

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Estacada School District No. )  
108 )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 11-054-022

**I. BACKGROUND**

On July 12, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parents of a child attending school and residing in the Estacada School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The parents provided a copy of the complaint to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On July 15, 2011, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On July 27, 2011, the District submitted its timely *Response* to the *Request for Response*. The parent did not provide a written *Reply* in this case.

The Department's contract complaint investigator determined that an on-site investigation would be necessary in this case. On August 22, 2011, the complaint investigator interviewed some of the District's staff, including a former principal, a learning specialist, a classroom teacher and the special education director. On August 26, 2011, the complaint investigator interviewed the parents by telephone. On August 26-30, 2011, the complaint investigator sought to interview a mental health counselor but authority was not provided for that interview to take place. On August 31, 2011, the complaint investigator conducted telephone interviews with the special education director, a school nurse and a former classroom teacher. On the same date the District provided additional documents to the complaint investigator electronically. The Department's investigator reviewed and considered all of the documents and interviews in reaching the findings of fact 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 (2010). The parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from July 11, 2010 to the filing of this complaint on July 12, 2011.<sup>2</sup>

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<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010).

<sup>2</sup> OAR 581-015-2030(5)

No.	Allegations	Conclusions
(1)	<p><b><u>Child Find, Evaluation and Reevaluation procedures, IEP content, Free Appropriate Public Education (FAPE), Behavior Intervention Plan</u></b></p> <p>The parents allege that the District violated the IDEA by failing to complete “an evaluation, behavior plan, and/or an IEP” for the student despite the parents’ requests beginning in 2008, with the most recent request made in 2011.</p>	<p><b><u>Substantiated, in part</u></b></p> <p>The Department sustains the allegation that the District failed to complete an evaluation or behavior plan despite the parents’ requests. The Department does not sustain the allegation that the District improperly failed to complete an IEP, because only full evaluation of the student will reveal whether the student is eligible for special education services. <i>See Corrective Action Plan.</i></p>
(2)	<p><b><u>Prior Written Notice<sup>3</sup></u></b></p> <p>The parents allege that the District violated IDEA by failing to provide a written notice to the parents explaining the refusal to evaluate the student.</p>	<p><b><u>Substantiated</u></b></p> <p>The department sustains the allegation that the District failed to provide a written notice to the parents explaining the refusal to evaluate the student.</p>

### III. FINDINGS OF FACT

#### Background:

1. The student in this case is ten years old and attended school in the District during the 2010-2011 school year from April 14, 2011 to the end of the school year. From June 15, 2010 until April 14, 2011, the parents home-schooled the student and allowed him to attend school in another District. The student also attended school in the District during the 2009-10 school year until June 15, 2010. The student is a regular education student, with no eligibility determination for special education services. The student’s report cards from the 2010-2011 school year indicate that the student is exceeding or meeting academic expectations.
2. For approximately six weeks during the 2009-2010 school year, from March 20, 2010 to April 23, 2010, the District tracked the student’s behavior using “Daily Point Cards”. The point cards were used at the request of the parents and were not initiated based on any behavior problems observed at school. The point cards did not reveal any behavior issues at school, but the parents reported behavioral issues at the student’s home. The point cards were requested, implemented and discontinued more than one year preceding the filing of the complaint in this case.
3. On April 12, 2011, shortly before the student’s reenrollment at school in the District on April 14, 2011, one of the parents contacted the District by email and notified the District that the

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<sup>3</sup> OAR 581-015-2110(2)(c)

student would be returning to school. This email also stated that the student has been "having problems with acting out in [the student's] new school and I think it would be best if we implement a behavioral plan before [the student] begins class." In response to that email, District staff responded by email to the parent and indicated that they would contact the student's previous school to see what they have had in place for the student and draft an appropriate behavior plan. When District staff contacted the student's previous school, District staff learned that the student did not present behavior issues at the student's previous school and no behavior plan had been in effect there. Based on this information, District staff did not pursue drafting a behavior plan.

4. On May 10, 2011, the parents sent an email to District staff reporting that the student had said that he wants to kill himself and that the student had been grounded for throwing rocks at someone. This email asks if there is a counselor at school that the student could see on a daily basis for the student's "anger/negativity issues". A District principal responded to the parents by email, stating that they would "pass this along to the 3<sup>rd</sup>/4<sup>th</sup> grade teachers and to our School Psychologist \* \* \*." No reports of any further difficulties by this student are in the records reviewed by the complaint investigator in this case.

5. The District does not have any record of written or verbal requests for evaluation of the student, other than the email request on April 12, 2011 for a behavior plan and the May 10, 2011 email noted above.

6. The parents reported that they had signed several medical releases to allow the school to evaluate the student. However, review of the records provided by the District do not reveal any signed medical releases concerning this student, although there are some signed medical releases for two siblings of the student'.

7. The District is now aware of the parents' desire to have the student evaluated to determine if the student is eligible for special education services and whether the student needs a functional behavior analysis and a behavior intervention plan. The District scheduled an evaluation planning meeting for this student on September 1, 2011, with the intent of fully evaluating the student.

#### IV. DISCUSSION

The complaint alleges that the District violated the IDEA by failing to complete "an evaluation, behavior plan, and/or an IEP" for the student despite the parents' requests beginning in 2008, with the most recent request made in 2011.

