

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Beaverton
School District 48J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-034

I. BACKGROUND

On June 18, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an attorney for the parents (Parent) of a student (Student) attending school in the Beaverton 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 June 18, 2024. The Complaint also included eight exhibits, as follows:

1. Email Communication, 5/6/24
2. IEP Draft, 4/22/24
3. PWN (Prior Written Notice), 4/22/24
4. Email Communication, 5/14/24, 5/20/24, 6/6/24
5. Email Communication, 6/6/24
6. IEP, 4/22/24
7. Department Order, 23-054-036
8. 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 26, 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 July 10, 2024. On July 9, 2024, due to the volume of cases and staff being out on summer break, the Department extended the final order due date in this case by two weeks, to August 30, 2024. Accordingly, the Department also extended the *Response* due date to July 25, 2024.

The District timely submitted a *Response* on July 25, 2024. The *Response* included a narrative, and the following relevant documents upon which the Investigator relied:

1. District's Written *Response* to Complaint, 7/25/24
2. PWNs (2), 1/9/24
3. Placement Determination, 1/9/24
4. IEP, 1/9/24

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

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

5. ESY Determination, 1/9/24
6. Opt Out Form, 1/20/24
7. Meeting Minutes, 1/9/24
8. PWN, 4/22/24
9. Placement Determination, 4/30/24
10. IEP (Amendment), 4/22/24
11. Health Management Plans, undated
12. Medical Statement, 2/27/24
13. Statement of Eligibility (2), 4/22/24
14. Statement of Eligibility (Revised), 4/22/24
15. Motor Development Team Evaluation, 3/13/24
16. ESY Determination Worksheet, 1/11/23, 1/9/24
17. Psychoeducational Evaluation Report, 4/23/24
18. Inclusion Plan, 4/8/24
19. Additional Adult Assistance Support and Independence Plan, 4/8/24
20. Meeting Minutes, 4/22/24
21. PWN, 4/23/24
22. PWN, 6/6/24
23. Health Management Plan, undated
24. Meeting Minutes, 6/6/24
25. Email Communication, 12/2/23 to 6/3/24

On July 26, 2024, the Student and the Parent, through their attorney, timely submitted a *Reply* via email. The *Reply* included three exhibits, as follows:

1. Colorado State Educational Agency decision, 8/15/13
2. Department Order in case no. 15-054-001, 3/6/15
3. OSEP *Letter to Chandler*, 4/26/12

On August 14, 2024, the Complaint Investigator interviewed the Parent and the Parent's Attorney by telephone. On August 14, 2024, the Complaint Investigator interviewed the District's Assistant Administrator for Special Education by telephone. On July 26, 2024, the Complaint Investigator emailed the District's Attorney, requesting any written District policies or guidelines concerning issuance of PWNs. In response, on July 31, 2024, the District's Attorney emailed the District's Special Education Handbook to the Complaint Investigator and the Parent's Attorney. 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 June 19, 2023, to the filing of the Complaint on June 18, 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 Prior Written Notice (PWN) to the Parents before changes were made to the Student’s IEP and the IEP was implemented, the date of which is unknown. Specifically, the Complaint alleges that after an IEP meeting on April 22, 2024, the District failed to provide a PWN to the Parent before implementing the amended IEP, which indicated the amended IEP would be implemented on April 22, 2024; and the Parent did not receive the updated and finalized document until June 6, 2024, and parents were never given a PWN informing them of the proposed changes to the IEP.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Substantiated</p> <p>The District failed to provide PWN to the Parent prior to implementing the Student’s IEP on April 22, 2024. While the Parent and their Attorney received a copy of the IEP and a PWN on May 6, 2024, this does not impact the requirement to provide PWN <i>prior</i> 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 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>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 14 years old and has completed 8th grade. The Student is eligible for special education as a child with Other Health Impairment (OHI) and Orthopedic Impairment (OI). The Student’s placement is general education with support from special class focusing on functional academics, social/emotional skills, and functional life skills.
2. On January 9, 2024, the Student’s IEP team met for an annual IEP review. On April 22, 2024, the Student’s IEP team met and amended the Student’s IEP as follows: added the eligibility of OI to the previous eligibility of OHI, clarified language regarding a psychoeducational report, added parent interest into the IEP, updated health services, added ESY services, and added an augmentative communication support plan to ensure it was established prior to the Student’s upcoming transition from middle school to high school. The IEP team also considered the Parent’s request for an Independent Educational Evaluation (IEE), and on April

23, 2024, the District approved the Parent's request for an IEE. The District's Assistant Administrator for Special Education reported to the Complaint Investigator that the District did not provide to the Parent or their Attorney the PWN dated February 23, 2024 approving the Parent's IEE request.

