

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Elkton
School District 34

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-003

I. BACKGROUND

On February 2, 2017, the Oregon Department of Education (Department) received a Letter of Complaint from the parents (Parents) of a student (Student) attending school in the Elkton School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on February 3, 2017.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On February 13, 2017, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On February 27, 2017, the District timely provided to the Department's Contract Complaint Investigator (Complaint Investigator), via email, its narrative *Response* to the *Request for Response* and accompanying documentation via email, followed by hard copies of the *Response* and accompanying documentation, via mail, received on February 28, 2017. On March 1, 2017, the District provided additional documentation, via mail. On March 6, 2017, the Parents provided an additional document, via mail. On March 13, 2017, in response to an inquiry from the Complaint Investigator, the District provided additional documentation, via email.

The Parents provided the following documentation with their *Complaint*:

1. Psycho-Educational Evaluation 4/6/16
2. Email communication 5/16/16, 5/17/16
3. Email communication 5/17/16
4. IEP 5/18/16
5. Report card 1st quarter 2016-2017 school year
6. Email communication 11/1/16
7. Postmarked envelope and 1st page of amended IEP 12/12/16
8. Prior Written Notice 11/7/16
9. Memo and amended IEP 12/12/16
10. Email communication with 1st page of amended IEP 1/9/17
11. Handwritten note from Student's teacher 1/23/17
12. Email communication 1/25/17
13. District Complaint Form 1/26/17

The District provided the following documentation with its *Response* on February 2, 2017 and via mail on March 1, 2017:

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153

1. Behavior Support Plan 12/11/15
2. Notice of Referral 2/11/16
3. Notice of Team Meeting 2/11/16
4. Consent for Evaluation 2/17/16
5. Authorization re Educational and Protected Health Information 2/17/16
6. Medical Statement 3/7/16
7. Behavior Support Plan 3/9/16
8. Email communication 3/30/16
9. Meeting notes 4/18/16
10. Disability Statement 4/18/16
11. Notice of Team Meeting 5/10/16
12. IEP 5/18/16
13. Placement Determination 5/18/16
14. Prior Written Notice 5/19/16
15. Provision of Special Education Services 5/20/16
16. Behavior Plan 9/2016
17. Notice of Team Meeting 10/27/16
18. IEP amendment 11/4/16
19. Prior Written Notice 11/7/16
20. Email communication 1/9/17
21. Consent for Evaluation 2/1/17
22. IEP 2/27/17
23. Placement Determination 2/27/17
24. Prior Written Notice 2/27/17
25. IEP 2/27/16 (final)
26. Placement Determination 2/27/17 (final)

The Parents provided one additional document after the District's *Response*:

1. Crisis Response Plan 1/31/17

On March 13, 2017, the District provided the following additional documents, via email:

1. Report card, 3rd and 4th quarters 2015-2016 school year
2. Report card, 1st and 2nd quarters 2016-2017 school year

The Department's Complaint Investigator determined an on-site investigation to be necessary in this case. On March 17, 2017, the Complaint Investigator interviewed District staff, including the District's Superintendent/Principal, a Special Education Teacher (now the Student's Case Manager) and the District's Special Education Director. Legal Counsel for the District participated in the interviews of District staff via telephone. Also on March 17, 2017, the Complaint Investigator interviewed the Parents. The Complaint Investigator reviewed and considered all of the documents received 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 OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Complainants' allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and

the Discussion in Section IV. This Complaint covers the one year period from February 3, 2016, to the filing of this complaint on February 2, 2017.²

