

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eugene School District 4J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-030

I. BACKGROUND

On September 28, 2016, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Eugene 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 on September 28, 2016, by email.

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.¹ On October 7, 2015, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On October 20, 2016, the District timely submitted its *Response* to the *Request for Response*, both by email and by providing a hard copy of the *Response*, with accompanying documentation. On October 29, 2016, Legal Counsel for the Parent timely provided documents in reply to the District's *Response*. This order is timely.

The District provided the following documentation in its *Response*:

1. Letter 12/5/07
2. Assessment summary 2009-2010
3. Enrollment and health records 2009-2010
4. Assessment checklist 2010-2011
5. Authorization to Disclose Protected Health Information 3-14-11
6. Assessments 2014-2015, 2011-2012
7. Health screening 12/9/14
8. Report cards 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015
9. Report card & schedule 2015-2016
10. "Synergy Notes" 9/16/15 to 9/12/16
11. Student Rights & Responsibilities Handbook 2016
12. Safety Plan & unsigned permission form 6/6/16
13. Success Plan 9/8/16
14. Notes of telephone conversation 9/19/16
15. Secondary Withdrawal Slip 9/22/16
16. Request for Student Records 9/22/16
17. Communication log 5/16 to 9/23/16
18. Suspension-related documents through 9/26/16
19. Expulsion hearing audio (on thumb drive) 9/26/16
20. Prior Written Notice 9/30/16
21. Notice of Team Meeting 9/30/16

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153

22. Prior Written Notice 10/7/16
23. Notice of Team Meeting 10/7/16
24. Meeting Minutes 10/10/16
25. Prior Written Notice 10/11/16
26. Prior Written Notice 10/12/16
27. Email communication threads 9/19/16 – 10/14/16
28. District Handbook 2016-2017
29. Report cards & enrollment history
30. District staff list

The Parent provided the following documents in reply to the District's *Response* in this case:

1. EI/ECSE referral docs 2007
2. Math assignments 2015-2016
3. Records Request Form 9/12/16
4. Facsimile of Docs re Safety Assessment Referral 9/14/16
5. Parent's timeline 9/7/16 – 9/15/16
6. Letter 9/2016
7. Documents re safety plan, referrals and expulsion - through 9/26/16
8. Form re file request, including 9/26/16 note
9. Email communication 5/2016 to 10/24/16
10. Email communication 6/1/16 – 10/27/16
11. Audio recordings (on thumb drive)

The Department's contract complaint investigator (Complaint Investigator) determined that onsite interviews of District staff were not necessary in this case. However, the Complaint Investigator interviewed the Parent and the Parent's Legal Counsel by telephone on November 9, 2016. The Complaint Investigator reviewed and considered all of the documents received 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 Complainant'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 September 29, 2015 to the filing of this complaint on September 28, 2016.

	Allegations	Conclusions
(1)	<p><u>Child Find; Free Appropriate Public Education (FAPE)</u></p> <p>The Complaint alleges that the District violated the IDEA from September of 2015 through September of 2016, when it failed to evaluate the Student, a child with a suspected disability known to the District. The Complaint further alleges that the District failed to pursue requests for evaluation by the Parent and failed to</p>	<p><u>Not Substantiated</u></p> <p>During the 2015-2016 school year, the Student's disciplinary violations were not of a nature to result in the District reasonably suspecting that the Student is a student with a disability. Similarly, the Student's academic performance in class and on District-wide and State-wide assessments, did not necessarily result in the District suspecting that the Student</p>

