

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
South Coast Education Service District &)
Central Curry School District)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 011-054-020 (a) & (b)

I. BACKGROUND

On June 30, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parents of a child residing within the Central Curry School District (District B) who was evaluated for special education services by the South Coast Education Service District (District A). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on July 1, 2011 and provided the Districts a copy of the complaint letter.

On July 11, 2011, the Department sent a *Request for Response* (RFR) to District A identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of July 25, 2011. On July 19, 2011, the Department revised the RFR to include District B and sent the revised RFR to both Districts. The Districts submitted their timely¹ *Response* to the Department and to the parent on July 29, 2011. The Districts' *Response* included a narrative response; copies of assessments and evaluations conducted with the child over the last year; copies of Consents for Evaluations and meeting notices sent to the parent during the last year; copies of evaluations completed by other agencies, and copies of email and other written correspondence conducted with the parent over the last year. On August 4-5, 2011, during the interview with the Department's complaint investigator, both the parents and the District's staff gave the investigator additional materials.

The Department's complaint investigator determined that on-site interviews were required. On August 4, 2011, the Department's investigator interviewed District A's ECSE specialist, speech and language therapist, autism specialist and ECSE Supervisor. On the same day, the investigator interviewed District B's superintendent/special education director. On August 5, 2011, the Department's investigator interviewed the parents. 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 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 This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

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

¹ The complaint investigator allowed the Districts an additional five days to prepare the RFR but did not extend the 60 day complaint timeline.

² OAR 581-015-2030(12) (2008)

Discussion in Section IV. This complaint covers the one year period from June 29, 2010 to the filing of this complaint on June 30, 2011.³

| | Allegations | Conclusions |
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| | <p>Allegations to be investigated. The written complaint alleges that both Districts violated the IDEA in the following ways:</p> | |
| <p>1.</p> | <p><u>ECSE Evaluation</u></p> <p>1.1 Failing to consider all areas of possible disability when the District evaluated the child for ECSE eligibility on 7/27/2010;</p> <p>1.2 Failing to consider the child's previous testing, medical data, parent reports and information about previous services provided to the child when the District evaluated the child for ECSE eligibility on 7/27/2010;</p> <p>1.3 Failing to complete a second evaluation within 60 school days after the parent signed consent for the second evaluation (to include autism) on 11/16/2010;</p> <p>1.4 Failing to convene a meeting to consider information the parent brought to the District on 3/3/2011, after the child had been evaluated by a multi-disciplinary team at CDRC. The evaluation summaries contained a documented diagnosis of autism and a recommendation for ECSE services;</p> | <p><u>Substantiated:</u></p> <p>Having reviewed all of the applicable rules, and the facts in this case, the Department substantiates the parents' allegation for the following reasons and orders corrective action.</p> <p>1. District A did not appropriately evaluate the child's original area of eligibility (Developmental Delay) when it evaluated the child in July 2010;</p> <p>2. Neither District A nor District B requested the full set of records from the Idaho school district;</p> <p>3. District A did not complete a thorough evaluation of the child as promised when staff discussed the evaluation with the parent in November 2010 and when the parent signed the consent for evaluation on November 16, 2010; and, the eligibility meeting was held 61 days after the parent signed the consent;</p> <p>4. The Prior Written Notice given to the parents on the day of the March 8th meeting did acknowledge that part of the agenda was to consider pre-evaluation planning for an autism evaluation, it did not include notice that the team planned to consider eligibility for special education under the category of</p> |

³ See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

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| | <p>1.5 Failing to provide the parents with Prior Written Notice of a meeting held on 3/8/11 to discuss the pre-evaluation planning; and,</p> <p>1.6 Failing to consider the CDRC evaluation information at the eligibility meeting held on 4/26/2011.</p> | <p>Other Health Impairment. While the parents did not include this in their allegation (1e); the Department finds this was a significant omission and includes it as part of the substantiation of the whole allegation;</p> <p>5. District A used inappropriate information (ADOS); to conclude that the child did not have an Other Health Impairment when it found the child ineligible under that category; and,</p> <p>6. District A did not adequately consider the information from the CDRC evaluation when it met to discuss the child's eligibility for special education on March 8, 2011.</p> |
| 2. | <p><u>Child Find:</u></p> <p>2.1 Failing to meet the District's responsibility to "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." In October the parents asked a District school psychologist how they might obtain an educational evaluation for their child. The school psychologist shared this information with District staff who did not act on it.</p> | <p><u>Substantiated:</u></p> <p>When the parent contacted the superintendent/special education director of District B in March 2011; and expressed concern about the evaluation process, the superintendent/special education director did not follow up with District A to see what District A had done and to find out how District A was meeting the parent's concerns. In addition, neither District requested the records from the Idaho school district once staff knew the child had received EI and ECSE services there from the age of six months.</p> |
| 3. | <p><u>Independent Educational Evaluation:</u></p> <p>3.1 Failing to provide the parent with information that would allow the parent to appropriately choose an independent educational evaluator that complied with the District's criteria.</p> | <p><u>Substantiated:</u></p> <p>Because the Districts' imposed limitations constituted a failure to provide accurate information about their choices in selecting an independent evaluator; the Department substantiates the parents' allegation and orders corrective action.</p> |

