

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego SD 4J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 14-054-027

I. BACKGROUND

On June 19, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Lake Oswego School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on June 19, 2014 and provided the District a copy of the complaint letter on June 20, 2014.

On June 24, 2014, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of July 8, 2014. The District subsequently requested an extension of time due to unavailability of key staff. On June 30, 2014, the Department granted a 10 day extension of time, allowing the District to remit its *Response* on July 18, 2014. The District submitted its timely *Response* to the Department and to the Parent. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. The Second Semester Final Exam Schedule for 2014;
2. Correspondence between SPED Teacher and Parents dated June 12, 2014;
3. Email from Parent to District dated June 12, 2014;
4. Email from Student to Teacher dated June 11, 2014;
5. Email from Teacher to Student dated June 12, 2014;
6. Emails between Parent and District dated June 13, 2014;
7. Emails between Parent and Teacher dated June 12, 2014;
8. Emails between Student and Teachers dated June 4, 2014 and June 12, 2014;
9. Emails between Parent and SPED Teacher dated June 12, 2014;
10. Student grades for school year 2013-2014;
11. Student's attendance record for school year 2013-2014;
12. Student's Progress Reports for school year 2013-2014;

13. Syllabus for Health/Health Issues Class;
14. Student's IEP dated January 9, 2013;
15. WIATT-III test results;
16. Prior Written Notices dated:
 - a) November 7, 2013
 - b) November 13, 2013
 - c) November 23, 2013
 - d) December 2, 2013
 - e) January 9, 2014
 - f) April 4, 2014
 - g) April 10, 2014
17. Meeting minutes dated:
 - a) November 13, 2013
 - b) January 8, 2014
 - c) April 10, 2014
18. Eligibility Statement dated January 8, 2014;
19. Medical Statement- OR Health Assessment dated November 13, 2013;
20. Medical Statement – OR dated October 2, 2010;
21. Schedule of teacher prep periods for school year 2013-2014;
22. Email between Parent and District dated April 3, and April 4, 2014;
23. Emails between Parent and District dated March 13, 2014;
24. Seating chart for Health Class;
25. Student's graded assignments for Health Class, including tests and quizzes;
26. Current Events sign-up sheet for Health Class;
27. Student's Current Events Power Point presentation;
28. Inter-District email between SPED Director and Principal;
29. Email between SPED Teacher and Health Teacher dated June 6, 2014;
30. Student's Final Power Point presentation;
31. Emails between SPED Teacher and Parent dated June 9, 2014 and June 10, 2014;

The Parents submitted the following documents:

1. An incomplete copy of the Student's January 2013 IEP; (Pages 1, 3, 5, 7, 9, 11, 13, 15);
2. Student's Progress Report from Health Issues Class for the second semester of 2013-2014 school year;

The Department's complaint investigator determined that on-site interviews were required. On July 28, 2014, the Department's investigator interviewed the Student, the Parents and the Health Teacher. Thereafter, on July 31, 2014, the Department's investigator interviewed the Principal, the Special Education Director, and the Special Education Teacher. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation or local resolution, or if exceptional circumstances require an extension.¹ This order is timely.

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 allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from June 18, 2013 through June 19, 2014.

	Allegations	Conclusions
1.	<p><u>Implementation of IEP:</u></p> <p>a. Parent alleges that the District failed to implement the Student's IEP by failing to provide the Student's accommodations in regard to the Student's class presentation and final exam in Health Class.</p>	<p><u>Not substantiated:</u></p> <p>The Student's IEP does not contain any accommodations or special services related to giving class presentations in an alternate environment or in a small group; therefore, this allegation is not substantiated.</p>
2.	<p><u>Implementation of IEP:</u></p> <p>b. Parent alleges one teacher in the District refused to allow Student to use alternative test environments which was required by the IEP. OAR 581-015-2200, 34 CFR 300.323.</p>	<p><u>Not substantiated:</u></p> <p>Although the Student's IEP provides for an alternate environment for testing, the facts do not support the assertion that the final presentation for Health Class was a final examination. Therefore this</p>

