

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Parkrose SD 3

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 15-054-001

I. BACKGROUND

On January 15, 2015, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Parkrose 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 January 16, 2015 and provided the District a copy of the complaint letter on January 16, 2015.

On January 22, 2015, 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 February 4, 2014. The District stated that it had not timely received notice of the complaint and was granted a one day extension to prepare its *Response*. The District remitted its *Response* which was made available to the complaint investigator on February 5, 2015. The District also submitted its *Response* to the Parent. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. Discipline and Attendance reports for school year 2014-2015;
2. Student schedule for school year 2014-2015;
3. Student grades/Progress report for school year 2014-2015;
4. The Student's IEP dated January 13, 2015;
5. Special Education Determination dated January 13, 2015 (incomplete).
6. Written Agreement between Parent and the District dated January 13, 2015 excusing Regular Education Teacher from attendance with parental refusal to sign dated January 13, 2015;
7. Handwritten Note from Sped Teacher Clint Henry dated January 13, 2015;
8. Eligibility Summary Statement dated January 13, 2015;
9. Executive Function Report dated January 13, 2015;
10. Disability Statement dated January 13, 2015;
11. Medical Statement of Health dated January 12, 2015;
12. Speech/Language/Diagnostic Evaluation Report dated January 9, 2015;
13. WIAT III Score Report dated December 15, 2014;
14. IEP Progress Notes dated December 5, 2014;
15. IEP Progress Report dated December 5, 2014;
16. Summary of Performance in Language Arts dated November 24, 2014;
17. Student progress reports dated November 7, 2014 in Language Arts;
18. IEP Progress Report dated May 15, 2014;
19. Summary of Performance in Language Arts dated January 16, 2014;
20. Student IEP dated January 15, 2014;
21. IEP Meeting Checklist/Notes dated January 15, 2014;
22. Special Education Determination dated January 15, 2014;
23. Progress Notes dated June 10, 2013;
24. Proposed Changes dated March 13, 2013;
25. Prior Written Notice dated March 13, 2013;

26. Written Agreement between Parent and District dated March 11, 2013;
27. IEP dated January 17, 2013;
28. Meeting Checklist/Notes dated January 17, 2013;
29. Prior Written Notice dated January 17, 2013;
30. Statements of Eligibility dated January 17, 2013
31. Psycho-educational Report dated January 11, 2013;
32. Notice of Team Meeting dated January 7, 2013;
33. Evaluation Planning Meeting Notes dated October 15, 2012;
34. Prior Written Notice dated October 14, 2012;
35. Notice of Team Meeting dated October 10, 2012
36. Record Review dated October 8, 2012;
37. Prior Written Notice dated April 25, 2012;
38. Written Agreement between Parent and District dated April 24, 2012;
39. Correspondence from Parent to District dated March 23, 2012;
40. Correspondence from Parent to District dated March 9, 2012;
41. IEP Meeting Notes dated March 8, 2012;
42. Revisions to January 31, 2012 IEP dated March 8, 2012 and April 24, 2012
43. Notice of Team Meeting dated March 2, 2012;
44. Prior Written Notice dated February 15, 2012;
45. Prior Written Notice dated February 10, 2012;
46. Parental input/concerns for 2012 IEP dated January 31, 2012;
47. Student's IEP dated January 31, 2012;
48. IEP Meeting Checklist/Notes dated January 31, 2012
49. Correspondence from Parent to District dated January 26, 2012;
50. Notice of Team Meeting dated January 24, 2012;
51. Meeting Checklist/Notes dated February 14, 2011;
52. Incomplete IEP dated February 8, 2011;
53. Progress notes dated February 8, 2011;
54. Placement Determination dated February 8, 2011;
55. Notices of Team Meeting dated February 4, 2011;
56. District Non Discrimination Policy dated December 13, 2010;
57. Special Ed Consensus Report dated April 4, 2010
58. IEP dated February 9, 2010;
59. Progress Notes dated February 9, 2010;
60. Statements of Eligibility dated February 9, 2010;
61. Meeting Notes/Checklist dated February 9, 2010;
62. Prior Written Notice and Consent to Services dated February 9, 2010;
63. Statement for Eligibility dated February 9, 2010;
64. Notice of Team Meeting dated February 4, 2010;
65. Addendum to Psycho-educational report dated February 4, 2010;
66. Evaluation Planning Meeting Notes dated October 29, 2009;
67. Record Review dated October 28, 2009;
68. Prior Written Notice/Consent for Evaluation dated October 28, 2009;
69. Notice of Team Meeting dated October 20, 2009;
70. District Policy regarding Special Education – Procedural Safeguards dated February 25, 2008;
71. Listing of persons with information regarding Complaint No. 15-054-001.

