

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Jefferson School )  
District 14J )

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 18-054-043

**I. BACKGROUND**

On October 24, 2018, 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 Jefferson School District 14J (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule 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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.<sup>2</sup> The Parent and District attempted mediation. The timeline was extended for mediation. On January 19, 2019 the Department was informed that mediation was unsuccessful in this matter and the investigation proceeded. This order is timely.

On January 22, 2019, the Department's Complaint Investigator (Investigator) sent a *Revised Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 5, 2019.

On January 25, 2019, the District submitted a *Response* explaining the District's understanding of the allegations and the District's efforts to address the issues raised in the Parent's Complaint. In total, the District submitted the following items:

1. District Response in 18-054-013
2. District Response, Table of Contents
3. Special Education Notice of Team Meeting, 09/14/2017
4. Special Education Notice of Team Meeting, 09/18/2107
5. Special Education Notice of Team Meeting, 09/14/2017
6. Oregon Standard Individualized Education Program, 09/22/2017
7. Behavior Support Plan, 11/28/2017
8. Functional Behavioral Assessment, 12/12/2017
9. Meeting Notes, 09/22/2017
10. Prior Notice of Special Education Action, 09/22/2017
11. Prior Notice of Special Education Action, 11/03/2017

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

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

12. Special Education Notice of Team Meeting, 01/30/2018
13. Special Education Notice of Team Meeting, 02/01/2018
14. Special Education Notice of Team Meeting, 02/07/2018
15. Special Education Notice of Team Meeting, 02/09/2018
16. Special Education Notice of Team Meeting, 04/18/2018
17. Special Education Notice of Team Meeting, 04/18/2018
18. Meeting Minutes, 04/26/2018
19. Pre-Referral Team Meeting Notice, 09/10/2018
20. Special Education Notice of Team Meeting, 09/10/2108
21. Special Education Notice of Team Meeting, 09/10/2018
22. Oregon Standard Individualized Education Program, 09/13/2018
23. Behavior Support Plan, 2018—2019
24. Pre-Referral, 09/13/2018
25. Prior Notice about Consent for Evaluation, 09/13/2018
26. Student Assessment List, 09/13/2018
27. Meeting Notes, D91—D93
28. Prior Notice of Special Education Action, 09/13/2018
29. Email: (Student) 09/13/2018
30. Prior Notice of Special Education Action, 09/17/2018
31. Email: Assessments, 09/26/2018
32. Referral Team Meeting Notice, 10/01/2018
33. Referral Team Meeting Notice, 10/01/2018
34. Letter from Parents to District, 09/26/2018
35. Special Education Notice of Team Meeting, 10/15/2018
36. Meeting Notes (and sign-in sheet), 10/11/2018
37. Student's Referrals by Month
38. Prior Notice of Special Education Action, 10/12/2018
39. Special Education Notice of Team Meeting, 10/15/2018
40. Meeting Notes, 10/24/2018
41. Prior Notice of Special Education Action, 10/24/2018
42. Prior Notice about Evaluation/Consent for Evaluation, 01/18/2019
43. Student Assessment List, 01/18/2018
44. Letter from District to Parents, 01/28/2018
45. Record of SDI services provided to Student, 09/25/2108
46. Email, "Message" 01/14/2019
47. Student referrals by Month
48. Confidential Student Incident Report, 9/04/2018—6/12/2018
49. Statement of Eligibility for Special Education, 02/23/2016
50. Meeting Notes, 02/23/2016
51. Confidential Psychoeducational Report, 10/23/2015
52. Medical Statement of Health Assessment, 11/13/2012

The Investigator interviewed the Parents (each Parent individually and jointly are referred to here as "Parents") on February 23, 2019. The Parents provided additional documentation at that time. The Investigator determined that onsite interviews were not necessary. On January 9, 2019, the Investigator interviewed the District's Special Education Director by telephone regarding this matter. The Investigator reviewed and considered the previously-described

documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>3</sup> The Parents' allegations and the Department's conclusions are set out in the chart below. The 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 October 25, 2017, to the filing of this Complaint on October 24, 2018.

