

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Salem-Keizer  
School District 24J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 14-054-043

**I. BACKGROUND**

On December 3, 2014, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Salem-Keizer School District 24J (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 on December 3, 2014.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 9, 2014, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of December 23, 2014.

On December 22, 2014, the District submitted a timely *Response* indicating they agreed with one of the allegations, and disputed the remaining allegations in the Parent's complaint. Following the complaint investigator's meeting with the District, additional materials were submitted. In total, the District submitted the following items:

- A. Move-in Paperwork: Notice of IEP Team Meeting 6/10/2014;
- B. Move-in Paperwork: IEP page 6/11/2014;
- C. Move-in Paperwork: Special Education Placement Determination: 6/11/2014;
- D. Move-in Paperwork: Move-in Student Process Documentation, 6/11/2014;
- E. IEP from previous school district, 2/20/2013;
- F. Disability Summary for Student, 11/24/2014;
- G. Email from District to Parent, 9/26/2014;
- H. Notice of 11/24/2014 IEP Team Meeting, 11/13/2014;
- I. Notice of 6/11/2014 IEP Team Meeting, 6/10/2014;
- J. Prior Notice About Evaluation/Consent for Evaluation, 6/11/2014;
- K. Statement of Eligibility for Special Education, 11/24/2014
- L. Speech-Language Evaluation Report (previous district) 2/5/2013;

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- M. Prior Notice of Special Education Action, 12/15/2014;
- N. Prior Notice of Special Education Action, 12/15/2014;
- O. Prior Notice of Special Education Action, 11/24/2014;
- P. Prior Notice and Consent for Initial Provision of Special Education Services, 6/11/2014;
- Q. Prior Notice and Consent for Initial Provision of Special Education Services (previous district) 2/20/2013;
- R. Prior Notice of Special Education Action (previous district), 2/20/2013;
- S. IEP Meeting Minutes (previous district) 2/20/2013;
- T. Goldman Fristoe 2 Test of Articulation, 10/17/2014;
- U. Audiometric Report, 12/17/2014;
- V. Arizona 3 Articulation Test, 3/05/2013;
- W. Student's current class schedule;
- X. 2014-2015 Attendance log for Student;
- Y. 2014-2015 Speech service log;
- Z. Student Process Form Math;
- AA. Student Progress Form Health;
- BB. Student Progress Form Science;
- CC. Student Progress Form Rock Roll Workshop;
- DD. Student Progress Form Yearbook Production;
- EE. Student Progress form Language Arts
- FF. Schedule of Speech Services to Student;
- GG. District Policy/Procedure for Move-in;
- HH. Student Grades as of 12/16/2014;
- II. Email between Parent and District;
- JJ. Email between District Staff regarding Student and Parent;
- KK. Email from Parent requesting revocation;
- LL. List of knowledgeable staff;
- MM. Salem-Keizer Public Schools 2013-2014 School Calendar;
- NN. Email: Re: Salem-Keizer Schools... Student led conferences, 1/15/2015;
- OO. Prior Notice of Special Education Action, 1/5/2015;
- PP. Prior Notice of Special Education Action, 12/15/2014;
- QQ. Prior Notice of Special Education Action, 12/15/2014
- RR. District IEP Meeting Procedure;
- SS. 12/1/2014 Email from SLP to District SLP Consultant;
- TT. Email from Parent to District, 12/18/2014;

The Parent submitted materials for consideration on December 18, 2014; December 29, 2014 and January 2, 2015. The Department's complaint investigator determined that on-site interviews were needed. On January 2, 2015, the complaint investigator interviewed the Parent. On January 13, 2015 the complaint investigator interviewed staff from Salem-Keizer School District; specifically, Legal Counsel for the District, Student's Speech Language Pathologist, the Student's Science Teacher, the Student's Middle School Principal, the Student's prior year Physical Education Teacher, the Student's prior year Education Resource Center Teacher, District Student Services Coordinators, and District's Consulting Speech Language Pathologist. Following both sets of interviews the Parent and the District submitted additional materials for review. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact

and conclusions of law contained in this order. 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 December 3, 2013 to the filing of this complaint on December 3, 2014.