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| 4. | <p><u>Implementation of the IFSP:</u></p> <p>4.1 Failing to implement the IFSP and provide Early Childhood Education and related services as appropriate to the child's disability.</p> | <p><u>Substantiated:</u></p> <p>Given the fact that neither district sent for records, explored the reevaluation question, or considered that the child's eligibility for ECSE could possibly extend through September. 1, 2011; the Department substantiates the parents' allegation and orders corrective action.</p> |
| 5. | <p><u>Prior Written Notice and Notice of Procedural Safeguards—EI/ECSE Program and Termination of Eligibility—EI/ECSE:</u></p> <p>5.1 Failing to provide Prior Written Notice when the District terminated the child's eligibility for Early Childhood Special Education under the category of Developmental Disability and also found the child not eligible for Early Childhood Special Education under the category of a Communication Disorder on 7/27/2010. The parents were given neither the Prior Written Notice nor a copy of a speech/language evaluation summary until 11/16/2010.</p> | <p><u>Not Contested:</u></p> <p>The District does not dispute this allegation and offers a Corrective Action Plan outlined below.</p> |
| 6. | <p><u>Parent Participation—General—EI/ECSE Program:</u></p> <p>6.1 Failing to provide parents with a written notice of a meeting held on 11/16/2010; and,</p> <p>6.2 Failing to consider the concerns the parents expressed at the 4/26/2011 eligibility meeting.</p> | <p><u>Not Contested:</u></p> <p>The District does not dispute this allegation and offers a Corrective Action Plan outlined below.</p> |
| 7. | <p><u>Autism Spectrum Disorder:</u></p> <p>7.1 Failing to observe the child in multiple settings as required by OAR 581-015-2130 (1)(b).</p> | <p><u>Substantiated:</u></p> <p>Given the fact that the specialist observed the child engaged in multiple activities in one environment, the Department substantiates the parents' allegation and orders corrective action.</p> |

Issues outside Scope of Investigation

The parent alleges that District A violated IDEA when it placed the child in a preschool program that was inappropriate for the child because the staff acknowledged that they had little, if no experience with children with autism. This allegation will not be investigated, as the District found the child not eligible for Early Childhood Special Education services. However, if the

Department substantiates the allegations about the ECSE Evaluation process; then the Department may consider this issue in the context of a corrective action plan.

Similarly, the parents allege that the District B prevented them from communicating their child's needs to the special education teacher who teaches at the elementary school in which the child will start Kindergarten in the fall of 2011. Again, this is an issue that will be considered if the Department substantiates the allegations about the ECSE Evaluation Process.

Requested Corrective Action. The parents are requesting that:

1. The District reevaluate the child for eligibility for special education, and that this eligibility discussion include consideration of the CDRC reports, the child's history, medical records, and other information the parent's have provided to the District. The evaluation should include observations of the child in various settings, as well as consideration of parental observations and documentation.
2. The District start an ECSE preschool in the community.
3. The District pay the parents' costs not covered by insurance when the parents obtained the CDRC evaluation.
4. The District separate the positions of the Special Education Director and the Superintendent.
5. The District provide compensatory ECSE services as follows:
 - a. Extended day kindergarten or;
 - b. A group setting of age appropriate peers, perhaps a social skills group, staffed by professional(s) in accordance with IDEA;
 - c. Speech therapy to address articulation, functional communication, and social skills areas;
 - d. Physical therapy consult/services to address gross motor delays and motor planning (dyspraxia) as recommended by the CDRC Occupational Therapist;
 - e. Occupational therapy to address sensory processing issues as well as develop appropriate movement seeking behaviors that are appropriate for classroom setting; and,
 - f. Autism training and/or counseling to support parents in understanding and addressing the child's specific developmental/educational needs and determine and implement appropriate behavioral supports.
6. The District change the policy and procedure used to provide parents with information on obtaining Independent Educational Evaluations.
7. The District pay for an Independent Educational Evaluation conducted by a provider(s) that meets the criteria.
8. The District find the child eligible for special education services including speech, Occupational Therapy and counseling. Further that the District develop an IEP for the child prior to the start of the 2011-2012 kindergarten year. This IEP should include recommendations from the school psychologist such as:
 - a. Frequent movement breaks;
 - b. Extra assistance/small group instruction;
 - c. A safe and predictable routine (structure);
 - d. Preferential seating;
 - e. Positive reinforcement;
 - f. Prior notice of transitions;
 - g. Behavioral supports;
 - h. Using more than one way to demonstrate or explain information; and,
 - i. Teacher consultation, etc.
9. The District specifically address social skills and stereotypy behaviors/movement seeking in the IEP.

10. The District provide a teacher who receives training about the child's symptoms and disability, and about autism as needed.
11. The District arrange for the child to meet the teacher ahead of the start of the school year and for the child to have an opportunity to become familiar with the classroom and review routines, etc.
12. The Department provide training to all ESD staff in the areas of non-compliance.

III. FINDINGS OF FACT

Background

1. The child is five years old, lives in District B, but has not attended school in the District. The child is not eligible for special education.
2. The family moved into District B from Idaho in late July 2010. In Idaho the child was eligible as a child with a Developmental Delay, had an active IEP⁴ and received services from the local school district in an early childhood center.
3. The parents referred the child to the Early Intervention Program in Idaho on March 1, 2006 when the child was six months old because the child demonstrated "no interest in sitting, rolling, and didn't hold head up well". The child received Early Intervention services until August 15, 2008 when the child was transitioned from the Early Intervention Program to the Early Childhood Special Education Program as a child with a Developmental Delay.
4. The child's most recent IEP was written in Idaho on September 14, 2009 and contained goals in pre-reading, math, language articulation and fine motor skills. The IEP contained the following accommodations: Collaboration with the speech therapist to support and increase fundamental communication skills; use of visuals and models to assist with instruction, extra processing and response time, and repetition of directions. The team defined the child's necessary services as pre-school, ten hours per week; and speech therapy, 15 minutes two—six times per month. The team placed child in an early childhood special education program located in the district. The date of the child's projected three year evaluation was July 27, 2011.
5. Under OAR 581-015-2700(6), a child in Oregon is eligible for services as a child who needs early childhood special education from three years of age until the age of eligibility for public school. In District B, students must turn five on or before September 1st of the current school year in order to attend kindergarten that year.
6. Under OAR 581-015-2790(6)(b), in order to determine whether or not a child has a Developmental Delay the team must do an evaluation that includes at least one norm referenced, standardized test in each area of suspected delay; at least one additional procedure to confirm the child's level of functioning in each area of suspected delay; at least one 20-minute observation of the child; review of previous testing, medical data, and parent reports; and, other evaluative information as necessary to determine eligibility.
7. On July 20, 2010, the parent called District A to request services for the child. The next day, the ECSE specialist met with the parent to discuss the child's current program and needs. The parent signed consent for an evaluation and the team noted on the consent form that it would evaluate the child's communication and developmental skills. The next day the parent

