

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eagle Point School District #9)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-027

I. BACKGROUND

On June 22, 2009, the Oregon Department of Education (the Department) received a letter of complaint from an attorney representing the parents of a student residing in the Eagle Point School District (the District). On behalf of the parents, the attorney requested that the Department conduct a special education investigation under OAR 581-015-2030 (2008). The Department confirmed receipt of this complaint on June 23, 2009. The parents’ attorney provided a copy of the complaint letter to the District.

On June 30, 2009, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegation in the complaint to be investigated and establishing a *Response* due date of July 14, 2009. The District submitted its timely *Response* to the Department and to the parents on July 7, 2009. The District’s *Response* included a narrative response and copies of District policies which outline the District’s practices regarding the provision of educational and other public records to parents. The parents’ attorney did not provide any additional records.

The Department’s complaint investigator determined that on-site interviews were not required but chose instead to conduct telephone interviews. On Wednesday, August 19, 2009, the Department’s investigator interviewed the District special education director and a special education secretary by telephone. On August 24, 2009, the Department’s investigator interviewed the parents’ attorney by telephone. The Department’s complaint investigator reviewed and considered all of these 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 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.¹ Due to an unexpected personal matter concerning the complaint investigator assigned to this case, the Department extended the timeline for issuance of the written decision in the case to September 4, 2009.

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The parents’ allegation and the Department’s conclusion 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 investigation covers the one year period from June 23, 2008 to the filing of this complaint on June 22, 2009.²

¹ 34 CFR § 300.152(b) (2009); OAR 581-015-2030(12).

² See 34 CFR § 300.153(c); OAR 581-015-2030(5).

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	Fees for Copies of Education Records The parents allege that the District violated IDEA when it inappropriately charged a fee for the labor costs incurred when the District copied 348 pages of the student's record after the parents requested, through their attorney, copies of said record.	Substantiated. To the extent that the \$60.00 fee was associated with District personnel's organizing and redacting the records prior to copying, the District violated the IDEA and related federal and state regulations.
	Requested Corrective Action. The parents are requesting that the District: <ol style="list-style-type: none"> 1. Reduce the amount of the invoice sent to the parents' counsel from \$94.80 to \$34.80, the cost of 348 copies at \$.10 each. 2. Change the District policy which established "a fee of \$.10 per page plus the cost of labor that exceeds 30 minutes" for providing educational records to parents. 3. District staff shall attend and document training related to the provision of educational records to parents. 	See Section V, titled CORRECTIVE ACTION, below.

III. FINDINGS OF FACT

1. The child is a resident of the District, is seven years old, and is eligible for special education services as a child with autism. The child does not attend school within the District at this time.³
2. On April 17, 2009, the parents requested a copy of the student's educational records through their attorney.

³ At the time the parents' attorney requested the records, the student was placed in a program run by the educational service district.

3. On April 24, 2009, the District sent a letter to the parents' attorney. The letter verified that the parents wanted copies of the "student's 'cum' file, special education file, attendance file, photographs, correspondence, health, early intervention, memos, testing and evaluation, 'contact logs', receipt logs, and all hand-written notes."
4. The letter also informed the parents and their counsel that the District would charge the parents for the copies and that, "School Board Policy establishes a fee of ten (10) cents per page plus the cost of labor that exceeds 30 minutes. The estimated cost to you is \$100.00."⁴
5. After this letter was sent to the parents, the District special education director convened a meeting of all relevant staff, including ESD staff. At this meeting, the team members reviewed what records had been requested and who had custody of each of the records. The director then assigned each member of the team to obtain any records in their possession and bring them to the District Office.⁵
6. Once all of the original records were at the District Office, the director and a special education secretary reviewed all of the records to make sure that no other students were mentioned in the records, and to organize them into the categories the parents requested. Once this was complete, the secretary made copies of the records.
7. On May 22, 2009, the District sent the records to the parents' attorney. There were 348 pages in the packet sent. The District included an invoice for payment. The invoice lists 348 pages copied at a cost of \$.10 per page for a total of \$34.80. The invoice states, "Total employee time incurred to produce documents was 3.5 hours. First 30 minutes free." The employee's rate of pay per hour is \$20.00, so the charge for labor is listed as \$60.00.
8. The District has a policy, KBA, Public Records, adopted on 2/9/05, which defines public records as per ORS Chapter 192—"Public record includes any writing containing information relating to the conduct of the district's business". This policy also states, in part, that the "Board reserves the right to establish a fee schedule which will reasonably reimburse the district for the actual cost of making copies of public records for the public."
9. The District has an administrative rule, KBA-AR Public Records, adopted on 8/10/05, which states, "In compliance with ORS 192.430 the following guidelines apply to the dissemination, inspection and examination of the public records of the district:" Guideline number three states, "Where the cumulative labor effort exceeds 30 minutes, labor, material and out-of-pocket charges will be reimbursed to the district. Labor will be calculated at the hourly rate of the employee affected."