	<u>Allegations</u>	<u>Conclusions</u>
<b>1.</b>	<p><b><u>Parent Participation</u></b></p> <p>The Parents allege that the District violated the IDEA when the District scheduled a meeting with the Student and the District's Autism Specialist without first notifying the Parents and affording them the opportunity to attend or provide input.</p> <p>(34 CFR §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The meeting complained of by the Parents was not an IEP Team Meeting, but rather the District implementing the Student's IEP through the District's Autism Specialist. The Parents participated in the Student's IEP Team Meeting and agreed to goals and services. After an IEP Team Meeting, the Parents objected to the IEP Team's decisions. The District responded by issuing a prior written notice and soon thereafter convening another IEP Team Meeting, which the Parents attended and actively participated.</p>
<b>2.</b>	<p><b><u>IEP Implementation</u></b></p> <p>The Parents allege that the District violated the IDEA when it added evaluation requirements before fully implementing the Student's existing IEP.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The concerns raised by the Parents were not evaluation requirements or additions to the Student's IEP. Rather, they related to services that were included in the Student's IEP, and which were part of a previously agreed upon IEP.</p>
<b>3.</b>	<p><b><u>Prior Written Notice</u></b></p> <p>The Parents allege that the District violated the IDEA by having the Student meet with the District Autism Specialist without prior written notice being given to the Parents or</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Parents report having not received prior written notice regarding the District's response to the Parent's communicated preferences about the</p>

<sup>3</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

<p>the Student. The Parents allege that there were prior communications between the Parents and the District deferring the decision to the Student, and that the Student had decided not to undergo the evaluation proposed by the District.</p> <p>(34 CFR § 300.503; OAR 581-015-2310)</p>	<p>Student's IEP goals and services. Upon learning that the Parents had not received the initial prior written notice by mail, the District re-sent the original notice.</p>
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### III. FINDINGS OF FACT

1. The Student in this case is in the tenth grade, resides in the District, and receives special education services under the eligibility category of Autism Spectrum Disorder. The Student is artistic and enjoys creating art. The Student enjoys football and has a strong interest in word games and auto shop class. The Student enjoys physical activities, drawing, reading books with more pictures than words, and watching videos.
2. The Student receives specially designed instruction in math, reading, written language, transition, and social communication. The Student currently reads at a sixth-grade level, performs math at a third-grade level, and requires modifications and accommodations in the IEP to continue to work toward academic skills.
3. The Student's Autism Spectrum Disorder affects the Student's ability in some social situations. The Student can act out verbally with profanity to gain attention from others. Based on the District records, the Student struggles with refusals, noncompliance, and disrespect. The Student displays lowest test results in fluid reasoning, and highest scores in processing speed. **(D63—D64)**
4. The Student is currently scheduled to graduate in 2021 with a modified diploma. The Student is set to receive transition classes to support the Student in such activities as study skills, time management, home economics, car care, and job readiness. **(D67)**
5. In addition to the specific academic goals in reading, written language and math, the Student also received support in the area of social communication. The Student's goal in this area was for the Student to identify and apply a problem-solving template for incidents that involve inappropriate behavior, such as swearing, aggression toward a person or property, disruption to classrooms, and noncompliance. A District Autism Specialist would collect this data and progress would be reported with the Student's report cards four time yearly.
6. The Student's IEP specified a variety of services and supports. To provide the support needed, the Student's placement would be in general education for the majority of the school day, and the Student would spend two class periods in the District's Learning Resource Center.

