

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the matter of )  
Gresham-Barlow SD 10J )

) FINDINGS OF FACT,  
) CONCLUSIONS,  
) AND FINAL ORDER  
) Case No. 13-054-009

**I. BACKGROUND**

On March 5, 2013, the Oregon Department of Education (Department) received letter of complaint from a parent (Parent) of a student (Student) residing in the Gresham-Barlow School District 10J (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 on March 6, 2013.

On March 8, 2013, 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 timely sent a narrative *Response* and related documents on March 22, 2013. The Parent submitted a narrative *Reply* and related records on March 28, 2013.

The Department's complaint investigator determined that on-site interviews were necessary. On April 5, the Department's investigator interviewed the District Executive Director of Special Services and a Program Director, the only two District employees with direct knowledge of the events related to this complaint. On the same date, the investigator interviewed the Parent and asked a few follow-up questions by email. On April 15, the investigator conducted a telephone interview with an independent psychologist who conducts educational evaluations (Evaluator A). The Department's complaint investigator reviewed and considered all information obtained from the District's, the Parent's, and Evaluator A's narratives, documents, interviews, and emails.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint. The 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.<sup>1</sup> This order was extended due to exceptional circumstances, specifically that additional review of the facts and materials was needed in this case, so the order was extended by seven days.

**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 March 6, 2012 to the filing of this complaint on March 5, 2013.<sup>2</sup>

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

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

	<b>Allegations</b>	<b>Conclusions</b>
	The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b>Independent Educational Evaluation:</b></p> <p>The complaint alleged that the District violated IDEA by impeding the parent's access to an independent educational evaluation (IEE) when the parent disagreed with the District's evaluation.</p> <p>OAR 581-015-2305 and 34 CFR §300.502</p>	<p><b><u>Substantiated</u></b></p> <p>While the District did attempt to commence an IEE, the District imposed conditions on the Parent's access to an IEE. The District also limited the scope of the evaluation.</p> <p><i>See Corrective Action</i></p>
2.	<p><b>Prior Written Notice:</b></p> <p>The complaint alleges that the District violated the IDEA by not giving the complainant timely Prior Written Notice of its decisions in response to repeated requests for an IEE.</p> <p>OAR 581-015-2310 and 34 CFR §300.503</p>	<p><b><u>Substantiated</u></b></p> <p>The District made a number of decisions related to the Parents effort to obtain an IEE but gave the parent a Prior Written Notice on only one occasion.</p> <p><i>See Corrective Action</i></p>

	<b>Requested Corrective Action</b>	<b>Conclusions</b>
	<p>The Parent has requested the following corrective action:</p> <ul style="list-style-type: none"> <li>• Immediately provide a contract to the Parent's chosen independent educational evaluator to begin an IEE of student without limitation.</li> <li>• An independent audit of Gresham-Barlow Special Services, particularly two specific staff members' handling of all IEP and IEE requests made since September 2010, including [those of] the Student.</li> <li>• Reimbursement of complainant's alleged costs of more than \$1200.</li> </ul>	<p><i>See Corrective Action</i></p>

### III. FINDINGS OF FACT

#### **Background**

1. The Student is a 12-year-old sixth-grade student who resides in the District. The Student began attending District schools in 2010, when the Student was in 4<sup>th</sup> grade.
2. Since the beginning of the 2012-13 school year, the Student has been home schooled.
3. During the 2010 school year, the Parents expressed concern to District staff about the Student's academic progress and requested a special education evaluation. On May 24, 2011, a Student Study Team (SST) at the Student's school and the Parent met to discuss concerns about the Student. At this meeting, the SST agreed to a special education evaluation to determine whether the Student met eligibility criteria for Specific Learning Disability (SLD) or Other Health Impairment (OHI). The Parent provided written consent for the evaluation.
4. On November 1, 2011, the SST and the Parent met to discuss the results of the evaluation. The team determined that the Student did not meet eligibility criteria for either SLD or OHI at that time, and all meeting participants signed eligibility paperwork indicating agreement with these conclusions.