	<p>identify the Student as eligible for Special Education. The Complaint further alleges that the foregoing resulted in a denial of FAPE to the Student from September of 2015 through September of 2016.</p> <p>Relevant Law: OAR 581-015-2080, 581-015-2040 and 34 CFR 300.101, 300.111.</p>	<p>is a Student with a disability. There is also no evidence that the Parent ever requested the District to evaluate the Student to determine eligibility for Special Education.</p> <p>The District did not have information that led the District to reasonably suspect that the Student is a student with a disability that triggered the obligation to initiate Child Find procedures until September 13, 2016.</p>
(2)	<p><u>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive); Manifestation Determination</u></p> <p>The Complaint alleges that the District violated the IDEA by failing to conduct a Manifestation Determination following a suspension (expulsion) of the Student for more than 10 days for disciplinary reasons, despite knowledge that the Student is a child with a disability.</p> <p>Relevant Law: OAR 581-015-2415, 581-015-2420, 581-015-2440 and 34 CFR 300.504(a)(3), 300.530, and 300.534.</p>	<p><u>Not Substantiated</u></p> <p>Although an evaluation process is underway, the Student had not been identified as a student with a disability at the time the behavior that precipitated the disciplinary action occurred, nor did the District have knowledge that the Student was a child with a disability. In its <i>Response</i>, the District states that it has "suspended the expulsion process pending the evaluation for eligibility and a Manifestation Determination should the [S]tudent be found to be eligible."</p>
(3)	<p><u>Prior Written Notice (PWN); Protections for Children Not Yet Eligible for Special Education</u></p> <p>The Complaint alleges that the District violated the IDEA by failing to provide a PWN, and by failing to provide the Student and the Parent with Procedural Safeguards, "when refusing to evaluate the Student."</p> <p>Relevant Law: OAR 581-015-2310, 581-015-2315 and 34 CFR 300.503, 300.504.</p>	<p><u>Not Substantiated</u></p> <p>The District timely provided a PWN and Notice of Procedural Safeguards to the Parents when the District proposed to convene an evaluation planning meeting; a meeting which occurred on October 10, 2016.</p>
<p><u>Proposed Corrective Action:</u></p> <p>The Parent requests the following proposed solutions:</p> <p>"(a) Immediately begin and timely complete Child Find, evaluation, and eligibility determinations for the Student.</p> <p>(b) If the Student is found eligible for special education services, and Parent consents to placement in special education, timely conduct a Functional Behavioral Assessment and Behavior Support Plan and develop an Individual Education Plan that provides measurable goals in all areas of need, but especially in behavior.</p>		

(c) If the Student is found eligible for special education services, provide compensatory education for September 2015 through September 2016 in all areas of Student need, but especially in behavior.

(d) Dismiss all suspension and expulsion actions pending against the Student at the time of this notice.

(e) Adopt a board policy and District administrative rules to require special education Child Find investigations for all children without disabilities who exhibit behaviors that result in three or more suspensions, removals, restraints or isolations (full day, half day, out of school or in school) within one calendar year. Provide training necessary to implement this change.

(f) Adopt a board policy and District administrative rules to require all relevant school building staff to be trained and knowledgeable in procedures for parental referral for special education. Staff shall include: Front office staff, registrar, counselor, administrators, behavior specialists, suspension room supervisors, sports coaches, electives teachers, and teachers and educational assistants. Procedures to assist parents in making special education evaluation referral requests shall include: providing parent with a printed packet of information describing the resources available to students with special education needs, describing each disability category, describing the referral and evaluation procedures, providing forms for parent referral for special education evaluation. Provide training necessary to implement this change.”

The Department does not order any Corrective Action in this case.

III. FINDINGS OF FACT

Background

1. The Student in this case is presently thirteen years old and is in 7th grade. The Student has attended school in the District since the Student began kindergarten. The Student has not attended school in the District since September 9, 2016, after a behavioral issue occurred on September 8, 2016, the first day of the 2016-2017 school year.

Child Find; FAPE; Disciplinary Removals

2. The Parent reported during a telephone interview with the Complaint Investigator that the District has been aware for several years that the Student has had various diagnoses and that the Student has consistently performed poorly academically, yet has never received an evaluation to determine eligibility for Special Education services.
3. A review of the Student's report cards and assessments provided by the District with its *Response* in this case, reveals that during the time period for this Complaint, beginning September 29, 2015, the Student's grades reflect average performance but the Student's grade point average did decline during the 2015-2016 school year. The Student's scores on a District assessment reflected no risk in the area of Reading and above average performance in Vocabulary. The Student's Math testing scores dropped when tested toward the end of the third trimester. The District states it is *Response* that it did not view this as a red flag, as the test window coincided with the Student's suspensions from incidents on May 19, 2016 and May 25, 2016. Additionally, the District's *Response* states that many students did not perform well on the third trimester test, which happened to be scheduled close in time to a state assessment.

