

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Gresham-Barlow SD 10J)	
)	FINDINGS OF FACT,
)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 12-054-033

I. BACKGROUND

On November 5, 2012, the Oregon Department of Education (Department) received a letter of complaint from complainant concerning the Gresham-Barlow School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The complainant provided a copy of the complaint to the District.

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 November 14, 2012, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On November 28, 2012, the District timely submitted its *Response* to the *Request for Response*. On December 5, 2012, the complainant provided further information by email to the Department's contract complaint investigator (Investigator). Under federal and state law, the Department must investigate written complaints that allege IDEA violations 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 to participate in mediation or if exceptional circumstances require an extension.² This order is timely.

The Department's Investigator determined that an on-site investigation would not be necessary in this case, but posed questions to the complainant by email on December 13, 2012, to which the complainant responded on December 14, 2012. The Investigator also posed questions by email to the District's Special Education Director on December 17, 2012, to which the District responded on that day (December 17, 2012). The Department's Investigator reviewed and considered all of the documents and email responses 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 parent'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 November 6, 2011 – November 5, 2012.

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010)

² OAR 581-015-2030(12)

No.	Allegation	Conclusion
(1)	<p data-bbox="293 218 873 285"><u>Access to Student Education Records; Safeguards</u></p> <p data-bbox="318 317 873 453">The complaint alleges that the District violated the IDEA by failing to maintain confidentiality of student education records, as follows:</p> <p data-bbox="293 520 873 722">(a) The complaint alleges that in November of 2011 the District mailed to the parent a psychological evaluation of another student; and the parent assumes that the District mailed the evaluation of the parent's student to another parent.</p> <p data-bbox="293 1394 873 1625">(b) The complaint alleges that on June 22, 2012, the parent observed removal from an unlocked desk drawer by a school janitor (at the request of a special education District staff person) a key to locked file cabinets containing student education records.</p> <p data-bbox="334 1766 873 1860">Relevant Law: OAR 581-015-2300, 34 CFR 300.613, 34 CFR 300.622, and 34 CFR 300.623.</p>	<p data-bbox="902 520 1438 590">(a) <u>No Finding – See Discussion, page 4</u></p> <p data-bbox="943 590 1438 758">If the District released personally identifiable information of a student to the complainant who was not authorized to view it, this would amount to a violation of IDEA.</p> <p data-bbox="943 793 1438 1367">The Department has jurisdiction over this allegation if the allegation occurred during the one year period prior to the filing of this complaint. However, the Department cannot find any evidence establishing when the complainant received the Evaluation/Personally Identifiable Information that should not have been received. Under these circumstances, the Department may not make a finding that the complainant received the evaluation within the year preceding the filing of the complaint, so the Department does not make a finding in this allegation or order corrective action.</p> <p data-bbox="902 1394 1198 1430">(b) <u>Not Substantiated</u></p> <p data-bbox="943 1430 1438 1797">Pursuant to IDEA and FERPA, personally identifiable information may be accessed without parental consent, by district staff members with legitimate educational interest, as defined by the District. Additionally, a janitor unlocking a door or desk is not the same as access to educational records. The Department does not sustain this allegation.</p>

III. FINDINGS OF FACT

1. The Department received the written complaint in this case on November 5, 2012.
2. The complainant in this case alleges that he/she received a copy of a psychological evaluation (evaluation) from the District via US Mail. The complainant should not have received the evaluation because it concerned a person with no connection to the complainant. The complainant alleged in the complaint receipt of the evaluation in "11/2011" and further clarified in a response to the Investigator's questions that the complainant "estimate[s]" the complainant received the evaluation at "the end of November 2011". The complainant did not keep the envelope containing the evaluation, which may have contained a postmark.
3. The Department cannot determine when the complainant received the document nor that the District mailed the document to the complainant from the facts presented in the record, and it is not clear the complainant received the evaluation within one year preceding the Department's receipt of this complaint.
4. Both the complainant and the District provided theories concerning the date of the mailing of the evaluation to the complainant and no other relevant information clearly establishes the date of mailing or receipt of the evaluation.
5. Under the complainant's theory, the District mailed the wrong evaluation in response to a call in mid-November of 2011 by the complainant reminding the District that the complainant had not received from the District meeting notes of the November 1, 2011 eligibility determination meeting concerning the complainant's child (a former student in the District).
6. Under the District's theory, the date on the evaluation mailed to the complainant is September 13, 2011, in preparation for an October 11, 2011 eligibility meeting concerning the evaluation. The District thus surmises that the evaluation would have been mailed on or near October 12, 2011, and the complainant would have received the evaluation shortly thereafter, but well before November 2011.
7. The complainant alleges a second violation of confidentiality provisions occurred on or about June 22, 2012 (during summer break) when the complainant observed a school custodian unlocking a door to a District school principal's office at the request of a District special education administrator.
8. This act allowed the special education administrator access to an unlocked desk that contained a key to locked file cabinets containing special education records.
9. The special education administrator then accessed the student records in the locked file cabinet pursuant to a parent request.

