

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Tigard-Tualatin School)
District 23J)

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-017

I. BACKGROUND

On April 22, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school in the Tigard-Tualatin School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030.

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 the circumstances of the investigation satisfy the requirements for an extension contained in OAR 581-015-2030(12). On April 29, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On May 12, 2009, the District timely submitted a narrative *Response* to the allegations and sent the parent a copy. The parents did not provide a *Reply* to the District's *Response*.

The Department's complaint investigator reviewed the information submitted by the District and determined that on-site interviews were needed. On May 28, 2009, the investigator conducted a face-to-face interview with the parents. The parents provided additional documents at that time. On June 2, 2009, the investigator conducted on-site interviews with the a school counselor and the student's classroom teacher as well as the District's Director of Student Services, Associate Director of Student Services, Occupational Therapist, and Speech Language Therapist (SLP). The Department's investigator reviewed and considered all of the documents and interviews.

I. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR § 300.151-153. The allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

No.	Allegations	Conclusions
(1)	<p data-bbox="289 1671 808 1734"><u>General Evaluation and Reevaluation Procedures:</u></p> <p data-bbox="289 1787 792 1881">(a) Not ensuring that the student's evaluation was sufficiently comprehensive to identify all of the</p>	<p data-bbox="894 1671 1138 1696">Not Substantiated.</p> <p data-bbox="894 1772 1414 1871">The evaluation provided by the District by the school's psychologist, based on several assessments by the school</p>

	<p>child's special education and related needs;</p> <p>(b) Not ensuring that the student was evaluated in all areas related to the suspected disability.</p>	<p>psychologist and other District staff, sufficiently addressed the areas of potential impact on the student's educational performance identified by the evaluation planning team, including the parents, at the November 4, 2008 evaluation planning meeting. Despite the District's conclusion that special education services were not needed, the District immediately proceeded to evaluate the student's eligibility for a 504 plan, and adopted a 504 plan providing accommodations in the areas of work completion and organization. The Department does not substantiate the allegation that the District's evaluation following the parents' October 6, 2008 request for an evaluation was not sufficiently comprehensive and that the evaluation did not evaluate in all areas related to the suspected disability.</p> <p>The Department finds that the District appropriately responded to the parents' March 16, 2009 requests for evaluation, by scheduling and holding an evaluation planning meeting on April 14, 2009, and by having the SLP and Occupational Therapist complete initial assessments to determine the need for further evaluation in those areas.</p>
(2)	<p><u>Independent Educational Evaluation:</u></p> <p>Not ensuring that an independent educational evaluation was provided at public expense following the parents' request that the District complete additional evaluations to address the student's needs.</p>	<p>Not Substantiated.</p> <p>The Department does not substantiate the allegation that the District failed to ensure that an IEE was provided at public expense in this case. The District appropriately provided (and the parents have obtained) an IEE following the District's evaluation discussed at the January 23, 2009 eligibility meeting. Any delay between the January 23, 2009 and the March 3, 2009 offer of an IEE is not attributable to the District, because the parents did not request an IEE immediately following the January 23, 2009</p>

		<p>meeting, despite having received notice of procedural safeguards from the District at that time.</p> <p>The Department finds that the District appropriately responded to the parents' March 16, 2009 requests for evaluation, by scheduling and holding an evaluation planning meeting on April 14, 2009, and by having the SLP and Occupational Therapist complete initial assessments to determine the need for further evaluation in those areas. The Department also finds that the District properly provided the parents with documentation of the decision not to provide an evaluation in the areas of social communication and OT, and with notice of the procedural safeguards.</p> <p>The parents have not requested an IEE in the areas refused by the District at the April 14, 2009 meeting.</p>
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III. FINDINGS OF FACT

Background:

1. The student is presently twelve years old and is in the fifth grade at a District elementary school. At the time of the filing of this complaint, the student is not eligible for special education and related services under IDEA. The student is at or above grade-level benchmarks in all academic areas in the student's regular education curriculum.

