

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Salem-Keizer  
School District # 24J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 16-054-023

**I. BACKGROUND**

On July 1, 2016, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from a complainant (Complainant) within the Salem-Keizer School District 24J (District). The Complainant 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 on July 1, 2016.

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

On July 8, 2016, 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 July 22, 2016. Following receipt of the *Request for Response*, the District indicated that producing the requested documents might create a burden on the District due to the manner in which the documents are stored throughout the District and the fact that the District was currently in summer break. The District also indicated that the *Request* might result in a volume of documentation that would delay the process. The District and the Department worked together to focus the *Request* to documents most relevant to this matter. On July 15, 2016, the Complaint Investigator sent an amended *Request for Response*, constraining the requested documents to the population of students most relevant to the specific facts alleged in the Complaint, and establishing an amended *Response* date of July 29, 2016.

On July 29, 2016, the District submitted a *Response* indicating that they disputed all portions of the allegations in the Complaint. In total, the District submitted the following items:

Letter responding to each allegation in the *Request for Response* (RFR)  
Table of Contents of Documents Provided in *Response* to RFR

1. List of all 12th grade students at one of the District's high schools during the 2015-2016 school year with IEPs;
2. List of all 12th grade students at one of the District's high schools with IEPs during the 2015-2016 school year who graduated with a regular diploma;
3. List of all 12th grade students at one of the District's high schools with IEPs during the 2015-2016 school year slated to receive services during the fall of 2016;
4. Copies of all Summaries of Performance and Prior Written Notices for 12th grade students during the 2015-2016 school year who did not receive a regular diploma and who are not slated to

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

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

- receive services during the fall of 2016;
- 5. Copy of the District policy regarding discipline; District policy, or description of District practice, regarding reevaluations of students with IEPs eligible for graduation who do not receive a regular diploma;
- 6. List of staff knowledgeable about the circumstances of this Complaint.

The Complaint Investigator interviewed the Complainant on August 9, 2016 and the Complainant submitted several emails for consideration ahead of that meeting, and additional emails following the meeting. The Department's Complaint Investigator determined that on-site interviews were not needed. On July 12, 2016, the Complaint Investigator interviewed, by phone, one of the District's Learning Resource Classroom Teachers, one of the District's Youth Transition Program Transition Employment Specialists, one of the Student Services Program Assistants, and the District's Coordinator of Student Services. Also present was the District's Legal 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 Complainant'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 2, 2015 to the filing of this complaint on July 1, 2016.

	<u><b>Allegation:</b></u>	<u><b>Conclusion:</b></u>
1.	<p><b><u>Evaluation and Reevaluation Requirements</u></b></p> <p>The Complainant alleges that the District violated the IDEA when it did not conduct an evaluation or reevaluation prior to terminating the eligibility of each 12th grade Student with a disability who did not earn a regular education diploma. The Complainant alleges that instead of conducting an evaluation to determine whether or not each Student with an IEP was eligible to continue to receive services, the District allowed the eligibility of these Students to terminate at the end of their 12th grade year.</p> <p>(OAR 581-015-2105, 34 CFR 300.301, 34 CFR 300.303)</p>	<p><b><u>Not substantiated:</u></b></p> <p>The evidence collected in this case indicates that the District does evaluate the needs of Students for continued services ahead of graduation. Students and their families are provided the opportunity to reengage with District services following graduation upon request, if the IEP Team determines that terminating service was inappropriate, or if Students initially reject services following graduation but later reconsider their decision.</p>

