

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Beaverton School District 48J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 11-054-029

I. BACKGROUND

On October 20, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in Beaverton School District 48J (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2011). The Department confirmed receipt of this complaint and forwarded the request to the District via email the next day.

Under federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or for exceptional circumstances related to the complaint.²

On October 25, 2011, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of November 8, 2011.

On October 26, 2011, the District's attorney requested an extension of the investigation timeline to pursue a mediated settlement and on November 1, 2011, the parent agreed to this extension. On November 17, 2011, the parent withdrew her consent for extension and requested the complaint investigation be restarted. On November 18, 2011, the Department's Complaint Investigator re-issued the revised *Request for Response* reflecting the revised due date for receipt of the District's response as December 2, 2011 and for the parent's response due date of December 9, 2011.

On December 2, 2011, the District submitted a timely response indicating they were not disputing the parent's allegation concerning the District's Child Find and Evaluation/Reevaluation requirements. The District's response also indicated that they had evaluated the student on November 15, 2011, finding her ineligible for special education services, but eligible for a Section 504 Plan.³ The District's response further listed the District's proposed corrective action which they offered to undertake in order to address the alleged Child Find omissions. The District elected not to provide documentation in response to the *Request for Response* since they had decided not to contest the allegations, thereby stipulating to the facts as alleged in the complaint.

On December 10, 2011 the parent submitted a timely response that included a cover letter along with various records, such as student transcripts, medical records, school evaluation documents for both an IEP and Section 504 plan, various email transcripts, and other information. On December 15, 2011 the Department's complaint investigator conducted a phone interview with the parent and subsequently discussed the results of the investigation with ODE's legal specialist.

On December 20, 2011 the student turned 18 years of age, and became a legal adult. After receiving the student's consent to discuss the student's educational and related information with the parent's, the Department's complaint investigator inquired about the parent's willingness to dismiss the complaint due to the fact that both the parent and child wrote that the student was "ineligible for special education services" on the District's evaluation paperwork dated November 15, 2011, which was turned into the investigator in the course of the investigation. The Department

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a) (2011)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

³ 34 C.F.R. Part 104 Subpart D

inquired about parental dismissal, because the main allegation against the District was a failure to evaluate the child for special education services, and the evaluation documentation would lead readers to believe the complaint was therefore moot. However, the parent maintained that she would not dismiss the complaint against the District.

The Department's complaint investigator therefore reviewed and considered all of the documents, interviews, and exhibits that were provided by the parent in reaching the findings of facts and conclusions of law contained in this order. The District was again asked by the Department if they would like to submit any documentation or materials for the preparation of the final order; however, the District declined to submit any additional materials.

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 Discussion in Section IV. This complaint covers the one year period from November 16, 2010 to the second filing of this complaint post the requested mediation attempts, on November 17, 2011.⁴

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	Child Find Failing to identify, locate, and evaluate a resident child with disabilities, regardless of the severity of the disability, who was in need of special education services. (Relevant Law and Regulations: OAR 581-015-2180 and 34 CFR § 300.111).	Not contested. The District did not contest this allegation and stipulated that it failed to identify, locate, and evaluate a resident child with disabilities who was enrolled in the Fall of 2010. The District proposed corrective action of "providing training to the staff at the student's school regarding the District's child find responsibilities under the law." The Department believes that this is appropriate under the circumstances in this case. <i>See Corrective Action.</i>
2.	Evaluation Requirements Failing to conduct an evaluation to determine that a child is a child with a disability when the public agency suspects, or has reason to suspect, that the child has a disability that has an adverse impact upon the child's educational performance and the child may need special education services as a result of the disability. (Relevant Law and Regulations: OAR 581-015-2105 and 34 CFR §300.15).	Not contested. The District did not contest this allegation and stipulates they should have evaluated this student in the Fall of 2010, if not sooner. The District conducted various evaluations on the child in the fall of 2011, after the state complaint was filed. The District was asked by the Department if they would like to provide any information in support of these local resolution efforts and the District declined.

⁴ OAR 581-015-2030(5) and 34 CFR § 300.153(c).

