

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Educational Service)
District)
)
)

FINDINGS OF FACT
CONCLUSIONS AND
FINAL ORDER
Case No. 15-054-014a

I. BACKGROUND

On April 6, 2015, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a Student (Student) residing in (District). The Parents 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 Educational Service District (ESD) by email on April 8, 2015. At the same time, the Parents requested in writing that the Department also conduct a special education investigation under OAR 581-015-2030 with the District. The Student lives in the District, and receives services from the ESD.

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. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint; or for extenuating circumstances. The ESD, the District and the Parents asked for and received a 26 day extension for the purpose of local resolution. The local resolution attempts were not successful, so the complaint investigation was conducted using the new dates, as outlined below. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.¹ Based on the date the Department received the complaint, the relevant period for this complaint is April 6, 2014 through April 6, 2015. The Final Order is due out July 1, 2015.

On May 6, 2015, the Department's complaint investigator sent a *Request for Response* to the ESD identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of May 20, 2015.

On May 18, 2015, the ESD submitted a *Response* indicating they did not dispute the first allegation in the complaint, but did dispute allegations 2, 3, and 4 of the Parent's complaint. In total, the ESD provided these materials;

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|--------------------------------------|------------|
| 1. Prior Written Notice Evaluation | 1/11/2012 |
| 2. Permission to Place in SPED | 4/4/2012 |
| 3. Permission to Place in SPED | 11/12/2013 |
| 4. Prior Written Notice Evaluation | 11/21/2013 |
| 5. Kindergarten Evaluation Questions | 2/26/2014 |
| 6. Prior Written Notice | 5/13/2014 |
| 7. Prior Written Notice | 5/13/2014 |
| 8. Attendance Record | 8/25/2014 |
| 9. Prior Written Notice | 8/26/2014 |
| 10. Prior Written Notice | 8/26/2014 |

¹ OAR 581-015-2030 (5).

11.	Prior Written Notice	8/26/2014
12.	Mail Receipt	8/28/2014
13.	IEP	9/2/2014
14.	IEP Goal Pages	9/2/2014
15.	Services Summary	9/2/2014
16.	Placement Determination	9/2/2014
17.	Prior Written Notice	9/2/2014
18.	Permission to Place in SPED	9/2/2014
19.	Meeting Notice for 9/5/14	9/4/2014
20.	Placement Determination	9/5/2014
21.	Prior Written Notice	9/5/2014
22.	Meeting Minutes Pre-School Parent Board	9/10/2014
23.	Meeting Notice for 10/8/14	9/13/2014
24.	Meeting Minutes Pre-School Parent Board	10/1/2014
25.	Prior Written Notice Evaluation	11/4/2014
26.	Meeting Minutes Pre-School Parent Board	11/5/2014
27.	Sensory Processing Measure Pre-School	12/2/2014
28.	Meeting Minutes Pre-School Parent Board	12/3/2014
29.	Meeting Minutes Pre-School Parent Board	1/7/2015
30.	Speech Language Log	1/27/2015
31.	Behavior Report	2/2/2015
32.	Meeting Minutes Pre-School Parent Board	2/4/2015
33.	Meeting Notice for 2/11/15	2/10/2015
34.	Placement Determination	2/11/2015
35.	Meeting Minutes	2/11/2015
36.	Meeting Minutes	2/11/2015
37.	Meeting Minutes	2/17/2015
38.	Placement Determination	2/17/2015
39.	ESD letter about meeting with staff on FERPA and privacy rights	2/26/2015
40.	Speech Language Log	3/3/2015
41.	Meeting Notice (MN) for 3/16/15	3/11/2015
42.	Placement Determination	3/16/2015
43.	Prior Written Notice Evaluation	3/16/2015
44.	Meeting Minutes	3/16/2015
45.	Meeting Minutes	3/16/2015
46.	Student Observation Notes	4/1/2015
47.	Meeting Minutes Pre-School Parent Board	4/1/2015
48.	Therapy Notes	4/13/2015
49.	Speech Language Assessment Summary	4/16/2015
50.	Evaluation Summary Report	4/16/2015
51.	Meeting Minutes	4/16/2015
52.	Placement Determination	4/20/2015
53.	ESD Response Letter	5/14/2015
54.	Communication Book Copy	
55.	Communications from Parents	
56.	Communication Book Copy	

57. By-Laws of private Preschool, Inc.
58. ESD policies

During the on-site interviews, the ESD staff gave the complaint investigator additional materials. These documents were paper copies, and included:

1. The Student's Attendance Records, 9/14 through 2/15;
2. A copy of the Privacy policy suggested to the private Preschool;
3. A job description for the private Preschool teacher;
4. An out of date copy of the Preschool Parent Handbook;
5. A copy of meeting minutes of the March 11, 2015 private Preschool Board Meeting;
6. A copy of the letter the ESD Superintendents sent to the Parents in response to their complaint that the ESD Early Childhood Director violated the Student's privacy rights;
7. Notes from one of the ESD Co-Superintendent's working files;
8. A copy of the Prior Written Notice sent to Parents after the transition meeting held on 5/13/15; and,
9. Copies of sign-in sheets and meeting notes from IEP meetings held in February—April, 2015, in chronological order.

