

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Oregon City School) District No. 62)))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 12-054-029
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I. BACKGROUND

On October 16, 2012, the Oregon Department of Education (Department) received a letter of complaint from a complainant (Complainant) on behalf of a student (Student) residing in and attending school within the Oregon City School District (District). The Complainant requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email and by US mail on October 17, 2012.

On October 19, 2012, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint that the Department would investigate. The District provided its timely *Response* to the Department and to the Complainant on November 1, 2012, along with approximately 524 pages of documents in support of its *Response* and pursuant to the request contained in the RFR¹. The Complainant did not submit a formal Reply or any additional documents by the due date of November 9, 2012.

The Department's complaint investigator determined that on-site interviews were required. On November 14, 2012, the Department's investigator interviewed the District special services director, the District's high school special education coordinator, the high school learning specialist, Teacher on Special Assignment (TOSA), two high school associate principals, and a school psychologist. On November 15, 2012, the Department's investigator interviewed the following staff of a District sponsored public charter school operated within the District at a former District elementary school: the principal, a special education teacher, a school counselor and an instructional assistant. In addition, on November 15, 2012, the Department's investigator interviewed the administrator and a teacher of a private alternative education school (Alternative School) operated within the District. Also on November 15, 2012, the Department's investigator interviewed the Student and the Student's parent. The Department's complaint investigator reviewed and considered all of these documents, exhibits, and interviews.

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

¹ The District provided a total of approximately 524 pages of exhibits. A portion of those documents were general documents applicable to Case Nos. 12-054-028, 12-054-029 and 12-054-030, while the balance of the documents were specific to each individual case referenced above.

complaint.² The Department may extend the timeline if the District and the parent agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present.³ 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 (Section III) and the Discussion (Section IV). This complaint covers the one-year period from October 17, 2011 to the filing of this complaint on October 16, 2012.⁴

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>Child Find:</u></p> <p>Not locating and identifying all children with disabilities located within the boundaries of the school district by appropriate consultation with representatives of charter and private schools.</p> <p>(OAR 581-015-2080, OAR 581-015-2085, OAR 581-015-2480, OAR 581-015-2485, 34 CFR 300.111, 34 CFR 300.131, 34 CFR 300.134, 34 CFR 300.136, and 34 CFR 300.137)</p>	<p>Substantiated</p> <p>The District had sufficient notice to suspect that the Student might be in need of special education and related services and yet did not identify, locate, or evaluate the Student to determine the existence of a disability and the Student's need for special education services.</p>
2.	<p><u>Special Education Evaluations:</u></p> <p>Not identifying and initiating special education evaluations regarding the Student for Special Education Eligibility when the District should have suspected that the Student was in need of special education services.</p> <p>(OAR 581-015-2080, 581-015-2085, 581-</p>	<p>Substantiated</p> <p>The District should have initiated the special education eligibility process before the Student was withdrawn from the Charter School on June 5, 2012. Since the complaint was filed, the District has initiated the special evaluation education process.</p>

² OAR 581-015-2030 (12); 34 CFR §300.151

³ OAR 581-015-2030 (12)

⁴ See 34 CFR § 300.153(c); OAR 581-015-2030(5)

	015-2100, OAR 581-015-2105 through OAR 581-015-2120, 34 CFR 300.303, 34 CFR 300.111, 34 CFR 300.131, and 34 CFR 300.157)	
3.	<p><u>Denial of FAPE:</u></p> <p>Not providing a Free Appropriate Public Education (FAPE), including special education and related services, to the Student.</p> <p>(OAR 581-015-2040)</p>	<p>Not substantiated</p> <p>The Student has not been found eligible for special education or related services, and therefore has not been denied a FAPE.</p>

1.	<p><u>Requested Corrective Action:</u></p> <p>A. The District evaluate the Student for special education eligibility; and</p> <p>B. The Department to investigate whether the District is systemically failing to identify students whom it suspects are eligible for special education services but instead are placing those students at another location that operates within the District without locating and identifying all children with disabilities.</p>	<p>See Corrective Action</p>
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III. FINDINGS OF FACT

Background

1. The Student is currently sixteen years old and began attending school within the District on February 6, 2012. The Student's previous attendance in schools was intermittent. Documents record that the Student did not attend school in the 7th or 8th grades, and possibly had not attended school since 5th grade.

