

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of )  
Beaverton School District 48J )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 14-054-007

**I. BACKGROUND**

On February 11, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing and attending school in the Beaverton School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On February 20, 2014, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On March 6, 2014, the District submitted its *Response* to the *Request for Response*, with accompanying documentation (69 documents totaling 218 pages). On March 19, 2014, the Parent submitted a written *Reply* via email in this case. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that an onsite investigation would be necessary. On March 21, 2014, the complaint investigator separately interviewed the Parent and District staff, including a School Psychologist and an Autism Consultant, with the District's legal counsel present during interviews of District staff. On March 28, 2014, the complaint investigator interviewed by telephone the Student's medical doctor. The complaint investigator reviewed and considered all of the interviews and documents in reaching the findings of fact and conclusions of law contained in this order.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from February 12, 2013, to the filing of this complaint on February 11, 2014.<sup>2</sup>

| No. | Allegations   | Conclusions   |
|-----|---|---|
| 1.  | <p><b><u>Evaluation and Reevaluation Requirements; Consent</u></b></p> <p>The complaint alleges the District violated the IDEA by exceeding the</p> | <p><b><u>Not Substantiated</u></b></p> <p>The Department concludes that the exchange of information that occurred in this case is</p> |

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

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

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|  | <p>scope of the written consent signed by the Parent for reevaluation of the Student and by exceeding the scope of the reevaluation process, by consulting with the Student's treating physician in addition to obtaining a medical statement from the treating physician.</p> <p>Relevant Law: OAR 581-015-2105; OAR 581-015-2110, OAR 581-015-2115 and 34 CFR 300.301 and 34 CFR 300.303; OAR 581-015-2090 and 34 CFR 300.9, 300.154, 300.300 &amp; 300.622.</p> | <p>clearly within the scope of the consent provided by the Parent. The Department does not sustain the allegation that the District must reimburse the Parent for the amount billed by the Student's medical doctor based upon an allegation that the District exceeded the scope of the consent in this case or failed to provide free reevaluation of the Student.</p> |
|  | <p><b><u>Proposed Corrective Action</u></b></p> <p>The Parent requests the following corrective action: reimburse the Parent for the cost of the District's consultation with the Student's treating physician.</p>  | <p>No Corrective Action is ordered in this case.</p>   |

### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently 10 years old, and is in fifth grade. The Student is eligible for special education under the categories of Emotional Disturbance, Other Health Impairment and Communication Disorder.

#### Evaluation and Reevaluation Requirements; Consent

2. On September 12, 2013, the Student's IEP team met at the Parent's request to determine if additional assessments were needed. The IEP team agreed to evaluate the Student for Autism Spectrum Disorder (ASD), and on September 12, 2013 the Parent signed a form entitled "Prior Notice about Evaluation/Consent for Evaluation" to consent to the evaluation, which lists the following assessments: "Functional Communication, Social Communication, Test of Problem Solving, Medical Evaluation, one illegible item, Autism Diagnostic Observations Schedule, Developmental Profile, and an Autism Spectrum rating scale." The Parent also signed on September 12, 2013 an "Authorization to Use and/or Disclose Educational and Protected Health Information" form which authorized the use and disclosure to the District by the Student's medical doctor (a Psychiatrist) of the "Physician's Eligibility Statement," "Educational Information" and "Psychological evaluations," along with "Mental health related information requested." The District then began the assessments required to determine whether the Student's disability includes ASD.
3. The Parent states the Student's medical doctor has been the Student's treating doctor since 2009. The Student's medical doctor completed a Medical Statement on September 17, 2013 and provided it to the District's School Psychologist. This Medical Statement included, *inter alia*, a diagnosis of "Asperger's Disorder," and the School Psychologist observed that this was a new diagnosis for the Student and on or about October 31, 2013, called the Student's medical doctor intending to discuss this new diagnosis and left a message requesting the Student's medical

doctor return the call. The School Psychologist was interested in knowing if there were additional assessments concerning the "Asperger" diagnosis listed on the Medical Statement, to avoid duplication of assessments.

