

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego SD 7J

)
)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 11-054-032

I. BACKGROUND

On November 21, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parents of a child attending school and residing in the Lake Oswego School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department 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 December 1, 2011, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On December 13, 2011, the District timely submitted its *Response* to the *Request for Response*. 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’s contract complaint investigator determined that an on-site investigation would be necessary in this case. On December 14, 2011, the complaint investigator interviewed the parents. On January 4, 2012, following the District’s holiday break, the complaint investigator interviewed some of the District’s staff, including an elementary school principal, the Director of Elementary Programs, a regular education teacher, a special education teacher, and the Executive Director of Student Services (Special Education Director). 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 November 22, 2010, to the filing of this complaint on November 21, 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><u>Parent Participation; Placement; Least Restrictive Environment; Notice of Procedural Safeguards</u></p> <p>The complaint alleges that the District violated the IDEA by failing to allow meaningful, informed parent participation in the District's decision made in November of 2010 to change the student's placement to an "Autistic Program" at an elementary school across town from the student's home school and the team allegedly failed to discuss other placement options available for the student at that time or at later times during the 2010-2011 and 2011-2012 school year, including the parents' option to revoke special education services for the student.</p>	<p><u>Not Substantiated</u></p> <p>The Department has not found any indication that the parents were not allowed meaningful, informed participation in the decision to change the student's placement made in November of 2010⁴.</p> <p>Concerning the allegation that the District failed to timely advise the parents of the option of revoking consent for special education services, the Department does not sustain this allegation. The District clearly provided the procedural safeguards notice required by OAR 581-015-2315(1)⁵</p>
(2)	<p><u>Independent Educational Evaluation (IEE)</u></p> <p>The complaint alleges that the District failed to obtain an independent educational evaluation despite the parents' request on October 10, 2011 for an outside assessment of the student.</p>	<p><u>No Finding</u></p> <p>This issue was not investigated because the parents agreed that they did not request an Independent Educational Evaluation.</p>
(3)	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings</u></p> <p>The complaint alleges that the District conducted an IEP meeting on or about February 15, 2011, without ensuring parent participation in the meeting.</p>	<p><u>Substantiated</u></p> <p>Under all of the circumstances, the Department finds that the District violated the IDEA when it failed to ensure that one or both of the parents of the student attended the IEP meeting. The Department substantiates the allegation that the District conducted an IEP meeting on February 15, 2011 without ensuring</p>

⁴ The annual IEP team meeting held on November 15, 2010 is outside of the jurisdiction of the Department's investigatory authority set forth in OAR 581-015-2030(5) but is relevant for the discussion and analysis that follows.

⁵ Procedural Safeguard notices were given to parents beginning with the evaluation planning meeting held on November 3, 2009, and continuing with the February 23, 2010 IEP meeting.

		<p>parent participation in the meeting.</p> <p><i>See Corrective Action.</i></p>
--	--	--

III. FINDINGS OF FACT

Background:

1. The student in this case is 7 years old and is in the second grade at the District. The student is eligible for special education services as a student with Autism Spectrum Disorder (ASD), with an initial eligibility determination of February 9, 2010. The District held an evaluation planning meeting on November 3, 2009, and the meeting minutes of that meeting indicate that the District offered the parents the "parental rights" publication, and this was accepted by the parents. The student's initial IEP, dated February 23, 2010, noted that the student should receive, "Regular education with pull out services for specially designed instruction" (SDI), "until the end of Kindergarten" (the 2009-2010 school year). This IEP also identified specially designed instruction (SDI) goals in the following areas: "Communication – Language", "Social Cognition", "Language Arts", and "Math."

