



Wyoming Department of Education

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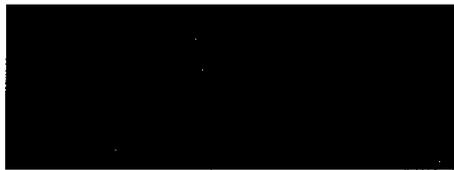
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WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS UNIT
SPECIAL EDUCATION

Complainant:



District:



Case Number 2010-3

COMPLAINT DECISION

Date of Decision: April 15, 2010

On February 17, 2010, the Wyoming Department of Education (WDE) received a letter of complaint and supporting documentation filed by [REDACTED] (hereinafter "Complainant"), alleging violations of special education law with respect to her daughter, [REDACTED] (hereinafter "Student"), by [REDACTED] County School District [REDACTED] (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 2007 Wyoming Department of Education, Chapter 7 Rules in effect at the time the Complaint was filed, WDE issues the following Findings of Fact, Conclusions, and Decision.

Complaint Issue:

Issue #1

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, including assessment, evaluation results, and grade reports from 2007 to the present.
- Documentation provided by the Complainant, including relevant privately obtained evaluation results, medical information and treatment plans.
- Review of the results of a comprehensive independent educational evaluation conducted by a licensed private Psychologist.

Teacher Questionnaires were submitted to the Student's current teachers. WDE reviewed the results of 4 questionnaires returned by the District.

The District and Complainant were given the opportunity to submit additional information to WDE to be considered during the investigation of this complaint.

Relevant Time Period: Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate violations that occurred not more than one year prior to WDE's receipt of the Complaint. In this case, the Decision will be limited to the time period commencing February 18, 2009 through February 17, 2010, the date the Complaint was received. However, in order to fully understand the facts relevant to this Complaint, a thorough review of the Student's educational records was undertaken.

Applicable Federal Regulations or State Rules:

- | | |
|--------------------|---|
| 34 C.F.R. §300.8 | Child with a disability. |
| 34 C.F.R. §300.101 | Free appropriate public education (FAPE). |
| 34 C.F.R. §300.111 | Child find. |

2007 Wyoming Department of Education, Chapter 7 Rules (effective at the time the Complaint was filed.)

Findings of Fact:

1. At all times relevant to this Complaint, the Student was enrolled in the District.
2. The Student currently attends [redacted] grade at an [redacted] school in the District.

3. The Student was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) during her [REDACTED] year and prescribed medication to reduce her symptoms. Additionally, the Student suffers from chronic, severe asthma, which is controlled by medication.
4. An [REDACTED] Pediatrician report indicated the Student's ADHD was well controlled and that the Student did well in [REDACTED] grade.
5. On [REDACTED], the same Pediatrician reported increased aggressions by the Student at home, and increased distractibility at school as reported by the Complainant.
6. On [REDACTED], the Pediatrician documented Complainant's report of increased anxiety and sleep disturbance at home and that the Student was receiving weekly counseling at school.
7. During the fall of [REDACTED] the Student was evaluated to determine eligibility for special education. Relevant assessment results are summarized below:

Date	Evaluation Tool	Results
[REDACTED]	Woodcock-Johnson III Test of Achievement (WJ-III)	<ul style="list-style-type: none"> • Written Expression scores: [REDACTED] • Broad Math scores: [REDACTED] • Broad Reading scores: [REDACTED]
[REDACTED]	Weschler Intelligence Scale for Children-Fourth Edition (WISC-4)	<ul style="list-style-type: none"> • Verbal Comprehension Index: [REDACTED] • Perceptual Organization Index: [REDACTED] • Working Memory Index: [REDACTED] • Processing Speed Index: [REDACTED] • Full Scale: [REDACTED]
[REDACTED]	Weschler Individual Achievement Test-Second Edition (WIAT)	<ul style="list-style-type: none"> • Word Reading: [REDACTED] • Reading Comprehension: [REDACTED] • Pseudoword Decoding: [REDACTED] • Numerical Operations: [REDACTED] • Math Reasoning: [REDACTED] • Spelling: [REDACTED] • Listening Comprehension: [REDACTED]
[REDACTED]	Scale for Assessing Emotional Disturbance	<ul style="list-style-type: none"> • Average range on all subscales
[REDACTED]	Psychological Evaluation Summary	<ul style="list-style-type: none"> • Student demonstrates hyperactive and aggressive behaviors in the home. • Within the home, Student's social and emotional functioning is

