

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Forest Grove School District )	FINDINGS OF FACT,
No. 15 )	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 010-054-004

**I. BACKGROUND**

On February 18, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student residing in the Forest Grove School District No. 15 (District). The parents alleged several violations of the Individuals with Disabilities Education Act (the IDEA) and requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on February 18, 2010. The parents provided a copy of the complaint letter to the District.

On February 25, 2010, the Department 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 March 11, 2010. OAR 581-015-2030 authorizes the Department to investigate alleged violations of the IDEA that occurred within the calendar year prior to the receipt of the complaint.

The District submitted its timely *Response* to the Department and to the parent's attorney on March 11, 2010. The District's *Response* included a narrative response and copies of the student's behavioral and attendance records, relevant meeting minutes, the signed permission to evaluate, and a few emails. The parents did not submit any additional documents.

The Department's complaint investigator determined that on-site interviews were required. On March 31, 2010, the Department's investigator interviewed the parents. On the same day, the Department's investigator interviewed the District special education director, a principal, an assistant principal, a counselor, and a special education coordinator. The District provided additional materials during the interview process. The Department's complaint investigator reviewed and considered all of the relevant documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege violations of the IDEA that occurred within the twelve months prior to the Department's receipt of the complaint and must issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.<sup>1</sup>

The Department has jurisdiction to resolve this complaint under 34 CFR §§300.151-153 (2009) and OAR 581-015-2030. The parents' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the period from February 19, 2009 to the filing of this complaint on February 18, 2010.<sup>2</sup>

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<sup>1</sup> OAR 581-015-2030(12).  
<sup>2</sup> See 34 CFR § 300.153(c); OAR 581-015-2030(5).

	<b>Allegations</b>	<b>Conclusions</b>
	<b>Allegations to be investigated.</b> The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b><u>Child Find:</u></b></p> <p>The parents allege that the District failed to identify, locate and evaluate the child as a student in need of special education.</p>	<p><b><u>Substantiated.</u></b></p> <p>The District had reason to suspect that the student had a disability that was causing an adverse impact on the student's educational performance. Therefore, the Department substantiates the parents' allegations that the District did not meet its child find responsibilities and orders corrective action.</p>
2.	<p><b><u>Evaluation and Reevaluation Requirements:</u></b></p> <p>The parents allege that the District failed to:</p> <p>(a) evaluate the student even though the District suspected or had reason to suspect that the student had a disability that had adverse educational impact and that the child needs Special Education as a result of the disability; and,</p> <p>(b) include the parents in the decision as to whether the student would be evaluated.</p>	<p><b><u>Substantiated, in part.</u></b></p> <p>The District had reason to suspect that the student had a disability that had an adverse impact on the student's education. The Department substantiates the parents' allegations that the District failed to evaluate the student in compliance with the IDEA.</p> <p>Because the District never considered the issue of whether the student should be evaluated, the Department issues no findings with regard to this allegation.</p>
3.	<p><b><u>General Evaluation and Reevaluation Procedures:</u></b></p> <p>The parents allege that the District failed to provide prior written notice when it refused the parents' request for an evaluation.</p>	<p><b><u>Not Substantiated.</u></b></p> <p>Because the District never considered the issue of whether the student should be evaluated, the Department issues no findings with regard to this allegation.</p>
4.	<p><b><u>Protection For Children Not Yet Eligible For Special Education:</u></b></p> <p>The parents allege that the District failed to</p>	<p><b><u>Substantiated.</u></b></p> <p>Because the District had knowledge that the</p>

<p>provide the child with the disciplinary protections contained in OAR 581-015-2400 through 581-015-2435 despite having knowledge that the child was a child with a disability.</p>	<p>student might be a student with a disability, when it suspended the student pending expulsion, the Department finds that the District violated IDEA and orders corrective action.</p>
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<p><b>Requested Corrective Action.</b> The parents are requesting that the District:</p> <ol style="list-style-type: none"> <li>1. Schedule an evaluation planning meeting and subsequent Special Education evaluation and involve the parents in these processes; and,</li> <li>2. Provide compensatory education services in the form of increased tutoring during the evaluation process which will continue when student returns to the least restrictive education environment.</li> </ol>	
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### III. FINDINGS OF FACT