The investigator scanned and forwarded these new documents to the Parent via email.

On May 9, 2015, the Parent submitted a packet of materials for the Department's investigator to review. In total, the Parent provided these materials:

- A. Response Letter, 5/10/15;
- B. IEP, 9/5/14;
- C. Request for records to ODE, 3/25/15;
- D. Emails between private preschool and both Districts;
- E. Placement Determinations, 9/2/14 & 2/17/15;
- F. Log of SPED services withheld, 3/16/15;
- G. Request for a comprehensive evaluation to determine the Student's current level of academic functioning, 3/9/15; and,
- H. Statement by Parent about an incident in the kindergarten classroom, 3/16/15.

After the on-site interview, the Parents emailed additional documents to the complaint investigator. The investigator forwarded these to the ESD and the Districts. These materials included:

1. A copy of a journal the Parents kept in January and February, 2015;
2. A statement from an individual tasked with licensing the private Preschool regarding this individual's observation of the Student;
3. A copy of the Parent's letter of complaint sent to the ESD on April 26, 2014;
4. A copy of a letter of concern the Parents sent to the ESD on 5/18/15;
5. A copy of the ESD response to the Parent's complaint, dated 5/16/15;
6. Copies of notes sent from the Preschool to the Parents;
7. Parent's notes from a November conference with the Preschool; and,
8. An updated Evaluation Summary Report, dated, 4/16/15.

The Department's complaint investigator determined that on-site interviews were needed. On June 11, 2015, the complaint investigator interviewed the ESD's Assistant Superintendent for Special Education; Co-Superintendent 1; Speech Language Pathologist; and Special Education Teacher. On June 12, 2015, the Department's complaint investigator interviewed the ESD's Speech Language Pathologist's Assistant; Early Childhood Director; and Co-Superintendent 2.

On June 11, 2015, the complaint investigator interviewed the Parents. On June 16, 2015, the complaint investigator interviewed by telephone the private Preschool Board Chair. 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 Parents' 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 April 6, 2014 to the filing of this complaint on April 6, 2015.

	Allegations	Conclusions
1	<p><u>Confidentiality of Student Education Records:</u></p> <p>a. The Parents allege that the ESD violated the IDEA when it discussed the Student's Individualized Education Program (IEP), placement, disability, and confidential educational issues at a public Board Meeting held in the District on February 4, 2015. The Parents allege that members of the board spoke of the Student by name during the meeting. Further, the Parents allege that staff from the ESD revealed information about the Student in the public meeting, and specified that the Student is a Student with a disability and with an active IEP.</p> <p>OAR 581-021-0265 and 34 CFR Sec. 99.7.</p>	<p><u>Not Contested:</u></p> <p>The ESD does not contest this allegation and took steps to repair the situation. The ESD investigated the incident, met with the ESD employee who attended the meeting, and instructed the employee that the employee should have stopped the discussion as soon as it started at the Preschool Board Meeting. As a Corrective Action, the ESD held a "refresher" training for all employees on the provisions of the Family Education and Right to Privacy Act (FERPA). Additionally, the ESD gave the Early Childhood Director a sample policy on confidentiality to share with the Preschool Board. The Preschool Board will consider and adopt this policy at its first Board Meeting when the 2015-2016 school year begins.</p>
2	<p><u>Prior Written Notice (PWN):</u></p> <p>The Parents allege that the ESD violated the IDEA when it did not provide the Parents Prior Written Notice that the ESD intended:</p> <p>a. to discuss the Student at a public Board Meeting;</p> <p>b. to change the Student's placement; and,</p> <p>c. to suspend the Student from the program.</p> <p>OAR 581-015-2310 & 34 CFR 300.503</p>	<p><u>Substantiated in Part:</u></p> <p>The purpose of a Prior Written Notice is to provide notice to parents regarding proposed or refused special education or related services actions, so is not relevant to community board meetings. However, the ESD should have sent Prior Written Notices when the Student's placement was discussed and changed during several different IEP meetings in February/March 2015, and when the</p>