⁴ Idaho uses the Developmental Disability category for students age 3—9 and therefore the child had an IEP instead of an IFSP.

gave the ECSE specialist copies of the child's IEP, eligibility and EI paperwork from the Idaho district. Neither District A nor B requested records from the Idaho district.

8. On July 27, 2010, the ECSE specialist and the speech language therapist evaluated the child. The speech therapist gave the child the Preschool Language Scale 4; the Expressive One-Word Picture Vocabulary test—Revised; the Goldman Fristoe Test of Articulation-2; and took a language sample. The ECSE specialist administered the Battelle Developmental Inventory. The child scored as follows:

9.

| Tests and Scores | |
|--|--|
| Pre-School Language Scale 4 | |
| • Understanding Language | SS83 |
| • Expressing Ideas | SS84 |
| Expressive One-Word Picture Vocabulary Test—Revised | SS98 |
| Goldman Fristoe Test of Articulation – 2 | SS86 |
| Language Sample | 90% intelligibility MLU 4.0 |
| Battelle Developmental Inventory | |
| • Adaptive | 10%ile |
| • Person-Social | 47%ile |
| • Communication | 34%ile |
| • Motor | 55%ile |
| • Cognitive | 12%ile |
| • Total TEST | 24%ile |

10. The parent was present while the specialists administered the tests, and afterwards, the specialist and the parent discussed how the child had performed. The specialists told the parent that it was unlikely that the child would qualify for special education under Oregon rules; but that they would have to score the results. Both the parent and the specialists agree that the specialists would contact the parent at a later date to complete the paperwork. The parent expressed some concern that the child might have Tourette's syndrome and the specialists encouraged the parent to seek medical help to obtain a diagnosis. The specialists also suggested that the parents explore the local Head Start program.
11. The parents applied for the Head Start program but the child was not accepted. When the parents registered their other children at the local elementary school, the kindergarten teacher suggested that the parents consider applying for early entry to kindergarten and the "two year kindergarten" program. In other words, the child would attend kindergarten for two years.
12. On October 27, 2010, the parents took the child to a local psychiatrist. The psychiatrist did not provide any specific diagnosis, but encouraged the parents to call District A again and ask for further discussion and exploration of the child's educational needs. The psychiatrist also referred the parents to the local county health agency; specifically to the pediatric nurse practitioner. On October 29, 2010, the nurse practitioner met with the parent and the child. In chart notes⁵, the nurse practitioner wrote that the psychiatrist referred the child due to

⁵ The parents provided the District and the complaint investigator with a copy of the nurse practitioner's notes at the interview. The first notation is dated October 29, 2010 and the last entry is dated June 7, 2011.

concerns about the child's "Tourette's tics; galloping run; toe-walks; clicks (sic) teeth; blows on hands; (keeps hands in front of face); and repeats words and phrases". The nurse practitioner also noted in the chart that the child had just completed toilet training that summer. The nurse practitioner agreed to facilitate an appointment with the Child Development and Rehabilitation Center (CDRC) in Eugene, to review the records the parent had given to the nurse practitioner and to consider a consultation and record review with District A.

13. On November 8, 2010 the parent called the ECSE specialist and informed the specialist that the psychiatrist and the nurse practitioner had recommended the parent ask District A for more help in obtaining services for the child. The parent also asked for a copy of the paperwork that reflected the evaluation conducted in July. The specialist scheduled a meeting for November 16, 2010 but did not send a meeting notice to the parent.
14. At the November 16 meeting, the parents met with the ECSE specialist, the speech and language specialist, the county health nurse practitioner and District A's school psychologist. At the meeting, District A's staff reported that the child was not eligible for special education services as a child with a communication disorder. The staff presented the parent with a statement of Eligibility for Special Education (Communication Disorder) dated July 27, 2010. Everyone in the meeting signed the statement agreeing with the conclusion except the parent who disagreed. The parent dated the form November 16, 2010. The team did not complete a statement of eligibility for special education as a child with a Developmental Delay. The team gave the parent a Prior Written Notice that stated the child was evaluated for developmental concerns and speech and language. District A refused to identify the child as being eligible for special education. There is no language on the statement to inform the parents that the child's eligibility as a child with a Developmental Delay had been considered or terminated. The team also gave the parent a memo dated July 27, 2010 that summarized the observation (evaluation) conducted on July 27, 2010. In the memo the ECSE specialist noted that the team "will meet to discuss all information that is available to us to help in determining the child's eligibility for services".
15. During the meeting the parents and the nurse practitioner shared their concerns and the psychiatrist's concerns about some of the child's behaviors. The parent asked District A to evaluate the child for eligibility for special education as a child with an Other Health Impairment Tourette's syndrome, Attention Deficit Hyperactivity Disorder (ADHD), Obsessive Compulsive Disorder (OCD), Autism Spectrum Disorder, and Developmental Delay (DD). The school psychologist also suggested that the parents might consider home schooling the child and that if they did the school psychologist could work with the child. The nurse practitioner told the team that a referral to CDRC⁶ was in process. The specialists gave the parent a Prior Notice about Evaluation. This notice informed the parents that District A would evaluate the child's need for early childhood special education services. District A would conduct a file review, complete a developmental history and review "medical records from medical providers to gain information about a physical or mental condition which may result in a developmental delay". No specific test instruments were notated. Further, the team agreed that the school psychologist would coordinate the evaluation with CDRC and might do some of the evaluation of the child.
16. CDRC evaluated the child on February 28, 2011. The CDRC team completed a speech and language evaluation; a pediatric examination; a psychological evaluation; and an occupational therapy evaluation. All of the CDRC specialists wrote in their assessment