2011-12 School Year

2. The Student attended a District sponsored charter school [the Charter School] as a 9th grade student beginning in February 2012. District Health Service records reflect that the Student had anxiety issues, was on medication, and could self-administer

the medication. The Student attended the Charter School on a partial day schedule and expressed anxiety about being in school.

3. School staff provided transportation from home to school daily, arriving at approximately 11:30 am to transport the Student. Reportedly the Student at times, refused to go to school.
4. The Student completed one quarter of a credit before the Student withdrew from the Charter School on June 5, 2012.
5. To assist students, the Charter School staff meets to discuss strategies for each student's success, develops intervention plans, and implements the identified supports throughout the school day. Typically, school staff would implement interventions for three or four months before evaluating the impact and, if the interventions had not been effective, then the staff would consider a referral for special education.
6. This Student received supportive guidance from an instructional aide and the school counselor. Although the school reduced the attendance requirement to one half day and provided transportation, the Student's attendance was still erratic.
7. Reportedly, in other district schools, a student presenting similar issues of attendance and with the lack of response to interventions, school staff would consider a referral to special education, or involvement with a District psychologist. However, the Charter School did not make a referral for special education evaluation.

2012-13 School Year

8. On September 5, 2012, a registered private Alternative Education School⁵ with which the District contracts contacted [the Charter School] for a referral to transfer the Student to the Alternative School. The referral was completed on September 6, 2012, and approved by the District business manager on September 11, 2012. The referral form indicated that the Student could not keep up with schoolwork and, that the Student was "having extreme anxiety due to family issues."
9. On September 10, 2012, the Alternative School contacted District staff, requesting transportation for the Student because "[the Student] has a lot of anxiety and cannot ride the bus by [the Student's] self (without [the Student's] mom), and [the Student's] mom had a [medical condition] and can't [transport the Student]. District staff replied that the District does not provide transportation to students who are not

⁵ OAR 581-022-1350(3)(b) Before contracting with or distributing an public school funds to a private alternative education program, the district must document that:

(H) The program assists the district in meeting its comprehensive K-12 instructional program in compliance with OAR 581-022-1210.

on an IEP.⁶ The Alternative School said that the Student may need to be referred for a special education evaluation at this time.

10. On October 11, 2012, an Alternative School staff member wrote District staff, thus inquiring with the District a second time about the Student's anxiety issues and noting that the student was not on an IEP. District staff replied:

"This is the first contact I've had from anyone regarding [the Student]. Is the [S]tudent a current [Alternative School] student? Do you have any educational records and/or reports regarding the [S]tudent's anxieties and other qualifying disabilities that I could look at? Typically, the referral process starts with a pre-referral intervention plan being developed. This is a formalized written plan with documentation for data collection. That is monitored for 4-6 weeks, depending what the team agrees to, then a check in meeting is scheduled to review the results of the intervention plan. It's at that second meeting that I participate and learn about the effectiveness of the intervention plan. We then make a plan to either continue those supports they are positively impacting the [S]tudent, or we refer for testing. Let me know if you have questions about the process and if you have documentation regarding the possible disabilities you mentioned."

11. Also on October 11, 2012, the Alternative School staff emailed District staff regarding the IDEA complaint the Complainant intended to file on behalf of the Student.
12. On October 17, 2012, District staff initiated efforts to schedule an initial meeting, subsequently held on October 25, 2012, to review existing information about the Student and to decide if the Student should be evaluated for special education eligibility. The Student was referred for Special Services evaluations. The District obtained parental consent and the evaluations are pending.

