

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Oregon City School District)
#62)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 010-054-020

I. BACKGROUND

On August 3, 2010, the Oregon Department of Education (Department) received a letter of complaint from an advocate representing the parent of a student residing in the Oregon City School District #62 (District).¹ The complaint alleged several violations of the Individuals with Disabilities Education Act (the IDEA) and requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on August 4, 2010. The parent’s advocate provided a copy of the complaint letter to the District.

On August 9, 2010, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of August 23, 2010. OAR 581-015-2030 authorizes the Department to investigate alleged violations of the IDEA that occurred within the calendar year prior to the receipt of the complaint.

The District submitted its timely *Response* to the Department and to the parent’s advocate on August 23, 2010. The District’s *Response* included a narrative response, a copy of an unsigned Prior Notice and Parental Consent for Evaluation, and a timeline outlining the District’s conversations with the parent. The District also submitted a Client Release form signed by the parent, allowing the District and the Department to communicate with the parent’s advocate.

The Department’s complaint investigator determined that on-site interviews were not required; but that telephone interviews would suffice. On September 14, 2010, the Department’s investigator interviewed the parent’s advocate by telephone. Following this interview, the advocate submitted additional documentation to the Department’s complaint investigator. These documents included copies of mental health evaluations, records of the District’s BESTeam² meetings (dated January 11, 2010 and February 1, 2010), and copies of correspondence between the District and the parent. The Department’s complaint investigator shared these documents with the District.

On September 16, 2010, the Department’s complaint investigator conducted a telephone interview with the District Special Education Director. Following this conversation, the District Special Education Director went to the school to review the counselor’s working file to verify dates on which the counselor³ had talked with the parent. In the working file, the District Special Education Director discovered a Prior Notice and Parental Consent for Evaluation Form, signed by the parent on January 8, 2010, in addition to other documents. As a result, the District

¹ Currently, according to the advocate, the parent is home-schooling the student.
² The BESTeam meets regularly to review information about students who are struggling to make appropriate progress. Often, The BESTeam then refers students for special education evaluations.
³ The Department’s complaint investigator could not interview the counselor because the counselor was on medical leave from the District for the duration of the complaint investigation.

revised its response to the second allegation and proposed a corrective action plan, discussed below.

Under federal and state law, the Department must investigate written complaints that allege violations of the IDEA that occurred within the twelve months prior to the Department's receipt of the complaint and must 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 to participate in mediation or if exceptional circumstances require an extension.⁴

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 (2010) 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 September 15, 2009 to the filing of this complaint on September 14, 2010.⁵

| | Allegations | Conclusions |
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| | Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways: | |
| 1. | <u>Access to Student Education Records:</u> Failing to provide the child's parent access to the child's educational records within a reasonable time of the parent requesting the documents; | <u>Substantiated.</u> The District sent the educational records to both the parent's attorney and advocate within two weeks of receiving the requests for records after the District Special Services Office reopened on August 3, 2010. |
| 2. | <u>Evaluation and Reevaluation Requirements:</u> Failing to conduct an evaluation or provide notice that it refused to conduct an evaluation of the child within a reasonable amount of time after the child's parent requested such an evaluation; and, | <u>Not Contested .</u> The District does not dispute this allegation and proposes to conduct an evaluation to determine the student's eligibility under IDEA. Further, if the student is eligible, the District will hold an IEP meeting to develop an IEP and to define a placement in the least restrictive environment in which the student's IEP can be successfully implemented. |
| 3. | <u>Review and Revision of IEPs:</u> | <u>No Finding.</u> |

⁴ OAR 581-015-2030(12).

⁵ See 34 CFR § 300.153(c) and OAR 581-015-2030(5).