¹ OAR 581-015-2030(12)

		presentation was not eligible for the testing accommodations that are listed on the Student's IEP.
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REQUESTED CORRECTIVE ACTION		
1.	The Student will be given full credit for work completed for current events assignment and Final presentation as requirements for grading in Health Class. The Student will present both assignments orally to the Student's SPED Teacher. The Student will not present to the District employees who are the subjects of this Complaint.	
2.	The Student's grade will be adjusted to reflect the full credit be given in the course, from the Student's current 62.6%/D received to 80-85%/B+, making this the official grade on the Student's school records. The Student was denied 200 course points, hence the Student would be able to earn up to 738 total course points as the Student currently has 539 course points.	
3.	Both District employees go through FAPE, special education awareness training, continuing education of IDEA and receive sensitivity training for children with learning and anxiety disabilities.	
4.	Both District employees to be reprimanded on their LOSD employment records indicating a violation of a student's IEP and open access to the Student's education.	
5.	Both District employees are handed down an appropriate punishment from the Oregon Department of Education for this violation.	
6.	LOSD implements district wide training for all teachers for annual continued education seminars and/or third party education for the IDEA and its tenets.	

III. FINDINGS OF FACT

1. The Student is 17 years old and resides in the Lake Oswego School District. The Student currently attends Lake Oswego High School and is entering the 12th grade next school year.
2. The Student was originally found eligible for special education services on May 13, 2005 for a Specific Learning Disability based on reading fluency. However, the Student was found no longer eligible for special education services for the Specific Learning Disability on January 8, 2014.
3. On January 8, 2014, the Student was found eligible for special education services for Other Health Impairment for Attention Deficit Disorder (ADD). The Student's Medical Statement/OR Health Assessment dated December 20, 2013 indicates that the Student is diagnosed with ADD.
4. The District also submitted the Student's previous Medical Statement/OR Health Assessment dated November 8, 2010 which did contain a diagnosis of "generalized anxiety, dysthymia" and indicated the Student was taking Adderall, and Zoloft.
5. The Student's current IEP dated January 8, 2014 states the Student had a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and an Anxiety Disorder. The IEP also notes that the Student needs to work on self-advocacy skills.
6. Under the current IEP section entitled, "How the student's disability affects involvement and progress in the general education curriculum", it is noted that the Student "...has difficulty with written & oral expression, specifically with sentence composition and public speaking. [The Student] often requests to do any public speaking individually with... teachers after school."
7. The current IEP contains the following measurable short term goal: [The Student] will advocate for ... accommodations (e.g. pre-arrange a test, request: notes, backward planning, extended time) at least once a week.
8. The current IEP also notes the Student's Progress Toward the Goal and states the Student "...showed great progress and comprehension when [the Student] was in attendance; however, this quarter [the Student's] anxiety was the main reason [the Student's] grades slipped." Further, it is noted that [the Student] "made excellent progress bringing up [the Student's] grades, meeting with teachers and working with the learning specialist to manage [the Student's] anxiety."
9. The Student's January 9, 2014 IEP contained the following Supplementary Service Summary:

Supplementary Aids/Services, Modifications, Accommodations	Anticipated Amount/Frequency	Anticipated Location	Start date	End Date
Check in with [the Student] to ensure	Daily	Regular and Special	1/8/2014	1/7/2015

[the Student] has a clear understanding of directions and expectations of assignments/projects		Education		
Copy of lecture notes at Student request	When notes are taken	School setting	1/8/2014	1/7/2015
Preferential seating: seated near supportive/on-task peers	In each class	School Setting	1/8/2014	1/7/2015
Grade for content; spelling not counted against [the Student] on daily assignments, quizzes and tests	Daily assignments, quizzes and tests	Regular Education	1/8/2014	1/7/2015
Tests: -Option to take tests/quizzes in an alternate environment -Extended time on tests/quizzes -Test questions read aloud and clarified	Daily, when pre-arranged	Regular Education and Special Education	1/8/2014	1/7/2015

10. There is no accommodation for an alternate setting for the Student to give presentations or speeches and there is no accommodation regarding the Student's anxiety toward public speaking.

11. During the 2013-2014 school year, the Student was absent from 106 class periods with 56 being excused and 50 being unexcused. The Student missed the entire first week of the second semester. The Student estimates that 75% of these absences are anxiety related, i.e. the Student is anxious regarding attending school or anxious regarding that day's assignment and subsequently becomes ill or requests to miss school.

12. The Regular Ed teachers are all provided copies of the Student's IEP at the beginning of the school year. The current IEP, dated January 8, 2014 is kept on hand by the Regular Ed teachers.

