

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of)	FINDINGS OF FACT,
Reynolds School District #7)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 13-054-023

I. BACKGROUND

On July 16, 2013, the Oregon Department of Education (Department) received a letter of complaint from a parent (Parent) of a student (Student) residing in Reynolds School District #7 (District). The Parent 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 and by US mail on July 22, 2013.

On July 24, 2013 the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint that the Department would investigate. The District *Response*, including a narrative and related documents was timely on August 5, 2013. The Parent submitted a narrative *Reply* September 27, 2013.

The Department's complaint investigator determined that on-site interviews were necessary. The investigator conducted interviews on October 10, 2013, with the Parent; and on October 15, 2013 with the District Executive Director of Student Services and the Student's case manager. On October 16, 2013, the investigator spoke by phone with the speech-language pathologist. The District did not provide contact information for the physical therapist. Although a number for the physical therapist was subsequently located, the physical therapist was unable to be interviewed. The investigator reviewed and considered all narrative and documentary information that was available as well as information provided by the Parent and District staff during interviews and in email messages.

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 Department may extend the timeline if the District and the parent agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present. Owing to unforeseeable circumstances, the timeline for investigation was extended twice. This order is timely per the extended timeline.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 and OAR 581-015-2030. The Parent's allegations¹ 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 July 17, 2013 to the filing of this complaint on July 16, 2013.

¹ The Department can investigate only IDEA allegations relating to issues occurring within one year before the date of the complaint, i.e., July 17, 2012-July 16, 2013, a period of time that includes the entire 2012-13 school year.

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1	<p><u>IEP Implementation & When IEPs Must be in Effect:</u></p> <p>The complaint alleged that the District violated the IDEA by non-implementation of the Student's IEP, specifically:</p> <ul style="list-style-type: none"> a) not providing the SLP, PT, and OT services the Student's IEP prescribed from September 2012 through April 2013 b) not providing related services (transportation) that the Student's IEP prescribes c) not providing extended school year (ESY) services that the Student's IEP prescribes <p>OAR 581-015-2220 and 34 CFR 300.323</p>	<p><u>Substantiated in part</u></p> <ul style="list-style-type: none"> a) Documentation supports that the District implemented the Speech-Language and Physical Therapy services specified in the IEP. Documentation does not support that the occupational therapy services were implemented according to the IEP. b) Documentation supports that the District provided transportation as a related services, including a period of time when the Student was temporarily living outside the school district. c) Documentation supports that the District provided extended school year (ESY) services in accordance with the IEP.
2	<p><u>Parent Participation:</u></p> <p>The complaint alleged that the District violated the IDEA by modifying the IEP, specifically dropping goals without Parent participation.</p> <p>OAR 581-015-2190 and 34 CFR 300.501</p>	<p><u>Not substantiated</u></p> <p>The Parent participated at the IEP meeting via alternative means, specifically by phone.</p>

	Requested Corrective Action	Conclusions
	The Parent has requested the following corrective action if the Department substantiate the allegations in this complaint:	
1	Compensatory education, specifically SLP, OT, and PT services.	<p>District has offered to provide 30 minutes of compensatory services for the services.</p> <p>See Corrective Action</p>
2	Hiring trained staff to work with Student on "communication goals and other goals."	<p>Not required.</p> <p>The District provided communication services in accord with the Student's IEP.</p>

III. FINDINGS OF FACT

Background

1. The Student is nineteen years old and resides with Parents in the attendance area of District. The Student is eligible for special education as a student with orthopedic impairments and intellectual disability.
2. The Student's disabilities severely impair the Student's ability to participate in the general curriculum, to be educated with non-disabled peers, and to receive a regular diploma. Until the end of the 2011-2012 school year, Student was receiving special education and related services in a high school based life skills program.
3. According to the District's Executive Director of Special Services, "All students who are on track to receive an alternative diploma leave the high school after twelfth grade. ...The only exception is fifth-year seniors who are on track for a regular diploma."
4. On June 5, 2012², the District held a meeting of the IEP team. Because the Student was completing twelfth grade, the IEP team discussed the two options for "post-high" programs the District offers to implement post-secondary transition services. The team selected a community-based post-high school transition program designed to prepare students with disabilities for life after high school.
 - a. According to handwritten notes on the Meeting Notes form, this was a "placement meeting" with a goal to: "Establish placement & update skills for [Student]; Mom wants [Student] to be prepared for future transition to 50/50 at home/group home (medical foster home)."
 - b. On the section of the Meeting Notes form headed "For ALL STUDENTS 16 and older during the duration of the IEP: Discuss Post-Secondary Goal, Course of Study, Diploma Track, etc.", a handwritten note states: "Team agrees [Student] would do better in a social environment (alternative to employment) vs. work atmosphere post-secondary; revised post-secondary goal."
 - c. On the section of the Meeting Notes form headed "Placement Page (Start with LRE)", a handwritten note states: "Team chooses [the community-based post-high program] as LRE." This is a self-contained program serving solely students with disabilities, and "the general public serves as the general education population".
 - d. An IEP placement page also dated June 5, 2012 documents the team's discussion and decision regarding Student's placement for the 2012-2013 school year.
 - i. No changes in IEP content accompany the placement page
 - ii. On the section of the placement page headed "This placement is based on:" a check mark appears next to "the attached IEP" option with the date October 20, 2011 handwritten.
 - e. The District did not provide to the Parents a Prior Written Notice (PWN) of the June 5, 2012 change in placement.³

