

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lincoln County)
School District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-030

I. BACKGROUND

On May 30, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an attorney for a Student and the parent (Parent) of a student (Student) attending school in the Lincoln County 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 30, 2024. The Complaint also included four exhibits, as follows:

1. Ex. 1: Email Communication, 1/18/24
2. Ex. 2: IEP, 1/4/24
3. Ex. 3: Department Order, 23-054-036
4. Ex. 4: Department Order, 23-054-031

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 June 7, 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 June 21, 2024.

The District timely submitted a *Response* on June 21, 2024. The Response included a narrative, and the following relevant documents upon which the Investigator relied:

1. District's Written *Response* to Complaint, 6/21/24
2. Disability Statements, 12/13/23
3. Eligibility Summary Statement, 12/13/23
4. PWN, 12/13/23
5. Behavior Assessment, 12/12/23
6. Behavior Assessment, 12/13/23
7. Neuro-Psychological Evaluation, 12/7/23
8. Notice of Team Meeting, 1/2/24
9. Meeting Notes, 1/4/24
10. IEP, 1/4/24

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

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

11. Placement Determination, 1/4/24
12. IEP Attendance Excusal Form, 12/11/23
13. PWN, 1/4/24
14. Transfer of Rights History, 1/11/24
15. Email Communication, 12/1/23
16. Email Communication, 12/4/23
17. Email Communication, 12/6/23
18. Email Communication, 12/11/23
19. Email Communication, 12/12/23
20. Email Communication, 12/13/23
21. Email Communication, 1/2/24
22. Email Communication, 1/3/24
23. Email Communication, 1/4/24
24. Email Communication, 1/5/24
25. Email Communication, 1/9/24
26. Email Communication, 1/10/24
27. Email Communication, 1/11/24
28. Email Communication, 1/17/24
29. Email Communication, 1/18/24
30. Educational Progress Report, 1/4/24
31. Report Card (Residential Program), 2022-23

On June 27, 2024, the Student and the Parent, through their attorney, timely submitted a *Reply* via email. The *Reply* included a Department Order issued March 16, 2015, in case number 15-054-001.

On July 9, 2024, the Complaint Investigator interviewed the Parent's Attorney by telephone, due to the unavailability of the Parent. On July 9, 2024, the Parent's Attorney forwarded to the Complaint Investigator two emails with attachments sent by the District to the Parent's Attorney on January 9, 2024 and January 18, 2024. On July 11, 2024, The Complaint Investigator interviewed the District's Director of Special Education by telephone. That day, the Director emailed to the Complaint Investigator "the district's policies that reference prior written notice", including the District's 2022-23 Special Education Handbook. On July 10, 2024, the Complaint Investigator emailed the Parent's attorney with an additional question regarding the Parent's receipt of the PWN dated January 4, 2024, but the Parent's attorney has not provided an answer to the question as of the date of this Order. 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 31, 2023, to the filing of the Complaint on May 30, 2024.

Allegations	Conclusions
<p>Prior Written Notice (PWN)</p> <p>The Complaint alleges that the District violated the IDEA “by denying the Parent’s participation in the IEP process when it did not provide the Prior Written Notice (PWN) to the Parent before the changes made to the Student’s IEP prior to the date of implementation, which is unknown.” Specifically, the Complaint alleges that after an IEP meeting on January 4, 2024, the District, on January 18, 2014, distributed the IEP to the Attorney for the Student and Parent, and backdated the IEP to January 4, 2024, which is 14 days prior to when the District distributed the IEP. The IEP listed the start date of services on the IEP as the day following the IEP meeting, January 5, 2024. However, as of the date of filing of the Complaint, the District had not distributed a PWN to the Parent, the Student, or the Attorney for the Parent and Student.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Substantiated</p> <p>The District failed to provide a PWN to the Parent prior to implementing the Student’s IEP on January 5, 2024. While the Parent and their Attorney received a copy of the IEP on January 18, 2024, this does not impact the requirement to provide PWN prior to implementing the IEP.</p>
<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 Parent before implementing the IEP, the Parent’s 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...” Additionally, the Complaint alleges that “[f]ollowing the January 4, 2024 IEP meeting, the Parent could not know which IEP was being implemented because they had no notice or documentation of the proposed changes until the final IEP was sent...”</p> <p>(OAR 581-015-2190; 34 CFR § 300.500, §§ 300.327 & 300.501(b))</p>	<p>No Finding Made</p> <p>Upon receipt of this Complaint, the Department considered the entirety of the Complaint rather than strictly relying upon the specific allegations section of the Complaint. During the investigation, it became clear that the Parent was not alleging that their ability to participate in meetings regarding the Student had been impacted by the District’s failure to provide PWN.</p>