		<p>problematic.</p> <ul style="list-style-type: none"> • Observations of her current behavior in the school environment indicate that Student is functioning within normal, expected limits. • Student does not meet the eligibility criteria for a student with a disability.
<p>██████████</p>	<p>Parent Interview</p>	<ul style="list-style-type: none"> • Student has a short temper and gets angry easily. • Student struggles in reading. • "Student doesn't do too bad in getting along with friends, but doesn't really have good friends." • "Student does not do well at home. She fights with her sister and easily gets angry." • Student likes school and always wants to come to school.
<p>██████████</p>	<p>Teacher Reports (3)</p>	<ul style="list-style-type: none"> • Work habits include works slowly, listens carefully most of the time, makes good use of time, prepared for class most of the time, and works independently. • Would rather talk than work. • Assignments consistently completed. • Pays attention, but easily distracted at times. • Short attention span, easily distracted. • Has difficulty staying on task. • Seldom uses time wisely. • Assignments often incomplete or inaccurate. • Tries hard, good effort; seems interested. • Participates in discussion sometimes. • Gets along well with peers. • Somewhat isolates from peers. • Generally defensive with peers. • Behavior in class is good. • Relationship with teacher is appropriate.
<p>██████████</p>	<p>Classroom Observation during Reading</p>	<ul style="list-style-type: none"> • Student had difficulty remaining still in her seat. She raised her hand, participated, and provided accurate and appropriate responses.

8. Key notes from the [REDACTED] Eligibility meeting were as follows:
- Educational Diagnostician reported on [Student's] achievement testing: "Everything is right on and where it should be."
 - The School Psychologist stated, "Everything looked okay and [Student's] processing speed was very fast."
 - "Teacher reported [Student] is doing fine in the classroom, do not see anything." "She is a very bright student and always helpful and on task."
 - Parent stated that "[Student] seems to hold it together at school but when she gets home she lets it all out and gets very upset, also has to have everything just right. Very competitive with her older sister."
9. At the [REDACTED] meeting, the team determined that the Student was not eligible for or in need of special education under the IDEA.
10. In early [REDACTED], the Student participated in the Day Treatment Unit at the National Jewish Medical and Research Center as part of her medical follow-up for asthma and allergies.
11. The Student's Doctor issued a Home Management Plan at discharge on [REDACTED] with the following diagnoses and recommendations:
- Diagnosed with severe Asthma, seasonal allergies, and "Psychosocial Factors Affecting Illness Management."
 - "[Student] would benefit from regular Cognitive Behavioral Therapy to address her OCD and anxiety."
 - "[Student's] ADHD has been managed by medication and [Student's] adaptive skills. However, more recently, her school performance appears to be suffering. This may be due to both her ADHD and a possible auditory processing problem. [Student's] parents should request a meeting and discuss both a 504 Plan and an IEP."
12. The Doctor's report also indicated that the Student is allergic to many substances, including plants and animals, specifically cat, dog, goat, hog, horse and rabbit. As a result, he recommended that the family's dog should not be in the home, and at the very least, should not be allowed in the Student's bedroom. (The Student previously reported that she sleeps with her dog.)

13. As a result of the National Jewish Medical and Research Center recommendations and Complainant's concerns, the District initiated a referral for Section 504 services on [REDACTED]

14. The Student was placed on a 504 Plan on [REDACTED]. Accommodations in the plan permitted the Student additional flexibility in school and for late assignments due to her asthma.