² As this meeting took place about 13 months before the Parent filed a complaint it is outside of the one-year period of this investigation. The conduct of this meeting is accordingly not under investigation, but the findings of fact are detailed here for applicable analysis related to the investigated allegations.

³ While not the subject of this complaint investigation, it was discovered that this PWN was not given to parent. The finding was shared with the agency's monitoring team and the District's county contact.

5. The Student's IEP dated October 20, 2011 and marked DRAFT, which was cited as the basis for the June 5, 2012 placement decision, was in effect at the beginning of the 2012-2013 school year. It provided in relevant part:
- a. Present Levels of Academic Achievement and Functional Performance that describe a student with cognitive limitations and multiple physical disabilities involving gross and fine motor functions, mobility, and many aspects of daily living. The present levels statement indicates that "[Student] requires a great deal of assistance from adults due to her orthopedic impairment and requires the assistance of two adults for most physical therapy transfers". The present levels related to communication describe Student's multi-modal communication that includes "approximations of signs, gestures, facial affect, body language, picture communication symbols, and a speech generating device.
 - b. Specially Designed Instruction: Motor Skills (total 360 min/week)
 - c. Specially Designed Instruction: Life Skills (total 40 min/day)
 - d. Specially Designed Instruction: Social skills (10 min/day)
 - e. Specially Designed Instruction: Communication Skills (180 min/week)
 - f. Related Services: Transportation (45 min/day)
 - g. Related Services: Speech-language Therapy (120 min/mon)
 - h. Related Services: Physical Therapy (120 min/mo)
 - i. Nine annual goals and a number of short-term objectives for each:
 - i. Motor Skills-Bench Sitting: *"When positioned on a bench and engaged in an activity, [Student] will maintain sitting with good posture and without upper extremity support for 25 minutes, 90% of the time on 3 consecutive data days."*
An IEP progress note dated January 2012 indicated that Student achieved this goal.
 - ii. Lifeskills/Social Skills: *"Given opportunities to practice in the classroom, around the school, and in the community, [Student] will demonstrate appropriate pro-social behaviors (i.e. wipe [] mouth, quiet voice volume, personal space, hands to self, hands out of mouth) with 80% accuracy on 3 out of 5 data days."*
An IEP progress note dated June 2012 stated that the Student "has made little progress on this goal".
 - iii. Lifeskills/Academic Readiness: *"Given highly motivating activities, [Student] will demonstrate academic readiness skills in selected areas by completing the activities [described in the short-term objectives] with 80% accuracy during 4 out of 5 opportunities."*
An IEP progress note dated January 2012 indicated that [Student] was doing well on the measurable short-term objectives A June 2012 progress note indicated that one short-term objective remained problematic.
 - iv. Lifeskills/Prevocational (Fine Motor): *"Given a scheduled pre-vocational time, [Student] will follow an established routine (get voc strip, locate work task on shelf, take task off shelf, bring it to table, open task, complete task, put task in finished box) and remain on task for 30 minutes with no more than two interactions from staff during 4 out of 5 opportunities on 3 consecutive data days."*
An IEP progress note dated January 2012 suggested that Student had reached the goal, and another progress note, dated June 2012, stated that Student "continues to show progress with this goal".
 - v. Communication: *"[Student] will use a multi-modal communication system to demonstrate receptive and expressive communication needs and wants in 80% of opportunities with minimal cues provided."* All of the short-term objectives for this goal refer to the use of a Dynavox, which is an assistive technology device.
An IEP progress note dated June 2012 stated that Student was "making progress toward [] communication goal."

vi. Lifeskills/Computer Skills: "Given a scheduled computer time, [Student] will demonstrate meaningful and intentional actions by selecting picture representations of preferred and non-preferred video clips and presenting them to a partner to make a request with 80% accuracy during 4 out of 5 consecutive data days."

