

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-001

I. BACKGROUND

On January 16, 2018, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing and attending school in the Klamath Falls School District (District). The Parent requested a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided a copy of the Complaint to the District on January 17, 2018.

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 sixty days of receiving the complaint unless exceptional circumstances require an extension or the parties agree to extend the timeline to participate in mediation.¹

On January 25, 2018, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On January 30, 2018, both parties agreed to extend the Complaint timeline to engage in mediation. On May 21, 2018, the Department received notice that mediation had been unsuccessful, and determined the new date for the final order to be July 2, 2018.

On May 22, 2018, the Department sent a *Revised Request for Response* to the District, modifying the investigation timeline. On June 4, 2018, the Department received the District's *Response* to the *Revised Request for Response*, with accompanying documentation. The Parent did not submit a written *Reply* to the District's *Response*, but the Department's Contract Complaint Investigator (Investigator) interviewed the Parent on June 14, 2018. The Parent did not provide any additional materials to the Department concerning this Complaint. This order is timely.

The District provided the following documentation in its *Response*:

1. Prior Written Notice 3/23/18
2. Notice of Team Meeting 3/6/18
3. IEP 3/22/18
4. Meeting Minutes 3/22/18
5. Prior Written Notice 11/9/17
6. Amendments to IEP 11/9/17
7. IEP 4/9/17
8. Prior Written Notice 6/9/17
9. IEP 6/9/17
10. IEP 4/9/17
11. Meeting Notes from 11/9/17 IEP meeting
12. Email Communication 11/13/17
13. Service Summary 4/19/17
14. Email Communication 11/17/17

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

15. Statement of Eligibility (OHI) 4/20/16
16. Statement of Eligibility (ID) 4/20/16
17. Assessment Summary 4/20/16
18. Assessment Summary 4/18/16
19. Summary Psychological Report 2/13/14
20. Medical Statement 9/12/13
21. Prior Written Notice 4/10/18
22. Individual Health Plan 3/2018-3/20/19
23. Release of Confidential Health Information 3/22/18
24. Guide to Modified Diplomas 3/22/18
25. Letter to District 3/8/18
26. Prior Written Notice 3/2/18
27. Email Communication 2/9/18
28. Letter to Parent 1/17/18
29. Contact History 1/5/28 - 3/23/18
30. List of Knowledgeable Persons

On June 14, 2018, the Investigator interviewed the Parent, District Special Education Director, a Special Services Coordinator and two Special Education Teachers/Case Managers by telephone. On June 15, 2018, the District also provided the following documents:

1. Course Change History - beginning 1/17/17
2. Report Card - ending 1/27/17
3. Report Card - ending 6/15/17
4. Course Change History - beginning 9/5/17
5. Report Card - ending 1/26/18
6. Report Card - ending 6/14/18
7. Student Grade Book Summary - Grade 10
8. Student's Transcript 2016-2017 and 2017-2018

The Investigator reviewed and considered all of the previously described documents and interviews received 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.² The Parent's 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 January 17, 2017, to the filing of this Complaint on January 16, 2018.

	Allegations	Conclusions
1.	<p><u>Parent Participation – General; Additional Parent Participation Requirements for IEP and Placement Meetings; Placement of the Child.</u></p> <p>The Complaint alleges that the District violated the IDEA by:</p>	<p><u>Not Substantiated</u></p> <p>On June 9, 2017, the Student's placement team convened and agreed to change the Student's</p>

