

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
North Santiam School District 29J)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-044

I. BACKGROUND

On November 20, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) who attends high school in the North Santiam School District 29J (District). The Parents' complaint contained allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Department confirmed receipt of the 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 to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint investigation is November 21, 2018 through November 20, 2019.

On November 25, 2019, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of December 9, 2019.

On December 9, 2019, the District submitted a packet of materials for the Investigator. The materials included in the submission are listed below:

1. District Response
2. Schedule, Transcript, Grade Reports, etc.
3. IEPs, Meeting Notices and Minutes, Prior Written Notices
4. Testing Results
5. Email Communications

The Investigator determined that on-site interviews were necessary. On December 11, 2019, the Investigator interviewed the District Special Education Director, two Assistant Principals, two General Education Teachers, an Autism Specialist, a Counselor and a Case Manager. On December 30, 2019, the Investigator interviewed the Parents.

The Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

¹ 34 CFR § 300.152(a); Oregon Administrative Rule (OAR) 581-015-2030(12).

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.³ The Parents' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This complaint covers the one-year period from November 21, 2018 through November 20, 2019.

<p>1. IEP Team</p> <p>The Parents allege the District violated the IDEA when it did not ensure that at least one regular education teacher attended the Student's IEP meeting on June 3, 2019.</p> <p>(34 CFR § 300.321(a)(2); OAR 581-015-2210(1)(c))</p>	<p>Not Disputed</p> <p>One of the Student's general education teachers was invited to the June 3, 2019 IEP meeting but did not attend the meeting. The District does not dispute this allegation and proposes to implement training and accountability measures for its general education staff to ensure that general education teachers attend IEP team meetings.</p>
<p>2. When IEPs Must Be In Effect</p> <p>a. The Parents allege the District violated the IDEA when it did not provide the Student with the modifications in general education classes as agreed to by the IEP Team.</p> <p>b. The Parents also allege the District did not provide the Student with a modified grading system in some general education classes.</p> <p>c. The Parents allege the District did not allow the Student to attend higher level science classes even though modifications in those classes might have facilitated the Student's learning of the subject matter.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220(1)(b))</p>	<p>District Does Not Dispute the First Two Allegations. The Third Allegation Is Not Substantiated</p> <p>The District does not dispute the first two allegations and acknowledges that it needs to conduct more training and supervision to ensure that all students with disabilities receive the necessary accommodations and modifications in general education classes; and that there is a flaw in the database grading system.</p> <p>The Student wanted to take a Zoology class, but had not taken one of its prerequisites. The Student's IEP contains provisions for a modified curriculum and an alternate grade scale, but does not provide an exception to required course prerequisites. The Department does not substantiate this allegation.</p>
<p>3. Consent</p> <p>The Parents allege the District violated the IDEA when it did not obtain informed consent from the adult Student before conducting a reevaluation of the student's disability.</p>	<p>Not Substantiated</p> <p>The Case Manager described the evaluation process in such a way the Student could understand it and</p>

³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

	(34 CFR §§ 300.9, 300.300; OAR 581-015-2090(5)(a))	appropriately obtained the Student's consent.
4.	<p><u>Parent Participation – General</u></p> <p>The Parents allege the District violated the IDEA when it provided inaccurate notice of the purpose of the IEP meeting held on October 14, 2019. As a result, the Parent and the Student were not able to adequately prepare for and participate in the meeting. The Parents also allege the District violated the IDEA on October 14, 2019 when it made changes to the IEP outside of the team process and without the adult Student's participation.</p> <p>(34 CFR § 300.501(b); OAR 581-015-2190)</p>	<p><u>Not Substantiated</u></p> <p>The District provided the Parents and Student with sufficient notice of the subject matter of the upcoming IEP team meeting, and Parent and Student were provided a meaningful opportunity to participate. The District did not change provisions of the Student's IEP without the adult Student's participation.</p>
5.	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings</u></p> <p>The Parents allege the District violated the IDEA when it did not timely provide the adult Student with copies of the IEP or the eligibility documents discussed at the October 14, 2019 IEP meeting.</p> <p>(34 CFR § 300.322(f); OAR 581-015-2195(5))</p>	<p><u>Not Substantiated</u></p> <p>The District did provide copies of the IEP to the family.</p>

Requested Corrective Action

The Parents request the following action be implemented as a resolution to the Complaint:

1. IEP Team

- Training for all general education teachers about the legal importance of their participation in IEP meetings.
- Accountability for teachers if they do not come to required meetings. Ongoing training for new teachers.
- Training for special education teachers about how to document the nonparticipation of team members.