13. The Student was enrolled in Health Issues/Health II during the second semester of the

2013-2014 school year.

14. According to the syllabus for the Health Issues class, late work is to be given one half credit (50%). Further:
 - Assignments turned in after the beginning of class are considered late.
 - Late assignments will not be accepted after a unit of instruction has been completed.
 - Make up work will be allowed for excused absences only. You will have one day to make up work for the day you were gone. (If you were gone for two days, you have two days to make up the work, etc.).
15. Letter grades for the Health Issues class are based on Student participation, journals, daily assignments, quizzes, projects, and unit exams.
16. There were two class presentations that were to be completed by the Student for the Health Issues class. The first was a current event presentation wherein the Student would chose a current event and give a presentation to the class on the current event. The Student was absent the day the class signed up for the current event presentations' schedule; therefore, the Student's presentation was scheduled for the only date that was not taken, i.e. February 19, 2014. The Student was then absent from the Health Issues Class on February 19, 2014; therefore, the Student did not give the current event presentation on the date it was due.
17. The Student said that the Student had requested from the Health Teacher the ability to give the current event presentation in an alternate environment. However, the Student did not provide specific dates or evidence for these requests. The Student reports that the Student had been able to give presentations in alternate environments in English and History class. The Student said the Health Teacher did not give an affirmative or negative reply to the requests for an alternate environment for the current event presentation.
18. On June 4, 2014, the Student emailed the SPED Teacher and asked for the SPED Teacher's help in requesting that the Health Teacher allow the Student to give the current event presentation in an alternate environment. The Student never gave the current event presentation during the second semester of the 2013-2014 school year although the Health Teacher had given the Student three opportunities to present the current event assignment during the regular class for some credit. The last chance the Health Teacher gave the Student to present the material was on June 6, 2014.
19. On June 6, 2014, the Student contacted the Health Teacher via email and requested to present the current event directly to the Teacher alone either after school or during the Health Teacher's preparation/planning period. The Student explained that the Student has trouble performing to full ability when the Student has anxiety about doing something, and giving presentations in general gave the Student anxiety "and a lot of it."
20. In the same email dated June 6, 2014, the Student opined that it would be more than likely the Student would be able to present the final presentation, because the final presentation would be of a shorter duration than the current events presentation.
21. Rather than responding to the Student, the Health Teacher emailed the SPED Teacher and stated that he could not find an accommodation in the Student's IEP regarding not

presenting in front of a class. The SPED Teacher responded that there was no "official" accommodation because the Student's anxiety arises only for larger projects. Based on the IEP and the information from the SPED Teacher, the Health Teacher never provided the Student with the Student's requested accommodation for the Health Class presentations.

22. The second presentation for the Student's Health Class was a final presentation that class members would be given over the last three class periods of Health Issues, the final date for the presentation being June 10, 2014. Students were assigned specific topics and then expected to give a short presentation (approximately three minutes) in front of the entire Health Class on the assigned topic. The juniors in the class would give their presentations on either June 6, 2014 or June 10, 2014.
23. The Student was scheduled to give a final presentation on June 10, 2014. This date was also the date finals for some classes were to be given. Prior to June 10, 2014, the Student rehearsed the final presentation for Health Class with the SPED Teacher on at least two separate occasions. The SPED Teacher gave the Health Teacher notice that the Student would be able to give the final presentation.
24. On June 10, 2014, the Student was in attendance at the Health Issues class but repeatedly texted² the Parent to call into the attendance office and excuse the Student from finals. The Parent complied, calling into the attendance office and removing the Student from the Health Class before the Student gave a final presentation. During the class, the Health Teacher received a message to dismiss the Student from the class, which he did. The Health Teacher then followed the Student into the hall, when the Student was leaving, and asked twice if the Student had any portion of the presentation to turn in for credit. On both occasions, the Student indicated that the Student had no part of the presentation to turn in.
25. On June 11, 2014, the Student emailed the Health Teacher and attached power point presentations of the Student's current event presentation as well as the final presentation for Health Class stating that if the Student was not permitted to "make up" the current events presentation and the final presentation, it was the Student's hope that the Health Teacher would give at least one half credit for the presentation. The Student never presented either of these presentations in class.
26. On June 12, 2014, the Health Teacher responded to the Student that neither presentation would be accepted and that no credit would be given for the late submissions.
27. The District has a policy for making up final exams wherein any student may request taking a final on the makeup day if his or her final exam schedule is too difficult or if extraordinary circumstances arise. To apply, a student must make a request through the guidance office to obtain permission to make up a final exam on the make-up day. For the 2013-2014 school year, the make-up day was June 12, 2014.
28. The Student took an English final on the make-up test day, June 12, 2014.
29. On June 12, 2014, the Parent emailed the Health Teacher and requested the Health Teacher allow the Student to present the information individually, by allowing the Student to

