

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Grants Pass School District 7

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 21-054-007a

**I. BACKGROUND**

On April 16, 2021, the Oregon Department of Education (Department) received a Letter of Complaint from the attorney (Attorney) of a student (Student) possibly residing in the Grants Pass School District (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.<sup>1</sup> This timeline may be extended if the complainant and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On April 28, 2021, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of May 12, 2021.

On April 28, 2021, the Student's Attorney, as part of the evidence for consideration in this matter requested that the Department consider all of the documents and evidence in the records in the Department's previous consideration of matters relevant to the Student under ORS 343.193.

The District requested additional time to submit its request. That request was granted. The District submitted a *Response* on May 14, 2021 denying the allegations, providing an explanation, and supporting documents for the District's position. The Student's Attorney submitted additional information on May 20, 2021. As part of the Student's response, the Student's Attorney amended the Complaint to include a Child Find allegation against the District. In total, the District submitted the following items:

1. District Response

On June 8, 2021, the Department's Complaint Investigator interviewed the District's Director of Student Services. The Complaint Investigator reviewed and considered these

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

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 relevant 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 April 17, 2020, to the filing of this Complaint on April 16, 2021.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>1) <u>Transfer Students</u></b></p> <p>The Student's Attorney alleges that the District violated the IDEA when the District did not adopt, develop, or implement the Student's IEP from the Student's previous school district.</p> <p>(OAR 584-015-2230; 34 CFR 300.232)</p>	<p><b><u>Not Substantiated</u></b></p> <p>There is no evidence in the record that the Student attempted to enroll in the District, or that the two Districts communicated regarding the Student's potential transfer.</p>
<p><b>2) <u>Child Find</u></b></p> <p>The Student's Attorney alleges that the District violated the IDEA when it failed to identify, locate and evaluate the Student.</p> <p>(OAR 581-015-2080; ORS 343.041, 343.045 &amp; 343.157)</p>	<p><b><u>Not Substantiated</u></b></p> <p>While there is evidence in the record that the Student has family members within the District's boundaries, there is no evidence that the Student resides within the District boundaries, or that District staff had knowledge of the Student's presence.</p>

## III. FINDINGS OF FACT

### Background

- 1) The Student in this case is a 20-year-old student who attended school in the Three Rivers School District beginning in the third grade. With some exceptions, the Student attended elementary, middle, and high school in the Three Rivers School District.
- 2) On September 25, 2019, the Three Rivers School District sent the Student's mother

a prior written notice (PWN), at the mother's address in Grants Pass, Oregon. The PWN stated that the District would no longer provide special education or regular education services to the Student effective September 26, 2019.

- 3) Thereafter, the Student's Attorney, and Legal Counsel for the District exchanged communications regarding the Student's residency and possible eligibility for enrollment in the Grants Pass School District.
- 4) The Department previously investigated a case under ORS 343.193, related to the Student's residence and which school districts were potentially responsible for providing FAPE to the Student.
- 5) As part of the Department's ORS 343.193 investigation, outside Legal Counsel for the Three Rivers School District opined that the Grants Pass School District may have responsibility for the Student. Based on communications received from outside Legal Counsel for the Three Rivers School District, the Student's Attorney reported ambiguity over whether the two Districts were in communication with one another regarding the Student.
- 6) ORS 343.193(2) specifies that attorneys are "not required to report" information regarding a child with a disability who may require special education services, if that information may be subject to attorney client privilege.
- 7) The Department has interviewed staff members of the Three Rivers School District who indicated that they did not contact Grants Pass School District regarding the Student, the Student's enrollment status, or whether the Student transferred to the Grants Pass School District.
- 8) As part of the evidence collected in the Department's investigation of the report pursuant to ORS 343.193, the Student's family and others who provide services to the Student agreed that the Student resides within the Three Rivers School District boundaries. While the Student's mother lives in Grants Pass, the Student resides with another family member who resides in the Three Rivers School District. As a result, the Student attended school and received services from the Three Rivers School District for most of their life. While the Student has family whom he visits within the boundaries of the Grants Pass School District, the family and services providers report that the Student does not live with those family members.
- 9) On June 8, 2021, the Department's Complaint Investigator interviewed the District's Director of Student Services. The District's Director reported that to the District's knowledge the Student nor the Student's family had ever attempted to enroll in the District. The District's Director reported that prior to the filing of this Complaint, the District was not aware of the Student or the Student's needs. The Director further provided the Department with an overview of the District's child find activities including outreach to a variety of public and private organizations that routinely come into contact with children with disabilities.

## IV. DISCUSSION

### 1. Transfer Students

The Student's Attorney alleged that the District violated the IDEA when the District did not adopt, develop, or implement the Student's IEP from the Student's previous district. The Student's Attorney alleged that Three Rivers School District previously asserted that Grants Pass School District had responsibility for the Student. Given this alleged assertion by Three Rivers School District, the Student's Attorney observed a lack of coordination between the two Districts to develop or implement an IEP for the Student.

When a student with a disability transfers to a new district within the state and enrolls in a new school within the same school year, the new school district must provide a free appropriate public education (FAPE) to the child.<sup>3</sup> When transferring to a new district, the district the student transfers to should provide a FAPE, including services comparable to those described in the student's IEP from the previous district.<sup>4</sup> The district into which the student transfers should adopt the student's IEP from the previous district, or develop, adopt, and implement a new IEP for the student.<sup>5</sup>

There is no evidence in the record that the Student enrolled or attempted to enroll in the District. Without enrollment, the District had not the duty to coordinate the development or implementation of an IEP for the Student under OAR 581-015-2230(1).

For this reason the Department does not substantiate this allegation.

### 2. Child Find

The Student's Attorney alleges that the District violated the IDEA when it failed to identify, locate and evaluate the Student. The Student's Attorney alleges that the Three Rivers School District has asserted its belief that the Student resides in the Grants Pass School District. This assertion has included Three Rivers School District sending notices to addresses within the Grants Pass School District.

A school district must have procedures in place to ensure that all children with disabilities are "identified, located, and evaluated."<sup>6</sup> This responsibility includes children above the age of compulsory school attendance who have not graduated with a regular high school diploma.<sup>7</sup> This responsibility also applies to all children unless they are no longer entitled to a free appropriate public education under OAR 581-015-2040—OAR 581-015-2050.<sup>8</sup>

The Department has previously investigated issues relevant to matters regarding the Student's residence, and what school districts were potentially responsible for the Student's education. The Student's Attorney asked that the information gathered in that

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<sup>3</sup> OAR 581-015-2230(1)

<sup>4</sup> *Id.*

<sup>5</sup> OAR 581-015-2230(1)(a) and (1)(b)

<sup>6</sup> OAR 581-015-2080(2), *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1183 (9th Cir. 2010) (quoting 20 U.S.C. § 1412(a)(3)(A))

<sup>7</sup> OAR 581-015-2080(2)(h)

<sup>8</sup> OAR 581-015-2080(1)

past investigation be considered as part of this investigation. In the prior case under ORS 343.193, the Student's family, care givers, and service providers reported that the Student resides within the boundaries of the Three Rivers School District. As part of this investigation the District provided an overview of the many contacts with community agencies through which it typically identifies students in need of special education. The District denied knowledge of the Student either through enrollment, or by notice through any community partners.

The Department does not substantiate this allegation.

## V. CORRECTIVE ACTION<sup>9</sup>

*In the Matter of Grants Pass School District  
Case No. 021-054-007a*

No corrective action is ordered in this matter.

Dated: this 15 Day of June 2021



Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: June 15, 2021

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).)

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<sup>9</sup> 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)).