The February 23, 2010 IEP also specified the following supplementary services, aids, accommodations, and modifications: "Preferential seating," "Visual schedule," "Social stories," "Repeat/paraphrase directions," "Adult assistance," "Motor break" and "Allow alternate seating options (seat cushion, standing, T stool)." The February 23, 2010 placement page indicates that the selected placement of "Regular education with pull out services for specially designed instruction" is "Selected until the end of Kindergarten." The meeting minutes of the February 23, 2010 IEP meeting, as well as the Prior Written Notice (PWN) from that meeting indicate that a special class placement for the 2010-2011 school year may be considered pending a team decision. The meeting minutes also note that the parents were offered the "parent rights" publication.

November 15, 2010 IEP and New Placement

2. The student's placement in the February 23, 2010 IEP continued during the 2010-2011 school year (the student's first grade year). At the November 15, 2010 IEP meeting, the team revised the IEP and then, with the parents, discussed the possibility of changing the student's placement to a special education class referred to as the "ACCESS" program. The ACCESS class is not limited to children diagnosed with autism, and is a small (present population is 9 students) classroom focusing on the individual needs of each student. District staff recalled providing the "parent rights" publication to the parents at the outset of the November 15, 2010 meeting. The meeting minutes of the November 15, 2010 IEP meeting lists the benefits of the placement options considered by the IEP team, the "neighborhood school" or the "ACCESS" classroom. The meeting minutes reveal an extensive discussion of the placement options being considered, and that the parents indicated they wanted to do whatever was best for the student. The parents provided no alternative placement options during the November 15, 2010 meeting. Ultimately, the IEP team, including the parents, agreed to the IEP which placed the student in the ACCESS program, described in the meeting minutes and in the November 15, 2010 revisions to the IEP as "Special class with focus on social communication skills." It was clear that the parents did not offer, and the IEP team did not discuss, additional placement

options at the November 15, 2010 IEP meeting. During the on-site interviews District staff stated that the regular education placement with significant special education pull out services was not adequately addressing the needs of the student.

3. The student actually began attending the ACCESS program on January 4, 2011. The parents reported that by the third day in the new placement, the student did not want to attend the program and that by the beginning of the second week the parents decided not to send the student to school.

February 15, 2011 IEP meeting

4. On January 20, 2011, the District sent an IEP meeting notice for February 15, 2011, at 11:00 a.m. to 1:00 p.m. to the parents. The parents had also indicated they wished to discuss the student's placement.

5. On February 15, 2011, the parents and student arrived for the student's IEP meeting. Upon entering the school building, the District's Special Education Director met the parents and student at the door and, according to one of the parents, the Special Education Director introduced himself in a friendly manner. According to the Special Education Director, the upset parent informed the Special Education Director that the student would be returning to the student's home elementary school and that there was nothing the Special Education Director could do about that. The Special Education Director reportedly informed the parent that there would have to be an IEP team decision before that could happen, and the parent insisted that their demand be met immediately, allegedly using profanity, and saying that the student would attend the student's home elementary school because the parent would just take the student there. In response, the Special Education Director, admittedly, stated "that's not going to happen." One of the parents observed that the Special Education Director stood very close to the other parent, which reportedly upset the other parent and triggering a "PTSD episode." The upset parent characterized the Special Education Director's posture as "frightening." All agree that at that time one of the parents used numerous "profanities" and that the parent's voice was raised significantly. The Special Education Director reported telling the parents that "we have a process" that must be followed. All of this was occurring just inside of the elementary school building in the hallway, while other elementary students and other parents were entering the building. The Special Education Director reported that the parent stepped towards the Director while continuing the abusive language and the Director asked the parent to back up and told the parent he was uncomfortable with the parent's proximity. The parent did back up but continued the profane language in the hallway. The Special Education Director asked the parent to leave the school and asked another District staff member to call the police. The parent reportedly said that "You cannot have the meeting" (to the Special Education Director), and the Special Education Director advised the parent that the IEP team would meet at that time and that the school would send the information to the parent. The parent then left the school and did not attend the IEP meeting. The Special Education Director did not ask the other parent if they wanted to attend the meeting, because the parents (and student) left the building together, and the other parent who was not involved in the altercation did not ask to attend the meeting nor was the parent asked to stay for the meeting. The meeting minutes from the February 15, 2011 IEP meeting state that the parents were not present and that "Parental rights were given and they chose not to attend the meeting (verbally aggressive, threatening posture – dismissed)." The PWN issued the next day, February 16, 2011, states that "Due to verbal aggression and threatening postures from [parent], [the parent] was asked to leave the school building. Parents did not attend the IEP meeting and were given a copy of their parental rights by the District Representative, [the Special Education Director]."