District Policies

13. The District maintains written policies regarding locating, identifying and evaluating all children birth to age 21 residing within its jurisdiction who have disabilities and who need special education services. The District's policy, consistent with state and federal regulations, includes all children, including highly mobile children, such as migrant and homeless children; children suspected of having disabilities even though they have not failed, been retained in a course or a grade, and are advancing from grade to grade; are home schooled; or are attending a private or charter school located within the District.
14. The District's written policies reflect implementation of its child find obligation through public awareness, including but not limited to providing information to public and private facilities and public charter schools, to private schools located within the

⁶ OAR 581-022-1350(3)(b)(G) A transportation plan is in place ensuring that the program is accessible to each student approved for placement in the program.

boundaries of the District, and for home-schooled students by collaboration with the Education Service District (ESD).

15. The District maintains a list of alternative education programs approved annually by the School Board. Private alternative education programs must be registered with the Department in order to be approved by the Board. District policies state that students, upon parental request, may be placed in an alternative education program if the District determines that the placement serves the student's educational needs and interests and assists the student in achieving or exceeding district and state academic content standards.⁷
16. The District School Board approved the Alternative School as an alternative education school for the 2009-10; 2010-11 and 2011-12 school years, as well as the current 2012-13 school year. The Alternative School is also registered with the Department for the same years. It is not approved by the Department to provide special education services.⁸ The Northwest Accreditation Commission formally accredited the Alternative School during a site visit in April 2012 as a "non-public special purpose school."
17. The District sponsors four charter schools. ODE records identify two of these as high schools; a third as a K-12 school, and the fourth as K-4 school.⁹ The contract between the District and the Charter School referenced in this final order, one of the District's public charter schools, includes the following provisions:

4.N. (v) The funds from the Oregon Department of Education representing the Average Daily Membership weighted (ADMw) for special education for [the Charter School] special education students shall be retained by the District, if the student is a resident of the District.¹⁰

4.N. (xi) [the Charter School] shall notify the student's resident district if a student may need special education services.

4.N. (xii) If, after a student is enrolled and attending [the Charter School], staff and employees of [the Charter School] suspect a student is eligible for special education and related services under IDEA [the Charter School] shall comply with the District practices and policies for referral of the student for evaluation.

⁷ OAR 581-022-1350

⁸ Approval by the District's School Board is a different "approval" than the Department's "approval" to provide special education services. See OAR 581-015-2270.

⁹ Alliance Charter Academy; Clackamas Academy of Industrial Science (CAIS), Oregon City Service Learning Academy (OCSLA) and Springwater Environmental Sciences School

¹⁰ ORS 338.155; OAR 581-015-2075; Children enrolled in charter schools are considered residents of the district in which the Charter School is located, regardless of parental resident district. Thus, children enrolled in these charter schools are considered resident of Oregon City School District.

4.N. (xiv) The District remains responsible for offering and providing a FAPE to all resident special education students who attend [the Charter School]. The District is responsible for the provision of all specially designed instruction to resident special education students who attend [the Charter School]; unless an alternative instructional arrangement is mutually agreed upon by the District and [the Charter School].

9. The District shall be the employer of all employees of [the Charter School].

18. The "Contract for Educational Services" between the District and the Alternative School for the 2011-12 school year include the following provisions¹¹:

1. [Alternative School] will meet the standards of the State Department of Education (ODE) necessary to be approved and renewed as a registered alternative program per OAR 581-021-0072.

2. [Alternative School] will continue to meet the standards necessary to maintain ODE approval as an agency to serve IDEA students per OAR 581-015-2270 and be approved by ODE as a special education provider.

8. [Alternative School] will employ a licensed special education teacher who will provide services to special education students as required by each student's IEP.

9. [Alternative School] will operate special education programs and maintain policies and procedures in compliance with applicable state and federal regulations.

22. The District will hold harmless [Alternative School] from any claim made because of the District's failure to comply with the State Department of Education regulations.