15. The Student's grades for the [REDACTED] school year are summarized as follows:

Subject	Term 1	2	3	4
Math	[REDACTED]			
Reading				
Social Studies				
Science				
Writing				
PE				
Music				
Creative Expression				

Academic Performance Level for Primary Grades					
I	O	S+	S	S-	N
Improving	Outstanding	Satisfactory +	Satisfactory	Satisfactory -	Needs Improvement

16. No disciplinary referrals for inappropriate behavior were noted for the [REDACTED] school year.

17. The Student's 504 plan was reviewed at a meeting on [REDACTED]. The Student's Plan was amended to continue the previous accommodations while adding additional accommodations to provide the Student with stress relieving sensory tools throughout her day, a daily communication notebook, and weekly counseling.

18. On the Student's [REDACTED] Proficiency Assessments for Wyoming Students (PAWS) report, her scores were as follows:

- Reading: [REDACTED]
- Writing: [REDACTED]
- Math: [REDACTED]

19. At the Student's 504 Plan meeting of [REDACTED], she was reportedly "progressing academically" and receiving Title I intervention support three times per week for twenty

minutes per session. The Student was also receiving "one to one support at recesses (due to health issues and staying in) and after school on Tuesdays."

20. The 504 Plan was revised to incorporate a plan for asthma treatment prior to PE class and after school reading tutoring.

21. The Student's pediatrician sent a letter to the District (dated [REDACTED]), which summarized the Student's medications and plan of care.

22. The Student's Psychiatrist sent a letter to the District ([REDACTED]) asking school personnel to "administer [Student's] medications as prescribed."

23. The Psychiatrist's letter also included a note on a prescription form indicating that the Student needs IEP for diagnoses of ADHD 314.01 and obsessive-compulsive disorder 300.3.

24. On [REDACTED] in response to the Complainant's request for additional evaluation, the District provided the Complainant with a "Notice of Refusal to Conduct an Initial Evaluation," which included the following key information:

- Reference to the Student's average levels of intellectual and behavioral functioning (according to the results of the psychological evaluation conducted in the fall of 2007), along with WIAT scores placing the student in the average range for both reading and mathematics.
- Other options/relevant factors: "[Student] is presently being served under a 504 plan – this plan provides allowance for absences (sic) due to her asthma. [Student] has only missed 4 days as of [REDACTED] [Student] is seeing school counselor 1x/wk and she is receiving tutoring for reading 1x/wk – classroom teacher."

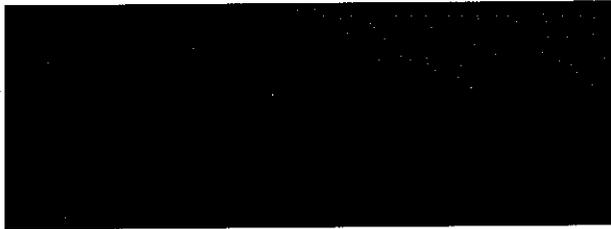
25. On the Student's [REDACTED] PAWS report, her scores were as follows:

- Reading: [REDACTED]
- Writing: [REDACTED]
- Math: [REDACTED]
- Science: [REDACTED]

26. The Student's grades for the 2008-2009 school year are summarized as follows:

Subject	Term 1	2	3	4
Math	[REDACTED]			
Reading	[REDACTED]			
Social Studies	[REDACTED]			

Science
 Writing
 PE
 Music
 Creative Expression



Academic Performance Level for Primary Grades					
I	O	S+	S	S-	N
Improving	Outstanding	Satisfactory +	Satisfactory	Satisfactory -	Needs Improvement

27. No disciplinary referrals for inappropriate behavior were noted in the [redacted] school year.

28. On [redacted] the Student's 504 team met and added six new accommodations to her plan, including the following:

- "Teacher will monitor [Student's] interaction with peers (making friends, getting along, etc...) – comments in notebook to parents."
- "Change accommodations on working after school on reading skills one time a week – Tuesdays until 5 p.m."