<p>Requested Corrective Action.</p> <p>The parent is requesting an evaluation of the student's eligibility for ongoing special educational services to include transition planning, if necessary.</p>	<p>The parent was offered an evaluation during the course of the investigation, but said the child was "ineligible for special education."</p> <p><i>See Discussion and Corrective Action</i></p>
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III. FINDINGS OF FACT

1. The student is a resident of the District and was 17 years old at the time of filing this complaint.
2. On November 10, 2009, the student was admitted to Trillium Family Services, an in-patient treatment center, and discharged on December 1, 2009. The three page discharge document reflects DSM Axis I primary diagnoses of Mood Disorder NOS and Attention-Deficit/Hyperactivity Disorder, Primarily Inattentive Type. The parent alleges this documentation was provided to a counselor in the District in late 2009 upon the student's classroom reinstatement, but no evidence was provided in support of or in opposition to this claim by either party.
3. On March 26, 2010, the student was admitted to Northwest Behavioral Healthcare, an adolescent dual-diagnosis, mental health and chemical dependency program. A discharge date was not listed, but the notice indicates the average length of stay to be 30-45 days. The school was notified of this placement on March 30, 2010, via letter from the care provider.
4. On May 30, 2011, the parent met with the student's personal psychologist who inquired as to why the student wasn't on an IEP.
5. Subsequent to this meeting with the personal psychologist, the parent visited the school to inspect the student file and found only the first page of the Trillium discharge paperwork within the student's file. The parent subsequently e-mailed the school Vice Principal inquiring why the student was never placed on an IEP, and on June 3, 2011, the Vice Principal replied that the student would be evaluated for an IEP in September, 2011.
6. Beginning in September 2011 the student was evaluated via several methods, including BASC-2, Achenbach, and the Vanderbilt Assessment Scales.
7. On October 20, 2011, the parent filed a complaint alleging Child Find and Evaluation/Reevaluation deficiencies. On October 26, 2011, the District's attorney requested an extension of the investigation timeline to pursue a mediated settlement and on November 1, 2011, the parent agreed to this extension.
8. On November 15, 2011, the District commenced its evaluation for special education and the student was deemed ineligible for special education. Based upon the consensus of the evaluation team, as well as the contributions of the parent and student, it was determined that the student was not eligible for special education. Additionally, at this time the parent and student said the student "did not qualify for special education". It was then decided to evaluate the student for a Section 504 plan.
9. On November 17, 2011, the parent withdrew consent for the extension for mediation purposes and a revised *Request for Response* was issued.
10. On November 29, 2011, the student was evaluated and found eligible for a Section 504 plan.

11. On December 2, 2011, the District responded to the complaint indicating that they did not contest the parent's allegation and offering proposed corrective action.
12. On December 20, 2011, the student turned 18 years of age thereby becoming a legal adult, and on December 22, 2011 the student provided written permission authorizing the parent's to discuss the student's educational and school records on the student's behalf with the Oregon Department of Education.

IV. DISCUSSION

1. Child Find and Evaluation

The parent's complaint alleges that the District violated the IDEA by failing to identify, locate, and evaluate a resident child with disabilities, regardless of the severity of the disability, who was in need of special education services. The parent alleges that the District also violated the evaluation provisions of IDEA by failing to determine the student eligible for special education.

The District, in their *Response*, states that "*The District does not dispute the parent's allegations and [a]t a minimum, the District should have referred the student to an evaluation planning team to decide whether a special education evaluation was appropriate.*" The District further states that "*In the fall of 2010, the District should have conducted a special education evaluation to determine whether the student was eligible for special education services.*"

In *Reply* to the District's response, the parent provides a series of documents ranging from admission/discharge notices from treatment facilities, discipline reports, and school transcripts that persuasively support her assertion that the student should have been evaluated for specially designed instruction upon reinstatement to the District high school in 2009. However, the Individuals with Disabilities Act contains a requirement, mirrored in the Oregon Administrative Rules⁵, that "[t]he complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department." Therefore, we are limited to considering violations that occurred only within the past year.

Given the information that the student's behavior and DSM Axis I diagnoses had an apparent impact upon the student's educational performance, a comprehensive evaluation to determine IDEA eligibility for specially designed instruction should have occurred sometime during the Fall of 2010, if not sooner. The Office of Special Education Programs (OSEP) has addressed this topic in its Letter to Dr. Lorrie Harkness, dated March 30, 2001, which speaks specifically to the topic of Child Find requirements and ADD/ADHD. In this Letter, OSEP opined:

"While it is true that ADD/ADHD is not one of the specified disabilities in and of itself, children with ADD/ADHD may have a disability under one or more of the specified disabilities such as Other Health Impaired, Specific Learning Disability or Serious Emotional Disturbance. Children with ADD/ADHD may be considered disabled under Part B solely on the basis of this disorder within the "other health impaired" category in situations where special education and related services are needed because of the ADD/ADHD."

Under IDEA and OARs, evaluations must include parental input and relevant information about the student. As published in the federal regulations as detailed in the applicable IDEA Analysis and Commentary for Section 300.304(c)(4), IDEA requires the public agency to ensure that a child is assessed in all areas related to the suspected disability as determined by the needs of the child, which includes academic performance and social and emotional status.⁶

⁵ 34 CFR 300.153/OAR 581-15-2030(5)

⁶ 34 CFR 300.304(c)(3)

In short, had the District properly fulfilled its obligations, the student may have qualified for specially designed instruction that could have provided the student with a level of support designed to help the student perform more proficiently both academically and behaviorally. Since we are unable to retrospectively establish whether the student would indeed qualify for special education services and an attempt at any such analysis is speculative at best we are left with assessing the evaluation that occurred on November 15, 2011 after the state level IDEA complaint was commenced.