IEP progress notes dated January 2012 and June 2012 are vague, but the latter note states that Student "is making progress with [] goal".

vii. Gross Motor/Mobile Prone Stander: "[Student] will propel the mobile prone stander around the gym (approximately 200'), 6 laps in 30 minutes, 100% of the time on three days."

An IEP progress note dated January 26, 2012 indicates that Student had exceeded this goal. An IEP progress note dated June 1, 2012 states that Student "continues to meet this goal."

viii. Gross Motor Walking: "[Student] will walk 250' in 5-6 minute, with a gait trainer, close standby supervision, and assistance to steer and on ramps, 100% of the time on 3 days."

An IEP progress note dated January 26, 2012 states that Student "has met this goal". An IEP progress note dated June 1, 2012 states that Student "continues to meet this goal walking 300' in 5 minutes with a gait trainer, close standby supervision 100% of the time on 3 days".

ix. Gross Motor Adapted Tricycle: "[Student] will independently ride an adapted tricycle around the basketball court (approximately 200') 8 times in 30 minutes, 100% of the time on three days."

An IEP progress note dated January 26, 2012 states that Student "has met this goal". An IEP progress note dated June 1, 2012 states that Student "continues to meet this goal, [Student] rides ½ mile on the track (11 laps) 100% of the time on 2 days."

j. Supports for School Personnel, including (among other things): OT and SLP care coordination

k. Numerous Supplementary Aids/Services, Modifications, and Accommodations

6. A Notice of Team Meeting, dated 10/03/0012 [sic] invited Student and Parent to a meeting scheduled for October 16, 2012.

a. On the Notice form, checkmarks appear next to the following purposes for the meeting:

i. Review existing information about [Student] and

(1) decide if [Student] should be evaluated for special education eligibility

(2) decide whether additional testing is needed

(3) decide whether [Student] is eligible for special education

ii. Develop or review an individualized educational program (IEP) and placement for [Student].

iii. Consider [Student]'s transition needs or services.

7. During October 2012, the Parent reported that she was dealing with her husband's health issue and surgery. She notes that she informed the District of her situation.

8. Parent reported that, in order to spend time at the hospital with her husband, she placed Student in residential respite care for an anticipated period of 6-8 weeks. The respite care was located less than 2 miles from Student's school but outside of District boundaries. On September 24, 2012, the Parent requested that the District provide transportation to and from the respite care facility during Student's stay there which would begin in October. Student was placed in the respite care center on October 8, 2013.

9. On September 25, 2012 the Student's case manager notified the Parent that the District would not provide transportation for the Student to and from respite care and that the Student would have to enroll in the neighboring school district for the 6-8 weeks Student was in respite care.
10. In the same September 25, 2012 email, the Student's case manager also told the Parent that Student's IEP was "due" on October 18 and that she would "like to have it done before the Student leaves on October 8, so that the new district's post-high program "...will have an updated IEP with post-high goals." In an email Parent replied that she would sign the IEP and acknowledged it was soon "due". Parent reportedly asked that the District not make any changes in the IEP until her husband's health issues were resolved, at which time she would be able to turn her attention to reviewing Student's IEP goals.

11. On October 3, 2012, the case manager sent the Parent an email that included the following paragraph:

Like stated before, we need to hold an IEP meeting ... to talk about future planning, goals and services while student is enrolled in the post-high program. These goals will need to reflect what [Student] will be doing after [Student] completes the time here and as [Student] enters into adult services provided by Adult Service through the county. I have offered three dates in previous emails, Wednesday October 3 at 3:30 pm, Thursday October 4 at 2:30 pm, or Friday October 5 at 8:30 am. Since today is the October 3 and I have not heard back from you, I have set a meeting for Friday at 8:30 here [at the school]. Attached is a meeting notice. I hope to see you Friday.

12. On October 11, 2012, the Student's case manager sent an email to the Parent notifying her that the previous guidance about the Student's enrollment in the District and transportation had been erroneous and that the District would provide transportation.⁴
13. The last sentence of the case manager's October 11, 2012 email regarding transportation states: "As a reminder [Student's] IEP meeting is on October 16 at 3:00 here [at the school]."
14. On October 15, 2012, the Parent sent a message to the case manager and the Executive Director of Student Services notifying them that she was ill and would have to reschedule the meeting. She wrote:

My understanding no changes would be made on the IEP at this time it's only extended of services and I'll be happy to sign any paper you can fax to me tel [sic] we meet.