#### **Parent's Independent Educational Evaluation Request and District Response**

5. On June 22, 2012, the Parent gave the District written notice that she wanted an Independent Educational Evaluation (IEE).
6. On June 27, 2012, the Parent and District exchanged several communications:
  - a. A District special education administrator sent the Parent an email offering a "repeat eligibility determination" conducted by district staff. The administrator added, "If this is not acceptable we will move ahead with your request for an Independent Educational Evaluation."
  - b. The Parent replied by email, thanked the administrator for the offer of another eligibility determination, and stated: "I do not consider another evaluation by the school district to substitute for the independent evaluation I requested. Please start the IEE process immediately and let me know the steps for choosing an evaluator."
  - c. The District sent a letter to the Parent stating that "[t]here is a process for accessing a district funded IEE" and directing the Parent to call a District staff member, who would "talk with you about what she needs from you and what steps you can take to get this accomplished."
7. On July 10, 2012, the District sent the Parent a letter stating in relevant part:

"From our conversation on July 9, you have requested an Independent Education Evaluation for [Student]. In order to begin to process your request, I need to know which specific assessments that you disagree with so that I can appropriately coordinate the independent individuals/agencies to administer other assessment(s)."

The letter included a list of assessments that the District had administered in its own evaluation and asked the parent to "[p]lease highlight the assessment(s) that you disagree with the findings (of?) [sic?] so that we can honor your request." The letter also asked the Parent to select an independent evaluator from the District's list of providers.

8. The District reported that it does not have a formal IEE policy, but the Special Education Department reported that it has a five page document describing its IEE process, which District staff wrote to reflect their understanding of the ODE Notice of Procedural Safeguards.
9. Enclosed with the District's July 10, 2012 letter to the parent was a five-page description of District criteria for an IEE that included:
  - a. location limitations for evaluators
  - b. minimum qualifications for evaluators
  - c. cost limitations for evaluations with a stated cap of \$1000 for an "Independent Multidisciplinary Evaluation (more than one type of assessment)" a variety of assessment types and price ranges for "single disciplinary evaluations (only one type of assessment)"
  - d. sources of independent evaluations by area of assessment
  - e. approved assessment instruments for use in IEEs

This document mentions that exceptions to District criteria may be possible in some circumstances. It indicates that the list of approved assessment instruments was representative rather than exhaustive, but it does not indicate whether the list of sources of independent assessments was intended to be exhaustive.

The document also states that "To ensure that the district will pay for a parentally requested IEE the parents should contact the special education staff in the school that their child attends and request an evaluation planning meeting for an IEE."

10. The District did not require that the Parent attend an evaluation planning meeting with staff at the Student's school at this time, because most staff members were out for their summer break. Instead, the Parent met with the District on July 9 to discuss the IEE.
11. On July 10, 2012, the Parent notified the District that she had selected Evaluator A.
12. Evaluator A's first contact was with the Parent. Evaluator A recommended that the Parent pay for her own independent evaluation, so she could authorize whatever assessments were needed. The Evaluator explained to the Parent that the Evaluator understands that if the District was paying, the District could determine the scope of the evaluation.
13. On August 6, 2012, the Parent sent a lengthy email to the District expressing concern about how the District was handling the IEE request. The parent indicated that she had done legal research and found regulations and regulatory guidance that conflicted with District IEE procedures. In addition to quoting IDEA regulations and regulatory guidance about IEEs, the Parent wrote:

- a. "If I understand correctly, you have stated to me ... that the district will only allow the independent evaluator to assess the same the exact areas which the district evaluated"
  - b. "The district cannot have criteria which limits the evaluator's test instruments to those on your list or in a pre-agreed 'evaluation plan.' The district is also not allowed to limit the evaluator's ability to assess areas not previously assessed by the district. One of the reasons we disagree with the evaluation conducted by the district is that it did not assess all areas of [the student's] needs."
  - c. "[Y]ou may not have an 'evaluation plan' that pre-determines which assessments the provider will use."
14. On August 7, 2012, after checking with counsel for the school district about the Parent's email, the District sent an email that said only:
- "I reviewed your email and in response, I think we should proceed in working with [Evaluator A] to determine what next steps should occur for [Student]. I have spoken with [Evaluator A] and she has agreed to review [Student's] most recent evaluations to determine what additional activities are needed."
15. On August 16, 2012, the Program Director wrote a letter to Evaluator A that stated in relevant part:
- "Per our phone conversation on August 16, 2012, this letter is a conformation [sic] for you to complete an IEE that will consist of file review and phone interview with [Student], student at [District Middle School]. I have included the most recent evaluation reports from [District staff members]. If you have questions specific for either [District staff member], please let me know and I will arrange that for you."
- "We have informed the Parents of [Student] that you will be contacting them to make appropriate arrangements to complete the phone interview. Upon completion of the file review and phone interview, please send written documentation with your considerations/recommendations to [The District]."
16. The District made all arrangements for Evaluator A's work.
17. The District reported that it is "the normal practice in the district to set up the billing process at beginning and then cut a check at the end."
18. The Evaluator reported that in the initial conversation with the District, Evaluator A felt that the district was reluctant to authorize any testing, so the evaluator suggested a file review as an "interim" measure, pending her possible recommendations of additional assessment.
19. When Evaluator A read the District's August 16, 2012 confirmation letter for the file review, she reported that she concluded that the District was clearly limiting the scope of her activities and that she had no option of conducting additional assessment activities. In her experience, an IEE would normally include assessment, but "a file review is what the district agreed to allow me to do." Evaluator A knew that the Parent wanted the IEE to include additional assessments and that the Parent was not happy with the file review being treated

as an IEE, but Evaluator A believed that only the District had authority to define and limit her work.

20. On September 18, 2012, Evaluator A wrote a letter addressed to the District and two other District staff members. She expressed approval of the District assessments and their interpretations. In addition, she identified concerns about some of the Student's scores on the District evaluation and recommended several assessments that the District had not administered. She concluded that "[Student] does not seem to need IEP intervention ... but accommodations under a 504 Plan might indeed be helpful."
21. On October 3, 2012, the Parent sent an email to the District asking "what the next steps are and what the time line would be."
22. On October 11, 2012, the District sent the Parent an email suggesting meeting dates. The Parent replied stating that she was unavailable on the suggested dates and offering alternative dates.
23. On October 24, 2012, the District sent the Parent an email saying that team members were available to meet on November 19, 2012. The Parent replied that this was too long to wait for a meeting she had requested on October 3. She suggested that the District should simply agree to the evaluator's recommendation of additional assessments.
24. On October 25, 2012, the District sent the Parent an email explaining why it was difficult to find a meeting time that worked for all the District staff members who would need to participate in the meeting. She stated that:

"As for the team's next steps (as a result from [Evaluator A's] letter), I don't know what they would look like—that will need to be the focus of the conversation. It will be a team decision. At this point, I do not have a proposal—the team, in which you are a member, will have to create one. Please know that I am not side-stepping your request, but that I am honoring the team process."
25. On October 30, 2012, the Parent wrote a letter to the District in which she expressed dissatisfaction with virtually all aspects of the interactions between the District and Evaluator A and she argued that a file review and interview with the Student did not constitute an IEE. She quoted federal regulations and OSEP guidance and explained how, in her view, District actions violated the IDEA. She finally demanded that the District "immediately move forward with [the Student's] IEE" and to stop dictating the terms of and limiting the scope of the IEE. She also "effective immediately" revoked consent for the District to correspond with Evaluator A regarding the Student.
26. On October 31, 2012, the Parent signed an "Authorization to Use and/or Disclose Educational Information" which was to supersede and revoke the consent to disclosure form she had signed on August 2, 2012. In this document, the Parent stated that she wanted the District to share test protocols, observation notes, and other student records to assist Evaluator A in conducting an IEE.
27. In a letter to the Parent dated November 1, 2012, the District denied the Parent's accusations of inappropriate District involvement in the IEE. She stated that "the district did not limit the scope of the evaluation. It was [Evaluator A's] sole decision how to conduct the

IEE.”<sup>3</sup> The District asserted that the IEE was complete and informed the Parent that she was welcome to consult further with Evaluator A but that the District would not pay for that consultation. She added that “[t]he district has satisfied its obligation to provide you with an IEE with someone of your own choosing.”