During the in person interview, the Parent submitted the following documents:

1. IEP Meeting Checklist/Notes, specifically page 2 from January 13, 2015 IEP meeting;

2. Correspondence between Parent and District from approximately October 1, 2014 through January 15, 2015;

During the in-person interview, the District submitted the following supplemental documents at the request of the Investigator:

1. IEP dated November 26, 2014;
2. Evaluation Planning Meeting Notes dated November 25, 2014;
3. Parent Consent for Evaluation dated November 25, 2014
4. Written Agreements between the Parent District dated November 2014
5. Record review dated November 25, 2014;
6. Meeting Request dated November 14, 2014;
7. Evaluation Planning and IEP Review Meeting Notes dated November 25, 2014;
8. Sample of TAG notification letter

The District also submitted on its own volition:

1. PWN dated January 13, 2015 showing a mailing date of January 16, 2015;
2. A corrected Placement Determination dated January 13, 2015

Thereafter the Parent submitted documents in relation to the November 25, 2014 Evaluation Planning and Interim IEP meeting:

1. Amended January 13, 2015 IEP document including Parent comments section completed and with expanded PLAAF (incomplete);
2. Copy of envelope with postage and post it note from District;
3. Original January 13, 2015 IEP document with Parent comments omitted and PLAAF statement without reference to additional Language Arts help on Tuesday afternoons (incomplete);
4. IEP Meeting Notes dated January 13, 2015.

The Department's complaint investigator determined that on-site interviews were required. On February 16, 2015, the Department's investigator interviewed the Parent. Thereafter on February 20, 2015, the Department's investigator interviewed the District's Special Education Director, TAG Coordinator, and Special Education Teachers. 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 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

¹ OAR 581-015-2030(12)

Section IV. This complaint covers the one year period from January 15, 2014 through January 15, 2015.

	Allegations	Conclusions
1.	<p><u>Prior Written Notice:</u></p> <p>The Parent alleges the District violated IDEA when it failed to provide a Prior Written Notice (PWN) following a change to the provision of Free Appropriate Public Education (FAPE); specifically, after an IEP meeting held on January 15, 2014, when the Specially Designed Instruction (SDI) in Writing on the Student's IEP was removed, without providing a Prior Written Notice to the Student's Parents</p> <p>(OAR 581-015-2310 and 34 CFR 300.503)</p>	<p>Substantiated</p> <p>The District failed to produce a Prior Written Notice (PWN) after the Specially Designed Instruction (SDI) was removed on the January 15, 2014 IEP. This allegation is substantiated. See Corrective Action.</p>
2.	<p><u>Retaliation:</u></p> <p>The Parent alleges that the District has retaliated and discriminated against the Student and Parent as a result of participation in the state IDEA complaint process against the District. Specifically, after the filing of a state IDEA complaint on October 17, 2014, Parent was told that due to the fact that Parent filed a state IDEA complaint, any meetings with District staff, including meetings with teachers of the Student, required the presence of the District's Director of Student Services and the School Principal or Vice Principal. In addition, a meeting to develop the Talented and Gifted (TAG) plan for Student was cancelled. Finally, the complaint alleges that no meetings with the exception of two IEP related meetings have been scheduled with the Parent since the filing of the state complaints in October of 2014.</p> <p>(OAR 581-015-2030(19) and 34 CFR 300.151)</p>	<p>Unsubstantiated.</p> <p>This allegation is unsubstantiated because the District continually pursued rescheduling meetings with the Parent, because the District continuously attempted to create and present TAG plans to the Parent, and because the District attempted but was unsuccessful in coordinating the schedules of the necessary parties to have the TAG meetings. These actions are not significant and adversarial in nature, and there is no evidence of a causal connection between any significant actions from District, and the Parent pursuing his rights to file state IDEA complaints.</p>

	Requested Corrective Action:	
1.	The Department should order the District to provide Parent with Prior Written Notice in	

	its decision to change the FAPE of the Child. The Department should order District to review requirements of Procedural Safeguards in IDEA and its implementing regulations, in a manner the Department sees fit.	
2.	The Department should order any other measures it sees fit to protect the Procedural Safeguards of IDEA Part B and in implementing regulations and ensure the rights of children with disabilities and parents of such children are protected.	
3.	The Department should order the District to cease and desist any retaliation and/or discrimination.	
4.	The Department should order the District to review the Findings, Purposes, and Procedural Safeguards of IDEA, 2004 in a manner the Department sees fit.	