#### **Student Background Information**

1. The child is a resident of the District, is twelve years old, and is not eligible for special education services. The child is in the 7<sup>th</sup> grade, is currently expelled from school, and is receiving five hours of tutoring per week from the District.
2. The student received special education services as a student with a communication disorder from preschool through the 2<sup>nd</sup> grade (the 2004-2005 academic year). In the 4<sup>th</sup> grade (the 2006-2007 academic year), the student was again made eligible as a student with a communication disorder and received services through June of 2007, when the student was found no longer eligible.
3. On September 9, 2009, the student started 7<sup>th</sup> grade in a new school in the District.<sup>3</sup> During the 6<sup>th</sup> grade year the student was in a self-contained 6<sup>th</sup> grade class. In 7<sup>th</sup> grade, students in this District are no longer in self-contained classes and attend seven different classes daily.
4. During the 6<sup>th</sup> grade year, the student's grades dropped from five Bs and one A at the beginning of the year to one C, three Ds, and one F at the end of the year. The student did

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<sup>3</sup>The District's schools are configured as follows: K—4; 5—6; 7—8; and 9—12.

meet the standard on the state Mathematics and Reading tests in grade 6, with scores of 224 and 222 respectively.

5. For the first trimester, the student was assigned Middle School Math, Language Arts, Humanities, Physical Education, Science, Spanish, and Technology I. The student was originally assigned to a Band class but was transferred out of that class for too many unexcused absences. At the end of the first trimester, the student had earned a GPA of .057 and had earned a total of .66 credits.
6. For the second trimester, the student was assigned Middle School Math, Language Arts, World Geography, Physical Education, Art, Spanish, and Science. At the time the student was suspended (January 28, 2010), the student had F's in all classes except PE, in which the student had a D.
7. During the 2009-2010 academic year, the student was enrolled in school from September 9, 2009 to January 28, 2010, on which date the student was suspended for ten days, pending expulsion. The expulsion hearing was held on February 22, 2010; following the hearing, the student was expelled<sup>4</sup>.
8. During the time the student was enrolled, the student was absent for a total of 29 days for a wide variety of reasons. The reasons include illness, truancy, appointments, and suspension. The student was assigned in-school suspension on 11/19/09 and 12/9/09. The student was suspended out of school on 10/19/09, 12/15/09, 12/16/09, 12/17/09, 1/14/10, 1/15/10, 1/19/10, 1/22/10, 1/25/10, 1/26/10, and from February 1—12, 2010.
9. The student received a total of 24 Behavioral Referrals from October 7, 2009 to January 28, 2010. The referrals were for these behaviors: Skipping—2; Disrespectful—10; Fight—1; Property Damage—2; Disruptions—4; Harrassment—2; and, Forgery or Theft—3. These behaviors occurred in these locations: Classroom—14; Cafeteria—3; Bus—1; Hallway or Commons—3; Other or Unknown—2; and, Office—1.

### **District Background Information**

10. The District uses an Effective Behavior and Instructional Support (EBIS) system to screen and identify students who need additional academic and/or behavioral support. A committee of school staff<sup>5</sup> meets regularly and reviews the progress or lack thereof of students who have been referred to the committee. The committee considers the student's current situation and educational history and makes recommendations. Possible recommendations include planning, implementing, and modifying interventions for the student; establishing a Section 504 plan; or, referring the student for a special education eligibility evaluation. Generally, the team begins with an intervention plan and, depending on the student's response to the plan, moves to more serious interventions such as a recommendation for a special education evaluation.

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<sup>4</sup> The expulsion hearing was originally scheduled for February 11, 2010 but had to be rescheduled.

<sup>5</sup> The committee generally includes a counselor, the assistant principal, special education staff, a school psychologist, and other specialists such as English Language Learner teachers.

11. In addition, the District has a contractual relationship with a non-profit, community-based prevention, mental health, and addiction agency. Under this contract, District staff may refer general education students and or their families for counseling and other kinds of support, and the agency works to connect the families to services in the community. Also under this contract, the agency provides school-based mental health services to general education students who need them.
12. The District also works collaboratively with the county juvenile justice authority. When a student has been placed with the youth authority, youth probation officers will often notify District staff about services the youth will receive.
13. The District uses a computerized School-Wide Information System (SWIS) to track data on student behavior issues. When a student receives a discipline referral, clerical staff records the information in this system. The system tracks the “date, [student] name, grade, staff who referred the student, time of referral, location, problem behavior, motivation, others involved, the administrative decision, days suspended or expelled, and other information.” The “other information” category is generally a short description of what actually happened and is taken directly from what the teacher wrote on the referral form.
14. This school in the District has used a discipline system for a number of years. The system outlines offenses that a student might commit and assigns a point system to each offense<sup>6</sup>. Until the 2009-2010 school year, the system was in effect for all students at the school. When a student earned 25 points on this discipline system, the District automatically recommended expulsion of the student. A new principal at the school has revised the practice, and the decision to place a student on the point system is now made on a case by case basis.
15. When a student is suspended at this school, the administrator generally informs the parent(s) by phone call. If the administrator cannot reach the parent by phone, the administrator will send a copy of the referral paperwork home with the student. Generally, the administrator does not send a letter through the mail notifying the parent that a student has been suspended and the reason for the suspension.