No	Allegations	Conclusions
1.	<p><u>Parent Participation – General, Additional Parent Participation Requirements for IEP and Placement Meetings</u></p> <p>The Complaint alleges the District violated the IDEA by failing to provide written notice of an IEP Meeting scheduled for May 18, 2016 (a meeting unilaterally rescheduled by the District with “less than 36 hours before it was to occur” via an email) and by also failing to provide written notice of the IEP Meeting scheduled on or about November 4, 2016. The Complaint further alleges “On 11-04-2016 the IEP Team was entirely changed without any notice or communication of any kind.”</p> <p>Relevant Law: OAR 581-015-2190 and 34 CFR 300.500, 300.327, 300.501(b); OAR 581-015-2195 and 34 CFR 300.322, 300.500, 300.327, 300.328.</p>	<p><u>Substantiated, in part</u></p> <p>The District provided documentation of a written Meeting Notice for the May 18, 2016 IEP Meeting to the Parents. Although there is no actual evidence that the Parents received this Meeting Notice, they were present at this meeting. Since there have been other concerns about whether or not the Parents are receiving mailings from the District, the District now mails all documents to the Parents via certified mail. Therefore, the Department does not substantiate this portion of the allegation.</p> <p>Although the first page of the Student’s November 4, 2016 amended IEP indicates that an “Email scheduling meeting” went out on October 27, 2016, this is not supported by other information in the documentation provided by the parties and is unlikely since the Student’s Case Manager did not return until October 31, 2016, from leave. The District’s Superintendent/Principal also did not work the week of October 24-28, 2016, returning to work on October 31, 2017. The invited attendees on the Meeting Notice is also significantly different than the list of attendees at the November 4, 2016 IEP Meeting. As a result, the Parents could not have relied on that document to know who was actually attending the IEP Meeting. Therefore, the Department substantiates this portion of the allegation.</p>
2.	<p><u>Review and Revision of IEPs</u></p> <p>The Complaint alleges the District violated the IDEA by failing to timely schedule an IEP meeting following requests by the Parents. Specifically, the</p>	<p><u>Not Substantiated</u></p> <p>The Department does not sustain the allegation that the District failed to timely schedule an IEP meeting following requests by the Parents. The District became aware of the Parents’ request</p>

² OAR 581-015-2030(5)

	<p>Complaint alleges that on October 29, 2016 "60 days had lapsed since our initial request and continued requests for an IEP meeting". Additionally, in an email dated November 1, 2016, the Parents communicated to the District: "It is clearly stated in the current IEP that a behavioral plan needs to be drafted at the start of the 2016-2017 school year" and that "It has been over two months since school started and since we made our first verbal request for an IEP Meeting. We have made numerous requests since with no success."</p> <p>Relevant Law: OAR 581-015-2225 and 34 CFR 300.324(a)(4), (a)(5), (a)(6), (b)(1).</p>	<p>for an IEP meeting on October 12, 2016. The schedules of essential District staff members made it impossible for the District to schedule an IEP meeting prior to November 4, 2016. The IEP Meeting was held in a reasonable period of time after the request for an IEP meeting was made.</p>
<p>3.</p>	<p><u>Content of IEP</u></p> <p>The Complaint alleges the District violated the IDEA by failing to include in the Student's IEP adopted on or about November 4, 2016 a "Summary of Present Levels of Academic Achievement and Functional Performance", resulting in an IEP that is "rather useless without this pertinent information."</p> <p>Relevant Law: OAR 581-015-2200 and 34 CFR 300.320.</p>	<p><u>Substantiated</u></p> <p>The District concedes that the Student's November 4, 2016 IEP failed to include an adequate PLAAFP statement.</p> <p>The Department also finds that the District failed to include an adequate PLAAFP statement in the Student's May 18, 2016 IEP.</p> <p>The Department also finds that the amended IEP of November 4, 2016 does not provide an adequate PLAAFP statement. No meeting minutes are available for either IEP Meeting, nor were current District staff members able to provide additional information concerning the discussions at either IEP Meeting.</p>
<p>4.</p>	<p><u>Prior Written Notice (PWN)</u></p> <p>The Complaint alleges that the District failed to provide an amended IEP and PWN to the Parents within a reasonable period of time following an IEP meeting on or about November 4, 2016.</p> <p>Specifically, the Complaint alleges the District sent the amended IEP and PWN concerning the IEP Meeting of November 4, 2016 to the Parents on December 12,</p>	<p><u>Substantiated</u></p> <p>The Case Manager reported that the delay in providing the PWN occurred in part due to the Case Manager's desire to obtain all District staff signatures on the November 4, 2016 IEP, (which are not required on IEPs; only documentation of participants) and due to the fact that the Case Manager is new to teaching and is not fully aware of "what was needed." The Department finds that the provision to the Parents of the PWN and a copy of the</p>

<p>2016.</p> <p>Relevant Law: OAR 581-015-2310 and 34 CFR 300.503.</p>	<p>November 4, 2016 IEP after twenty school days did not occur within a reasonable amount of time.</p>
--	--

<p><u>Proposed Corrective Action</u></p> <p>The Complaint requests the following solutions: "As a corrective action we would like the retraining of SPED teachers at Elkton Charter School."</p>

