

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Douglas
County School District # 4 (Roseburg)

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 16-054-009

I. BACKGROUND

On April 4, 2016, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Douglas County School District 4 (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 on April 4, 2016.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On April 8, 2016, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 22, 2016.

On April 18, 2016, the District submitted a *Response* indicating that they disputed all portions of the allegations in the Parent's Complaint. In total, the District submitted the following items:

- A. Initial Autism Evaluation Report, Fall 2008;
- B. Functional Communication Assessment, 11/18/08;
- C. Initial Autism Evaluation Report, 1/13/2009;
- D. Comprehensive Educational Evaluation (Psychometric Summary), 1/30/09;
- E. news article regarding evaluators criminal history, 1/8/10;
- F. news article regarding advocacy fraud, 3/7/10;
- G. news article regarding evaluator fraud, 5/13/10;
- H. news article regarding evaluators criminal history, 2/13/11;
- I. Psychoeducational Evaluation, 1/10/11;
- J. Functional Behavioral Assessment, 3/13/12;
- K. Special Education Placement Determination, 12/11/14;
- L. Student IEP, 12/11/14;
- M. Student IEP, 12/11/14 with 10/23/15 amendment;
- N. Student IEP, 12/11/14 with 9/21/15 amendment;
- O. Behavior Specialist Program Consultation Service report, 06/15/15;
- P. Special Education Placement Determination, 9/21/15;
- Q. Special Education Placement Determination, 10/23/15;
- R. Student Data Collection, 12/9/15—1/19/16, 1/26/16—2/19/16;

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- S. Student Behavior Support Plan, 12/3/15 (with 1/12/16 edits);
- T. Student Autism Evaluation Report, 3-year reevaluation, 1/12/16;
- U. Parent Permission for Occupational Therapy Observation, 1/14/16;
- V. Student IEP, 2/25/16;
- W. Student Behavior Support Plan, 3/3/16;
- X. Email: Parent request to District for IEE, 3/14/16;
- Y. Email: District internal email discussion regarding Parent request, noting that District recently completed FBA in school and suggesting Parent's request be clarified regarding the intent of the IEE FBA, whether for school, home, or community, 3/14/16;
- Z. Email: District response to Parent request agreeing and noting District requirements regarding evaluator professional qualifications, cost, and geography, 3/18/16;
- AA. Email: Parent selected evaluator to District, with attached consulting agreement, price, and requesting PO#; 3/26/16;
- BB. Email: District to parent selected evaluator, process starting and naming contact persons, 3/27/16;
- CC. Email: District responding to parent selected evaluator, problems with evaluator qualifications, 4/4/16;
- DD. Email: Department to District re: filing of complaint, 4/4/16;
- EE. Email: District to Department, additional issues regarding complaint, 4/4/16;
- FF. Email: District to Department, clarifying issues in complaint, 4/4/16;
- GG. Email: District to Parent, providing list of evaluators and evaluator qualifications, 4/6/16;
- HH. Email: District to Parent, providing IEE procedures and guidelines, 4/11/16;
- II. Letter responding to each allegation in the Request for Response, 4/18/16;
- JJ. Email: District to Parent, assuring Parent that IEE will be provided at public expense, 4/14/16;
- KK. Cover letter from District to Parent with duplicate packet of materials, 4/19/16;
- LL. Department Request for Response in case No.: 16-054-009.
- MM. Copy of website dealing with prospective evaluator's past criminal behavior;
- NN. Copy of prospective evaluators' website;
- OO. Copy of prospective evaluator's website advertising the evaluator as special education advocate.

The Parent submitted a short letter and a series of emails between the Parent and the District, as well as IEP Meeting Notes from December 1, 2015 and January 12, 2016 IEP Meetings on April 12, 2016. The Parent submitted a letter from Community Living Case Management Inc. on April 27, 2016. The Department's Complaint Investigator determined that telephone interviews were needed. On April 29, 2016, the Complaint Investigator interviewed the Parent by phone. On May 6, 2016, the Complaint Investigator interviewed the District's Director of Student Services by phone. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. 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 in Section III and the Discussion in Section IV. This Complaint covers the one-year period from April 5, 2015 to the filing of this Complaint on April 4, 2016.

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Independent Education Evaluation:</u></p> <p>The Parent alleged that the District violated the IDEA by:</p> <p>(a) failing to provide the Parent with information about where an Independent Educational Evaluation may be obtained, and the school district criteria applicable for Independent Educational Evaluations;</p> <p>(b) creating unnecessary delay in the provision of an Independent Evaluation at public expense following the Parent's request; and</p> <p>(c) asserting that the District would choose the evaluator for the Independent Educational Evaluation rather than Parent.</p> <p>(OAR 581-015-2305, 34 CFR 300.503)</p>	<p><u>Not Substantiated.</u></p> <p>The District did not violate the IDEA in this case because:</p> <p>(a) the District did provide the Parent with information about where an Independent Educational Evaluation could be obtained, and the applicable District criteria;</p> <p>(b) the delay was due partially to scheduled breaks in the academic schedule, and complications attributable to the first evaluator selected; and</p> <p>(c) the District did not assert that it would choose the evaluator, only that unqualified evaluators could not be selected.</p>

