

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego School)
District 7J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-005

I. BACKGROUND

On February 11, 2009, the Oregon Department of Education (Department) received a signed written complaint from the parents of a student in the Lake Oswego School District 7J (District) alleging violations of the Individuals with Disabilities Education Act (IDEA). The Department sent a copy of the complaint to the Lake Oswego School District 7J on February 11, 2009. The Department must investigate written complaints that allege IDEA violations 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 unless the circumstances of the investigation satisfy the requirements for an extension contained in OAR 581-015-2030(12).

On February 23, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. Both the District and the parent timely submitted supporting documentation to the complaint investigator.

The Department’s complaint investigator determined that on-site interviews were necessary. On March 9, 2009, the investigator interviewed the parent and the District Director of Special Education.

Both the parent and the District gave additional pages of documentation to the Department’s complaint investigator during the interview process and shared the additional materials with each other. The complaint investigator conducted a phone interview with the special education manager at the web academy, which is sponsored by a neighboring public school district, on March 17, 2009. The Department’s investigator reviewed and considered information from all of the documents and interviews in finding the facts enumerated below in Section III.

II. ALLEGATIONS AND CONCLUSIONS

	Allegations	
1.	<u>Child Find:</u> The parent alleges that the District has not fulfilled its Child Find obligations,	Substantiated. The Department finds that the District failed to undertake reasonable efforts to

	<p>described in OAR 581-015-2080, after the parent informed the District that the child was a resident of the District and had previously been determined eligible for special education.</p>	<p>identify, locate, and evaluate students with disabilities residing within the district's boundaries. Therefore, the Department substantiates the parents' allegation that the District did not fulfill its Child Find obligation.</p>
2.	<p><u>Age Limitations and Exceptions to FAPE:</u></p> <p>The parent alleges that the District did not admit the student in violation of OAR 581-015-2045(1).</p>	<p>Unsubstantiated.</p> <p>The Department finds that the District's admissions process is reasonably accessible to students seeking enrollment in or services from the District. Therefore, the Department does not substantiate the allegation that the District denied the student admission.</p>
3	<p><u>Responsibility for Evaluation and Eligibility Determination:</u></p> <p>The parent alleges that the District violated OAR 581-015-2105(3)(a) when it failed to conduct a reevaluation to ascertain whether or not the student continued to be eligible after the parent notified the District of the student's previous eligibility.</p>	<p>No Finding</p> <p>Because the District did not carry out its child find obligations, the Department was unable to adequately investigate this claim. The District's failure to identify the student as a student with a disability precluded the District from scheduling an evaluation or determining eligibility. Therefore, the Department makes no findings with respect to this allegation.</p>
4.	<p><u>Transfer of Student Education Records:</u></p> <p>The parent alleges that the District violated OAR 581-021-0255(1) by not requesting the student's educational records from the student's prior school after the student sought enrollment in the District.</p>	<p>Substantiated.</p> <p>The Department finds that, upon the parent seeking enrollment in or services from the District, the District did not request the student's educational records from the student's prior school within 10 days. Therefore, the Department substantiates the parent's allegation that the District violated the IDEA by failing to request the student's records in the applicable time period.</p>

Proposed Solutions:

The parents are requesting that the District provide:

- a.) an evaluation;
- b.) a current IEP; and,
- c.) a guarantee of entry into a specific high school program if the student meets the program requirements.