		Parent requested a change in services in September 2014. In addition, the ESD should have also provided procedural safeguard information when the Student was suspended from the Preschool by the District. The Department substantiates this allegation in part and orders Corrective Action.
3	<p><u>Placement of the Child:</u></p> <p>a. The Parents allege that the ESD violated the IDEA when it changed the Student's placement at a public Board Meeting and did not involve the Parents or other individuals knowledgeable about the Student in the placement determination process.</p> <p>OAR 581-015-2250 & 34CFR 300.116</p>	<p><u>Not Substantiated:</u></p> <p>Even though the discussion at the Board Meeting was inappropriate and violated the Student's FERPA rights, the Board did not formally conclude the Student should be immediately removed from the Preschool. Actions by the Preschool Board Chair to contact the District to request removal of the Student from the Preschool after receiving a complaint from another preschool parent the morning after the Board Meeting cannot be applied to the ESD. The ESD is not accountable for the independent actions of District. Therefore, the Department does not substantiate this allegation on the part of the ESD.</p>
4	<p><u>Free Appropriate Public Education (FAPE) and Age Ranges:</u></p> <p>a. The Parents allege that the ESD violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.</p> <p>OAR 581-015-2040 & 34 CFR 300.101 & CFR 300.201</p>	<p><u>Substantiated:</u></p> <p>Given the fact that the ESD violated the Student's privacy rights, and did not provide adequate procedural safeguards regarding a change in placement and procedural notice about the Student's suspension to the Parents, the Department substantiates this allegation and orders Corrective Action.</p>

Issues outside of the scope of the IDEA:

The Parents also allege that the ESD discriminated against the Student due to issues of ethnicity. This allegation falls under the purview of the Office of Civil Rights. You may contact Winston Cornwall at the Oregon Department of Education or the US Department of Education's Office of Civil Rights in Seattle, Washington, regarding any Civil Rights or discrimination issues. Complaints about teachers or staff may be filed with the Oregon Teacher Standards and Practices Commission (TSPC).

III. FINDINGS OF FACT:

General Information Pertinent to the Complaint:

- A. Through Resolution Services, the ESD provides all Special Education services to the District. This includes case management, evaluation, and direct services to Students in the District who are eligible for Special Education.
- B. The District employs no licensed Special Education staff.
- C. For many years, there has been a private Preschool in the District community. Head Start money, grants, and tuition paid by the Parents, fund the Preschool. A Board of Directors governs the Preschool. All members of the Board must be Parents of children attending the Preschool; with the exception of a Business Manager, who may not be a parent of a Preschool child. The District provides in-kind support to the Preschool (room, utilities, etc.)
- D. The ESD employs a Director of Early Education/Parent Advocacy, who coordinates the Head Start and Oregon Pre-Kindergarten programs in the ESD service area. This individual provides guidance to the private Preschool.
- E. During the time under investigation, the private Preschool employed two individuals. The first was a person with previous preschool teaching experience. The second was a person who had no previous preschool teaching experience. At the beginning of the 2014-2015 school year, the individual with previous experience was the Teacher for the Preschool, and the other person worked as an Assistant to the Teacher for a limited amount of time each day.
- F. In January 2015, the Teacher in the Preschool resigned and left the program after the first two weeks of the month. The Preschool Board of Directors appointed the Assistant to the position of Teacher, and asked the ESD Director of Early Education to mentor this person.

Background Information:

- 1. The Student is 6 years old, and is eligible for Special Education services as a Student with a Communication Disorder (CD). Previously, the Student had a secondary eligibility of Developmental Delay, while in Early Childhood Special Education (ECSE).
- 2. On April 15, 2014, the Student turned age 6 and was no longer eligible for Early Childhood Special Education. The Parents, ECSE staff and both the ESD and the District staff members met in an IEP meeting on May 13, 2014. The team decided to retain the CD eligibility, and discussed elements of a school-age IEP. The team also decided that the Student would start the 2014-2015 school year placed in General Education in the kindergarten classroom in the District. The team did not complete any IEP paperwork at this meeting.
- 3. On May 13, 2014, District A sent the Parents a Prior Notice of Special Education Action (PWN) stating the team had met that day and decided the Student's placement in the school-age program would include removal from the General Education classroom for 8% of the day for specially designed instruction in Reading, Writing, Math and Language. In this PWN, the Case Manager noted that all of the goals from the Student's Individual Family Service Plan (ISFP) would transition to the IEP.

4. In late August, 2014, the Parents informed the District that they did not want to sign any Special Education paperwork until they knew exactly what the Student's service, placement and program would be. The IEP team met on September 2, 2014. The team wrote an IEP for the Student, and the Parents signed permission for Initial Placement in Special Education on September 2, 2014.
5. The IEP contained these provisions:

Consideration of Special Factors:	Student has communication needs;
PLAAFP: Present Levels of Academic Achievement and Functional Performance	<p>Student is able to connect with people, and wants to do well.</p> <p>Student has a good sense of humor;</p> <p>As reported by the Assessment, Evaluation, and Programming SYSTEM (AEPS) Level 2, the Student has demonstrated growth during the 2012-2013 and 2013-2014 school years in Fine Motor, Gross Motor, Adaptive, Cognitive, Social Communication and Social Skills;</p> <p>Student can identify colors, 1/6 geometric shapes, 3/26 letters, 1/10 numbers, and is able to follow two-step instruction and instructions given in a group;</p> <p>Student learns well when given visual models, time to process information and cues/prompts from a teacher;</p> <p>Student responds to positive reinforcement;</p> <p>Student does not respond rapidly, needs time to process/answer a question; and,</p> <p>Student scored SS 78 on receptive language on the Test of Early Language Development and SS 66 in expressive language in the same test.</p>
District and Statewide Assessments:	None given at kindergarten level.
Goals:²	Expressive Communication; Receptive Communication; Math; Writing; and, Reading.
SDI: Specially Designed Instruction	Math: 30 minutes weekly SPED and Regular Ed; Reading: 60 minutes weekly SPED and Regular Ed; Writing: 60 minutes weekly SPED class and Regular Ed; and, Speech/Language: 30 weekly SPED class.
Related Services:	None needed at this time
Supplementary Aids/Services, Modifications, Accommodations:	Wait time to process information; Positive Reinforcement (verbal/visual); Visual Models/Multisensory; Peer tutor, and; Choral Responses/Direct Instruction

² The team wrote that progress on the IEP goals and objectives would be reported "on the same schedule as grades".

Supports for School Personnel:	Consultation with staff by special education department
Non-Participation Justification:	Student will be removed from the general education setting for 90 minutes per week (8%) for specially designed instruction in reading, writing, math and speech/language services, as the Student needs individualized instruction at appropriate level in a small group or 1-to-1 setting.
ESY: Extended School Year:	None needed.
Placement Determination:	Partial day, with 80% or more in the regular education setting with removal for specially designed instruction to include speech/language and academics (reading, writing, and math)

6. After two days on this schedule in the General Education classroom, the District called the Parents and asked them to attend another IEP meeting. At that meeting, the District Kindergarten Teacher reported to the team that the Student was struggling to participate in the general education setting. The Kindergarten Teacher reported that the Student's language was difficult to understand, the Student was constantly in motion, and that the Student had difficulty using the bathroom independently. After consideration, the team decided to place the Student back in the private Preschool for 4 hours per day, and to continue the 8% pull-out for specially designed instruction in Speech/Language, Reading, Writing, and Math for a total of 2.5 hours per week.
7. On September 5, 2014, the ESD sent the Parents a PWN notifying them of the change in placement. The Student began attending the private Preschool immediately. The ESD Special Education Teacher arranged a schedule in which the Teacher would work 1 to 1 with the Student on Monday, Tuesday and Wednesday each week for 30 minutes. The Student would then return home, until it was time to begin class at the private Preschool (11:30 - 3:30, daily). At the direction of and under the supervision of the ESD Speech/Language Pathologist (SLP), Speech/Language Assistant (SLPA) worked with the Student one day per week for a total of 30 minutes. Sometimes, the SLPA worked 1 to 1 with the Student, and sometimes the SLPA worked with the Student in the preschool group (total 7 Students).
8. On September 10, 2014, during the private Preschool Board Meeting, a member of the Board suggested that the Board Chair talk to the Superintendent of the District about the District contributing \$2,000.00 more for "the special ed (sic) Student that they have placed in the preschool as it takes a full-time person to aide." The Board member does not refer to the Student by name.
9. On September 23, 2014, the ESD Special Education Teacher, and the Speech/Language Pathologist met with the private Preschool Teacher and Preschool Assistant. The ESD staff provided information about the Student and reviewed the IEP with the two preschool staff.
10. On September 29, 2014, the Parents sent a memo to the ESD Speech/Language Pathologist, who was the Student's Case Manager. In this memo, copied also to the ESD Special Education Teacher and the private Preschool Teacher, the Parents stated:

"Effective today, our Student's IEP will consist of Preschool and Speech Therapy. We feel for the time being that it is best for our Student to spend as much time as possible with peers in class."

The ESD staff did not send the Parents a PWN indicating what action the ESD would take in response to this request. There is also nothing in the record to indicate that the ESD suggested or held an IEP meeting with the Parents to discuss this request for the suspension of specially designed instruction in Reading, Math and Writing.

