

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Douglas Educational)
Service District Early Intervention/Early)
Child hood Special Education (EI/ECSE))
(Area 3))

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 11-054-017

I. BACKGROUND

On May 20, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parent of a child receiving services from or through the Douglas County Educational Service District (ESD) Early Intervention/Early Childhood Special Education (EI/ECSE) program regarding services provided in a Head Start program. The complainant requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint to Douglas ESD.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ The investigation timeline was extended by a total of four weeks in this case, due to extenuating circumstances discussed below. On May 25, 2011, the Department sent a *Request for Response* to the ESD identifying the specific allegations in the complaint to be investigated. On May 27, 2011, the ESD submitted its timely *Response* to the *Request for Response*. The parent did not provide a written *Reply* in this case.

The Department's contract complaint investigator determined that telephone interviews would be sufficient in this case and that an on-site investigation would not be necessary. Lake ESD subcontracts with Douglas ESD to provide EI/ECSE administration and services for children living in Lake County. These services are provided in various programs, including Head Start. On July 11, 2011, the complaint investigator conducted telephone interviews of Lake ESD personnel, including an EI/ECSE program coordinator and the superintendent. On July 12, 2011, the complaint investigator conducted telephone interviews with a Head Start site manager, a teacher, and a Lake ESD school psychologist. On the same date Head Start staff e-mailed documentation concerning this child to the investigator. The Department's investigator reviewed and considered all of the documents and interviews in reaching the findings of fact and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and 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.² In this case the complaint investigator's attempts to interview the parent were unsuccessful, although the Department twice extended the investigation timeline, for a total of 28 days, to give the parent the opportunity to respond to the complaint investigator. When these efforts were unsuccessful, the complaint investigator

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010).

² OAR 581-015-2030(12)

determined that communication with the parent was not going to occur. This order is issued within the extended timelines.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153 (2010). The parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from May 21, 2010 to the filing of this complaint on May 20, 2011.³

No.	Allegations	Conclusions
(1)	<p><u>Child Find</u></p> <p>The complaint alleges that despite the child's significant behavioral difficulties resulting in removal of the child from a Head Start program, ESD and Head Start staff failed to inform the parent of available assessments or supports to identify any disability of the child and failed to evaluate the child and provide appropriate services, in violation of the ESD's obligations under OAR 581-015-2080.</p>	<p><u>Not Substantiated</u></p> <p>The Department concludes that Douglas ESD, through its subcontractor Lake ESD, made the parent aware of availability of supports and assessments to identify any disability of the child, but the parent refused to access the available assessments.</p>

III. FINDINGS OF FACT

Background:

1. The child in this case is six years old and completed kindergarten during the 2010-2011 school year. On May 10, 2011, a school district determined the child's initial eligibility for special education services with an eligibility of Other Health Impairment. Prior to that, the child attended a Head Start program for two years, beginning on September 23, 2008 and ending on June 3, 2010.
2. According to Head Start and ESD staff, the child exhibited behavior issues during the child's enrollment in Head Start. A Behavior Services Plan (BSP) was developed early on during the child's attendance at the Head Start program, sometime prior to March 10, 2009. The child did not exhibit other areas of concern for suspected disabilities.
3. Head Start and Lake ESD staff reported that they are aware of the "child find" policies and procedures adopted by Lake ESD, and were fully aware of these during the child's period of attendance from September 23, 2008 to June 3, 2010.

³ OAR 581-015-2030(5)

4. Progress notes provided by the Head Start program, as well as information provided during telephone interviews of Head Start and Lake ESD staff, support the conclusion that the parent was informed about supports and assessments available to assist the child.
5. Referrals to child and family counselors and for mental health evaluations were made as early as October 8, 2008. Head Start and Lake ESD staff consistently reported that the parent did not want to proceed with evaluations because the parent did not want the child labeled.
6. The letter of complaint submitted to the Department identified the parent and a Lake ESD school psychologist as complainants, but was signed only by the parent.
7. When interviewed the psychologist explained that he had helped initiate the complaint in this case after becoming aware of the child in December 2010. The psychologist stated a belief that the ESD had failed to identify the child as being eligible for special education services due to a focus on children who exhibit speech or developmental delays.
8. The psychologist reported that the parent told him that the ESD and Head Start staff had not made the parent aware of the availability of supports or of the possibility of assessments to determine if the child's behavior was related to a disability. The psychologist confirmed that the complaint in this case does not allege a failure to appropriately evaluate the child during the child's kindergarten year (2010-2011), but only concerns the EI/ECSE program in Lake ESD during the child's attendance at the Head Start program.

IV. DISCUSSION

The complaint alleges that despite the child's significant behavioral difficulties resulting in removal of the child from the Head Start program, ESD and Head Start staff failed to inform the parent of the availability of supports or assessments to identify any disability of the child and failed to evaluate the child and provide appropriate services, in violation of the ESD's Child Find obligations under OAR 581-015-2080.

The Department notes that the applicable time period in this case means that the Department may only consider the allegations of the complaint concerning incidents occurring on or after May 21, 2010, one year before the filing of this complaint. Due to this limitation, the complaint only encompasses the period of time beginning May 21, 2010 and ending on June 3, 2010 (the child's last day in the Head Start program).

The findings of fact, concerning matters before May 21, 2010, are included only to provide context for the circumstances of this case, as they demonstrate the circumstances during the year preceding the filing of this complaint. The parent provided no clarification of the allegations in this case because the parent failed to communicate with the complaint investigator despite significant extension of the investigation timeline to allow the parent to do so.

The Department concludes that Douglas ESD, through its subcontractor Lake ESD, made the parent aware of availability of supports and assessments to identify any disability of the child, but the parent refused to access the available assessments. The ESD provided significant behavioral supports for the child during the child's enrollment in the Head Start program, including completing a Functional Behavior Assessment and implementing a Behavior Support Plan (BSP). The BSP was in effect for more than a year before this complaint was filed.

Although the Head Start occasionally required the parent to take the student home, the Department finds that, the child was not otherwise removed from the Head Start program. The child completed the Head Start program.


The Department does not substantiate the parent's allegation that the ESD failed to inform the parent of the availability of supports or assessments needed to identify the child, if the child is a child with a disability.

V. CORRECTIVE ACTION

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The Department does not order any Corrective Action resulting from this investigation.

Dated: August 8, 2011



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

Mailing Date: August 8, 2011

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.