² Note, the school does have a cell phone policy that does not allow students to text during final exams.

meet with the Health Teacher on the afternoon of June 12, 2014 to present the final assignment after the Student was done with the make-up English final. The Health Teacher did not agree to this request for the Student.

30. The Student's IEP provided for alternate testing environments which the Student took advantage of for Health Class. When the Student would request an alternate environment, the Health Teacher would send the test or quiz to the SPED Teacher in a sealed envelope, which the SPED Teacher would then administer to the Student in the alternate setting.
31. The final presentation for the Student's Health Class was not graded on a weighted basis, did not encompass any questions and answers, did not request students demonstrate their knowledge of subjects previously covered in the Health Class, and was not administered as a regular test would be administered.
32. The SPED teacher noted the Student's need for self-advocacy skills and a need for alternate presentation environment which was noted in the PLAAF section of the Student's IEP. The need for self-advocacy was also echoed in the Student's IEP section entitled, "The concerns of the Parents for enhancing the education of their child:" The Parents noted during the IEP meeting that, "We would like to see [the Student] become a better advocate... both in school and in the community."

IV. DISCUSSION

1. Implementation of the IEP

Parent alleges that the District failed to implement the Student's IEP by failing to implement the Student's accommodations in regard to the Student's class presentation and final exam in Health Class.

Pursuant to OAR 581-015-2220(3)(a) and 34 CFR 300.324, a District must provide each regular education teacher, special education teacher, and service provider access to a child's IEP if that individual is responsible for implementation of the child's IEP.

A. Implementation of the Accommodations contained in the IEP:

An IEP is a legally binding document designed for the provision of services to a student. The review of an IEP is limited to those terms contained in the IEP.³ Further, an IEP must provide an educational benefit to the Student.⁴

In this case, the Student's IEP contains Aids, Services Accommodations and Modifications designed to provide an educational benefit to the Student. Specifically, the IEP provides for, among other things, extended time on tests and testing in an alternate environment. The IEP **does not**, however, contain any accommodations for public speaking to be held in an alternate environment. The IEP clearly indicates the Student has anxiety, but the IEP also

³ Avjian v. Weast, 48 IDELR 61 (4th Cir. 2007).

⁴ County of San Diego v. California Special Education Hearing Officer, 93 F.3d 1458, 24 IDELR 756 (United States Court of Appeal, 9th Cir. 1996).

notes that a short term measurable goal and desire of the Parents is for the Student to engage in self-advocacy. Although it seems an oversight to exclude a public speaking accommodation, the absence of this particular accommodation also provides an educational benefit to the Student. Because the IEP does not contain an accommodation for public speaking in an alternate environment, or in small groups, the Student is able to use self-advocacy skills if necessary for those types of assignments, and thus fulfills a short term self-advocacy goal and a Parental desire as expressed on the IEP. If the IEP had contained an accommodation for public speaking in either an alternate environment or in a small group, the Student would never be forced to request permission to present to teachers in an alternate environment or to a group smaller than a regular class; hence, the Student would never meet the short term measurable goal of self-advocacy in this regard. By requiring the Student to request permission or alternatives in this regard, the Student learns self-advocacy and reaps an educational benefit.

Additionally, the IEP in question is being implemented based on the facts at hand. An IEP is limited and defined by its content; services or accommodations cannot be unilaterally presupposed if they are not specifically provided for in the IEP document.

Therefore, because the Student's IEP does not contain an accommodation for public speaking in an alternate environment, or in a small group setting, and because the IEP provides an educational benefit to the student related to self-advocacy skills, the District did not fail to implement the IEP. This allegation is not substantiated.

B. Regular Education Teacher's access to the IEP and implementation thereof:

The District must ensure that a student's IEP is accessible to all regular education teachers and those who are responsible for its implementation. 34 CFR 300.343(d)(1). See also, CU v. New York City Department of Education, No. 13 Civ. 5209 (DLC) (S.D.N.Y. May 27, 2014).