	<b><u>Allegations:</u></b>	<b><u>Conclusions:</u></b>
1.	<p><b><u>Confidentiality of and access to Student Education Records:</u></b></p> <p>The Parent alleges that the District violated IDEA when staff discussed the Student in a setting that was not private and that the District failed to provide parent with assessment findings.</p> <p>(OAR 581-015-2300 &amp; 34 CFR 300.610, and 34 CFR 300.622)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The Department concludes that the District did discuss students in a relatively public setting, however, there was no evidence that the conversation in question was overheard by anyone. The Department therefore does not substantiate this portion of the complaint.</p> <p>The Department concludes that Parent was not provided with a copy of assessment findings, because no assessment findings were requested during the time in question.</p>
2.	<p><b><u>Consent - Consent for reevaluation:</u></b></p> <p>The Parent alleges that the District did not obtain consent before conducting a reevaluation of the Student.</p> <p>(OAR 581-015-2090(3) and (5), OAR 581-015-2095(1) and (3) &amp; 34 CFR 300.9, 34 CFR 300.300)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>There is a Prior Notice/ Consent for Evaluation dated June 11, 2014 and signed by the parent. It indicates Parent has consented to hearing tests and communication assessments to determine the child's special education needs. The Department does not substantiate this allegation.</p>
3.	<p><b><u>Transfer Students - Evaluation timelines/IEP Implementation for Transfer Students:</u></b></p> <p>The Parent alleges that the District did not implement the Student's out-of-district</p>	<p><b><u>Not Contested:</u></b></p> <p>The District acknowledges that it did not implement the Student's IEP within the</p>

	<p>IEP within the required timeline.</p> <p>(OAR 581-015-2230(2), 34 CFR 300.301, OAR 581-015-2110(5), 34 CFR 300.304, &amp; 34 CFR 300.305)</p>	<p>required timeline, and stipulates to corrective action.</p>
4.	<p><b><u>Prior Written Notice:</u></b></p> <p>The Parent alleges that the District violated the IDEA by not providing prior written notice (PNW) of an IEP meeting.</p> <p>(OAR 581-015-2310 and 34 CFR 300.503)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The District provided a prior written notice (PWN) signed by Parent and dated June 11, 2014. This PWN contained all necessary components. The Department does not substantiate this allegation.</p>
5.	<p><b><u>Parent Participation:</u></b></p> <p>The Parent alleges that the District frustrated Parent's ability to participate in IEP meetings.</p> <p>(OAR 581-015-2190, 34 CFR 300.500, 34 CFR 300.327, &amp; 34 CFR 300.501(b))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The Department finds that two IEP meetings were scheduled during this timeframe. Parent was provided sufficient advance notice of both meetings both in writing and on the telephone. The Department therefore does not substantiate this allegation.</p>
6.	<p><b><u>IEP Team</u></b></p> <p>The Parent alleges that the District failed to comply with IEP meeting requirements, and failed to include required participants.</p> <p>(OAR 581-015-2210(1), 34 CFR 300.344, 34 CFR 300.321, 34 CFR 300.324(a)(3) &amp; (b)(3))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The arena style conference was not an IEP meeting and was not construed to be an IEP meeting by District. The meeting notice for the IEP meeting specifically said that the time and place of the IEP meeting, which was distinguished from the conference which was held in the cafeteria, a separate place from the IEP meeting. The Department therefore does not substantiate the allegation; however, due to impropriety with signatures collected on several forms, the Department does order training in this regard.</p>

7.	<p><b><u>Evaluation and Reevaluation Requirements</u></b></p> <p>The Parent alleges that the District improperly terminated the Student's eligibility as a student with a disability.</p> <p>(OAR 581-015-2105(1)(d), 34 CFR 300.301 &amp; 34 CFR 300.303)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>At the time the complaint was received by the Department, the Student remained eligible for special education services as a student with a disability, therefore no reevaluation was needed to terminate this child's eligibility at this time. This allegation is not substantiated.</p>
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### III. FINDINGS OF FACT