III. FINDINGS OF FACT

Background

1. The student is a resident of the District and is 16 years old. Currently, the student attends a public web academy located in a neighboring public school district.
2. The student was found eligible for special education by another Oregon school district on December 13, 2005, as a student with autism. That district wrote an IEP for the student on the same date.
3. The parents moved into the District, into the Lake Oswego High School attendance area, in February 2008. At that time, the student was attending a private school in the area that serves students with disabilities. The parents placed the student in this educational setting but did not contact the resident District at that time.
4. In late April 2008, the parent contacted the District office and talked with the Supported Education Specialist.² The parent spoke with this individual regarding special education services for the student. The Supported Education Specialist answered the questions in a general manner and suggested that the parent bring a copy of the IEP and eligibility paperwork to the district office for review.
5. The parent agreed to do so, and, on April 25, 2008, the parent delivered a packet containing a cover letter, an observation report, a Psycho-Educational Assessment report, the IEP, ODE individual Student test Results, and a withdrawal form from a previous private school. All of the special education documents were from the 2005-2006 school year and from another Oregon district.
6. When the parent went to deliver the materials, the Specialist was in the office, and the parent and the Specialist talked briefly about the situation. The Specialist informed the parent that the student would not be eligible for Extended School Year services as the student had not yet failed in the

² The contracted complaint investigator did not interview this individual as the person is on personal leave from the District.

District and also informed the parent that the student needed to be enrolled in the District before any additional steps could take place.

7. On May 5, 2008, the Specialist emailed the parent and thanked the parent for delivering the materials. The Specialist stated that "once the student is enrolled we will follow through with our special education procedures."
8. On May 20, 2008, the parent replied to the May 5 email from the Specialist. In this email, the parent expressed distress that the student would have to fail in the District before possible consideration for Extended School Year. The parent asked, "what is the proper way to enroll the student as the student will be on an IEP." The Specialist replied later the same day and told the parent to follow the enrollment procedures on the District website for the appropriate high school attendance area. The Specialist again stated that once the student was enrolled, the District would follow through with special education procedures.
9. The parent then went to the District website, completed the application form, and faxed a copy to the appropriate high school based on the student's residence in the school's attendance area.
10. After a period of time, the parent checked with the high school to see if it had received the faxed enrollment papers. A student helper at the high school told the parent on the phone that there was no paperwork about the student in the file, so the parent faxed the paperwork a second time to the same high school. In a second phone call, the student helper verified that the school's fax machine had received the enrollment papers.
11. The District Special Education Director stated that the District receives many requests from parents to enroll their students in the District for a variety of reasons. The practice is that, when the District receives enrollment paperwork - by whatever means - the paperwork goes into a holding file until the start of the new school year. That paperwork is brought out again during the registration period at the start of the school year. If the family comes to the registration meetings and completes the paperwork, then the student is entered onto the District's record, and appropriate steps are taken to get the student started at the District. However, if the parent does not attend the registration meeting, the paperwork stays in the holding file until late in the fall when it is destroyed. The District does not contact families to see if they are serious about enrolling their students in the District.
12. The District's website instructs parents to contact the local school for an enrollment packet and to fill out an on-line enrollment form and either bring it to the school or fax or mail it. There are no other instructions about what kinds of documentation the District requires in order to enroll a student. The on-line registration form does not ask for any information about whether or not the student is eligible for special education or has received special education in the past. Additionally, the District website gives no guidance to parents who seek special education services through the District for a student

who is home schooled or enrolled in a private school or out-of-district charter school.

13. The parent and the District Special Education Director both agree that the parent did not attend a registration meeting, nor did anyone in the District special education department contact the parent in the fall of 2008.
14. In September of 2008, the parent began teaching the student at home and began working with a home school group in the area. The parent did not register the student with the local education service district as a home-schooled student. Instead, the parent enrolled the student at a public school web academy in a nearby district on October 14, 2008. The student continues to attend this program.
15. On October 15, 2008, the web academy sent a letter with the names of students from the District who were enrolled at that time in the web academy. In the letter, the web academy special education manager asked the District to verify whether any of the students on the list were eligible for special education and to send copies of any appropriate paperwork to the web academy.
16. The student's name was included on this list; however, the District did not send any paperwork because the student was not enrolled.
17. On October 16, 2008, the parent attended a special education open house that was held at the District. The parent spoke briefly with the Special Education Director but did not have time to explain the enrollment difficulty. The Director encouraged the parent to make an appointment, but the parent decided afterwards not to do so.³
18. On February 11, 2009, the parent filed a complaint, which is the basis of this order, with the Oregon Department of Education.