⁶ CDRC in Eugene is an outreach clinic from Oregon Health Sciences University. School districts can no longer refer students and families to CDRC; rather the referral has to be made by the student's primary care physician. CDRC evaluates students using an inter-disciplinary approach; and specializes in diagnosis, assessment, and intervention related to disorders affecting development.

summaries that the child met the criteria for having an Autism Spectrum Disorder. The Occupational Therapist also noted that the child had dyspraxia, defined as “an impairment or immaturity of the organisation of movement”; and motor delays. The physician noted encopresis; the speech language therapist noted a moderate articulation disorder; and the psychologist noted average intellectual skills.

17. On March 4, the parent took the assessment summaries from the CDRC multi-disciplinary evaluation to District A’s local office and left them for the ECSE specialist. The parent and the ECSE specialist also had a phone conversation that day. During the conversation the parent informed the specialist that the child had attended a local pre-school program from January through February. However, the parents had withdrawn the child due to economic concerns. The parent also informed the specialist that the CDRC team had diagnosed the child with Autism Spectrum Disorder (ASD) and ruled out ADHD, OCD and Tourette’s syndrome⁷; and recommended an educational evaluation for ASD.
18. During this conversation and in a subsequent phone call the same day; the specialist informed the parent that the District A team would need to meet again to have the full reports from CDRC and to hold a “pre-evaluation meeting” to consider the child’s assessment needs. The parent expressed disappointment and concern over the delays and asked why another referral process was needed. The specialist reminded the parent that the team had supported the parents’ decision to have the child evaluated at CDRC.
19. On March 7, 2011, the ECSE specialist contacted the parent and invited the parent to attend a meeting on March 8, 2011.⁸ When the parents arrived at the meeting, they were given a Notice of an Individualized Family Service Plan (IFSP) meeting that informed them that at the meeting the team would review existing information about the child and review the preliminary CDRC report and discuss pre-evaluation procedures. The school psychologist and the ECSE specialist were invited to and did attend the meeting.
20. During the March 8, 2011 meeting the parents expressed their concern about how long the assessment period was taking and how lengthy the referral process was. The school psychologist explained the differences between ADHD, ASD, and Tourette’s syndrome.⁹ In the meeting minutes, the ECSE specialist wrote that the purpose of the meeting was “pre-referral for evaluation for ADHD and Autism”. The parent signed a consent form so that District A staff could interview the community pre-school teacher about how the child had performed in that classroom. The specialists then filled out a Statement of Eligibility for Special Education (Other Health Impairment). In the statement, the specialists noted that the team had obtained the following assessments:
 - a. Medical statement from the CDRC Physician;
 - b. Assessments to determine the impact of the suspected disability—Autism Diagnostic Observation Schedule (ADOS) (incorrectly attributed to the Physician, actually administered by the speech and language therapist at CDRC); and,
 - c. A Wechsler Preschool and Primary Scale of Intelligence-III (WPPSI-III); and Wide Range Achievement Test-4 (WRAT-4) (Word Reading, Spelling and Math Computation).

⁷ The complaint investigator could find no written verification that the CDRC team ruled out any of these diagnoses; instead there was a clear diagnosis of Autism Spectrum Disorder.

⁸ Although the team did not have the full reports from CDRC, the District A special education director asked the team to expedite the meeting because the consent for evaluation had been signed on November 16, 2010 and March 8, 2011 was the 60th school day.

⁹ At this meeting the parents also learned that the school psychologist had not contacted the CDRC staff about the evaluation, as promised, nor conducted any assessments with the student.

21. The two specialists at the meeting signed the Statement of Eligibility (Other Health Impairment) agreeing that the child was not eligible for special education under this category. The parents refused to sign, stating that they were uncomfortable doing so because of the lengthy assessment process and because they did not expect to be considering eligibility at this particular meeting.
22. At the March 8 meeting the parents signed the Consent for Evaluation form. The specialist wrote on this consent form that the parents had concerns about autism and ADHD, and that the team had "assessed the child in July (2010) and found the child ineligible for Developmental Delay and Communication Disorder". The specialist also noted that the team would assess the child by doing a file review and reviewing the physician's statement as well as administering the Childhood Autism Rating Scale (CARS). Additionally, the specialist would interview the parents and the pre-school teacher; conduct three observations; complete a Developmental History and a Sensory Profile. On April 20, 2011, the team amended this consent and added a Functional Communication Assessment, ADOS-2.
23. On March 28, 2011 the specialist scheduled the eligibility meeting with the parents for April 6, 2011. On March 31, 2011, the specialist canceled the April 6 meeting because of staff conflicts; and offered three possible dates for the meeting: April 21, April 26 or April 28. On April 11 the meeting was scheduled for April 26, 2011.
24. The meeting was held on April 26, 2011. The District B superintendent/special education director attended the meeting. The District A special education director, autism specialist, occupational therapist, speech language therapist, ECSE specialist and school psychologist attended. A county health nurse (different than the previous nurse practitioner) also attended the meeting as did the mother. The father attended via telephone. During the meeting the team reviewed and discussed the following issues:
 - a. Parent's Concerns: delayed processing; child's behavior at home and in other social settings; increases in flapping, echolalia, etc., and lack of response from the two districts. The parents asked specifically that the team consider the parents' observations of the child at home and in other social settings, and offered to show a video of the child on a soccer team¹⁰. The team declined to view the video;
 - b. Psychoeducational Evaluation: the school psychologist reached no conclusions other than to write that the child has a "tendency to behave in ways that are atypical for a child of this age"; and to offer recommendations such as a safe and predictable environment;
 - c. Sensory Processing Evaluation: the occupational therapist concluded that the child's scores on the Sensory Processing Measure revealed issues in the home setting with sensory defensiveness and motor planning and in the school setting with distractible vision issues to nearby persons and objects. The occupational therapist also noted that the child's scores showed a probable difference in social participation and planning/ideas;
 - d. Communication: the speech language therapist noted that the child seemed comfortable in the setting and made eye contact and answered questions directly. On the Arizona Articulation Proficiency Scale the child obtained an AAPS total score of 90, which was a T score of 47 based on 50 as average. The therapist noted that "in Oregon a 1.5 standard deviation below the average (50)