### III. FINDINGS OF FACT

#### Background

- 1) The Students in this case were seniors with disabilities who did not earn a regular education diploma from the Salem-Keizer School District 24J during the 2015-2016 school year. The Complainant alleges that the Students were not appropriately evaluated ahead of graduation to determine their eligibility to continue receiving service from the District; rather the District allowed these Students' eligibility to terminate at the end of their 12th grade year.
- 2) The Complainant alleges that the District's practice was to verbally inform Students at their final IEP meeting that they would no longer be eligible to receive Special Education services and that services provided by the District would end with that final meeting.
- 3) The Complainant further alleges that the District carries these Students on attendance rolls, thereby receiving federal funding, but does not offer a post high school transition program.
- 4) The Complainant, who is also a teacher in the District, alleges that while working on student exit surveys in anticipation of the Students' graduation, one of the Student Services Program Assistants provided instruction to cease the preparation of such documentation for Students. The Complainant offered this example as proof that the District was doing little more than allowing Students on IEPs to graduate, without evaluating them for eligibility for any of the available transition services or continuation of services offered by the District.
- 5) The Complainant is acquainted with a number of current and former Students in the District through a variety of community associations and relationships. The Complainant displayed a high level of concern for Students the Complainant taught in the past, as well as other Students known to the Complainant who received Special Education services from the District. The Complainant has followed the progress of these Students through reports from parents, friends of the Students, and social media connections. The Complainant lamented that many Students who could have benefited from transition services from the District were not receiving such services. The Complainant provided a few examples of Students expressing feelings of depression, reporting drug use, or engagement in illegal activities.
- 6) The Complainant noted that the District formerly offered a variety of services to Students following graduation who remained eligible to receive services. The Complainant noted that programs such as a community living tract, local community college tract, and a local business run by the District where students could gain necessary work skills while attending community college were no longer offered.
- 7) During the Complaint Investigator's interview with the Complainant, the Complainant intimated that perhaps the Students did not need the services that the Complainant desired for these Students to access from the District.
- 8) The Complainant's practice while teaching was to prepare a two page narrative summary of all Students' progress following graduation whether they graduated with a regular or modified diploma. The Complainant notes that the District instructed that this be done only for those Students graduating with regular diplomas.
- 9) The Complainant strongly suggested that the District had no process for Students headed toward graduation. The Complainant reported that Students were evaluated solely by their primary Special Education teacher who typically only referred to the Student's report card/progress report and whichever test result they chose in making the determination of whether the Student would

be eligible to continue to receive services from the District.

- 10) The Complainant believes that such an evaluation was insufficient and that Special Education teachers, such as the Complainant, were talked out of doing a more thorough evaluation by District staff in order to avoid offering services to Students. The Complainant suggested that the exit interview/meeting with Students was done without instruction or procedure. The Complainant further suggested that without a formal process in place, Special Education teachers essentially made-up the process as they went along.
- 11) The Complainant brought to the interview with the Complaint Investigator pictures of Students taken from social media. Many of those pictures showed Students engaged in various activities or expressing emotional states that were upsetting to the Complainant. The Complainant also suggested that their predicament was the result of the District's handling of student exit interviews.
- 12) The District generally begins the conversation about services offered following graduation during a Student's junior year. This conversation occurs in conjunction with the Student's IEP meeting, and with their IEP Team (which includes students and their families). The IEP Team's decision regarding the Student's needs and eligibility for service following graduation is then made a part of each Student's senior year IEP.
- 13) The District, in response to the Complainant's allegation that Learning Resource Center (LRC) teachers should but do not have a manual to guide them in creation of a program for Students following graduation, noted that owing to the individualized nature of each Student's IEP, a single manual would be insufficient to guide the IEP Team in evaluating the needs and wishes of Students and families. Rather, the IEP Team is aware of the needs of the Students and resources of the District, and makes determinations as appropriate.
- 14) The District noted that in addition to the IEP meeting, there is a formal evening meeting open to all Students and their families where the District presents the continuum of services available to Students, including those available following graduation.
- 15) The District reports that the Special Education teachers in the LRC, such as the Complainant, would provide names of prospective Students to access services coordinated by the Youth Transitions Program (YTP) Employment Specialist, Office of Vocational Rehabilitation Services Counselor, and the Student. The planning for implementation of these services begins as early as the Student's junior year.
- 16) Success in the program depends on the Student's willingness to participate. The District noted that referrals to the program are solicited from the LRC teachers. While a number of Students begin the program, some change their minds and cease participation while still eligible.
- 17) Prospective Students that would be successful in the YTP program are those who are motivated and who will follow through on goals the YTP Employment Specialist set out for them. At an IEP meeting, the Student's parent, the YTP Employment Specialist, and other IEP Team members, plan the specific services the Student receives.
- 18) District staff members begin planning for each Student slated to receive a modified or extended diploma ahead of an IEP meeting in order to present the various District services available. The IEP Team then discusses the most suitable options for the Student. The IEP is then revised to address the key areas based upon the Student's post-secondary goals.