2. When IEPs Must Be In Effect

- Create and implement a schoolwide system for modifying coursework for students on modified diploma. The following questions should be considered. Who will modify the work (special education teachers? General education teachers?) What training do they need? What resources do they need?
- All teachers involved will need to be trained on the system and be given appropriate resources to implement the system.

- District should look at the grading software/system and determine how it can be used to support modified grading in real time.
- All general education teachers should be trained on the importance of following grading modifications.
- At schedule changes and the beginning of school years, a process should be put into place to allow all teachers to know and understand accommodations and modifications for students on IEPs.
- School counselor should check on [the Student's] transcript and verify that Algebra 1 grades are Pass/Fail.
- If modified grading is done better, this may take care of this problem. General education teachers/counselors/administrators are in the habit of moving kids to more restrictive placements when they cannot keep [up] with all the general education coursework.
- Training for counselors around special education law and placement as a team decision and directions for them to consult with case managers before changing class schedules.

3. Consent

- Clarification/training for special education teachers about when the[y] need permission to assess.
- Gain permission before assessing students for eligibility in the future.

4. Parent Participation – General:

- Agenda's (sic) for IEP meetings (as opposed to revisions) should include all areas of the IEP: present levels, goals, transitions, services, ect (sic). (Perhaps this teacher needs clarification on what type of meeting should be held for what purpose?)
- Teachers should read their communication from parents carefully and respond to all questions asked.
- A case manager should carefully consider student's needs, provide data, and make recommendations to the IEP team.
- Drafting an IEP prior to a meeting is appropriate, but team input needs to be sought at the meeting.
- Services often don't change drastically from year to year. Changes in accommodations/modifications should be data driven and explicitly talked about and agreed upon by the team.
- Team should hold a meeting to determine which of these changes are appropriate.

III. FINDINGS OF FACT

1. The Student is eighteen years old⁴ and a senior in high school on a modified diploma plan. The Student is described as a quiet, friendly student who works hard and is interested in science.
2. On September 17, 2019, the District sent a meeting notice to the Student and Parents, notifying them of a meeting to be held on October 14, 2019. On the meeting notice, the District noted the purpose of the meeting was to review information about the Student and decide

⁴ The Student advocates for themselves and authorized for records to be released to the Department for the purposes of the investigation.

whether the Student was still eligible for special education. The second purpose of the meeting was for the Team to develop or review the Student's IEP and placement and to consider the Student's transition needs.

3. On October 1, 2019, the Student's Case Manager met with the Student to discuss plans for an upcoming Individualized Education Program (IEP) team meeting. The Case Manager reported discussing with the Student the testing necessary to reestablish the Student's eligibility for special education as a student with Autism Spectrum Disorder. The Case Manager reported that the Student was not interested⁵ in discussing the topic, but that the Student did sign a consent for academic testing and observations. During their conversation, the Student's teacher told the Student that the Student had the option to not consent to testing.
4. On October 11, 2019, the Parents sent an email to the Case Manager in which they informed the District that they had been preparing the Student to self-advocate at the upcoming meeting and asked if the meeting was an IEP revision meeting. The Team had completed the Student's annual review IEP meeting on June 3, 2019. The Case Manager replied on that same day by email and informed the family the Team would be discussing additional accommodations and post-secondary transition.
5. When the IEP Team met on October 14, 2019, the Student was accompanied by one Parent. The Student participated in the meeting, but was reluctant to discuss to topic of their Autism Spectrum Disorder eligibility. According to the Statement of Eligibility, during the discussion, the Team considered recent observations, recent math testing and information provided by the Parents. The Team agreed to reestablish the Student's Autism Spectrum Disorder eligibility and completed the necessary paperwork. The Team then discussed the Student's IEP. The Parent in attendance reported that the Team reviewed all aspects of the Student's IEP and made several changes.
6. The changes made on October 14, 2019 included adding several accommodations,⁶ revising two accommodations, and removing three accommodations.⁷
7. The Student and the Parent were given a draft copy of the IEP at the end of the October 14, 2019 IEP team meeting. A printed copy of the IEP was then sent to the Parents on November 13, 2019. The family asked for a copy of the IEP with the signatures of Team Members who attended, and the District sent that copy on November 21, 2019. An additional copy was given to the Parents at a meeting just before the District's winter break.⁸
8. The District uses an electronic database to track students' grades over the course of the year. Teachers enter percentages reflecting the students' performance on assignments and tests. The database then translates these percentages to a standard letter grading system (A-F). In the system, any percentage score below 60% is automatically translated to an "F", even if the student is on a modified grading system or alternate grading scale. At the end of each term, teachers can change an "F" grade to a Pass or Fail in conformity with a Student's IEP's modification of an alternate grading scale. However, throughout the term, when a parent or