15. On October 15, 2012, the case manager replied as follows:

I am sorry you are not feeling well. We will still need to hold the IEP meeting tomorrow as the IEP expires this week. It is very important that the team meets. Like I have stated before in other emails we will need to make changes to the IEP. Now that the Student is in a Post-High program, the goals begin to shift focus on future planning. I would like for you to be a part of this meeting if possible as you are the most knowledgeable [sic] and can answer questions about future plans. If you would like, we can try a conference call. We can call you at 3 and put you on speaker phone so that you can still participate. Would this work for you?

⁴ Note, student began respite care October 8, 2013. The emails provided indicate that the student did not attend school on October 8, 2013, so only two school days passed when the new transportation as requested was not accounted for by the District.

16. Student did not attend the meeting in person and the Parent participated by telephone. Meeting notes indicate the meeting lasted one hour and 34 minutes and the participating members were present for this entire time.
17. The Meeting Notes form dated October 16, 2012 indicates by check marks that the team reviewed the present levels of academic achievement and functional performance, including:
- a. The strength [sic] of the child
 - b. The concerns of the parent for enhancing the education of their child
 - c. The present level of academic performance, including the student's most recent performance on state or district-wide assessments
 - d. The present level of developmental and functional performance (including the results of the initial or most recent evaluation)
 - e. How the student's disability affects involvement and progress in the general education curriculum
 - f. For students 16 and older: the student's preferences, interests and needs and the results of age-appropriate transition assessments.
 - g. At the end of this list, a handwritten note states: "Team will update as more information is gathered regarding life after 21."
18. Narrative notes from the October 16, 2012 meeting indicate the following:
- a. Meeting participants:
 - i. the Parent participated by phone
 - ii. a case manager from Developmental Disabilities, the Student's special education case manager, the speech-language pathologist (SLP), and the District's Executive Director of Student Services attended the meeting
 - iii. the physical therapist (PT), occupational therapist (OT), and Assistive Technology specialist (ACC) were "not able to attend".
 - b. Introductions: "Today we will be discussing [Student's] IEP and goals that will need to change because [Student] is in a post-high program."
 - c. Parent's comment: "Consider [Student's] needs at the moment as well as in the future. [Student] will not be independent.
 - d. Case manager's reply: "We know [Student] won't be completely independent but we want to prepare [Student] for the type of things [Student] will be doing after here, such as Alternatives to Employment."
 - e. Case manager's comment: "We are going to discuss goals with the team, they were not fully written ahead of time so that we can make sure it matches the overarching transition goals."
 - f. Parent's reply: "How can we discuss the goals that are in the IEP with half of the team?" The Parent further stated that she did not believe that the team could change or agree or disagree if she was not at the meeting.
 - g. Director's reply: Each person is "... just one part of the team, including [Parent]. We will work on it with the team we have and [Parent] can ask questions as needed. It is a living document that needs editing asap and can continue to be edited."
 - h. Parent did not have a copy of the draft IEP and asked that the staff at the meeting read to her "the PLAAFP in its entirety".
19. The Student's IEP dated October 16, 2012 and marked DRAFT was in effect from that date until the October 16, 2013. It included significant changes, providing in relevant part:
- a. Present Levels of Academic Achievement and Functional Performance that are very similar to the present levels in the October 29, 2011 IEP but with the following prefatory statement:

"[Student is 18 and has begun a community-based post high program. ...The team is still getting to know [Student], however the previous IEP reflects good information about [Student] and [] abilities. The team feels that now that [Student] is in a post high school program the goals should begin to reflect what [Student] will be doing after the age of 21. The post-high program is designed to help students be successful in their planning and for families future planning. As the team gathers more information from the meeting the PLEP will be updated to reflect more post-high and future planning information."

