

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School
District # 1J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 15-054-027

I. BACKGROUND

On July 16, 2015, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Portland School District 1J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District.

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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On July 21, 2015, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of August 4, 2015.

On July 30, 2015, the District submitted a *Response* indicating they disputed all portions of the allegations in the Parent's complaint. In total, the District submitted the following items:

- A. Letter responding to each allegation in the Request for Response, list of documents included, and list of knowledgeable staff, 7/30/2015;
- B. House Bill 2673—effective date July 1, 2015,
- C. House Committee on Education Agenda, 2/20/2015;
- D. Urge to Support HB2673, 4/19/2015;
- E. Please vote yes on House Bill 2673 letter from Parent, 2/20/2015;
- F. PPS Letter to House Education Committee from District Personnel, 2/20/2015;
- G. Prior Notice of Special Education Action, 7/06/15, & Email from Parent;
- H. Student IEP, 5/29/2015;
- I. Special Education Progress Notes, 6/9/2014—6/22/2015;
- J. IEP Meeting Minutes, 5/29/2015;
- K. Parent Concerns, 5/29/2015;
- L. Notice of IEP Team Meeting 3/17/2015;
- M. IEP Meeting Minutes, 4/2/2015;
- N. Notice of IEP Team Meeting, 3/30/2015;
- O. IEP Meeting Minutes, 3/13/2015;
- P. Behavior intervention plan, March 2015;
- Q. Notice of IEP Team Meeting, 3/02/2015;
- R. IEP Meeting Minutes, 1/14/2015

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- S. Notice of IEP Team Meeting, 1/8/2015;
- T. IEP Meeting Minutes, 8/27/2014;
- U. Notice of IEP Team Meeting, 8/19/2014;
- V. IEP, 6/9/2014;
- W. Parent Concerns, 6/9/2014;
- X. Transition Plan, 6/13/2014;
- Y. IEP Meeting Minutes, 6/9/2014;
- Z. Notice of IEP Team Meeting, 6/5/2014;
- AA. Prior Notice of Special Education Action, 4/14/2014;
- BB. Prior Notice of Special Education Action, 1/6/2014;
- CC. Authorization, 12/20/2013.

The Parent submitted materials for consideration on August 11, 2015. In total, the Parent submitted the following documents:

- A. Request for Complaint Investigation, 7/16/2015;
- B. Email from Parent to District, 5/29/2015
- C. Email from District to Parent, 6/8/2015;
- D. Final IEP (5/29/15) provided to Parent via email, 6/8/2015;
- E. IEP Meeting Minutes (5/29/15) provided to Parent via email, 6/8/2015;
- F. Email from Parent to District, 6/8/2015;
- G. Excerpt from IEP w/handwritten note mailed to Parent, 6/18/2015;
- H. Prior Notice of Special Education Action, 7/6/2015, Postmarked, 7/9/2015;
- I. Parent Supplemental Letter, 8/11/2015;
- J. Email from District to Parent Attorney, 6/9/2014;
- K. Email from Parent to District, 6/6/2014;
- L. Legislative Concept: Disclosure of Special Education Accommodations and Services

The Department's complaint investigator determined that on-site interviews were needed. On August 10, 2015, the complaint investigator interviewed the District's General Counsel and Program Administrator for Special Education. On August 13, 2015 the complaint investigator interviewed the Parent, and Parent's counsel. On August 14, 2015, the complaint investigator conducted a follow-up call with the District's General Counsel. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one-year period from July 17, 2014 to the filing of this complaint on July 16, 2015.³

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Parent Participation — General:</u></p> <p>(a) The Parent alleges that the District did not provide Parent with an opportunity to</p>	<p><u>Not Substantiated:</u></p> <p>The Parent was provided notice of the IEP team meeting, attended, and fully</p>

³ This order does include some facts that are relevant to the case and that happened before January 2, 2012.

	<p>participate in an IEP meeting.</p> <p>(OAR 581-015-2190(1) and 34 CFR 300.500, 34 CFR 300.327, 34 CFR 300.501(b))</p>	<p>participated. Despite debate over relevance of information the Parent intended to offer at the meeting, the Parent was afforded the opportunity to voice Parent's concerns.</p>
2.	<p><u>IEP Team Considerations and Special Factors:</u></p> <p>The Parent alleges that the District violated the IDEA when it did not take into consideration the Parent's concerns during an IEP meeting.</p> <p>(OAR 581-015-2205(1)(b); 34 CFR 300.320, 300.324(a)(1)(ii) & (2))</p>	<p><u>Not Substantiated:</u></p> <p>The Parent was present and participated in the IEP meeting. Not listing each concern raised by Parent in the "parent concerns" section of the final written IEP is not a violation of IDEA.</p>