29. A private Occupational Therapist retained by the Complainant conducted a therapy evaluation of the Student on [redacted]. The following salient information and comments were contained in the report:

- The Student exhibits abnormal responses to particular stimuli (i.e., types of clothing, certain smells, certain bath products, hygiene procedures)
- "There has been some discussion as far as if patient has autism but has not been tested for it."
- Strategies/techniques affirmed by student: rolling chairs, swivel stool, stress ball in hands, "enjoyed the flat heated sound head of the vibrator on her arms, neck, face, and back," "hotdog" in which patient was rolled up in a vinyl pad, and compression with therapy ball. The Student reportedly "feels comfortable when she [is] allowed to hide underneath things"
- "This patient has significant issues that need to be dealt with in the school setting. My approach is that this child be allowed to have some concessions and more freedom than her classmates which would allow her to calm herself down and stay more focused during school. As this child gets older these deficits will be magnified especially in the areas of personal hygiene, communication skills and behavioral issues."

30. While the Student was in [redacted] grade, the Complainants retained a private Psychologist to conduct a psychological evaluation of the Student. On [redacted] the Psychologist conducted an evaluation and issued a report concerning the Student's current levels of functioning. Key results and observations from testing include the following information:

- The Student has experienced "difficulties in social relationships," fears, and "problems with anxiety" since preschool.
- The Student's "academic grades appeared to be adequate."
- "[Student] is in the Average range of intellectual functioning."

31. Relevant assessment results from the Psychologist are summarized below:

Assessment Tool	Results	
Stanford-Binet Intelligence Scales, Fifth Edition (SB5)	<ul style="list-style-type: none"> • Full Scale IQ: [redacted] • Nonverbal IQ: [redacted] • Verbal IQ: [redacted] • Fluid Reasoning: [redacted] • Knowledge: [redacted] • Quantitative Reasoning: [redacted] • Visual Spatial: [redacted] • Working Memory: [redacted] 	
Woodcock Johnson Tests of Achievement Form C.	Reading Tests: <ul style="list-style-type: none"> • Letter Word Id. • Passage Comp. • Reading Fluency 	Grade Equivalent: <ul style="list-style-type: none"> • [redacted]
	Mathematics Tests: <ul style="list-style-type: none"> • Applied Problems • Calculation • Math Fluency 	Grade Equivalent: <ul style="list-style-type: none"> • [redacted]
	Written Language: <ul style="list-style-type: none"> • Spelling • Writing Samples • Writing Fluency 	Grade Equivalent: <ul style="list-style-type: none"> • [redacted]
Achenbach Child Behavior Checklist	Teachers and the Student's Father provided ratings resulting in no elevations on any of the clinical scales. Mother's ratings resulted in substantial elevations on all of the clinical scales and T-scores that indicated problems with Anxiety and Conduct.	
Connors 3	Ratings provided by teachers did not result in any scale elevations. Ratings provided by parents resulted in marked elevations of the ADHD, Conduct Disorder and Oppositional	

	Defiant Disorder.
Millon Pre-Adolescent Clinical Inventory	The Student rated herself as having elevations in Anxiety/Fears and Disruptive Behavior scales.

32. The following summary statements and recommendations were also included in the Psychologist's [REDACTED] report:

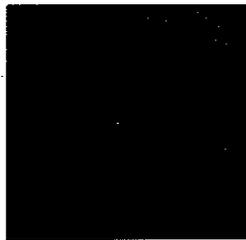
- "According to her history and this evaluation, [Student] is experiencing school performance problems. According to her history and her academic scores, [Student] will likely continue to require academic assistance to reduce her academic problems."
- Regarding ADHD: "...her symptoms do not appear to be adequately controlled."
- "[Student's] multidisciplinary team should determine whether she meets the criteria for special education services as a student with emotional disability because of her ADHD symptoms and the effect of her symptoms on her school performance."
- [Student's] multidisciplinary team should determine whether she meets the criteria for special education services as a student with emotional disability because of her anxiety symptoms and the effect of her symptoms on her school performance.
- "[Student] has several symptoms of autism"; "However, [Student] does not meet the complete diagnostic criteria for an autism spectrum disorder at this time."
- "She should be provided with physical therapy services at the direction of her multidisciplinary team."
- "[Student] should be provided with social skills teaching including didactic skills instruction followed by the application of those skills in meaningful situations during her school day and at home."