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| | <p>Failing to convene an IEP Team meeting or provide notice that it refused to hold such a meeting within a reasonable amount of time after the child's parent requested a meeting with District representatives.</p> | <p>Following completion of the evaluation as outlined in allegation #2, the District proposes to hold an IEP meeting.</p> |
| | <p>Requested Corrective Action. The parents are requesting that the District:</p> <ol style="list-style-type: none"> 1. Supply the requested records as soon as possible; 2. Convene an IEP Team meeting as soon as possible; and, 3. Evaluate the student in all areas of suspected disability as soon as possible. | |

III. FINDINGS OF FACT

Background Information on the Student

1. The child is a resident of the District, is 13 years old, and is in the 8th grade. Currently, the student is being home-schooled by the parent. The student is not eligible for special education at this time, and has not yet been evaluated for such eligibility.
2. During the 2009-10 school year, the student attended two different middle schools in the District. The student transferred into the second middle school on December 7, 2009; and attended this school until February 5, 2010. During the time the student was registered at this school, the student attended classes only 42.6% of the time.
3. On January 8, 2010, the parent signed a Prior Notice and Parental Consent for Evaluation form, giving the District permission to evaluate the student for special education eligibility. The parent gave consent for the District to complete behavior checklists, review the file, and obtain a medical statement. Two teachers did complete the Achenbach Child Behavior Checklist (teacher's form). The parent also signed an Authorization to Use and Disclose Educational and Protected Health Information form. This was sent to a psychologist who was treating the student, and subsequently, this psychologist mailed a brief psychological report to the District.
4. The school counselor had been working with the parent through this process, but in the middle of February 2010, the school principal became the primary contact with the parent. According to school contact records, the principal talked several times with the parent about a special education evaluation over the next two weeks.

5. On March 1, 2010, the District referred the student to the Itinerant Teaching Program. The program is open to all students in the District. Students enrolled in the program receive 1:1 tutoring from a licensed teacher at a centrally located site other than their home school. Initially, the student attended these sessions regularly and the tutor reported that the student was making good progress.
6. On April 7, 2010, the parent informed the Itinerant Teaching Coordinator that the student would not continue the tutoring but instead was going into a residential treatment program. In a phone conversation between the parent and the principal, the parent stated that the student would no longer return to the District but would attend the Malibu In-House Treatment Center⁶ in California. The student attended this program for 36 days. The advocate verified this but did not have a diagnostic report to share with the Department's complaint investigator.
7. The District's Special Services Office closed on June 24, 2010 and was closed until August 3, 2010.
8. On June 22, 2010, an attorney acting on behalf of the parent sent the District a letter requesting the student's record. The letter included a Request for Release of Education Records signed by the parent. The letter was sent to the District Office; however, the Special Services Office did not receive the letter until August 12, 2010.
9. On June 14, 2010, the parent's advocate wrote a letter informing the District that the parent had retained the advocate to represent the student. The advocate requested all educational records for the student and included a signed parental release form. A facsimile transmission record verifies that the letter and consent form were faxed to the District at 1:05 p.m. on July 28, 2010.
10. The District sent copies of the student's educational records to both the attorney and the advocate on August 17, 2010.
11. The advocate filed the complaint for the parent on August 3, 2010.

IV. DISCUSSION

A District meets its Child Find⁷ obligation when it identifies, locates, and evaluates students residing in the District who may be in need of special education and related services. In addition, once a student is found eligible for special education, a District meets its responsibility when it convenes the team to meet with the parent and write an Individualized Education Plan⁸ (IEP) and define a placement in the least restrictive environment in which the student's IEP can be successfully implemented. Finally, a District meets its responsibility to provide parents with the opportunity to be fully engaged in the special education process when it supplies the parent with records the parent has requested in a timely fashion⁹.

⁶ The advocate describes this facility as a residential treatment center for individuals with addiction issues and/or with "co-occurring disorders".

⁷ OAR 581-015-2080

⁸ OAR 581-015-2200 through 581-015-2225

⁹ OAR 581-015-2300

In this case, the parent alleges that the District did not provide the parent access to the student's educational record in a timely fashion, did not conduct an evaluation of the student, and did not convene an IEP team meeting after the parent requested a meeting.