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

	<p>(a) Failing to hold an IEP meeting concerning the Student's change of placement from "Bridges class to general ed classes" during the current school year.</p> <p>(b) Failing to finalize the Student's IEP at an IEP meeting on or about November 9, 2017, and by failing to provide the Parent a copy of the Student's finalized IEP within a reasonable time following the Student's November 9, 2017 meeting. Specifically, the Parent alleges the District did not provide a complete, finalized IEP to the Parent until January of 2018.</p> <p>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, 300.501(c); OAR 581-015-2250 and 34 CFR §§ 300.116 & 300.327</p>	<p>special education placement to the regular education placement for the 2017-2018 school year. The Parent agreed to this placement. The Department does not substantiate this allegation.³</p> <p>District Staff reported the District provided a copy of the IEP at the end of the November 9, 2017 IEP Meeting. The IEP Team meeting minutes produced eight days after the November 9, 2017 meeting state that the District delivered a copy of the IEP to the Parent. The Department finds that the District did provide a copy of the IEP to the Parent at the end of the November 9, 2017 meeting. The Department does not substantiate this allegation.</p>
<p>2.</p>	<p><u>When IEPs Must Be In Effect</u></p> <p>The Complaint alleges that the District violated the IDEA by:</p> <p>(a) failing to provide to the Student's teachers a copy of the Student's IEP with the changes agreed upon during the November 9, 2017 IEP Meeting; and</p> <p>(b) failing to implement new Accommodations and Modifications in the Student's November 9, 2017 IEP.</p> <p>34 CFR §§ 300.323, 300.324; OAR 581-015-2220.</p>	<p><u>Not Substantiated</u></p> <p>On November 13, 2017, the District delivered the Student's Service Summary to each of the Student's service providers by email following the November 9, 2017 IEP Team Meeting. The Department does not substantiate this allegation.</p> <p>The Student's November 9, 2017 IEP did not adopt any "new" Accommodations and Modifications. New accommodations had been in place since the Student's April 19, 2017 IEP and only the location of the implementation of the accommodations changed when the Student's previous, June 9, 2017 IEP changed the Student's placement to general education classes only. District staff reported that the accommodations had been implemented in both the special education and general education classrooms. The Department does not substantiate this allegation</p>

³ During the course of the investigation, the Parent made additional verbal allegations about the District failing to convene IEP team meetings that were not mentioned in the Parent's initial complaint, nor were they added after the Department's issuance of Request for Response. The Department informed the Parent that a subsequent complaint could be filed to address new allegations.

3.	<p><u>Additional Finding: When IEPs Must Be In Effect</u></p> <p>At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. The special education and related services provided by the school district must be provided in conformity with the Student's IEP.</p> <p>OAR 581-015-2220</p>	<p><u>Substantiated</u></p> <p>The Student began the 2017-2018 school year in a placement that conformed with the agreement of the June 9, 2017 placement team. However, the Student's IEP document did not align with the Student's placement, and was not updated until November 9, 2017. The Department substantiates a finding of noncompliance.</p>
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<u>Proposed Corrective Action</u>
<p>The Complaint offers the following Proposed Solutions:</p> <p>"I would like a response on how my concerns will be addressed. I want my child's accommodations to be met. I would like copies of my child's IEPs. If teachers and district need professional development I think that would be beneficial."</p>

III. FINDINGS OF FACT

1. The Student in this case is seventeen years old and most recently attended a Klamath Falls School District (District) high school for tenth grade during the 2017-2018 school year.
2. The Student is eligible for Special Education under the category of Other Health Impairment (OHI). The Student experiences anxiety in educational settings, requires additional time to complete assignments, and benefits from adult assistance to maintain focus in school.
3. On June 9, 2017, the Student's placement team, including the Parent, changed the Student's placement from "Separate class with no participation in regular education settings" to "Full Time Regular education with special education consultation/support."
4. The District sent out a Prior Written Notice (PWN) dated June 9, 2017 stating that "the team changed the diploma from modified to regular, re-added [the Student's] behavior plan, and changed [the Student's] schedule to all regular classes next year."
5. The Parent agreed with the changes made during the June 9, 2017 IEP meeting.
6. The June 9, 2017 IEP Team did not change the accommodations in the Student's previous IEP from April 19, 2017. District staff did change the Student's upcoming 2017-2018 school year class schedule to reflect the decision of the June 9, 2017 IEP Team that the Student would attend all general education classes.
7. Prior to the change of placement on June 9, 2017, the Student attended classes in the District's "Bridges" program. The Bridges classroom offered small group instruction from a special

education teacher and three instructional assistants. The number of students in the classroom fluctuated from 12 to 28 at different times during the day.