III. FINDINGS OF FACT

Background

1. The Student in this case is presently eight years old and in 3rd grade in the District. The Student is eligible for Special Education as a student with Emotional Disturbance (ED) and Other Health Impairment (OHI).
2. The Student transferred to the District at the beginning of the 2015-2016 school year from another Oregon school district. The Student had not been found eligible for Special Education services at that time. In September, 2015, the District referred the Student to the Therapeutic Learning Classroom Program (TLC) operated by the Douglas Education Service District, which is a certified psychiatric day treatment program through Oregon's Addictions and Mental Health. Students are not required to be receiving Special Education services in order to participate in this program. The Student attended school at TLC until March 28, 2016 when, following Parent consent for a psycho-educational evaluation, the Student began transitioning back to the District. The District reported the official enrollment with the District as April 13, 2016. The District developed the Student's initial IEP on May 18, 2016.

Parent Participation

3. The District's *Response* states that the District scheduled the May 18, 2016 IEP Meeting by phone on May 10, 2016, and refers to the first page of the May 18, 2016 IEP's list of the efforts to schedule the meeting. This page also states that the District confirmed this meeting with the Parents on May 10, 2016. The District states that the time of the meeting was changed on May 17, 2016. The District's documentation contains a Notice of Team Meeting dated May 10, 2016 for an IEP Meeting on May 18, 2016. The District employee whose name appears on the Meeting Notice is no longer employed with the District and was not available for an interview.
4. During the on-site interviews, the Parents stated that they had not received the Notice of Team Meeting for the May 18, 2016 IEP Meeting. The Parents stated that they were notified of an IEP meeting scheduled for May 17, 2016 by a telephone call from the District on May 10, 2016. The May 18, 2016 IEP also includes a note stating "rescheduled IEP time of day", on May 17, 2016. The Parents stated they believed the IEP Meeting had been rescheduled from May 16, 2016 to May 17, 2016. An email from the Case Manager to the Parents sent on May 17, 2016 states that "we need to reschedule the meeting for tomorrow" since the Superintendent/Principal could not attend. This email also includes an apology from the Case

Manager “for the delay in the meeting notice, as I thought I had sent it because I have a copy in my files.”

The May 18, 2016 IEP and the Placement Determination both indicate that both Parents attended the May 18, 2016 IEP Meeting. During the on-site interviews, the Parents stated their concern with the rescheduling of the meeting the day before the IEP Meeting is that if the Parents had been unable to attend that day the IEP Team could not have completed the Student’s IEP in a timely fashion. During the on-site interviews, the District also expressed a belief that mail to the Parents did not always reach the Parents, and now documents are mailed to the Parents by certified mail only. This appears to have solved the problem.

5. The District provided a written Notice of Team Meeting dated October 27, 2016 for an IEP Meeting on November 4, 2016. This Meeting Notice indicates that the Student’s Case Manager, who began working with the District in the summer of 2016, issued the written Notice. The list of individuals invited/required to attend included on the Meeting Notice was significantly different than the list of attendees on the November 4, 2016 amended IEP. Although the Case Manager did not have a specific recollection of sending this Meeting Notice, the Case Manager believes it was sent and that it is the Case Manager’s practice to do so.
6. The November 4, 2016 amended IEP states on the first page that the District sent an “Email scheduling meeting” on October 27, 2016. However, the District did not provide a copy of this email to the Complaint Investigator. The documentation submitted by the Parents with the Complaint include an email communication dated November 1, 2016, in which the Parents state “This is a formal written request for an IEP * * * Meeting for [the Student]”; and that “it is clearly stated in the current IEP that a behavior plan needs to be drafted at the start of the 2016-2017 school year”; and that “The offer to meet on 10/31[/16] at 4 pm made was completely insufficient, considering you are aware we live in a very rural area. Any other day and time since 8/29 would have been sufficient.” This November 1, 2016 email thread in the documents provided by the Parents includes an email from the District to the Parents, also on November 1, 2016, asking if November 4, 2016 will “work for you to hold the IEP? [The current Case Manager] will send a meeting invite today to you.”
7. During the on-site interviews, the Parents stated that they did not receive the Meeting Notice dated October 27, 2016 until December 12, 2016, when the Parents received the amended IEP and PWN following the November 4, 2016 IEP Meeting. This amended IEP states that both Parents attended this IEP Meeting.
8. The Parents stated to the Complaint Investigator that they would have liked the School Psychologist to attend the November 4, 2016 IEP Meeting but were unaware that the School Psychologist would not be attending and therefore did not invite this individual.