III. FINDINGS OF FACT

1. The Student is 13 years old and resides in the Parkrose School District. The Student currently attends Parkrose Middle School and is in the 7th grade.
2. The Student was initially found eligible to receive Special Education services on February 9, 2010 under the classifications of Communication Disorder (CD) (50) and under Specific Learning Disability (SLD) (90).
3. According to the Student's February 8, 2011 IEP, the Student participated in specially designed instruction in the area of Written Language for 120 minutes per week. However, the following year, the IEP team determined that the Student's Writing instruction could be decreased and that the Writing instruction could be decreased by 60 minutes. The District prepared a PWN evidencing this change in the Student's services.
4. Thereafter, in April 2012, pursuant to a mediated IEP, the District prepared a PWN dated April 25, 2012, advising the Parent's that the Student's specially designed instruction in Reading comprehension would be discontinued, because the Student no longer needed specialized Reading comprehension instruction according to the data provided in the mediation. Specifically, the information came from the Student's OAKS testing and in Easy CBM data, as well as Parent input. The IEP team did, however, agree to make the Writing goal more specific and to eliminate Spelling as a convention upon which the Student would be graded.
5. On January 17, 2013, at the Student's three year re-evaluation, the Student was no longer found eligible for Special Education Services under the category of Communication Disorder (50). The Student, however, remained eligible for Special Education services under the eligibility category of Specific Learning Disability (90). The record shows the Student had a specific learning disability in the area of Reading fluency skills.

6. The January 17, 2013 IEP removed the Student's specially designed instruction based on communication disorder. The District prepared a Prior Written Notice dated January 17, 2013 regarding the Student's failure to qualify as a student needing specially designed instruction based on Speech (Communication Disorder).
7. In March 2013, the IEP team met and agreed to add 15 minutes of Spelling instruction. The District prepared a Prior Written Notice regarding the addition of this instruction dated March 13, 2013.
8. The Student began sixth grade at Parkrose Middle School in the fall of 2013.
9. The Student's January 15, 2014 IEP contained the following specially designed instruction and accommodations:

Specially Designed Instruction	Provider	Role	Anticipated Location	Time/ Frequency	Start date	End Date
Reading Fluency	LEA	Special Ed Teacher/ Provider	SPED Classroom	60 min/weekly	1/15/2014	1/14/2015
Supplementary Aids/Services; Modifications; Accommodations	Provider	Role	Anticipated Location	Time/ Frequency	Start Date	End Date
Check Student planner for accuracy	LEA	Regular Ed Teacher	Classroom	weekly	1/15/2014	1/15/2015 (sic)
Access to spelling tools, electronic or otherwise. Audio Books/passages provided at school to aid in fluency. Extra time for reading assignments, Adults identified misspelling on final draft of writing. Check of student planner for accuracy	LEA	Regular Ed Teacher	Classrooms	Daily	1/15/2014	1/14/2015
Supports for school personnel						
Description of Supports	Provider	Role	Time	Frequency	Start date	End Date
Consultation between regular ed teacher and sped teacher	LEA	Special Ed Teacher/ Provider	15 min	Per semester	1/15/2014	1/14/2015

10. As of the January 15, 2014 IEP, the Student was no longer receiving specialized instruction in Writing (Spelling) for 15 minutes per week.
11. The District reported they did not prepare a Prior Written Notice regarding the removal of the specially designed instruction for 15 minutes of Writing per week.
12. In October, 2014 the Parent requested an Independent Education Evaluation (IEE) and in response, the District scheduled a dual purpose meeting, first as an interim IEP meeting and also as a pre-evaluation meeting because the Student's three year evaluation was due in January 2015. The meeting was held on November 25, 2014 pursuant to written Meeting Request.
13. During the November 25, 2014 Evaluation Planning and IEP Review meeting, the Parents requested that a short term objective for Spelling be added to the Reading goal in the IEP. The SPED Director countered this proposal with a suggestion that a Sitton Spelling or other explicit spelling program could be used and that the team could make Spelling a separate goal.
14. The Specially Designed Instruction and Supplementary Aids, Services, Modifications and Accommodations on the Student's IEP dated November 26, 2014 are as follows:

Specially Designed Instruction	Provider	Role	Anticipated Location	Time & Frequency	Start Date	End Date
Written Language	LEA	Special Ed Teacher/ Provider	SPED Classroom	30 min weekly	11/26/14	1/13/15
Reading	LEA	Special Ed Teacher/ Provider	SPED Classroom	30 min weekly	11/26/14	1/13/15
Supplementary Aids, Services, Modifications, Accommodations	Provider	Role	Anticipated Location	Time and Frequency	Start Date	End Date
Access to work processor and spell checker for written assignments	LEA	Regular Ed Teacher	Classroom	Min per period	11/26/14	1/13/15
Check of student planner for accuracy	LEA	Regular Ed Teacher	Classroom	Min per period	11/26/14	1/13/15
Extended time to complete written and reading assignments and tests	LEA	Regular Ed Teacher	Classroom	Min per period	11/26/14	1/13/15
Option to take content standards based tests verbally	LEA	Regular Ed Teacher	Classroom	Min per period	11/26/14	1/13/15
Option to take tests and assessments in	LEA	Regular Ed Teacher	Classroom	Min per period	11/26/14	1/130/15

an alternative location						
Weekly email on Fridays to parents concerning homework status in all classes	LEA	Special Ed Teacher/ Provider	School wide	Min weekly	11/26/14	1/13/15
Supports for School Personnel	Provider	Role	Time	Frequency	Start Date	End Date
Consultation between regular ed teacher and sped teacher	LEA	Special Ed Teacher/ Provider	15 min	Per semester	11/26/14	1/13/15

15. During the November 26, 2014² Interim IEP/Re-evaluation planning meeting, the Parent requested the Student be given the Woodcock Johnson III Test to focus on Reading and Writing. The District agreed with this suggestion. The Parent also reported he requested a short term objective for Spelling to be added to the Reading goal at this meeting. The District said it would make more sense to have a separate Spelling goal. The IEP dated November 26, 2014 added a new goal to collect baseline data in the category of Writing. This goal reads that, "given specially designed instruction in Spelling, the student will learn to spell high frequency morphemes at 80% accuracy, as measured by weekly student work." The meeting notes dated November 25, 2014 also state that for evaluation planning, the team agreed that additional testing in Reading, Writing and language would be beneficial. This included the WIAT, Woodcock-Johnson III, BRIEF, and the CTOPP.

16. The District did not present a copy of a Prior Written Notice (PWN) for the proposed evaluations, including the Woodcock Johnson III testing, that was discussed at this meeting during the investigation. Nor did a PWN after this meeting indicate the acceptance of the new Spelling goal or the rejection of the Parent's request for a STO for Spelling.

17. The Student had another IEP meeting on January 13, 2015. According to the written IEP, the Student's Specially Designed Instruction and Supplementary Aids, Services, Modifications and Accommodations are:

Specially Designed Instruction	Provider	Role	Anticipated Location	Time & Frequency	Start Date	End Date
Written Language	LEA	Special Ed Teacher/ Provider	SPED Classroom	30 min weekly	1/13/15	1/12/16
Reading	LEA	Special Ed Teacher/ Provider	SPED Classroom	30 min weekly	1/13/15	1/12/16
Supplementary Aids, Services, Modifications, Accommodations	Provider	Role	Anticipated Location	Time and Frequency	Start Date	End Date

² Note that some of the documents from this meeting (i.e. IEP Review meeting notes) are dated November 25, 2014 while the IEP itself is dated November 26, 2014.

Grades based on content, no conventions, in content area classes (math, science, wellness, social studies)	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Option to turn in typed work	LEA	Regular Ed Teachers	Classroom	Min per period	1/13/15	1/12/16
Access to work processor and spell checker for written assignments	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Check of student planner for accuracy	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Extended time to complete written and reading assignments and tests	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Option to take content standards based tests verbally	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Option to take tests and assessments in an alternative location	LEA	Regular Ed Teacher	Classroom	Min per period	1/13/15	1/12/16
Weekly email on Fridays to Parents concerning homework status in all classes	LEA	Special Ed Teacher/ Provider	School wide	Min weekly	1/13/15	1/12/16
Supports for School Personnel	Provider	Role	Time	Frequency	Start Date	End Date
Consultation between regular ed teacher and sped teacher	LEA	Special Ed Teacher/ Provider	15 min	Per semester	1/13/15	1/12/16

18. During the IEP meeting of January 13, 2015, the Parents had requested a reduction in Reading homework which was refused by the District.