### **Chronology**

16. The parents stated that one of them went to the school during the in-service time before school started and talked with an administrator. The parents state that the parent expressed concern to the administrator about the child being in classes with some children that the parents felt were negative influences. The parents also stated that the administrator was informed at that time that the student was diagnosed with Attention Deficit Disorder with Hyperactivity (ADHD) and that the student was on medication. Neither administrator interviewed remembers this conversation.
17. The counselor stated that in late September or early October of 2009, a probation officer from the county juvenile authority came to meet with the counselor and informed the

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<sup>6</sup> Examples of offenses and the points assigned to each include: tobacco—5 points; gambling—2 points; absence (skipping)—5 points; physical assault—10 to 25 points; and, disorderly conduct—2 points. When a range of points is indicated, the number of points assigned is at the discretion of the administrator.

counselor that the student was on probation for illegal activity. The probation officer also informed the counselor that the county juvenile authority was planning to do a mental health assessment on the student and that the student was receiving some counseling from the county juvenile authority.

18. In October, 2009, the parents began meeting with a school-based mental health counselor from the local non-profit agency.
19. The counselor noted that sometime during the fall of 2009, the 7<sup>th</sup> grade teachers met and discussed the student and established some interventions to use in the classroom. None of these interventions were written or formalized in any way, and the team did not discuss them with the parents.
20. On November 19, 2009, a building administrator contacted the parents over the telephone about some behavior issues.
21. On November 30, 2009, the building administrators decided to put the student on the discipline point system. They sent a copy of the document that outlines the point system home with the student for the parents to read.
22. The parents assert that one of them met briefly with the assistant principal on December 12, 2009 and that, during this conversation, the parent informed the assistant principal that the student has been diagnosed with ADHD and is taking medication for the condition. The assistant principal stated that this conversation actually took place during a meeting held on January 7, 2010.
23. The District staff referred the student to the EBIS team on December 10, 2009, and a meeting of the EBIS team was scheduled for January 7, 2010. In preparation for the January 7<sup>th</sup> meeting the counselor reviewed the student's cumulative file on December 14, 2009 and completed a staffing worksheet. On this staffing worksheet, the counselor wrote that "school staff had notified the parents that the school would start the 504 process as soon as the parents provided documentation of the student's diagnosis of ADHD." In addition, the counselor notes that "Parents also requested ... psychological testing. They were informed that such testing, as it is administered through schools, is more cognitive and academic in nature. The family has medical insurance, so it was suggested that they seek the comprehensive psychological evaluation they desire through their medical doctor or through county juvenile authority."
24. In addition, as part of this preparation for the EBIS team meeting, the counselor wrote a draft Section 504 Plan. The draft Section 504 plan provided for a behavior/evaluation sheet for daily use, reduction in length of assignments, quiet distraction-free settings for testing and project completion, administration of medications at school, and continued counseling services through the non-profit agency.
25. On January 13, 2010, the assistant principal informed the parents via a phone call that the student had earned 16 points on the discipline plan.

26. On January 21, 2010, the student and another student stole keys from a staff member's desk.
27. On the same day, a school administrator completed a referral for mental health services to the non-profit agency. On the referral form, the administrator wrote that the reason for the referral was: "On-going behavioral issues--impulsive actions with little remorse or willingness to correct behavior. Repeated refusal to follow school expectations. Student is diagnosed with ADHD, family is working with counselor at school level. Student has a juvenile counselor due to a legal infraction in the summer. Parent is asking for help--not able to get control of student's behavior--under evaluation for current Section 504 Plan." Finally, the administrator notes, "Met with parent on 1/7/2010--parent has asked for some assessment data to help the student be more successful in school. Student is in jeopardy of being expelled due to on-going behavioral issues."
28. On January 25, 2010, the counselor states that the student's probation officer told the assistant principal that the county juvenile authority would be completing a psychological evaluation. Several District staff commented that the team then decided not to replicate such an evaluation but to wait for the completion of the juvenile authority's report.
29. On January 28, 2010, the student was again disruptive in class and was consequently referred to the office. Administrators noted that the student had earned 25 points on the discipline system and decided to suspend the student for ten days, pending expulsion. On February 7, 2010, the District sent the parents a letter confirming this.
30. On February 10, 2010, the parent completed a written referral for special education evaluation. On that day as well, the parents gave staff at the school a letter from the family's physician stating that the student had been diagnosed with ADHD and was currently on medication for this condition. The parents also sent the letter to the school by certified mail on February 17, 2010.
31. On February 12, 2010, the District special education department sent the parents a meeting notice for an evaluation planning meeting to be held on February 24, 2010.
32. On February 18, 2010, the parents filed the complaint with the Oregon Department of Education.