- 1) The Student in this case is 12 years old and resides in the Salem-Keizer School District 24J.
- 2) the Student is eligible for special education services under the categories of Communication Disorder.
- 3) the Student currently participates in general education with pullout for speech and language therapy.
- 4) the Student registered for classes in the Salem-Keizer School District on April 2, 2014. the Student previously attended school in a previous school district.
- 5) The Salem-Keizer School District received the Student's records from the previous school district on April 10, 2014. The Student previously received speech services in the formerly attended school district, and was home schooled for a time. By April 2014, when the Student enrolled in District, the former district's IEP was already out-of-date. The IEP from the previously attended school district was dated February 20, 2013.
- 6) On June 10, 2014, the District sent a Notice of Team Meeting to Parent for an IEP team meeting scheduled for June 11, 2014. The day of June 11, 2014 was the last day of classes for the 2013-2014 school year. Therefore the parties agree that no meeting was to be held on this date. The Parent acknowledged receiving this meeting notice. However, the Parent stated that their understanding was that no meeting would actually be held at this time. The meeting notice dated June 10, 2014 clearly states that a meeting is scheduled for June 11, 2014 at noon to decide if the Student is eligible for or continues to be eligible for special education. The Speech Language Pathologist (SLP) signed the notice. All parties agree that the meeting was not held. District instead implemented the outdated IEP from the previous school district on June 11, 2014.
- 7) On November 13, 2014 District sent Parent a Notice of Team Meeting for an IEP team meeting scheduled for November 24, 2014. According to the Notice, the meeting would be held at 7:30 p.m. on November 24, 2014. The notice also includes notes that the meeting would be held in the speech therapy office at the middle school.

- 8) The evening of November 24, 2014 was also the night of parent teacher conferences. This date and time was chosen because Parent works outside of the Salem-Keizer metro area and this evening would be convenient for Parent to attend the IEP meeting in addition to parent teacher conferences. Parent teacher conference evening was also a convenient evening time for the District and IEP team members to attend the meeting.
- 9) On November 24, 2014, the Parent and the Student arrived at the middle school for the conference night and scheduled IEP meeting.
- 10) The student led conferences are held in the cafeteria. Tables are arranged in the cafeteria where the advisors are seated with student advisory files awaiting the arrival of parents and students for the meetings.
- 11) The SLP who scheduled and would facilitate the IEP meeting, arranged with the Student's advisor to utilize some of the parent teacher conference time to meet Parent and provide Parent with a brief overview of the Student's progress with speech services.
- 12) Upon the Parent and the Student's arrival in the cafeteria for the conference meeting, the SLP met with Parent, the Student, and Advisor at the table in the cafeteria and provided Parent with an update on the Student's progress with speech services.
- 13) Following the delivery of information by the SLP, Parent, Student and Advisor continued the student led conference as regularly scheduled in the cafeteria.
- 14) Following the conference, the Parent and the Student departed the school.
- 15) The Parent reported that they understood the meeting with the SLP in the cafeteria with the Advisor present, to have been the IEP meeting that was also scheduled that night.
- 16) The SLP reported that Parent did not come to the speech room following the conference between Parent, Student and Advisor.
- 17) On November 25, 2014, Parent sent an email to SLP and other District staff objecting to a number of issues, including the format and setting of Parent's meeting with the SLP the night before.
- 18) Salem-Keizer School District was closed for the Thanksgiving Holiday, November 25-29.
- 19) On December 2, 2014, the first day after the Thanksgiving break; the Student received speech therapy from a Speech Language Pathologist Assistant (SLPA). During this therapy session the SLPA made notes of the Student's progress, making the notation of "90%" regarding the Student's performance that day.
- 20) Following the December 2, 2014, speech therapy session, the Parent, on the same day, sent an email to the District objecting to this session, because it was what the Parent considered to be retesting, without obtaining Parent's consent in advance.