Evaluation and Reevaluation:

2. The parents reported during the investigation interview that, following the student's diagnosis of ADHD in 2006, they requested the District obtain an evaluation of the student, but the District determined that the student was not eligible for an evaluation based on the student's progress. The parents also reported that they are concerned about the student's lack of organizational and social skills. The parents report that the student's report cards show difficulty in organization and in turning in homework despite his excellent academic performance. The parents are also exploring physical issues experienced by the student this school year including sleep difficulties and a seizure. The student is waking up too tired to attend school and is experiencing a high absence and tardy rate at school. Through June 2, 2009, the student has been absent for 41 days of the 2008-2009 school year.

3. On October 6, 2008, the parents wrote a letter to the District requesting an evaluation for a possible learning disability. This letter references a physician's diagnosis of ADHD. In response to that request, the District developed an evaluation planning team and scheduled an evaluation planning meeting for November 4, 2008. At the meeting the parents expressed concern with several areas, including the student's organization skills, flat affect, anxiety, homework, crying at home, sensory areas, and transition to middle school. The District determined that the student did not need to be evaluated in academic areas because the student was at or above benchmark in all academic areas. The District agreed to evaluate the student in the areas of social and organizational skills. The parents provided written consent for the evaluation at the November 4, 2008 meeting. The District scheduled an eligibility meeting for January 23, 2009.
4. The District's school psychologist completed an evaluation report, dated January 23, 2009, based on several assessments completed between November 4, 2008 and January 6, 2009. At the January 23, 2009 eligibility meeting, the District determined that the student did not meet eligibility criteria for Other Health Impairment (OHI) because there was no documentation of an educational impact requiring special education services or specially designed instruction (SDI). At the January 23, 2009 eligibility meeting, the District then considered the student's eligibility for an educational plan under Section 504 of the Rehabilitation Act of 1973 and determined that the student qualified for a 504 plan based on the observation of "[d]istractio[n] issues and lack of organization skills make following directions, completion of classwork, and following through on homework difficult." The 504 eligibility determination states that the student's ADHD affects the "major life activity" of "work completion and organization." The District's 504 plan adopted for the student is discussed in the related Prior Notice of Special Education Action as follows: "Although [the student] is a student with ADHD, he does not meet eligibility requirements for special education services. He does, however, require accommodations in the classroom to assist him with organization, task completion, written language production and stress reduction. He is eligible for a 504 Plan." The District finalized and initiated implementation of the student's 504 plan on January 26, 2009.
5. On February 24, 2009, the parents and an advocate met with the Special Education Director. On March 3, 2009, the Special Education Director wrote a letter to the parents addressing several issues raised at the February 24, 2009 meeting, including the parents' request for evaluation back in 2006. In this letter, the Special Education Director noted that the parents were provided with the Parental Rights in Special Education booklet at that time. The Special Education Director also discussed the parents' dissatisfaction with the school psychologist's evaluation, completed on January 23, 2009, and apprised the parents of their right to an Independent Educational Evaluation (IEE) at the District's expense. At the time of the filing of the complaint in this case on April 22, 2009, the parents had not provided the District with any documentation regarding a privately-obtained evaluation. The parents did, however, obtain an IEE from a psychologist who administered the assessments on March 26, April 8 and April 13, 2009. The IEE is dated April 28, 2009. The District received the IEE (entitled "Psychological Evaluation") on May 14, 2009. The District scheduled a meeting to discuss the IEE for June 4, 2009, two days after completion of the on-site interviews by the Department's investigator in this case.
6. On March 16, 2009, the parents wrote two letters to the principal of the student's school. One of the letters requested "assessment in the area of social communication due to concern that [the student's] pragmatic and social communication is not at grade level and is inhibiting his interaction with peers." The other letter requested "evaluation in the areas

of Social communication, including verbal and nonverbal communication,” based on concern that the student is not demonstrating age appropriate or grade-level social literacy skills, resulting in depression and anxiety at school and increased melt downs at home, and “[o]ccupational therapy in the areas of fine motor, coordination, and sensory,” based on concerns that the student has delays in the areas of fine motor, coordination, and sensory integration that are impacting his academic performance and causing him undue stress at school.