III. FINDINGS OF FACT

- 1) The Student in this case is sixteen years old and resides in the Douglas County School District 4 (Roseburg).
- 2) The Student is in the tenth grade at the high school and eligible for Special Education services under the category of Autism Spectrum Disorder.
- 3) The Student had a Functional Behavioral Assessment (FBA) conducted in 2015, and a Behavior Support Plan (BSP) was in place. The Student was suspended on October 15, 2015 after the Student displayed verbal and physical aggression, culminating in injury to a teacher. The Student was suspended on October 15, 2016 for a time for this incident. This suspension was in place until the IEP Team placed the Student on homebound instruction by revising the Student's IEP on October 23, 2015. Following this incident the District updated the FBA and BSP. Both were in the process of being implemented when the Parent filed this Complaint.
- 4) As of March 3, 2016, the District had a new BSP in place, and the Student's class time and course schedule were being increased.
- 5) On March 14, 2016, prior to the Student's being fully reintegrated into a full school day, the Parent requested an Independent Educational Evaluation (IEE), specifically a Functional Behavioral Analysis/Assessment.
- 6) On March 18, 2016, the District responded to the Parent seeking clarification regarding whether the FBA/BSP was for home, school, or community, and explaining that the two parties would

need to set parameters such as the professional qualifications of the evaluator, cost, and geography. The District was aware that the Parent had selected a prospective evaluator, and expressed willingness to work with the Parent-selected evaluator.

- 7) On March 26, 2015, the evaluator selected by the Parent sent the District his consulting agreement with details of the evaluation, including cost.
- 8) On March 27, 2016, the District responded to the selected evaluator and began the process of starting the IEE.
- 9) Sometime between March 27, 2016 and March 31, 2016, the District discovered, through District personnel familiar with the proposed evaluator, that the proposed evaluator had a criminal conviction for defrauding a school district and also lacked the educational qualifications to conduct the IEE.
- 10) On March 31, 2016, District sent an email to the proposed evaluator and to the Parent, stating that the District would send a list of evaluator requirements as well as a list of potential evaluators to the Parent, so that the Parent could choose an evaluator for the IEE.
- 11) On March 31, 2016, the proposed evaluator asserted that the District could not select the provider for the IEE. The proposed evaluator also threatened to file a complaint with the Department if the District did not change course.
- 12) On March 31, 2016, the District informed the proposed evaluator that the District could provide input on the evaluator with regard to qualifications and training of the selected evaluator. The proposed evaluator responded by quoting the relevant law to the District and threatening to file a complaint with the Department if the proposed evaluator was not utilized.
- 13) The District emailed the proposed evaluator on April 4, 2016 and informed him that the District would not agree to allow him to conduct the IEE at public expense. The District emailed a list of qualified evaluators to the Parent on April 6, 2016 and provided a document titled "PROCEDURES: INDEPENDENT EDUCATIONAL EVALUATIONS" to the Parent on April 11, 2016.
- 14) On April 4, 2016, the Parent, through the advocate/proposed evaluator, filed this Complaint.

IV. DISCUSSION

1. Independent Education Evaluation:

The Parent alleges that the District failed to provide the Parent with information about where an Independent Educational Evaluation could be obtained and the applicable criteria; created unnecessary delay in the provision of an Independent Educational Evaluation at public expense; and asserted that the District would choose the evaluator for the Independent Educational Evaluation rather than the Parent.

The parent of a child with a disability has the right to an Independent Educational Evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. Upon request, the district must ensure the independent evaluation is provided without unnecessary delay or, in the alternative, the school district may request a hearing to demonstrate the appropriateness of its evaluation. "Independent Educational Evaluation" indicates an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child. "Public

expense" has the meaning that the school district will either pay for the full cost of the evaluation or ensure that the evaluation is otherwise provided at no cost to the parent.³

Upon receiving a request for an Independent Educational Evaluation at public expense, the district must provide information to parents about where an Independent Educational Evaluation may be obtained and the school district criteria applicable for Independent Educational Evaluations. An Independent Educational Evaluation conducted at public expense must accord with the same criteria the school district uses when it initiates an evaluation; to the extent those criteria are consistent with the parent's right to an Independent Educational Evaluation. The district may not impose conditions, or timelines related to obtaining an Independent Education Evaluation at public expense, other than the criteria mentioned above.⁴

The Parent requested an Independent Educational Evaluation at public expense on March 14, 2016, via an email to the District. On March 18, 2016, the District responded to the Parent's email indicating a willingness to work with the proposed evaluator once chosen, and began arranging for the proposed evaluator to be paid by the District. On March 26, 2016, the Parent's proposed evaluator sent the District the proposed evaluator's consulting agreement, and inquired regarding instructions for coordinating site visits. On March 27, 2016, the District's Director of Student Services indicated that the consulting agreement would be reviewed and provided details regarding site visits and coordination of information exchange.

Following the March 27, 2016 email to the proposed evaluator, the Director of Student Services discovered that the proposed evaluator had a conviction for defrauding a school district, and did not have the requisite credentials to complete the evaluation. The District emailed the proposed evaluator on April 4, 2016 and explained that due to these concerns, the District would not agree to the proposed evaluator. On April 6, 2016, the District provided the Parent with a list of potential evaluators, and on April 11, 2016 provided criteria under which the evaluation should be obtained.

In short, the District provided the Parent with information about where an IEE could be obtained and what the applicable criteria were by emailing the Parent a list of qualified evaluators on April 6, 2016 and by emailing the specific criteria under which the evaluation should be obtained on April 11, 2016. There was no "unnecessary delay" in providing this information. The brief delay was the result of the District being closed for spring break and the discovery that the proposed evaluator was not qualified to conduct the evaluation and also had a criminal conviction for defrauding a school district. The District also did not tell the Parent that the District would choose the evaluator but instead informed the Parent that the District had the right to ensure that the evaluator chosen met District criteria.

The Department does not substantiate this allegation and no corrective action is ordered.

³ OAR 581-015-2305

⁴ OAR 581-015-2305

V. CORRECTIVE ACTION⁵

In the Matter of Douglas County School District (Roseburg) #4
Case No. 16-054-009

No corrective action is ordered in this case.

Dated: this 19th Day of May 2016



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

Mailing Date: May 19, 2016

⁵ 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)).