

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter Portland SD 1J

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 12-054-038

I. BACKGROUND

On December 12, 2012, the Oregon Department of Education (Department) received a letter of complaint from the parent of a child residing in the Portland School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The parent 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 19, 2012, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On January 2, 2013, the District timely provided its *Response* to the *Request for Response*. The parent provided a *Reply* to the District's *Response* on January 9, 2013. On January 8, 2012, the District provided an additional *response*, identifying an additional issue in the parent's *Reply*. The parent provided an additional *Reply* on January 10, 2013. On January 16, 2013, the District provided additional information and on January 18, 2013, the parent provided a *Reply* to this additional information. The Department's contract complaint investigator (complaint investigator) determined that an on-site investigation would be necessary in this case, and on January 24, 2013, interviewed District staff, including a Special Education Teacher, a School Psychologist and the District's legal counsel. On January 28, 2013, the District emailed a copy of additional information provided during the on-site investigation to the parent. The complaint investigator reviewed and considered all of the documents 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. 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 December 13, 2011, 2011, to the filing of this complaint on December 12, 2012.²

No.	Allegations	Conclusions
(1)	<u>When IEPs Must Be In Effect</u> The complaint alleges that the	<u>Not Substantiated</u> The Department has reviewed the student's current

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153

² OAR 581-015-2030(5)

	<p>District violated the IDEA by failing, beginning November 2012 and continuing through the date of the filing of the complaint, to have in place a current IEP for the student. The parent clarified that much of the content of the student's IEP is outdated (for example, the IEP now in place refers to a speech therapist who is no longer with the District).</p> <p>Relevant Law: OAR 581-015-2220, 34 CFR 300.323 and 34 CFR 300.324.</p>	<p>IEP, as revised on October 18, 2012, and concludes that the IEP, as revised, is current under the circumstances. Additionally, the District's obligation to have an IEP in effect for this student ended when the parent withdrew the student to be home schooled on November 30th. Instead, the District was obligated at this time, to offer an IEP meeting to discuss if IEP services could be provided in conjunction with home schooling under OAR 581-021-0029, and to offer FAPE if the student re-enrolled in public schools. The Department does not sustain this allegation.</p>
(2)	<p><u>IEP Team Considerations and Special Factors</u></p> <p>The complaint alleges that the District violated the IDEA by failing to address the student's behavior and have in place appropriate strategies to address the student's behavior beginning December 10, 2012.</p> <p>Relevant Law: OAR 581-015-2205, 34 CFR 300.320 and 34 CFR 300.324.</p>	<p><u>Not Substantiated</u></p> <p>The available evidence shows that the District had a BSP in place early in the 2012-13 school year. This BSP was signed on September 10, 2012 by several District staff, including the student's special education teacher. District staff worked on improving and amending that BSP and developed a new plan that is dated December 12, 2012. The parent removed the student from the District, on November 30, 2012. The District advised the parent by email of a meeting to discuss the BSP but the parent was not able to attend the meeting the District attempted to hold on December 12, 2012. District staff met on January 2, 2013 and, despite the student's absence from school and the parent's inability to attend the meeting to discuss the BSP, the District reviewed an updated plan and determined the updated plan would be put in place, anticipating future attendance by the Student. The Department does not sustain this allegation.</p>
(3)	<p><u>Content of IEP</u></p> <p>The complaint alleges that the District violated the IDEA by failing to have in place IEP goals relating to the students' processing disorders, learning disabilities or intellectual disability, on the following dates: May 15, 2012, May 30, 2012, August 28, 2012 and in October 2012.</p>	<p><u>Not Substantiated</u></p> <p>Oregon does not require that a District formally classify a student in every disability category for which a student is eligible. Instead, the IEP team must consider the special education and related services needs of an individual student based on the student's individual needs. Accordingly, the IEP goals should not be written based on a student's disability type or IDEA eligibility category, but they are instead written based upon the student's needs.</p>