IV. DISCUSSION

In this case, the parent alleges four violations of IDEA. Specifically, the parent alleges that the District did not fulfill its child find obligations. Additionally, the parent alleges that the District denied enrollment to the student and failed to evaluate the student for qualifying disabilities. Finally, the parent alleges that the District failed to request educational records from the student's previous school. As alleged, each of these violations would individually constitute a denial of a free appropriate public education (FAPE).

³ The parent explained to the complaint investigator that the experience of trying to enroll the student in the District had been very "disheartening and off-putting", and consequently, the parent decided not to make an appointment with the Director.

Under OAR 581-015-2075, a district must admit students who are “otherwise eligible” and who have not reached the age of 21 on or before September 1 of the school year. “Otherwise eligible” refers to the residency requirement as established in ORS 339.133 (2007) and ORS 339.134 (2007). The “resident school district” of a student who is eligible for special education and related services shall be the school district in which the student’s parent or guardian or person in a parental relationship to the student resides. ORS 339.133. In this case, the student lives with a parent within the Lake Oswego School District boundaries; the student is a resident of the Lake Oswego School District.

Under the requirements of child find, the District shall identify, locate, and evaluate all residents with disabilities who are in need of special education services. OAR 581-015-2080. Separately, the District has a child find obligation to identify, locate, and evaluate parentally placed private school children enrolled in private schools located within the district. OAR 581-015-2085. This applies equally to all resident children, including those who are enrolled in public charter schools or are home-schooled. *Id.*

If the district has reason to suspect that a resident student may have a disability, the district must then conduct an evaluation to discern whether or not the student is eligible for special education. OAR 581-015-2100. If the student is found eligible, the school district must then develop and implement an IEP for the student designed to ensure that the child receives a FAPE.⁴ A school district meets its obligation to provide FAPE by complying with the procedural requirements of the IDEA and providing the student with an IEP that is “reasonably calculated to enable [the student] to receive educational benefit.”⁵ An IEP must be in effect for each eligible child at the beginning of each school year. OAR 581-015-2220.

1. Child Find

In this case, the parent contacted the District on April 22, 2008 and asked how to obtain special education services for the student. On April 25, the parent delivered copies of the student’s previous special education eligibility paperwork and the previous IEP. The parent gave these directly to a member of the District’s special education staff. Instead of responding to this information by undertaking its child find responsibilities with respect to a parentally-placed public school student, the District treated the case as a general request for district enrollment.

Based on the above facts, the Department finds that the District had notice that the student resided in the District and that the student had previously been determined eligible for special education. Upon receipt of this notice, the District did not initiate any further contact with the parent or the student. This failure constitutes a violation of the District’s obligation to “identify, locate, and evaluate” all resident students in need of special education and all parentally placed private school students who may be in need of special education.

⁴ *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

⁵ *Id.* at 192.

In its *Response*, the District asserts that it was unable to fulfill its child find obligations with regard to this student because the District was unaware that the student was a resident of the Lake Oswego School District. However, the District received notice on April 25, 2008, when the parent delivered the student's educational paperwork, and again on October 15, 2008, via the letter from the student's charter school to the District. The District did not follow up to determine the student's special education status on either instance. The student's paperwork indicated the student was parentally placed in a private school within the district's boundaries, creating a separate child find obligation.

The child find provisions of the IDEA create an affirmative obligation for districts to locate all resident students within their boundaries that are in need of special education. The Department finds that the District's failure to pursue further information concerning the special education eligibility of the student, despite having reason to suspect that the student had a disability, violated the District's child find obligation. Therefore, the Department substantiates the parent's allegation that the District did not satisfy its child find obligation when it failed to identify and locate the student despite the District having notice that the student was previously found eligible for special education.