1) Access to Student Education Records

Parents have a right to access education records concerning the identification, evaluation, and educational placement of their child.¹⁰ The parental right of access includes a right to inspect and review the education records of the child upon request. This right extends to representatives of the parent who are authorized in writing by the parent to inspect and review the records.¹¹ Upon request, parents or their authorized representatives must be allowed to access student education records within a reasonable period of time and "[i]n no case more than 45 days after [the school district] has received the request."¹²

In this case, an authorized representative of the parent, the parent's attorney, requested access to the student's education record on June 22, 2010. The District provided copies of the requested records to the representatives on August 17, 2010 – 57 days after the June 22 request was made.

The Department finds that the District generated educational records with regard to the identification and evaluation of the student beginning no later than January 2010, when the parent consented to a number of special education evaluations. The Department also finds that the District failed to provide the parent's authorized representatives access to those records within 45 days of receipt of the request. Therefore, the Department concludes that the District erred by failing to provide the parent's authorized representatives access to educational records concerning the identification and evaluation of the student within 45 days of receipt of a request for the records.

The Department also finds that the District timely responded to the July 28, 2010 request made by the advocate. Although the request is dated June 14, 2010, the District's facsimile transmission records indicate that it was received by the District on July 28, 2010. Therefore, the District's response to that request, on August 17, 2010, was timely.

2) Evaluation and Reevaluation Requirements

School districts must complete special education evaluations and determine a student's eligibility within 60 school days of the parent consenting to such evaluations.¹³ The District stipulates that, in January 2010, it received signed parent permission to conduct an evaluation and that the District took some initial steps towards completing the evaluation. However, the District did not complete the evaluation and determine the student's eligibility within the 60 school day timeline. As corrective action, the District proposes to complete the evaluation, and, if the student is eligible for special education, to conduct an IEP meeting to write the IEP and to determine placement. See *Corrective Action*.

¹⁰ OAR 581-015-2300.

¹¹ OAR 581-021-0270.

¹² *Id.*

¹³ OAR 581-015-2110.

3) Review and Revision of IEPs

Because the District did not hold an eligibility determination for this student, the District was under no obligation to convene an IEP meeting for the student. The Department makes no finding with regard to this allegation. Nonetheless, the Department believes that the corrective action plan ordered with regard to the prior allegation addresses all of the impacts that the District's delay in completing the evaluation may have had on the student's education.

V. CORRECTIVE ACTION¹⁴

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| Action Required | Submissions ¹⁵ | Due Date |
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| <p>1. <u>Evaluation and Reevaluation Requirements</u>: District will expedite the completion of the student's evaluation and eligibility determination and, if found eligible, IEP development.</p> | <p>Copy to ODE of completed eligibility determination statement(s) and any related notices and evidence that this statement has been provided to the parent.</p> <p>If student is determined eligible, copy to ODE of completed IEP and any related meeting notices, meeting notes, and prior written notices.</p> | <p>October 15, 2010</p> <p>October 29, 2010</p> |
| <p>2. <u>Compensatory Education</u>: If the student is determined eligible for special education services, the parent and the district will determine a compensatory education services plan for the time period from April 19, 2010 (approximately 60 school days from the request for evaluation) to the last day of school in the 2009-10 school year and September 2010 (first day of school) to the first day of implementation of the student's initial IEP.</p> | <p>Copy of plan, signed by parent and authorized staff of the district, to provide the agreed upon compensatory education services based on the student's IEP.</p> <p>An assurance that the agreed upon compensatory educational services were made available to the student.</p> | <p>November 12, 2010</p> <p>September 30, 2011</p> |

¹⁴ 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).

¹⁵ Corrective action plans 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: raeann.ray@state.or.us; fax number (503) 378-5156.

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| <p>3. <u>Access to Student Education Record:</u> The District will review, and revise as necessary, its policies, procedures, and practices related to responding to requests for student education records with the 45 day timeline, regardless of whether school is in session.</p> | Copies of policies, procedures, and descriptions of practices with revisions, if any, identified. | October 29, 2010 |
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Dated: September 27, 2010

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: September 27, 2010

APPEAL RIGHTS: You are entitled to 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 you reside. Judicial review is pursuant to the provisions of ORS 183.484.