

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Oregon City School District No. 62))))	CORRECTED¹ FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 12-054-030
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I. BACKGROUND

On October 16, 2012, the Oregon Department of Education (Department) received a faxed two page letter of complaint from a parent (Parent) of a student (Student) residing in and attending school within the Oregon City School District (District). The Parent 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 RFR.² The Parent 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 (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's parent by phone. 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 complaint.³ The Department may extend the timeline if the District and the parent agree to an extension to

¹ The Department issued a final order on December 14, 2012. Subsequent to the issuance, the Department became aware of minor mechanical errors within the order. Specifically, the order misidentified a date and a type of school referenced in analysis. The changes appear in the corrective action column and on page 7. These corrections appear in bolded text in this version.

² 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.

³ OAR 581-015-2030(12); 34 CFR §300.151 (2010)

participate in local resolution, mediation, or if requisite exceptional circumstances are present.⁴ 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, 2012.⁵

	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 should have been identified under State Child Find laws.</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, 581-015-2100, 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)</p>	<p>Substantiated</p> <p>The District should have initiated the special education eligibility process by January 2012. Since the complaint was filed, the District has initiated the special education evaluation process.</p>

⁴ OAR 581-015-2030(12) (2010)

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

3.	<p><u>Denial of FAPE:</u></p> <p>Not providing a Free and 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>
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1.	<p><u>Requested Corrective Action.</u></p> <ol style="list-style-type: none"> 1. The District evaluate the Student for special education eligibility; and 2. 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>See Corrective Action</p>
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III. FINDINGS OF FACT

Background

1. The Student is currently fifteen years old and has attended school within the District since first grade. The Student was eligible for special education as a student with a communication disorder until the student was exited from special education in January 2004. The Student's attendance, through 2009, was consistent.
2. In 2009, the Student's state benchmark tests ranged from "meets" to "nearly meets".

During the 2010-11 school year, the Student's 8th grade year, the Student attended 79% of school days (21% absences). The Student's 8th grade State benchmark test results showed the Student "met" standards in reading (226), "nearly met" standards in science (229), and was "low" in math (219).
3. In March and again in May 2011, District staff wrote the Student's parent that all students had to maintain a grade of "C" or better in Language Arts and Math or "they may be placed in an alternative setting for high school." If grades did not improve by the end of 8th grade, the District high school staff would meet to determine placement as an

incoming freshman. "The recommendations may vary from beginning their 9th grade on an academic contract to placement in a skills class. In extreme cases, they may recommend an alternative placement."

2011-12 School Year

4. The District placed the Student at an Alternative School for the freshman year of high school. The Student's attendance at school was poor. On January 23, 2012, the Student's mother called the District high school special education department and spoke with the secretary. The Parent stated that the Student had not been in school for more than ten days and the Alternative School was threatening to drop the Student from its roster.⁶ The Parent continued by explaining that the Alternative School was not offering resources to assist with the Student's attendance issue. The Parent asked whether the Student could be placed on an IEP to obtain help with the Student's lack of attendance.
5. The Parent spoke with the high school special education coordinator on January 24, 2012. The special education coordinator confirmed this same information, while adding that the staff at the Alternative School also told the parent to contact the District for additional supports and referrals for testing.
6. The coordinator asked the District supervisor, by email, whether the high school coordinator would participate in referrals for special education testing if the Alternative School had a special education teacher on staff. The supervisor advised the coordinator that the District "should do the assessment."
7. District efforts to schedule an evaluation planning meeting were unsuccessful. Per the District's *Response*, no meeting date with the Parent was ever scheduled or agreed upon following the initial request. There is no further documentation relating to contact between the high school staff and the Parent.
8. The District high school team met in February 2012 regarding Parent's belief that their child couldn't attend the Alternative School if he or she was on an IEP.
9. In April 2012, the Student enrolled at a District sponsored charter school located in the District. In May 2012, the Alternative School staff contacted the Charter School counselor to discuss a referral for evaluation for special education eligibility for the Student. Three calls by the Charter School in May and June were met with one return call from the Parent, but these efforts to discuss special education eligibility and testing were not successful.

2012-13 School Year

10. On September 5, 2012, the Alternative School contacted the Charter School principal, on behalf of the Student, for a referral to the Alternative School. The charter school made the referral to the Alternative School the next day. Since the Charter School was the last school the Student attended, it could make the referral to the Alternative School

⁶ OAR 581-023-0006 (4) A student must be withdrawn from the active roll on the day following the tenth consecutive full school day of absence but may be retained on the inactive roll at the district's option.

according to district policy. The Student has been attending the Alternative School up to the present time.

11. On October 11, 2012, Alternative School staff formally requested District staff to consider special education eligibility.
12. The District held an evaluation planning meeting regarding the Student on October 31, 2012.

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 boundaries of the district, and for home-schooled students by collaboration with the Education Service District.
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.
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.⁷ 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-8 school.⁸ The contract between the District and the Charter School referenced in this final order includes the following provisions:

⁷ 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.

⁸ Alliance Charter Academy; Clackamas Academy of Industrial Science (CAIS), Oregon City Service Learning Academy (OCSLA) and Springwater Environmental Sciences School

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

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

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

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

18. The "Contract for Educational Services" between the District and the Alternative School for the 2011-12 school year include the following provisions⁹:

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.