11. Again, an unidentified person at the October 1, 2014 private Preschool Board Meeting suggested that the Board Chair talk to the District Superintendent about an additional \$2,000.00 for the "special ed" Student. The Board member does not refer to the Student by name.
12. On September 30, 2014, the Case Manager sent the Parents a meeting notice for an IEP meeting to be held on October 8, 2014. The meeting was actually held on October 15, 2014. The Parent, the ESD Case Manager, the District Superintendent, the District Kindergarten Teacher, the District Paraprofessional, the ESD Special Education Teacher and the private Preschool Teacher all attended the meeting. The Parents expressed two concerns: first that pull-out instruction for specially designed instruction in academic goals would remove the Student from socialization opportunities; and, second, that using any electronic devices might induce a seizure in the Student. After a discussion, during which the private Preschool Teacher reported that the Student was having positive interaction with peers on the playground, the team decided to continue the SDI three days per week from 10:00 a.m. - 10:30 am. The team agreed that the IEP was appropriate and that the meeting held on this date could serve as the yearly review.
13. On October 21, 2014, the Chair of the private Preschool Board of Directors wrote an email to the District Superintendent, and included the ESD Early Childhood Director in the email. The Board Chair asked for a meeting with the District Superintendent and with the ESD Early Childhood Director to discuss the questions the Preschool Board members had about the Student. The three individuals met some time after this email (date unknown), and the Preschool Board Chair asked for \$3,000.00 to help support the Student. During interviews, all three individuals stated that it was their understanding that this money would be used to increase the amount of time the Preschool Assistant was in the classroom; but that the Preschool Assistant would not be specifically assigned to support the Student.
14. On November 4, 2014, the Case Manager requested permission from the Parents for an evaluation of the Student's small motor skills. The Parents signed permission for this evaluation on November 6, 2014.
15. At the private Preschool Board Meeting on November 5, 2014, the Board Chair made a motion to include the Student in the TS Gold³ formative assessment system and suggested that the Preschool pay for this. The Board seconded and approved the motion, all in favor. In the minutes of this private Preschool Meeting, the Student is mentioned by name in this discussion.
16. On December 2, 2014, at the request of the ESD Occupational Therapist (OT), the Parent completed the Sensory Processing Measure – Preschool, as part of the OT evaluation. The Parent noted that the Student hates fire alarms, and that only family members touch the Student's face.

³ TS GOLD was adopted by Oregon as the state's formative assessment to be used in programs receiving Oregon Head Start Prekindergarten funding.

17. On December 3, 2014, at the private Preschool Board Meeting, the Secretary noted in the Board minutes that the District Superintendent had approved \$3,000.00 for the Special Education Student. The Student was not mentioned by name in these minutes.
18. When the Preschool resumed in January, 2015, the experienced Preschool Teacher resigned, and the Preschool Board moved the Assistant to the teacher position. For several days at the beginning of school in January 2015, both teachers were in the classroom for transition services. The Student was present on January 5 - 8; but absent on January 12 - 15. The Student then attended for 7 days in a row, January 20 - 29, 2015. The Student attended school from February 3 - 5, 2015, in the Preschool program.
19. The private Preschool held another Board Meeting on January 7, 2015. In the minutes of this meeting, the Board Secretary notes that the Preschool Business Manager will submit an invoice to the District in the amount of \$3,000.00 which the Superintendent of the District approved. The Student is not mentioned by name in the minutes of this meeting.
20. On January 29, 2015, the Preschool Board Chair sent another email to the District Superintendent, asking for a meeting with the Superintendent. In this email, the Board Chair stated that the Student is becoming uncontrollable in the classroom and that the new Teacher is not equipped or educated enough to know what to do to resolve the issues. After receiving this email, the Superintendent called the ESD Special Education Teacher and asked if the Special Education Teacher would meet with the Preschool Teacher to provide some support.
21. On February 2, 2015, the Special Education Teacher met with the Preschool Teacher and discussed beginning the process of completing a Functional Behavior Assessment (FBA).
22. On February 4, 2015, the private Preschool Board met again. The Business Manager of the Preschool records all Board Meetings. During this particular meeting, under the agenda item of "Teacher Input", the Preschool Teacher began discussing the Student (by name), and the difficulties the Student was having in the classroom. The Board Chair, Business Manager, the ESD Early Childhood Director, and two other parent board members attended this meeting. The Board Chair told the group that the Chair had contacted the District Superintendent, who agreed to look for more resources. The group discussed the Student's behavior, and several parents commented that their children were becoming frightened of the Student. Although the ESD Early Childhood Director informed the Board that they should contact the Special Education Teacher and Case Manager, the Director did not stop the discussion of confidential information that the Preschool Teacher shared with the group. The group reached the conclusion that the Board Chair should inform the District Superintendent that an IEP meeting needed to be arranged.
23. The next morning, February 5, 2015, the Board Chair of the Preschool received a text message from another parent of a child in the Preschool. This parent told the Board Chair that the parent had witnessed the Student pushing other Students down, and that the parent would withdraw her child if the Board Chair did not "do something about this". Consequently, the Board Chair sent an email to the District Superintendent, and requested that the Student be "removed from the Preschool effective 2/9/15 because of safety concerns for the other children and be in effect until a meeting has occurred and a plan be put in place on how to proceed forward." No one from the Preschool contacted the Special Education Teacher or Case Manager and shared this information. Additionally, no one from the Preschool called the Parents to give them this information.
24. The District Superintendent replied on February 6, 2015. In this email the District Superintendent suggested a meeting that day, and asked if the Board Chair had notified the

Parents that the Student was not allowed back in the Preschool. The Board Chair responded by email and informed the District Superintendent that the ESD staff had said to have the District Superintendent communicate with the Parents. After receiving this email, the District Superintendent sent an email to the Parents informing them that the Student would not be allowed back to the Preschool until an IEP meeting could be arranged and held. Unfortunately, the District Superintendent sent the email to the wrong email address. When the District Superintendent did not get a response from the Parents, the Superintendent called the Parents. The District Superintendent also informed the Case Manager, who called the Parents to arrange an IEP meeting. The District Superintendent did not believe this was a suspension and therefore, did not complete any suspension paperwork or provide procedural guidance to the Parents.