During this evaluation meeting a variety of documents were examined ranging from psychological summary reports, student observation reports, emails, medical statements, and other documentation. The assembled team, including the parent and the student, completed the eligibility determination statements by indicating the student was not eligible as a child with a disability and had no need of special education services.

This is problematic to the investigation for two reasons. First, prior to this meeting, the District had already acknowledged that it had breached its Child Find and Evaluation/Reevaluation requirements and had already conceded that the student may need special education under IDEA. Secondly, the parent and student making these statements appeared to remove the issue that was the primary basis of the complaint.

Child Find is a requirement to identify those children who are in need of special education by the nature of their disability, and this selection in essence proclaimed the absence of a need for special education. In short, the complaint alleged a Child Find violation, but the Statement of Eligibility forms indicated no need for special education services per the parent and student. When questioned about this conflicting information the parent indicated that she delegated the final decision to the student since the student was soon to be 18 years of age, and the student did not wish to be removed from the student's current schedule or placed in special classes. The parent alleges that the District expressed to the student and parent at the evaluation meeting that if the student took special education services the student may have to change the schedule or attend special classes. The parent also contends that the District informed her that the student was eligible for special education, but they would try the 504 plan first. The parent's reply letter states the following, "*The evaluation team and I agreed that at this time the 504 Plan may work better for [...] (the Student), but we were told that the option to switch to a Special Ed program is still available and that we could revisit that option in the future if needed.*" Unfortunately, the record does not reflect this representation or these allegations, and the Department can only render decisions based upon what is in the record.

Based on the response from the District and their decision not to contest any allegations, and the reply and interview with the parent, the Department concludes that the District did violate its Child Find and Evaluation/Reevaluation requirements, but the breach did not necessarily deprive the student of any appropriate special education services due to the finding of ineligibility which was agreed upon on November 15, 2011. The Department substantiates the parent's allegation and the District's concession that the District violated its Child Find and Evaluation/Reevaluation requirements with corrective action to be ordered.

Also as noted above, the District did not contest the allegations discussed in this Order and proposed staff training on Child Find as corrective action. The Department accepts the District's proposed corrective action with the modifications shown in the Corrective Action table that follows. Prior to providing the stipulated training, the District must submit to the Department, for review and approval, its proposed Child Find training content and the written information specified in the corrective action table.

CORRECTIVE ACTION⁷

In the Matter of Beaverton School District 11-054-029
Case No. 10-054-009.

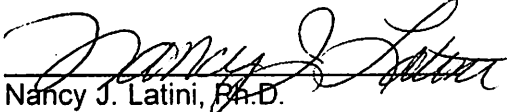
Action	Submissions ⁸	Due By
<p><u>Child Find</u></p> <p>(1) Identify and submit for ODE review, existing District policies, procedures, staff directives, district forms or documents, regarding:</p> <ul style="list-style-type: none"> a) Child Find b) Responding to parent requests for evaluation for special education eligibility; c) Determining if sufficient information exists to suspect a need for evaluation; d) Information, if any, made generally available to parents or adult students regarding (1)(a), (b), and (c) <p>(2) Following ODE approval of submission in (1) above, distribute by e-mail, and copy to ODE, the approved information to appropriate staff including, but not limited to, case managers, special education teachers, program site and program administrators, and school counselors.</p>	<p>Copies of information specified in (1) (a) – (d)</p> <p>By e-mail, the distribution and attachments identified in (2)</p> <p>Printed list of names and positions of those receiving e-mail.</p>	<p>January 25, 2012</p> <p>February 21, 2012</p> <p>February 21, 2012</p>
<p>(3) Following completion of actions (1) and (2), provide Child Find training proposed</p>	<p>(a) Agenda, training materials, name of presenter(s), signed list</p>	<p>April 3, 2012</p>

⁷ 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).

⁸ 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.

<p>by the District</p> <p>(a) Provide Child Find training proposed by the District; or</p> <p>(b) Submit statement of completed training based on (2) above.</p>	<p>of those attending; or</p> <p>(b) Statement signed by District official indicating that training was completed through information distribution in (2).</p>	
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Dated: January 6, 2012


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

Mailing Date: January 6, 2012

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. Additionally, pursuant to OAR 581-015-2030(14)(b), the Department of Education will not reconsider complaints after a Final Order has been issued.

Additionally, the Department of Education will not reconsider Complaints after a Final Order has been issued pursuant to OAR 581-015-2030(14)(b).