	Relevant Law: OAR 581-015-2200 and 34 CFR 300.320.	The evidence here does not indicate that this student's IEP goals were inappropriate. The Department does not sustain this allegation.
(4)	<p><u>IEP Implementation/When IEPs Must Be In Effect</u></p> <p>The complaint alleges that the District violated the IDEA by failing to provide timely progress reports to the parent beginning in November 2012.</p> <p>Relevant Law: OAR 581-015-2220, 34 CFR 300.323 and 34 CFR 300.324.</p>	<p><u>Sustained</u></p> <p>The quarterly progress reports were completed on November 9th, as specified in the IEP, but the District did not mail them to the parent until December 3rd. The Department thus sustains this allegation.</p>
(5)	<p><u>Placement of the Child</u></p> <p>In the parent's first <i>Reply</i> in this case, the parent alleged that the District did not respond to the parent's request for a change in placement in an email dated July 5, 2012.</p> <p>Relevant Law: OAR 581-015-2250 and 34 CFR 300.116</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the District did respond to the parent's email of July 5, 2012. The record shows correspondence between the parent and district from July 9, 2012 to July 11, 2012. The District also wrote the parent on July 25, 2012, acknowledging the parent's request for a day treatment placement and asking for information needed by the IEP team to determine an appropriate placement for the student during the upcoming 2012-2013 school year. Next, on August 28, 2012, the IEP team met and the team, including the parent, agreed to change the student's placement to a special class at the District. At this meeting, the parent did not make a request for placement in a day treatment program. The Department does not sustain this allegation.</p>
	<u>Corrective Action:</u>	See Corrective Action

III. FINDINGS OF FACT

1. The student in this case is presently 10 years old and attended third grade in the District until November 30, 2012 when the parent stopped sending the student to school in the District.
2. The Student is eligible for special education as a student with an Emotional Disturbance, Other Health Impairment and Communication Disorder.

3. The student's current IEP, dated May 16, 2012, and revised on October 18, 2012, identified "Special Class- Externalizing Behavior Class" as the placement.
4. The student attended a special school beginning mid-kindergarten until the first half of third grade (the 2011-2012 school year). The student's placement changed to a special class which the student began attending on January 3, 2012. By agreement between the parent and the District the student remained in the third grade which the student attended from the beginning of the 2012-2013 school year until removal of the student from school on November 30, 2012.
5. The parent withdrew the student from attendance at the District on November 30, 2012, with intent to home school.
6. The student began the 2012-2013 school year in another special class located within the same special school.

When IEPs Must Be In Effect

7. The District presently has an IEP in place for the student, dated May 16, 2012 which was revised on October 18, 2012.
8. On November 16, 2012, the District agreed to complete an additional evaluation of the student, and the parent signed a parent consent form for the evaluation on that date.
9. The parent removed the student from attendance at the District on November 30, 2012, and the parent recently contacted a District school psychologist to begin the evaluation process.
10. On January 22, 2013 the District began the evaluation process. The District is evaluating the student for specific learning disabilities (LD) consistent with the consent provided by the parent.
11. The student began school in the District during the 2012-2013 school year and attended a special class until the parent removed the student from school on November 30, 2012.
12. On January 8, 2013 and January 13, 2013, the District provided a written offer to provide services to the student who is now being home-schooled and last attended the District on or about November 30, 2012.
13. The student's annual IEP review is presently not due until May 15, 2013, but the District has agreed to change that date to an earlier date, February 14, 2013, to allow the annual IEP review to be more expedient and include the recent consideration of the parents' request for an SLD evaluation and of the results of the SLD evaluation and of the ongoing evaluations of the student.
14. In the parent's communications with the Department and with the District in this case, the parent has not identified specific proposed additions to the student's IEP that are required to ensure that the IEP is a "current plan" in light of the student's current needs.

The IEP does mention the name of a speech-language therapist previously employed by the District.

