

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Ontario School)
District 8C)
)
)
FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 09-054-038

I. BACKGROUND

On October 19, 2009, the Oregon Department of Education (Department) received a letter of complaint from the parents of two students attending school and residing in the Ontario School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030 (2008).

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and must issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On October 27, 2009, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On November 10, 2009 the District timely submitted a narrative *Response* to the allegations along with supporting documents and sent the parents a copy. The parent provided additional information to the Department by e-mail on November 11, 2009.

The Department’s complaint investigator reviewed the information submitted by the District and the parents and determined that interviews were needed. On December 3, 2009 and December 4, 2009, the investigator interviewed the District’s special education director by telephone. On December 3, 2009, the investigator also interviewed the parents by telephone. The Department’s investigator reviewed and considered all of the documents and interviews in reaching the findings of facts and conclusions of law contained in this order.

II. 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)	Reevaluation and Consent: The parents allege that the District	Not Substantiated. The Department does not

¹ OAR 581-015-2030(12); 34 CFR §§ 300.151-153 (2009).

	misrepresented to them that they must sign a form entitled "Authorization to Use and/or Disclose Educational and Protected Health Information" to ensure continued eligibility for special education.	substantiate the allegation that the special education teacher's statement constitutes a violation of the IDEA.
(2)	<p>Education Records:</p> <p>The parents allege that the District's process for gathering and releasing the students' education records improperly involved District staff other than the special education director and special education teacher.</p>	<p>Not Substantiated.</p> <p>The Department does not substantiate the allegation that the District improperly disclosed the students' educational records to school officials who did not have a legitimate educational interest in accessing the records.</p>

III. FINDINGS OF FACT

Background:

1. The students in this case are 16 year old twins who reside and attend high school in the District. The students' initial Oregon eligibility forms, dated November 13, 2006, show that the students are both eligible for special education under disability code 10, Mental Retardation. Medical statements provided for both students on November 9, 2006 refer to "ADHD" and "FAS" in the health impairment and health condition sections of the form.
2. The students' current IEPs, dated November 4, 2009, each provide for placement in a "Combination of Reg Ed and special education classes" and each provide for approximately 12 hours each week "removed from participating with nondisabled students in the regular classroom."

Reevaluation and Consent

3. The three-year reevaluation date indicated on each student's IEPs since 2006 is November 13, 2009. On or about October 15, 2009, the District's special education teacher provided the parents with forms requesting parental consent to conduct additional evaluations of the students along with forms, one for each child, entitled "Authorization to Use and/or Disclose Educational and Protected Health Information." The form authorized disclosure of education and health information and allowed the District and the children's physician to exchange otherwise protected information relevant to the treatment of the students. The parents expressed reservations about signing the forms, and the special education teacher advised that if the parents did not give their permission to conduct a reevaluation, including an exchange of information with the students' doctor, it may result in the students not continuing to be eligible for special education services. The special

education teacher was concerned about the approaching 3-year reevaluation deadline of November 13, 2009 and believed that the team should consider other possibility eligibility types when the students' IEP teams met for reevaluation planning. In the time between the request for consent and the issuance of this final order, the District has never ceased the provision of special education services to the students.

4. The parents have raised concern about the appropriateness of identifying both students under disability code 10, Mental Retardation, and there has been some discussion of this with the District prior to the filing of the complaint. The students' current eligibility has been in place since the initial determination by the eligibility teams in 2006. Prior to that, the students had been found eligible by an Idaho school district. The teams determining initial Oregon eligibility of the students included the parents.
5. After the filing of the complaint, the District developed new IEPs, dated November 4, 2009, for each student and held evaluation planning meetings for each student. One of the parents signed consent forms for each student on November 10, 2009, consenting to the following evaluation measures and assessments:

"Peabody Picture Vocabulary Test-4, Expressive Vocabulary Test, Comprehensive Assessment of Spoken Language, Language Sample, Curriculum-Based Measures, Classroom observations, Research Based Intervention Data, Wechsler Adult Intelligence Scale or Wechsler Intelligence Scale for Children-IV, Vineland Adaptive Behavior Scales – II, Wechsler Individual Achievement Test, and a Developmental History, Occupational Therapist Screening, Hearing and Vision Screening, Functional Behavior Assessment."

At the time of the issuance of this final order, both students are in the process of being evaluated to determine their continued eligibility status and to identify their special education and related service needs. The parents have not, to date, agreed to full disclosure of the students' medical information between the students' physician and the District.

Education Records

6. During the investigation, the parents clarified that their complaint does not concern the disclosure of information to an attorney on October 12, 2009 pursuant to a release of information signed by one of the parents on September 12, 2009. Rather, the parents' complaint is that an inappropriately large number of District staff were involved in the gathering and release of the students' education records. The release form signed by the parent authorized the release to an attorney, "without any limitation whatsoever," of all "academic records," "behavioral records," "cognitive records and/or testing," "intellectual records and/or testing [information]," "Individualized Education Plan(s)," "testing, assessment, evaluation[,] re-testing, [and] re-assessment," "re-evaluation for special education services," and "meeting records and notes concerning IEP meetings." A copy of the October 12, 2009

transmittal letter to the attorney accompanying the students' educational records indicates that the following District staff members were involved in the release of the students' records: "District Data Specialist," "High School Principal," High School Associate Principal (Special Ed)," "High School Counselor," "High School Learning Specialist," and "Middle School Principal." The October 12, 2009 transmittal letter states that the listed staff members were involved in a 30-minute meeting to determine the location of files and who should retrieve, review, and copy the files.