- 21) On December 3, 2014, District responded to the Parent, that the Student was not re-tested on December 2, 2014.
- 22) On December 3, 2014, Parent sent an email to district which read in relevant part, “[Student] is to have absolutely NO involvement in anything related to an IEP, speech services, conversations about speech or the need for an IEP, until this matter has been resolved.”
- 23) On December 3, 2014, Parent filed this complaint with the Department.
- 24) On December 15, 2014, the District sent Parent a prior notice of special education action, proposing to change the Student’s provision of special education services, based on the statement in Parent’s December 3, 2014 email to District in which the Parent revoked consent to Special Education.
- 25) On December 15, 2014, the District sent Parent a second prior notice of special education action, indicating the District’s refusal to perform an independent evaluation for the Student’s speech needs, noting that the current assessment data had yet to be reviewed by the IEP team.

#### **IV. DISCUSSION**

##### **1. Confidentiality of and access to Student Education Records**

The Parent alleges that the District violated the IDEA when District discussed the Student’s progress with speech services during student led conferences held in the middle school cafeteria. An IEP meeting was scheduled for the evening of November 24, 2014, the same evening as parent teacher conferences. Parent teacher conferences at this middle school are conducted in a student led format, where students explain their grades, progress, and personal plan to the parent with an advisor present. This takes places in a public area of the school. The Speech Language Pathologist (SLP) asked the Advisor for an opportunity to speak with Parent about the Student’s progress during the conferences in advance of the IEP meeting. Parent and SLP spoke at a table in the cafeteria for up to 15 minutes about the Student’s progress with speech therapy.

Access to student education records must be safeguarded.<sup>3</sup> Specifically all records related to the identification, evaluation, and educational placement of a child must be held confidential.<sup>4</sup>

In this case, District did discuss the Student’s progress in speech therapy in a somewhat public space. While the SLP discussed with the Parent the Student’s progress, no records related to the Student’s progress were shared at this time. Interviews with the Parent, SLP, and the Student’s Advisor, who were all present during the conversation, agree that it was possible but unlikely that the conversation was overheard by anyone else in the room due to

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<sup>3</sup> OAR 581-015-2300(2)(a) and (b)

<sup>4</sup> 34 CFR §300.610

the large number of conversations then ongoing in the cafeteria and the spaces between the various tables. No documentation was shared or seen by any other parties.

The Department does not sustain this portion of the allegation.

Next, the Department must consider the allegation that the Parent was not provided with access to the assessment findings.

The IDEA requires that a district must comply with a parent's request to inspect and review records without unnecessary delay and after such a request from a parent, before any meeting regarding an IEP, and in no case more than 45 days after the request has been made.<sup>5</sup>

Here, the Parent did not make a request from District for any assessment findings or for any specific records to review or inspect. As such, the District had no obligation to affirmatively produce such records without a request.

The Department does not substantiate this portion of the allegation.

## **2. Consent—Consent for reevaluation**

Parent alleges that the District did not obtain consent before conducting a reevaluation of the Student. Specifically, the Parent alleges that on December 2, 2014, the Student was evaluated by a different SLP, and that the Student was provided a numerical score indicating a test result. Therefore, Parent argues that the District did not obtain informed consent for reevaluation.

IDEA regulations require that school districts must first obtain informed written consent from the parent before conducting an initial evaluation to determine if a child qualifies as a child with a disability.<sup>6</sup> A school district must also obtain informed written consent before conducting any reevaluation of a child with a disability.<sup>7</sup> However, obtaining written consent from the parent is not required before reviewing existing data as part of an evaluation or reevaluation.<sup>8</sup>

First, the District did obtain an initial signed Consent for Evaluation from Parent dated June 11, 2014. This Consent for Evaluation form states that the purpose is to evaluate the child, to do an initial evaluation that will be used to determine if the child is a child with a disability and to determine special education needs. The form clearly indicates Parent consented to evaluation for communication assessments and hearings tests, as evidenced by "x" marks in the corresponding boxes. Therefore, consent was properly obtained at this time.

