

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Hillsboro
School District 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-026

I. BACKGROUND

On May 6, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an attorney for a Student and the parents (Parent) of a student (Student) attending school in the Hillsboro School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this original complaint and forwarded the request to the District by email on May 6, 2024. The Complaint also included exhibits, as follows:

1. Meeting Notes, 3/22/23
2. Meeting Notes, 4/18/23
3. Email, 3/30/23
4. Individualized Education Program (IEP), 3/22/23
5. Email, 5/8/23
6. Prior Written Notice (PWN), Consent for Evaluation, 3/22/23
7. Department Final Order, 23-054-031
8. Department Final Order, 23-054-036

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 Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On May 14, 2024, the Department's Complaint 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 May 28, 2024.

The District timely submitted a *Response* on May 28, 2024. The Response included a narrative, and the following relevant documents upon which the Investigator relied:

1. District's Written *Response* to Complaint, 5/28/24
2. Notice of Proposed Transfer of Special Education Rights, 3/22/23
3. Email Communication, 5/21/24
4. Meeting Minutes, 3/6/23
5. PWN, 3/6/23
6. Email, 3/21/23
7. IEP, 3/22/23

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

8. Meeting Minutes, 3/22/23
9. Placement, 3/22/23
10. PWN Re-Evaluation Consent, 3/22/23
11. PWN, 3/22/23
12. Email, 3/29/23
13. Email, 3/28/23
14. Email, 3/30/23
15. Meeting Minutes, 4/18/23
16. PWN, 4/18/23
17. Email, 5/8/23
18. Meeting Minutes, 6/8/23
19. PWN, 6/8/23
20. Eligibility Statements, 1/23/18, 12/14/20, 12/14/23

On May 30, 2024, the Student and the Parent, through their attorney, timely submitted a *Reply* via email. The *Reply* included a Department Final Order issued March 16, 2015, in case number 15-054-001.

On June 13, 2024, The Complaint Investigator interviewed the District’s Director of Special Services by telephone. The Complaint Investigator offered the Student and the Parent, through their attorney, the opportunity for an interview, but they declined. On June 20, 2024, the Complaint Investigator emailed the District’s Director of Student Services with two additional questions, and the Director responded by email on June 21, 2024. On June 21, 2024, the Complaint Investigator emailed the attorney for the Student and the Parent with a question regarding two of the exhibits submitted with the Complaint in this case, and the attorney for the Student and the Parent responded by email that day. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s 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 May 7, 2023, to the filing of the Complaint on May 6, 2024.

Allegations	Conclusions
<p>Prior Written Notice (PWN)</p> <p>The Complaint alleges that the District violated the IDEA “when the District did not provide the Prior Written Notice (PWN) to the Parents before the changes made to the Student’s IEP were implemented on March 22, 2023.” Specifically, the Complaint alleges that after an IEP meeting on March 22, 2023, the District failed to provide a PWN to Legal Counsel for the Parent until May 8, 2024, when the District provided a PWN backdated to March 22, 2023. (OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Not Substantiated</p> <p>The Department cannot investigate alleged violations occurring more than one year before the filing of the Complaint. Any violations alleged in this instance occurred more than one year before the filing of the Complaint in this case. The Department lacks</p>

Allegations	Conclusions
	jurisdiction to make a substantive determination.
<p>Parent Participation - General</p> <p>The Complaint alleges that the District violated the IDEA as follows: “Because the District did not provide prior written notice to the Parents before implementing the IEP, the Parents’ participation in the IEP process was denied. Therefore, the District violated the IDEA. The District must send prior written notice to Parents prior to implementing the IEP...”</p> <p>(OAR 581-015-2190; 34 CFR § 300.500, § 300.327 & § 300.501(b))</p>	<p>Not Substantiated</p> <p>The Department cannot investigate alleged violations occurring more than one year before the filing of the Complaint. The alleged violations in this instance occurred more than one year before the filing of the Complaint in this case. The Department lacks jurisdiction to make a substantive determination.</p>

III. FINDINGS OF FACT

1. The Student in this case is 19 years old and has now completed twelfth grade. The District completed a notice of transfer of special education rights on March 22, 2023, following the Student’s 18th birthday on 3/12/23. The Student is eligible for special education as an adult student with Autism Spectrum Disorder and Emotional Behavior Disability.
2. The Student re-enrolled with the District after successfully completing an out-of-district residential program, and the IEP team met on March 6, 2023. The team determined that, upon completion of enrollment paperwork, the District would provide home instruction, a “service” which the District had previously provided to the Student. The March 6, 2023 Meeting Minutes state that when the Attorney for the Student and the Parent requested clarification about, “what is happening between now and when we meet again”, the team agreed that “we will do home instruction until then,” of at least 5 hours per week.
3. The March 6, 2023 PWN states that the District “will provide special education services for [the Student] after enrollment is completed. [The District] will provide home instruction by [a particular teacher] for 5 hours a week until the team can meet to update [the Student’s] Individualized Education Plan [sic].” The team scheduled the next IEP team meeting for March 22, 2023.
4. The March 22, 2023 IEP Meeting Minutes noted difficulty in obtaining records and educational data from the Student’s prior residential placement. One of the Student’s Parents and the family’s Attorney stated that “home instruction is working for all parties involved.” The Meeting Minutes also noted that the Student is at or above grade level in all areas which is consistent with the Present Levels of Academic Achievement and Functional Performance section of the March 22, 2023 IEP.
5. During the March 22, 2023 IEP meeting, the IEP team reviewed a draft IEP, with the Student’s Case Manager noting that they “kept social emotional goals from last time.” The team agreed

to add an academic goal “pertaining to GED progress.” The IEP team also agreed to “complete consent for transition assessment, schedule a meet up with [the Student] to complete and use information to update transition plan/possibly add a transition goal.”

