concern the allegation that the District failed to adequately communicate the student's progress to the parent. However, during this 13-day summer class the teacher discussed the student's progress with the parent on at least two occasions, expressing that the student had not turned in assignments. The teacher also reported the student's scores on chapter work regularly in the District's electronic grading program. The teacher also allowed the student to take home assignments. The Department does not sustain the allegations that the District failed to communicate to the parent that the student was failing and that the District failed to adequately explain the student's progress in class.

Finally, the Department has not found any basis for concluding that the District's method of reporting the student's failing grade in the summer credit recovery class violates the IDEA. The District reported the student's grade by the usual method, and nothing in the student's IEP required otherwise.

V. CORRECTIVE ACTION

Because the Department does not sustain the allegations in this case, no corrective action is ordered.

Dated: December 2, 2011



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

Mailing Date: December 2, 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).