33. The District wide assessments completed in [REDACTED] confirmed the Student was performing at or near target in reading.

34. The Student's grades at the end of Second Semester in the [REDACTED] school year are summarized as follows:

Subject	Term 1	2
Math	[REDACTED]	
Reading	[REDACTED]	
Social Studies	[REDACTED]	

Science
 Writing
 PE
 Music
 Creative Expression



Academic Performance Level for Primary Grades					
I	O	S+	S	S-	N
Improving	Outstanding	Satisfactory +	Satisfactory	Satisfactory -	Needs Improvement

35. As part of this investigation, information was gathered from the Student's current teachers regarding her current functioning. Four teachers reported the following salient information:

- The Student listens carefully, makes good use of time, is prepared for class and can work independently.
- The Student works slowly.
- The Student completes all assignments consistently.
- The Student pays attention during class.
- The Student has difficulty staying on task.
- The Student is motivated, tries hard, shows good effort and seems interested.
- The Student participates in class discussions.
- The Student would rather talk than work.
- The Student gets along well with peers and has good behavior in class.
- The Student's relationship with the teacher is appropriate.

36. The following comments were provided by the teachers:

- "[Student] is a very caring young lady. She 'mothers' her classmates who need a friend and attention. But then she has a tendency to 'patrol' the class to see who's behaving or not. She can get herself involved in others' affairs when she doesn't need to. I think that is when she gets off task in my area."
- "[Student] participates well in art. She can be upset easily by peers if there are disagreements or mild conflicts in conversation. She seems jittery and works slowly in class, but has been able to complete all of her assignments as required."
- "[Student] is a wonderful student in my class. She takes care of herself and her learning well and is a positive role model for her peers."

37. On [redacted] the Complainant sent a letter to the District requesting that the Student be identified as a "Child with a Disability" under IDEA: "Her academics and her

emotional needs are being impacted so once again we are requesting that an IEP be put in place so [she] can receive the level of support that she requires.”

38. The Complainant filed this Complaint with WDE on February 17, 2010.

Conclusions:

1. The Student's records confirm that she displays varying symptoms of ADHD related difficulties in the school environment. However, her records indicate that the most serious issues, including difficulties with aggression and anxiety, occurred in the home environment rather than school.
2. Under the IDEA, if a parent initiates private evaluations of a student and shares those evaluations with the school district, the evaluation must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. §300.502(c). The requirement, however, does not mean that a public agency is compelled to accept the findings of a privately obtained evaluation.
3. In this case, the Complainants initiated several private evaluations of the Student and shared the results with the District. The records support that the District considered each evaluation, appropriately utilizing the information obtained and incorporating suggestions when appropriate.
4. Throughout the period of time relevant to this Complaint, the Student consistently made educational progress, experienced success on state and district wide assessments, and did not experience any behavioral difficulties warranting discipline.
5. The IDEA and the implementing Federal Regulations at 34 C.F.R. §300.111 place the responsibility on the State, and ultimately the local school districts (through §300.201) for appropriate child find activities. Child find refers to the affirmative, ongoing obligation of states and school districts to identify, locate, and evaluate all children with disabilities residing within their jurisdiction, regardless of the severity of the disability, and who are in need of special education and related services.
6. The child find obligation becomes an affirmative duty to act when a school district suspects that a student has an IDEA disability and is in need of special education.
7. A child suspected of having a disability but who has not failed, is making academic progress, and is passing from grade to grade must be considered in the child find process as any other child suspected of having a disability. 71 Federal Register 46584.