7. On March 17, 2009, the 504 team met to review implementation of the student’s 504 plan. The 504 team discussed the student’s attendance, noting that the student had accrued 13 absences and 8 tardies in the 22 school days following the implementation of the student’s 504 plan.
8. On March 20, 2009, in response to the parents’ letters of March 16, 2009, the District scheduled an evaluation planning meeting for April 14, 2009. On April 14, 2009, the evaluation planning team met to consider the need to evaluate the student for special education services related to social communication and fine motor skills. The District reviewed existing information, including the prior evaluation of the student by the school psychologist and the student’s academic performance, and concluded that the student exhibited the ability to socially communicate appropriately with both adults and peers at school.
9. Prior to the April 14, 2009 evaluation planning meeting, the District’s SLP interviewed the student’s teacher and counselor using a “social communication questionnaire.” Based on these interviews, the SLP concluded that the student did not exhibit communication difficulties that impacted the student’s education. The SLP shared these results at the April 14, 2009 evaluation planning meeting. The District’s Occupation Therapist also completed a review of several of the student’s written work samples prior to the April 14, 2009 evaluation planning meeting and learned from the student’s classroom teacher that the student’s work is at grade level or above and that the student’s writing skills are in the functional range. Based on review of the student’s work samples and the discussion with the classroom teacher, the Occupational Therapist determined that no additional assessments were necessary and shared the results at the April 14, 2009 meeting. During the April 14, 2009 meeting, the team discussed that the student’s writing is legible and his drawing ability surpasses that of his peers. The team discussed that the student does experience fatigue with long writing assignments but noted that the student’s 504 plan addresses this issue with specific accommodations and that the student also has a safety plan in place.
10. The privately-obtained evaluation provided to the District on May 14, 2009 makes several recommendations for accommodations. Comparison of the recommended accommodations to the student’s 504 plan reveals that all of the concepts addressed by the recommended accommodations are also addressed in the student’s 504 plan.

IV. DISCUSSION

General Evaluation and Reevaluation Procedures

The parents allege that the District did not ensure that the student’s evaluation was sufficiently comprehensive to identify all of the child’s special education and related needs and did not

ensure that the student was evaluated in all areas related to the suspected disability. The parents also allege that the District did not ensure that an IEE was provided at public expense following the parents' request that the District complete additional evaluations to address the student's needs.

OAR 581-015-2080 (1) provides:

“Child Find

(1) School districts must identify, locate and evaluate all resident [children] with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services. The requirements of this rule apply to all preschool and school age children unless these children are no longer entitled to a free appropriate public education under OAR 581-015-2040 to 581-015-2050.”

OAR 581-015-2105 provides, in part:

“Evaluation and Reevaluation Requirements

(1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:

(a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;

(b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;

(c) Changing the child's eligibility, or

(d) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.

(2) Request for initial evaluation: Consistent with the consent requirements in OAR 581-015-2090, a parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.

(3) When initial evaluation must be conducted:

(a) An 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.

(b) The public agency must designate a team to determine whether an initial evaluation will be conducted.

(A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.”

Finally, OAR 581-015-2305 provides:

“Independent Educational Evaluation

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child.

(b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.

* * *

(4) If a parent requests an independent education evaluation at public expense, the school district must, without unnecessary delay, either:

(a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.”