Next, we turn our analysis to the Parent's complaint in this area related to events which occurred on December 2, 2014. On this date, the Student received speech therapy services from a Speech Language Pathologist Assistant (SLPA) in accordance with the IEP from the

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<sup>5</sup> OAR 581-015-2300(3)

<sup>6</sup> OAR 581-015-2090(3)

<sup>7</sup> OAR 584-015-2090(5)

<sup>8</sup> OAR 581-015-2095(1)

previous district. This was the first time that the Student worked with this SLPA. As part of that day's speech therapy the SLPA conducted exercises with "r" articulation. As part of the data gathering for that exercise and the Student's progress, the SLPA made a progress note that the Student was performing at 90% accuracy. Such progress monitoring data is generally gathered throughout the school year to assess the Student's performance toward meeting the IEP goals. The Student reported to Parent that this information was gathered. On the following day, Parent sent an email to District indicating the Parent's understanding that this was a reevaluation of the Student, in the context of the previous week's conversation with the SLP about the Student's need for reevaluation. The District responded on the same day that the Student "was not tested yesterday" and that the Student remained eligible for speech services.

Therefore, the Department does not sustain this allegation.

### **3. Transfer Students - Evaluation timelines/IEP Implementation for Transfer Students**

The Parent alleges that the District did not implement the Student's out-of-district IEP within the required timeline. The Student enrolled in the Salem-Keizer School District on April 2, 2014. The Notice of Team Meeting was sent on June 10, 2014, for a meeting scheduled for June 11, 2014. June 11, 2014 was also the last day of school for the District.

When a student with a disability, who had an IEP in effect in a previous school district in Oregon, transfers to a new district in Oregon, and enrolls in the new school in the same school year, the new school district must provide a free appropriate public education to the child, including services comparable to those described in the child's IEP from the previous district,<sup>9</sup> until the new district either, adopts the child's IEP from the previous school district,<sup>10</sup> or develops, adopts and implements a new IEP for the child.<sup>11</sup> Additionally, the IDEA requires annual review of IEPs, which should occur at least once every 365 days.<sup>12</sup> Also, if a reevaluation is needed for a student, it must be completed within 60 school days from written parent consent, to the date of the meeting to consider eligibility, continuing eligibility, or the student's educational needs.<sup>13</sup> When a child with a disability transfers from one school district to another school district in the same school year, the previous and current school district must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.<sup>14</sup>

The Student enrolled in the Salem-Keizer School District on April 2, 2014. The District obtained the Student's records from the previous school district on April 10, 2014. The Student was found eligible for speech services through the previous district on February 20, 2013. This was the last IEP from the previously attended district. The record shows that the Student was homeschool at some point prior to attending District. The District acknowledges

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<sup>9</sup> OAR 581-015-2230(1)

<sup>10</sup> OAR 581-015-2230(1)(a)

<sup>11</sup> OAR 581-015-2030(1)(b)

<sup>12</sup> OAR 581-015-2225(1)

<sup>13</sup> OAR 581-015-2110(5)(b)

<sup>14</sup> OAR 581-015-2110(5)(d)

that it did not implement the Student's IEP within the required timeline and that it did not create a new IEP for the Student expeditiously.

The Department therefore sustains this allegation and orders corrective action.

#### **4. Prior Written Notice**

The Parent alleges that the District violated the IDEA by not providing prior written notice (PWN) of an IEP team meeting. Specifically, Parent notes that the District sent a Notice of Team Meeting on June 10, 2014, for a meeting scheduled for June 11, 2014.

Prior written notice must be provided to the parent of a child within a reasonable period of time before a school district proposes to initiate or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.<sup>15</sup> However, it is important to note that prior written notice is a different IDEA requirement than notice of team meetings. Written notice of IEP team meetings is covered by the IDEA's parent participation requirements which are detailed below. These rules state that school districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have the opportunity to attend.<sup>16</sup>

There is no evidence that the IEP team changed the placement or provision of FAPE to the Student at the June 11th meeting, though the meeting notice form does state the purpose of the meeting is to "decide whether the child is eligible for or continues to be eligible for special education." The District was able to produce a prior notice and consent for initial provision of special education services form dated June 11, 2014. This PWN describes the placement for the Student based on the previous district's eligibility and IEP. It notes other options discussed for placement and states that the Student has an out-of-date IEP from another district. It further documents that Student was an in-state transfer so initial provision of special education services and eligibility paperwork will be completed as well to ensure a smooth transition in receiving special education program services from the District. This form is signed and dated by the Parent with an 'x' placed on the box to give permission for the initial provision of special education services as described above.