- 19) During the IEP meeting, the Community Transition Program (CTP) teacher discusses which type of CTP is most closely matched to the needs and abilities of the Student. The District noted that depending on the needs of the Students, possible services would be delivered at one of seven sites throughout the District offering the following services:
  - a) Developmental Learning Center (DLC)
  - b) Life Skills Center (LSC)
  - c) Community Transition Program (CTP), and
  - d) The Independent Living program.
- 20) The District noted that when Students exit or leave school, they continue to be eligible for services and may receive services upon request. When requested, an IEP meeting is offered to determine what service best meets the needs of the Student.
- 21) The District noted that in response to the Department's request for documents in this matter, it had provided a copy of the Department's own training materials in this area, as the Department had provided training to the District this year. The District also stated that this training was offered yearly to all secondary and Special Education teachers in the District.
- 22) In addition, LRC teachers participated in monthly meetings, "Job-Alike's" with colleagues from throughout the District, building and District wide meetings among LRC teachers to exchange ideas and practices. Each building has additional professional development opportunities for teachers.
- 23) In response to the Complainant's contention that the Complainant was left to do exit interviews with Students, the District maintains that the District's Youth Transition Program Transition Specialists in fact facilitate these meetings, not LRC teachers.
- 24) The District maintains a process to follow-up with Students who have graduated, whereby a team of LRC teachers places calls to Students and their families to survey the graduate's need for services from the District. After these contacts, the District's YTP Team is responsible for follow-up and provision of services.
- 25) The District's process is supported by a computer system that tracks Student graduation dates, IEP status, and the creation of relevant documents in the IEP process such as Prior Written Notices. If the District overlooks a Student headed toward graduation because a Prior Written Notice to complete an evaluation ahead of the graduation date was not prepared, it would trigger District staff to prepare the document and complete the evaluation. The Community Transition Program utilizes this system to connect Students with services leading up to and following graduation.
- 26) On July 1, 2016, the Complainant filed this Complaint.

#### **IV. DISCUSSION**

##### **1. Evaluation and Reevaluation Requirements:**

The Complainant alleges that the District violated the IDEA when it did not conduct an evaluation or reevaluation prior to terminating the eligibility of each 12th grade Student with a disability that did not earn a regular education diploma. The Complainant alleges that instead of conducting an evaluation to determine whether or not each Student with an IEP was eligible to continue to receive services, the

District allowed the eligibility of these Students to terminate at the end of their 12th grade year. Specifically, the Complainant, also a teacher in the District, alleges that the District gave instructions to staff members to limit the amount of work that the Complainant conducted to complete the evaluations for Students. The Complainant also alleges that teachers such as the Complainant were not provided with training, support, or oversight in the evaluation process, leading to uneven practices in classrooms throughout the District, which contributed to Students being terminated from services inappropriately.

A school district must conduct an evaluation or reevaluation prior to the district terminating a child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate education.<sup>3</sup> Districts must engage in evaluation planning ahead of conducting an evaluation or reevaluation of a student.<sup>4</sup> The student's IEP team is responsible for reviewing the existing evaluation data and determining whether gathering any additional data is warranted.<sup>5</sup> For a student whose eligibility is terminated due to graduation with a regular diploma or exceeding the age of eligibility, the district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.<sup>6</sup>

The evidence collected in this matter shows that the District does have a procedure for evaluating Students who are not scheduled to receive a regular diploma. The suitability of post-graduation services for individual Students is evaluated and determined by the Student's IEP Team at IEP meetings as early as the Student's junior year. From the information gathered from the Complainant, there appeared to be an expectation that a roadmap or blueprint for such evaluations should be available for LRC teachers to utilize. The District noted that owing to the individualized nature of each Student's IEP, a single guiding document or manual would likely be insufficient in catering to the needs of Students. The District trains all staff involved in this process to ensure that all legal requirements are satisfied for Students approaching graduation. In addition, contrary to the Complainant's assertions, the District provides yearly trainings, monthly opportunities for exchange among LRC teachers, professional development in these areas in the building, and support from District staff to teachers.

The Complainant is correct that some eligible Students are not accessing services from the District post-graduation. Students must desire to utilize the available services. Unfortunately, some Students do not access available services. The District does follow-up with Students and their families after graduation to inquire about reengaging, and to measure follow-through by eligible Students. That process is often frustrated by difficulty locating Students following graduation, or the Student's lack of interest in obtaining services.

The specific Students that the Complainant identified as not utilizing services could not be located, had moved out of the District, or possibly did not want to engage with the District any longer. Those cases are regrettable and it was evident that Students' social media posts and reports coming from friends regarding their progress personally touched the Complainant. However, the Complainant's regrets do not evince a failing on the District's part.

The Department does not substantiate this allegation.

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<sup>3</sup> OAR 581-015-2105(1)(d)

<sup>4</sup> OAR 581-015-2110(1)

<sup>5</sup> OAR 581-015-2115(1)(a) & (1)(b)

<sup>6</sup> OAR 581-015-2105(5)

## V. CORRECTIVE ACTION<sup>7</sup>

*In the Matter of Salem-Keizer School District #24J  
Case No. 16-054-023*

The Department does not order any Corrective Action resulting from this investigation:

Dated: this 24th Day of August 2016



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

Mailing Date: August 24, 2016

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<sup>7</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).