7. The October 12, 2009 transmittal letter identifies the staff members involved in retrieving the documents, the specific tasks completed, and time required to complete the tasks. The transmittal letter identified the following tasks and personnel: "High School Secretary – Copying student permanent file" (1 hour of time); "High School Counselor – School Master records search, retrieval, and printing" (1 hour); "High School Associate Principal (Special Ed) – Permanent file/discipline records review" (30 minutes); "Administrative Assistant to Special Education – Copying special ed records" (15 minutes); "District Data Specialist – Retrieval and print screen of all School Master archives" (14 hours); "District Office Receptionist – Copies of teacher working files/electronic files" (3 hours); "Director of Special Education – File Review" (1 hour); "Director of Personnel – Project review" (1 hour); and "Administrative Assistant to Personnel – Boxing and mailing records, prepare cost summary" (1.5 hours).
8. The special education director and the director of personnel were the only District staff who reviewed the records of each student in their entirety during the process of providing the students' education records. Other District staff members were only able to access those records that they retained pursuant to their duties as District employees.

IV. DISCUSSION

Reevaluation and Consent

The parents allege that the District misrepresented that the parents must sign a form entitled "Authorization to Use and/or Disclose Educational and Protected Health Information" to ensure continued eligibility for special education for both students. OAR 581-015-2105, concerning evaluation and reevaluation requirements, provides, in subsection (4)(b)(B), that a reevaluation for each child with a disability "must occur at least every three years, unless the parent and the public agency agree that a reevaluation is unnecessary." OAR 581-015-2110 provides, in subsection (3)(a) that

"In conducting the evaluation, the public agency must:

- (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

- (A) Whether the child is a child with a disability * * *; and
- (B) The content of the child's IEP."

OAR 581-015-2115, entitled "Evaluation Planning," provides in part:

"(1) Review of existing evaluation data. As part of * * * any reevaluation, the child's IEP or IFSP team, and other qualified professionals, as appropriate, must:

(a) Review existing evaluation data on the child, including:

- (A) Evaluations and information provided by the parents of the child'
- (B) Current classroom-based, local, or state assessments, and classroom-based observations; and
- (C) Observations by teachers and related services providers."

The Individuals with Disabilities Education Act identifies a number of circumstances where parents must grant informed, voluntary consent prior to the completion of some activity by a local educational agency. In this case, the District was required to obtain parental consent prior to conducting additional evaluations of the students and before sharing or obtaining protected medical and educational information with the students' physician. The parents allege that the District violated the IDEA when a special education teacher for the District told the parents that, if they did not provide consent for evaluations and the exchange of information, their children risked being found ineligible for special education and related services.

The special education teacher's statement was accurate to the extent that it represented to the parents that the evaluation data would be more comprehensive and more likely to identify all suspected disabilities and special education and related service needs if all relevant information on the students was made available to the eligibility team. The statement is also consistent with the IDEA's requirement that districts consider all available evaluation data as part of a comprehensive evaluation intended to determine eligibility and inform the creation of effective IEPs. Despite the general accuracy of the statement, however, the context in which the special education teacher made it and the lack of specificity about how a refusal to grant consent would impact the pending eligibility determinations created the potential to mislead the parents.

Nonetheless, the Department concludes that the special education teacher's comments linking the grant of parental consent to the students' eligibility determinations was not so coercive or misleading as to render the parents' consent uninformed or involuntary. This conclusion is supported by the fact that, despite the statement, the parents declined to immediately sign the forms and, when they did sign the forms, they did so only after altering them. Additionally, the Department's investigation uncovered no evidence that the District discontinued services at any time between the requests for parental consent at issue in this case and the issuance of this order. Therefore, the Department is unable to conclude that the District violated the IDEA by telling the parents that failure to provide their consent would impact the student's eligibility determination; this allegation is not substantiated.

Education Records

The parents allege that the District's process for gathering and releasing the students' education records unnecessarily involved District staff other than the special education director and special education teacher. The parents believe that the inclusion of a number of other staff members in the District's efforts to compile the students' education records violated the confidentiality provisions of the IDEA.

OAR 581-021-0270, entitled "Rights of Inspection and Review of Education Records," provides in part:

"(1) Except as limited under OAR 581-021-0290, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.

"(2) The educational agency or institution shall comply with a request for access to records:

"(a) Within a reasonable period of time and without unnecessary delay;"

The parents allege that the District allowed staff members with no legitimate educational interest to access the students' educational records when gathering and copying the students' records to complete a legitimate records request.

The Department concludes that the District followed its policy and the applicable administrative regulations regarding the disclosure of protected student records.² The broad scope of the unlimited request for all education records of the two students in this case appropriately resulted in a meeting of a number of relevant District staff members to determine all possible locations of each student's education records. Each of the individuals who participated in the search for the students' educational records could, as part of their job function, reasonably have been expected to generate or receive documents which would be considered a part of the students' educational records under OAR 581-021-0220(6). As such, those individuals' involvement in the compilation of the students' educational record was reasonable given the District's obligation to produce the students' records within a reasonable amount of time of the request.

Although a number of District staff were involved in compiling the students' educational records, the special education director and the director of personnel were the only District staff members who reviewed all of the education records considered for release. The Department concludes that, given their positions within the District, it was reasonable for the special education director and director of personnel to have access to the students' entire educational records in order to satisfy the record request while ensuring that the District's response complied with the various regulations concerning student records. Based on these conclusions, the Department does not substantiate the allegation that the District violated IDEA by inappropriately disclosing the students' education records.

² The District has adopted policies concerning education records management, as required by OAR 581-021-0250.

V. CORRECTIVE ACTION³

In the Matter of Ontario SD 8C
Case No. 09-054-038

No Corrective Action is ordered in this case.

Dated: 16th of December 2009

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

Mailing Date: December 16, 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.

³ 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).