

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Ashland School District)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-025

I. BACKGROUND

On November 20, 2017, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the Parent (Parent) of a student (Student) residing in the Ashland School District (District). The Parent requested that the Department conduct a special education investigation pursuant to Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of the Complaint on November 20, 2017 and on the same day provided the District with a copy of the Complaint. A contractor with the Department (Investigator) investigated the Complaint.

On November 27, 2017, the Investigator sent a *Request for Response* (RFR) to the District that identified specific allegations in the Complaint to be investigated and also established a *Response* due date of December 11, 2017. The District completed its *Response*, which was received by the Investigator on December 7, 2017. The District notified the Parent that the Parent's copy of the *Response* could be retrieved at the District office. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. District employee phone conference notes, dated October 18, 2017
2. Email from District to Parent subject line: "Follow Up on Phone Conversation," dated October 19, 2017 through November 2, 2017
3. Procedural Safeguards Notice – Parent Rights for Special Education K-21 2017-2018, Oregon Dept. of Education publication
4. Authorization to Use and/or Disclose Educational and Protected Health Information (undated and unsigned)
5. Medical Statement or Health Assessment (undated and unsigned)
6. Permission to Obtain and Release Information (undated, unsigned)
7. Email between District and McKinney-Vento advocate, subject line: "ACTION ITEM: McKinney Vento Law and School Registration," dated October 26, 2017
8. Team Meeting Notes, dated October 30, 2017
9. Authorization to Use and/or Disclose Educational and Protected Health Information, signed and dated October 30, 2017
10. Intra-District email, subject line: "eval planning for [Student]," dated October 31, 2017
11. Request for Medical Statement or Health Assessment, dated October 31, 2017
12. Physician Diagnosis, dated November 1, 2017
13. Intra-District email, subject line: "Follow Up on Phone conversation," dated November 2, 2017
14. Medical Statement or Health Assessment, completed and dated November 3, 2017
15. Intra-District email, subject line: "Any word on a tutor for new homebound student..? Thanks," dated November 3, 2017
16. Student Registration form, signed and dated November 4, 2017
17. Night Time Residency Form, dated November 4, 2017
18. Confidential Student Health Inventory, completed and dated November 4, 2017
19. Language Use Survey, dated November 4, 2017

20. [] Elementary School New Student Registration Form, dated November 4, 2017
21. Registration and Disclosure Information, (undated)
22. Confidentiality Notice, pediatric clinic, dated November 6, 2017
23. Email, subject line, "completed medical statement is all set," dated between November 6, 2017 and November 15, 2017
24. Intra-District email, subject line: "[Student] evaluation meeting Tuesday November 14th at 3pm" dated November 7, 2017
25. Inter-District email, subject line: "Fwd: [Student] update from tutor," dated November 11, 2017
26. Intra-District email, subject line: "[Student] eval planning meeting tomorrow" dated November 13, 2017
27. Intra-District email, subject line: "Tutor," dated November 13, 2017
28. Meeting notes authored by District employees, dated November 14, 2017
29. Meeting notes authored by District employee, dated November 15, 2017
30. Intra-District email, subject line: "[Elementary School] Student," dated November 15, 2017
31. Email, subject line: "Starting at [Elementary School]," dated November 16, 2017
32. District's Formal Record Request to former Washington State (Washington) School District, dated November 16, 2017
33. Email to former Washington District, subject line: "records of former student," dated November 30, 2017.

The Investigator determined that in-person interviews were required. On December 13, 2017, the Investigator conducted in-person interviews of District personnel (Director of Student Services, Special Education Teacher, Tutor) and the Parent. On December 21, 2017, the Investigator interviewed, via telephone, a McKinney-Vento advocate employed by the Maslow Project in Medford, Oregon. Parent and Student meet the definition of "homeless" under 42 USC § 11301 *et seq.* (The McKinney-Vento Homeless Assistance Act).