III. FINDINGS OF FACT

- 1) The Student in this case is 9 years old and resides in the Portland School District 1J.
- 2) Student is eligible for special education services because of a medical and educational diagnosis/identification of autism spectrum disorder. Student displays difficulty participating, contributing, and engaging with peers during group work, large and small group activities. The Student also exhibits difficulty in seatwork and certain classes. The Student's social/behavioral/emotional skills are impacted due to the Student's diagnosis, which affects the Student's ability to perform within the general education classroom without adequate one-on-one support and accommodations.
- 3) The Student attended school full time for kindergarten and first grade. The Student attended second grade for a portion of the school year, but was unable to continue due to medical issues, and completed the second grade as a home-schooled student.
- 4) The Student currently attends an accelerated program for highly gifted students in the District.
- 5) On May 29, 2015, the District held an IEP meeting for the Student. In advance of the meeting, the Parent sent, via email, a two page document of "parent concerns" that the Parent wanted included in the "parent concern" portion of the IEP.
- 6) During the May 29, 2015 IEP Meeting, the Parent reports attempting to speak to the issues raised in the Document emailed to the District earlier that day. The District initially objected to the Parent discussing these issues as outside the scope of the IEP. Specifically, the District asserted that issues of "parent concern" should relate to the Student and the Student's IEP. Discussion over the relevance ensued, ultimately leading to the Parent discussing those points raised in the Document. The Parent spoke about the issues raised in the Document as the Parent felt they related to the Student and the Student's IEP.
- 7) The Parent desired that the points raised in the Document be emailed to the District be included in the "parent concerns" section of the Student's IEP.
- 8) The Parent discussed the Parent's desire that the District provide information about the types of special education and related services that are available in the District. The Parent expressed the preference that this information be available to them, and all parents in the District, preferably as

a list of services that the District has provided to children in the District.

- 9) The Parent asserts that this information would be helpful as the services the Parent desired for the Student were not provided by the District, but the Parent has subsequently come to learn that similar services were provided to other children in the District.
- 10) Following the IEP meeting, the Parent received a copy of the Student's IEP and the IEP Meeting Notes. The Parent's concerns about services offered in the District were not included in the "parent concerns" portion of the IEP. Other concerns raised during the meeting were memorialized in the "parent concerns" portion of the IEP. The Parent's additional concerns raised during the meeting, and provided to the District ahead of the meeting, were recorded in the IEP Meeting Notes.
- 11) On June 8, 2015, via email, the Parent requested that the District correct the IEP to include the additional information in the "parent concerns" portion of the IEP.
- 12) On June 19, 2015, the Parent received a hard copy of the IEP by mail without the requested corrections.
- 13) On June 30, 2015, counsel for the Parent contacted the District to request that the IEP be changed to include the requested information in the "parent concerns" section.
- 14) On July 11, 2015, the Parents received a Prior Written Notice of Special Education Action by mail. The Prior Notice rejects the inclusion of the specific language the Parents desired be included because the, "...section...which was not included, are concerns about enhancing parent advocacy in general and not specific to [Student]."
- 15) On July 16, 2015, Parent filed this complaint.

IV. DISCUSSION

1. Parent Participation--General:

The Parent alleges that the District violated the IDEA when the Parent was not afforded a full opportunity to voice concerns during an IEP Meeting.

The IDEA recognizes the necessity of Parent Participation in the creation of the IEP, and requires districts to provide one or both parents the opportunity to be present at the IEP team meeting.⁴ Parent Participation in meetings means affording parents the opportunity to participate with respect to the identification, evaluation, and educational placement of the child,⁵ and the provision of FAPE to the child.⁶ Parents are one of several individuals that constitute the IEP team.⁷ The team should also consist of at least one regular education teacher of the child,⁸ a special education provider,⁹ a representative of the school district,¹⁰ someone who can interpret the instructional implications of evaluation results,¹¹ and others invited by the parent or district as needed.¹² The team works together

⁴ OAR 581-015-2190(1), 34 CFR 300.501(b)

⁵ 34CFR 300.501(b)(i)

⁶ 34 CFR 300.501(b)(ii)

⁷ OAR 581-015-2210(a)

⁸ OAR 581-015-2210(c)

⁹ OAR 581-0152210(d)

¹⁰ OAR 581-015-2210(e)

¹¹ OAR 581-015-2210(f)

to create the IEP, a written statement of an educational program that is developed, reviewed, revised and implemented for a school-aged child with a disability.¹³

The evidence provided in the record shows that the Parent desired to provide information during the IEP meeting that the Parent considered relevant to the provision of FAPE. That information was provided in advance of the meeting via email. The Parent was informed ahead of time the location of the meeting, and did attend and participate in the meeting with the assistance of legal counsel. The Parent desired that the District provide a list of all services the District provides to all students receiving special education. It is the Parent's position that such a list would provide parents with the ability to better articulate the needs of children. The District initially objected to the Parent raising concerns regarding services offered by the District to other children, as not relevant to the Student. The Parent responded that if provided the opportunity, the Parent could explain the relevance to the Student. The Parent proceeded to discuss the desire that the District provide a list of services provided to all children on IEP's, so that the Parent and other parents would be better informed regarding the services available to students generally. The Parent noted that a specific service was denied the Student the previous year, but that the District had provided the same service to another student. All IEP team members heard this information.