The Department also finds that the District's failure to identify, locate, and evaluate the student following the District's receipt of information indicating that the student was previously found eligible for special education services and that the student resided in and attended a private school in the District resulted in a denial of special education services to the student. Due to the District's failure to identify the student, the student was denied services as a parentally-placed private school student, as a homeschooled student, and as an out-of-district charter school student from May 5, 2008, ten days after the parent delivered educational paperwork to the District, until February 11, 2009, the date of the filing of this complaint. The District's ongoing obligation to provide these omitted services is discussed below in the Corrective Action section.

2. Age Limitations and Exceptions to FAPE

Under the Oregon Administrative Rules, a district "must admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year." OAR 581-015-2045. The parent does not allege that the District overtly denied the student admission to the District; the parent's allegation is that the District's admissions procedures effectively blocked the student from registering. Specifically, the parent alleges that the District provided her with incomplete and misleading information concerning the steps the parent was required to undertake to register the student with the District. However, the rules do not prescribe minimum procedures for admitting eligible students.

The Department finds that the registration process is reasonably calculated to allow admission to all eligible students; the Lake Oswego High School website provides comprehensive instructions for registering a student with the school. This conclusion is based on the impracticality of requiring the District to actively pursue every registration form submitted to the District and the lack of evidence showing that the current

procedures have prevented other parents from registering with the District. Therefore, the Department does not substantiate the allegation that the student was denied admission by the District as a result of the District's admissions process.

In order to gain admission at a school in the District, a parent must complete and submit a District registration form and supporting documentation and attend a registration meeting. In this case, the parent completed and submitted the registration form and some other documentation but did not attend a registration meeting. In the time between the submission of the form in late April of 2008 and the filing of this complaint on February 11, 2009, no one from the District has contacted the parent regarding the student's enrollment in District programs or services.

In determining if the student in this investigation was denied admission by the District, the Department decided that the District's admissions procedure is reasonably accessible to all resident students. Although the Department found that, on its face, the District's process does not deny enrollment to eligible students, the Department is concerned that the in-person admissions process, described previously in this order, may constitute an obstacle to enrollment for some parents and students.⁶

Though the policy does not violate the rights of eligible students to enroll in their resident district, the Department notes that the policy, as practiced, does not reflect the District's heightened obligation to students with disabilities or suspected of having disabilities. As discussed above, the District has a duty to identify, locate, and evaluate all resident school-aged children with disabilities. OAR 581-015-2080, and all students parentally placed in private schools located within the district, regardless of residency OAR 581-015-2085. Therefore, in instances where a student seeking enrollment has a disability or is suspected of having a disability, the District's policy of requiring parent-initiated follow-up would not satisfy the District's affirmative obligation to identify and locate the student.⁷ The Department believes that the impermissible effect that the District's admissions policy has on students with or suspected of having a disability will be eliminated as a result of the corrective action ordered pursuant to the substantiated child find allegation discussed above.

3. Responsibility for Evaluation and Eligibility Determination

The Department issues no finding with regard to the parent's allegation that the District violated IDEA by failing to evaluate the student for a disability. Because the District had failed to identify the student through the child find process and because it failed to properly acquire copies of the student's educational records, the Department is unable to determine whether or not the District violated the IDEA by failing to evaluate the student.

⁶ The Department is particularly concerned about the lack of clear registration directions on the Lake Oswego School District website and the websites of individual Lake Oswego schools. With the exception of the Lake Oswego High School website, the Department was unable to locate a complete list of the District's registration requirements on any District websites. The majority of school websites refer individuals seeking enrollment information to the District's website; the District's website refers individuals to the school website for the school in their attendance boundary.

⁷ The Department notes that the District's enrollment form does not allow the individual seeking enrollment to indicate whether or not the individual has a disability that necessitates consideration of special education or prior eligibility under the IDEA.