During the in-person interviews, the Investigator requested more written materials from the District. On December 14, 2017, the Investigator received from the District the following documents:

34. Birth Certificate
35. Order Granting Termination and Step-Parent Adoption, dated December 28, 2009
36. Order on No Legal Standing by the Respondent, dated December 28, 2010
37. Washington Notice of Meeting, dated April 2, 2014
38. Washington Contact Attempt, dated April 8, 2014
39. Evaluation Summary, dated April 8, 2014
40. Medicaid Consent, dated April 8, 2014
41. Washington Prior Written Notice, dated April 11, 2014
42. Washington Meeting Notice, dated April 18, 2014
43. Washington Behavioral Intervention Plan, dated June 2, 2014
44. Washington school registration form, dated June 6, 2014
45. Washington IEP Invitation, dated June 12, 2014
46. IEP, dated June 12, 2014
47. Washington Written Parental Consent for Initial SPED services (undated and unsigned)
48. Washington Prior Written Notice, dated June 12, 2014
49. Medicaid Consent, dated June 12, 2014 (unsigned)
50. Functional Classroom Coping Skills (blank)
51. Request for Initial Evaluation Extension (unsigned)
52. Washington Invitation to Review IEP, dated September 2, 2014
53. Medicaid Consent, dated September 3, 2014
54. IEP, dated September 5, 2014

55. Ethnicity and Race Data Collection Form, dated September 8, 2014
56. Home Language Survey, dated September 8, 2014
57. Washington Prior Written Notice, dated October 14, 2014
58. Notice of Disclosure of Student Information to Washington State Health Care Authority (undated)
59. Washington Meeting Notice, dated October 27, 2014
60. Prior Written Notice, dated October 27, 2014
61. Attendance record, dated October 28, 2014
62. Certificates of Immunization Status (undated)
63. Vaccine Administration Record (undated)
64. Washington School District request for records, dated January 5, 2015
65. Response to Washington School District request for records, dated January 7, 2015
66. Transfer Review, dated January 20, 2015
67. Prior Written Notice, dated January 20, 2015
68. Notification for the Disclosure of Student Information to the Washington State Health Care Authority
69. Medicaid Consent, signed and dated January 20, 2015
70. Washington School District Meeting Notice re: transfer review, dated January 20, 2015
71. Contact Attempt Report, dated January 20, 2015
72. Washington Notice of Meeting, dated February 26, 2015
73. Contact Attempt Report, dated February 26, 2015
74. Prior Written Notice, dated February 26, 2015
75. Washington Placement notice
76. District's Formal Record Request to former Washington School District, dated November 16, 2017
77. Email to former Washington District, subject line: "records of former student," dated November 30, 2017.

The Investigator contacted the Parent via email and requested copies of all emails between the Parent and the District. The Investigator received the following sets of emails from the Parent on December 15, 2017:

1. Email string from October 19, 2017 through November 2, 2017, subject line: "Follow Up on Phone Conversation"
2. Email String from November 15, 2017 to November 16, 2017, subject line: "completed medical statement is all set"
3. Email string from November 1 – November 2, 2017 subject line: "next steps for a school plan"

The Investigator reviewed and considered all of above-described documents, as well as information gathered during interviews in reaching the findings of facts and conclusions of law contained in this Order.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint. The timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation, or if exceptional circumstances require an extension.¹ This order is timely.

¹ OAR 581-015-2030 (12)

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint pursuant to 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). The Complaint covers the one-year period from November 21, 2016 to November 20, 2017.

