



Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction

320 West Main Street

Riverton, WY 82501

Phone 307-857-9250

Fax 307-857-9256

Website www.k12.wy.us

WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainants:

Case #: 2010-10

Respondent:

COMPLAINT DECISION

Date of Decision: July 21, 2010

On May 27, 2010 the Wyoming Department of Education (WDE) received a letter of complaint and supporting documentation filed by _____ (hereinafter "Complainants") alleging violations of special education law with respect to _____ (hereinafter "Student"), by _____ (hereinafter "District").

Pursuant to 34 C.F.R. §§300.151 through 300.153 of the Federal Regulations implementing the Individuals With Disabilities Education Act (IDEA), WDE conducted an investigation into the allegations in the complaint. Consistent with the IDEA, Federal Regulations, and the Wyoming Department of Education Rules, Chapter 7 governing Services for Children With Disabilities WDE issues the following Findings of Fact, Conclusions, Decision, and Order for Corrective Action.

Complaint Issue:

Whether the District violated its child find responsibility by failing to evaluate the Student consistent with 34 C.F.R. §300.111.

Investigatory Process:

Review of records consisting of the following:

- Original letter of complaint and supporting documents.
- Documentation provided by the District.

The District and Parent were given the opportunity to submit additional information to WDE for consideration during the investigation of this complaint.

Applicable Federal Regulations or State Rules:

34 C.F.R. §300.111 Child Find

Wyoming Department of Education Rules, Chapter 7

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate allegations of violations that occurred not more than one year from the date the Complaint was received. In light of this limitation, the investigation and any findings of noncompliance will be limited to the period commencing May 28, 2009 and ending on May 27, 2010.

Findings of Fact:

1. At all times relevant to this complaint, the Student was a resident of the District.
2. At the time this complaint was filed, the Student was parentally placed in a residential treatment program due to suicidal behavior and mental health concerns.
3. On January 18, 2010 the Complainants hospitalized the Student due to suicidal behavior.
4. The Complainants transferred the Student to WBI under a voluntary commitment on January 19, 2010.
5. On January 26, 2010, the Complainants removed the Student from WBI against medical advice.
6. The District began providing homebound services on January 29, 2010 and continued until the Student was hospitalized again on February 8, 2010 for suicidal behavior. Complainants report that during this period, the Student was working with the District's homebound instructor, and "was doing great." " was almost completely caught up on missed work."

7. On February 8, 2010 the police were again called to the complainant's home, and the Student was transported to the emergency room. A determination was made by mental health officials that the Student needed to be involuntary committed.
8. Due to acting out behavior, the Student was transferred to the Detention Center on February 9, 2010.
9. A commitment order was issued on February 10, 2010.
10. The Student was transferred to WBI on February 12, 2010. The District provided work for the Student, but little work was completed as most of the client's time at is spent in therapy.
11. The Student transferred to the residential treatment facility on March 3, 2010. The District homebound instructor began working with the residential facility to supplement the services provided.
12. The Student recently received credit for 11th grade year in the District, although second semester classes were taken at the residential treatment facility with additional homebound instruction provided by the District.
13. The Student's high school grades are reported below:

9 th Grade	First Semester	Second Semester
Physical Science	A	
Power & Energy Technology	A	
World History	A	
Algebra	A	
Computer Apps		B+
Physical Education		A
Spanish I		A
English		B+
10 th Grade	First Semester	Second Semester
Geometry	A-	
English	B-	
Health	A-	
Beginning Guitar	A	
Algebra II		C
Class Guitar		B+
College Prep Biology		B
U.S. History		B
11 th Grade	First Semester	Second Semester
Life Sorts	A	
Chemistry I	B-	

Sports/Entertainment Marketing	C+	
Honors American Lit.	C-	
Spanish II		I
Accounting I		A
Pre-Calculus		W/D
U.S. History II		A-