4. The Parent reports that the District has been aware of the Student's various diagnoses and difficulties since the 2010-2011 school year, the Student's 1st grade year, when the Student experienced a seizure at school, a loss of control over bodily functions, and experienced difficulty paying attention. The Parent also reported that in 2011, also during the Student's 1st grade year, that the Parent obtained an evaluation at the Oregon Health & Science University's Child Development and Rehabilitation Center (CDRC) which revealed diagnoses of Oppositional Defiance Disorder (ODD), ADHD, Anxiety and Obsessive Compulsive Disorder (OCD).
5. The Parent also reported that during the 2014-2015 school year the Student demonstrated behavioral issues, including walking around the classroom, disrupting the class, and using bad language.
6. The Student began 6th grade on September 9, 2015 at a District middle school. At that time, the Parent visited with all of the Student's teachers and told them that the Student had difficulty paying attention, would follow the suggestions of other students to do disruptive acts such as grabbing certain items in the classroom, and had difficulty hearing. Parent also reported vision difficulties, so requested that the Student be seated in the front of the classroom.
7. During the 2015-2016 school year, the Student received 6 minor disciplinary referrals for infractions like swearing or laughing when a playground supervisor asked the Student not to swear (on November 12, 2015, January 11, 2016, February 26, 2016, March 8, 2016, April 1, 2016 and June 16, 2016.)
8. Additionally, the Student obtained four major disciplinary referrals during the 2015-2016 school year, including the following:
 - (a) a referral on January 14, 2016 for menacing other students on the bike path, not allowing other students to pass, and making rude comments (parent notified, student warned that other infractions would result in suspension);
 - (b) a referral on February 18, 2016 for throwing a basketball across the gym during p.e. class, which struck another student in the face (conference with student, student not allowed to attend gym for a week);
 - (c) a referral on May 19, 2016 for fighting (two-day out-of-school suspension), and;
 - (d) a referral on May 25, 2016 for fighting as well as directing profanity toward and threatening another student's parent (who had broken up the initial fight) (four-day out-of-school suspension and forbidden to be on campus except when attending classes or otherwise authorized). The two disciplinary referrals for fighting indicate that the Student was the aggressor in each instance.
9. Following the May 25, 2016 fighting incident, the District scheduled a risk assessment for the Student. However the Parent, when contacted by the District on June 1, 2016 by telephone, declined the risk assessment. During the Parent's telephone interview in this case, the Parent reported declining the risk assessment due to not understanding the purpose of the test.
10. The Parent also reported that on May 26, 2016 the Student's Principal advised that they could not find documentation related to the Child Development & Rehabilitation Center (CRDC) evaluation in the Student's records, including neither records of the initiation of an evaluation process in 2007 nor an authorization to disclose CDRC health records relating to the Student on March 14, 2011. However, the District provided to the Complaint Investigator documentation of an ECSE referral dated September 28, 2007, an ECSE Eligibility Evaluation Plan dated November 8, 2007, a Prior Notice about Evaluation/Consent for Evaluation (unsigned) dated November 15, 2007, and a letter from the 4J Early Intervention Team dated December 5, 2007 regarding two missed evaluation appointments. The District later provided to the Complaint Investigator a letter dated November 22, 2010 from CRDC to the District requesting completion by the Student's Parents and a teacher of a

"set of behavioral rating scales and a questionnaire", a completed "School ADHD Symptom Checklist – IV", and an "Authorization to Use and Disclose Protected Health Information" signed by the Parent on March 11, 2011.

11. During the May 26, 2016 meeting, the Principal requested that the Parent sign a new form to allow CRDC to share health information with the District for the purpose of "Determining eligibility for Special Education, EI/ECSE, or other services", with the 504 added in handwriting to the form. The Parent refused to sign this authorization and advised the Principal that the District must find the old records before the Parent will sign a new authorization to disclose the Student's health records.

The Parent and the Principal met again on June 6, 2016. At that time, the Principal presented a "Safety Plan", requiring the Student to check in with the Principal three times each day. The Student and the Parent signed the Safety Plan.