	Allegations	Conclusions
1.	<p>FAPE</p> <p>The Parent alleges that the District violated the IDEA by denying the Student a free appropriate public education (FAPE) when it did not enroll the Student in school and did not provide a tutor to the child as the District had promised the Parent.</p> <p>(34 CFR § 300.101; OAR 581-015-2040).</p>	<p>Not Substantiated</p> <p>The Parent and District representatives convened to discuss the Student's placement prior to the Student registering at the District. The meeting was attended by the Parent, an advocate for the Parent, District's Student Services Director, a School Psychologist, School Principal, and Special Education Teacher. At the meeting, the group agreed to a plan for the Student to initially receive tutoring over a two-week period. The decision was based upon the Student's history—as reported by the Parent—of aggressive behavior, recent "meltdowns," limited exposure to a formal classroom environment, and lapsed IEP.</p> <p>In the first week after registering, the Student received two tutoring sessions. The tutor reported that the sessions were productive and recommended that the Student transition to a classroom setting, beginning with half-day sessions.</p> <p>The District delivered appropriate tutoring services to the Student as agreed upon by a group knowledgeable about the child. This allegation is not substantiated.</p>
2.	<p>Failure to Evaluate</p> <p>The Parent alleges that the District violated the IDEA because it did not evaluate the Student after the Parent requested the Student be considered for an Individualized Education Program (IEP). The Parent further alleges the District violated the IDEA because it did not provide the Parent with a consent to evaluate during an initial meeting.</p> <p>(34 CFR § 300.301(b); OAR 581-015-2105).</p>	<p>Substantiated</p> <p>The Parent requested an evaluation of the Student for special education services. On numerous occasions thereafter, the District had the opportunity, but failed to provide the Parent with a consent for evaluation or, alternatively, a prior written notice explaining its refusal to evaluate the Student. This allegation is substantiated.</p>

3.	<p>Child Find</p> <p>The Parent alleges that the District violated the IDEA because it failed to commence any evaluations of the Student after the Parent informed the District that the Student had previously had an IEP and that the Student had a diagnosis of Autism.</p> <p>(34 C.F.R. § 300.111; OAR 581-15-2080).</p>	<p>Substantiated</p> <p>The District was on notice that the Student previously had an IEP. The District also received medical documentation noting that the Student had “learning difficulty,” PDD/Autism, and ADHD. The District failed to fulfill its Child Find obligation when it failed to commence evaluation processes for the Student. This allegation is substantiated.</p>
4.	<p>Parent Participation/Placement</p> <p>The Parent alleges that the District violated the IDEA because it unilaterally placed the Student without conducting an evaluation of the Student and without giving credence to the Student’s previous IEP. The Parent also alleges that the District violated the IDEA because it placed the Student in the more restrictive environment of home-bound tutoring and not an elementary school classroom.</p> <p>(34 C.F.R. §§ 300.114, 300.116, 300.327; OAR 581-015-2195, 581-015-2190, 581-015-2250).</p>	<p>Not Substantiated</p> <p>(a) Parent Participation - Not Substantiated The Parent participated in group meetings and agreed to the Student receiving tutoring on a temporary basis prior to placement in an elementary school classroom. The Parent also agreed to a school tour, academic testing and a half-day start. The Parent meaningfully participated in the decisions regarding the Student’s educational placement. This portion of the allegation is not substantiated.</p> <p>(b) Placement – Not Substantiated A team including the Parent and District personnel convened and agreed that the Student would initially receive tutoring over a two-week period. The decision was based upon Student’s history—as reported by the Parent—of aggressive behavior, recent “meltdowns,” limited exposure to a classroom environment, and lapsed IEP. After receiving tutoring services, the team reconvened and agreed on a plan where the Student and the Parent would tour a school, the Student would undergo academic testing, and the Student would begin half-day placement in a classroom setting.</p>

CORRECTIVE ACTION REQUESTED BY PARENT:

Parent did not request a specific corrective action in the Complaint.

