

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of: Warrenton-Hammond School )  
District No. 30 )  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 12-054-036

**I. BACKGROUND**

On December 6, 2012, the Oregon Department of Education (Department) received a written request for a special education complaint from an individual (Complainant) on behalf of a student (Student) currently residing in the Warrenton-Hammond School District (District). The Complainant requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email on December 6, 2012. On December 18, 2012, the Department received an amended complaint from the Complainant, a copy of which was provided by the Department's contract complaint investigator to the District.

On December 11, 2012, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint that the Department would investigate. On December 20, 2013, the Department sent an *Amended Request for Response* (RFR) to the District identifying the added allegations that the Department would investigate. The District provided its *Response* to the Department and to the Complainant four days late on January 23, 2013. The District provided 102 pages of documents, an incomplete response to the documents requested in the *Amended RFR*, in support of its *Response*, five days late, on January 23, 2013. At the investigator's request for additional/previously requested documents, the District provided an additional 69 pages of documents by fax transmission on January 24, 2013. The District provided an additional ten pages of narrative *Responses* and additional documents to the investigator on January 25, 2013. On January 27, 2013, the Complainant submitted a 13 page *Reply* including an email narrative Rebuttal to the District's *Response* and additional documents. The District continued to supplement and respond to issues associated with the RFR through January 30, 2013.

The Department's complaint investigator determined that on-site interviews were not required. The Department's complaint investigator reviewed and considered all of these documents, and exhibits.

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.<sup>1</sup> The Department may extend the timeline if the District and the Complainant/parent agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present.<sup>2</sup> On December 18, 2012, the Department extended the timeline by 24 days for "exceptional circumstances" due to the Complainant's amendments to the complaint and due to unavailability of key staff during the winter school break. This order is timely.

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<sup>1</sup> OAR 581-015-2030(12); 34 CFR §300.151

<sup>2</sup> OAR 581-015-2030(12)

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 and OAR 581-015-2030. The Complainant's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one-year period from December 7, 2011 to the filing of this complaint on December 6, 2012.<sup>3</sup>

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b>Parent Participation and Procedural Issues:</b></p> <p>a. Not providing the Student's parent with a copy of the Student's revised IEP, following an IEP meeting on October 4, 2012, until November 14, 2012;</p> <p>b. Not providing the Student's parent with a Prior Written Notice following the District removing the Student from the placement on October 23, 2012;</p> <p>c. Not providing the Student's parent with a copy of the Procedural Safeguard Notice following the District changing the Student's placement on October 23, 2012.</p> <p>(OAR 581-015-2310 and 34 CFR 300.503 and OAR 581-015-2195(5) and 34 CFR 300.322(f)).</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>
2.	<p><b>Content of the October 4, 2012 IEP/ IEP Design:</b></p> <p>a. Not accurately describing the Student's present level of academic achievement and functional performance to allow the IEP team to assess whether the Student is progressing toward the Student's annual goals (including the results of the initial or most recent evaluations);</p> <p>b. Not describing measurable annual goals in the Student's IEP;</p> <p>c. Not including the Student's most recent statewide assessments;</p> <p>d. Not including how the Student's disability</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>

<sup>3</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

	<p>affects the Student's involvement and progress in the general education curriculum;</p> <p>e. Not including a complete statement of the specific special education and related services and supplementary aids and services to be provided to the Student, a statement of the program modifications or accommodations, or a description of the supports for school personnel relating to the Student.</p> <p>(34 CFR 300.320 and OAR 581-015-2200).</p>	
<p>3.</p>	<p><b>Failure to Provide a Placement Consistent with the October 4, 2012 IEP:</b></p> <p>Not placing the Student in the Special Education Placement determined by the IEP team.</p> <p>(OAR 581-015-2250 and 34 CFR 300.116).</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>
<p>4.</p>	<p><b>Content of the November 17, 2011 IEP/ IEP Design:</b></p> <p>a. Not accurately describing the Student's present level of academic achievement and functional performance to allow the IEP team to assess whether the Student is progressing toward the Student's annual goals;</p> <p>b. Not describing measurable annual goals in the Student's IEP;</p> <p>c. Not describing the results of the Student's initial or most recent evaluation;</p> <p>d. Not including a complete statement of the specific special education and related services and supplementary aids and services to be provided to the Student, a statement of the program modifications or accommodations, or a description of the supports for school personnel relating to the Student.</p> <p>(34 CFR 300.320 and OAR 581-015-2200).</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>