¹⁰ The complaint investigator viewed the video and several others during the interview process. Other members of the soccer team (five year olds) are shown following the coaches instructions to chase the ball and kick it. During the video the child is running parallel to the rest of the team, but spinning around in circles and flapping hands to sides. The child does not interact at all with the other team members.

(T score of 35) would qualify the child for special education articulation services"; and,

- e. Autism Evaluation: the autism specialist administered the CARS-2 and the ADOS-2; interviewed the parents, the pre-school teacher and observed the child in three different activities in the pre-school classroom; at the art table, the snack table, and at circle time. The autism specialist also engaged in a direct interaction with the child by administering the ADOS-2. Finally the autism specialist conducted a file review.
25. The team discussed all of the above issues and the reports from CDRC. When the parents asked why the school team had repeated some of the same testing from CDRC and why the team did not use the CDRC information, District A staff replied that the CDRC testing was completed in a medical setting and the school team needed to evaluate the child in a school setting. The parents asked why there was no information provided in the report about an ADHD evaluation or an evaluation for Tourette's syndrome.¹¹ The parents expressed great concern about the child entering kindergarten in the fall without any support systems in place. District B's superintendent/special education director replied that District B has been using an RTI program and that the RTI system would provide plenty of support for the child.¹²
 26. The specialists completed the Statement of Eligibility for Special Education (Autism Spectrum Disorder) noting only the District A evaluations except for the medical statement where they noted the physician's report from CDRC. All of the Districts' staff members signed in agreement that the child was not eligible for special education as a child with an Autism Spectrum Disorder. The parent signed but noted that both parents were in disagreement with the decision. Finally, District A offered to pay for the child to continue to attend the community pre-school through the end of May 2011. The parents accepted the offer and the child attended the community preschool three hours per day, three times per week.
 27. On May 16, 2011, the parent wrote to the ECSE Supervisor and informed the District that the parents disagreed with District A's evaluation and requested District A pay for an Independent Education Evaluation (IEE). The parent included this comment and question in the letter:
 - a. "You and other ESD staff advised me that the CDRC evaluations were conducted in a medical setting and therefore could not be considered in determining my child's special ed (sic) needs or eligibility. I have since been informed that CDRC frequently conducts independent educational evaluations. I am requesting the specific required criteria CDRC did not meet for their evaluation of my child to be considered educationally relevant."
 28. The ECSE Supervisor wrote back on May 23, 2011 and invited the parents to meet with the District B superintendent/special education director and the ECSE Supervisor to discuss the IEE process and to provide the parents with the information needed to obtain an IEE.
 29. The parent responded to the ECSE Supervisor's letter on May 25, 2011. In this letter, the parent refused the request to meet, and asked again for the list of providers who could

¹¹ 34 CFR §300.8 (9) includes Tourette's syndrome in the list of chronic or acute health problems that could be included in the disability category of Other Health Impaired. The list is not exhaustive.

¹² U.S. Department of Education Memorandum, January 21, 2011: "It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework."

complete the IEE. The parent again asked what criteria CDRC did not meet in completing its evaluations and asked the Supervisor to provide the answer in writing. The parent also expressed confusion as to why the Supervisor had referred the IEE request to the District B superintendent/special education director. The parent stated:

- a. "I first spoke with the superintendent/special education director in early March about my child because I was dissatisfied with ESD's services and lack of timely evaluation to date. I inquired as to the school district's role with the ESD and the superintendent/special education director informed me that they don't have anything to do with the ESD and ECSE, that the only time they become involved is to meet when it is time to transition an eligible child into Kindergarten."

30. The ECSE Supervisor responded to the parent in a letter with attachments written on June 2, 2011. In this letter the Supervisor provided these answers to the parent's questions:

- a. The ECSE Supervisor had contacted District B's superintendent/special education director because District B, as the local district, bears the responsibility of Child Find;
- b. Pages 3—6 from the Oregon Department of Education Autism Spectrum Disorder: Evaluation, Eligibility, and Goal Development (Birth – 21) Technical Assistance Paper [Revised March 2010]; and pp. 8 from An Introduction for Parents, A guide to Oregon's Education and Human Service System [updated 2011];
- c. Under Oregon Administrative Rules, districts must include:
 - i. Observations in multiple settings;
 - ii. The impact the child's sensory processing issues has on the child in the educational setting;
 - iii. A functional communication assessment; and,
 - iv. Behavioral rating scales in multiple settings.
- d. Copy of the Central Curry School District #1 Procedures and Criteria: Independent Educational Evaluation document.