⁵ Both the Parents and District agreed that the Student does not like the "Autism" label and often argues that it is not part of the Student's persona. The Student did not agree to be interviewed.

⁶ Access to Learning Resource Center (LRC) for assessments; Allow retakes for tests with scores below 60%; Break projects into smaller chunks; Allow the option of using notes on tests; Seating away from distractions; Social skills instruction in Behavior classroom one period daily; Check for comprehension to ensure retention.

⁷ Written and visual instructions; Sensory Breaks; Reduced amount of work.

⁸ The District inadvertently excised some of the Student's IEP accommodations when entering information into the District's database. The District corrected this error.

student looks at the grades in the online portal, they will see the grade of “F”. The Parents understand this component of the system, but the Student is discouraged upon monitoring a consistent “F” grade throughout the term.

9. Each of the general education teachers interviewed noted they changed the Student’s grade to a Pass at the end of the term if it met the alternate grading scale decided by the Student’s IEP Team.
10. The Student expressed interest in taking a Zoology class. Students qualify for the Zoology class by taking Biology as a prerequisite. The Student had not taken Biology. After a short period of time in the class, the Zoology teacher informed the Student that the Student needed to attend a different class because the Student had not taken the prerequisite Biology class. Consequently, the Student’s schedule was changed to another class.
11. The District offers a variety of modified courses in Social Sciences, History, Global Studies, General Science and Math for students who are on modified or other diploma plans.
12. The Parents filed this Complaint on November 20, 2019.

III. DISCUSSION

A. IEP Team

The Parents allege the District violated the IDEA when it did not ensure that at least one general education teacher attended the Student’s IEP meeting on June 3, 2019. One of the Student’s general education teachers was invited to the June 3, 2019 IEP team meeting, but did not attend. The District does not dispute this allegation and consequently, the Department substantiates it. The District proposes to implement training and accountability measures to ensure that general education teachers attend IEP meetings.

B. When IEPs Must Be In Effect

The Parents allege the District violated the IDEA when it did not provide the Student with the modifications in general education classes that were agreed to by the Student’s IEP Team. The Parents also allege the District did implement the modified grading system in some general education classes, as required by the Student’s IEP. Finally, the Parents allege the District did not allow the Student to attend higher level science classes even though modifications in those classes might have facilitated the Student’s learning of the subject matter.

A school district meets its responsibility to an eligible child when it provides the services outlined on the child’s IEP.⁹

1. General Education Classroom Accommodations and Modifications

The general education teachers interviewed during this investigation were able to clearly explain how they modified instruction and curriculum for the Student in their classes. The District acknowledges that after the October 14, 2019 IEP meeting, several accommodations were deleted inadvertently when the Student’s IEP was written into the District’s database, and also acknowledged that some accommodations and modifications were not provided in some general education classes. The District has proposed instituting a system of training and accountability to

⁹ OAR 581-015-2220.

ensure that all general education teachers meet the provisions of eligible students' IEPs. The Department substantiates this allegation and recognizes the District's proposal to improve its implementation of appropriate modifications to students with disabilities in the general education environment.

2. Modified Grading

The District acknowledges that there is a lag between reporting a letter grade for a student in its online portal, and a teacher's revision of the grade to reflect alternate grading systems agreed upon by the IEP Team. The Department substantiates this allegation and recognizes the District's efforts to remedy this system flaw.