4. On or about November 12, 2013, the Parent requested a telephone call from the School Psychologist, and then the Parent requested that the School Psychologist share the evaluation information with the Student's medical doctor before the Parent's appointment with the medical doctor the next day. On or about November 12, 2013, the Student's medical doctor returned the School Psychologist's phone call. By that time, the School Psychologist had completed the relatively small assigned portion of the overall assessment concerning the Student's potential ASD, which included a records review and a review of observational checklists from the Parent and teacher. The School Psychologist reports that the Student's medical doctor said that the Student is a "complex kid" when the School Psychologist noted the new Asperger diagnosis, but no additional assessments were identified by the Student's medical doctor. The Student's medical doctor then made inquiries of the School Psychologist, including whether the District had completed a cognitive assessment of the Student and the School Psychologist informed the medical doctor of a cognitive assessment by a third party which concluded the Student is in "high-average to superior" cognitively. The medical doctor also asked the School Psychologist about the School Psychologist's findings, which were limited to a Psychoeducational Evaluation based on behavior checklist reports. Although the School Psychologist's component of the assessment related to ASD showed some elevated scores, this is only one part of the overall ASD assessment. The Student's medical doctor also had questions about a particular assessment, the Autism Diagnostic Observation Schedule (ADOS) but the School Psychologist had not administered that assessment to the Student. At the Student's medical doctor's request, the School Psychologist sent an email to the District's Autism Consultant requesting contact with the Student's medical doctor concerning the ADOS. The School Psychologist also reported that the Student's medical doctor called the School Psychologist because the medical doctor needed to gather information before an upcoming appointment with the Parent. The School Psychologist is not sure how long the conversation with the Student's medical doctor took but believes it was around 20 minutes.
5. The District's Autism Consultant reports calling the Student's medical doctor on November 13, 2013, at the request of the Student's medical doctor, as relayed by the School Psychologist, and sharing the ADOS assessment results with the Student's medical doctor by telephone. The Autism Consultant also emailed a copy of the relevant portions of the report to the medical doctor after-hours that evening. The Autism Consultant also reports that the Student's medical doctor shared information concerning the Student and the Student's family, but this was not information that was requested by the Autism Consultant. The Autism Consultant also reports that the Student's medical doctor had questions concerning the Student's educational eligibility under ASD, and the Autism Specialist explained that the results to date were "non-spectrum scores." The Autism Specialist did tell the Student's medical doctor that the Student was at times non-compliant, refusing to answer some questions, but the report indicates that the Student was "rather negative and non-compliant, but conversation did occur." The Autism Consultant's second, and last, observation of the Student as part of the assessment occurred on November 15, 2013, after the conversation with the Student's medical doctor, but before the IEP meeting on November 19, 2013.
6. The Student's medical doctor reports that conversation with the School Psychologist by telephone, on or about November 12, 2013, lasted about one hour; and that the conversation with the District's Autism Consultant lasted about 30 minutes; and that District staff had not previously contacted the medical doctor concerning the Student during the ASD evaluation process. The Student's medical doctor and, reportedly, the Parent, believed District staff needed input from the Student's medical doctor and should have called in the first instance. The Student's medical

doctor reports that he called District staff to give them a better perspective of the Student's psychological disorders and believes that goal was accomplished. The Student's medical doctor billed the Parent for the time spent on the telephone with District staff, but reported advising the Parent that the Parent should not seek reimbursement from the District. The medical doctor did not notify District staff they would be billed for the conversations concerning the Student prior to or during the conversations. The medical doctor reports that any incurred bills for a student go to the Parents in these circumstances and that the Student's medical doctor has never billed school districts for these consultations. The medical doctor believes that all parties benefitted from the conversations concerning the Student and expressed hope that District staff learned more about the Student's psychological status.