The Parent was provided notice in advance of the meeting and afforded the opportunity to participate at the IEP meeting. While there was some discussion during the meeting regarding the relevance of particular information offered by the Parent, the Parent ultimately had the opportunity to speak to the relevance of the information to the Student's IEP during the meeting. Both Parent and District were represented at the IEP meeting by legal counsel. The Parent contends that counsel for the District presented an obstruction to sharing this information. "The presence of an attorney could contribute to a potentially adversarial atmosphere at the meeting. The same is true with regard to the presence of an attorney accompanying the parents at the IEP meeting."¹⁴ The presence of attorneys at IEP meetings is generally discouraged as not necessarily in the best interest of the child.¹⁵

This allegation is not substantiated and no corrective action is ordered.

2. IEP Team Considerations and Special Factors:

The Parent alleges that the District violated the IDEA when it did not take into consideration the Parent's concerns during an IEP meeting. Specifically, the Parent provided information in the IEP meeting during coverage of parent concerns, which were not later recited in the IEP under the "parent concerns" section.

The IDEA encourages parental input and involvement in all aspects of a child's educational program.¹⁶ Districts must ensure that parents are included in the IEP team.¹⁷ The team considers a variety of factors in developing the IEP, including the concerns of the parent for enhancing the education of their child.¹⁸ The IEP is prepared and reviewed by the school district with participation by the parent.¹⁹ The IEP "is prepared at a meeting between a qualified representative of the local education agency, the child's teacher, the child's parents or guardian and where appropriate, the child..."²⁰

¹² OAR 581-015-2210(g)

¹³ OAR 581-015-2000(15)

¹⁴ Letter to Clinton, (OSEP July 23, 2001)

¹⁵ *Id.*

¹⁶ 71 Fed. Reg. 46688 (Aug. 14, 2006)

¹⁷ 34 CFR 300.321(a)(1); 34 CFR 300.322(a)

¹⁸ OAR 581-015-2205(1)(b); 34 CFR 300.324(a)(ii)

¹⁹ Bd. Of Educ. of Hendrick Hudson Cent. Sch. Dist. Westchester Cnty. v. Rowley, 458 U.S. 176 (1982)

²⁰ *Id.* at 182.

The legal requirement regarding free appropriate public education (FAPE) can be found in OAR 581-015-2040 and 34 CFR 300.101. School districts must provide special education and related services to all resident school-aged children with disabilities. In determining whether a district has denied Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.²¹ While harmless procedural errors do not constitute a denial of FAPE,²² "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."²³ The IDEA requires school districts to provide a "basic floor of opportunity" to disabled students, consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit" to the child with the disability.²⁴ A student's IEP need not address every medical diagnosis that a student receives or every condition that a student has. Instead the IEP must address the unique special education and related service needs that arise from a student's qualifying disabilities.²⁵

In this case, the Parent was present at the IEP meeting, and there is no dispute regarding notice of the meeting. The required individuals were present at the meeting, as was Parent's legal counsel, and counsel for District. This meeting revised and extended the Student's prior year IEP. The Parent has provided, at Parent's expense, additional supports and expert advice to support the Student in class. Those outside experts have coordinated with District staff successfully and this collaboration is to continue through the coming school year. The Parent would prefer that the District pay for this additional support and expert advice and incorporate these services into the IEP as services provided by the District.

The Parent desired that the Student's IEP include, either in summary or verbatim, the Parent's desire that the Parent and other parents in the District be provided with a list of services provided by the District to all other students receiving special education services. The District did not recite these specific concerns of the Parent in the final IEP; however other concerns of the Parent were documented therein. The Parent's specific concerns and opinion that the District provide a list of services provided to all other students was reflected in the IEP Meeting Minutes, notes and attendant documents. No description or definition of parent concerns accompanies the statute beyond stating that the District must consider "the concerns of the parent for enhancing the education of their child."²⁶ Parent concerns are one of the many things the IEP team considers in the development of the IEP.²⁷ IEPs do not include all information about a student, only that information necessary to address a student's special education needs. Questions have arisen with regarding what Districts are required to do with information provided by parents during IEP meetings.