III. FINDINGS OF FACT

1. The Student is nine years old as of the date of this Order. The Student previously resided in Washington. The Student attended Montessori preschool for three years prior to enrolling in kindergarten in Washington.
2. While residing in Washington, the Parent requested that the local school district evaluate the Student for special education. The Parent reported that the Student engaged in tantrum behavior. It was also noted by the Parent that the Student tended to have more meltdowns at home or when with the Parent, in comparison to when the Student was in the presence of others.
3. On April 8, 2014, before beginning kindergarten in Washington, the Student was evaluated for special education services. Based upon the evaluation, Student was found eligible for special education services under the eligibility category of Autism. An IEP was developed prior to Student beginning kindergarten, which included supplementary aids and services such as the following: (1) Communication Consultation; (2) Autism Consultant; and (3) Positive Behavior Support Plan.
4. In January 2015, the Student enrolled in a new school district in the Washington. The new school district accepted the Student and implemented the Student's IEP.
5. On April 8, 2015, the Parent requested that neurological testing be done. The school district refused the request for neurological testing as the Student was not displaying behaviors of concern in school and the school district "could not make a good faith neurological referral."
6. During September 2017, the Parent contacted the District to inquire about enrolling the Student. At the time of this initial contact, the Parent did not reside in the District. The Parent contacted the District prior to establishing residency in the District because the Parent acknowledged that school enrollment could be especially difficult because the Student had an IEP and several diagnoses, including Autism Spectrum Disorder.
7. On October 18, 2017, the Parent and the District's Director of Student Services participated in a phone conference regarding enrolling the Student. The Parent explained the Student had a diagnosis of Autism and had not been attending a public school regularly for some time. The Parent had been solely responsible for the Student's academics and wanted the Student enrolled in a formal setting. The Parent shared that the Student was often aggressive with the Parent in the past. The Parent also stated that the Student had an IEP but it had lapsed.
8. During the initial phone interview, the District recommended the Student receive tutoring initially, rather than be immediately placed in an elementary school classroom setting. At the time, the District did not have in its possession formal education records for the Student. The District stated that a plan for special education and the tutoring process could begin once the Student was registered. The Parent agreed that tutoring, followed by a transition to a classroom environment would be a good start.
9. The District employs tutoring as an information-gathering tool when there are safety concerns surrounding a student's behavior, "unknowns" about a student's behavior, or gaps in school attendance.

10. On October 19, 2017, the District's Director of Student Services emailed the Parent, attaching three forms to assist in completing the Student's registration. The District also included a link to the online registration for the District.
11. On October 22, 2017, the Parent emailed the District's Director of Student Services requesting an IEP evaluation for the Student and also requesting that the Student be placed in school as soon as possible, even if the Student was to initially receive tutoring.
12. After the October 22, 2017 email, the Parent attempted to register the Student using the online system. The Parent was repeatedly exited from the online registration process because the Parent refused to check specific boxes. Thereafter, the Parent sought to register the Student using a paper form. The Parent required several attempts to obtain enrollment forms and have the forms subsequently processed.
13. The Parent engaged an educational advocate from the Maslow Project in Medford, Oregon. The advocate was a McKinney-Vento specialist who assists unhoused students gain entrance to public schools. The Parent and the Student meet the definition of "homeless" under 42 USC § 11301 *et seq.* (The McKinney-Vento Homeless Assistance Act).²
14. On October 26, 2017—after the Parent's failed attempts to register the Student—the Maslow Project advocate contacted the District requesting immediate registration and enrollment of the Student pursuant to the McKinney-Vento Act. The District's Director of Student Services stated that due to reports of the Student presenting a safety risk, including a report of a recent assault by the Student on the Parent, doctors, nurses, and law enforcement, the District was working to secure tutoring for the Student before placing the Student in an elementary school classroom.
15. On October 30, 2017, a meeting was held to discuss the Student's enrollment in the District. The meeting was attended by the Parent, an advocate for the Parent, the District's Student Services Director, a School Psychologist, School Principal, and Special Education Teacher. At this meeting, the Parent described how the Student could be verbally aggressive and had "big emotions" but also stated that the Parent did not always "buy" the Student's behaviors because they seemed self-directed. The Parent described a "meltdown" the Student had the previous day, instigated by the sharing of a toy that involved the Student's physical aggression toward another child and disobedience toward the Parent. The Parent opined that the Student could be manipulative. The Parent believed the Student had "light" autism, ADHD and Reactive Attachment Disorder. The Parent stated that the Student was aggressive toward the Parent and that the Student's negative emotions were aimed mostly at the Parent. The Parent described another "meltdown" incident in June 2017 that prompted the Parent to call the police and resulted in the Student being taken to the emergency room by ambulance. The Parent estimated the meltdown lasted three hours.
16. At the October 30, 2017 meeting, the Parent agreed to the District's proposed plan to provide tutoring to the Student for two weeks to better familiarize itself with the Student's needs before proceeding to placement in a classroom. On November 3, 2017, the District began the process to secure a tutor for the Student.
17. On October 30, 2017 the Parent executed a medical release so the District could obtain the Student's health information. The Parent noted that the information would be used to

² The McKinney-Vento Homeless Assistance Act aims to provide homeless children and youths with access to the education and other services necessary to have an opportunity to meet the same challenging State student academic achievement standards to which all students are held. (42 USC § 11431 *et seq.*)

develop an IEP, determine the Student's current levels of performance, and a safety plan.