31. The parents contracted with three different agencies to do the IEE's. The parents received final reports of a speech language pathology evaluation and an Occupational Therapy Evaluation from The Speech Center, Inc., Medford, OR dated July 19, 2011 and July 20, 2011, respectively. They also received a final report of a clinical psychologist's file review and professional opinion on a differential diagnosis from the Allies Family Solutions, Pocatello, Idaho¹³.

32. District B's procedural guidelines and criteria for IEE's states that evaluators will be located within a 200-mile radius of the district and that parents can choose to use evaluators outside this radius only if they can demonstrate the necessity to do so. Further the guidelines specify that all evaluators must be on the approved District A list.

¹³ The Speech Center concluded that the child presents with a severe expressive and receptive language disorder, pragmatic language disorder, consistent with Autism Spectrum Disorder and an articulation disorder, and that the child would benefit from support in a school based setting to minimize the secondary behavioral and emotional issues the child is currently exhibiting associated with sensory processing difficulties. The clinical psychologist at the Allies Family Solutions concluded that the child's difficulties are best described by Pervasive Developmental Disorder NOS, and that the school should not rule out the need for support services at this time based solely on academic achievement or other strengths but should consider that the child has made progress given the special education previously provided since the age of six months.

33. The Oregon Department of Education's Procedural Safeguards Notice of Parent Rights for Early Intervention (0-2 Years) & Early Childhood Special Education (3-5 Years) defines the criteria for an Independent Educational Evaluation as follows:

- a. "If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria that the public agency uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).
- b. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. The public agency must provide you, on request, with an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the agency's criteria".(Page 12)

34. The parent filed the complaint on June 30, 2011.

35. On August 22, 2011 the parents notified the Department that they were in the process of moving from District B.

IV. DISCUSSION

Under OAR 581-015-2710, the Department selects contractors in specific geographic locations and according to specific criteria to provide administration and coordination of the ECSE services. However, the local school district retains the responsibility to ensure that students with disabilities are located and evaluated¹⁴. Central Curry School District contracts with South Coast Education Service District to conduct the EI/ECSE evaluations to determine whether or not students are eligible for special education. In this case, both Districts bear responsibility for three of the seven allegations, and District A bears the responsibility for four of the seven allegations. The discussion on each allegation is organized according to which District has primary responsibility.

The written complaint alleges that both Districts violated the IDEA in the following ways:

1. ECSE Evaluation:

- a. Failing to consider all areas of possible disability when the District evaluated the child for ECSE eligibility on 7/27/2010;
- b. Failing to consider the child's previous testing, medical data, parent reports and information about previous services provided to the child when the District evaluated the child for ECSE eligibility on 7/27/2010;
- c. Failing to complete a second evaluation within 60 school days after the parent signed consent for the second evaluation (to include autism) on 11/16/2010;
- d. Failing to convene a meeting to consider information the parent brought to the District on 3/3/2011, after the child had been evaluated by a multi-disciplinary team at CDRC. The evaluation summaries contained a documented diagnosis of autism and a recommendation for ECSE services;
- e. Failing to provide the parents with Prior Written Notice of a meeting held on 3/8/11 to discuss the pre-evaluation planning; and,

¹⁴ OAR 581-015-2080

- f. Failing to consider the CDRC evaluation information at the eligibility meeting held on 4/26/2011.

2. Child Find:

- a. Failing to meet the District's responsibility to "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." In October the parents asked a District school psychologist how they might obtain an educational evaluation for their child. The school psychologist shared this information with District staff who did not act on it.

School districts meet their obligation to provide special education and related services to students between the ages of three and kindergarten entry when they identify, evaluate and consider the child's eligibility in accordance with Oregon Administrative Rules. Under OAR 581-015-2710, the Department selects contractors in specific geographic locations and according to specific criteria to provide administration and coordination of the ECSE services. However, in addition to general child find responsibilities, the local school district retains the responsibility for evaluations of EI/ECSE children and EI/ECSE programs are responsible for eligibility determination and for evaluations other than those to establish eligibility.¹⁵ All evaluations to determine eligibility must be comprehensive enough to address all the child's special education and related services needs, whether or not commonly associated with the eligibility category under consideration.¹⁶ Parents and appropriate professionals are included in the review of existing information, in evaluation planning, and in the eligibility decision-making process. The contractor is responsible to evaluate the child for all areas of suspected disability¹⁷ and to include the parents and appropriate professionals in the eligibility decision-making process. The evaluation must be concluded in 60 school days, using the local school district's calendar, and if the team finds the child eligible, it must meet within 30 calendar days to write an IFSP.

In addition, there are other Oregon Administrative Rules that apply in this case. OAR 581-015-2230(2) outlines what districts must do when students who are eligible for special education transfer into an Oregon school district from another state. OAR 581-015-2790(6)(b) stipulates how an evaluation for a developmental disability must be conducted. OAR 581-015-2795(4)(b) defines the criteria the team must use to identify a child as having a Developmental Delay. Finally, OAR 581-015-2800 outlines the procedures a district must follow when it terminates a child's eligibility for special education.