It is clear that the parents have made known to the District their belief that the student exhibits significant behavior issues at home, and that the student requires, at a minimum, a behavior plan. It is equally clear that the student has not exhibited any significant behavior issues while at school. The May 10, 2011 email from the parents again involved conduct of the student reported at home, but also involved threats to the student and others. The question is thus whether the District, upon reports of behavior issues and possible psychological issues, had an obligation to initiate behavioral or other evaluations. The Department concludes that the District should have construed the reports of behavioral issues at home and the request for a behavior intervention plan as requests, at a minimum, to conduct a functional behavior analysis of the student. Additionally, upon receiving reports of the student's threat of suicide and threatening others, the District, at a minimum, should have either conducted an evaluation of the student or sought access to the medical or psychological records of the student, to aid in appropriate evaluation planning for the student. Under OAR 581-015-2100 an initial evaluation to determine eligibility

must be conducted when the District "suspects or has reason to suspect" that the student has a disability that has an adverse impact on the child's educational performance. The Department concludes that significant behavior issues reported at home, the report of the student's threat of suicide and harm to others, and the parents' request for a behavior intervention plan and counseling, were sufficient to trigger the requirement that an initial evaluation of the student be conducted in this case.

The Department thus sustains the allegation that the District failed to complete an evaluation or behavior plan despite the parents' requests. The Department does not sustain the allegation that the District improperly failed to complete an IEP, because only full evaluation of the student will reveal whether the student is eligible for special education services.

The question then becomes the appropriate Corrective Action in this case. The Department concludes that the District must conduct an evaluation planning meeting for this student. The Department recognizes this may have occurred at the scheduled September 1, 2011 meeting. The Department also concludes that if the student is identified as eligible for special education services, the District must provide compensatory special education services designed to make up for special education services that should have been provided since the student's reenrollment in school at the District on April 14, 2011. If the student is not determined to be eligible for special education services following the evaluation of the student, no compensatory special education services will be required.

## V. CORRECTIVE ACTION

*In the Matter of Estacada SD*  
Case No. 11-054-022

	Action Required	Submissions <sup>4</sup>	Due Date
(1)	<p>Policy and Procedure Review</p> <p>ODE will review copies of <b>existing</b> District policies and implementing procedures in the following areas:</p> <ul style="list-style-type: none"> <li>• Child Find</li> <li>• Evaluation and Eligibility, including but not limited to responding to parent and agency requests for evaluation to determine eligibility for special education;</li> <li>• Procedural Safeguards including, but not limited to Written</li> </ul>	<p>Submit to the Department for review copies of <b>existing</b> 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><b>September 9, 2011</b></p>

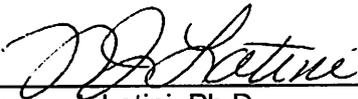
<sup>4</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

	Notice		
(2)	Confer with ODE staff regarding existing policies and implementation to determine if revisions are necessary and create policies if none are currently in place.	Submit documentation of conversations with ODE staff regarding existing or necessary policies.	September 23, 2011
(3)	The District reported holding a facilitated evaluation planning meeting on September 1, 2011.	Submit to ODE and to the parents a copy of the evaluation plan, and any minutes, notes, or notices generated from the meeting. If the meeting did not occur, submit a statement to that effect to ODE.	September 9, 2011
	With the appropriate consent and parental input the district will complete, in an expedited manner, any evaluations determined necessary in an evaluation planning meeting to establish eligibility.	Submit to ODE and to the parents a copy of the prior notice and consent, the evaluation report, and the eligibility.	October 14, 2011
	If the student is determined to be eligible, obtain consent for initial provision of services from the parent, develop an IEP and determine Placement.	If the evaluation did not occur, submit a statement to that effect to ODE.	October 14, 2011
	<b>Compensatory Education Services<sup>5</sup></b> Compensatory education services are intended to be a remedy for actions that resulted in a denial of FAPE. If the student is determined eligible for special education	Submit a copy of the consent, or a refusal to consent to the Department and the parents. If parents give consent for services, send a copy of the IEP, placement determination and any associated notes, minutes, or notices.	October 31, 2011

<sup>5</sup> "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.

	<p>services and, if the parents agree, the parents and the District will determine a compensatory education services plan.<sup>6</sup> If the parents and the District agree, ODE will provide a facilitator to assist in the development of the plan.<sup>7</sup> The compensatory education services provided must be based on the student's IEP/placement at the time the services are implemented and must be implemented outside the school day by qualified providers.</p>		
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Dated: 8th Day of September, 2011



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

Mailing Date: September 8, 2011

**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.

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<sup>6</sup> The 9<sup>th</sup> Circuit Court has held that a student with disabilities is entitled to only so much compensatory education time as is required to provide him with an appropriate education. *Parents of Student W. v. Puyallup Sch. Dist.*, 21 IDELR 723 (9th Cir. 1994).

<sup>7</sup> If requested and mutually agreed upon, the Department will provide a facilitator at no charge to the parties to assist with this discussion. To request a facilitator, contact Steve Woodcock at [steve.woodcock@state.or.us](mailto:steve.woodcock@state.or.us) or (503) 947-5797.