7. During interview of the Parent by the complaint investigator, the Parent reports understanding that District staff would talk to the Student's medical doctor as part of the consent to obtaining a Medical Statement so that District staff could do their report, but that the Parent did not give permission to explain the report to the Student's medical doctor, so that the Student's medical doctor could explain their report to the Parent. The Parent further stated in the interview that the District did not explain it would be verbally explaining their report to the Student's medical doctor and the Parent stated that a copy of the written reports would have been fine. However, there is no written evidence in the record to indicate the District was on notice of this. The Parent further stated Parent just wanted a copy of a written report so the Parent could talk to the Student's medical doctor about the reports before the IEP meeting and that Parent did not want the District to explain the reports to the doctor. Again, it is not clear that this information was relayed to the District based on the documents in the record. The Parent further explained that the Parent wanted a final report but instead District staff provided only portions of the report and want the Parent to pay the bill. Finally, the Parent believes that the District should have declined to answer any questions asked by the Student's medical doctor.
8. On January 22, 2014 and again on January 31, 2014, the District issued Prior Written Notices (PWN)s refusing the Parent's email request for reimbursement for the Student's medical doctor's invoice to the Parent for the time spent during the medical doctor's telephone conversations with the School Psychologist and Autism Consultant.

#### **IV. DISCUSSION**

##### **1. Evaluation and Reevaluation Requirements; Consent**

As related to the IDEA allegation above, at particular issue in this case, is a fee charged to the Parent by the medical doctor for phone conversations with school staff that were related to the Student and associated clarifications by the Student's medical doctor regarding certain assessments conducted by various school personnel during the school's autism evaluation process. The IDEA allegations at issue for the purpose of this investigation apply to the evaluation of the Student for an autism eligibility and the Parent's related consent. The complaint alleges the District violated the IDEA by exceeding the scope of the written parental consent signed by the Parent for the reevaluation of the Student and by exceeding the scope of the reevaluation process by consulting with the Student's treating physician in addition to obtaining a medical statement from the treating physician. The Parent's *Reply* in this case states that the Parent's "allegations are that by refusing to reimburse me for the [Student's medical doctor's] fees, the school district has violated their obligation under the IDEA to provide a re-evaluation at public expense and without charge to the parent under the definition of Free and Appropriate Public Education (FAPE) in the IDEA 2004 law." [emphases in original]

In a February 25, 2014, letter to the Department's complaint investigator, the Parent also stated that "a more accurate statement of my allegation is that, by consulting with [the Student's medical doctor] *for reasons other than obtaining an explanation of the medical statement*, the school district violated the IDEA by exceeding the scope of my written consent." Concerning the allegation in the Department's *Request for Response* concerning "exceeding the scope of the reevaluation process," the Parent's letter of February 25, 2014 states:

[I]t is my understanding that the school district is obligated to provide a reevaluation that is "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." OAR 581-015-2110(4)(e). With that in mind, a consultation with [the Student's medical doctor] by the school district personnel would, in my view, be within the scope of the reevaluation process as long as it was confined to obtaining an explanation of the medical statement *as it relates to the identification of all of [the Student's] special education and related services needs*. In fact, it would seem to me that such a consultation with [the Student's] treating physician would help the school district meet its obligation to provide a reevaluation that is "sufficiently comprehensive" as required under OAR 581-015-2110(4)(e). [emphases in original]

The essence of the complaint in this case is thus whether the District must reimburse the Parent for time billed to the Parent by the Student's medical doctor for two phone conversations which were initiated by the medical doctor after the District's IDEA reevaluation process, based upon the Parent's theory that the District exceeded the scope of the Parent's written consent for the particular reevaluation of the Student. To determine this question, the Department must first examine the IDEA's reevaluation process and its rules and then look at the relevant consent requirements.

