

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School District 1J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-033

I. BACKGROUND

On June 10, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the attorney (Attorney) for the parent (Parent) of a student (Student) residing in Portland School District 1J (District). The Attorney requested that the Department conduct a special education investigation under OAR 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.¹ This timeline may be extended if the Parent 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 19, 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 August 9, 2024.

The District submitted a *Response* on June 27, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. Individualized Education Program (IEP), 05/17/23
2. IEP Amendment, 05/17/23
3. Special Education Determination Document, 05/17/23
4. Notice of Team Meeting (NOM), 05/04/23 for meeting on 06/08/23
5. NOM, 4/17/23 for meeting on 05/04/23
6. NOM, 05/04/23 for meeting on 05/17/23
7. Prior Notice of Special Education Action (PWN), 03/14/23
8. PWN, 05/17/23
9. PWN, 06/22/23
10. Meeting Minutes, 05/04/23
11. Continued IEP Meeting, 06/08/23
12. Continued IEP Meeting, 05/17/23

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)
² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

13. District Emails during April to June 2023
14. Special Education Procedures Manual
15. District Calendar for the 2022-23 school year

The Parent submitted the following documents in support of allegations set forth with the Complaint document:

1. Emails between District Staff and the Parents beginning May 2, 2023 through June 22, 2023
2. IEP Document, 05/17/23
3. PWN Document, 05/17/23
4. Memo from Parent’s Counsel to District Counsel, 06/21/23
5. IEP Amendment, 05/17/23
6. Earlier Oregon Complaint Investigations 23-054-036 and 23-054-031

The Parent submitted a *Reply* to the District’s *Response* on July 2, 2024, providing an explanation and rebuttal, and a document in support of the Parent’s position. The Parent submitted the following relevant item:

1. Letter from the Office of Special Education and Rehabilitation Services (OSERS), 04/26/12

The Complaint Investigator interviewed the Parent and available District personnel separately via videoconference on July 17, 2024. 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 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 June 11, 2023, to the filing of this Complaint on June 10, 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 PWN to the Parents before the changes made to the Student’s IEP were implemented, which is unknown.”</p> <p>(OAR 581-015-2310; 34 CFR § 300.421)</p>	<p>Substantiated.</p> <p>The District began implementing the Student’s IEP on May 17, 2023 but did not provide PWN to the Parents until June 12, 2023.</p>

REQUESTED CORRECTIVE ACTION

The Complainant requested the following corrective action:

1. "Order training on proper IEP document requirements, including accurate dates on IEPs and prior written notices for all special education staff";
2. "Require the District to send PWNs prior to implementing the students' IEPs and provision of FAPE";
3. "Require the District to update their special education procedures manual."

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before June 11, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the issue set forth.

1. At the time the Complaint was filed, the Student attended 10th grade at a District High School.
2. At the time of the alleged violation, the Student attended 9th grade at a District High School.
3. The Student is eligible for Special Education as a child with Autism Spectrum Disorder (ASD).
4. The Student's IEP was due for annual review on March 15, 2023. As documented in a PWN dated March 14, 2023, the IEP meeting was delayed by mutual agreement of the Parents and District in order to accommodate participation of the Parent's Attorney.
5. The IEP team met on May 4, May 17, and June 8, 2023 to develop the Student's annual IEP. The draft IEP document was not examined by the team on May 4 in order for the team to address another situation. Draft IEPs and parent input were shared between the Parents and the District prior to each meeting. Following each meeting, the draft IEPs reflected changes resulting from the team's discussion.
6. In a June 9, 2023 email between District staff, the District staff member decided to date the IEP May 17, 2023.
7. The Service Summary of the IEP indicates May 17, 2023 as the starting date for all services.
8. The Meeting Notes document is dated May 4, 2023. The notes show that the IEP meeting was continued on May 17 and again on June 8, 2023. The document indicates that a copy of the notes was provided to the Parents at the meeting, but the parties agree that the meeting notes and other documents were not provided until June 12, 2023.