18. At the October 30, 2017 meeting, the Parent was not provided with a consent to evaluate or any other consent forms to begin an evaluation of the Student, nor was the Parent provided with a prior written notice (PWN) declining an evaluation.
19. After the meeting, on October 31, 2017, the District sent a medical request to the Student's former Physician noting the information would be "regarding possible special education eligibility." A District Special Education Teacher also emailed a District Principal and School Psychologist to begin "evaluation planning."
20. On November 1, 2017, the Student's treating Physician sent the District a note with the following diagnosis for Student: Learning Difficulty, ADHD, Disruptive Behavior, and PDD (unspecified).³ On November 3, 2017, a document titled, "Medical Statement or Health Assessment" was sent by the Physician that described the Student as having the following diagnoses: Autism, ADHD, Regulative Behavior Disorder, and Learning Difficulty.
21. After several attempts, the Parent completed all the registration and consent documents on November 4, 2017.
22. On November 6, 2017, a tutor retained by the District met with the Student and provided instruction. The assigned Tutor does not possess a special education teaching credential. The Tutor had previously worked with a different student with special education eligibility. The Tutor is a full-time District employee. The Tutor met with the Student again on November 8, 2017 and provided instruction.
23. On November 11, 2017, the Tutor emailed a District Special Education Teacher after completing two tutoring sessions with the Student. The Tutor's impressions were that the Student lacked social skills but overall was respectful and focused on assigned tasks as long as the Parent was not interrupting. The Tutor was supportive of the Student transitioning into an elementary school classroom, suggesting a half-day schedule.
24. On November 14, 2017, another meeting was held regarding the Student's evaluation and placement. In attendance were the Parent, an advocate for the Parent, a friend of the Parent, a District School Psychologist, an elementary school Special Education Teacher, and a District elementary school Principal. During the meeting, the the following actions were agreed upon by the group: (1) On the following day, November 15, 2017, the Student and the Parent would participate in an after-school visit of a proposed elementary school site; (2) the Student would undergo academic testing (easyCBM) on November 16 or 17, 2017 to evaluate the Student's academic abilities; and (3) the Student would begin attending an elementary school classroom on a half-day schedule beginning November 17, 2017. The Parent agreed to this plan.
25. At the November 14, 2017 meeting, the Parent was not provided with a consent to evaluate or any other consent forms to begin an evaluation of the Student, nor was the Parent provided with a PWN declining an evaluation.
26. After school hours on November 15, 2017, the Parent and the Student toured the proposed school placement as scheduled. During the tour, the Parent was told by the school's Special Education Teacher that the elementary school Principal proposed that the Student not

³ A diagnosis of PDD (Pervasive Developmental Disorder) is now categorized as Autism Spectrum Disorder under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

attend an elementary school classroom on November 17, 2017 as was discussed and agreed upon the previous day. Rather, the Special Education Teacher communicated to the Parent that the elementary school Principal proposed that the Student continue meeting with a tutor and engage in a slower introduction to attendance in a classroom setting. The Parent was upset by the elementary school Principal's message as delivered by the Special Education Teacher.

27. On November 16, 2017, the elementary school Principal emailed the Parent and reverted back to the plan agreed upon at the November 14, 2017 meeting, stating that the Student would start school for a half-day session in an elementary school classroom on Friday, November 17, 2017. The Student did not attend school on November 17, 2017.

28. On November 16, 2017, the District sent by fax a records request to the Student's former school district in Washington. The District received a portion of the records on November 28, 2017. On November 30, 2017, the District contacted the Student's prior district in Washington to obtain the remainder of the Student's academic record.