IEP Team Considerations and Special Factors

15. The parent alleges that the District failed to address the student's behavior and have in place appropriate strategies to address the student's behavior beginning December 10, 2012.
16. The IEP team determined at an August 28, 2012 meeting that the student's FBA and a Behavior Safety Plan (BSP) would be updated during the first four to six weeks of the 2012-2013 school year.
17. The District implemented a BSP, dated September 10, 2012. This BSP was signed by several District staff, including the student's special education teacher.
18. The student's teacher in the special classroom implemented this BSP and the parent told the teacher that the parent used some of the successful techniques being used by the teacher in the classroom at home.
19. At an IEP meeting held on October 18, 2012, District staff stated the FBA and BSP would be reviewed with the parent at the upcoming parent-teacher conferences, during the week of November 19-21, 2012.
20. However, on October 26, 2012 the parent filed a previous IDEA complaint with the Department, the parties agreed to mediation, and the parties met on November 16, 2012. The mediation was extended to November 30, 2012.
21. The parent removed the student from school on November 30, 2012, but the District has continued to attempt to update the student's BSP.
22. The District attempted to schedule a meeting on December 12, 2012, the last day before the District's winter break, but the parent could not attend.
23. The District then attempted to meet with the parent again, on January 2, 2013, but when the parent could not attend this meeting, the District reviewed proposed updates of the BSP and determined the updated plan would be put in place, if the student were re-enrolled in the District.
24. The parent has not provided any specific provisions that the parent wishes to be included in a BSP.

Content of IEP

25. Previous District evaluations of the student have not currently identified the student as a student with a "processing disorder,"³ specific learning disability (SLD) or intellectual disability (ID).
26. At the IEP meeting held on October 18, 2012, the IEP team, at the request of the parent, agreed to add an accommodation to allow the student additional time to comply with

³ Note that a "processing disorder" is referenced in the definition of Specific Learning Disability found at OAR 581-015-2000(4)(i) and 34 CFR 300.8.

directions and removed a behavioral objective that the student would “follow directions within 1-2 verbal and visual prompts” due to the parent’s belief, shared by the student’s special education classroom teacher, that the student may need more time to process directions.

27. A private evaluation and a discharge summary conducted by the Child Development and Rehabilitation Center at OHSU, which was provided to the District by the parent, does not indicate that the student has an Intellectual Disability, because of the scores on the cognitive portions of the evaluations.⁴
28. This report’s use of the phrase “mild intellectual disability” raised the question of intellectual disability for the District’s Evaluation team.
29. The ongoing evaluations of the student are to assess whether the student is eligible as SLD, and these evaluations will also review the student’s cognitive abilities.

IEP Implementation/When IEPs Must Be In Effect

30. The student’s IEP provides that the District is to report the student’s progress quarterly. The first quarter of the 2012-2013 school year in the District ended on November 9, 2012.
31. The District completed progress reports for the student on November 9, 2012, and although the progress reports are usually provided during parent-teacher conferences in November (the week of Thanksgiving), the progress reports were not given at this time.
32. The parent did not attend a parent-teacher conference the week of Thanksgiving. The district reported that they intended to provide the progress reports to the parent at the upcoming mediation meeting.
33. The District and the parent met for mediation on November 16, 2012. The student’s teacher, who had completed the progress reports, brought the progress reports to the mediation, but reported to have forgotten to give the progress reports to the parent at that time.
34. The special education teacher reportedly mailed the progress reports to the parent on approximately December 3, 2012.
35. On December 5, 2012, the District also provided a copy of the student’s November 9, 2012 progress reports to the parent, as an exhibit to the District’s *Response* to the prior complaint.

Placement

36. In the parent’s first *Reply* (dated January 7, 2013), the parent first alleges that the parent had requested that the District change the student’s placement to a particular day treatment program, and that the District did not respond to this mention of a recommendation for a new placement.
37. In the District’s second *Response* (dated January 8, 2013), the District responded to this new allegation.

⁴ From OHSU Psychological Evaluation, April 17, 2012.