6. During the on-site interviews, the Special Education Director said that the District had an imminent deadline⁶ for the student's annual IEP of February 22, 2011, and that there was not sufficient time to reschedule the IEP meeting prior to that date, in light of the logistics of scheduling a meeting in the District.

7. The District held the February 15, 2011 IEP meeting without the parent present. The IEP team made minor revisions to the IEP, based on the recommendations of the District's staff in the current placement. On February 16, 2011, the District sent a copy of a draft IEP showing the changes, a final copy of the February 15, 2011 IEP and the PWN (dated February 16, 2011).

Matters Following February 15, 2011 IEP Meeting

8. On February 23, 2011, the District's Director of Elementary Programs spoke with one of the parents by telephone, and offered to hold another IEP meeting at the District's central office, a meeting which the Special Education Director would not have to attend. The parent was to determine whether they wanted the additional meeting. The Director of Elementary Programs called the parents to follow up on this issue a few days later, but the parents did not respond to this call and did not request the additional meeting. The parents reported during the on-site interview that in March of 2011, the Director of Elementary Programs contacted the parents and said that they should schedule a new IEP meeting, but the parents said they did not want to. The parent said that they were considering an outside evaluation, but did not request that the District provide an independent educational evaluation (IEE). The parents reported that one of the parents had suffered "a mental breakdown."

9. Just prior to the beginning of the 2011-12 school year (the student's second grade), the parents called various District staff members, stating that the student needs to return to the student's home elementary school. The parents reported that the Director of Elementary Programs advised there would have to be an IEP meeting to change the student's placement. During the first week of September, 2011, one of the parents reported that during a face-to-face conversation the principal said that the student's new placement occurred because the student had a couple of "meltdowns" and the District did not have the time or staff to deal with it and that the decision is still up to the student's IEP team. One of the parents reported that the principal then said that the parents have "certain parental rights in a booklet", but the parent could not recall the options discussed by the principal at that time.

10. In an email message from the principal to the Special Education Director dated September 1, 2011, the principal relayed a telephone conversation with one of the parents, and noted that the parent had said that the parent believed the Special Education Director "is 'Pissed' at her because taking [the student] out of SPED would mean [the District] would lose money from the state for our programs."

11. One of the parents reported that the parent called the Director of Elementary Programs on October 11, 2011 to advise that the parent's were obtaining an outside assessment, and during that conversation the Director said "do you know you can do a letter of revocation and can revoke IEPs, and special services and this would allow * * *" the student to return to the student's home elementary school? The parent reported that the Director of Elementary

⁶ See OAR 581-015-2229 which requires that an IEP be conducted at least once every 365 days.

Programs told the parent that the Special Education Director and the Principal had said they had both told the parent this. On October 12, 2011, the parents signed a letter demanding that the student "not serve [the student's] IEP." On October 17, 2011, the parents revised this letter to request that the student be "removed from Special Education Services."

12. The student returned to school in a regular education classroom at the student's home elementary school on October 18, 2011, and the student remains enrolled here as of the date of the on-site interviews of District staff on January 4, 2012. The student's regular education teacher reports that the student is experiencing difficulties in the regular education classroom, both socially and academically, to the point that the regular education teacher has requested what the District refers to as an "Intervention Team," to suggest strategies to the classroom teacher. The student's first report card for this school year, issued recently, shows that student is "Having difficulty" in many academic and social development areas, and is "Developing" in most other areas.