IV. DISCUSSION

A State Educational Agency (SEA) is required under Part B of the IDEA to enforce all Part B requirements, including those Part B Confidentiality of Information regulations that incorporate provisions of the Family Educational Rights and Privacy Act (FERPA). Additionally, the IDEA Part B regulations contain additional safeguards for confidentiality of student records and

information.³ This complaint first alleges that the District violated the IDEA by failing to maintain confidentiality of student education records, when allegedly, in November of 2011, the District mailed to the complainant a psychological evaluation of another student. The complainant assumes that the District mailed the evaluation of the complainant's child to another parent at this time.

The District argued in their *Response* that the Department does not possess jurisdiction to address this allegation because the complainant's child no longer attends school in the District. However, OAR 581-015-2030(1) provides: "An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that * * * a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act." Thus, the fact that the complainant's child is not currently a student in the District is irrelevant. The Department has jurisdiction over the first allegation of the complaint filed in this case, which alleges the District violated the IDEA.

Next, the Department will examine the facts related to the allegation. Under State and Federal law, the Department may only investigate complaints related to the IDEA that occur not more than one year before the date the complaint is received by the Department.⁴

Here, the complainant allegedly received from the District personally identifiable information relating to a child other than their own, when the District mailed to the parent a psychological evaluation of another student. The complainant alleges this took place in November 2011. While the complainant assumes that the District likewise mailed the evaluation of their student to another parent at this time, neither the District nor the parent can verify this assumption. The complainant did not present any information supporting when the evaluation document was received. The complainant did not maintain a copy of the letter or envelope which allegedly accompanied the mailed evaluation document. Without an envelope or letter for this document, there is nothing to substantiate when the document was sent, to whom it was sent, the purpose of the release of information, or that it was in fact erroneously mailed to the complainant. Additionally, the District has no record of actually mailing this document to the complainant. The District asserts that if this release occurred, then it logically would have been on or near October 12, 2011 rather than in November of 2011, as the District had nothing to send the complainant at that time. Additionally, the District replied that no parents at the school have reported not receiving an evaluation they had requested or been promised between November of 2011 and November 26, 2012. As such, there is no evidence or logical indication that this document was erroneously sent to the complainant during the time in question.

As such, the Department cannot find evidence establishing when the complainant received the evaluation. The complainant may have received the evaluation on or before November 6, 2011, which is more than one year prior to the Department's receipt of the complaint in this case, which was on November 5, 2012. Under these circumstances, the Department may not make a finding that the complainant received the evaluation within the year preceding the filing of the complaint in this case, nor that the complainant received this document via US Mail. The Department thus does not sustain this allegation nor make a finding (see OAR 581-015-2030 which notes that the complaint must allege a violation of the IDEA that occurred not more than one year before the date that the complaint is received by the Department).

³ 34 CFR §§ 300.610 – 300.627

⁴ OAR 581-15-2030 and 34 CFR 300.153(c)

The complainant also alleges a second violation of confidentiality provisions which occurred on or about June 22, 2012 (during summer break) when the complainant observed a school custodian unlock a door to a District school principal's office at the request of a District special education administrator. This act allowed the special education administrator access to a desk that contained a key to file cabinets containing special education records.

According to the District Records Management Policy for Students with Disabilities, posted on the District's website, a student's education records will be maintained at the school building at which the student is in attendance and the administrator/principal or his/her designee shall be the person responsible for maintaining and releasing the education records.⁵

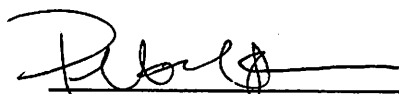
Pursuant to FERPA and IDEA, a district may make disclosure of personally identifiable information without consent to other school officials, within the district who have a legitimate educational interest. An individual with a "legitimate educational interest" means a district official employed by the district as an administrator, supervisor, instructor or staff support member; or a person serving on a school board who needs to review an educational record in order to fulfill his or her professional responsibilities, as delineated by their job description, contract, or conditions of employment. The Special Education Director, acting in that capacity, would have the requisite legitimate educational interest in accessing these records. The regulations delineate that more than one person may access a student's personally identifiable information if those individuals have a "legitimate educational interest." Additionally, a janitor unlocking a door to an office is not "accessing student records" pursuant to FERPA and the IDEA. Therefore, the Department does not substantiate this allegation.

CORRECTIVE ACTION⁶

In the Matter of Gresham-Barlow School District
Case No. 12-054-033

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

Dated: this 4th day of January 2013



Petrea Hagen-Gilden
Interim Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: January 4, 2013

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.

⁵ Gresham-Barlow District Policy - Education Records/Records of Students with Disabilities Management http://policy.osba.org/gbsd/iigbab_jo%20r%20g1.pdf. Refer to section 5a.

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)).