19. In its submission of additional materials on February 22, 2015, the District produced a Prior Written Notice dated January 13, 2015. The Prior Written Statement provides that it is "to be given to Parents prior to action to change or to refuse to initiate the identification, evaluation, educational placement of a child with a disability." The PWN provides that the action proposed or refused by the District are: "The District refuses to add the requested accommodation of "Reduce reading homework from 200 minutes per week to 100 minutes per week." The Prior Written Notice (PWN) dated January 13, 2015 does not discuss the changes made to the Student's Supplementary Aids, Services; Modifications and Accommodations at the IEP meeting, specifically that the Student's grades will be based on content and not conventions in

content area classes, and that the Student has the option to turn in typed work.³

20. During the 2013-2014 school year, the Student was given the Raven test to ascertain whether the Student would qualify for talented and gifted (TAG). The Student scored in the 99th percentile for intelligence.
21. The TAG Coordinator for Parkrose Middle School needed additional data points to qualify the Student for TAG so she requested teacher input. The Student's core class teachers expressed that the Student had strong comprehension skills but the Student still lacked in Spelling and, at times, Reading comprehension. Based on the Student's test scores and teacher input, the Student was identified for participation in the TAG program.
22. Once a student is identified for TAG, a letter goes out to parents to advise them that their child has qualified for TAG. The letter also gives them the option to "opt out" if they do not want their child to participate in TAG.
23. In September of 2014, the Student's Parent contacted the TAG Coordinator and expressed his desire to participate in the writing of the Student's TAG plan. The TAG Coordinator then scheduled a meeting with the Parent for October 23, 2014 at 2:45 pm per this request.
24. The District encourages Parents to participate in the TAG planning for their children. Parents of children identified for TAG are given a questionnaire to complete to aid in TAG planning for their children. The Parents filled out and returned the District's TAG questionnaire noting repeatedly that the Student suffers from dyslexia and does not read quickly on this document. The Parent also noted the Student has been diagnosed as ADHD on this form. The TAG questionnaire is dated October 20, 2014.
25. It is customary at Parkrose Middle School for teachers to have TAG plans presented to parents for review during the fall school conferences. The level of TAG planning does not rise to the formality of an IEP plan because TAG is a not a formal program at the school, but rather a targeted method of teaching gifted children by focusing on their strengths and giving them work which challenges them individually. The first parent teacher conferences for the school years 2014-2015 were held on October 30, 2014 and October 31, 2015.
26. Prior to the Parent Teacher conferences scheduled for October 30, 2014 and prior to the TAG planning meeting initially scheduled for October 23, 2015, the Parent filed three (3) separate state IDEA complaints against the District with the Oregon Department of Education.
27. The Parent and TAG Coordinator set up a meeting for October 23, 2014 so that the Parent could participate in the writing of the Student's TAG plan. On October 19, 2014, the TAG Coordinator emailed the Special Education and Regular Education teachers in the District advising them of the impending meeting on October 23, 2014 with the Parent. The TAG Coordinator asked for guidance from the Student's teachers via email, while developing the TAG plan, because the Student had an IEP and the TAG Coordinator wanted to ensure that the Student would be properly served, and that the IEP was taken into consideration in the TAG plan. The TAG Coordinator also was concerned with compliance issues because the Parent was well versed with IDEA law and because the TAG Coordinator had also seen District personnel meeting with their lawyers in the school office regarding the Parent's multiple complaints.

³ Note that neither of these modifications/ accommodations appeared in the former IEP in effect, therefore, they constituted a change in the Provision of FAPE to the Student.

28. In response to the TAG Coordinator's email dated October 19, 2014, a SPED teacher advised the TAG Coordinator to cancel the TAG planning meeting with the Parent until a District representative or an administrator could be present. The District reported this was because the SPED teacher knew the TAG Coordinator was unfamiliar with IEPs as well as the IDEA and did not want the TAG Coordinator to use the wrong wording or to make a misstep in any meeting with the Parent. The District also reported the SPED teacher also advised the TAG Coordinator not to forward any emails regarding the Student, as she was concerned with avoiding any potential FERPA or student privacy violations.

29. The District cancelled the October 23, 2014 meeting with the Parent in an email dated October 21, 2014, advising that they could not hold a meeting without an administrator or Director of Student Services because the Parent had filed a complaint at the state level. Thereafter, the District began attempting to reschedule the meeting with all the appropriate personnel.