"In cases where parents submit a lengthy statement or report at an IEP Team Meeting, it would be reasonable for a district to ask parents to verbally summarize...their main concerns so that the district may address those concerns at the meeting. If parents seek a more comprehensive or written response to a lengthy statement or report, it is not inconsistent with the intent and requirements of the IDEA for the district to take a reasonable time to respond in detail."²⁸

²¹ Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (U.S. 1982)

²² L.M v Capistrano Unified Sch. Dist., 556 F3d 900, 910 (9th Cir. 2008)

²³ Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, , 1079 (9th Cir. Ariz. 2003)

²⁴ Rowley, 458 U.S. at 200

²⁵ North St. Paul- Maplewood Indep. Sch. Dist. #622, 110 LRP 40253 (SEA MN 06/07/10).

²⁶ 34 CFR 300.324(a)(ii)

²⁷ 34 CFR 300.324

²⁸ Letter to Breton (OSEP, September 24, 2013).

While districts are required to consider the input of the parent, they are not required to follow the guidance of the parent. The District makes the ultimate decision subject to the parent's procedural safeguards.²⁹ The Parent did submit information in advance of the meeting, and after some discussion over relevance, was asked to summarize the Parent's concerns during the meeting. After receiving the final IEP, and finding the desired information was not included in the parent concerns portion, the Parent contacted the District to request the information be included. On July 9, 2015 the District responded with a Prior Notice of Special Education Action,³⁰ formally stating that the information was considered and would not be included in Student's IEP because it was not specific to the Student. The District thereby preserved Parent's procedural safeguards. As a member of the team, parents have input, and as was done in this case it is often helpful for parents to provide information in advance of a meeting so that the IEP team may consider the information as part of the full discussion of the student's needs.³¹

The IEP itself must include specific elements,³² but beyond those, inclusion of additional information is not required.³³ In developing the IEP, the IEP Team must consider a variety of factors, including the concerns of the parent. The IEP may be composed from a variety of source data and assessments.³⁴ These are considered, developed, and interpreted³⁵ into the IEP, but are not necessarily included in the IEP in whole. The IEP itself becomes the guiding document for those individuals providing services to the student, and must be accessible to those individuals. The legal requirement regarding accessibility of IEP's can be found at OAR 581-015-2220(3)(a), (3)(b), and 34 CFR 300.323. Each school district must ensure that a child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.³⁶ The school district must inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP. Furthermore, OAR 581-015-2220(1)(b), requires that school districts must provide special education and related services to a child with a disability in accordance with an IEP.

Districts are required to consider the concerns of parents. While one possible inference, the IDEA does not expressly announce that the "parent concerns" portion of the IEP is the real estate of a parent. While districts must consider information provided by parents, they need not accept all information or opinions of the parent.³⁷ The stated purpose of the IEP is to communicate to teachers and service providers the services the child needs in order to receive FAPE. While those needs and services are developed in consultation with parents; the IEP is not a tool through which parties communicate other information to each other, or to services providers. The IEP is a tool to guide teachers and service providers in the delivery of services reasonably calculated to provide benefit to the student. That reasonable calculation envisions a moderate position with regard to the final plan.³⁸ Consensus building is encouraged, but the District has the ultimate responsibility to ensure the IEP includes the services the child needs in order to receive FAPE.^{39,40} The IEP team in this case has produced an IEP that satisfies that requirement.

²⁹ *Matter of Sackets Harbor Central School District v. Munoz*, 725 N.Y.S.2d 119, 283 A.D.2d 756, at 760 (2001)

³⁰ In accordance with 34 CFR 300.501.

³¹ Letter to Northrup (OSEP, May 21, 2013)

³² 34 CFR 300.320(a)

³³ 34 CFR 300.320(d)

³⁴ 34 CFR 300.304, 34 CFR 300.305, and 34 CFR 300.305(c).

³⁵ 34 CFR 300.321(5)

³⁶ 34 CFR 300.323(d)

³⁷ Letter to Northrup (OSEP, May 21, 2013)

³⁸ *Doe v. Bd. Of Educ. Of Tullahoma City Schools*, 9 F.3d 455, 459-460 (6th Cir. 1993)

³⁹ 64 Fed. Reg. 12473 (1999)

⁴⁰ *Murray v. Montrose County Sch. Dist.*, 51 F.3d 921 (10th Cir. 1995)

The District provided the Parent with the opportunity to participate in the generation of that IEP; considered information presented by Parent, and preserved Parent's procedural rights.

The Department therefore does not sustain this allegation and orders no corrective action.

V. CORRECTIVE ACTION⁴¹

In the Matter of Portland School District
Case No. 15-054-027

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

Dated: this 10th Day of September 2015



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

Mailing Date: September 10, 2015

⁴¹ 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).