Review and Revision of IEPs

9. The May 18, 2016 IEP states “A behavior plan will be written and put into place at the beginning of the next school year. (2016-2017).” The Parents state that they requested the development of the behavior plan on the first day of the 2016-2017 school year (August 29, 2016), and made verbal requests again on September 29, 2016 and October 29, 2016 and requested an IEP meeting via email on November 1, 2016. The Parents provided an email communication dated November 1, 2016, in which the Parents wrote “This is a formal written request for an IEP * * * Meeting for [the Student]”; and that “it is clearly stated in the current

IEP that a behavior plan needs to be drafted at the start of the 2016-2017 school year"; and that "The offer to meet on 10/31/[16] at 4pm made was completely insufficient, considering you are aware we live in a very rural area. Any other day and time since 8/29 would have been sufficient." This email thread includes an email from the Case Manager to the Parents, also on November 1, 2016, asking if November 4, 2016 will "work for you to hold the IEP? [The current Case Manager] will send a meeting invite today to you."

10. The District notes a Behavior Plan was issued in September of 2016, following a meeting on September 6, 2016, which included the Parents and a Counselor at the District's elementary school. During the on-site interviews, District staff stated that a written Behavior Plan prepared by the School Counselor and dated "September 2016" inaccurately stated that the Student's regular education teacher, the current Case Manager and the Superintendent/Principal attended the September 6, 2016 meeting concerning the Student's Behavior Plan. The Parents reported during the on-site interviews, that although one of the Parents recalled speaking with a counselor at the elementary school in September of 2016 concerning the Student's behavior, both Parents were not present.

The Parents also stated they did not receive the September 2016 Behavior Plan included in the District's documentation provided with the *Response* in this case until they received it with the District's *Response* in this case, in February of 2017. The Student's current Case Manager reported during the on-site interviews an awareness that the Behavior Plan had been developed in September of 2016, so the Case Manager did not believe an IEP meeting would be required until the Student's annual review IEP, in May of 2017, since the IEP team developed the Student's then current IEP on May 18, 2016.

11. The Case Manager and Superintendent/Principal both reported during the on-site interviews that they did not learn of any requests for an IEP meeting made by the Parents prior to October 12, 2016, when a District elementary school secretary sent an email stating that one of the Student's Parents had verbally requested an IEP meeting. The Case Manager could not meet from October 17, 2016 through October 28, 2016, due to leave, and the Superintendent/Principal also could not meet October 17, 2016 through October 28, 2016, due to other commitments. On their first day back to work (10/31/2016) the Case Manager and Superintendent/Principal, offered the Parents an IEP meeting on October 31, 2016, but the Parents could not attend that meeting. The November 4, 2016 amended IEP states that on October 10, 2016 the District called one of the Parents to schedule an IEP meeting, and that on October 27, 2016 the District sent an "Email scheduling meeting". The District did not provide a copy of this email to the Complaint Investigator.

Content of IEP

12. The Student's Psycho-Educational Evaluation provides a detailed summary of the Student's educational and behavioral background, including a diagnosis of Post-Traumatic Stress Disorder. This evaluation recommends consideration of the following in developing the Student's educational plan: individualized instruction in the area of Writing, and shortened, modified writing assignments; the opportunity to express content knowledge through multiple modalities, rather than only pencil and paper answers; reading test and assessment questions to the Student; and personal academic growth tracking toward personalized goals. During the on-site interviews, District staff stated that the District relied upon the Psycho-Educational Evaluation when developing the Student's May 18, 2016 IEP.

