

No.	Allegations	Conclusions
1.	<p><u>Consent</u></p> <p>The complaint alleges the District violated the IDEA by providing special education services without consent for the student during the 2013-2014 school year.</p> <p>Relevant Law: OAR 581-015-2090 and 34 CFR 300.9, 300.154, 300.300 & 300.622.</p>	<p><u>Not Substantiated</u></p> <p>In this case, the Parent consented to the initial provision of special education services on June 3, 2011.³ Although the consent form was signed when the Student attended the Student's former school district, it was still in effect upon the Student's transfer to the District at the beginning of the 2013-2014 school year. The documentation does not reveal that the Parent revoked consent for the District to provide special education services to the Student, verbally or in writing at the September 19, 2013 meeting. In any event, a verbal attempt to revoke previously granted consent for special education services is simply ineffective. Rather, revocation of consent for special education services must be in writing. OAR 581-015-2090(4)(B)⁴ The Department does not sustain the allegation that the District continued to provide special education services to the Student after revocation of consent from the Parent for the provision of special education services.</p>
2.	<p><u>Access to Student Education Records</u></p> <p>The complaint alleges that the District violated the IDEA by not providing to the Parent all the Student's education records requested during March and April 2014, after a request by the Parent that the District do so.</p> <p>Relevant law: OAR 581-015-2300 and 34 CFR 300.501 and 34 CFR 303.405(a).</p>	<p><u>Not Substantiated</u></p> <p>In this case, the District provided to the Parent the requested education records in a timely fashion. Thus, the Department does not sustain the allegation that the District failed to timely provide the Student's requested education records.</p>

	<p><u>Proposed Corrective Action</u></p> <p>The complaint does not request specific corrective action.</p>	<p>No Correction Action is ordered in this case.</p>
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³ While this date is outside the jurisdictional timeframe, of OAR 581-015-2030, it is relevant for discussion purposes for the allegations under investigation.

⁴ See also *Department of Education v. M.F. ex rel R.F.*, 840 F.Supp2d 1214, 1228-29 (D. Haw. 2011), clarified by No. 11-0047, 2012 WL 639141 (D. Haw. Feb. 28, 2012).

III. FINDINGS OF FACT

Background

1. The Student in this case is presently seven years old and is in the second grade in the District.
2. The Student transferred to the District at the beginning of the 2013-2014 school year.
3. The Student is presently eligible for special education as a student with a Communication Disorder (CD).

Consent and Access to Student Education Records

4. The Student's former school district's records provided to the District included an IEP and a statement of eligibility, both dated March 13, 2013. The Student's records from the former school district included Prior Written Notice (PWN) which included a "Consent for Initial Provision of Special Education Services," signed by the Parent on June 3, 2011. The consent in the former school district's records provided to the District include a fact sheet stating that consent for special education services may be revoked in writing at any time. The Student's IEP with the former school district, dated September 22, 2013, provides a placement of "Regular classroom with pullout speech therapy" and the Nonparticipation Justification indicates a removal from regular education classes for "120 min/month Speech Therapy in small group outside of the classroom."
5. The records provided to the District by the Student's former school district include a letter to the Parent dated June 13, 2013 which acknowledges a verbal request made by the Parent to the former school district on May 20, 2013 to "stop speech services" and this letter advises: "However, the school cannot take any steps towards this until we receive this request from you in writing," and "[The Student] will still be enrolled in speech services as a student with a communication disorder until we receive your request in writing."
6. On September 18, 2013, the SLP (who reported during the complaint investigator's telephone interview that the records from the Student's former school district had arrived after the beginning of the school year) left a voice mail telephone message with the Parent indicating that the District was prepared to initiate special education services as provided in the Student's IEP from the Student's former school district (dated March 13, 2013). On September 19, 2013, the Student's SLP (who is also the Student's case manager) and the Student's regular education classroom teacher met with the Parent who expressed concern about the evaluation completed at the Student's former school district and also verbally indicated that the Parent had not attended the IEP meeting for the March 13, 2013 IEP developed at the Student's former school district and thus did not want the District to implement the IEP from the Student's former school district. At that meeting, the Parent verbally agreed to a reevaluation of the Student to determine current language levels. On September 24, 2013, the District mailed to the Parent a PWN (dated September 22, 2013) stating the IEP team, including the Parent, had agreed to continue the Student's "Communication eligibility while a re-evaluation is in the process..." The District also sent a letter with the PWN stating, in part: "Enclosed you will find a 'Prior Written Notice of Evaluation' and a 'Consent for Evaluation' form. These documents give Oregon Trail School District permission to re-assess [the Student's] speech and eligibility for specialized services, as we discussed in our meeting September 19th. Please sign these documents and return them...."
7. The District reminded the Parent to return the signed consent form in October and November of 2013, by telephone on October 9, 2013 and on October 17, 2013. The SLP also left a voice mail telephone message with the Parent concerning signing and return of the consent form and asked

if they could meet at the parent-teacher conferences. Although the Parent did not respond to the SLP's voice mail message, the SLP attempted to discuss signing and return of the consent form in person with the Parent at a parent-teacher conference on or about October 18, 2013, but the Parent refused to discuss the matter. The Parent did not provide a signed consent to evaluate form to the District. The Parent also did not provide a written request to revoke special education services to the Student. In December of 2013, because the Parent had not returned the reevaluation consent form and had not revoked special education services in writing, the District began to provide services to the Student based on the Student's IEP from the former school district requiring speech services.