IV. DISCUSSION

The parents first allege that the District failed to allow meaningful, informed participation in the decision made in November of 2010 to change the student's placement to an "Autistic Program" at an elementary school across town from the student's home school and failed to discuss other placement options available for the student at that time or at times during the 2010-2011 and 2011-2012 school years, including the parents' option to revoke special education services for the student.

The Department has not found any indication that the parents were not allowed meaningful, informed participation in the decision to change the student's placement made in November of 2010. The parents' deference to the District's educational experts at the November 15, 2010 IEP meeting does not mean that the parents were not allowed the opportunity to fully participate in the placement decision. To the contrary, the meeting minutes clearly reflect an extensive discussion of the placement options during the meeting, a discussion in which the parents fully participated. The parents provided no alternative placement options during the November 15, 2010 meeting. The fact that once the student arrived at the new placement the student did not wish to attend, along with the fact that the parents chose to not require the student's attendance in the new placement, simply do not implicate the process by which the IEP team, including the parents, made the decision to place the student in the special education classroom.

The parent alleged that the District failed to timely advise the parents of the option of revoking consent for special education services. Effective December 31, 2008 federal IDEA regulations were revised to permit parents to revoke all consent for special education services. ODE provided information to districts in January 2009, enabling parents and districts to exercise this option. The current revocation notice appeared in the procedural safeguards notice in May of 2010 which provided to the parents information that states that the parents may revoke consent for special education and related services and that it must be done in writing. Additionally, although the parents insist they were not told of the ability to revoke consent for special education services until October 11, 2011, the email message among District staff dated September 1, 2011 does suggest awareness by the parent of the option to "take the student out of special education" as early as September 1, 2011. However, whether or not the parents recall their actual awareness of the ability to revoke special education services, the District complied with the regulations concerning procedural safeguards by providing the publication to the

parents beginning November 3, 2009, again on February 23, 2010, and also on February 15, 2011. The Department does not substantiate this allegation.

Concerning the allegation that the District failed to obtain an IEE despite the parents' request for the same which was perceived when reading the initial parent narratives by the Department and subsequently reflected in the Request for Response, however, the parent's agreed that they did not request an IEE. The Department thus makes no finding on this allegation.

Finally, the Department will address the allegation that the District conducted an IEP meeting on February 15, 2011 without ensuring parent participation in the meeting.

OAR 581-015-2195 (Additional Parent Participation Requirements for IEP and Placement Meetings) provides, in part:

(1) Parent Participation: 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

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

(2) Other Methods to Ensure Parent Participation: If neither parent can attend, the school district must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.

(3) Conducting an IEP/Placement Meeting without a Parent in Attendance: An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.

(a) If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed on time place such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(b) The Department considers school district attempts to convince parents to attend sufficient if the school district:

(A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2190(2) to confirm this arrangement; or

(B) Sends written notice required under OAR 581-015-2190(2) proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice.

(c) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.

The regulations do not directly address the circumstances presented in this case, specifically, they do not account for situations when parents come to the school for IEP meetings and then display potentially abusive or hostile language toward administrators in the school building, which is sufficiently appropriate to remove the parent from the school. The regulations do, however, place much importance on holding IEP meetings with the parents of special education students present if at all possible, and providing procedural safeguards to all parents, which includes districts making sufficient attempts to reschedule IEP meetings as needed for a mutually agreeable time and place. Additionally, state and federal rules allow for parents to participate in IEPs via alternate means if necessary including but not limited to phone calls or home visits.⁷

The Department does not fault the District for its decision to exclude the aforementioned parent under the circumstances presented above. Nor does the Department imply that administrators are required to remain in potentially hostile or volatile situations involving parents at scheduled IEP meetings. However, many alternatives existed here to ensure that the parents' procedural safeguards were met and that their participation or lack thereof was properly accounted for, rather than immediately proceeding with the IEP meeting without either of the parents being present.