IV. DISCUSSION

Section 1. FAPE

The Parent alleges that the District violated the IDEA by denying the Student a free appropriate public education (FAPE) when it did not enroll the Student in school and did not provide a tutor to the child prior to enrollment as the District had promised the Parent.

OAR 581-015-2040 provides that school districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible. The IDEA defines FAPE as special education and related services that:

- a) Are provided at public expense, under public supervision and direction, and without charge;
- b) Meet the standards of the [state education agency];
- c) Include an appropriate preschool, elementary school, or secondary school education; and
- d) Are provided in conformity with an individualized education program (IEP).⁴

"A child receives a FAPE, for purposes of the IDEA, if the program addresses the child's unique needs, provides adequate support services so that the child can take advantage of educational opportunities, and is in accordance with the IEP."⁵

Through telephone conferences and in-person meetings with the Parent even before the Student was registered as a District student, the District collected information that the Student: (1) had a diagnosis of Autism; (2) had not attended public school regularly; (3) had an IEP in kindergarten, which had lapsed and was not updated; and (4) experienced meltdowns and exhibited aggressive behavior, as recently as the previous day. To successfully transition the Student back into a formal educational setting, a team that included the Parent, an advocate for the Parent, the District's Student Services Director, a School Psychologist, school Principal, and Special Education Teacher agreed that the Student would receive tutoring to best address the Student's needs before proceeding to placement in a classroom.

A tutor was retained contemporaneous with the Student's registration with the District. The Tutor

⁴ 20 USC § 1401(9); 34 CFR § 300.17.

⁵ *L.J. v. Pittsburg Unified Sch. Distr.*, 850 F.3d 996, 1003 (9th Cir. 2017).

met with the Student for two tutoring sessions, in which the Tutor was able to deliver instruction. At the end of the week, the Tutor reported out to a District Special Education Teacher that the Student lacked social skills but overall was respectful and focused on assigned tasks. The Tutor expressed support for the Student transitioning into an elementary school classroom, suggesting a half-day schedule. The following week, the team met and proposed that the Student begin attending school in a classroom setting.

The tutoring services that the Student received were tailored to address the Student's unique needs, specifically keeping in mind the Student's infrequent school attendance, lack of any current IEP, and the Student's reported history of recent aggressive behaviors. The District provided the Student with appropriate educational services through tutoring pursuant to an agreement between the Parent and the District after discussion in a team meeting. This allegation is not substantiated.

Section 2 Failure to Evaluate

The Parent alleges that the District violated the IDEA because the District did not evaluate the Student after the Parent requested the Student be considered for an Individualized Education Program (IEP). The Parent further alleges the District violated the IDEA because it did not provide the Parent with a consent to evaluate during an initial meeting.

A parent may initiate a request for an initial evaluation to determine if a child is a child with a disability.⁶ A parent may also request a re-evaluation of a student with a disability.⁷ A school district must obtain informed written consent from a parent before conducting an evaluation.⁸ The District must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.⁹ In the event a school district refuses a parent's request to evaluate a student, within a reasonable time it must provide parents with a PWN.¹⁰ The PWN refusing an evaluation must contain specific information, including a description of why the school district refuses to evaluate the student, how the school district arrived at its decision, and other options considered.¹¹

Here, the Parent requested a special education evaluation. Specifically, the Parent sent an email to the District's Director of Student Services on October 22, 2017 stating that, "I personally feel that . . . it would be best to start over with a clean IEP evaluation." The District's Director of Student Services did not respond to this email with either a PWN regarding the Parent's request for a special education evaluation, or a form for Parent to consent to an evaluation of the Student.

On October 30, 2017, after the Parent had requested in writing a special education evaluation, District personnel and the Parent convened for a meeting to discuss the Student's educational history and placement possibilities. At this meeting, the District did not provide the Parent with a consent form to evaluate the Student, nor did it provide the Parent with a PWN regarding the Parent's request.

On November 1, 2017 and again on November 4, 2017, the District received information from

⁶ 34 CFR § 300.301; OAR 581-015-2105(2).

⁷ 34 CFR § 300.303; OAR 581-015-2105(4).