The Department therefore does not sustain this allegation concerning Prior Written Notice.

#### **5. Parent Participation**

The Parent alleges that the District failed to allow for the Parent's ability to participate in IEP meetings. Specifically the Parent noted that notice of the June 11, 2014 meeting was received on June 10, 2014, the Parent was unable to attend, and no meeting was held on that date.

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the

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<sup>15</sup> OAR 581-015-2310(2)(a)

<sup>16</sup> OAR 581-015-2190(2)(a)

child, and the provision of free and appropriate education (FAPE) to the child.<sup>17</sup> Districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.<sup>18</sup> The written IEP meeting notice must inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child, inform the parent that the team may proceed with the meeting even if the parent does not attend, and inform the parent of whom to contact before the meeting to provide information if they are unable to attend

For the meeting scheduled for June 11, 2014, notice was sent on June 10, 2014. The Parent argues that there was insufficient advance notice to attend. However, there is no evidence that this is the case. Rather there is a notice for the meeting on June 11, 2014 dated June 10, 2014 which the SLP signed and which was sent home with the Student. The notice sent on June 10, 2014 stated the purpose of the meeting is to decide whether the Student is eligible for or continues to be eligible for special education. It states the meeting will be held at the middle school in the speech therapy office on June 11, 2014 at noon. The Parent is listed on the form under the individuals required to attend section, along with the SLP, the Physical Education Teacher, and the District Representative/ ERC teacher. In this case Parent received a notice of team meeting only one day in advance of the IEP team meeting. The Parent stated that she was unable to attend this meeting on such short notice. However, the prior notice about evaluation/ consent for evaluation form dated June 11, 2014 has the Parent's signature which is dated as June 11, 2014. Furthermore, the District claims that the Parent spoke to the SLP a week and a half before the date of the meeting and that they agreed to meet on June 11th at this time. However, the Parent's work schedule and location prevented Parent from attending the meeting on this date. The District said they also spoke with the Parent a day before the meeting and that the Parent said they could not attend on this date. Both parties agree the meeting did not occur. The District instead sent the paperwork for the meeting home with the Student, and had the Parent sign the papers which were for the June 11, 2014 meeting. This paperwork included: the meeting invitation, consent for provision of services, consent for evaluation, and a copy of the old IEP from the previous district, which was adopted and dated as the annual IEP for the District.

Notice of the November 24, 2014 meeting was sent to Parent on November 13, 2014. That date and time was selected in advance with the Parent's input. Both parties confirmed this was a mutually agreeable time to meet, as the meeting was scheduled for the same night as parent teacher conferences at the school. The SLP met briefly with Parent in advance of the 7:30 p.m. meeting time, during parent teacher conferences in the cafeteria. During the meeting, the SLP held the Student's assessment data, but did not provide a copy to parent. However, the Parent did not ask for a copy of the assessment data at that time. The SLP provided a brief update to the Parent regarding the Student's favorable progress with speech therapy. The SLP and Parent spoke in the cafeteria, with the Student's Advisor present. The SLP then departed the area where student led conferences occurred. The Parent and the Student met with the Advisor. After meeting with the Advisor, the Parent and the Student left the building. The Parent reports being under the impression that the meeting with the SLP at the cafeteria table, where the Parent was provided an update regarding the Student's progress and assessment data, was the scheduled IEP meeting. It is somewhat reasonable

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<sup>17</sup> OAR 581-015-2190(1)

<sup>18</sup> OAR 581-015-2190(2)(a)

under the circumstances for the Parent to have mistaken this advance meeting with the SLP, where an update on the Student's performance in speech was provided, as having been the IEP meeting, as the Parent had not attended any prior IEP meetings with the District. However, the meeting notice is clear with a specific date, time, and location of the IEP meeting and none of these factors matched the conference in the cafeteria. Additionally, the Parent had attended one prior IEP meeting in the previous district, where the Parent would have been able to see the content, format, and documentation of an IEP meeting and none of these factors was present in the conference at the school cafeteria. Further interviews with District staff indicate that they agree that no formal IEP meeting was held on November 24, 2014 to which Parent was not allowed to participate.