The parents filed the complaint in this case on April 22, 2009. Concerning the parents’ allegations that the District did not ensure a sufficiently comprehensive evaluation, the Department first notes that it cannot address matters occurring prior to one year preceding the filing of the complaint in this case. Thus, the parents’ concerns about matters occurring prior to April 23, 2008, including a prior request for evaluation, cannot be addressed in this order.¹

The Department may, of course, address the District’s response to the parents’ evaluation requests beginning with the October 6, 2008 evaluation request by the parents. Concerning that evaluation request, the Department finds that the District appropriately proceeded with

¹ The Department also notes that most of the additional concerns of the parents expressed during the investigator’s interview of the parents concerned matters occurring more than one year prior to the filing of the complaint; and many of the parents’ concerns were not included in the complaint.

evaluation planning upon receipt of the request, by scheduling and holding an evaluation planning meeting on November 4, 2008. The Department also finds that the District appropriately addressed the evaluation request by agreeing to evaluate the student in the areas of social and organizational skills. Upon obtaining the parents' consent for this evaluation on November 4, 2008, the District timely (in 42 school days) completed an appropriate evaluation and held an eligibility meeting on January 23, 2009. The fact that the District concluded that the student's diagnosed disability of ADHD does not have an adverse impact on the student's educational performance and did not indicate a need for special education services does not mean that the evaluation was not sufficiently comprehensive. The evaluation provided by the District's school psychologist, based on several assessments by the school psychologist and other District staff, sufficiently addressed the areas of potential impact on the student's educational performance identified by the evaluation planning team, including the parents, at the November 4, 2008 evaluation planning meeting.

Despite the District's conclusion that special education services were not needed, the District immediately proceeded to evaluate the student's eligibility for a 504 plan and adopted a 504 plan providing accommodations in the areas of work completion and organization. The Department does not substantiate the allegation that the District's evaluation following the parents' October 6, 2008 request was not sufficiently comprehensive and that the evaluation did not consider all areas related to the student's suspected disability.

The Department next addresses the parents' March 16, 2009 requests for evaluation in the areas of social communication and OT. First, the Department notes that prior to the parents' March 16, 2009 letters requesting evaluations, the District (in its March 3, 2009 letter) reminded the parents of the availability of an IEE at the District's expense based on the parents' dissatisfaction with the evaluation report discussed at the January 23, 2009 eligibility meeting. However, the first testing date by the psychologist who administered the private evaluation is March 26, 2009. The District was apparently not informed that the parents were proceeding with the evaluation. The District appropriately considered the parents' March 16, 2009 requests for evaluation as requesting evaluation in different areas than those address in the evaluation report dated January 23, 2009. The District thus appropriately scheduled and held another evaluation planning meeting on April 14, 2009. At that meeting, the District concluded, based on existing assessments and the initial assessments of the District's SLP and Occupational Therapist, that no evaluations were needed in the areas of social communication and OT/fine motor skills. The District provided the parents copies of the evaluation planning meeting minutes, the Prior Notice of Special Education Action, and a copy of Procedural Safeguard Rights following that meeting.

The Department finds that the District appropriately responded to the parents' March 16, 2009 requests for evaluation by scheduling and holding an evaluation planning meeting on April 14, 2009 and by having the SLP and Occupational Therapist compete initial assessments to determine the need for further evaluation in social communication and fine motor skills. The Department also finds that the District properly provided the parents with documentation of the decision not to provide an evaluation in those areas and with notice of the procedural safeguards. The parents have not requested additional evaluations in areas other than those refused by the District at the April 14, 2009 meeting. The Department does not substantiate the allegation that the District inappropriately failed to evaluate the student in the areas of social communication and OT following the parent's March 16, 2009 requests for evaluation. Additionally, the Department also does not substantiate the allegation that the District failed to ensure that an IEE was provided at public expense in this case. The District appropriately informed the parents concerning obtaining an IEE following the District's evaluation discussed at

the January 23, 2009 eligibility meeting. Any delay between the January 23, 2009 meeting and the March 3, 2009 offer of an IEE is not attributable to the District because the parents did not request an IEE immediately following the January 23, 2009 meeting despite having received notice of procedural safeguards from the District at that time.

V. CORRECTIVE ACTION²

In the Matter of Tigard-Tualatin SD 23J
Case No. 09-054-017

The Department did not substantiate the allegations in this complaint. Therefore, no corrective action is ordered.

Dated: June 17, 2009

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

Mailing date: June 17, 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.

² 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).