19. The District's cohort graduation rates for 2010-11 (the most recently reported data available) are separately reported for the District's high school and charter schools located in the district. Students placed at alternative education programs within the District are included in the District high school's data reporting and, are not currently required by ODE to be separately reported. Although the alternative education graduation data are not an independent part of public reporting, the District is able to identify these data.

¹¹ The District and the Alternative School have not yet signed a contract for the 2012-13 school year, although the draft contract is essentially the same as the contract for the 2011-12 school year.

IV. DISCUSSION

1 & 2) Child Find and Special Education Evaluations

The Complainant alleges that the District failed to identify, locate and evaluate the Student when the District suspected, or should have suspected, the Student's special education eligibility.

The issue is whether the District complied with the required procedures related to "child find" under the IDEA. Child find is a primary obligation of school districts in Oregon under the IDEA. Child find requires districts to identify, locate, and evaluate all children who are in need of special education and related services.¹² This includes, among other categories, "children who are highly mobile, such as migrant and homeless children, children who are wards of the state, children who are suspected of having a disability even though they are advancing from grade to grade, children enrolled in public charter schools, children who are home schooled, and children above the age of compulsory school attendance who have not graduated with a regular high school diploma."¹³ Additionally, the district is responsible for conducting child find activities for children enrolled in private schools located within the district.¹⁴

The child-find obligation is an affirmative duty imposed upon the District, and not dependent upon a parent's request for an evaluation.¹⁵ A parent's failure to make such a request does not relieve a District of its child-find obligation.¹⁶

A District's lack of awareness of a student's possible disability and need for special education and related services will not relieve the District of its child-find obligation if it should have suspected that a student is a child with a disability under IDEA. Failing to meet child find requirements is a matter of serious concern that can deprive FAPE to a student who should have been identified.¹⁷

In this case, during the 2011-12 school year, the Student did not achieve success at the Charter School. Even though the school provided transportation and reduced required daily attendance to half a day, the Student's attendance was still erratic. The interventions were not successful. The Student faced multiple challenges and it is difficult to determine why the interventions were unsuccessful. Staff at the Charter School were candid that, typically, interventions that did not change the Student's behaviors within three or four months would prompt consideration of a special education evaluation referral. In this case such a referral was not initiated during the 2011-12 school year.

¹² OAR 581-015-2080

¹³ OAR 581-015-2080 and 34 CFR 300.111

¹⁴ 581-015-2080; OAR 581-015-2085

¹⁵ ODE Final Order 05-054-017 citing *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996).

¹⁶ *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996)

¹⁷ *Robertson, supra*; *Department of Educ. v. Cari Rae S.*, 35 IDELR 1036 (D. Hawaii 2001); *Lakin v. Birmingham Pub. Schs.*, 39 IDELR 152 (6th Cir. 2003)

Also, the District Health Services Record reflects that the student had anxiety issues and was on medication for them. The Student was also allowed to self-administer medication and was working with a school counselor and instructional aide. However, the student still suffered from anxiety and erratic attendance and the Charter School did not commence a special education evaluation.

Pursuant to Oregon law, and specified in excerpt Section 4.N. (xiv) of the Charter agreement,¹⁸ the District in which the Charter School is located is responsible for FAPE. Under OAR 581-015-2075 and OAR 581-015-2080, the District has responsibility for child find for children enrolled in charter schools. By contract, the District has assigned to the Charter School the activities associated with the District's child find responsibility, requiring that "[the Charter School] shall comply with the District practices and policies for referral of the Student for evaluation."¹⁹ This agreement does not go on to detail what those practices or policies would require of the Charter specifically. District policy, as described to the Alternative School staff in the October 11, 2012 email, is to attempt interventions on students for four to six weeks before a meeting to consider if a special education evaluation is warranted.

The Charter School, although responsible by contract to refer students to the District for special education consideration, did not do so in the manner expected by the District based on its contract language. However, child find is an affirmative *District obligation* and the Student was not referred or considered for evaluation in a timely manner. The Department therefore substantiates the allegation that the District did not locate, identify, and evaluate the Student.