12. Between June 8, 2016 and June 16, 2016 (the last day of the 2015-2016 school year), an Assistant Principal met with the Parent concerning the Parent's request to lift the trespass during the summer months. The Assistant Principal advised it would be easier to make this decision if the District had more information about the Student, but the Parent stated that the District had everything it needed. On or about June 24, 2016, the Assistant Principal communicated to the Parent the decision to suspend the trespass notice for the summer. The District then revised the trespass notice to allow the Student on school grounds during the summer and to provide that if the Student did not have discipline incidents before December 1, 2016 the District would lift the trespass notice.

13. On September 8, 2016, the first day of the 2016-2017 school year, a Principal, the Student and the Student's Step-Parent signed a "Success Plan", which included several requirements. At the end of the school that day, the Student violated the Success Plan by 1) making contact with a student with whom the Student was not to have contact, 2) not leaving school property when asked, and 3) by making a statement that the Student would need to beat up another student. On September 9, 2016, the District suspended the Student pending an expulsion hearing. Given that the expulsion hearing was not yet scheduled, the duration of the suspension could not be determined. In addition, on September 9, 2016, the Parent left a verbal message for the Principal that the Parent was immediately dis-enrolling the Student from the school

14. On September 13, 2016, the Principal contacted the Director of the Student Services Department and advised that the Principal suspected the Student had a disability and that the District needed to convene a Child Find meeting. On September 16, 2016, and again on September 19, 2016, a District Special Education Administrator contacted the Parent by telephone to set up a Child Find meeting to consider an evaluation under the IDEA or Section 504. During the telephone call on September 19, 2016, the Administrator explained that the District suspected a pattern of behavior that might lead the team to suspect a disability; and that the Child Find meeting should occur prior to proceeding with the expulsion. This meeting ultimately took place on October 10, 2016. A Meeting Notice was provided for this meeting.

15. On September 26, 2016, at the time scheduled for an expulsion hearing, the parties determined that the District would suspend the expulsion process pending evaluation of the Student for eligibility for Special Education services and a Manifestation Determination should the Student be found to be eligible. At this meeting, the District offered to provide instruction for the Student, who the Parent withdrew from school on September 9, 2016, (after the District expressed its intention to request an expulsion proceeding) in a particular instructional program or home instruction.

16. On October 7, 2016, the District issued a PWN stating that the District proposes to implement instructional services for the Student in a particular instructional program, while a Child Find

meeting is convened to consider an evaluation for Special Education services, as offered during the expulsion hearing on September 26, 2016, and again in emails on September 27, 2016 and October 13, 2016. The District again stated the availability of instruction for the Student, by email, on October 11, 2016 and October 14, 2016.

17. On October 10, 2016, the District held the Child Find meeting and the process of evaluating the Student for Special Education eligibility in the areas of Other Health Impairment (OHI) and Emotional Disturbance (ED) is underway.

Prior Written Notice (PWN) and Procedural Safeguards

18. The District issued and provided to the Parent a PWN on September 30, 2016, along with a Notice of Procedural Safeguards.

IV. DISCUSSION

1. Child Find

The Complaint alleges that the District violated the IDEA from September of 2015 through September of 2016, when it failed to evaluate the Student, a child with a suspected disability known to the District. The Complaint further alleges that the District failed to pursue requests for evaluation by the Parent and failed to identify the Student as eligible for Special Education.

The District's *Response* asserts that the Parent did not request an evaluation or provide documentation that the Student was a student with a suspected disability to the District; and that the District reasonably did not suspect the Student is a student with a disability until September of 2016.

OAR 581-015-2080 provides that school districts must identify, locate and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of Special Education or Special Education services, including children enrolled in public charter schools and children who are home schooled. In this case the regulations obligated the District to identify, locate, and evaluate the Student if the Student has a disability and may need Special Education services. A district's Child Find obligation is triggered when a district suspects or has reason to suspect a student has a disability that has an adverse impact on the student's educational performance and may need Special Education services as a result of the disability.² The applicable limitations period for the state complaint timeframe, limits this case to the District's Child Find obligation beginning September 29, 2015, one year preceding the filing of the Complaint in this case.³

Thus, in this case, the analysis must begin with the information possessed by the District beginning September 29, 2015 through the filing of the Complaint on September 28, 2016. In determining whether the circumstances triggered an obligation on the part of the District under Child Find to evaluate the Student based upon the Student's suspected disability or disabilities and the need for Special Education or Special Education services. On September 29, 2015, the District had not received from the Parent any documentation concerning any disability or disabilities of the Student.