Having reviewed all of the applicable rules, and the facts in this case, the Department substantiates the parents' allegations 1 and 2 for the following reasons:

1. District A, contracted by District B for evaluation services, did not appropriately evaluate the child's original area of eligibility (Developmental Delay) when it evaluated the child in July 2010;
2. When the parent contacted the superintendent/special education director of District B in March 2011; and expressed concern about the evaluation process, the superintendent/special education director did not follow up with District A to see what District A had done and to find out how District A was meeting the parent's concerns;
3. Neither District A nor B requested the child's full set of education records from the Idaho school district;

¹⁵ OAR 581-015-2100

¹⁶ OAR 581-015-2110(4)(e)

¹⁷ OAR 581-015-2790 (6)(a)(b) and OAR 581-015-2795(2)

4. District A did not complete a thorough evaluation of the child as promised when staff discussed the evaluation and the parent signed the consent for evaluation on November 16, 2010. The eligibility meeting was held 61 days after the parent signed the consent;
5. The Prior Written Notice given to the parents at the March 8 meeting did acknowledge that part of the agenda was to consider pre-evaluation planning for an autism evaluation. However, it did not include notice that the team planned to consider eligibility for special education under the category of Other Health Impairment. While the parents did not include this in their allegation (1e); the Department finds this was a significant omission on the District's part and includes it as a piece of the substantiation of the allegation;
6. District A used inappropriate information (ADOS) to conclude that the child did not have an Other Health Impairment when it found the child not eligible under that category; and,
7. District A did not adequately consider the information from the CDRC evaluation when it met to discuss the child's eligibility for special education on March 8, 2011.

3. Independent Educational Evaluation:

- a. Failing to provide the parent with information that would allow the parent to appropriately choose an independent educational evaluator that complied with the District's criteria.

Under OAR 581-015-2305(3), districts may specify criteria under which parents can obtain an IEE. However, these criteria must be the same as the school district uses in obtaining evaluations, and the district may not impose conditions or timelines related to obtaining an IEE at public expense. In addition, districts must provide parents an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the district's criteria. These guidelines are clearly stated in the Department's Procedural Safeguards Notice given regularly to parents. In contrast, District B's guidelines, which were given to the parents by District A staff, imposes two limitations. First, all evaluators must be located within a 200 mile radius of the District, and second, all evaluators must be on District A's approved list. Such limitations constitute a failure to give parents accurate information about what their choices are in choosing an independent evaluator. Therefore, the Department substantiates the parents' allegation and orders corrective action.

The written complaint alleges that District A violated the IDEA in the following ways:

4. Implementation of the IFSP:

- a. Failing to implement the IFSP and provide Early Childhood Special Education and related services as appropriate to the child's disability.

IDEA specifies the actions school districts must take to address the special education needs of children with disabilities transferring into their jurisdictions from another state. Oregon implements these requirements through OAR 581-015-2230, OAR 581-015-2110, and OAR 581-015-2790.¹⁸ According to OAR 581-015-2790(10)(c)(d), when a child with a disability transfers from one ECSE program to another a district has several options. If the district from which the child is transferring is currently in the process of evaluating the child, the two districts must coordinate any pending assessments as expeditiously as possible. However, if the child is a transfer student in the process of reevaluation, the public agency and the parents may agree to extend the timeline of the evaluation.

¹⁸ OAR 581-015-2230 Transfer Students addresses IDEA, Part B, requirements, including evaluation, for children ages 3-21; OAR 581-015-2110 General Evaluation and Reevaluation Procedures and OAR 581-015-2790 ECSE Evaluation restate portions of the evaluation requirements.

In this case, the family moved into the district several weeks before the end of the summer session of the ECSE program. By the time the specialists met the parent and had a chance to review the records and to do some preliminary testing with the child, there were only three days left in the program. The specialists rushed an incomplete evaluation and did not complete all paperwork appropriately. If, instead, the specialists had sent for the child's full record from the Idaho district, done a thorough review of the child's developmental history and progress in the Idaho EI/ECSE program, and acknowledged that the child was eligible for ECSE services until age of school entry (September 1, 2011); their conclusions and decisions might have been different. The child's three year eligibility reevaluation date was July 27, 2011. Because neither District A nor B contacted the Idaho school district, they had no idea whether or not that district had started (or even completed) the three year reevaluation.

Given the fact that neither district sent for records, explored the reevaluation question, or considered that the child's eligibility for ECSE could possibly extend through September 1, 2011; the Department substantiates the parents' allegation and orders corrective action.

5. Prior Written Notice and Notice of Procedural Safeguards—EI/ECSE Program and Termination of Eligibility—EI/ECSE:

- a. Failing to provide Prior Written Notice when the District terminated the child's eligibility for Early Childhood Special Education under the category of Developmental Disability and also found the child not eligible for Early Childhood Special Education under the category of a Communication Disorder on 7/27/2010. The parents were given neither the Prior Written Notice nor a copy of a speech/language evaluation summary until 11/16/2010.

The District does not dispute this allegation and offers a Corrective Action Plan outlined below.

6. Parent Participation—General—EI/ECSE Program:

- a. Failing to provide parents with a written notice of a meeting held on 11/16/2010; and,
- b. Failing to consider the concerns the parents expressed at the 4/26/2011 eligibility meeting.

The District does not dispute this allegation and offers a Corrective Action Plan outlined below.

7. Autism Spectrum Disorder:

- a. Failing to observe the child in multiple settings as required by OAR 581-015-2130 (1)(b).

Under OAR 581-015-2130(1)(b) an evaluation for an Autism Spectrum Disorder must include at least three observations of the child's behavior, at least one of which includes a direct interaction with the child. These observations must occur in multiple environments, on at least two different days and be completed by professionals skilled in and knowledgeable about the behavioral characteristics of children with autism spectrum disorder.

In this case, the autism specialist observed the child in one environment, the community preschool, in which District B had enrolled the child for purposes of completing the autism evaluation. In this single environment, on three different days the autism specialist observed the child involved in three different activities: at the sink, in the circle time, and at snack time. Two common synonyms for the word environment are surroundings and milieu. All of these words denote a location. The preschool is a single location and consequently does not meet the

definition of multiple environments. In addition, the parents had offered to show the team a video of the child in a soccer game, and had given the team many context clues about the variances of the child's behavior in the home and other settings. Given the fact that the specialist observed the child engaged in multiple activities in one environment, the Department substantiates the parents' allegation and orders corrective action.