8. The IEP Team met again on November 9, 2017 to review the decisions the Team made at the June 9, 2017 IEP Team Meeting to move the Student entirely into general education classes. The Team edited the Student's IEP to reflect the June 9, 2017 decisions, including a change to the Student's IEP's nonparticipation justification and placement page reflecting a zero percent removal from the general education environment. District staff at the IEP Team Meeting handwrote these changes onto the IEP amendment page, which were each dated and initialed by District staff and the Parent. The District sent the Parent a PWN on November 9, 2017 reflecting the action taken at the IEP Team Meeting.
9. Meeting notes from the November 9, 2017 IEP Meeting, dated November 17, 2017 (eight days after the IEP Meeting) state, "[a] copy of the IEP with the new amendments was provided following the meeting to . . . the parents." The meeting notes also state that the notes themselves were given to the Parents.
10. At the November 9, 2017 IEP Meeting, the IEP Team did not make changes in the accommodations and modifications section of the Student's IEP. The same accommodations for the Student had been in place since the Student's April 19, 2017 IEP. Only the location of the implementation of the accommodations changed when the Student's June 9, 2017 IEP Team convened and changed the Student's placement to regular education classes. The District implemented the Student's accommodations in both the special education and general education classrooms.
11. On November 13, 2017, the Student's Case Manager sent an email to District staff, including all of the Student's teachers at the time, and included a copy of the Student's Services Summary page, which lists the Student's "Supplementary Aids/Services; Modifications/Accommodations."
12. Accommodations for the Student include extended time on tests and assignments, tests in a quieter location, lecture notes, preferential seating, frequent checks for understanding, an organizer/planner, check-ins with staff, and a calming/time out space.
13. On January 5, 2018, the Parent reported to District staff that the District had not provided the Parent with a copy of the amended IEP following the November 9, 2017 IEP Team Meeting.
14. The Parent contends that the District did not provide the Student with necessary accommodations, but did not identify specific accommodations that the District failed to implement. Rather, the Parent expressed frustration with the District's lack of sufficient communication with the Parent.

IV. DISCUSSION

A. Change in Placement

The Complaint alleges that the District violated the IDEA by failing to hold an IEP meeting concerning the Student's change of placement from "Bridges class to general ed classes" during the 2017-2018 school year. School districts must ensure that the educational placement of a child with a disability is "determined by a group of person, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options."⁴

⁴ OAR 581-015-2250.

On June 9, 2017, the District convened a team of appropriate individuals, including the Parent, and the team agreed to change the Student's placement. The placement team decided that at the beginning of the 2017-2018 school year, the Student's placement would change to all general education classes. The District fulfilled its obligation regarding placement team decision-making for the beginning of the 2017-2018 school year. The Department does not substantiate this allegation.

B. Parent's Right to IEP Documents

The Parent alleges that the District violated the IDEA by failing to finalize the Student's IEP at an IEP Team Meeting on or about November 9, 2017, and by failing to provide the Parent a copy of the Student's finalized IEP within a reasonable time following the Student's November 9, 2017 Meeting. Specifically, the Parent alleges the District did not provide a complete, finalized IEP to the Parent until January 2018.

A school district must provide the parent a copy of the IEP at no cost to the parent.⁵ District staff report the District provided the Parent with a copy of the amended IEP at the end of the November 9, 2017 IEP Meeting, and that the meeting's minutes were sent to the Parent eight days after the November 9, 2017 IEP Team Meeting. The November 9, 2017 IEP Team Meeting notes, dated November 17, 2017 (eight days after the IEP meeting) state, "[a] copy of the IEP with the new amendments was provided following the meeting to . . . the parents." The meeting notes also state that the notes themselves were given to the Parents. Additionally, after the November 9, 2017 IEP Team Meeting, the District sent the Parent a PWN reflecting the action taken at the IEP Team Meeting. Based on the information provided by the parties, the Department finds that the District did provide a copy of the IEP to the Parent at the end of the November 9, 2017 Meeting. The Department does not substantiate this allegation.