⁸ 34 CFR § 300.300; OAR 581-015-2090. When a parent suspects the student may have a disability and requests an evaluation, "that suspicion should be sufficient to place any subsequent action or inaction taken with respect to that request within the ambit of the IDEA" (*Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796, (9th Cir. 1996).)

⁹ OAR 581-015-2090(3)(B).

¹⁰ 34 CFR § 300.503; OAR 581-015-2310.

¹¹ *Id.*

medical professionals that had previously treated the Student, describing the Student's medical diagnoses that included learning difficulty, ADHD, Disruptive Behavior, and PDD/Autism.

On November 14, 2017, District personnel and the Parent met once more regarding the Student's education and placement. At the meeting, the District again failed to provide the Parent with a PWN or a consent for evaluation despite having documentation in its possession from both the Parent and a medical professional that the Student had a history of learning difficulties. As of November 20, 2017—the date the Parent filed the Complaint—at least 29 days lapsed without any evidence indicating that the District furnished the Parent with either a consent to evaluate form or a PWN refusing to evaluate the Student.

The Parent requested that the District evaluate the Student for special education services. Despite having the opportunity to respond on numerous occasions, the District failed to provide the Parent a consent for evaluation or, in lieu of a consent for evaluation, a PWN explaining the refusal for evaluation. This allegation is substantiated.

Section 3. Child Find

The Parent alleges that the District violated the IDEA because it failed to commence any evaluations of the Student after the Parent informed the District that the Student had previously had an IEP and that the Student had a diagnosis of Autism.

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 services, including highly mobile children with disabilities, such as homeless children.¹²

On October 18, 2017, during an initial phone conference with the District's Director of Student Services, the Parent shared that the Student had been diagnosed with Autism. The Parent also shared that the Student had a lapsed IEP from Washington. At this point, the District was on notice that the Student may have a disability that affected the Student's learning. Even if the Parent had not requested an evaluation, which the Parent did, receiving information that the Student previously had an IEP and a diagnosis of Autism triggered the District's child find responsibilities.

Moreover, on November 3, 2017, the District received a Medical Statement or Health Assessment from the Student's Physician stating that the Student had "learning difficulty," ADHD, Disruptive Behavior, and Regulative Behavior Disorder. At this time, the District possessed more information from an alternate source that the Student's ability to learn was impacted. Because the Student's ability to learn was being impacted by a disability, the District had a duty to evaluate the Student.

The District was on notice that the Student previously had an IEP, an Autism diagnosis as reported by the Parent, and a diagnosis that included "learning difficulty," PDD/Autism, and ADHD. The District had an obligation to identify, locate, and evaluate the Student. The District failed to fulfill its child find obligation when it failed to initiate evaluation procedures for the Student. This allegation is substantiated.

Section 4. Parent Participation/Placement

The Parent alleges that the District violated the IDEA because it unilaterally placed the Student without conducting an evaluation of the Student and without giving credence to the Student's

¹² OAR 581-015-2080(2)(a).

last IEP. The Parent also alleges that the District violated the IDEA because it placed the Student in the more restrictive environment of tutoring and not an elementary school classroom.

a. Participation

A school district must provide one or both parents with an opportunity to meaningfully participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.¹³

Here, the District did include the Parent in the meetings on October 30, 2017 and November 13, 2017 regarding the Student's educational history and placement possibilities. The Parent was able to provide meaningful input about the Student's educational profile. The Parent agreed to the Student participating in tutoring prior to transitioning into a classroom setting. The Parent also participated in a school tour, agreed to academic testing, and a half-day start scheduled for November 17, 2017. This allegation is not substantiated.

b. Least Restrictive Environment/Placement

A school district "must ensure that: (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability; and (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."¹⁴

In this case, on November 6, 2017 and November 8, 2017, during the first week after registering in the District, the Student participated in two tutoring sessions outside of the classroom. On November 11, 2017, the Tutor sent a report positively describing the Student's performance in tutoring and recommended the Student transition to a classroom environment. Three days later, on November 14, 2017, District personnel and the Parent convened for a meeting to discuss the Student's transition to a classroom environment. At that meeting, the team agreed that the following day the Student would participate in an after-school visit of a proposed elementary school site, undergo academic testing the day after that, and begin attending an elementary school classroom on a half-day schedule beginning November 17, 2017. The Parent agreed to this plan.