30. The timeline and results of emails between the District and Parent regarding the scheduling of and creation of a TAG meeting and creation of a TAG plan are as follows:

Date	Sender	Recipient	Message content
10/20/14	Administrator	Parent	Cancellation of original meeting scheduled for October 21, 2014 at 7:30 am. Request to reschedule for October 22, 2014 at 7:30 am so that Director of Student Services may attend.
10/20/14	Parent	Administrator	Parent cannot attend October 22, 2014 in the morning and questions need for administrator and Director of Student Services.
10/21/14	Administrator	Parent	Administrator explains that she and Director of Student Services must be present because of Parent has filed complaints at state level.
10/21/14	Parent	Administrator	Parent proposed various alternate dates for a morning meeting.
10/22/14	Administrator	Parent	Administrator requests afternoon settings for the TAG planning meeting.
10/22/14	Parent	Administrator	Parent requests that TAG plans be sent to him via email due to scheduling problems.
10/23/14	TAG Coordinator	Parent	Administrator agrees that District will send TAG plans to Parent.
11/18/14	Parent	TAG Coordinator	Parent expresses concerns about TAG plans he has received because they focus on conventions, specifically spelling and grammar, and he is concerned in light of Student's spelling/dyslexia.
11/19/14	TAG Coordinator	Parent	Tells Parent District is hosting other educators and a more complete response will be following on Friday, November 20, 2014.
12/11/14	Parent	TAG Coordinator	Parent has concern as to why there have been no TAG plans remitted to him.
12/14/14	TAG Coordinator	Parent	Advises Parent to offer suggestions for the TAG plans and also explains that science and math will not be completed until regular teachers return from leave. Offers an in person meeting to write the plan.

1/9/15	Parent	TAG Coordinator	Parent still interested in participating in the development of the TAG plan which has not yet occurred.
1/9/15	TAG Coordinator	Parent	Will be contacting soon with possible meeting dates.

31. The Student's Parents attended the parent teacher conferences and at that conference a TAG plan was presented to the Parents for a single class. The Parent refused to review the plan and sign it during the parent teacher conferences.
32. The Parent received a draft of the TAG plan for Language Arts and Social Studies. As part of that plan, the Student was to read one novel per month. Given the Student's SLD in Reading fluency, the Parent was extremely concerned about this TAG plan and wanted to have it revised.
33. Prior to October 20, 2014, the Parent had filed three IDEA complaints against the District which were subsequently dismissed by the Department and the Parent also reported they had requested an IEE for the Student.
34. The Student currently has TAG plans in place with all core subjects, i.e. Math, Language Arts, Science, and Social Studies.

IV. DISCUSSION

1. Prior Written Notice

Parent alleges that the District violated IDEA when it failed to provide a Prior Written Notice (PWN) following a change to the provision of a Free Appropriate Public Education (FAPE); specifically after an IEP meeting held on January 15, 2014 when the Specially Designed Instruction (SDI) in Writing on the Student's IEP was removed, without providing a Prior Written Notice to the Student's Parents. (OAR 581-15-2310 and 34 CFR 300.503)

A District must provide parents with Prior Written Notice whenever it proposes or refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE to the student.⁴ This notice must include an explanation of why the agency proposes or refuses to take the action and a description of the action proposed or refused by the agency.⁵ The PWN must include the description of each evaluation, procedure, assessment, record, or report that the agency used as a basis for the proposed or refused action.⁶ Providing parents with verbal notice of a refusal to initiate proposed changes as a substitute for a written notice does not fulfill the Prior Written Notice Requirements of the IDEA, regardless of whether the verbal notice is substantively proper.⁷

In this case, the District has failed to provide Prior Written Notices to the Parent on three separate required occasions.

First, during the January 15, 2014 IEP meeting, the Parent suggested a Spelling accommodation for the Student. The District verbally discussed this suggestion with the Parent and rejected it at

⁴ 34 CFR 300.503(a)

⁵ 34 CFR 300.503(b)(1) and (2)

⁶ 34 CFR 300.503(b)(3)

⁷ *Union Sch. Dist. v. Smith*, 20 IDELR 987 (9th Cir., 1994)

the IEP meeting. Thereafter, the District failed to provide the Parent the requisite Prior Written Notice which noted that the Parent's suggested accommodation would not be included in the Student's Specially Designed Instruction and why this decision was made. Here, a PWN was required under the IDEA, because the District refused to initiate a Spelling accommodation for the Student after the Parent made the proposal for a Spelling accommodation.

Because the District failed, on January 15, 2014 to provide Prior Written Notice, this allegation is substantiated.

2. Retaliation

The Parent alleges the District has retaliated and discriminated against the Student and Parent as a result of the Parent's participation in the state IDEA complaint process against the District. Specifically, after the filing of a state IDEA complaint on October 17, 2014, Parent was told that due to the fact that Parent filed a state IDEA complaint, any meetings with District staff, including meetings with teachers of the Student, required the presence of the District's Director of Student Services and the School Principal or Vice Principal. In addition, a meeting to develop the Talented and Gifted (TAG) plan for the Student was cancelled. Finally the complaint alleges that no meetings with the exception of two IEP related meetings have been schedule with the Parent since the filing of the state complaints in October of 2014. (OAR 581-015-2030(19) and 34 CFR 300.151).