⁴ Letter from Eagle Point School District #9 to parents' attorney, April 24, 2009.

⁵ Some of the records were located in places other than the District Office.

10. The District has a policy, IGBAB/JO, Education Records/Records of Students with Disabilities, adopted on 4/9/08. This policy defines education records as “those records maintained by the district that are directly related to a student”. The accompanying administrative rule, IGBAB/JO-AR, states that the district “shall give the eligible student or student’s parent(s) a copy of the student’s educational record”, if the student or parent so requests. Further, the rule states that the district “may recover a fee for providing a copy of the record, but only for the actual costs of reproducing the record”. The policy states that the district may not charge a fee “to search for or to retrieve the education records of a student”.

IV. DISCUSSION

The parents allege that the District violated the IDEA by charging the parents an excessive fee for providing a copy of the student’s education record. Under Oregon law, student education records under the control of a local education district are considered public records.⁶ However, consistent with the IDEA, student education records are not publically available and may only be disclosed under limited circumstances.⁷ The IDEA and its federal and state implementing regulations establish a number of rights concerning access to education records by parents, adult students, or the representatives of parents or adult students.⁸

Consistent with ORS 192.440(1)(a), school districts are required to provide parents with a copy of the student’s education record upon request.⁹ Districts may charge a fee for the copying of the record but may not charge the parent for the costs of searching for or retrieving the record.¹⁰

In this case, the parents requested a copy of the student’s educational record through a duly appointed representative. Pursuant to ORS 192.440(2)(c) and (4)(c), the District sent, on April 24, 2009, an acknowledgment of receipt of the request and notice that the District estimated that the fee for the copy would exceed \$25.00. The notice indicated that the District had arrived at their estimate by applying the fee structure contained in District administrative rule KBA-AR. That policy authorizes the District to charge \$.10 for each page photocopied and for the costs of the associated labor that exceeds thirty minutes. The notice did not address the requirement of OAR 581-021-0280(3) and District policy IGBAB/JO-AR that the fee for the copy not include the costs associated with District personnel’s search for and retrieval of the education record.

On March 22, 2009, the District sent a copy of the requested records to the parents’ representative. The copy was accompanied by an invoice for \$94.80. The invoice itemized the charges on the bill – \$34.80 for 348 copied pages at \$.10 per page and \$60.00 for three and a half hours of labor at \$20.00 per hour and the first 30 minutes of

⁶ OAR 581-021-0280(1).

⁷ See ORS 192.502(8) (2007); 34 CFR § 300.610; OAR 581-021-0265.

⁸ See 34 CFR § 300.613; OAR 581-021-0270.

⁹ OAR 581-015-0270(4).

¹⁰ ORS 192.440(4); OAR 581-021-0280(2) & (3).

labor free. The invoice did not indicate the specific tasks performed during the three and a half hours of labor that were included in the labor costs.

In their complaint, the parents contend that the District is prohibited from including labor costs for the time needed to produce educational records. However, the IDEA and the state and local implementing regulations do not include such a broad prohibition on the assessment of fees for copies of educational records. Oregon public record law provides public agencies broad authority to assess fees for copies of public records; the fee must be “reasonably calculated to reimburse the public body for the public body’s actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person’s request” and the fee must not include “the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505”.¹¹ This authority is further limited by OAR 581-015-0280(3), which prohibits public agencies from charging fees “to search for or to retrieve the education records of a student.”