9. The Parents received copies of the meeting notes for the first time on June 12, 13, and 15 from the District via email. The email included a copy of the final IEP, still noted as a draft document, and a PWN document dated May 17, 2023. Interviews with the District indicated that district practice is to generally send the IEP and associated special education meeting paperwork after it has been finalized.
10. District staff provided Parents with PWN documents dated March 14, May 17, and June 22, 2023.
11. The PWN document dated May 17, 2023 was provided to the Parents via email on June 12, 13, and 15, 2023. The email also included the copy of the final IEP dated May 17, 2023, still noted as a draft document, and Meeting Minutes from each of the three IEP meetings.
12. On June 22, 2023, the Parents requested corrections to the copy of the IEP they received so that the document would more accurately reflect their understanding of the agreements of the IEP team at the meetings on May 4, May 17, and June 8, 2023. One request was for a change of wording on the Present Levels of Academic Achievement and Functional Performance (PLAAFP). The other change was for a change of wording to the accommodation of shortened assignments in order to more accurately reflect the conversation.
13. On June 23, 2023, the Parents received an email from the District including an attached copy of the IEP that, for the first time, was not labeled “draft.”
14. On July 3, 2023, the District provided the Parents with an amended IEP reflecting the changes requested by the Parents on June 22, 2023. The IEP was provided via email and remains dated May 17, 2023 with revisions dated June 22, 2023. At the same time, the District also provided Parents with a corresponding PWN dated June 22, 2023.

IV. DISCUSSION

Prior Written Notice

The Complainant alleges that the District violated the IDEA when it failed to provide PWN and a copy of the finalized IEP document to the Parents *before* the IEP was implemented.

Written notice must be given to the parents of a child with a disability a reasonable time *before* the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child, or the provision of FAPE to the child.³ The PWN must include, among other things, a description of the action refused by the agency, an explanation of why the agency refused to take the action, a statement that the parents have procedural safeguards, and sources for parents to contact to obtain assistance.⁴

The District does not contend that the facts presented by the Parents are inaccurate. The parties agree that the annual review of the Student’s IEP was overdue in order to accommodate the Parents’ desire to obtain legal counsel and that the IEP team met on May 4, May 17 and

³ OAR 581-015-2310; 34 CFR 300.503

⁴ OAR 581-015-2310; 34 CFR § 300.503; See also, Letter to Chandler, 59 IDELR 110, (OSEP 2012).

June 8, 2023 to develop the Student's annual IEP. In spite of the fact that that the IEP team was still convening until June 8, the IEP and starting dates for all services are dated May 17, 2023. The question in this case is when the IEP was implemented. The facts involve the timing of IEP meetings for the Student's annual IEP review, when the IEP was finalized and when the draft IEPs, final IEP and PWN were dated and provided to the Parents.

The District does not deny that the IEP was implemented before the final document and PWN were provided to the Parents. Instead, the District asserts that "IEPs generally reflect the date of the meeting at which they are developed (or changed, in the case of an amendment) even if the IEP document is finalized and received by team members on a date different than the meeting itself." This is an inaccurate conclusion on the part of the District and ignores the language of the regulations stating that PWN must be provided a reasonable amount of time before the changes are implemented. The District provided numerous, similar documents to the Parents with multiple dates that were incongruent with the events in this matter, leading to the potential for ambiguity in the services and supports bring provided, which is why the IDEA requires PWN. PWN ensures that Parents have clear documentation of district decisions that enable them to know the services to which their child is entitled and ensure their child receives them. "There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA actually implements the action."⁵ According to the IEP dated May 17, 2023, the IEP was implemented on May 17, 2023, even though the IEP meeting did not begin until after the end of the May 17 school day. In contrast to the fact that IEP meetings continued until June 8, 2023, both the IEP and PWN are dated May 17, 2023 and Parents did not receive a draft for review until June 12, 2023. Even then, additional changes to the draft IEP were made with the final adjustments dated June 22 and final documents with PWN, also dated June 22, were not provided to the Parents until July 3, 2023.

The Department substantiates this allegation.

Additional Finding

Review and Revision of IEPs

"Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days to determine whether the annual goals are being achieved . . ."⁶ As noted above, the annual review was due no later than March 15, 2024 but did not begin until May 4, 2024 and the IEP was not finalized until June 22, 2024, well beyond the 365-day requirement.

VII. CORRECTIVE ACTION

*In the Portland School District 1J
Case No. 24-054-033*

The Department orders corrective action in this matter.

⁵ Letter to Chandler, 59 IDELR 110 (OSEP 2012).

⁶ OAR 581-015-2225

Action Required	Submissions	Due Date
The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs receive training in PWNs.	Training agenda/materials to ODE for review/approval.	November 15, 2024
	Sign-in sheet for training.	January 15, 2025

Dated: this 9th Day of August 2024

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: August 9th, 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).)