14. The Student's 2007 PAWS results document that the Student's performance level was proficient in Reading, Writing, and Mathematics.
15. The Student's 2009 PAWS results document that the Student's performance level was Basic in Reading, and Proficient in Writing and Mathematics. The Student demonstrated proficiency in 2 out of 3 content areas for Reading, but overall Reading score was within the Basic range.
16. The Student's high school transcript indicates that has earned 22 credits toward graduation and a cumulative Grade Point Average (GPA) of 3.431.
17. Throughout high school, the Student had no office referrals, detentions, suspensions, or any noted disciplinary infractions.
18. The Student was successful in the regular education environment of high school until became ill and the Complainants hospitalized
19. Prior to the Student's hospitalization in January 2010, neither the District or the Complainants had referred the Student for a special education evaluation.
20. This complaint was filed on May 27, 2010 requesting systemic changes to the medical and educational systems as well as financial assistance with the cost of the Student's medical care.

Conclusions:

1. The Complainants make the argument, in relevant part, that because the Student struggles with mental health, the State or District should be responsible for holding the District responsible for funding the costs of education, hospitalization and residential placement.
2. In order to be eligible for special education services under the IDEA, a child must be evaluated in accordance with the Federal Regulations as having one of the IDEA disabilities, who, by reason thereof, needs special education and related services. See 34 C.F.R. §300.8. It is a two-prong test, and both elements must be satisfied. A child must have an IDEA disability, and the disability must adversely impact the child's educational performance resulting in a need for special education.

3. The IDEA disability categories identified in 34 C.F.R. §300.8 are as follows:
 - a. Autism
 - b. Deaf-Blindness
 - c. Deafness
 - d. Developmental Delay (as an optional category for states)
 - e. Emotional Disturbance
 - f. Hearing Impairment
 - g. Mental Retardation
 - h. Multiple Disabilities
 - i. Orthopedic Impairment
 - j. Other Health Impairment
 - k. Specific Learning Disability
 - l. Speech Language Impairment
 - m. Traumatic Brain Injury
 - n. Visual Impairment
4. It is the duty of the District to evaluate any child who is suspected of being a child with a disability and in need of special education. See 34 C.F.R. § 300.111(c).
5. Once eligible under the IDEA, children are entitled to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). FAPE means special education and related services that are provided at public expense, under public supervision and direction, meet the standards of WDE, and are provided in conformity with an individualized education program (IEP) that meets federal requirements. See 34 C.F.R. §300.17.
6. While it is possible for a mental health diagnosis to serve as the underlying disability under the category of Other Health Impairment, the second prong of the child find obligation has not been met.
7. The Student was successful in the regular education environment at high school. achieved success in all of classes, was compliant with the rules of the school, and did not pose any safety risks. The Student continues to maintain an above average GPA. Nothing in the District's records would cause the District to suspect that the student had an IDEA disability or needed special education.
8. The Student's health concerns surfaced outside of the school environment. The Student became acutely ill on January 18, 2010, and the Complainants took to a hospital

emergency room, in much the same way parents would if their child had any other acute medical illness.

9. Consistent with W.S. §21-4-402, the District provided homebound instruction to the Student, permitting to continue to progress toward graduation.
10. The fact that the Student was successful in high school education until became ill is critical to the special education analysis. The District had no reason to suspect the Student was a learner with an IDEA disability or in need of special education.
11. The District may now be on notice of a mental health diagnosis, but that alone does not trigger the District's child find obligation or make the Student eligible under the IDEA.
12. Although prior receipt of special education service is not an automatic bar to reimbursement under the IDEA (*See Forest Grove Sch. Dist. v. T.A.*, 52 IDELR 151 (U.S. 2009)), the Student's need for a residential placement must be born out of educational necessity in order for the District to be financially responsible.
13. In the *Forest Grove* case on remand from the United States Supreme Court, the District Court of Oregon held that the noneducational nature of the placement precluded reimbursement. In that case, the underlying reason for the residential placement was the student's out-of-school drug abuse and problem behaviors. *Forest Grove Sch. Dist. v. T.A.*, 53 IDELR 213 (D. Or. 2009).
14. The distinction between placements made for educational reasons as opposed to medical reasons would also control a district's reimbursement responsibilities for a special education student.
15. "If a placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including **non-medical care** and room and board, must be at no cost to the parents of the child." (Emphasis added.) 34 C.F.R. §300.108.
16. The determination of whether a residential or hospital placement is necessary in order to child to receive FAPE has been frequently litigated across the country, resulting in a body of case law that distinguishes between placements made for educational reasons and those made for noneducational, medical or psychiatric reasons.
17. The Ninth Circuit Court of Appeals has recently ruled that placements made for medical, including psychiatric, reasons are noneducational, and therefore, the costs of care are NOT the responsibility of a school district. The Ninth Circuit identified the focus of the court's analysis as follows: "Our analysis must focus on whether [the residential] placement may be considered necessary for educational purposes, or whether the placement is in response to