25. The ESD Case Manager arranged an IEP meeting for February 11, 2015, and sent the Parents a meeting notice. Both Parents attended this meeting, as did the District Superintendent, Case Manager, Special Education Teacher and the District Kindergarten Teacher. At this meeting, the Parents expressed concern that their Student had been unduly punished by being removed from the Preschool. The Parents asked for an apology from the Preschool Board, and told the team that there had been no behavioral issues until the change in Preschool Teacher. The team considered placing the Student back in the kindergarten classroom for half days, with an assistant. The Parents asked for time to consider this placement and the team scheduled another meeting for February 17, 2015.
26. The same team met again on February 17, 2015. In addition, the Parents brought an Advocate to the meeting, and the District Paraprofessional, the ESD SLP Assistant and the ESD Co-Superintendent attended the meeting. In the meeting, the Special Education Teacher stated that the Student was not difficult to teach, and the Parents discussed the tape of the Preschool Board Meeting and their concern that the discussion had violated their Student's Civil Rights. The team agreed to place the Student back in the kindergarten class under a part-time schedule. The Student would work with the Special Education Teacher from 10:00 am - 10:30 a.m. Monday, Tuesday, and Wednesday; would be in the kindergarten class 10:30 a.m. - 11:00 a.m.; and would participate in lunch and recess from 11:00 a.m. - 11:50 a.m. with the kindergarten class. The Parent agreed to attend the lunch and recess time to help supervise the Student. The Student would return to the kindergarten class with the Paraprofessional from 11:50 a.m. - 1:10 p.m. each day and would attend the Music class with the kindergarten students from 1:10 p.m. - 1:30 p.m., each day. The Student would return home between 1:30 p.m. - 1:45 p.m. each day. The IEP team agreed to try this schedule but did not finalize it as a placement decision. No changes were made to the IEP, and neither the ESD or the District sent the Parents a PWN confirming this decision.
27. On February 20, 2015 the Case Manager called the Parents to discuss the new placement. The Parents reported that the first day (February 19, 2015) had gone well. The Parents asked the Case Manager about arranging some additional testing/evaluation for the Student. They discussed various types of evaluations, but did not reach any firm conclusion. The Case Manager talked with the Parents again on February 23, 2015. On that day, the Parents told the Case Manager that a Parent had gone to the kindergarten in response to a call from the school because the Student was having difficulty. The Parents and the Case Manager agreed to a placement meeting on March 4, 2015. The next day, February 24, 2015, the District Superintendent called the Case Manger to say that the Parents had decided not to send the Student to school today or the next day because they felt the Student was not ready and they wanted to think about what to do next. The Case Manager called the Parents to inform them that the Special Education services outlined on the IEP were always available and that the Student was welcome to come to the school to meet with the SLP Assistant and the Special Education Teacher for services.

28. On March 3, the SLP worked with the Student for 45 minutes on fine motor and sound symbol relationships. The SLP Assistant worked with the Student on April 7th, 14th, for 45 minutes each time on various language skills. On March 9, 2015, the Parents sent a letter to the IEP team members and requested that the Special Education staff (SLP Assistant & Special Education Teacher) provide services to the Student in the home setting until such time as a new IEP could be written and put into place.
29. Between March 4 – 11, the Case Manager scheduled an IEP meeting for March 16, 2015, and talked with the Parents several times about this meeting. In addition, the Case Manager met with the ESD Co-Superintendents about the confidentiality issue from the February 4, 2015 Preschool Board Meeting. The ESD Co-Superintendents had begun an investigation to discern whether or not the conversation at that meeting constituted a violation of the Family Educational Rights and Privacy Act (FERPA). As part of this investigation one of the ESD Co-Superintendents met with the Parents, and both ESD Co-Superintendents and the ESD Special Education Director listened to the audio recording of the Preschool Board Meeting.
30. On March 11, 2015, the Case Manager sent the Parents a meeting notice for an IEP meeting to be held on March 16, 2015. The Parents informed the ESD that they had invited three individuals to attend the meeting; one person from Family Network,⁴ one person from FACT,⁵ and a family friend/advocate who attended a previous IEP meeting. The meeting was held on March 16, 2015. The ESD Special Education Director, the District Superintendent, the District Kindergarten Teacher, the ESD Special Education Teacher, the ESD Case Manager, and Parents attended the meeting in addition to the individuals invited by the Parents. The team discussed the major parts of an IEP; the process of evaluating a child with a disability; and five placement options. The options were: 1. PE, Music, Social Time with Special Education services; 2. In kindergarten part time with additional training for staff; 3. Full Day Kindergarten; 4. Home placement with services; and, 5. Withdrawal from school. The team decided to create a placement in which the Student participated in PE, lunch and socialization with the kindergarten class; and also decided to incorporate evaluation time into the schedule. The Parents signed permission for a re-evaluation to include: Academic testing, and a complete Speech and Language evaluation as well as observations of the Student. The Parents also informed the District that their pediatrician had arranged for the Student to be evaluated at a diagnostic clinic for children with disabilities; but that this could not occur until fall, 2015.
31. The SLP and the Special Education Teacher evaluated the Student from April 1 - April 16, 2015. The team met on April 15 and April 20 to consider the results of the evaluation and to discuss placement. On April 20, 2015, the team decided to place the Student in the Title I program at the elementary school for a partial day with Special Education services provided.
32. On May 7, 2015, due to a separate conflict, the Parents withdrew the Student completely from the District.