⁹ 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 Evaluation

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 requires districts to identify, locate, and evaluate all children who are in need of special education and related services.¹⁰ 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."¹¹ Additionally, the district is responsible for conducting child find activities for children enrolled in private schools located within the district.¹²

The child-find obligation is an affirmative duty imposed upon the District, and not dependent upon a parent's request for an evaluation.¹³

A District's lack 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 might have a disability. Failing to meet child find requirements is a matter of serious concern that can deprive FAPE to a student who should have been identified.¹⁴

In this case, during the 2011-12 school year, the Student did not achieve success at **school**. Even though the school provided transportation and reduced the required daily attendance to half a day, the student's attendance was still erratic. The interventions were not successful. The student faced multiple challenges, so it is difficult to determine why the interventions were unsuccessful. Charter school staff 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. Here, the Parent spoke with two District Special Education staff members in January 2012 requesting assistance for the Student's attendance issues and specifically inquiring about a special education evaluation. District staff confirmed within the Special Services department that even though the Student was attending the Alternative School, the District would do the assessment. Efforts to initiate the process failed.

After the Student transferred to the Charter School, Alternative School staff inquired with the Charter School staff about a special education referral. Charter school staff called the Parent three times, and the Parent returned the call once, but again efforts to schedule a meeting

¹⁰ OAR 581-015-2080

¹¹ OAR 581-015-2080 and 34 CFR 300.111

¹² 581-015-2080 and OAR 581-015-2085

¹³ ODE Final Order 05-054-017 citing *Roberston County School System v. King*, 24 IDEALR 1036 (6th Cir. 1996).

¹⁴ *Robertson, id*; *Department of Educ. v. Cari Rae S.*, 35 IDELR 1036 (D. Hawaii 2001); *Lakin v. Birmingham Pub. Schs.*, 39 IDELR 152 (6th Cir. 2003).

were unsuccessful. There is no correspondence between the District, the Charter School, or the Alternative School and the Parent attempting to schedule an evaluation planning meeting until the Alternative School formally wrote the District requesting an evaluation planning meeting on October 11, 2012. The evaluation planning meeting was held on October 31, 2012.

These events illustrate the challenges of ensuring child find procedures are in place to support students as they move between different types of schools and programs, and that staff in all locations understand and apply the requirements consistently. Without this understanding the child find system does not work in a timely manner for students and districts.

The Parent asked the District for help for the Student's struggling attendance issues in January 2012. District staff was at first unsure of their responsibilities when the Student attended the Alternative School, but District administration clarified their obligation and clearly accepted its obligation to evaluate the Student. However, the District did not then timely try to evaluate the Student. When the Student changed schools, another attempt to discuss the referral was initiated, but again, the evaluation process did not proceed. Once the complaint was filed, the District scheduled and held the evaluation planning meeting.

The District has an independent and affirmative duty to locate, identify, and evaluate students under Child Find. Since the IDEA and OARs do not require a meeting for evaluation planning in order to commence these Child Find activities,¹⁵ attributing the evaluation delay to parental scheduling issues would be misguided.

Likewise, while the District contractually delegated certain child find activities to the Charter School and required it to comply with the District's referral policies and procedures, the contract itself does not relieve the District of its responsibility and obligation to locate, identify, and evaluate students enrolled in charter schools located within its district.¹⁶

The Department finds that the District had sufficient evidence to suspect the Student may need special education and should have therefore initiated greater efforts in at least January 2012, if not sooner, and thus attempted to correspond with the parent, to gather parental input, and to review the existing data. These activities do not require parental consent. Following such a review, the District could have pursued consent for evaluation. The District did not provide any documentation of such activities. The Department therefore substantiates these allegations.

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).¹⁷

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

¹⁵ OAR 581-015-2115(2)

¹⁶ OAR 581-015-2080

¹⁷ 34 CFR 300.341

education; and are provided in conformity with an IEP.¹⁸ 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.¹⁹

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,²⁰ the student must be identified as a child with a disability in one of eleven eligibility categories and must need special education and related services.²¹ Furthermore, the parent must consent to initial placement in special education.²²

There is no showing, at present, that the District has denied FAPE. Currently, there is no determination that the Student is eligible as a child with a disability and needs special education or related services. 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 ACTION²³
In the Matter of Oregon City School District
 Case No. 12-054-030

	Actions Required	Submissions ²⁴	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>March 1 , 2013</p>
2	<p><u>Policy and Procedure Review:</u></p> <p>This corrective action is the same as</p>		

¹⁸ See 20 USC § 1402(8).

¹⁹ See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

²⁰ OAR 581-015-2095

²¹ See OAR 581-015-2020 and OAR 581-015-2130 through 581-015-2180

²² OAR 581-015-2090

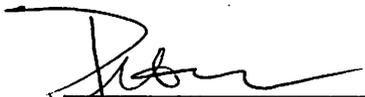
²³ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has 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)).

²⁴ 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>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 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> <ol style="list-style-type: none"> a. Procedures for implementing child find, including, evaluation, and eligibility determination; 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>*Educational Settings</p> <ul style="list-style-type: none"> • Charter Schools • Private Schools and Private Alternative Education Programs • Inter-district transfers 	<p>Develop and submit proposed timeline for procedure development.</p> <p>Submit completed training and informational materials to ODE.</p>	<p>December 21, 2012</p> <p>February 8, 2013</p>
3	<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 parent information to</p>	<p>Detailed agenda; Copies of procedures and parent information presented in training; and</p>	<p>March 15, 2013</p>

	<p>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.</p>	<p>Attendee information: name, position, assignment, (i.e. Charter school administrator), and signed attendance log.</p>	
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Dated: this 19th day of December 2012



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

Mailing Date: December 19, 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).