OAR 581-015-2030(19) prohibits retaliation against an individual who has filed a complaint alleging violations of the IDEA. It provides that, "no person shall suffer retaliation or discrimination for having filed or participated in [the] complaint procedure. Any person who believes he or she has suffered retaliation or discrimination may file a complaint under this rule with the Superintendent."

According to the United States Department of Education's Office for Civil Rights (OCR), in order to establish a claim for retaliation, the following elements must be met:

1. The person alleging retaliation must have been engaged in a protected activity;
2. The public agency accused of retaliation took an adverse action toward the person. This action must be both "significant" and "adverse."
3. A causal connection (based on time sequence, knowledge, or other factors) exists between the protected activity and the adverse action to infer retaliation;
4. If the evidence establishes an adverse action and a causal connection, the agency investigating the claim determines whether there was a legitimate non-retaliatory reason for the adverse action and if so, whether such a reason could be considered pre-text for retaliation.

In October 2014, the Parent engaged in actions which are all considered protected activity by the law. First, Parent requested from the District an Independent Education Evaluation (IEE) for the Student on October 16, 2014. Next, the Parent filed three IDEA Complaints against the District in the fall of 2014, which were subsequently dismissed by the Department.

The Parent alleges three distinct adverse actions resulted because of these activities:

1. That the Parent could no longer have meetings with any District personnel without the presence of either the District's Director of Student Services or the middle school Principal or Vice-Principal;
2. That a meeting to develop the Student's TAG plan had been cancelled; and
3. That no other meetings with the exception of two IEP related meetings have taken place.

For an action to be considered, "adverse", it must be both "significant" and "adverse."

The requirement that either the Director of Student Services or the Vice Principal or Principal be in attendance during any meetings with Parent does not rise to the standard of "significant". The District is merely requiring more experienced personnel be in attendance for any meetings with the Parent to ensure that all requirements and procedures are followed and to ensure that no other high conflict situations occur, based on the disputes already filed against the District. The Parent was still able to meet with District staff, but was actually provided with more highly qualified educators at each potential meeting as a result of this requirement. Given that the Student is on an IEP but has a TAG plan, the TAG Coordinator may be quite unaware of the separate legal requirements of the IDEA, which is another reason why administrative staff may wish to attend these TAG meetings. A Special Education teacher has already raised concern regarding the TAG Coordinator's IDEA knowledge and opined that more experienced personnel should be at the TAG meetings for this Student. By requiring the presence of more senior administrators and staff who are more knowledgeable about IDEA requirements, the District is being cautious and attempting to prevent any future problems between the Parent and the District. The attendance of excess personnel is neither adverse nor significant. Although the parties are already engaged in "adverse" proceedings and any action taken by either party could be seen as "adverse", without a more significant or nefarious intent, the requirement of senior staff attending meetings in and of itself is not retaliatory. Therefore, the Parent's allegation that the District is engaging in retaliatory conduct by requiring the presence of the Director of Student Services or the Principal or Vice Principal in all meetings with the Parent does not rise to the standard set forth in OAR 581-015-2030(19).

Regarding the cancellation of the Talented and Gifted (TAG) meeting, this action could potentially be considered both adverse and significant. Pursuant to OAR 581-022-1320(2), a District must provide an opportunity for the parents of a child to provide input to and discuss with the district the programs and services to be received by their child who is participating in a TAG program. Once a student is identified for TAG, a parent has the opportunity to "opt out" of the program but if the parent does not "opt out" a TAG plan is created for that particular student so that the student may be more challenged in his or her classes. Here, the Parent was concerned that in the development of the Student's TAG program, that conventions would play a major part in the TAG program. The Parent was especially concerned that the Student was expected to read one novel per month as part of the TAG plan. The Parent was also concerned that the Student would be graded on conventions such as Spelling and Grammar as well.

Preventing the Parent from participating in the TAG planning is adverse to the Student's academic development and is significant as it goes directly to the Student's ability to be challenged while also considering the Student's unique needs based on the Specific Learning Disability in Reading fluency. However, there were many attempts to reschedule the meeting and other attempts were made to gain Parent input in the TAG planning process.