C. Making the Student's IEP Accessible to Staff

The Complaint alleges that the District violated the IDEA by failing to provide to the Student's teachers with a copy of the Student's IEP containing the changes agreed upon during the November 9, 2017 IEP Meeting.

School districts must ensure that a Student's IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation. School districts must also inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.⁶

The District made the Student's IEP accessible to the Student's relevant service providers. Furthermore, on November 13, 2017, the District circulated an email to the Student's relevant service providers and attached a copy of the Student's Service Summary page following the November 9, 2017 IEP Team Meeting. The Department does not substantiate this allegation.

⁵ OAR 581-015-2195(5).

⁶ OAR 581-015-2220(3).

D. Implementing Accommodations and Modifications

The Parent alleges the District failed to implement new accommodations and modifications in the Student's November 9, 2017 IEP. School districts must provide special education and related services to a child with a disability in accordance with an IEP.⁷

The November 9, 2017 IEP Team did not add any "new" accommodations or modifications to the Student's IEP. The accommodations and modifications memorialized in the Student's November 9, 2017 IEP had been in place in the Student's April 19, 2017 and June 9, 2017 IEP. The location of the implementation of the accommodations changed when the Student's IEP team convened on June 9, 2017 and changed the Student's placement to 100% of the time in the general education environment. Moreover, District staff reported that the Student's accommodations had been implemented in both the special education and general education classrooms. The Parent did not identify any specific accommodations that the District failed to implement, but expressed frustration with the District's lack of sufficient communication with the Parent. The Department does not substantiate this allegation.

E. Additional Finding – When IEPs Must Be In Effect

The Department finds that the District failed to timely update the Student's IEP to reflect decisions made by the Student's placement team on June 9, 2017. At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. The special education and related services provided by the school district must be provided in conformity with the Student's IEP.⁸

On June 9, 2017, the Student's placement team, including the Parent, convened and agreed that starting with the 2017-2018 school year, the Student's placement would change to all general education classes. In line with this decision, the Student began the 2017-2018 school year attending all general education classes. The Student's IEP Team met on November 9, 2017 to update portions of the Student's IEP to reflect decisions made at the June 9, 2017 IEP Team Meeting. For example, the IEP Team edited the Student's placement page and the nonparticipation justification portion of the Student's IEP to reflect that the Student would have zero percent removal from the general education environment. District staff hand-wrote these changes onto the IEP amendment page, and the changes were dated and initialed by District staff and the Parent. The District sent the Parent a PWN on November 9, 2017 reflecting the action taken at the IEP Team Meeting.

The Student began the 2017-2018 school year in a placement that reflected the decisions of the Student's properly convened placement team. However, the District did not update all appropriate portions of the Student's IEP document (placement page, nonparticipation justification) until November 9, 2017—approximately two months after the 2017-2018 school year began. During this time, the District did not have an IEP in effect that accurately reflected the Student's special education program. The Department substantiates a finding of non-compliance in this instance.


⁷ OAR 581-015-2220(1)(b).

⁸ OAR 581-015-2220.

CORRECTIVE ACTION⁹
In the Matter of Klamath Falls School District
 Case No. 18-054-001

No.	Actions	Submissions ¹⁰	Due By
1.	Provide District special education staff with written guidance regarding nonparticipation justification decisions and narrative development within IEPs to reflect changes in placement decisions.	Submit draft staff guidance document to ODE for review prior to distribution.	September 17, 2018
2.	Provide guidance document to all special education staff.	Submit evidence of completed distribution to ODE. If distributed in a meeting, submit agenda, copy of guidance, and sign-in sheet. If distributed by e-mail, request "read receipt" and include ODE dispute resolution staff in distribution list.	October 5, 2018

Dated this 2nd Day of July 2018



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

Mailing Date: July 2, 2018

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).)

⁹ 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)).

¹⁰ 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.