13. The Student's current Case Manager reported during the on-site interviews that the Parents had requested an IEP Meeting, held on November 4, 2016, to amend a behavior goal in the Student's May 18, 2016 IEP that the Parents believed to not be measurable. As noted above, the Student's Case Manager did not believe an annual review of the Student's May 18, 2016 IEP would occur until May of 2017, and understood the purpose of the meeting to be amendment of the behavior goal and not to conduct an overall review of the Student's IEP as occurs during annual review of an IEP.
14. The PWN dated November 7, 2016 (but not sent to the Parents until December 12, 2016, as noted below) states "the Team amended the current IEP to re-write the behavior goal and plan", and that this is to be implemented on November 8, 2016. The Parents agreed during the on-site interviews that the main issue at the November 4, 2016 IEP Meeting to be amendment of the Student's behavior goal. The November 4, 2016 amended IEP includes a modified behavior goal that is measurable, especially when compared to the behavior goal in the May 18, 2016 IEP. However, the Parents reported during the on-site interviews that they mentioned the absence of Present Levels of Academic Achievement and Functional Performance (PLAAFP) during the November 4, 2016 IEP Meeting.
15. The Student's May 18, 2016 and November 4, 2016 IEPs both include identical PLAAFP statements. Specifically, both IEPs state the Student's strengths to be: "Creative, Artistic, loves science, and has a good memory." Both IEPs also state the concerns of the Parents for enhancing the education of the Student to be: "Reading and Writing". Both IEPs contain blank sections under the "Present level of academic performance, including the student's most recent performance on stat or district-wide assessments" and under the "Current Info" headings. Both IEPs state under the heading "Present level of development and functional performance (including results of initial or most recent evaluations) only "Below Grade Level". Both IEPs state under the heading "Describe how student's disability affects involvement and progress in the general education curriculum" the following: "[The Student] struggles both academically and behaviorally due to [the Student's] disability. When [the Student] gets frustrated, [the Student] tends to shut down and say that [the Student] doesn't know how to do something, when in fact, [the Student] only 'believes that [the Student] can't do it', therefore, has resigned * * * to believing that [the Student] cannot. [The Student] needs to build confidence, especially in the area of reading."
16. Both the May 18, 2016 and November 4, 2016 IEPs reference the Student's "Present Level" in the goals. In both IEPs, the two Reading goals each state the "Present Level" as "below grade level". In both IEPs, the Writing goal (which is identical in both IEPs) states the "Present Level" as "below grade level". In both IEPs, the Social/Emotional/Behavioral goal (the behavior goal) states the "Present Level" as "struggling". The May 18, 2016 behavior goal states only that "[The Student] will learn to create and achieve self-directed goals"; and the November 4, 2016 IEP behavior goal states the behavior goal as follows: "[The Student] will learn to follow classroom routines." No measurement method is stated for the behavior goal. The November 4, 2016 IEP also added Short-Term Objectives concerning the behavior goal and a "Measurement Method". The November 4, 2016 IEP adds Specially Designed Instruction (SDI) in Mathematics for 30 minutes per day, but otherwise retains the same Service Summary as the May 18, 2016 IEP. It is not clear why the November 4, 2016 IEP added SDI in Mathematics. There are no meeting minutes from either the May 18, 2016 or November 4, 2016 IEP Meetings, although there are handwritten notes of a meeting concerning the Student's needs on April 18, 2016.

17. On February 27, 2017, after the filing of the Complaint in this case, the Student's IEP Team met and developed a new IEP that includes a completed PLAAFP. This IEP also adopted new goals and amended the Service Summary section.

Prior Written Notice

18. The District did not provide a copy of the November 4, 2016 IEP amendment or the PWN to the Parents until it mailed these documents on December 12, 2016. The Student's Case Manager explained that due in part to the Case Manager being at the beginning of a teaching career the Case Manager determined it best to wait until obtaining the signature of a particular participant in the November 4, 2016 IEP Meeting.

IV. DISCUSSION

Parent Participation

The Complaint alleges that the District violated the IDEA by failing to provide written notice of an IEP Meeting scheduled for May 18, 2016 (a meeting unilaterally rescheduled by the District with "less than 36 hours before it was to occur" via an email) and by also failing to provide written notice of the IEP Meeting scheduled on or about November 4, 2016. The Complaint further alleges that "On 11-04-2016 the IEP Team was entirely changed without any notice or communication of any kind."

OAR 581-015-2190(1) and (2) provide, concerning "meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child", that "School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend." Additionally, OAR 581-015-2190(2)(b)(A) provides the written notice must state "who will attend", and OAR 581-015-2190(2)(b)(B) provides that the written notice must "Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child."