OAR 581-015-2100(1) provides that school districts are responsible for evaluating children and determining their eligibility for special education services. OAR 581-015-2105(4) provides that school districts must ensure that a reevaluation of a child with a disability is conducted in accordance with OAR 581-015-2115, subject to OAR 581-015-2110(2) (involving consent). OAR 581-015-2110(3)(a) requires school districts to "Use a variety of assessment tools and strategies to gather functional, developmental, and academic information about the child, *including information provided by the parent* that may assist in determining" the content of the child's IEP. [emphasis supplied]. The "sufficiently comprehensive" language that Parent noted is "... required under OAR 581-015-2110(4)(e)" actually relates to all of the assessments and evaluation materials for a student, which must identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified. Nothing in this rule or its language requires that non-District initiated follow up explanatory phone conversations with a parentally selected medical doctor are required components of a "sufficiently comprehensive" evaluation for IDEA purposes. Nor is there any indication in the record that the District was unable to determine what special education or related services the Student needed without these extraneous conversations with the medical doctor. Indeed, the only requirement for a physician or medical doctor expressly listed in the IDEA evaluation process is for the doctor to complete the medical assessment as necessary for various disability eligibility types.<sup>3</sup> School District staff will then review and use this medical assessment, in addition to a variety of other required assessments and materials, to complete the IDEA evaluation process. Additionally, OAR 581-015-2110(2)(a) and (b) provide that before conducting a reevaluation, school districts must

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<sup>3</sup> See OAR 581-015-2000 and OAR 581-015-2130(1)(d)

provide notice to the parent that describes any evaluation procedures the school district proposes to conduct as a result of the evaluation planning process and must obtain informed written consent in accordance with OAR 581-015-2090 and 581-015-2095.

OAR 531-015-2090(5) states that a school district must obtain informed parent consent before conducting any reevaluation of a child with a disability. OAR 581-015-2090(1)(a) and (b) provide that consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought and understands and agrees in writing to the carrying out of the activity for which consent is sought.

Thus, the inquiry of whether the District exceeded the scope of the notice provided to the Parent or the scope of the Parent's written consent in this case necessarily begins with a review of the notice that was provided by the District to the Parent before this evaluation occurred, and the related written consent form that was signed by the Parent. The notice and consent in this case are contained in a single document, entitled "Prior Notice about Evaluation/Consent for Evaluation" signed by the Parent on September 12, 2013. This notice and consent lists the following assessments which were consented to in writing by the Parent: "Functional Communication, Social Communication, Test of Problem Solving, Medical Evaluation [unreadable], Autism Diagnostic Observations Schedule, Developmental Profile, Autism Spectrum rating scale." The Parent also signed, on September 12, 2013, an "Authorization to Use and/or Disclose Educational and Protected Health Information" which authorized the use and disclosure to the District by the Student's medical doctor the "Physician's Eligibility Statement," "Educational Information" and "Psychological evaluations", along with "Mental health related information requested."

It is in this context that the Department must determine whether the Parent's allegation that the District's provision of information to the Student's medical doctor verbally, as opposed to a written report, is beyond the scope of the Parent's consent; and whether explaining the reports made by two District staff members to the Student's medical doctor is beyond the scope of the Parent's consent on this form. The Department concludes that the exchange of information that occurred in this case is clearly within the scope of the consent provided by the Parent. The logic of the distinction made by the Parent in this case simply escapes the Department. The caption of the form entitled "Authorization to Use and/or Disclose Educational and Protected Health Information" clearly envisions an exchange of information between the parties listed on the form, in this case the District, on the one hand, and the Student's medical doctor, on the other hand. Additionally the authorization begins. "I authorize the following provider(s) to use and/or disclose educational and/or protected health information regarding my child." Again, this clearly envisions an *exchange* of information between the District and the Student's medical doctor, of both educational and protected health information. Presumably, educational information would originate with District staff. Additionally, the Student's medical doctor called the District and provided information to the District during the call in question, but primarily received information from the District at this time, in order to assist the Student's medical doctor in preparing for an appointment with the Parent the day after the phone calls to the District, presumably to assist the Parent in being sufficiently informed by the Student's private medical provider and to allow for meaningful participation at the IEP meeting on November 19, 2013. This was per the Parent's request of the District. Parent has stated that Parent believes when asked questions by the Student's medical doctor by telephone that District staff had to decline to provide an answer to the Student's medical doctor, to stay within the scope of the Parent's written consent; however, there is nothing on the consent form or the Authorization to Use and/or Disclose Educational and Protected Health Information form to this effect. Neither the Student's medical doctor nor the Parent ever notified the District that it would be billed by the Parent or Doctor for providing information verbally to the Student's medical doctor concerning the District staff's assessments. Nor is there evidence that District was informed of an option of providing this information in writing to the parties in lieu of the phone