First, the District could have rescheduled the IEP meeting. The District said it could not reschedule the IEP meeting because the District had to hold the student's annual IEP meeting within the next 7 days, by February 22, 2011, and it would not be possible to reschedule the meeting within that time frame.⁸ Additionally, there is no evidence to indicate why it was impossible to reschedule a meeting within the noted seven day time period. Therefore, time remained for the District to reconvene the annual IEP and still fall within this timeframe or to make other arrangements on the day in question. Thus, the District's premise that the annual IEP meeting had to take place immediately as scheduled on February 15, 2011, is simply not supportable.

Another alternative which would have allowed the District to conduct the IEP meeting on February 15, 2011 and include parental presence would have been for the District to have provided the other parent (the parent who was calm and did not have to be excluded from the school premises) and the student the opportunity to attend the student's annual IEP meeting, as scheduled. As noted above, the remaining parent, who was not involved in the verbal altercation with the Special Education Director, could have remained for the meeting at this time. Also, the parents could have participated remotely via conference call after being escorted out of the building if needed. Under federal law, Districts are afforded the option of utilizing conference

⁷ OAR 581-015-2195(2)

⁸ OAR 581-015-2225(1)

calls as needed to ensure parent participation in IEP meetings if the parent cannot physically attend the meeting at the school.⁹

The Department therefore concludes that even under the unusual circumstances presented in this case, which included extreme displays of emotion, physical boundary concerns, and heated words between one of the parents and a District staff person, the District should have attempted to reschedule the meeting to provide an opportunity for those involved to calm down and reflect on the situation or participate using alternate means, reassess the best way to obtain parent participation, and ensure that the parental procedural safeguards were met.

Under all of the circumstances, the Department finds that the District violated the IDEA when it held the IEP meeting on February 15, 2011 without ensuring that one or both of the parents of the student attended the IEP meeting. The District's attempts to hold a later IEP meeting with the parents, while laudable, does not change the fact that the District held an IEP meeting without ensuring the presence of the parents, when the District had the ability to allow for parental participation. The Department thus substantiates the allegation that the District conducted an IEP meeting on February 15, 2011 without ensuring parent participation in the meeting.

Additionally, the Special Education Placement Determination completed after the February 15, 2011 IEP meeting notes that the parents were present. However, as described above, the District did not allow the parents to attend this meeting. As such, the parent should not have been listed on this form.

The discussion now turns to the appropriate remedy in this case. Because the parents in this case revoked consent for special education services in October of 2011, and have not again consented to the provision of special education services to the student as of the date of the on-site investigation (January 4, 2012), it would not be appropriate to order a new IEP meeting, with parental participation, as parental consent would first be necessary for an IEP meeting or special education services. The Department finds that it is appropriate for District staff to receive training on the importance of exhausting all alternatives before conducting an IEP meeting without the parents in attendance and properly documenting each attempt in accordance with State and Federal law. See *Corrective Action*.

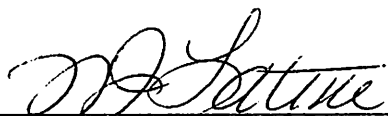
⁹ 34 CFR 300.322(c)

V. CORRECTIVE ACTION¹⁰

In the Matter of Lake Oswego SD
Case No. 11-054-032

#	Action Required	Submissions ¹¹	Due Date
(1)	<u>Training:</u> The District must provide appropriate training of all District special education staff on the proper procedures for ensuring parent participation in IEP and placement meetings in accordance with OARs 581-015-2190 and 581-015-2195.	Evidence of completed training, to include: a copy of the training materials and an attendance roster or distribution list identifying name and position of attendees.	March 02, 2012

Dated: January 18, 2012



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

Mailing Date: January 18, 2012

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 had been issued pursuant to OAR 581-015-2030(14)(b).

¹⁰ 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).

¹¹ 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.