7. On September 13, 2018 the Student's IEP Team met to review the Student's IEP. During the meeting the Team discussed the Student's progress and matters impeding the Student's progress, particularly the Student's behavior. The Team discussed such issues as the Student not receiving enough credit in math the prior year due to behavior issues. The Team discussed the Student's social communication goal, which was tracked by the Autism Specialist. The meeting minutes document that, "...parents are on board with trying Autism support with the new Specialist. . . . Parents said it was worth a try. The Team talked about the need for [the Student] to get support because [the Student] will not be able to use the behaviors [the Student] has now in a job setting. If [the Student] was to use profanity in a job [the Student] would be fired . . . . Parents agreed that [the Student] needs to learn this and that it wouldn't be good if [the Student] cussed at work."
8. The Student's IEP Team decided that the Student would benefit from assistance with support around communication and behavior. To this end, the Team included a social communication goal in the Student's IEP. The Student would meet with the District's Autism Specialist for 120 minutes per week to work with the Student on this goal.
9. At the end of the September 13, 2018 IEP Team Meeting, the Parents noted that they would ask the Student about meeting with the Autism Specialist, that they would not make the Student do so, and that they would report back with the Student's response.
10. Following the meeting—on the evening of September 13, 2018—the Parents sent an email to District staff, including the Student's Case Manager and Special Education Director. The Parent's email read, "After speaking with [the Student] tonight [the Student] does NOT want to meet with the Autism lady, so lets please get that off [the Student's] IEP please, and please don't push the issues its greatly appreciated."
11. Included with the District's response materials is a copy of a September 17, 2018 Prior Notice of Special Education Action. The prior written notice acknowledged the Parent's September 13, 2018 email asking that the Student's IEP be changed and stated, "At this time [the District] will be implementing the current IEP with the services that were agreed upon. We understand that in the past you have not wanted Autism services, but [the Student] is a student with Autism and providing Autism services is appropriate at this time. The Team will implement this IEP for the next 8 weeks as written."
12. The Parents claim to have not received the District's September 17, 2018 prior written notice.
13. On September 25, 2018, the Student met with the District's Autism Specialist pursuant to the service outlined in the Student's IEP. During, or immediately following this meeting, the Student called the Parents to report that the meeting had transpired. The Parents came to the school to inquire about this meeting. The Parents were told of the prior written notice dated September 17, 2018.
14. Following the Parent's visit to the school, the District mailed another copy of the September 17, 2018 prior written notice to the Parents. The Parents provided a copy of the envelope in which the District mailed this copy of the prior notice, postmarked September 27, 2018.

This was two days after the Parents went to the school in response to the Student's call regarding the Student's meeting with the District Autism Specialist.

15. The Parents question whether the September 17, 2018 notice was ever sent, or if the document provided by the District was created later and backdated to September 17, 2018.
16. The Parents further question how a document dated September 17, 2018 could address their concerns regarding a September 25, 2018 meeting between the Student and the Autism Specialist.
17. On October 24, 2018, the Department received the Complaint. The Parents and District agreed to extend the timeline to attempt mediation, which did not resolve the matter.

## IV. DISCUSSION

### A. Parent Participation

The Parents allege that the District violated the Individuals with Disabilities Education Act (IDEA) when the District scheduled a meeting between the Student and the District's Autism Specialist. The Parents allege that this meeting occurred without notice and without their consent. The Parents further allege that this meeting occurred without their ability to attend or provide input.

School districts must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child.<sup>4</sup> School districts must provide parents with written notice of meetings sufficiently in advance to ensure that one or both parents will have an opportunity to attend.<sup>5</sup> That written notice must state the purpose, time, and place of the meeting, along with who will be in attendance, among other requirements.<sup>6</sup> Meetings may be conducted without parents in attendance if the district has given the parent appropriate notice.<sup>7</sup>

The September 25, 2018 meeting the Parents refer to is in fact the District Autism Specialist convening with the Student as part of the Student receiving "Communication-Social" specially designed instruction. The Student received these services as they were outlined in the Student's IEP. The Parents initially agreed to these services during the Thursday, September 13, 2018 IEP Team Meeting. Later that evening—after speaking with the Student—the Parents sent an email to the District objecting to this service. On Monday, September 17, 2018, the District responded to the Parents by issuing a prior written notice—one which the Parents contend was not sent to them until September 27, 2018. The prior written notice acknowledged the Parent's September 13, 2018 email asking that the Student's IEP be changed and stated that the District refused to make such a change, noting that providing Autism services is

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<sup>4</sup> OAR 581-015-2190(1).

<sup>5</sup> OAR 581-015-2190(2).

<sup>6</sup> OAR 581-015-2190(2)(b)(A-D).

<sup>7</sup> OAR 581-015-2190(5).

appropriate, will be implemented as written in the IEP, and the District would be agreeable to revisit the issues after eight weeks of implementation.

The IDEA does not accord the Parents meaningful participation rights as part of meetings between school staff and students for purposes of delivering specially designed instruction. With respect to the September 13, 2018 IEP Team Meeting, the Parents attended, participated, provided input, and were part of the Team's developing the Student's IEP. The Parents agreed to the proposed services that were delivered on September 25, 2018. When the Parents later objected to implementation of the Autism Specialist services after eliciting input from the Student, the District responded within four days to the Parents' request, refusing it with a prior written notice. The Parents were afforded the opportunity to meaningfully participate in meetings with respect to the identification, evaluation, IEP and educational placement of the Student, as well as the provision of a free appropriate public education (FAPE). The Department does not substantiate this allegation.