3. On May 6, 2024, the District provided an updated IEP and a PWN to the Parent, both dated April 22, 2024.
4. On May 14, 2024 and again on May 31, 2024, the Parent's Attorney emailed the District regarding items agreed upon during the April 22, 2024 IEP meeting but missing from the amended IEP dated April 22, 2024 and received on May 6, 2024. These included the failure to add the Student's new OI eligibility, the absence of parent input regarding the Student's upcoming transition from middle school to high school, adding information from a medical statement to the present levels, adding the augmentative communication support plan, and adding the determination that the Student will receive ESY services. On June 6, 2024, the District provided an amended IEP dated April 22, 2024, which included the previously missing items. This IEP indicated all services began January 9, 2023, the date of a prior IEP meeting. The augmentative communication support plan indicated a start date of April 22, 2024. Also on June 6, 2024, the IEP team met and discussed the Student's upcoming transition from middle school to high school. The District issued a PWN dated June 6, 2024 following this meeting.
5. On June 18, 2024, the Parent, through their Attorney, filed this Complaint.
6. The District's Attorney, in an email on July 31, 2024, submitted a District Special Education Handbook to the Complaint Investigator. In the accompanying email, the District's Attorney stated that there is not a specific section on PWNs.

IV. DISCUSSION

Prior Written Notice (PWN)

The Complaint alleged 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, the date of which is unknown. Specifically, the Complaint alleges that, after an IEP meeting on April 22, 2024, the District failed to provide PWN to the Parent before implementing the amended IEP, which indicated the amended IEP would be implemented on April 22, 2024; the Parent did not receive the updated and finalized document until June 6, 2024; and the Parent was never given PWN informing them of the proposed changes to the IEP.

The updated IEP dated April 22, 2024, listed the start date of services on the IEP as January 9, 2024, the date of an earlier IEP meeting, except for the addition of an augmentative communication support plan, which indicates a start date of April 22, 2024.

The IDEA requires a school district to give parents PWN within a reasonable period of time before it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.³ PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;

³ OAR 581-015-2310; 34 CFR §300.503(a)

- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

In this case, the parties agree that the District did not provide PWN to the Parent before the start of all services identified in the IEP. The District contended that issuing the updated IEP and PWN ten days after the meeting was not objected to by the family and that IEP team members expect implementation of the IEP immediately following the meeting. While the expectation of timely implementation is understandable, the reason a district must provide *prior* 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. A timely PWN is still required before the start of services identified in the IEP, under the express, nearly identical, language of the applicable OAR,⁵ the applicable CFR,⁶ and the federal statute (IDEA).⁷

The Department substantiates this allegation.

Parent Participation – General

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]urthermore, the Parents' participation in the IEP process was denied because the District did not send any prior written notice to the Parents after proposing changes to the IEP. The Parents could not know when the changes would be implemented since they did not receive notice prior to any implementation."

Based upon this language, the Department included a second allegation in the *Request for Response* in this case, alleging a violation of OAR 581-015-2190 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 the Parent's Attorney acknowledges that the Parent participated in the April 22, 2024 IEP meeting. Because the Parent did not allege that the District's failure to

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

⁵ OAR 581-015-2310

⁶ 34 CFR § 300.503

⁷ 20 U.S.C. § 1415(b)(3)

⁸ OAR 581-015-2190

provide PWN resulted in the denial of 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 Beaverton School District
Case No. 024-054-034

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

Action Required	Submissions	Due Date
1. 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;	October 15, 2024
	Sign in sheet for training.	January 15, 2025
2. The District will review and revise special education policies, practices, and procedures for PWNs to meet the requirements under the IDEA.	Draft of revised policies, practices, and procedures, to be provided to ODE;	October 15, 2024
	Finalized procedures to be provided to ODE.	January 15, 2024

Dated: this 27th Day of August 2024

Ramonda Olaloye

Ramonda Olaloye
 Assistant Superintendent
 Office of Enhancing Student Opportunities

E-mailing Date: August 27, 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 thfrom 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

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)).

resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)