The Department does not sustain this allegation.

## 6. IEP Team

The Parent alleges that the District failed to comply with IEP meeting requirements, and failed to include required participants.

Districts must ensure that the IEP team for each child with a disability includes one or both of the child's parents,<sup>19</sup> the child where appropriate,<sup>20</sup> at least one regular education teacher,<sup>21</sup> at least one special education teacher,<sup>22</sup> a representative of the school district qualified to provide or supervise specially designed instruction,<sup>23</sup> knowledgeable about the general education curriculum,<sup>24</sup> knowledgeable about district resources,<sup>25</sup> and authorized to commit district resources and ensure that services set out in the IEP will be provided.<sup>26</sup> A member of the IEP team is not required to attend an IEP meeting if a parent or child agrees in writing that the attendance of the team member is not necessary because the members' area of the curriculum or related service is not being modified or discussed.<sup>27</sup> Additionally, eligibility teams have parent participation requirements and team composition requirements under IDEA. Eligibility teams must include the parent and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. This may be the child's IEP team.<sup>28</sup>

The Parent expressed the concern that both meetings for which the Parent received a notice of team meeting, had either not occurred, or had not included the required participants. The Parent was sent two notices of team meetings for meetings scheduled for June 11, 2014, and November 24, 2014. Interviews with District staff indicate that no IEP meeting was held on either date. District staff reported that the SLP collected the required signatures of IEP Team invitees on the District's Placement Determination form and on a District IEP Part B form in the meeting participant's box, to implement the out-of-date previous district's IEP in lieu of

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<sup>19</sup> OAR 581-015-2210(1)(a)

<sup>20</sup> OAR 581-015-2210(1)(b)

<sup>21</sup> OAR 581-015-2210(1)(c)

<sup>22</sup> OAR 581-015-2210(1)(d)

<sup>23</sup> OAR 581-015-2210(1)(e)(A)

<sup>24</sup> OAR 581-015-2210(1)(e)(B)

<sup>25</sup> OAR 581-015-2210(1)(e)(C)

<sup>26</sup> OAR 581-015-2210(1)(e)(D)

<sup>27</sup> OAR 581-015-2210(3)(a)

<sup>28</sup> OAR 581-015-2120(1)(a)

creating a new IEP for the Student at this time. While it is inadvisable and problematic to have IEP team members sign forms for meetings which they do not actually attend, there is no conclusive proof that an IEP meeting actually occurred on this date. Therefore, the question of which team members participated here is moot.

Next we look at the IEP meeting scheduled for November of 2014. Following Parent's departure from the building on the evening of November 24, 2014 after the conference, the District reported that invited participants did not meet for an IEP meeting. However, a draft prior written notice dated November 24, 2014 states that the Student's eligibility team met to discuss the most recent speech-articulation evaluation results, however, this form was not signed by anyone. The draft form indicates a refusal to initiate identification and placement for Student. The form said this action is justified because the Student was a move-in student from another district in Oregon and there is no attendant eligibility information indicating current eligibility as speech/ language disorder. There is also a statement of eligibility for special education (communication disorder) dated November 24, 2014 which was prepared by the SLP for this meeting, but not completed or signed. This statement indicates the SLP conducted a speech language assessment, an evaluation of hearing acuity, an evaluation of the Student's oral mechanism, and an informal conversational speech sample in October of 2014. The form was not completed and none of the team members, including Parent, signed the form.