8. Further, a child should not have to fail a course or be retained in a grade in order to be considered for special education and related services. *71 Federal Register 46580.*
9. In response to the child find obligation and parent requests, the District conducted a comprehensive evaluation of the Student in November 2007 consistent with its child find obligations. The Student was determined ineligible for services under the IDEA.
10. Although not eligible for special education, the District was aware that the Student was diagnosed with ADHD and a social anxiety disorder. Consistent with a different, but related, federal law, the District evaluated the child for service under Section 504 of the Rehabilitation Act, which protects qualified individuals from discrimination based on a disability. *45 C.F.R. Part 84.* Finding the Student eligible under Section 504, the District developed and implemented a 504 Plan.
11. Since the fall of [REDACTED] the Student's 504 team recognized that the Student was eligible for service and provided appropriate accommodations and/or modifications under Section 504.
12. The Student was successful in the regular class environment with accommodations and/or modifications provided in her Section 504 Plan.
13. With the assistance provided by the Section 504 plan, the Student received above average grades, performed at average or above on State and District wide assessments, and consistently performed at an average or above range on academic and intellectual testing.
14. The Second Circuit Court of Appeals recognized that ADHD and a bipolar disorder could qualify as a disabling condition under the IDEA. However, the student would not be a "child with a disability" under the IDEA unless those conditions had an adverse impact on a student's educational performance. In the *C.B.* case, the student's grades and test cores were at or above grade level. The Court ruled that the ADHD and bipolar did not have adverse impact on the student's ability to learn. *C.B. v. Dep't. of Ed. of the City of New York*, 52 IDELR 121 (2nd Cir. 2009).
15. According to the Third Circuit Court of Appeals, when a student is successful receiving services under a Section 504 Plan, the child find obligation is not triggered. There was nothing to alert the district for the need to conduct an IDEA evaluation. *Anello v. Indian River Sch. Dist.*, 53 IDELR 253 (3rd Cir. 2009).
16. The Fifth Circuit Court of Appeals held that a student with ADHD is not eligible for special education if the student is successful in school. In the *Alvin* case, a student with ADHD was determined not eligible under the IDEA because the student received

passing grades in classes and on state and district wide assessments, he demonstrated academic progress, the behavioral plan implemented by the school district addressed his behavioral concerns, and the student was achieving social success in school. *Alvin Ind. Sch. Dist. v. AD*, 48 IDELR 240 (5th Cir. 2007).

17. In another recent case, a District Court held that a district did not violate the IDEA by failing to evaluate a student with ADHD, concluding that the student's in class performance did not warrant an evaluation as she received primarily As and Bs. The court reasoned that the student did not need specialized instruction in order to be successful. *S. v. Wissahickon Sch. Dist.*, 50 IDELR 216 (E.D. Penn. 2008).
18. As applied to the Student, the District regularly monitored and documented the educational progress of the Student, and responded appropriately to the Complainant's request for evaluation. There was adequate documentation in the Student's record of her educational success.
19. After comprehensively evaluating the Student in the fall of 2007 and determining that she was not eligible, as well as her subsequent success on the Section 504 Plan, the District did not have reason to suspect that the Student was unable to make adequate educational progress, or that her educational needs had changed warranting a suspicion that she was now a student in need of special education. Therefore, the affirmative IDEA child find obligation was not triggered.

Decision:

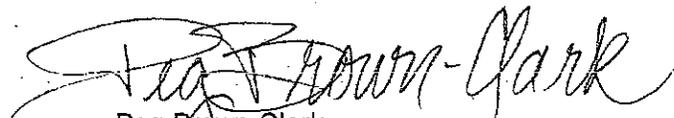
The District met its child find obligation during the time period relevant to this Complaint. **WDE finds no violation.**

Upon distribution of this Complaint decision, the complaint investigation process shall be complete and the Complaint formally closed.

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,

A handwritten signature in cursive script that reads "Peg Brown-Clark". The signature is written in black ink and is positioned above the printed name.

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

cc: [REDACTED], Superintendent
[REDACTED], Board of Trustees Chairman
Dr. James McBride, Superintendent of Public Instruction
Tania Hytek, WDE Legal Counsel