calls. Further, the Student's medical doctor billed the Parent for these calls, and the medical doctor reported during interviews with the Department that the Parent was told not to seek reimbursement from the District for these conversations by the medical doctor. Finally, nothing in the consent form or in the applicable regulations requires this rigid view of the Parent's written consent as related to medical billing in this case. There is nothing in the regulations that would require a school district to be billed for good faith conversations with medical doctors after obtaining an Authorization to Use and/or Disclose Educational and Protected Health Information form from a parent. Nor is there any guidance on point that would indicate that after a reevaluation consent form is signed by a parent that every subsequent medical expense associated with a student may be billed to a district without the district's knowledge or consent. Indeed, this would create a slippery slope for school districts and policy wise would prohibit conversations and collaboration which would ultimately benefit a student.

The signed IDEA Consent for Evaluation/ Reevaluation form is not to be confused with medical billing authorization nor is it a directive to doctors' regarding their billing practices. While the IDEA does require a Free Appropriate Public Education (FAPE) and evaluations at no-cost to parents, there is no provision for extra medical billing matters. These conversations were clearly initiated by the doctor for the benefit of the doctor and the Parent, not the school district. It is inconsequential if the District benefited in any way from these conversations made at the behest of the Student's physician. Indeed, the District had completed most of its reevaluation requirements *before* the doctor even returned the District's phone calls, and as noted above the District was never aware the doctor was billing them for the conversations. As such, the District was not the party who requested or expressly benefited from the dialogue and these discussions were not part of the regulatory reevaluation requirements that are necessary under the IDEA.

Finally, it is important to note that while the IDEA makes reference to a FAPE and lists several no-cost provisions for parents, there is nothing in the IDEA that would prohibit a school district from charging reasonable fees to students with disabilities, or their parents, if the fees are charged to the same extent to children who do not have disabilities.<sup>4</sup> Therefore, there is indeed a clear basis for *parents* to pay reasonable fees for their children in the IDEA.

As the fees for these conversations were not related to the doctor's necessary role in the specific IDEA evaluation process which was initiated by the District and the conversations were conducted at the behest of the doctor *after* the completion of the medical evaluation form, it is not unreasonable for the Parent to pay these fees or to likewise dispute them with the doctor's office as opposed to the District. Likewise, the doctor may want to reexamine these charges to determine if they were even within the scope of the Parent's requested services and payment authorization. However, these medical billing matters are outside the scope of the IDEA and thus cannot be addressed in this investigation.<sup>5</sup>

The Department therefore does not sustain the allegation that the District must reimburse the Parent for the amount billed by the Student's medical doctor based upon an allegation that the District exceeded the scope of the consent in this case or failed to provide free reevaluation of the Student.

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<sup>4</sup> 34 CFR 300.39(b)(10)

<sup>5</sup> See OAR 581-015-2030

**CORRECTIVE ACTION<sup>6</sup>**  
*In the Matter of Beaverton School District*  
Case No. 14-054-007

The Department does not order Corrective Action resulting from this investigation.

Dated this 9th Day of April, 2014



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Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Learning/Student Services

Mailing Date: April 9, 2014

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<sup>6</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)).