3) Denial of FAPE

Under the IDEA, school districts must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a free appropriate public education (FAPE).²⁰

FAPE is defined as "special education and related services" that are: provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and are provided in conformity with an IEP.²¹ A school district meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.²²

A denial of FAPE cannot be supported merely because the District has sufficient suspicion of special education eligibility and failed to evaluate the Student. Not only must the Student's parent consent to the evaluation, or have an exception to parental consent apply,²³ the Student must be identified as a child with a disability in one of

¹⁸ Section 4.N.(ixx) – see, page 6

¹⁹ Section 4.N.(xiv) – see, page 6

²⁰ 34 CFR 300.341

²¹ 34 CFR 300.17

²² See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982)

²³ OAR 581-015-2095

eleven eligibility categories *and* must need special education and related services.²⁴ Furthermore, the parent must consent to initial placement in special education.²⁵

Currently, there is no determination that the Student is eligible as a child with a disability and needs special education or related services. Thus, there is no showing, at present, that the District has denied FAPE. If there is a determination of eligibility, then this issue may be revisited. However, the Department does not substantiate this allegation at this time.

CORRECTIVE ACTION²⁶
In the Matter of Oregon City School District
 Case No. 12-054-029

	Actions Required	Submissions ²⁷	Due By
1.	<p><u>Evaluation:</u></p> <p>Complete comprehensive evaluation of the Student, after any requisite consent is obtained, not later than January 31, 2013.</p>	<p>Copy of any meeting notices, prior written notices, consent forms, and eligibility determination documents provided to the parent in conjunction with this evaluation.</p>	<p>February 11, 2013</p>
2.	<p><u>Policy and Procedure Review:</u></p> <p>This corrective action is the same as ODE complaint no. 12-054-028 and should be completed in conjunction with that complaint as well as 12-054-030.</p> <p>The District has in effect appropriate policies related to child</p>	<p>Develop and submit proposed timeline for procedure development.</p> <p>Submit completed training and informational</p>	<p>December 21, 2012</p> <p>February 8, 2013</p>

²⁴ See OAR 581-015-2020 and OAR 581-015-2130 through 581-015-2180

²⁵ OAR 581-015-2090

²⁶ 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)).

²⁷ Corrective action submissions 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>find, evaluation, and eligibility determination. Based on the investigation's findings, the District's procedures for implementing these policies in unique settings (alternative education, charter schools, home schooling, inter-district transfers) and for students who move between these settings are not adequate. The District maintains oversight and supervisions responsibilities for these students pursuant to State and Federal law and must ensure the compliance of its charter and alternative schools. Therefore, for each of the educational settings listed below develop, in consultation with ODE:</p> <p>a. Procedures for implementing child find, including, evaluation, and eligibility determination;</p> <p>b. Training materials for staff and information for parents explaining the procedures including, but not limited to, procedures for those who are moving between these settings and for children who may be homeless.</p> <p>*Educational Settings</p> <ul style="list-style-type: none"> • Charter Schools • Private Schools and Private Alternative Education Programs • Inter-district transfers 	<p>materials to ODE.</p>	
<p>3.</p>	<p><u>Staff Training:</u></p> <p>Following ODE approval of revised procedures and training materials in 1. a. and b. above, provide training on the District's revised and adopted procedures and</p>	<p>Detailed agenda; Copies of procedures and parent information presented in training; and Attendee information:</p>	<p>March 15, 2013</p>

	parent information to alternative education, charter school, private school, and other staff who may be involved in referrals for comprehensive special education evaluations or responding to parent inquiries.	name, position, assignment, (i.e. Charter school administrator), and signed attendance log.	
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Dated: this 14th day of December 2012



 Petrea Hagen-Gilden
 Interim Assistant Superintendent
 Office of Student Learning & Partnerships

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