Therefore, the Department concludes that the District did not violate IDEA or state special education law by charging \$.10 per page for copies of student educational records. The Department finds that such a charge is reasonably calculated to reimburse the District for the material costs of reproducing the student’s educational record and does not represent any expenses disallowed under ORS 192.440(4) or OAR 581-021-0280(3).

An issue remains as to whether or not the \$60.00 charge for “time incurred to produce documents” is allowable under IDEA and the state and federal implementing regulations. OAR 581-021-0280(3) prohibits the District from including in their fee charges for the time required “to search for or to retrieve the education records of a student.” However, neither the IDEA nor the Family Educational Rights and Privacy Act, which includes an identical fee provision, provide any guidance as to the scope of this prohibition.

The fees for labor included on the May 22, 2009 invoice include charges for time spent organizing and redacting the records in preparation for copying and charges for the time spent copying the records. The Department is unable to determine with precision the amount of time spent on each of these tasks. Nonetheless, the Department concludes that, to the extent that the labor charges included charges for organizing and redacting the records, the assessment of the fee was in violation of OAR 581-021-0280(3). This conclusion is based on a reading of the fee provision in conjunction with the parents’ right to inspect and review student records.

Under OAR 581-021-0270(1), districts must provide parents and their duly appointed representatives an opportunity to inspect and review student educational records. Prior to any such review, districts must ensure that records provided to parents do not include any protected information.¹² In order to accomplish this task, districts must first review the records to determine if any protected information is included therein and, if

¹¹ ORS 192.440(4).

¹² OAR 581-021-0290.

necessary, redact any protected information. However, neither state public records law nor the IDEA authorizes districts to assess fees for organizing and redacting documents in preparation for parental inspection or review of those records.

Concluding that fees for organizing and redacting student records when the parents request a copy are allowable would lead to an absurd result. Under this reading of the regulation, when parents request to inspect or review student records, school districts would be required to organize and redact the requested documents free of charge. However, if the parents request a copy of the documents, the district would be able to charge the parents for those same activities, redacting and organizing, in addition to the costs of producing the copies. Therefore, the Department concludes that the District violated IDEA by charging the parents for the time spent organizing and redacting the educational records. The Department holds that such charges are prohibited under OAR 581-021-0280(3) as costs associated with the search for and retrieval of educational records.

Because the District's records do not specify what portion of the three and a half hours of labor was spent on which specific activity, the Department is unable to determine with precision which portion of the \$60.00 labor charge is attributable to copying the records and which portion is attributable to the search for and retrieval of the records. Nonetheless, the Department concludes that, to the extent that the \$60.00 fee was related to organizing and redacting the records prior to copying, the District violated the IDEA and related federal and state regulations.

V. CORRECTIVE ACTION¹³

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Case No. 09-054-027

Action Required	Submissions ¹⁴	Due Date
Confer with parents regarding the amount to be charged for copying. The District will remove any charges for which it is unable to disaggregate copying charges from charges disallowed under OAR 581-021-0280(3) (to "search for or retrieve" records).	A copy of the final invoice and justification of costs, including an accurate accounting of the specific labor tasks performed, for Department review and approval. Upon Department approval, the District will reimburse the applicable amount. In lieu of these steps, the District may choose to	September 14, 2009

¹³ 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).

¹⁴ 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; fax number (503) 378-5156.

	waive all fees imposed other than the copying fee of 10 cents per page.	
Provide training ¹⁵ to administrators and special education staff regarding the requirements of the District's adopted policies and procedures for student education records of students with disabilities. Training must identify how administrators and staff will distinguish a general public information records request from a request for student education records made by the parent or representative of a parent of a student with a disability.	<p>Copies of all currently adopted/amended policies, procedures, and practices, and administrative regulations regarding records requests to the Department for review. These may be submitted electronically and will be maintained with the District's assurance of its records policy adoption.</p> <p>Evidence of completed training, including:</p> <ol style="list-style-type: none"> 1. Agenda including date, time, and location; 2. Copy of presentation materials and presenter(s); and 3. Attendance roster with printed names, positions, and signatures of those attending. 	<p>September 14, 2009</p> <p>October 21, 2009</p>

Dated: September 4, 2009

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

Mailing Date: September 4, 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.

¹⁵ Contact the Department for assistance with the content of this training.