38. The parent mentioned in an email dated July 5, 2012 that the student's psychiatrist was recommending "immediate Day Treatment" at a particular treatment center. The District responded to the parent's email by an email on July 9, 2012, in which the District requested additional medical information and told the parent to contact a particular staff person to set up a meeting to discuss the parent's concerns.
39. There was an email exchange between parent and district from July 9, 2012 to July 11, 2012 on this matter. During these exchanges, the parent indicated some confusion as to what must be presented at the meeting. In response, on July 11, 2012, the District's legal counsel listed the matters that needed to be discussed, including recommendations from the student's treating physicians.
40. On July 25, 2012, District staff wrote a letter to the parent acknowledging the parent's request for day treatment placement and asked the parent to provide medical records that the IEP team should consider in determining the student's placement for the upcoming school year.
41. The IEP team, including the parent, met on August 28, 2012 and the team, including the parent, agreed to change the student's placement for the 2012-2013 school year to a special class.
42. At this meeting, the team reviewed the parent's information including a medical discharge report dated July 6, 2012. This report which was provided to the District by the parent, does not specifically recommend an educational placement and does not recommend a particular day treatment placement.

IV. DISCUSSION

When IEPs Must Be In Effect

The complaint alleges that the District violated the IDEA by failing to have a current IEP in place, beginning November 2012 and continuing through the date of the filing of the complaint. The parent clarified that the IEP's inclusion of the names of previous staff members who were formerly used as service providers indicated to the parent that the content of the student's IEP is outdated. The IEP in effect on October 18, 2012 was considered the student's current IEP at the time of this complaint.

OAR 581-015-2225 provides for review and revision of IEPs, at least annually. The IEP team may revise an IEP to address a lack of expected progress; the results of a reevaluation, information provided by a parent, the student's anticipated needs or other matters. The Oregon Standard IEP does not require the use of individual staff member's names.⁵

In this case, the Department has reviewed the student's current IEP, as revised on October 18, 2012, and concludes that the IEP, as revised, is current in relation to the student under the circumstances. Mention of the name of a former speech-language therapist does not in and of itself mean that the IEP does not currently address the needs of the student. Additionally, the

⁵ <http://www.ode.state.or.us/search/page/?=1163>

district's obligation to have an IEP in effect ended when the parent withdrew the student to be home schooled on November 30, 2012. At that point the District was obligated to offer an IEP meeting to discuss if IEP services could be provided in conjunction with home schooling under OAR 581-021-0029.

Finally, the complainant has not identified or proposed any specific, new or necessary additions to the student's current IEP that would be required to ensure that the IEP is a current plan in light of the student's present needs, nor that IEP services can be provided in conjunction with home schooling. The Department does not sustain this allegation.

IEP Team considerations and Special Factors

The complaint alleges that the District violated the IDEA by failing to address the student's behavior and have in place appropriate strategies to address the student's behavior beginning December 10, 2012.

OAR 531-015-2205(3) provides that an IEP team must consider strategies to address the behavior of a student whose behavior impedes the learning of the student or others.

In this case, the available evidence reveals that the District had a BSP in place early in the 2012-13 school year, pursuant to the needs of the child. This BSP was signed on September 10, 2012 by several District staff, including the student's special education teacher. District staff worked on improving and amending that BSP and developed a new plan that is dated December 12, 2012. In the meantime, the parent removed the student from the District, on November 30, 2012. The District advised the parent by email of a meeting to discuss the BSP but the parent was not able to attend the meeting the District attempted to hold on December 12, 2012. District staff met on January 2, 2013 and, despite the student's absence from school and the parent's inability to attend the meeting to discuss the BSP, the District reviewed an updated plan and determined the updated plan would be put in place, anticipating future attendance by the Student. In light of the foregoing, the Department does not sustain this allegation.

Content of IEP

The complaint alleges that the District violated the IDEA by failing to have in place IEP goals relating to the students' processing disorders, learning disabilities or intellectual disability, on the following dates: May 15, 2012, May 30, 2012, August 28, 2012 and in October 2012.

OAR 581-015-2200(1)(b) provides that an IEP must include measurable annual goals designed to meet the student's needs. Oregon does not require that a District formally classify a student in every disability category for which a student is eligible. Instead, the IEP team must consider the special education and related services needs of a student, whether commonly associated with the disability category or not.⁶ The goals of an IEP are not written specifically to identify a disability or in conjunction with a disability category, but rather to address the needs of a particular student as identified by the IEP team. In developing the IEP, the team is directed to use a variety of information, including the most recent evaluations, the strengths of the child, the concerns of the parent, the academic, developmental, and functional needs of the child. The team must also consider other factors including potential communication needs of a child, and whether a child is a

⁶ OAR 581-015-2110

child with limited English proficiency.⁷ The IEP in effect here contained language, behavior information, and goals relating to these needs as identified for the child. The record shows the District and the IEP team considered recent evaluations and parental input when creating the IEP and its goals. The Department does not sustain this allegation.