<p>5.</p>	<p><b>Discipline Procedures:</b></p> <ul style="list-style-type: none"> <li>a. Not holding an IEP or Placement meeting, following the District changing the Student's placement on October 23, 2012, to determine the Student's alternative educational setting;</li> <li>b. Not holding an IEP meeting, following the District changing the Student's placement on October 23, 2012, to determine appropriate services to enable the student to participate in the general education setting and to allow the Student to make progress on the Student's IEP annual goals;</li> <li>c. Not holding a manifestation determination meeting within ten school days following the District changing the Student's placement on October 23, 2012;</li> <li>d. Not having all relevant members of the Student's IEP team consider all relevant information in the Student's file to determine whether the Student's conduct was: <ul style="list-style-type: none"> <li>i. caused by, or had a direct and substantial relationship to, the Student's disability, or</li> <li>ii. was a direct result of the District's failure to implement the Student's IEP;</li> </ul> </li> <li>e. When the Student returned to school on November 14, 2012, not returning the Student to the placement identified in the Student's IEP.</li> </ul> <p>(OAR 581-015-2415, OAR 581-015-2420, OAR 581-015-2435, 34 CFR 300.530-533, OAR 581-015-2250, 34 CFR 300.116, and 34 CFR 300.327 and OARs 581-015-2400 to 2440 and 34 CFR 300.530).</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>
<p>6.</p>	<p><b>Access to Educational Records:</b></p> <p>Not providing access to the Student's education records when they were requested on November 13, 2012 and on December 8, 2012.</p> <p>(OAR 581-015-2300, and 34 CFR 300.501, 34</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>

	CFR 300.405(a))	
7.	<p><b>Failure to Provide FAPE:</b></p> <p>As a result of the violations alleged above, the District has failed to provide the Student with a Free and Appropriate Public Education (FAPE).</p> <p>(OAR 581-015-2040 and 34 CFR 300.101)</p>	<p><b>Not Contested.</b></p> <p>The District does not contest the allegations.</p>
	<p><b><u>Requested Corrective Action.</u></b></p> <ol style="list-style-type: none"> <li>1. The District be monitored by the Department to review the District's compliance with special education law; and</li> <li>2. Compensatory education for the Student in general and special education after the District changed the Student's placement on October 23, 2012.</li> </ol>	<p>See Corrective Action</p>

### III. FINDINGS OF FACT

#### **Background**

1. The Student is currently nine years old, has been a resident of the District since the Student reached school age, and has attended school within the District since kindergarten. The student was first determined eligible for special education as a student with an emotional disturbance on November 30, 2010. The District completed an initial Functional Behavioral Assessment (FBA) on October 15, 2010 and a Behavior Intervention Plan (BIP) on December 6, 2010.

#### **2011-12 School Year**

2. The Student's IEP team met on November 17, 2011 to draft and design the Student's IEP for the balance of the Student's second grade and beginning of third grade. The IEP identified as a special factor, for team consideration, that the Student exhibited behavior that impeded the Student's learning or the learning of others. The Present Levels of Academic Achievement and Functional Performance identified the Student's strengths, interests and preferences; parental concerns; academic levels in reading ("end of kinder"), writing ("difficult time spelling...working on simple sentence structure"), and math ("below grade level"). The Student's behavioral functional performance was described as "easily frustrated" and the Student would "walk out of [the Student's] classroom when feeling this way." The Student missed significant instructional time due to behavioral issues, but was described as making a "huge increase in the amount of positive interactions and relationships" during the beginning of the 2011-12 school year and had "spent less time in the calm room both in frequency and duration."