8. The District mailed a progress report dated January 31, 2014, stating the Student had made progress towards the Student's annual goal (articulation), an IEP meeting notice for the annual IEP review (the District notified the Parent of the March 6, 2014 IEP meeting by a written meeting notice sent home with the Student on February 21, 2014, and a telephone message left with the Parent, also on February 21, 2014, and by mailing on February 27, 2014, to the Parent, the notice of the March 6, 2014 IEP meeting - with a delivery date of February 28, 2014 which was confirmed by U.S. Post Office documentation). On March 7, 2014, the District also mailed a copy of the new annual IEP dated March 6, 2014 to the Parent, after the Parent did not attend the March 6, 2014 IEP meeting.
9. The Parent mailed a letter dated March 31, 2014 to the District (to the attention of the Superintendent), stating that the District had failed "to obtain my consent for services at Sandy Grade School for the calendar year 2013-2014," and further stated that the Parent had verbally "clearly stated to decline ANY services for [the Student]." The Parent further stated in the letter that the Parent learned the Student "was receiving speech therapy the entire school year – unknown to myself." Finally, the Parent requested a "signed copy of the consent document which allowed participation, as well as a calendar of all times [the Student] met with [the SLP], or any substitute individual conducting assessments and/or instruction with [the Student]." This March 31, 2014 letter is date stamped April 4, 2014. On April 4, 2014, the District (the Superintendent) sent a letter to the Parent offering to meet with the Parent on April 9, 2014. The Parent did not respond to the District's April 4, 2014 letter and neither attended or rescheduled the April 9, 2014 meeting with the Superintendent.
10. On April 9, 2014, the District mailed to the Parent a PWN (accompanied by a copy of Procedural Safeguards) stating the District had received the Parent's letter on April 4, 2014, the Parent's "written request to revoke the provision of special education services . . . and will not continue to provide services." After the Parent received the PWN mailed on April 9, 2014, the Parent called the District Office and spoke with the secretary for the District's Superintendent and stated that revocation was not the Parent's intent by the prior communication.
11. On April 15, 2014, in response to the request for documentation in the Parent's letter dated March 31, 2014 (received by the District on April 4, 2014), the District mailed a letter to the Parent accompanied by a copy of the "Consent for Initial Provision of Special Education Services" signed by the Parent on June 3, 2011, a consent signed when the Student attended the Student's former school district. The District also included a copy of a fact sheet advising that consent for special education services may be revoked in writing at any time and citing OAR 581-015-2090(4). The District did not have access to the SLP to obtain the SLP's service log at the time of the April 15, 2014 letter because the SLP was not available to the District during this timeframe due to bereavement leave. The SLP took frequent leave beginning April 1, 2014. The SLP's bereavement leave began on April 15, 2014 and the SLP returned to work on April 23, 2014.

12. On April 21, 2014, the Parent wrote a letter to the District, acknowledging receipt of the District's April 15, 2014 letter and accompanying documents. The Parent stated that "The copy of the Consent you provided me was dated 2011 and was from Centennial School District, not Oregon Trail – as you are aware I never signed a consent and explicitly directed [a District elementary school Principal] and [the District's SLP]... on September 24, 2013 that I did NOT want services for [the Student]." The Parent also stated in this letter that "I request a copy of the calendar of ALL meeting times [the Student] had with [the SLP], or any individual substituting in her place. Additionally I request copies of all records pertaining the services provided to [the Student], evaluations, reports, etc." The District provided to both the Department and the Parent with its *Response* in this case (received by the Department on May 9, 2014) the dates special education services were provided to the Student by the SLP and evaluation reports in the District's possession (from the Student's former school district).

IV. DISCUSSION

1. Consent

The complaint alleges the District violated the IDEA by providing special education services for the Student without the Parent's consent.

The IDEA requires that districts obtain informed parental consent before: 1) conducting preplacement evaluations; 2) conducting reevaluations; and 3) before the initial provision of special education services.⁵ OAR 581-015-2090(2) provides: "A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child." OAR 581-015-2090(2)(e) provides: "If, at any time subsequent to the initial provision of special education and related services, the parent or adult student revokes consent in writing for the continued provision of special education and related services, the school district (A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services." Additionally, OAR 581-015-2090(4)(a)(B) provides: "A parent or adult student may revoke consent for the provision of special education services in writing at any time before or during the provision of those services." Parents must provide revocation of consent in writing.⁶

In this case, the Student transferred from another Oregon school district at the beginning of the 2013-2014 school year, and the Student's education records provided to the District by the Student's former school district included a current IEP in effect, dated March 13, 2014. OAR 581-015-2230(1) speaks to transfers of IDEA students and provides: "In state: If a child with a disability (who had an IEP that was in effect in a previous school district in Oregon) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either: (a) Adopts the child's IEP from the previous school district; or (b) Develops, adopts and implements a new IEP for the child." The IDEA and the Part B regulations only specifically address districts' obligations with regard to transfer students with disabilities who move during the school year.⁷ Thus, when a student transfers intrastate between