On October 20, 2014, the District cancelled the TAG planning meeting scheduled for October 22,

2014 at 7:30 am because neither the Vice Principal, Principal, nor Director of Student Services could attend a meeting at that time. The District, offered to reschedule with Parent for the very next day. However, the Parent was unable to attend a meeting at the time and day proffered by the District. The District then requested the Parent provide days wherein the Parent could attend an afternoon TAG planning session. The Parent stated that an afternoon setting is not feasible, but that the District could simply email the proposed TAG plans. On October 23, 2014, the TAG Coordinator agrees to email the TAG plans to the Parent. As such, District emailed the plans at this time. Further, on October 30, 2014 during the parent teacher conferences, the Parent was given a copy of a TAG plan for Science but refused to review it at that time.

On November 18, 2014, the Parent was in possession of at least two TAG plans for the Student as evidenced by emails from Parent to the District stating his concerns about the TAG plans, because they focused too much on conventions. Due to the Parent's concerns, the TAG plans were not put into effect in Social Studies or Language Arts.

The Parent did not receive any other TAG plans for the remainder of the first semester of the 2014-2015 school year. The Parent inquired on December 14, 2014 as to why no other TAG plans had been forthcoming for the Student. The TAG Coordinator explained that TAG is based in core classes and because the Student has two core classes with teachers who will be replaced in the second semester, having a TAG plan written so late in the semester would not be beneficial for Student, as those TAG plans would need to be rewritten by different teachers in a short period of time. The TAG Coordinator then asks the Parent to suggest a plan that would take into account the conventions and concerns of the Parent.

Beginning on January 7, 2015, the Parent inquired once more about the TAG plan. The TAG Coordinator suggested an in-person meeting with the core teachers to facilitate a TAG plan. The meetings are not currently scheduled, but the TAG plans were remitted to the Parent via email and the Parent subsequently approved the TAG plans. The Student is currently participating in the TAG program.

On its face, one could think the District delayed the Student's entry into TAG due to the numerous scheduling attempts and TAG draft plans. However, District reported it is not common for a parent to demand "hands on" planning to this extent in most TAG situations, which could have accounted for the delays. Also, the District continuously attempted to reschedule the TAG planning and to accommodate the Parent's schedule after the first meeting cancellation. There was no attempt to keep the Student from participating in TAG all-together, as evidenced by the Parent's receipt of a TAG plan at the parent teacher conferences at the end of October 2014. Further, the TAG planning was further frustrated by a change of semester/ core class schedule and the associated teaching personnel, a situation that was not precipitated by the Parent's filing of IDEA complaints or requesting an IEE. Although the delay in the Student's entry into the TAG program could potentially be seen as significant or adverse, there is no causal connection between the Parent exercising any protected rights and the delay of the Student's planning and subsequent entry into the TAG program. Therefore, there was a legitimate, non-retaliatory reason for the Student's delay into the TAG program, and the allegation of retaliation based on delayed entry into the TAG program is not substantiated.

As for the lack of new meetings with District portion of this allegation, as discussed above, one TAG planning meeting was cancelled due to the District's concerns about the TAG Coordinator's lack of experience with IDEA issues. However, the District did offer to reschedule the meeting the next day. Failure of both parties to have an amenable schedule for a meeting does not rise to the level of retaliation.

It should be noted that the Parent was willing to meet again later in the first semester to engage in TAG planning. More importantly, is the fact that the District suggested a meeting. The record shows that meetings are offered and there is an air of professionalism and respect between the District and Parent as well as a clear intention to create a workable educational plan for the Student. The District's failure to coordinate schedules of all necessary parties in a more timely manner does not rise to the level retaliatory conduct.

This allegation is unsubstantiated because the District continually pursued rescheduling the meetings with Parent, because the District continuously attempted to create and present TAG plans to the Parent, and because the Student is currently involved with the TAG program. These actions are not significant and adversary, and there is no causal connection between any significant actions and the Parent engaging in a protected activity. Therefore, this allegation is not substantiated.

V. CORRECTIVE ACTION⁸

In the Matter of Parkrose School District
Case No. 15-054-001

Action Required	Submissions	Due Date
<p>1) Prior Written Notice Requirements</p> <p>District training to all District special education staff on all requirements for Prior Written Notice found in 34 CFR 300.503. Training may be conducted in-person, via WebEx, or an online source.</p>	<ul style="list-style-type: none"> - Submit template of training materials and items to the Department for approval to Rae Ann Ray and Jan Burgoyne at the addresses listed below listed below. - Submit training roster of attendees and their positions as well as an agenda to the Department at the addresses listed below 	<p>April 30, 2015</p> <p>June 1, 2015</p>

⁸ 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).

	Corrective action plans and related documentation should be submitted to the Department via US Mail or email to raeann.ray@state.or.us and jan.burgoynes@state.or.us .	
--	---	--

Dated: this 16th Day of March, 2015



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

Mailing Date: March 16, 2015