- b. Specially Designed Instruction: Life Skills (120 min/week)
- c. Specially Designed Instruction: Vocational Skills (200 min/week)
- d. Specially Designed Instruction: Leisure/Rec[reational] Skills (90 min/week)
- e. Related Services: Transportation (45 min/day)
- f. Related Services: Speech-Language Therapy (120 min/mo)
- g. Four annual goals and a number of short-term objectives for each:
 - i. Life Skills: *"Given 40 different community based recreation/leisure activities, [Student] will participate, answer questions regarding activity, and follow expected social norms on 30/40 opportunities."*
IEP progress notes dated January 2013 and June 2013 appear to indicate progress toward this goal.
 - ii. Recreation/Leisure: Physical Activity: *"Given the opportunity to choose a familiar physical fitness routine (gait trainer, floor exercises, mobile prone stander), [Student] will choose and complete routine with 80% independence."*
IEP progress notes dated January 2013 and June 2013 indicate that Student has met or exceeded this goal.
 - iii. Vocational: *"Given the opportunity to work on a learned vocational task, [Student] will finish the tasks with 60% accuracy and no more than 3 verbal prompt [sic] from staff to finish."*
IEP progress notes dated January 2013 and June 2013 appear to indicate progress toward this goal.
 - iv. Communication: *"[Student] will use a multi-modal communication system to demonstrate receptive and expressive communication needs and wants in 80% of opportunities with minimal cues provided."*
IEP progress notes dated January 2013 and June 2013 discuss only the Dynavox device and Student's challenges with it. The extent of the Student's progress toward the annual goal and short term objectives is unclear.
- h. Supports for School Personnel, including (among other things): OT, SLP, and PT care coordination
- i. Numerous Supplementary Aids/Services, Modifications, and Accommodations.

20. On October 18, 2012, the case manager sent an email to the Parent that included the following excerpts:

Thank you for participating via the phone for the IEP meeting, it was nice to have you a part of the meeting so we could gather information.

I would like to reiterate some of the information that was explained during the meeting. Post-high is designed to help students be successful when they leave here and enter into the real world. ... Services begin to look different from the high school because we begin to partner more with, talk about, and understand the services after age 21. Doing this will help understand and help make an appropriate realistic based plan for [Student].

21. A Student Meeting Checklist form for the October 16, 2012 meeting indicates that the District sent to the Parents a copy of the IEP, Notice of Rights, a self-addressed envelope, a

“release/exchange”, and “medical/procedure (sic). The form indicates that this packet of information was mailed on December 19, 2012, two months after the IEP meeting.

22. The District did not send to the Parents a Prior Written Notice (PWN) of the changes in the October 16, 2012 IEP.⁵
23. Student returned home from the residential respite care on October 15 2012. Then, in the early months of 2013, the Parent again expressed concerns about the Student’s transportation drop offs for various reasons, primarily based on the schedules of the Parent and District. On some days, Student was to go to the residence of an in-district respite provider rather than to the family home. The Parent was especially concerned about transportation on Wednesdays, which were a weekly early release day for staff development.
24. On some occasions, the Parent contacted the school and asked for changes in the Student’s afternoon drop-off point on that same day.
25. The Parent has asked the District to provide transportation if Student becomes ill at school and needs to go home. The Executive Director of Student Services stated that “We don’t do that for any students.”
26. On February 8, 2013, the Executive Director of Student Services sent an email to the Parent that stated:

[If your concern] is in regards to transportation on early release days, we will be following the District’s policy, without exception and [the transportation director] has clearly communicated to you what that is. ... No – we will not be transporting [Student] to the high school to finish up [the] day on the post high early release days, as [Student] is already receiving the mandated amount of minutes per year of instruction. Our post high program has all of the minutes mandated by ODE and we are completely within the law.

27. District policy for Transportation provides in relevant part:
 - a. Stop Locations - Students may have one stop location in the AM and one stop location in the PM. The AM and PM locations may be different, but each location must be the same for each day of the week service is provided. Stop location must be within the Reynolds School District boundary.
 - b. Temporary Stop Changes - In an effort to provide the most consistent service possible to all our students, we are not able to provide temporary changes to bus stop pickup or drop off locations.
28. The Executive Director of Student Services stated that the District “...has bus routes... that we can’t... it would be a disaster to do that for 11,000 students.” To elaborate, this staff member also said Parent would call during school day and ask for changes for after school pickup. Parent also wanted District to take Student home after IEP meetings and during the day time if Student has to go home because Student is sick. The staff member also said, “We don’t do that for any students.” But the staff noted that District did change bus to accommodate Student’s social needs.

⁵ Note, that while not the subject of this investigation, the Department has found the District neglected to send the PWN after changes were made to the October 16, 2012 IEP, in violation of OAR 581-015-2310 and 34 CFR 300.503. Districts must send a PWN when the educational placement of a child or the provision of FAPE to a child is changed, when proposals to change the placement or provision of FAPE are made, and when proposals regarding placement or provision of FAPE are denied.