Because there is no evidence of an IEP meeting being held on either June 11, 2014, or November 24, 2014, the Department cannot conclude that required participants of an IEP meeting were not present. For this reasons this allegation is not substantiated. However, in light of the fact that District staff in this middle school had IEP team members sign forms for meetings that did not actually occur, corrective action is ordered in respect to staff training for IEP meeting participant documentation.

## **7. Evaluation and Reevaluation Requirements**

The Parent alleges that the District improperly terminated the Student's eligibility as a student with a disability.

A district must conduct an evaluation or reevaluation process in accordance with OAR 581-015-2105 and OAR 581-015-2110 before terminating a child's eligibility as a child with a disability, unless termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2090.<sup>29</sup>

On December 3, 2014, Parent sent an email to District indicating that the Student was retested without permission, and that the SLP had informed the Parent on November 24, 2014, that the Student was ineligible for services. The Parent reports that following Parent's brief meeting with the SLP that occurred on November 24, 2014, that Parent understood that SLP was communicating that the Student was no longer eligible for speech therapy. In the Parent's December 3, 2014 email, the Parent wrote: "Do not proceed with any further speech therapy. Do not proceed with any sort of re-evaluation. Do not so much as speak to [Student]

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<sup>29</sup> OAR 581-015-2105(1)(d)

about speech until this complaint investigation has reached resolution.” On December 3, 2014, the Parent filed the complaint initiating this investigation. On December 15, 2014, District sent a prior notice of special education action to the Parent that read in relevant part, “The district is required by law to discontinue special education and related services upon written revocation of parental consent for these services. The parents provided a written revocation to the District on 12/3/14.” On December 22, 2014, the District, in response to the request for response contends that Parent’s December 3, 2014, email constituted a revocation of special education services. The Parent understood the SLP’s November 24, 2014 explanation of the Student’s progress as constituting a reevaluation of the Student’s eligibility for special education. The Parent reports that the SLP discussed having a different SLP conduct an assessment of the Student. When the Student returned home on December 2, 2014, reporting having worked with a different person in speech therapy, the Parent understood this to be a reevaluation. The Parent was not provided with an explanation of the SLP’s services performed on December 2, 2014 as Parent did not receive a response to the December 3, 2014 email inquiry about these services. The Student remained eligible for speech therapy services at this time.

For the above stated reasons this allegation is not substantiated.

### V. CORRECTIVE ACTION<sup>30</sup>

*In the Matter of Salem-Keizer School District #24J  
Case No. 14-054-043*

	<b>Actions</b>	<b>Submissions<sup>31</sup></b>	<b>Due By</b>
1.	<p>Convene an eligibility team meeting to determine eligibility for special education services. If appropriate, after the eligibility decision, convene an IEP team meeting with all required participants to determine appropriate services for the Student.</p> <p>In addition, if the Student is eligible for speech services, provide 180 minutes of compensatory services.</p>	<p>Submit evidence of any prior written notices sent as a result of the meeting, meeting notice along with proof of the date of distribution to the Department via US Mail or email to <a href="mailto:raeann.ray@state.or.us">raeann.ray@state.or.us</a> and <a href="mailto:jan.burgoyne@state.or.us">jan.burgoyne@state.or.us</a>.</p> <p>If the Student is eligible, submit a copy of the new IEP and service log indicating the provision of compensatory services as directed above.</p>	<p><b>March 6, 2015</b></p> <p><b>May 29, 2015</b></p>

<sup>30</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>31</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156

2.	<p>Staff training for all District special education staff. Particularly, staff involved with the allegations in this complaint at the District's middle school.</p> <p>Topics to cover include:</p> <ul style="list-style-type: none"> <li>• Transfer procedures and timelines and IEP Implementation.</li> <li>• IEP team meeting, meeting invitations, and prior written notices.</li> <li>• Obtaining proper signatures for IEP team meeting - specifically highlights about improperly signing documents when a meeting did not occur.</li> </ul>	<p>Submit agenda, roster of attendees, and copies of training materials to the address above at ODE via email.</p>	<p><b>April 1, 2015</b></p>
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Dated: this 2nd day of February 2014




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

Mailing Date: February 2, 2015