#### **IV. DISCUSSION**

A District meets its obligation to identify, locate, and evaluate a student with a disability when it conducts an initial evaluation to determine if the student's disability has an adverse impact on the student's education. OAR 581-015-2105(3)(a) states that the "initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that: (A) The child has a disability that has an adverse impact on the child's educational performance; and (B) The child may need special education services as a result of the disability."

The District must begin the process of evaluation by designating a team to determine whether or not the evaluation will be conducted. This team must include the parents and at least two professionals, one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.<sup>7</sup> Further, OAR 581-015-2310(1) mandates that a district must provide prior written notice to parents when the district refuses to initiate an evaluation of a child suspected of having a disability.

The parents allege that the District violated IDEA when it did not identify, locate, and evaluate their child as a student suspected of having an educational disability. In addition, the parents allege that the District violated IDEA when it did not involve the parents in an evaluation planning process and when it did not give the parents prior written notice that the District was refusing to evaluate the child.

In this case, the District had ample reason to suspect that this child might have a disability and that the disability might have an adverse impact on the child's education. The student had been found eligible for special education on two prior occasions. During the student's 7<sup>th</sup> grade year, the student began struggling in a variety of settings soon after the start of the school year. The student was having trouble focusing in class, had poor grades and work completion habits, was skipping school, and was often defiant and disruptive in class. By the time the District moved to begin considering formal interventions by referring the student to the EBIS system, the student was already failing a number of classes and had been put on the school discipline system which could, and eventually did, lead to an automatic recommendation for expulsion. Even before the EBIS team met, the District had drafted a possible Section 504 Plan and had indicated in the notes which contain the draft plan that District staff were waiting for documentation from the physician that the student was diagnosed as ADHD. This document was written on December 14, 2009, and similar comments were recorded on a referral to a mental health agency on January 21, 2010. Given the student's behavior and lack of academic focus and the information that the student was identified as having ADHD, the Department concludes that the District should have suspected that the child had a disability and should have proceeded with the evaluation process.

The District had reason to suspect that the student had a disability that had an adverse impact on the child's educational performance and that the student required special education services. Therefore, the Department substantiates the parents' allegations that the District did not fulfill its child find or evaluation responsibilities with respect to this student. The Department orders corrective action, detailed below, with respect to the District's failure to evaluate the child for IDEA eligibility despite having reason to suspect that the child was a child with a disability.

Based on the conclusion that the District erred by not evaluating the child for IDEA eligibility, the Department is unable to address the allegations that the District failed to include the parents in the decision whether to evaluate the child and that the District failed to notify the parents of their refusal to evaluate the child. Because the District never considered the issue of whether to evaluate the child, the District was never subject to the provisions of the IDEA requiring it to include the parents in the decision-making process and to inform the parents of the outcome of that decision. Therefore, the Department makes no findings with regard to the parents' allegations that the District erred by failing to include the parents in evaluation planning and by failing to provide the parents with prior written notice of the refusal to evaluate.

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<sup>7</sup> OAR 581-015-2080 and 581-015-2105

A District meets its obligation to a student not yet eligible for special education when it follows the provisions of OAR 581-015-2440. These requirements mandate that the District must apply the provisions of OAR 581-015-2400 to 2435 when it has knowledge that the student has a disability. For purposes of the application of the disciplinary procedural safeguards, a District is considered to have knowledge that a child is a child with a disability when the parents have expressed concern in writing or have requested a special education evaluation or when the child's teacher or other school personnel have expressed concern about the child's pattern of behavior. The disciplinary options available to a school district that has knowledge that a child is a child with a disability vary depending on whether or not the conduct in question took place before or after the district had knowledge of the disability.