29. A Notice of Team Meeting, dated March 22, 2012 [sic] invited Student and Parent to a meeting scheduled for April 16, 2013 to:

“Develop or review an individualized educational program (IEP) and placement for [Student]. The development of the IEP will be based on information from a variety of sources including the most recent evaluation, progress reports, test results, and information from you.”

A handwritten note on the meeting notice form states: “The only things we discussed in regards to IEP was PT—no changes made to IEP.”

30. Meeting notes dated April 16, 2013 document the Parent’s concern about the lack of physical therapy services and physical activity in Student’s program. She wanted to add those back into the IEP. Although the team discussed ways to increase Student’s physical activity, and the case manager agreed to “figure out a way to incorporate more physical activity throughout the day”, the team did not add any motor skills specially designed instruction or physical therapy services to the IEP.

The District did not provide Parent with prior written notice of its items proposed or refused at the April 16, 2013 meeting.⁶

31. A June 11, 2013 Prior Written Notice (PWN) notified the Parents that the District found Student eligible for extended school year (ESY) services solely for vocational skills. DR p. 98 The District supported this decision with data showing that the Student regressed in Student’s skills related to the vocational IEP goal but did not regress relative to the other IEP goals.
32. When the investigator asked about the substantial changes made in the October 16, 2012 IEP from the October 20, 2011 IEP, the case manager stated: “Mom wanted the IEP from the high school, but with the placement change, the goals were not matching. ... I’ve seen this with parents whose kids move from high school to post high.”⁷
33. When the investigator asked specifically about the removal of physical therapy as a related service, the case manager stated: “.... A lot of the goals (from the 2011 IEP related to Student’s physical condition) were like gym....we don’t have those post high.”⁸
34. The District provided documentation of all of the care coordination support for the school personnel services that Student’s IEP required with the exception of 30 minutes of OT consultation. District therefore offered compensatory service of an additional OT coordination during 2013-2014 school year.

IV. DISCUSSION

1. When IEPs Must be in Effect & IEP Implementation (Related Services)

For every student with a disability under IDEA who needs special education and related services, public school districts must have an Individualized Educational Program (IEP) at the beginning of each school year. School districts must provide special education and related services to each student with a disability in accordance with an IEP.⁹

⁶ Refusal to add motor skills, physical therapy, or changes requested at the meeting.

⁷ Note that despite these comments, there is no finding of Predetermination here because of the parent’s participation of nearly two hours during the October IEP meeting which is detailed in the analysis.

⁸ Id.

⁹ 34 CFR 581-015-2220(a), OAR 581-015-2220(1)

The complaint alleged that the District violated the IDEA by not implementing some provisions of the Student's IEP, including physical therapy (PT), speech language pathology (SLP), occupational therapy (OT), and transportation.¹⁰ The District responded to each of the related services separately, and submitted with its *Response* to the complaint documentation that it had provided the PT, SLP, and transportation services as specified. The District acknowledged that it was unable to document some of the OT services that the IEP required and has therefore offered compensatory services.

IDEA defines related services as: "transportation as required to assist a child with a disability to benefit from special education, and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education."¹¹ Among the other related services that IDEA includes are speech language pathology, physical therapy, and occupational therapy. If an IEP team determines that a student needs a related service in order to benefit from special education, the IEP must include that service. A school district must ensure that the services identified in the IEP are provided.¹² A district must implement a student's IEP with all required components.¹³ Additionally, school authorities must consider whether the relocation of a child will result in a substantial change in the IEP or violate the LRE requirements under IDEA.¹⁴ The analysis as follows is for each individual allegation as related to this issue.

i. PT Services

The complaint alleged that the PT goals were "not worked on" from September 2012¹⁵ to April 2013.

The Student's October 20, 2011 IEP specified 120 minutes of physical therapy (PT) monthly as a related service. The Student's October 16, 2012 IEP added leisure recreation skills for 90 minutes per week in the special education classroom and also required 120 minutes per year of care coordination as a support for school personnel.

Based on email evidence and documentation from the District indicating compliance with these requirements, the Department does not substantiate this allegation.

ii. SLP Services

The Parent stated in the narrative complaint that District did not work on the Student's SLP goals from September 2012 to April 2013. During interviews, the Parent stated that the Parent's concern about SLP services related to the Student's Dynavox augmentative communication device. The present levels of performance statement and the annual Communication goal in both IEPs describe multi-modal communication, but the short-term objectives in both IEPs all specifically relate to the Dynavox.