The Department has substantiated the allegation that the District failed to fulfill its child find obligation. This obligation includes the requirement to evaluate students who need special education. The Department notes that the student's most recent evaluation is dated December 13, 2005 and that the IDEA required the student to have another evaluation prior to December 13, 2008, three years after the student's last special education evaluation, unless the parent and the District agreed otherwise. See OAR 581-015-2105. Therefore, the District must evaluate the student and determine the student's eligibility. Based on this information, the District shall develop a plan, subject to Department approval, for compensatory education services and, if appropriate, an IEP.

4. Transfer of Student Education Records

The Oregon Administrative Rules include a number of provisions dealing with the collection, maintenance, and retention of student educational records. For students who transfer from one school to another within Oregon, the rules require the student's new school to request, within 10 days of the student seeking admission to or services from the District, the educational record from the student's previous school or district. OAR 581-015-0255(1).

On several occasions during the timeframe included in this investigation, the parent communicated to the District that the student had recently moved within the district boundaries and that the student was eligible as a student with a disability under the IDEA. Based upon this information, the District should have requested the student's records from the previous school within 10 days of receiving notice in April 2008 that the student was a resident of the District who was parentally placed in a private school within the District. Therefore, the Department finds that the District violated the IDEA when it failed to request the student's educational records from Park Academy at Marylhurst within 10 days of April 25, 2008, the date on which the parent delivered documents to the District indicating the student's special education eligibility; the Department substantiates the allegation that the District violated IDEA by failing to request the student's educational records from a previous educational institution.

<p>requirements, and the related enrollment procedures, for students who may be:</p> <ul style="list-style-type: none"> A. Parentally enrolled in private schools located in the district or in any Oregon charter school, whether located inside or outside district boundaries; and B. Home schooled. <p>2. How the District provides notice of these requirements to parents.</p> <p>(b) The District will, with the consent of the parent, evaluate the student. Based on that evaluation and other available information and with the consent of the parent, the District will, in accordance with the requirements of the IDEA:</p> <ul style="list-style-type: none"> 1. Determine whether the student remains eligible for special education services under the IDEA; 2. Develop an Individualized Education Plan appropriate to the student's needs; 3. In conjunction with the parent, develop a plan for providing compensatory services to the student that is substantially similar to the services that the student should have received through the District from May 5, 2008 until February 11, 2009 and implement that plan; and 4. In the event that the eligibility team determines that the student is eligible for special education, implement the student's IEP in the least restrictive environment, a parentally chosen charter school, an in-district private school, or in conjunction with homeschooling. If the student is parentally enrolled at an in-district 	<p>Copies of: any meeting notices, minutes, or notes; any parental consent forms; evidence of evaluation planning; eligibility determination statement(s); the individualized education plan or services plan; and any prior written notices.</p> <p>A copy of the proposed plan for compensatory education signed by the parent and a District representative, for Department approval.</p> <p>A letter of assurance, signed by a District representative, indicating that the District has provided the services agreed to in the compensatory education plan.</p>	<p>June 30, 2009</p> <p>July 10, 2009</p> <p>No later than February 10, 2010</p>
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	private school, the District will develop and implement a services plan in accordance with IDEA requirements.		
2	<p>Records</p> <p>The District will review, and revise as needed, its policies, procedures, and practices regarding:</p> <ol style="list-style-type: none"> 1. The requirements of OAR 581-021-0255 Transfer of Student Education Records for students identified under the auspices of child find; 2. How the District collects, maintains, discloses, and destroys student record information collected in conjunction with its child find responsibilities; 3. How the District responds to parents, defined in OAR 581-015-2000, who submit student records as part of an inquiry related to potential enrollment or request for special education services; and 4. How the District responds to charter school notifications that a student who may be a resident student with disabilities has enrolled in a charter school. 	Evidence of policy revisions, if any, adopted by the District school board.	December 1, 2009

Dated: April 6, 2009

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

Mailing Date: April 6, 2009

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.