6. The March 22, 2023 Meeting Minutes state “draft of updated IEP and PWN – sent by 4/10/23”. The Meeting Minutes also indicate agreement that the next IEP team meeting, scheduled for April 18, 2023, would need to include the Student’s Home Instructor and a school psychologist, as “it would be an evaluation planning meeting”. The IEP dated March 22, 2023 provides that the starting date for all services under the IEP is March 22, 2023.
7. An April 18, 2023 IEP meeting was held for the purpose of “Goals.” In the Meeting Minutes, the Student’s Home Instructor reported, “things are going great. They could not be going better.” The April 18, 2023 Meeting Minutes also included several action items including “May 1st for updates to IEP and PWN”. A PWN dated 4/18/23 states that the IEP team met “to consider if additional testing/evaluations were appropriate to: Determine educational planning needs for [the Student], Determine transition services/needs for [the Student]. The team agreed that no new academic testing is needed at this time. However, the team did sign consent to complete transition assessments. [The Student] will work with [the Student’s] home instructor to complete these.”
8. The Complaint alleges that the District failed to provide an updated IEP to the Attorney for the Student and the Parent until March 30, 2023 and did not provide a PWN for the March 22, 2023 IEP meeting until May 8, 2023. The District’s *Response* states that the March 22, 2023 IEP and the corresponding PWN were finalized and provided on May 8, 2023, once the District received information from the Student’s prior residential placement. During an interview with the Complaint Investigator, the District’s Director of Special Services stated that both the updated IEP and PWN, dated March 22, 2023, were provided to the Attorney for the Student and the Parent on that same date. The Director further noted that, although the District does not have a school board policy regarding the distribution timeline for PWNs, its “Resources and Handbook” for case managers describes an expectation to distribute new IEPs and PWNs within 10 days to parents/guardians. The Director also stated that the PWNs dated March 6, 2023 and April 18, 2023 were issued within 10 days of their respective meeting dates.

IV. DISCUSSION

Prior Written Notice (PWN)

The Complaint alleged that the District violated the IDEA when the District did not provide the PWN to the Parents before the changes made to the Student’s IEP were implemented on March 22, 2023. Specifically, the Complaint alleges that after an IEP meeting on March 22, 2023, the District failed to provide a PWN to Legal Counsel for the Parent until May 8, 2023, when the District provided a PWN backdated to March 22, 2023.

PWN must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes or refuses 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.³ The Complainant’s allegations relate to prior written notice for decisions proposed or refused by the District between March and April 2023.

³ OAR 581-015-2310

A complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department.⁴ OSEP has stated that “This requirement applies even if the alleged violation is continuing . . .”⁵

In this case, the allegation is that the District implemented changes in the Student’s services before providing PWN. Specifically, the alleged violation is that the District violated the IDEA by implementing the changes following the March 6, 2023, March 22, 2023 and April 18, 2023 IEP meetings before providing PWN to the Parent or their Attorney. The Attorney for the Student and the Parent filed this Complaint on May 6, 2024, so any violations alleged to have occurred before May 7, 2023 may not be investigated by the Department. This alleged violation clearly occurred more than one year before the filing of the Complaint in this case.

The Department does not substantiate this allegation.

Parent Participation - General

The Complaint alleged that “because the District did not provide Prior Written Notice to the Parents before implementing the IEP, the Parents’ participation in the IEP process was denied. Therefore, the District violated the IDEA. The District must send prior written notice to Parents prior to implementing the IEP...”

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.⁶ In this case, the allegation is that the District implemented changes in the Student’s services before providing PWN. Specifically, the alleged violation is that the District violated the IDEA by implementing the changes following the March 6, 2023, March 22, 2023 and April 18, 2023 IEP meetings before providing PWN to the Parent or their Attorney.

However, as noted above, a complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department. In this case, the allegation is that the District implemented changes in the Student’s services before providing PWN and thus denied the Parent participation in the IEP process. The Attorney for the Student and the Parent filed this Complaint on May 6, 2024, so any violations alleged to have occurred before May 7, 2023 may not be investigated by the Department. This alleged violation clearly occurred more than one year before the filing of the Complaint in this case.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION⁷ *In the Matter of Hillsboro School District 1J* *Case No. 024-054-026*

The Department does not order corrective action in this case.

⁴ OAR 581-015-2030(5)

⁵ Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Act (Part B), Office of Special Education Programs, July 23, 2013, 61 IDELR 232

⁶ OAR 581-015-2190

⁷ 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)).

Dated: this 2nd Day of July 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: July 2nd, 2024

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).)