It is not clear from the documentation provided by the parties and the interviews of District staff and the Parents precisely how the District notified the Parents of the May 18, 2016 IEP Meeting. It is clear that both Parents attended the May 18, 2016 IEP Meeting, despite the rescheduling of this IEP Meeting. The documentation of efforts to schedule the May 18, 2016 IEP Meeting, on the first page of the May 18, 2016 IEP document, states the District issued a Meeting Notice on May 10, 2016, and the Department concludes that this means that the District indeed mailed the written notice of the May 18, 2016 IEP Meeting to the Parents on May 10, 2016. The May 17, 2016 email from the Student's former Case Manager to the Parents includes an apology for a delay in the Meeting Notice but also states the Case Manager "thought I had sent it because I have a copy in my files".

The Department does not substantiate this portion of the allegation.

It is doubtful that the Meeting Notice for the November 4, 2016 IEP Meeting (documentation provided by the District was sent on October 27, 2016, as both the Student's Case Manager and the District's Superintendent/Principal were not at work during that week. An email provided by the Parents, dated November 1, 2016, received from the Student's Case Manager, states that the Case Manager will send a meeting invitation "today." While the first page of the amended IEP

indicates that an "Email scheduling meeting" was sent on October 27, 2016, the District did not provide a copy of this email to the Complaint Investigator. It is also important to note that the required participants listed in this Meeting Notice included the School Psychologist; however, the roster of attendees included on the November 4, 2016 amended IEP does not include the School Psychologist. Therefore, the Parents were unaware that the School Psychologist would not be participating in the November 4, 2016 IEP Meeting.

Because the Department found no evidence that the District sent the written notice of the November 4, 2016 IEP Meeting on October 27, 2016, and that the Meeting Notice provided by the District included the School Psychologist as a required participant in the November 4, 2016 IEP Meeting even though the School Psychologist did not participate in the IEP Meeting, the Department finds that the Parents did not receive notice of those invited to the November 4, 2016 IEP Meeting.

The Department substantiates this portion of the allegation.

Review and Revision of IEPs

The Complaint alleges that the District violated the IDEA by failing to timely schedule an IEP meeting following requests by the Parents. Specifically, the Complaint alleges that on October 29, 2016 "60 days had lapsed since our initial request and continued requests for an IEP meeting". Additionally, in an email dated November 1, 2016, the Parents communicated to the District: "It is clearly stated in the current IEP that a behavioral plan needs to be drafted at the start of the 2016-2017 school year" and that "It has been over two months since school started and since we made our first verbal request for an IEP Meeting. We have made numerous requests since with no success."

The District *Response* states that "An initial IEP meeting was held on May 18, 2016, and parents signed consent for special education on that date. A behavior plan was completed by a team including the student's parents on September 6, 2016. The parents requested an IEP meeting after the school year started, and an IEP meeting was held on November 4, 2016, at which revisions were made to the behavior goal and the behavior plan."

The District acknowledges that the Parents verbally requested a meeting on October 12, 2016, and agrees an IEP meeting did not occur until November 4, 2016, and states that the IEP meeting did not occur due to the unavailability of the Superintendent/Principal from October 17, 2016 to October 31, 2016, and the unavailability of the Students' Case Manager from October 17, 2016 to October 31, 2016. The schedules of essential District staff after the Case Manager first learned of a verbal request by the Parents for an IEP meeting made on October 12, 2016 resulted in circumstances that render the holding of the IEP Meeting on November 4, 2016 reasonable.

The Department does not substantiate this allegation.

Content of IEP

The Complaint alleges that the District violated the IDEA by failing to include in the Student's amended IEP adopted on or about November 4, 2016 a "Summary of Present Levels of Academic Achievement and Functional Performance", resulting in an IEP that is "rather useless without this pertinent information."

In its *Response*, the District “agrees in part with the allegations, and denies in part”. It did not provide a sufficient Summary of Present Levels of Academic and Functional Performance for the November amended IEP. At a meeting held on February 21, 2017, the District and the Parents addressed present levels, behavior, and goals, and revised the IEP accordingly. A second meeting was set for February 27, 2017 to address additional information including present levels for revised goals.

OAR 581-015-2200(1)(a) provides: “The individualized education program (IEP) must include * * * A statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum.”