3. Zoology Class

The Student wanted to take a Zoology class, but had not taken one of its prerequisites. The Student's IEP contains provisions for a modified curriculum and an alternate grade scale, but does not provide an exception to required course prerequisites. Certainly, the Student, Parents, and District staff and/or the IEP Team could have convened to arrive at a creative way for the Student to participate in the Zoology class. However, the District's enforcement of a school-wide prerequisite—in the absence of an agreed upon IEP provision to the contrary—does not rise to an IDEA violation. The Department does not substantiate this allegation.

C. Consent

The Parents allege the District violated the IDEA when it did not obtain informed consent from the adult Student before conducting a reevaluation of the Student's disability. A school district must obtain informed consent from the parent or adult student before conducting any reevaluation of the child's disability.¹⁰ To meet the standard of "informed consent," the District must provide all information relevant to the activity for which consent is sought, the parent or adult student understands and agrees in writing to the activities described, and the parent or adult student understands that consent is voluntary and may be revoked.

Here, the District sought consent from the Student to test some of the Student's academic skills as part of an upcoming reevaluation. Both the Parents and the Case Manager acknowledged that the Student has difficulty discussing their Autism Spectrum Disorder eligibility. Nevertheless, the Case Manager met with the Student, explained the planned testing, and referred to a conversation District staff had with the Student the previous year. The Case Manager explained that the test results would be discussed at an upcoming meeting to help make plans for the Student's senior year. The Case Manager explained that the Student did not have to give consent, but the Student did so. The District fulfilled its obligation to obtain informed consent from the Student. The Department does not substantiate this allegation.

D. Parent Participation – General

The Parents allege the District violated the IDEA when it provided inaccurate notice of the purpose of the IEP meeting held on October 14, 2019. As a result, the Parent and the Student allege they were not able to adequately prepare for and participate in the meeting. The Parents also allege the District violated the IDEA on October 14, 2019 when it made changes to the IEP outside of the team process and without the adult Student's participation.

¹⁰ OAR 581-015-2090(5)(a).

A school district must ensure that parents and adult students are able to participate in meetings with respect to the identification, evaluation, IEP and educational placement of a child with a disability.¹¹ The relevant part of this standard in this case is that the District must provide written notice, which includes the purpose of the meeting.

The District provided the Parents and the adult Student with adequate notice of the Student’s IEP team meeting. The meeting notice states that the Team would be considering information and deciding on whether the Student remained eligible for special education and that the IEP Team would be reviewing the IEP. When the Parent asked for clarification, the District noted that the primary area of the IEP under discussion would be the Student’s accommodations. At the meeting, the IEP Team discussed the Student’s eligibility, classroom progress, transition activities, and IEP goals and services. One parent attended with the Student and the record indicates each were provided the opportunity to provide input, ask questions, and engage in IEP team decision making. The Department does not substantiate the allegation.

E. Additional Parent Participation Requirements for IEP and Placement Meetings

The Parents allege the District violated the IDEA when it did not timely provide the adult Student with copies of the IEP or the eligibility documents discussed at the October 14, 2019 IEP meeting. A school district must provide the parents or adult student a copy of the IEP at no cost to the family.¹² Soon after the meeting, the District gave the adult Student a copy of the IEP as drafted at the meeting. At a later date, the District sent the Parents a copy of the IEP that had excised some of the Student’s accommodations in error. The District corrected this error and provided the family with an accurate, edited copy. The Department does not substantiate this allegation.

CORRECTIVE ACTION¹³

In the Matter of North Santiam School District 29J
Case No. 19-054-044

Action Required	Submissions ¹⁴	Due Date
With the assistance of the County Contact, the District shall review its current practices around the IEP meetings and IEP implementation to ensure that all necessary parties are in attendance and all elements of IEPs are appropriately implemented. The District will also provide training in these areas to special education staff, general	All training materials as well as sign-in sheets for all trainings will be submitted to the County Contact.	<p>Training materials due August 30, 2020</p> <p>Sign-in sheets due September 30, 2020</p>

¹¹ OAR 581-015-2190.

¹² OAR 581-015-2195(5).

¹³ 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)).

¹⁴ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634; e-mail: mike.franklin@ode.state.or.us fax number (503) 378-5156.

education staff, and administrative staff. The District has already contracted with a Special Education Consultant to assist with this training and created a delivery schedule.		
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Dated: this 17th day of January 2020



Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: January 17, 2020

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).)