3. The November 2011 IEP contained two behavior goals and one reading goal. Specially designed instruction (SDI) in behavior is listed as 150 minutes per week, with the location indicated as "schoolwide" (sic). The IEP listed Reading SDI as 120 minutes per week in the "LRC." Accommodations included daily "adult assistance for behavioral supports," behavior intervention plan, and sensory/motor breaks provided daily. Nonparticipation justification indicated removal for 13% of the school week with an explanation for the removal in the areas of reading and behavior in order to make gains towards grade level peers.
4. Minutes from the meeting indicate discussion on a number of relevant topics, including the parent's concern about the Student's academic progress. The District identified that with the Student's progress in behavior from the previous year they would "focus a lot on academics" and it would "re-address academic progress later this year." In a typed document included in the Student's records authored by the Student's general education teacher, the teacher questions the Student's daily behavioral data, with the suggestion that the data underestimates the Student's negative behavioral activity. The teacher expresses her opinion that the Student "is not able to fully access [the Student's] learning due to [the Student's] behavior."

### **2012-13 School Year**

5. On September 10, 2012, the Student received a three-day out-of-school suspension. On September 19, 2012, the Student received a seven-day out-of-school suspension. The District called the parent that same day to set up an IEP meeting, which the District scheduled and issued a notice for October 4, 2012.
6. On September 25, 2012, the parent sent an email to the District requesting the Student's "school records" so that they could be reviewed before the October 4, 2012 IEP meeting.
7. In a notice dated September 28, 2012, the District informed the parent that it scheduled a manifestation determination meeting for October 1, 2012 (rescheduled from September 28, 2012 at the request of the parent). At the meeting, the team determined that the District had followed the Student's IEP, but the Student's behavior resulting in the suspension was a direct result of the Student's disability.
8. On October 1, 2012, parent again asked in writing for all of the Student's "school records" so they could be reviewed before the upcoming IEP meeting. The District provided the parent with a copy of the Student's current IEP and eligibility reports, but not additional records including data tracking sheets.
9. The District held an IEP meeting on October 4, 2012 as the Student's annual IEP review and revision. The team identified the special factor that the Student's behavior impeded the Student's learning. The Student's IEP present level statement stated "in June 2012, [the Student] was completing grade level math work" and the Student's reading was at the 1<sup>st</sup> grade, 3<sup>rd</sup> quarter level. The Student's behavioral issues were noted, with progress identified in avoiding "bad language."
10. Parental concerns included a request that strategies from the Student's prior year's educational assistant be shared with the Student's current assistant, have the Student work toward returning to the general education classroom and designing a new behavior plan. The parent was concerned that the Student was "not spending time in the classroom with peers" and was "insulated because of [the Student's] behaviors." The team added to the previous IEP, a math goal, with associated SDI of 120 minutes per week in the LRC. The District added transportation as a related service. The accommodations did not change.

The nonparticipation justification indicated that the Student was removed from participating with non-disabled peers 100% of the time. The explanation justifying the removal was blank. The District issued a Prior Written Notice dated October 4, 2012 regarding the IEP revision and placement change.

11. The Placement was determined as "special education classroom;" the general education with special education pullout placement option does not appear to have been rejected on the placement determination page at this time.
12. On October 23, 2012, the District suspended the Student for an additional ten days. On November 2, 2012, District staff called the parent to schedule a manifestation determination hearing. The District initially scheduled the meeting for November 6, 2012, but at the parent's request, rescheduled it for November 13, 2013. The District sent the November 6, 2012 meeting notice to the parent's physical address, but the Post Office returned the letter with a notation that there was no mail receptacle at the address to deliver the letter to the parent. The District explained in its *Response* to the RFR that with a change of software, the new program listed students' physical addresses, not mailing addresses. The Student's mailing address has previously been to a post office box.
13. The Student received medical treatment that kept the Student from attending school beginning October 26, 2012.
14. On November 13, 2013, the District scheduled a manifestation determination meeting. The parent and her advocate attended the meeting, along with an incomplete IEP team; The District cancelled the meeting when it did not have a full IEP team with the intent to reschedule it. The District did not reschedule the meeting.
15. The Student returned to school on November 14, 2012.
16. The Complainant filed the initial complaint with the Department on December 6, 2012.
17. The District conducted observations of the Student on November 16, 2012 and on December 4, 2012 in support of a revised Functional Behavioral Assessment dated December 10, 2012 and a draft behavior intervention plan dated December 11, 2012.
18. On December 13, 2012, the IEP team met to revise the Student's October 4, 2012 IEP. The team significantly revised the Present Level statement, added accommodations and also changed the Student's placement to general education class with special education pullouts in the LRC at this time.
19. The Complainant filed the amended complaint with the Department on December 18, 2012.
20. The District represents in its *Response* to the RFR that "the 12/13/12 IEP has been revised and a meeting has been scheduled for January 31, 2013."