III. FINDINGS OF FACT

1. The Student in this case is 17 years old and has completed 11th grade. The Parent signed a notice of transfer of special education rights on January 11, 2024, and the Student will turn 18 on October 12, 2024. **Dist docs D211-12** The Student is eligible for special education as a child with Intellectual Disability (ID) and Other Health Impairment (OHI). **E.g., Dist docs D77-83** The Student’s January 4, 2024 IEP refers to the Student’s diagnosis of Prader-Willi Syndrome. **Dist docs D205 (p. 3 of 1/4/24 IEP** The Student’s placement is a private residential facility that is located in Massachusetts. **Dist docs D205 (placement determination; D186 (p. 3 of 1/4/24 IEP) ; Interview of Sp Ed Dir** The Student’s IEP states

that the Student has attended this particular placement “since December of 2021 at public expense due to a court order.”

2. On December 13, 2023, the Student’s IEP team met and determined the Student’s continued eligibility for special education services, under a continued eligibility of OHI and a new eligibility of ID. The IEP team also decided to conduct a reevaluation of the Student
3. On January 4, 2024, the Student’s IEP team met for the Student’s annual IEP review. The attendees at that meeting, some of whom attended virtually, included the Student, the Parent, the Parent’s Attorney, and several staff from both the District and the private residential facility. The IEP team “reached consensus on new goals, service time and continued placement [at the private residential facility]” The IEP dated January 4, 2024 states that all Specially Designed Instruction, Related Services, Supplementary Aids and Services, and Supports for School Personnel, would begin on January 5, 2024. Due to a delay in obtaining required signatures on the eligibility form from a staff member of the private residential facility and the Parent, the District could not finalize the eligibility statement until January 17, 2024.
4. On January 9, 2024, the Director emailed the Parent and the Parent’s Attorney, letting them know that the “IEP documents” would not be emailed until the next day, because the Director was ill that day. This email included a Speech Language Assessment from November of 2023. The District did not provide the “IEP documents” to the Parent and the Parent’s Attorney until a January 18, 2024 email.
5. On January 18, 2024, the District emailed the January 4, 2024 IEP, and the eligibility and placement determinations to the Parent and the Parent’s Attorney. This email also stated that a paper copy would be mailed to the Parent. This email did not include the January 4, 2024 PWN. The Director of Special Education reported to the Complaint Investigator that a packet mailed to the Parent on January 18, 2024 included the documents included in the email earlier that day as well as with the PWN. The District provided a copy of the January 4, 2024 Prior Written Notice (PWN) in the documents submitted to the Complaint Investigator with the District’s *Response*, submitted on June 21, 2024. The Department is unable to determine if the packet mailed to the Parent on or about January 18, 2024 included the January 4, 2024 PWN.
6. The Complaint in this case alleged that neither the Parent nor the Parent’s Attorney received the PWN until receiving the District’s *Response* and supporting documents in this case on June 21, 2024. The *Reply* submitted by the Parent’s Attorney in this case states that “the decisions made at the January 24, 2024 [*sic* – should be January 4, 2024] meeting was not set forth in a PWN and distributed to parents until fourteen days after the final meeting.” This statement indicates that the Parent received a PWN on January 18, 2024, fourteen days after the January 4, 2024 IEP meeting. However, the Parent’s Attorney asserted during the interview with the Complaint Investigator that the Parent’s Attorney first saw the PWN when the District provided the January 4, 2024 PWN in the documents submitted with the District’s *Response* in this case on June 21, 2024. The Complaint Investigator has not received further information regarding whether the Parent received the PWN in a mailing on or about January 18, 2024, so the Department cannot determine whether or not the Parent did or did not receive a hard copy of the PWN from the District at that time.
7. The District, in an email on July 10, 2024, submitted to the Complaint Investigator a District Special Education Handbook for the 2023-24 school year. This handbook states:

“A Prior Written Notice of Action (PWN) is required whenever the district proposes to make a change, or action to a student’s Individualized Educational Program. This includes: placement

decision, adding/removing/changing a service or adding /removing/updating a goal. These are all 'actions' that require parent notification before they occur. This means our PWNs are dated the day of the meeting when the action or change is discussed, and the date of implementation is always the next day. It is best practice to hand the PWN to the parent before they leave the building. This is not always possible, but please make every effort to provide this to the parent as soon as possible and no later than 24 hours following the meeting. The PWN is the parent's legal right. Please refer to the available PWN template for specific language."

IV. DISCUSSION

Prior Written Notice (PWN)

The Complaint alleged the District violated the IDEA by denying the Parent's participation in the IEP process when it did not provide the Prior Written Notice (PWN) to the Parent before the changes made to the Student's IEP prior to the date of implementation, which is unknown. Specifically, the Complaint alleges that after an IEP meeting on January 4, 2024, the District, on January 18, 2014, distributed the IEP to the attorney for the Student and Parent, and backdated the IEP to January 4, 2024, which is 14 days prior to when the District distributed the IEP. The IEP listed the start date of services on the IEP as the day following the IEP meeting, January 5, 2024. However, it is unclear as to whether, as of the date of filing of the Complaint, the District has distributed a PWN to the Parent, the Student, or the Attorney for the Parent and Student.

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

In this case, the parties agree that the District did not provide a PWN to the Parent before January 5, 2024, the date indicated on the January 4, 2024 IEP of the start of all services identified in the IEP. Whether the Parent received a copy of the PWN around January 18, 2024 (the day the District asserts the District mailed to the Parent the PWN and other documents related to the January 4, 2024 IEP) or on June 21, 2024 with the District's *Response* in this case, does not change the fact that the District failed to provide the PWN to the Parent before January 5, 2024, the date scheduled for the start of the services listed on the January 4, 2024 IEP. The reason a district must provide written notice following a change in a child's services by an IEP team, is that "Providing such notice following an IEP Team meeting where such a change is proposed – or refused – allows the parent time to fully consider the change and determine if [they have] additional suggestions, concerns, questions, and so forth."⁴ It does not matter, as the District's *Response* argues, that the Parent fully participated in the IEP meeting. Nor does it matter that the changes in service were not substantial. The PWN is still required under the express, nearly identical, language of the applicable OAR,⁵ the applicable CFR⁶ and the federal statute (IDEA).⁷

The Department substantiates this allegation.

Parent Participation – General

³ OAR 581-015-2310

⁴ OSEP *Letter to Leiber*, August 15, 2008

⁵ OAR 581-015-2310

⁶ 34 CFR § 300.503

⁷ 20 U.S.C. § 1415(b)(3)

The Complaint in this case only stated one allegation in the allegations section of the Complaint document. However, within the Complaint itself, the Complaint also states “Because the District did not provide prior written notice to the Parent before implementing the IEP, the Parent’s 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...” Additionally, the Complaint alleges that “[f]ollowing the January 4, 2024 IEP meeting, the Parent could not know which IEP was being implemented because they had no notice or documentation of the proposed changes until the final IEP was sent...”

Based upon this language, the Department included a second allegation in the *Request for Response* in this case, alleging a violation of the OAR which states that 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.⁸ However, the *Reply* submitted in this case by Parent’s Attorney states “At no time have the Parents expressed concern of subversion of their participation *during* the meeting that occurred on January [4], 2024.” Because the Parent did not allege that the District’s failure to provide PWN resulted in the denial their ability to participate in meetings regarding the Student, the Department finds that this allegation should not have been included in the *Request for Response* in this case.

The Department does not make a finding with respect to this allegation.

V. CORRECTIVE ACTION⁹
In the Matter of Lincoln County School District
Case No. 024-054-030

Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions	Due Date
The District must provide training of all special education staff on providing proper and timely PWNs following a change or refusal to change services by an IEP team.	The District shall submit the following: Training agenda/materials to ODE for review/approval; Sign in sheet for training.	 October 15, 2024 January 15, 2024

Dated: this 29th Day of July 2024

⁸ OAR 581-015-2190

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)).

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: July 29, 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).)