Based on the District’s concession and the Department’s review of the documentation in this case, the Department finds that the Student’s November 4, 2016 amended IEP failed to include an adequate PLAAFP statement. Additionally, the Department finds that the District also failed to include an adequate PLAAFP statement in the Student’s May 18, 2016 IEP, as the PLAAFP statements in both the May 18, 2016 and November 4, 2016 amended IEPs are identical. The Department further finds that the Student’s present levels were not adequately expressed elsewhere in either the May 18, 2016 IEP or the November 4, 2016 IEP, including in the “Present Levels’ statement in the goals in both IEPs. District staff could not recall with any specificity the content of the discussions concerning the Student’s present levels, at either the May 18, 2016 or November 4, 2016 IEP Meetings, and the District did not have meeting minutes or other documentation from either IEP Meeting to provide additional information concerning the discussions at both IEP Meetings.

The Department substantiates this allegation.

Prior Written Notice

The Complaint alleges that the District failed to provide an amended IEP and PWN to the Parents within a reasonable period of time following an IEP Meeting on or about November 4, 2016. Specifically, the Complaint alleges the District sent the amended IEP and PWN concerning the IEP Meeting of November 4, 2016 to the Parents on December 12, 2016.

In its *Response*, the District states: “The District provided the amended IEP and PWN within a reasonable amount of time. The meeting occurred on Friday, November 4th and documents were provided to Parents on December 12, 2016. The District provided the documents within twenty working days of the meeting; there were six days of school holidays in November. In addition, for a portion of that time the Special Education Teacher was on protected leave.”

OAR 581-015-2310(2) provides: “Prior written notice must be given to the parent of a child * * * within a reasonable period of time before a school district * * * proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child * * *.”

The Case Manager who provided the amended IEP and PWN on December 12, 2016 reported that protected leave days occurred from October 17, 2016 to October 31, 2016 (the Case Manager returned to work on October 31, 2016), before the November 4, 2016 IEP Meeting. Additionally, the Case Manager reported that the delay occurred in part due to the Case Manager’s desire to obtain all District staff signatures on the November 4, 2016 amended IEP and this occurred, in part, due to the fact that the Case Manager is new to teaching and is not fully

aware of "what was needed." The Department finds that the District had ample opportunity to provide the Parents with copies of the November 4, 2016 amended IEP and Prior Written Notice prior to December 12, 2016.

The Department substantiates this allegation.

Additional Findings

OAR 581-015-2200(1)(c) provides that an IEP must include "A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals * * * will be provided."

The Department's *Request for Response* in this case requested all report cards and progress reports regarding the Student issued beginning February 3, 2016 (one year preceding the filing of the Complaint in this case) to the present. The District's *Response* stated that "The District does not have documents responsive to this request." In response to an email sent to the District's Legal Counsel, who drafted the District's *Response* in this case, on March 13, 2017 the District's Legal Counsel provided report cards "for Spring 2016, and for fall term 2016-17", and further stated: "You will note that the IEP was developed in May 2016, so there should have been progress notes mailed * * * for the same reporting periods. However, the District has not found documentation that there were progress reports provided to parent." During the on-site interviews, the District confirmed that the District did not complete or mail to the Parents progress reports concerning the Student's progress on the Student's IEP goals following the Student's initial IEP developed on May 18, 2016.

CORRECTIVE ACTION³
In the Matter of Elkton School District
 Case No. 17-054-003

The Department orders the following Corrective Action resulting from this investigation:

No.	Action Required	Submissions ⁴	Due Date
1.	<p>The District will schedule and provide training on the components listed below for all District Special Education staff and administrators who support and supervise Special Education services.</p> <p>a. District will share draft training</p>	Draft training agenda submitted	April 19, 2017

³ 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)).

⁴ 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>agenda to ODE (Rae Ann Ray and County Contact) for approval.</p> <p>District will provide professional development training on the following topics related to IEP development and implementation and parent participation. County Contact will assist with the training.</p> <ul style="list-style-type: none"> • All required components of a compliant IEP • Developing appropriate goals from assessment information • Writing appropriate 'Present Levels of Academic and Functional Performance • Requirements of meeting invitations/ IEP Meeting Participants, and Prior Written Notice to foster parent participation • Measuring progress towards IEP goals and timely reporting of progress to parents 	<p>to ODE for approval prior to professional development session.</p> <p>Following the training session, District will submit agenda, sign-in sheets with participant names and roles, and copies of all materials.</p>	<p>May 19, 2017</p>
--	---	---	----------------------------

Dated this 4th Day of April 2017



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

Mailing Date: April 4, 2017