On the same date, the District also wrote a letter to Evaluator A offering access to test protocols, as requested by the Parent. She wrote:

“We thought your IEE was complete, but if you believe that reviewing these documents would assist you in completing your IEE, please let me know and we will make the appropriate arrangements.”

28. On November 19, 2012, both Parents, the District, and a counselor and assistant principal at the Student’s middle school met and determined that the Student was eligible for a §504 Plan.
29. On November 20, 2012, the District sent the Parents a Prior Written Notice (PWN) of Special Education Action notifying the Parents of District “refusal of additional testing from IEE” because “District has completed IEE.” The PWN also indicated that the District and Parents would “schedule a conference call with [Evaluator A] to determine if IEE is complete and additional testing is necessary.”
30. On December 2, 2012, Evaluator A wrote a letter addressed to District staff and the Parent that purported to answer the question “whether the IEE is complete.” Evaluator A wrote in relevant part:

“[In the September 18, 2012 letter] I did not recommend that [Student] be considered for IEP, but did recommend [Student] be afforded a 504 Plan, and suggested that additional testing might prove useful in optimizing such a plan. The district did not request this additional testing, though I was quite willing to offer that service. I was paid for my time, as agreed, and it was my belief that the work for which I had been contracted by the district was complete.”

“ .... [T]here might be two interpretations to the question of whether ‘a complete IEE was performed’. .... [A]n IEE typically does involve additional, more in-depth testing of the child in question, but in this case, none of the additional testing that could have been performed was felt by district personnel to be needed in order to draft a workable 504 Plan.”

31. On December 6, 2012, when Parent continued to insist that the IEE was not complete, the District consulted with counsel and then agreed to “another IEE,” and the District sent to the Parent a “list of providers for the IEE.”
32. On January 28, 2013, the Parent sent an email to the District in which she stated that she had chosen Evaluator B “to provide the IEE services.”
33. On January 29, 2013, in an email to the Parent, the District replied as follows:

“I spoke to [Evaluator B] and he’s willing to complete the IEE for [Student]. Prior to him setting a timeline for the process he is needing the previous reports that were already

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<sup>3</sup> But note the Evaluator’s statement above which disputes this assertion made by the District.

completed so he'd not duplicate testing. If you could, please sign the release of information so that I can begin to get him the information that he requested."

34. On January 31, 2013, the Parent replied that she had already provided the records to Evaluator B. Over the following two weeks, the District and the Parent exchanged several emails repeating their disagreement about whether the Parent could directly provide the records to Evaluator B or whether she needed to sign a release of information.

35. On February 26, 2013, the District sent a letter to the Parent stating:

"From our last email on February 12, 2013, you have requested that [Evaluator B] complete an Independent Educational Evaluation for [Student]. In order to proceed, please sign and return the Release of Information to me so that we can move forward with your request."

36. On March 15, 2013, the District sent an email to the Parent. In the email, the District wrote:

"I contacted [Evaluator B] on January 29 to let him know that GBSD would begin an IEE for a GBSD student ... however I was not able to discuss any particulars with him at that time as I did not have a signed release of information."

....

"Please know that it is district policy that restricts the release of personally identifiable information which includes his/her education records to others without a signed consent. GBSD continues to offer the completion of the IEE for [Student]; however I have not received a signed release of information. As soon as the release of information is signed, GBSD is happy to develop a contract with [Evaluator B] for completion of the IEE."

#### IV. DISCUSSION

##### 1. Independent Educational Evaluation (IEE)

This complaint involves the legal entitlement of parents to obtain an independent educational evaluation (IEE) at public expense. The District contends that it has satisfied and even exceeded its IEE obligations under the IDEA through its contract with Evaluator A and expressed willingness to contract with Evaluator B. The Parent argues that the District has imposed limitations on the scope of the IEE in violation of IDEA.