IEP Implementation/When IEPs Must Be In Effect

The complaint alleges that the District violated the IDEA by failing to provide timely progress reports to the parent beginning in November of 2012.

OAR 581-015-2200(1)(c) provides that an IEP must include when periodic reports on the progress the child is making toward meeting the annual goals will be provided.

In this case, the student's IEP provides for quarterly reporting, and the District reported that the first quarter ended on November 9, 2012. District staff reported that the progress reports are typically provided during Thanksgiving week, but the parties here were in mediation the week before, with a meeting to be held on November 16, 2012. The student's special education teacher reported that she brought the student's progress reports to the November 16, 2012 meeting but simply forgot to provide the progress reports to the parent, and then did not mail the student's November 9, 2012 progress reports to the parent until at least December 3, 2012. This mailing occurred just two days before the District provided the student's progress reports to the parent in the District's *Response* which was sent subsequent to another previously filed IDEA complaint also filed by the parent in this case. It is thus clear that the District did not provide the progress reports to the parent in a timely manner. Specifically, the progress reports should have been provided to the parent in the normal course, by November 21, 2012 (the last day before the Thanksgiving holiday) and they were not provided to the parent until 14 days later, December 5, 2012. The Department thus sustains this allegation.

Failure to Respond to Placement Request

The parent alleged that the District did not respond to the parent's request for a change in placement in an email dated July 5, 2012. The development of an IEP and the identification of placement are two related, but distinctly different actions under the IDEA and OARs.

OAR 581-015-2250 discusses the requirements for placement of a child. The educational placement of a child with a disability must be determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It is based on the child's current IEP,⁸ made in conformance with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255, and is determined at least once every 365 days and is as close as possible to the child's home. A public agency is required to provide a Prior Written Notice to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the educational placement of a child or the provision of FAPE to a child.

The District must timely respond to a request for change of placement which did happen in this case. The Department finds that the District did respond to the parent's email of July 5, 2012 in an appropriate and timely manner. Indeed, in later conversations, the District had to remind the

⁷ OAR 581-015-2205

⁸ OAR 581-015-2250(1)(c)

parent of the placement concerns that had initially been identified in the parent's July 5, 2012 email, which included the parent's statement that the student's psychiatrist was recommending a day treatment placement. The District then wrote the parent on July 25, 2012, acknowledging the request for a day treatment placement, and asking for information needed by the IEP team to determine an appropriate placement for the student during the upcoming 2012-2013 school year. On August 28, 2012, the IEP team met and the team, including the parent, agreed to change the student's placement to a special class at the District. At this meeting, the parent did not make a request for placement in a day treatment program, nor did the team decide that a day treatment program would meet the needs of the student. In light of the foregoing, the Department does not sustain this allegation.

CORRECTIVE ACTION⁹
In the Matter of Portland School District
 Case No. 12-054-038

No.	Action Required	Submissions ¹⁰	Due Date
(1)	<p><u>Training:</u>¹¹</p> <p>The District must provide appropriate training to any special education and regular education staff who may participate in creating, reporting, and distributing IEP progress reports. Training should include a verification process for progress report distribution.</p>	<p>Evidence of completed training:</p> <p>If providing training by e-mail:</p> <ul style="list-style-type: none"> • Distribute materials to appropriate staff and request "read receipt" • Copy ODE on the distributed materials provided to staff members • List of staff members and position <p>If providing training in person:</p> <ul style="list-style-type: none"> • Agenda 	March 11, 2013

⁹ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (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)).

¹⁰ 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.

¹¹ Initial Verification: The Department will review the written confirmation to District staff and the distribution list.

		<ul style="list-style-type: none">• Attendance roster identifying names and positions of attendees• Copy of the training materials	
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Dated: February 8, 2013



Sarah Drinkwater, Ph.D.
Interim Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: February 8, 2013

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.