The District and the Parent reached an agreement that the Student would receive tutoring on a temporary basis so the District could get to know the Student and better understand the Student's needs. The District reasoned that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily because, at minimum, the Student had: (1) not attended public school regularly; (2) not received services under a current IEP in at least two years; and (3) experienced meltdowns and exhibited aggressive behavior as recently as the previous day. The Student's placement in the more restrictive setting of tutoring was supported by the Parent's account of the Student's sporadic school attendance and history of aggressive behaviors. Furthermore, the more restrictive tutoring was temporary in nature. The team reconvened within ten days of the Student registering and receiving tutoring services to discuss a transition to a classroom environment. The District ensured that the Student was educated in the least restrictive environment to the maximum extent appropriate. This allegation is not substantiated.

¹³ OAR 581-015-2190.

¹⁴ OAR 581-015-2240.

V. ADDITIONAL FINDING

The District violated the IDEA by usurping the decision responsibilities of the placement team. The District did so for only a brief period of time, and without ultimately affecting the Student's agreed upon placement.

The IDEA requires that placement decisions for a child with a disability be made "by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options" ¹⁵ Such a group met on November 14, 2017. A team assembled that included the Parent, an advocate for the Parent, a friend of the Parent, a District School Psychologist, an elementary school Special Education Teacher, and a District elementary school Principal. A decision was made that the Student would begin attending an elementary school classroom on a half-day schedule beginning November 17, 2017.

The following day, while on a school tour, the Parent was told by the school's Special Education Teacher that the elementary school Principal proposed that the Student not attend an elementary school classroom on November 17, 2017 as was discussed and previously agreed upon by the placement team. Rather, the Special Education Teacher communicated to the Parent that the elementary school Principal proposed that the Student continue meeting with a tutor and engage in a slower introduction to attendance in a classroom setting. This change in course upset the Parent. The following day, November 16, 2017, the elementary school Principal emailed the Parent and reverted back to the plan agreed upon at the November 14, 2017 meeting, stating that the Student would start school for a half-day session in an elementary school classroom on Friday, November 17, 2017.

The elementary school Principal timely corrected the error of improperly changing the Student's placement without convening an appropriate team knowledgeable about the Student.

VI. CORRECTIVE ACTION¹⁶

In the Matter of Ashland School District 1J
Case No. 17-054-025

Based on the facts provided, the following corrective action is ordered.

No.	Action Required	Submissions ¹⁷	Due Date
1.	Submit to ODE for review and approval, the District's Child Find policies and procedures related to:	1) The District's enrollment procedures, including timelines, for general and special education students, transferring into the District from out of state, including the procedures for assignment of	February 14, 2018

¹⁵ 34 CFR § 300.116(a).

¹⁶ The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

¹⁷ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; Telephone - (503) 947-5722; e-mail: raeannray@state.or.us; Fax - (503) 378-5156.

		<p>students to schools;</p> <p>2) The identification, referral, and evaluation of students moving into the District from out of state who are, or may be, children who are homeless or highly mobile.</p> <p>3) Responding to a parent's request for a special education evaluation.</p> <p>4) Following ODE review, meet with designated ODE staff to review and revise, if needed, the applicable policies, and procedures.</p> <p>5) Move policy changes requiring Board adoption to completion and submit Board agenda minutes identifying adopted changes.</p>	<p>March 16, 2018</p> <p>June 29, 2018</p>
2.	With an appropriate evaluation planning process and Parent consent, expedite the completion of the evaluation, eligibility determination, and if eligible, IEP meeting for the Student.	<p>1) Submit copies of:</p> <p>a) the evaluation planning documents,</p> <p>b) eligibility determination, documents</p> <p>c) the completed IEP, if appropriate,</p> <p>d) copies of required consent, notices,</p> <p>e) any meeting minutes or notes.</p>	March 5, 2018

Dated this 19th Day of January 2018



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

Mailing Date: January 19, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)