Few parental rights in special education are as clear-cut as the right to an IEE. The Individuals with Disabilities Education Act (IDEA) provides that parents may obtain an independent educational evaluation (IEE) of their children who have disabilities. 20 USC §1415(b)(1); 34 CFR §300.502(a). "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the student's education. 34 CFR §300.502(a)(3)(i); OAR 581-015-2305(1)(a).

Parents who disagree with a district's special education evaluation of their child have a right to an IEE *at public expense*. 34 CFR §300.502(b)(1); OAR 581-015-2305(1). "Public expense" means that the school district either pays the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. 34 CFR §300.502(a)(3)(ii); OAR 581-015-2305(1)(b).

The IDEA authorizes districts to establish criteria for publicly funded IEEs, including the location of the IEE and the qualifications of the examiner, that are the same as the criteria for a district-initiated evaluation. 34 CFR §300.502(e)(1); OAR 581-015-2305(3). School districts must provide parents an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the district's criteria. OAR 581-015-2305(3)(b). Aside from the district criteria that the regulations expressly permit, school districts may not impose conditions or timelines related to parents' access to an IEE at public expense. 34 CFR §300.502(e)(2); OAR 581-015-2305(3)(a).

When a parent seeks an IEE, the school district must provide information about where the parents may obtain an IEE and the school district criteria applicable to IEEs. 34 CFR §300.502(a)(2); OAR 581-015-2305(2). If a parent seeks an IEE *at public expense*, the district must "without unnecessary delay" either (a) initiate a due process hearing to show that its evaluation was appropriate, or (b) ensure that an IEE is provided at public expense unless the district can prove at a due process hearing that the parents' IEE did not meet district criteria. 34 CFR §300.502(b)(2); OAR 581-015-2305(4).

The school district may ask why a parent disagrees with the district's evaluation, but the parent is not obligated to provide an explanation. Regardless of whether the parent chooses to explain, the school district may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend its own evaluation. 34 CFR §300.502(b)(4); OAR 581-015-2305(6).

The Office of Special Education Programs (OSEP) at the US Department of Education, the federal agency responsible for administering the IDEA, has issued numerous advisory letters regarding IEEs. This guidance has consistently affirmed the plain language of the regulations and reiterated that school districts may not impose conditions, timelines, or other limitations on parents' access to an IEE.<sup>4</sup>

In the situation that gave rise to this complaint, the District imposed requirements that do not comport with IDEA requirements stated above.

The trigger for a parent's entitlement to an IEE is disagreement with a school district's evaluation. In this case, the District has asserted that the Parent did not disagree with the District evaluation because the parent did not express disagreement at the time of the evaluation, but rather waited almost eight months before requesting an IEE. The IDEA expressly prohibits school districts from imposing timelines on parents who seek an IEE, and no court has interpreted IDEA as imposing any kind of timeline for such a request<sup>5</sup> on parents. The District also argues that the Parent did not offer an explanation of her disagreement with the District evaluation in a way that made sense to the District. However, the plain language of IDEA and its implementing regulations provides that parents need not offer any explanation of their disagreement with a school district's evaluation to request an IEE. Neither the Parent's non immediate request for an IEE, nor the lack of an explanation of her disagreement voided her legal entitlement to an IEE.

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<sup>4</sup> See, e.g., *Letter to Thorne* (OSEP, February 5, 1990), *Letter to Petska* (OSEP, September 10, 2001), *Letter to Anonymous* (OSEP, January 4, 2010).

<sup>5</sup> An Administrative Law Judge in a Georgia Due Process hearing implied that the 2 year statute of limitations for due process hearing requests might also apply to IEE requests. Note that even if that ruling had value as a precedent in Oregon, the eight-month delay in this case would fall well within the 2-year timeline; Atlanta Pub. Schs., 51 IDELR 29 (SEA GA 2008).

The District document describing its IEE procedures clearly requires that parents participate in an assessment planning meeting for an IEE. Nothing in the IDEA or State law requires such an assessment planning meeting either with school-based staff or, as in this case, with a special education administrator. The reason parents seek an IEE is that they disagree with a school district's evaluation, and such a requirement would force parents to plan an IEE with the very staff whose evaluation and opinion they disagree with. The requirement that the parents attend an assessment planning meeting before obtaining an IEE imposes a condition upon parents' access to an IEE and thus unambiguously violates the IDEA.