⁴ Family Network is an organization located in Eastern Oregon that serves families of children with disabilities. "We encourage and equip families of children with disabilities to actively engage and embrace community; creating acceptance and inclusion for all." http://roccosfamilynetwork.org/?page_id=6701

⁵ FACT is a family leadership organization based in Oregon for individuals with disabilities and their families. <http://factoregon.org/>

IV. DISCUSSION

Confidentiality of Student Education Records:

The Parents allege that the ESD violated the IDEA when it discussed the Student's IEP, placement, disability, and confidential educational issues at a public Board Meeting held by the private Preschool on February 4, 2015. The Parents allege that members of the Board spoke of the Student by name during the meeting. Further, the Parents allege that staff from the ESD revealed information about the Student in the public meeting, and specified that the Student is a Student with a disability and with an active IEP.

Under OAR 581-021-0265, a school district or other educational entity shall keep confidential any record maintained on a child with a disability. Education Records are those records that are directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution.⁶

Here, the record shows that the Preschool discussed the Student's needs, educational difficulties and disability issues in an open public meeting. The ESD does not contest this allegation and took steps to repair the situation. The ESD investigated the incident, met with the ESD employee who attended the meeting, and instructed the employee that the employee should have stopped the discussion as soon as it started at the Preschool Board Meeting. As a Corrective Action, the District held a "refresher" training for all employees on the provisions of FERPA. Additionally, the ESD gave the Early Childhood Director a sample policy on confidentiality to share with the Preschool Board. The Preschool Board will consider and adopt this policy at its first Board Meeting when the 2015-2016 school year begins.

This allegation is not contested.

Prior Written Notice:

The Parents allege that the ESD violated the IDEA when it did not provide the Parents Prior Written Notice that the ESD intended: a. to discuss the Student at a public Board Meeting; b. to change the Student's placement; and, c. to suspend the Student from the program.⁷

As per OAR 581-015-2310 & 34 CFR 300.503, a school district or other educational entity must give parents of a child with a disability Prior Written Notice within a reasonable period of time before a district proposes to initiate or change, or refuses to initiate or change, special education and related services.

In this case, the ESD would not have provided Prior Written Notice about a Board meeting, unrelated to the proposal or refusal of special education and related services. After the ESD staff learned that the District had suspended the Student from the Preschool, no one on the ESD staff sent the Parents procedural guidance regarding this action. Although not related to this specific allegation, the Department notes that the ESD staff did not provide the Parents with Prior Written Notice for any of the placement decisions the IEP team made in February, March and April, 2015, or when the Parent requested Special Education services at home on March 9, 2015. Even though at least one Parent was present at all of these meetings, and participated in the discussions, the ESD must still provide Prior Written Notice.

⁶ OAR 581-021-0220 (6) (a).

⁷ Please see Final Order 15-054-014b for further discussion of the suspension issue.

In essence, the ESD developed a pattern of not sending Prior Written Notices to inform the Parents of the ESD's intention to change the Student's placement. Given this, the Department substantiates this allegation in part and orders Corrective Action.

Placement of the Child:

The Parents allege that the ESD violated the IDEA when it changed the Student's placement at a public Board Meeting and did not involve the Parents or other individuals knowledgeable about the Student in the placement determination process.

Under OAR 581-015-2250 & 34 CFR 300.116, a school district must ensure that the educational placement of a student with a disability is determined by a group of persons, including the parents, who are knowledgeable about the placement, the meaning of evaluation data, and knowledgeable about the child (IEP team). When a District employee attends a meeting as part of his or her employment duties, that employee is responsible to represent the district. This responsibility includes ensuring that a student's rights under IDEA are protected and that the provisions of the law are met.

Here, the record shows that the Student's placement was not changed by the private Preschool Board during the Board meeting. The Student was suspended from the private Preschool School by the District on February 6, 2015, and not by an IEP team. The ESD cannot be held accountable for the independent actions of the Preschool Board Chair, who is not an ESD employee. Therefore, the Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE):

The Parents allege that the ESD violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.