The speech-language pathologist told the Parent that she did not know how to program the Dynavox, and the Parent misunderstood this to mean that she was not using the device in her work with the Student. The SLP, in fact, did know how to use the Dynavox and did use it with the Student. Throughout the school year, the SLP and the case manager both sought training in programming the Dynavox, so they could expand its usefulness in helping the Student to

¹⁰ Considered related services under IDEA 34 CFR 300.34 and OAR 581-015-2000(28)

¹¹ 34 CFR §300.34(a); OAR 581-015-2000(28)

¹² 34 CFR 300.323(c)

¹³ 20 USC 1414(d)(2)(A)

¹⁴ *Letter to Angelo*, 213 LRP 9074 (OSEP 1988).

¹⁵ Note this complaint was originally filed in July of 2013.

communicate. However, the SLP did not use the Dynavox to the exclusion of other necessary communication modalities. The District produced the necessary documentation to show its implementation of the SLP services that the IEPs prescribed. Therefore, the Department does not substantiate this allegation.

iii. OT Services

Both the October 20, 2011 and October 16, 2012 IEPs included occupational therapy (OT), not as direct service to the Student, but only as care coordination support to the staff.¹⁶ The District has produced documentation of its implementation of most of the OT support for personnel that the IEP requires, but has acknowledged that it can document only 90 minutes of the prescribed 120 minutes of this service, and has offered to provide 30 minutes of compensatory OT coordination service.

The Department therefore sustains this allegation based on the documentation which was presented.

iv. Transportation

Parent's complaint stated that transportation was not provided "to and from respite care."

Transportation for IDEA purposes includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment if required to provide special transportation for a child with a disability.¹⁷ Districts must provide transportation as a "related service" when a student with a disability requires that service in order to benefit from special education.¹⁸ As with other related services, Districts must provide transportation as indicated on the IEP. Transportation service determinations must be made on an individual basis as part of the IEP process and decisions about such services are left to the discretion of the IEP team.¹⁹ States and local school boards can regulate aspects of transportation not addressed in federal law.²⁰

The Parent reported to District that the child would be moved to the residential respite care in an adjacent district on October 8, 2012 for an indeterminate amount of time. On September 25, 2012, the District initially informed the Parent that the child would need to enroll in the adjacent district during the potential six to eight weeks the Student would be in the out-of-district residential respite care facility and that the District would discontinue transportation during that time.

ORS 339.134 specifies criteria for determining residency for a child with a disability when that child is placed voluntarily and temporarily by the parent outside the home. When a placement meets these criteria and the child's parent/guardian and school staff can demonstrate that it is in the best interest of the child to continue to attend the same school as before the placement, the child may continue to attend the original school.

On October 11, 2012, after consultation with the adjacent school district, the District revised its decision to dis-enroll the Student and provided transportation to the residential respite care.²¹ As the Student had no school on October 8, 2012, there are only two school days for which the District did not account for the Student's transportation in light of the changed out-of-district residency.

¹⁶ 34 CFR 300.320 (4) Considered "supports to personnel" in the Definition of an IEP and 581-015-2200(d) IEP Content.

¹⁷ 34 CFR 300.34(c)(16)

¹⁸ 34 CFR 300.34; 71 Fed. Reg. 46, 576 (2006).

¹⁹ 71 Fed. Reg. 46,576 (2006).

²⁰ Marlinton (OH) Local Sch. Dist., 48 IDELR 81 (OCR 2007).

²¹ Fact 12

These two days to arrange for the new transportation were *de minimus* in nature and do not show that the District failed to provide transportation as a related service as required on the IEP.

After the return from respite care, the Parent made other requests for transportation changes that were intermittent in nature. These requests from the Parent included being taken to an in-district respite provider rather than to Student's own home, including weekly on early release days, and being delivered home when the Student became ill at school. Some of these requests were same-day requests. As described above, districts must provide transportation as a "related service" only when a student with a disability requires that service in order to benefit from special education.²² While transportation issues were connected with each of these requests, the IEP team did not determine at its IEP meetings that lack of transportation in these situations would keep the Student from benefitting from the Student's special education. Additionally, the Oregon Department of Education and the IDEA note that a district does not have an obligation to provide transportation that accommodates the scheduling problems of parents.²³

This allegation is not substantiated.

v. ESY Services

Extended school year (ESY) services means special education and related services provided to a student with a disability beyond the normal school year, in accordance with the student's IEP; and at no cost to the parents.²⁴ The purpose of ESY is not to teach new skills but to maintain the student's learning over breaks in the school schedule.²⁵ School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence is available, based on the team's professional judgment.²⁶

In this case, the team agreed to consider ESY services based on data collected before and after school breaks. The data showed regression related only to the Student's vocational goal, and accordingly, the District offered ESY services for vocational skills.