#### IV. DISCUSSION

In light of the District not contesting the allegations in the amended complaint, the Department orders Corrective Action (See below). The ordered training will include, but not be limited to, a review and discussion of the following information:

### 1) **Providing Parent with a copy of the IEP:**

The District asserts that it mailed the parent a copy of the October 4, 2012 IEP to the parent's physical address. Districts have the affirmative obligation to "give the parent a copy of the IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent."<sup>4</sup> The District does not comply with this obligation by mailing the IEP to an address that does not provide for mail delivery. The District explains this error due to a change in software, and represents that once identified, that it has rectified the address issue.

### 2) **Manifestation Determination:**

When a District imposes a disciplinary removal of more than ten days, it is obligated to hold a manifestation determination within ten school days of the suspension. When the District suspended the student on September 19, 2012, the District waited until September 28, 2012, eight school days, before it contacted the parent to schedule the manifestation determination meeting, then held the meeting on October 1, 2012, the ninth school day. When the District suspended the student on October 23, 2012, the District waited until November 2, 2012, eight school days, before it contacted the parent to schedule the manifestation determination meeting, then scheduled the meeting on November 6, 2012, the tenth school day, and later rescheduled to November 13, 2012. In light of the mutual District/Parent decision-making and reviews required by the IDEA and OARs, the late notice of the District's intent to hold a manifestation determination, the Department suggests that the District contact the parent/guardian earlier to allow sufficient notice and planning for a mutually agreeable meeting date within the ten-day period.<sup>5</sup>

### 3) **Denial of FAPE**

Under the IDEA, school districts must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a free appropriate public education (FAPE).<sup>6</sup>

FAPE is defined as "special education and related services" that are: provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and are provided in conformity with an IEP.<sup>7</sup> A school district meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.<sup>8</sup>

The Student in this case was suspended a total of 20 school days between September 4, 2012 and November 6, 2012 (during a period of 45 total school days), almost half of the time school was in session.<sup>9</sup>

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<sup>4</sup> OAR 581-015-2195(5)

<sup>5</sup> OAR 581-015-2415

<sup>6</sup> 34 CFR 300.341

<sup>7</sup> See 34 CFR 300.17

<sup>8</sup> See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

<sup>9</sup> See <http://www.whsd.k12.or.us/files/2012-2013%20School%20Calendar%20-%20REVISED%206.12.12.pdf> for the Warrenton-Hammond 2012-13 school year calendar.