The District made all the arrangements for the IEE and engaged in ongoing communication with Evaluator A both before and after the file review and interview that the District maintains was an IEE. Nothing in the IDEA would prevent District from providing assistance to a parent in arranging an IEE, if that was a parent's choice. However, the IDEA does not authorize District personnel to broker an IEE or limit the scope of an IEE against the parent's wishes. The District in this case maintains that Evaluator A, not the District, decided that the IEE should consist of a file review and a telephone interview with the student. Assuming that to be a fact (although that is not the way Evaluator A understood the situation), it does not reflect the requirements of the law. An IEE is not an evaluation service provider's right any more than it is a school districts right. According to the IDEA's procedural safeguards,<sup>6</sup> an IEE is a parental right, and the defining characteristic of an IEE is *independence*. Parents are entitled to decide for themselves what kind of an independent evaluation they want and to make their own arrangements with an independent evaluator, consistent with the limited criteria that the IDEA permits school districts to establish. The intervention of District personnel in determining the scope and conduct of an IEE defeated the Parent's efforts to access the independent evaluation to which she was entitled and thus violated the IDEA.

The District required the Parent to sign a two-way release of information before authorizing either Evaluator A or Evaluator B to begin an IEE. Requiring parents to waive their right to confidentiality of student records in order to access an IEE is problematic for several reasons. The District maintains that this requirement is essential,<sup>7</sup> so that District staff could give the Student's records to the independent evaluators. However, an independent evaluator may or may not need to examine the district's student records, including records of a district evaluation, to conduct an IEE for parents. If the parent's chosen independent evaluator needs to review student records, the parent can arrange for release of those records. In this case, the District refused to authorize an IEE with Evaluator B even though the Parent notified the District that she had already given relevant student records to Evaluator B, because the District did not have any way of knowing what records the Parent had provided. If a parent requests that school staff send student records to an independent evaluator, it is necessary for the parent to sign a release of information for the district, because schools cannot legally disclose confidential student records without the parent's written consent under FERPA and IDEA. However, nothing in IDEA or its implementing regulations or case law supports a requirement that a parent sign a release of records before an IEE can begin, and nothing in IDEA or any other law requires a parent to sign a release when the parent is directly providing the education records of their minor children to an independent evaluator.

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<sup>6</sup> 20 USC § 1415(b)(1)

<sup>7</sup> According to the District's Response to the complaint, "it is our practice that when the district completes an IEE, outside evaluators receive all of the student's special education records from the district. The District requires a signed lease of information for this to happen."

The District's demand that the Parent sign a release of records that would allow an independent evaluator to provide an evaluation report to the District was reasonable and possibly essential. The IDEA does not address this situation, and a discussion of confidentiality rules or ethical standards applying to psychologists or other independent evaluators is beyond the permissible scope of an investigation conducted under 34 CFR §300.151-153 and OAR 581-015-2030. However, if a parent obtains an independent educational evaluation at public expense, the school district must consider the results of the evaluation. OAR 581-015-2305(7)(a) and 34 CFR §300.502(c)(1). It would be unreasonable for a parent to obtain an IEE at public expense while refusing consent for the school district that funded the evaluation to see the evaluation report.<sup>8</sup> In this case, the Parent revoked consent for Evaluator A to further discuss the Student, but this happened only after the District received a copy of the evaluation report and after the parent learned that the District would not pay for any IEE service beyond the file review it had authorized.

When a parent requests an IEE, the IDEA offers an alternative if district staff are confident that their own evaluation is appropriate: The district may initiate a Due Process Hearing and seek an order that supports their evaluation. If a district does not do that, it has no alternative but to ensure that the parent is able to obtain an IEE. In this case, the District did not go to hearing and obtain an impartial ruling in its favor as required.