The Department does not substantiate this allegation.

2. Parent Participation

The Parent in this case believes that the District made IEP decisions regarding the Student's special education program and placement without Parent participation at the October 16, 2012 IEP meeting. Specifically, the Parent alleged that the District denied her right under the IDEA to participate in special education decision making by dropping the IEP goals at the October 16, 2012 meeting without her knowledge or participation in the decision.

IDEA regulations relating to parent participation in meetings provide that:

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

²² 34 CFR 300.34; 71 Fed. Reg. 46, 576 (2006).

²³ Final Order 07-054-044

²⁴ 34 CFR §300.106(b); OAR 581-015-2065(7)

²⁵ OAR 581-015-2065(4)

²⁶ OAR 581-015-2065(5)

(b) Scheduling the meeting at a mutually agreed on time and place.²⁷

A district may hold a meeting without parents if it is "unable to convince the [P]arents that they should attend."²⁸

The Ninth Circuit Court of Appeals, whose decisions are binding on Oregon public schools, has repeatedly emphasized the importance of parent participation in IDEA special education meetings.²⁹ Procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the individualized education program formulation process, result in the denial of FAPE.³⁰

Here, the District held an annual IEP meeting on October 16, 2012 that changed the special education and related services, including the goals of the specially designed instruction after offering several other alternate dates to the Parent. Based on the documents provided by the parties, the meeting was scheduled on this date after a series of emails were exchanged between Parent and District in which they were unable to determine an agreeable time and place for the meeting and neither parent was able to attend a meeting in person on any of the proposed dates. The District therefore used alternate means to gain parent participation at the meeting via telephone. The District and Parent ultimately agreed that the Parent participated in the entire meeting by telephone conference.

Two separate IDEA regulations and corresponding OARs address meeting participation by alternate means. Parent participation requirements in 34 CFR §300.322 state that "If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 CFR § 300.328 (related to alternative means of meeting participation)."³¹ The latter regulation, requires: "When conducting IEP Team meetings and placement meetings...the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls."³²

Here, the Parent expressed that her telephone participation in the meeting was not meaningful because her attention had focused on her husband's surgery and recovery, because she was ill the day of the meeting. In addition, the Parent expressed that she had not been able to prepare and review her own records related to Student's special education, and that she was not able to see the documents that other team members were sharing at the meeting. However, the Parent did agree to attend this meeting via phone as evidenced by her participation. The October 16, 2012 IEP meeting notes and email records indicate that the Parent participated throughout the meeting which lasted for nearly two hours.

These notes show the Parent participated via phone for the entire meeting, as there are many notes regarding Parent input, including a lengthy list of what the Parent wants for Student and the Parent's concerns. It appears that the IEP team listened to, discussed, and considered these items. "Parent participated via phone" is also listed on the meeting notes page and is indicated on the additional attached meeting notes themselves. Finally, follow up email records from District staff thanking the Parent for attendance at the meeting confirm that Parent attended this meeting

²⁷ 34 CFR §300.322(a); OAR 581-015-2195(1)

²⁸ 34 CFR §300.322(d); OAR 581-015-2195(3)

²⁹ See, e.g. *Drobnicki v. Poway Unified School District*, 358 Fed. Appx. 788 (9th Cir. 2009); *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9th Cir. 2001).

³⁰ *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072 (9th Cir. 2003).

³¹ 34 CFR § 300.322

³² 34 CFR § 300.328

via phone. There is no evidence in the record to indicate that the Parent did not participate in this meeting nor that Parent was unable to participate via phone.

This allegation is not substantiated.

V. CORRECTIVE ACTION³³

In the Matter of Reynolds School District
Case No. 13-054-023

The Department does not order compensatory education services or corrective action in this case as the District is providing Occupational Therapy Care Team services (Supports to Personnel) to replace those missed in the timeframe addressed in the complaint. Additionally, the complaint investigation identified issues related to Prior Written Notice (PWN) that were not included as allegations. Pursuant to a State's general supervision responsibilities, the Department and the District will address PWN through the State's monitoring system (SPR&I).

Dated this 29th day of October, 2013



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Learning/Student Services

Mailing Date: October 29, 2013

³³ 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).