medical, social or emotional problems that are quite apart from the learning process.” *Ashland Sch. Dist. v. E.H.*, 53 IDELR 177 (9th Cir. 2009), citing *Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings*, 16 IDELR 944 (9th Cir. 1990). In the *Ashland* case, the student was hospitalized by parents for psychiatric reasons. The district court concluded, and the Court of Appeals affirmed, that the student’s medical care was unrelated to educational needs.

18. In a similar case also from the Ninth Circuit Court of Appeals and the Ashland School District, the Court ruled that a residential placement resulted from the student’s out-of-school behaviors. Therefore, the residential placement was not educationally necessary. The record showed that the parents enrolled the student in a residential facility because of “risky” and “defiant” behaviors at home. Because the residential placement in this case was not necessary for the student to receive FAPE, the Ninth Circuit held that the parents were not entitled to reimbursement. *Ashland Sch. Dist. v. R.J.*, 53 IDELR 176 (9th Cir. 2009).
19. The Fourth Circuit Court of Appeals held that if medical needs are segregable from educational needs, then a school district is not responsible for funding a residential placement. In this case, the student had a history of severe emotional impairments and suicide attempts, but the Court held she did not require a residential placement in order to receive FAPE. The student’s safety, mental health and medical issues were distinct from her educational needs. The Court noted that a residential placement is required only if residential care is essential for the child to make any educational progress. *Shaw v. Shoemaker*, 53 IDELR 313 (4th Cir. 2010).
20. In a ruling denying reimbursement for a residential placement, the Second Circuit Court of Appeals reasoned “the central inquiry is whether the student’s conduct outside of the school building and outside the normal hours of the school day is such that it impedes [the] ability to derive an academic benefit from a day program.” As a general rule, a residential placement is not required under the IDEA unless there is objective evidence that the student is not progressing educationally. *M.H. v. Monroe-Woodbury Central Sch. Dist.*, 51 IDELR 91 (2nd Cir. 2008).
21. As applied to this complaint, the District had no reason to suspect the Student was a learner with an IDEA disability or in need of special education. The incidents that resulted in hospitalization were noneducational in nature.
22. In light of the noneducational nature of the Student’s hospitalization, the District is not obligated to fund hospitalization or placement outside of the separate responsibility placed on the District by virtue of W.S. §21-4-402.

Decision:

Issue

Whether the District violated its child find responsibility by failing to evaluate the Student consistent with 34 C.F.R. §300.111.

WDE determines that the District did not have any reasons to suspect that the Student was a learner with an IDEA disability or in need of special education. Therefore, there is no violation.

Pursuant to WDE's general supervisory authority, and its responsibility to address the appropriate future provision of services for all children with disabilities, this Complaint Decision, in redacted form, will be posted on the WDE website for public viewing. See 34 C.F.R. §300.151(b).

Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Unit at 307-857-9285 or 800-228-6194.

Sincerely,



Peg Brown-Clark
State Director of Special Education
Special Programs Unit Director

cc:

Dr. James McBride, Superintendent of Public Instruction
Tania Hytek, WDE Legal Counsel