⁵ 34 CFR 300.300

⁶ 34 CFR 300.300(b)(4) and 73 Fed. Reg. 73,014 (2008)

⁷ *Eagle Mountain-Saginaw Indep. Sch. Dist.*, 60 IDELR 178 (SEA TX 2012)

school years, the new district need only develop and implement a program that offers the student FAPE.⁸

The regulations do not provide that initial consent for the provision of special education services must be obtained again for a student transferring into a new Oregon school district with a current IEP in effect, but rather the rule provides that the new school district must provide services comparable to those described in the current IEP from a student's former school district until the IEP from the former school district is adopted or a new IEP is developed by the new school district for the student. Indeed, although the Parent did verbally request that services not be provided under the IEP adopted at the Student's former school district during a meeting on September 19, 2013, the final understanding reached at that September 19, 2013 meeting, as documented in the PWN issued by the District on September 22, 2013, is that the team, including the Parent, agreed that the District would reevaluate the Student in the area of speech. The documentation thus does not reveal that the Parent officially revoked consent for the District to provide special education services to the Student at the September 19, 2013 meeting. Furthermore, a verbal attempt to revoke previously granted consent for special education services is ineffective. Rather, revocation of consent for special education services must be in writing. OAR 581-015-2090(4)(a)(B)⁹ In this case, the Parent's consent to the initial provision of special education services on June 3, 2011, although signed when the Student attended the Student's former school district, was still in effect upon the Student's transfer into the District at the beginning of the 2013-2014 school year. The Parent had been advised that revocation of special education services must be in writing by the Student's former school district, in both the fact sheet accompanying the signed initial consent for special education services signed on June 3, 2013, and in a letter dated June 13, 2013 (a letter from the Student's former school district to the Parent acknowledging the Parent's verbal request to revoke consent for special education services and advising that revocation of special education services must be in writing from the Parent).

In this case, the Parent also asserted in a letter dated March 31, 2014 that the Parent was not aware the District was providing special education services to the Student until March 20, 2014 when the Student advised the Parent that the Student had been receiving speech services during the entire 2013-2014 school year. However, this assertion is not reasonably supported by the documentation in this case, which includes the mailing to the Parent of a January 31, 2014 progress report concerning the Student's annual goal of articulation, notice mailed to the Parent (received by the Parent on February 28, 2014) of an upcoming IEP meeting on March 6, 2014, and the mailing to the Parent a copy of the Student's new annual IEP dated March 6, 2014, because the Parent did not attend the March 6, 2014 IEP meeting. Upon receipt of the Parent's letter dated March 31, 2014, which the District correctly interpreted as a written revocation of consent for special education services, the District promptly stopped providing special education services to the Student and provided a PWN stating special education services would no longer be provided to the Student.

Based on the foregoing, the Department does not sustain the allegation that the District continued to provide special education services to the Student after revocation of consent to the provision of special education services.

⁸ See *Clovis Unified Sch. Dist.*, 52 IDELR 236 (SEA CA 2009)

⁹ See also *Department of Education v. M.F. ex rel R.F.*, 840 F.Supp2d 1214, 1228-29 (D. Haw. 2011), *clarified by No.* 11-0047, 2012 WL 639141 (D. Haw. Feb. 28, 2012)

2. Access to Student Education Records

The complaint alleges that the District violated the IDEA by not providing to the Parent all education records requested by the Parent. The investigation has clarified that the Parent is referring to the Parent's letter dated March 31, 2014, received by the District on April 4, 2014, in which the Parent requested a copy of the dates the Student had received special education services. The Parent made an additional request for certain education records in a letter dated April 24, 2014.

The Family Educational Rights and Privacy Act (FERPA) defines an education record as a record that is directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution.¹⁰ Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days following its receipt of a request.¹¹ IDEA adds the additional requirements that education records be provided without unnecessary delay and before any IEP meeting or any Due Process or Resolution Session.¹²

In this case, the District provided to the requested education records to the Parent in a timely fashion. The District provided the progress report concerning the Student's annual goal of articulation on January 31, 2014. With its *Response* in this case, received by the Department on May 9, 2014 and copied to the Parent, the District provided the additional requested education records to the Parent. These records include a summary of the dates of services provided to the Student by the SLP (along with some data from these service dates) and the only evaluation in the possession of the District, a "Speech/Language Evaluation Report" dated March 12, 2013 completed by the Student's former school district. Thus, the Department does not sustain the allegation that the District failed to timely provide the Student's requested education records.

CORRECTIVE ACTION¹³

In the Matter of Oregon Trail School District
Case No. 14-054-016

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

Dated this 18th Day of June, 2014



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

Mailing Date: June 18, 2014

¹⁰ 34 CFR § 99.3

¹¹ Id.

¹² 34CFR 300.613(a)

¹³ 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)).