² OAR 581-015-2105.

³ OAR 581-015-2030(5).

Although the Parent believed the District possessed evaluations from CDRC from 2011 and possibly 2007, it is clear the District did not.

During the 2015-2016 school year, neither the Student's minor nor major disciplinary violations were of a nature to necessarily result in the District reasonably suspecting the Student is a student with a disability. Although the behavior incidents involving fighting, on May 19, 2016 and May 25, 2016 were of a more serious nature, the Department finds that, on balance, these incidents did not trigger the District's obligation to initiate Child Find procedures in this case. Similarly, the Student's academic performance in class and on District-wide and State-wide assessments, did not necessarily result in the District suspecting the Student is a student with a disability. The Student's academic performance, though declining somewhat during the last trimester of the 2015-2016 school year, remained within average ranges, and the District noted that other students had not performed well on a particular assessment toward the end of the 2015-2016 school year.

When the Student demonstrated the inability to follow the Student's "Success Plan" on September 8, 2016, the very day the parties, including the Student, signed the plan, and the first day of the 2016-2017 school year, the Principal reasonably suspected that the Student might have a disability and determined that the District should pursue Child Find procedures. On September 13, 2016 the Principal contacted the District's Director of Student Services and the District initiated Child Find procedures. The District is presently evaluating the Student for possible eligibility for Special Education services, under OHI and ED.

The Department does not substantiate this allegation.

2. Free Appropriate Public Education (FAPE)

The Complaint further alleges that the foregoing resulted in a denial of FAPE to the Student from September of 2015 through September of 2016.

School districts must provide a FAPE to school-age children with disabilities.⁴ To be eligible for services under the IDEA a student must both be evaluated and eligible for services along with demonstrating a need to receive Special Education or Special Education services as a result of one of IDEA's enumerated disabilities. See OAR 581-015-2040. The IDEA's FAPE requirements apply to all school-age children with disabilities for whom a district is responsible, including children with disabilities who attend a Charter School located within the District.⁵

In this case, the District did not fail to timely initiate a Special Education evaluation of the Student and did not fail to comply with IDEA's Child Find requirements for the reasons identified in the previous section.

The Department does not substantiate this allegation.

⁴ OAR 581-015-2040.

⁵ OAR 581-015-2040(1)

3. Disciplinary Removals; Manifestation Determination

The Complaint alleges that the District violated the IDEA by failing to conduct a Manifestation Determination following a suspension (expulsion) of the Student for more than ten days for disciplinary reasons, despite knowledge that the Student is a child with a disability.

OAR 581-015-2420 (Manifestation Determination) and OAR 581-015-2415 (Disciplinary Removals of More than Ten School Days), apply to students with a disability. Additionally, OAR 581-015-2440 provides protections for students not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability. In this case, although an evaluation process is underway, the Department may not conclude that the District knew that this Student was a student with a disability at the time of the behavior that precipitated this disciplinary action. The District has also suspended the expulsion process in this matter pending the evaluation for eligibility and will conduct a Manifestation Determination should the Student be found eligible for Special Education.

The Department does not substantiate this allegation.

4. Prior Written Notice (PWN); Procedural Safeguards

The Complaint alleges that the District violated the IDEA by failing to provide a PWN and by failing to provide the Student and the Parent with Procedural Safeguards when refusing to evaluate the Student.

OAR 581-015-2310 provides that a PWN must be given to a parent of a child within a reasonable period of time before a school district proposes to initiate or change or refuses to initiate or change the identification, evaluation, of educational placement of a child or the provision of a free appropriate public education of a child. Additionally, OAR 581-015-2310(1) provides that school districts must give parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year, except that a copy must be given to the parents upon initial referral or parent request for evaluation.

In this case, the District timely provided a PWN and Notice of Procedural Safeguards on October 7, 2016 when the District proposed to convene an evaluation planning meeting, a meeting which occurred on October 10, 2016.

The Department does not substantiate this allegation.

CORRECTIVE ACTION⁶
In the Matter of Eugene School District
Case No. 16-054-030

The Department orders no Corrective Action in this matter.

Dated this 18th Day of November, 2016



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

Mailing Date: November 18, 2016

⁶ 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)).