Pursuant to OAR 581-015-2040 & 34 CFR 300.101 & CFR 300.201, school districts and other educational entities, acting on behalf of local school districts, must provide Special Education and related services to all resident school-age children who are eligible for Special Education. Under the law, a district provides FAPE when it writes and implements an IEP for an eligible child in the designated placement, In addition, a district provides FAPE when, as part of this process, it provides the student with the student's procedural safeguards, and protects the student's privacy rights.

In this case, the ESD was acting on behalf of the District to provide FAPE to the Student in a private Preschool setting chosen by the IEP team. The ESD Special Education staff participated in the development of the IEP, and provided specially designed instruction to the Student. The ESD violated the Student's privacy rights, and did not provide appropriate procedural guidance informing the Parents that the Student had been suspended from the private Preschool by the District, which then resulted in a change of placement.

The Department substantiates this allegation and orders Corrective Action.

CORRECTIVE ACTION⁸

*In the Matter of the Educational Service District
Case No. 15-054-014a*

	Action Required	Submissions⁹	Due Dates
1.	<p><u>Confidentiality of Student Education Records:</u></p> <p>a. The Parents allege that the ESD violated the IDEA when it discussed the Student's Individualized Education Program (IEP), placement, disability, and confidential educational issues at a public Board Meeting held in the District on February 4, 2015. The Parents allege that members of the board spoke of the Student by name during the meeting. Further, the Parents allege that staff from the ESD revealed information about the Student in the public meeting, and specified that the Student is a Student with a disability and with an active IEP.</p> <p>OAR 581-021-0265 and 34 CFR Sec. 99.7.</p>	<p>The ESD did not contest this allegation and took steps to repair the situation. The ESD investigated the incident, met with the ESD employee who attended the meeting, and instructed the employee that the employee should have stopped the discussion as soon as it started at the Preschool Board Meeting. As a Corrective Action, the ESD held a "refresher" training for all employees on the provisions of the Family Education and Right to Privacy Act (FERPA).</p>	<p>Not applicable</p>
2.	<p><u>Prior Written Notice (PWN):</u></p> <p>The Parents allege that the ESD violated the IDEA when it did not provide the Parents Prior Written Notice that the ESD intended:</p> <p>a. to discuss the Student at a public Board Meeting;</p> <p>b. to change the Student's</p>	<p>Professional development training to all ESD special education staff on all requirements for Prior Written Notice found in 34 CFR 300.503. Training may be conducted in-person, or via WebEx.</p>	

⁸ 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)). 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; fax number (503) 378-5156

⁹ Corrective action submissions 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; fax number (503) 378-5156.

	<p>placement; and, c. to suspend the Student from the program.</p> <p>OAR 581-015-2310 & 34 CFR 300.503</p>	<p>This training will be provided by the County Contact for Wheeler County, and include relevant District staff associated with this complaint investigation, including District Superintendent and Kindergarten Teacher.</p> <p>Submit template of training materials and items, developed in conjunction with the County Contact, to ODE for approval to: Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; (503) 947-5722; email- raeann.ray@state.or.us; fax number (503) 378-5156.</p> <p>Submit training roster which indicates all in attendance and their position and an agenda from the training indicating time, date, and manner of training to ODE via the means listed above.</p>	<p>Patrick Kelly¹⁰</p> <p>September 15, 2015</p> <p>October 9, 2015</p>
<p>3.</p>	<p><u>Free Appropriate Public Education (FAPE) and Age Ranges:</u></p> <p>a. The Parents allege that the ESD violated the IDEA because the sum effect of the above allegations resulted in the Student not receiving FAPE during the 2014-2015 school year.</p> <p>OAR 581-015-2040 & 34 CFR 300.101 & CFR 300.201</p>	<p>Professional development training to all ESD Special Education staff on all requirements for providing procedural safeguard information to parents when a change of placement occurs and appropriate notice when a student is suspended. Training may be conducted in-person, or via WebEx.</p> <p>This training will be provided by the County Contact for Wheeler County, and include relevant District staff associated with this complaint investigation, including District Superintendent and Kindergarten Teacher.</p> <p>Submit template of training materials and items, developed in</p>	<p>Patrick Kelly</p> <p>September 15, 2015</p>

¹⁰ Patrick Kelly, County Contact for Wheeler Co., Patrick.kelly@ode.state.or.us or 503-947-5655.

		<p>conjunction with the County Contact, to ODE for approval to: Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; (503) 947-5722; email- raeann.ray@state.or.us; fax number (503) 378-5156.</p> <p>Submit training roster which indicates all in attendance and their position and an agenda from the training indicating time, date, and manner of training to ODE via the means listed above.</p>	<p>October 9, 2015</p>
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Dated: this 1st Day of July, 2015



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

Mailing Date: July 1, 2015