**CORRECTIVE ACTION<sup>10</sup>**  
*In the Matter of Warrenton-Hammond School District*  
Case No. 12-054-036

#	Action Required	Submissions	Due Date
<b>(1)</b>	<b>Compensatory Education:</b>		
	(a) The District shall provide a total of 19.5 hours of compensatory education services. <sup>11</sup>	The District shall submit to the Department a plan for the provision of 19.5 hours of compensatory education services to the student signed by both the parent and the District. The plan must identify all the factors listed in the "Action Required" section including, but not limited to, identifying how the 19.5 hours of services will be provided, an initial schedule for services (including when services begin), and the contact person for oversight of these services.	<b>March 15, 2013</b>
	(b) The District shall confer with the parent to develop a plan for implementation of the compensatory education services. The District shall reasonably accommodate the parent's and student's preferences for scheduling these services. <sup>12</sup>		
	(c) These services shall be in addition to the services on the student's current IEP/placement at the time the services are implemented.		
	(d) These services shall not be implemented during the regular school day.		
	(e) These services shall be based on the goals and objectives in the student's IEP in effect at the time the services are provided.	The plan shall also include specific reporting dates for submitting status reports.	
	(f) Sessions:		
	1. The District must keep a dated log of these sessions, signed by the instructor, topics, and beginning/ending times of the sessions.	The District shall provide a status report to the Department (copied at the same time to the parent) on April 6, June 6, August 31, and upon completion of the services.	<b>April 6, 2013 June 6, 2013 August 31, 2013 Not later than Dec. 31, 2013</b>

<sup>10</sup> 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)).

<sup>11</sup>This total is based on the following:

For the period October 24, 2013 to November 13, 2013, a total of three weeks, 450 minutes of Behavior SDI; 360 minutes of Reading SDI and 360 minutes of Math SDI based on the October 4, 2012 Service Summary identifying the amount of SDI that the IEP team determined was appropriate for the Student to reach his annual goals.

<sup>12</sup> If the parents and District agree, the Department will reimburse the District for the use of a neutral facilitator for the meeting. For more information, contact Molly Hammans at (503) 947-5705, or e-mail at: Molly.Hammans@ode.state.or.us.

	<p>2. The District shall provide make-up sessions for sessions scheduled but cancelled due to instructor illness or unavailability.</p> <p>3. The District does not have to provide make up sessions for sessions scheduled but missed due to student illness.</p> <p>4. The District shall complete the compensatory education services by September 30, 2013 unless modified, but not later than December 31, 2013.</p> <p>(g) The District and parent may agree in writing to modify any of the provisions (a) through (g). These agreements must be signed and dated by both a District official and the parent.</p> <p>(h) The services shall be provided by qualified staff as defined by the IDEA.</p> <p>(i) The District shall provide transportation services as necessary for the student to access these services.</p>	<p>Submit copies of each agreement modifying the compensatory education agreements to the Department, copied to the parent.</p>	<p><b>Within one week of the date of any agreements to modify the corrective action.</b></p>
<p><b>(2)</b></p>	<p><b>Training:</b></p> <p>Provide training to staff and administrators who may be involved in any of the following:</p> <p>(a) Developing, reviewing, and revising student IEPs,</p> <p>(b) Implementing disciplinary procedures under IDEA;</p> <p>(c) Ensuring IEP team meeting members are accurately identified and timely notified;</p> <p>(d) Responding to and coordinating requests for student education records;</p>	<p>The District shall provide written evidence that it has completed this training, including copies of the agenda, name of trainer(s); materials distributed; any meeting notes, and sign-in sheet that includes names and positions of attendees.</p>	<p><b>April 12, 2013</b></p>

	<p>Training must include the following topics:</p> <ul style="list-style-type: none"> <li>(a) District "affirmative obligations" under IDEA;</li> <li>(b) Development, review, and revision of IEP to include all required content and considerations; and</li> <li>(c) Procedural Safeguards, including: <ul style="list-style-type: none"> <li>i. IEP Team meeting notices;</li> <li>ii. Prior Written Notices;</li> <li>iii. Disclosure of educational records to parents upon request and before IEP meetings; and</li> <li>iv. Discipline of students with disabilities including but not limited to: <ul style="list-style-type: none"> <li>a) Manifestation Determination meetings, attendees, process, and data.</li> </ul> </li> </ul> </li> </ul> <p>Training materials will be provided by ODE and will include:</p> <ul style="list-style-type: none"> <li>(a) information developed by the U.S. Department of Education;</li> <li>(b) the Oregon IEP Form; and</li> <li>(c) the Oregon Notice of Procedural Safeguards.</li> </ul>		
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Dated: February 20, 2013

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

Mailing Date: February 20, 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.