The regular education teachers within the District were given copies of the Student's IEP. The IEP is kept by the regular education teachers for reference. Further, in this case, although the Health Teacher had a copy of the Student's January 8, 2014 IEP, the Health Teacher also contacted the Student's SPED Teacher, because he had a question regarding the Student's specific accommodations. Specifically, the Health Teacher stated he could not find the Student's accommodation for public speaking and reached out to the SPED Teacher for clarification of the specific implementation requirements. The Student's SPED Teacher then explained that the public speaking accommodation was not "official" because it is not written into the Student's IEP. The Health Teacher not only had access to the Student's IEP and instruction as to specific implementation requirements, but this teacher also further received clarification from the SPED Teacher regarding the January 8, 2014 IEP. The IEP was in place for the Student during Health Class and the Health Teacher implemented the accommodations which were written into the IEP. It is not a violation of the IDEA to fail to implement a service, accommodation or aid that does not appear on the IEP

Therefore, because the Health Teacher had the Student's most current IEP dated January 8, 2014 and had further obtained clarification regarding the specific accommodations contained in that IEP, this allegation is not substantiated.

C. Implementation of IEP:

Parent alleges one teacher in the District refused to allow the Student to use an alternative test environment which was required by the IEP.

The Student's IEP does contain an accommodation for an alternate setting and extended time for testing. However, the final presentation for the Student's Health Class does not constitute a "test".

The final presentations for the Health Class were scheduled over a period of 3 days and did not include any questions regarding knowledge or subject matter that the Health Class had studied over the course of the semester, which is common in a "final examination" environment. Instead, each student was assigned a specific topic and was to present information on that specific topic to the class. According to the Health Class syllabus, the final grade any student received would be based not only on unit tests and quizzes but also on class presentations. There is no mention made in the syllabus of a "final test". Further, the final presentation grades were not "weighted", meaning that the point values were not larger for this presentation than for a daily grade. Simply because the assignment was entitled "Final Presentation" does not make it synonymous with a test. Finally, simply because the last day for the presentations in Health Class happened to occur on a day that other classes were taking final exams does not automatically make the "final presentation" into a "final exam".

It is correct that in reviewing the Student's Progress Report from Health Class that the Student's grade for the final presentation (a zero) is listed as a "final test". However, simply listing a grade under a column for a final test does not automatically equate the grade and assignment to a test.

Further, the Student had a cell phone in class during final presentations. Had this period been used as a testing period, it is highly doubtful that the Student could have been able to repeatedly text the Parent to remove the Student from Health Class. However, because this was a period for presentations, the Student had access to a cell phone and could request removal by the Parent. It should also be noted that a student would not have been excused from a final exam with such ease and would not have been able to use a cell phone so boldly during a test period pursuant to the school's policies for final examinations.

The Student solicited the assistance of the SPED Teacher to lobby for the removal from class for the current events presentation, but the Student did not similarly lobby for the same accommodation through the SPED Teacher prior to the final presentation. Rather, the Student told the Health Teacher that the Student felt confident the Power Point could be presented due to the three minute time limit. The SPED Teacher was also under the impression that the Student could perform the final presentation. Although the Student was present for the final presentation, the Student successfully engineered a removal from Health Class just prior to giving the Final Presentation. Generally a Student could not have engineered such a removal from class absent an emergency situation during a regular "final exam".

The Student also missed the English final but took the test on June 12, 2014 which was

designated as a make-up day. The SPED Teacher advised the Parent that the Student missed the English final and would have to make arrangements for a make-up test. The Student also positively represented to the Health Teacher that the final presentation for Health Class would be done on June 10, 2014. From the record, it becomes apparent that the Student believed that missing the Health Class and missing the English class would garner the same result, i.e. the ability to make up the work. However, there is a marked difference between being tested on classroom knowledge during a final exam and presenting a report on an assigned topic. The Student's and Parent's reliance on the IEP accommodation for testing is misplaced in this regard.

Due to the factors listed above, the IEP was appropriately implemented. This allegation is not substantiated.

V. CORRECTIVE ACTION⁵

Based on the facts provided, the Department did not find violation of the IDEA, and no corrective action is ordered.

Dated: August 21, 2014



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

Mailing Date: August 21, 2014

⁵ 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).