The parents allege that the District expelled the student for an incident which occurred on January 28, 2010, even though the District had knowledge, as defined above, that the student had a disability. A review of the facts finds that the parents did not express a concern in writing before the January 28<sup>th</sup> suspension and that school personnel, including the student's teacher, did not express concern to the school administration concerning the student's pattern of behavior. However, in a meeting on January 7, 2010, as recorded by the assistant principal on a referral to the local non-profit mental health agency, the parents "asked for some assessment data to help the student be more successful in school." The Department concludes that this request by the parents constituted a request for a special education evaluation of the child sufficient to establish that the District had knowledge that the student had a disability for the purposes of applying the disciplinary procedural safeguards.

School personnel are mandated by IDEA to make sure that parents are given appropriate opportunities to participate in the process of establishing IDEA eligibility and that parents are also given opportunities to understand the process. The authors of the IDEA included these provisions to address the lack of technical expertise that may serve as a barrier to meaningful parental participation in their children's education. Parents cannot be denied the benefits of the IDEA for failing to use precise vocabulary in their communications with District staff when the District has an obligation to provide parents with meaningful opportunities to participate in the education of their children. In short, District personnel should have recognized the parents' request for "assessment data" to "help the student be more successful in school" as a request for an evaluation for special education services. Therefore, the Department concludes that the District had knowledge that the student had a disability on January 7, 2010. Because the District had knowledge that the student had a disability when it initiated the disciplinary proceedings that led to the student's expulsion, the Department finds that the District violated IDEA and orders corrective action.

## V. CORRECTIVE ACTION<sup>8</sup>

*In the Matter of Forest Grove School District*  
Case No. 10-054-004

Action Required	Submissions <sup>9</sup>	Due Date
<p><u>1. Child Find and Evaluation Procedures</u></p> <p>a) Initiate an expedited evaluation of the student to determine if the student is eligible for special education and related services under the IDEA and to determine the content of the student's IEP if the student is found eligible. The evaluation shall comply with the requirements of OAR 581-015-2105 through 2125.</p> <p>Following the evaluation of the student, conduct an eligibility determination, consistent with the requirements of OAR 581-015-2120.</p>	<p>To the parents and the Department, copies of completed: evaluation reports; statements of eligibility; consent for evaluation documents; prior written notices; notices of team meetings; and notes and minutes from meetings related to these actions.</p>	<p><b>May 14, 2010</b></p>
<p>b) Review and revise school (and district if applicable) policies and procedures for referral for evaluation for special education eligibility. Include school procedures for referral decisions that incorporate student data from multiple sources including, but not limited to, EBIS, SWIS, parent information, discipline, and mental health or law enforcement referrals. Include related parent notification and participation requirements.</p>	<p>Revised documents to the Department for review and approval.</p>	<p><b>June 30, 2010</b></p>
<p>c) Provide training to staff at the student's school regarding the reviewed/revise policies and procedures for referral decisions prior to the beginning of the 2010-2011 school year.</p>	<p>Training agenda, including: presenters; staff sign-in sheet indicating participant's positions; and copies of training materials.</p>	<p><b>September 20, 2010</b></p>

<sup>8</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).

<sup>9</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

Action Required	Submissions <sup>9</sup>	Due Date
<p><u>2. Discipline</u></p> <p>During the pendency of the student's evaluation, return the student to the placement that the student was attending prior to the January 28, 2010 suspension. The District and the parents may agree to a placement other than the placement that the student was attending prior to the January 28, 2010 suspension.</p> <p>Following the student's eligibility determination:</p> <ul style="list-style-type: none"> <li>- If the student is found ineligible under the IDEA, the District may discipline the student as it would discipline any general education student.</li> <li>- If the student is found eligible, the District shall implement the disciplinary procedures described in OAR 581-015-2400 through -2445 with regard to the student.</li> </ul>	<p>To the parents and the Department, an assurance that the student has been returned to the prior placement or to a placement agreed upon by the parents and the District.</p> <p>If the student is determined eligible, copies of documents establishing that the District implemented the disciplinary protections provided by IDEA, including: a determination of whether the student's suspensions/expulsion constituted a change of placement; any Manifestation Determinations required; and any prior written notices generated as a result of disciplinary action concerning the student.</p>	<p><b>May 14, 2010</b></p> <p><b>June 30, 2010</b></p>

Dated: April 12, 2010

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Nancy J. Latini, Ph.D.  
Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: April 12, 2010

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.