The Department therefore substantiates the Parent's allegation that the District impeded her access to an IEE by setting impermissible conditions and limitations on the IEE. As of the date of this order, more than ten months have passed since the Parent notified the District that she wanted an IEE, and the parent still has not been able to obtain the IEE for the student. Therefore, the Department concludes that the District has unnecessarily delayed the Parent's access to an IEE in violation of the IDEA. See *Corrective Action*.

## 2. Prior Written Notice (PWN)

The Parent who filed this complaint alleged that the District had failed to provide PWN in response to her many requests for an IEE. The District, in its *Response* to the Complaint, stated that "[t]he district is waiting for a signed release from [Parent] to continue with the IEE process. No Prior Written Notice is necessary under these circumstances."

The IDEA requires school districts to give parents prior written notice (PWN) whenever it proposed or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability. 34 CFR §300.503(a); OAR 581-015-2310(1).

PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;

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<sup>8</sup> In *Letter to Katzerman* (1997), OSEP concluded that no IDEA violation would occur if a District obtained the report of a publicly funded IEE even without parent consent.

- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options that the district considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.34 CFR §300.503(b); OAR 581-015-2310(3).

The purpose of such detailed PWN requirements is twofold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it assists parents to receive definitive statements of school district decisions and to understand exactly what considerations led to those decisions.

In this case, the Parent contacted the District with requests and concerns a number of times. Most notably:

- a. on June 22, she requested an IEE
- b. on August 6, she objected to several aspects of the District's handling of her IEE request
- c. on October 24, she asked for the District to approve the additional assessment that Evaluator A had suggested
- d. on October 30, she asked that the District move forward with an IEE
- e. on December 6, she again insisted that the District provide access to an IEE
- f. and several times over the next two months, she urged the District to authorize Evaluator B to conduct an IEE

The District made decisions in each of the cases noted above, beginning with a decision in July 2012, to authorize an IEE with Evaluator A. The District also made several decisions not to allow the Parent to access an IEE with Evaluator A, and a decision not to authorize an IEE with Evaluator B until the Parent complies with its demand to sign a records release. In each these situations, the district either proposed or refused to initiate or change something related to the evaluation of the Student, but the District could provide evidence of only one PWN, dated November 20, 2012.

The Department therefore concludes that the District has violated the Parent's procedural right to PWN on multiple occasions. *See Corrective Action.*

**CORRECTIVE ACTION<sup>9</sup>**  
*In the Matter of Gresham-Barlow School District*  
Case No. 13-054-009

The Department orders the following Corrective Action resulting from this investigation

No.	Action Required	Submissions <sup>10</sup>	Due Date
1.	<p>Gresham-Barlow School District will:</p> <p>a. Review the IEE requirements identified in IDEA, (34 §§ CFR 300.502 – 300.504, OAR 581-015-2305, and this Final Order;</p> <p>b. Review the related requirements of the Procedural Safeguards Notice;</p> <p>c. Review and draft, as necessary, changes in the District’s IEE policy, administrative regulations (AR) and implementing procedures, and</p> <p>d. Develop a response aligned to requirements to the parent’s request for an IEE</p>	<p><i>If District identifies need for change:</i></p> <p>Submit original IEE policy, administrative regulations, and implementing procedures with draft changes identified.</p> <p><i>If the District determines that no changes are needed;</i></p> <p>Submit the original policy and administrative regulations with a statement attached specifying why changes are not needed.</p>	<b>June 14, 2013</b>
2.	Provide the response to the parent’s request for an IEE.	Submit copy of response to ODE.	<b>June 15, 2013</b>
3.	<p>ODE will review for approval policy changes, if any, recommended by the District.</p> <p>Upon ODE approval of submitted policy, administrative regulations, and implementing procedures,</p>	Agenda, sign-in sheet with printed names and positions of participating staff	<b>September 15, 2013</b>

<sup>9</sup> 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)).

<sup>10</sup> 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

	District shall provide training on the IEE information to all district staff and administrators who may respond to requests for an IEE.		
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Dated this 10th day of May 2013

  
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Sarah Drinkwater, Ph.D.  
Interim Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: May 10, 2013

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.