V. CORRECTIVE ACTION¹⁹

In the Matter of South Coast Education Service District & Central Curry School District
Case No. 011-054-020 (a) & (b)

| Action Required | Submissions ²⁰ | Due Date |
|---|---|---|
| <p>District A and District B Policy and Procedure Review</p> <p>ODE will review copies of existing District A and District B policies and implementing procedures in the following areas:</p> <ul style="list-style-type: none"> • Child Find • Evaluation and Eligibility • Procedural Safeguards: Independent Education Evaluations (IEE), Prior Written Notice; Parent Participation • Responsibilities for students transferring from another state • ECSE to Kindergarten transition | <p>Submit to the Department for review copies of existing policies and implementing procedures in the identified areas prior to training. These may be submitted electronically.</p> <p>Submit a list of topics for which policies and procedures are currently unwritten. This list may be submitted electronically.</p> | <p>September 2, 2011²¹</p> |
| <p>Administrators responsible for special education services in both Districts will review with Department staff the findings in the Final Order and applicable OARs, policies and procedures including:</p> <ul style="list-style-type: none"> • Child Find • Evaluation and Eligibility, including but not limited to, records, requests, evaluation and eligibility | <p>By September 8, establish mutually agreeable date and arrangements with both districts and Department staff for WebEx or other conference to be completed no later than September 21, 2011. Submit e-mail confirming date.</p> <p>Submit evidence of completed review</p> | <p>September 8, 2011²²</p> <p>September 21, 2011</p> |

¹⁹ The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

²⁰ 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.

²¹ The Department is asking only for EXISTING, not NEW policies or implementation procedures. If there are no existing policies and implementation procedures, then the Districts may send a statement to the Department to that effect. The policies and procedures can be emailed to the Department to raeann.ray@state.or.us

²² This is only the date by which to establish a plan – not a date for the training.

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| <p>determination for children transferring into a school district or EI/ECSE program from another state and criteria for categories of eligibility such as Other Health Impaired, Autism Spectrum Disorder, and Developmental Delay;</p> <ul style="list-style-type: none"> • Coordinated evaluation and evaluation responsibilities of EI/ECSE and school districts; • Procedural Safeguards including, but not limited to: Independent Education Evaluations (IEE) and Prior Written Notice; and, • U.S. Department of Education Memorandum 11-07 regarding the delay of an initial evaluation on the basis that a child has not participated in an RTI framework. | | |
| <p>Staff Training <i>Districts A and B</i></p> <p>Provide program wide training to review OAR requirements for transfer students, conduct of evaluation, including evaluation planning and eligibility determination to be conducted after the districts have reviewed the copies of existing policies and implementation procedures with ODE as described below.</p> <p>Upon policy and procedural approval, distribute and provide training on approved policies and implementing procedures to staff in both districts who are, or may be, involved in referral, evaluation, eligibility determination, or response to requests for IEEs, or explanations of procedural safeguards.</p> <p><i>District B</i></p> <p>Include training on U.S. Department of Education Memorandum 11-07 as part of training and in evidence of completed training.</p> | <p>Submit:</p> <ul style="list-style-type: none"> • Evidence of completed training and distribution of revised policies and procedures; • Dated agenda; • Presenters; • Sign-in sheet with signatures affirming receipt of policies and procedures. | <p>October 28, 2011</p> |

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| <p>IEE:</p> <p>The parents will give District B copies of the invoices for the cost of the IEEs conducted by Allies Family Solutions, Pocatello, Idaho; and The Speech Center in Medford, OR.</p> <p>District B will reimburse parents for the costs of the evaluations listed above.</p> | <p>Submit copies of the invoices submitted by the parents and of the payment made to reimburse the parents.</p> | <p>October 28, 2011</p> |
| <p>District A and B:</p> <p>Evaluation and Reevaluation Requirements:</p> <p>The Districts will assist the student's new district in completing an expedited evaluation and eligibility determination by:</p> <p>Providing, at no cost, copies of all student education records to the parent within 10 days of withdrawal from the district.</p> <p>With the parents' consent or upon request of the child's new school, provide copies of all student education records and a copy of the final order to the district within 10 days of the consent or request.</p> | <p>Evidence of completion, including signed verification of receipt from parent and authorized representative of new district.</p> | <p>September 30, 2011</p> |
| <p>2. Compensatory Education:^{23 24}</p> <p>On August 22, 2011, the parents notified the Department that they were in the process of moving from the District B. Compensatory education services are intended to be a remedy for actions that resulted in a</p> | <p>Submit a copy of any notifications of eligibility, eligibility determination statements, and related correspondence provided by the parent to District B.</p> | <p>Upon receipt and not later than October 30, 2011</p> |

²³ "Compensatory educational and related services, as a remedy to redress the denial of FAPE, is available to both judicial officers and SEAs. See 20 U.S.C. Sec. 1415(e)(2); 34 C.F.R. Sec. 300.660(b)(1) ("corrective action appropriate to the needs of the child"), and 34 C.F.R. Sec. 300.662(c). The independence of the remedy of compensatory services is consistent with the primary statutory and regulatory purpose set forth under the IDEA, namely, "[t]o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." See 20 U.S.C. Sec. 1400(d); 34 C.F.R. Sec. 300.1(a)." U.S. Department of Education, Letter to Riffel, August 2000.

²⁴ As described in the Final Order, the Districts' issues with appropriate evaluation and eligibility determination delayed the provision of comparable services for a previously eligible transfer student. This, in turn, delayed subsequent decisions regarding the continued provision of FAPE from the start of the ECSE program in September 2010 to the last day of school in the 2010-11 ECSE school year.