## **B. IEP Implementation**

The Parents allege that the District violated that IDEA when it added additional evaluation requirements before fully implementing the Student's existing IEP. The Parents allege that the District required a service not previously present in the Student's IEP and that the District required this new service for the Student to keep an IEP.

A school district must provide special education and related services to a child with a disability in accordance with the student's IEP.<sup>8</sup> As soon as possible following the development of the IEP, special education and related services should be made available to the child in accordance with that IEP.<sup>9</sup>

The September 13, 2018 IEP Team—which included the Parents—agreed that the Student would benefit from social communication services provided by the District's Autism Specialist. Following development of the IEP, the Parents communicated to the District the Student's preference not to receive these services. The District responded through a September 17, 2018 prior written notice that the IEP would be implemented as written. After the Autism Specialist met with the Student on September 25, 2018, the Parents continued to object to the social communication goal and services.

On September 25, 2018, the District was implementing the Student's operative IEP when the District Autism Specialist met with the Student to provide specially designed services in the area of "Communication-Social." The Department does not substantiate this allegation.

## **C. Prior Written Notice**

The Parents allege that the District violated the IDEA by requiring the Student to meet with the District Autism Specialist. The Parents allege that this requirement was added to the Student's IEP after the September 13, 2018 IEP Team Meeting. The Parents further allege that they

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<sup>8</sup> OAR 581-015-2220(1)(b).

<sup>9</sup> OAR 581-015-2220(2)(b).

objected to the addition of this requirement before the District provided it. The Parents question the authenticity of prior written notices provided by the District in response to this issue.

Issuance of a prior written notice is required when a school district refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE.<sup>10</sup> The notice must conform to specific requirements with regard to form and content, including but not limited to the action proposed and the reason for the action.<sup>11</sup>

On September 13, 2018, the Student's IEP Team, including the Parents agreed to Social Communication services provided by the District's Autism Specialist. Following the IEP Team Meeting, the Parents sent an email to the District asking that the Social Communication services be removed. The District responded with a prior written notice dated September 17, 2018 that provides a narrative describing that the District would be implementing the Student's IEP as it was agreed upon at the September 13, 2018 IEP Team Meeting. The prior written notice contains more information, including why the IEP Team concluded that the Social Communication services were important, other options that were considered, and why those options were rejected. The Parents report having not received this notice by mail. The District re-sent the prior written notice on September 25, 2018 after learning from the Parents that they did not receive the September 17, 2018 prior written notice. The Parents acknowledge receiving the prior written notice on or about September 27, 2018.

The District sent the Parents timely and responsive prior written notices after the Student's September 13, 2018 IEP Meeting and also in response to the Parents' request that social communication services not be provided. There is no indication that the date or content of the September 17, 2018 prior written notice was manipulated or changed by the District. The Department does not substantiate this allegation.

#### **D. Additional Observations**

During the investigation, the Parents shared their reason for objecting to the Social Communication goal. The Parents allege that the Student is bullied by other students when the Student leaves class to receive IEP services. The Parents further allege that the District has failed to address this issue. The District noted that the Parents had not raised this concern, that such concerns were not reflected in the IEP Meeting Minutes, and that the Student receives a number of the Student's IEP services without leaving class. The District stated that it was receptive to learning more about the Parent's concerns so they could be addressed.

As part of the District's response, it included compensatory education. The District recognized that in previous years the Social Communication goal was part of the Student's IEP, but was not implemented due to the Parent's objection.

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<sup>10</sup> OAR 581-015-2310(2)(b).

<sup>11</sup> OAR 581-015-2310(3)(a)-g)

## V. CORRECTIVE ACTION<sup>12</sup>

*In the Matter of Jefferson School District #14J  
Case No. 18-054-043*

The Department does not order corrective action in this matter.

Dated: this 18th Day of March 2019

*Candace Pelt, Ed.D.*

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Candace Pelt, Ed.D.  
Assistant Superintendent  
Office of Student Services

Mailing Date: March 18, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

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<sup>12</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)).