



Wyoming Department of Education

Cindy Hill, Superintendent of Public Instruction

320 West Main Street

Riverton, WY 82501

Phone: 307-857-9250 Fax: 307-857-9257 Website: edu.wyoming.gov

WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Case #: C-0138-12

Respondents:

**COMPLAINT DECISION
AND ORDER FOR
CORRECTIVE ACTION**

Date of Decision: July 13, 2012

On May 16, 2012 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by (hereinafter “Complainant”) alleging violations of special education law with respect to (hereinafter “Student”), attending (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 raised in the complaint. Pursuant to the IDEA, Federal Regulations, and the Wyoming Department of Education Chapter 7 Rules, WDE issues the following Findings of Fact, Conclusions, Decision and Order for Corrective Action.

Complaint Issues:

Issue #1

Whether the District violated its child find responsibility by failing to identify and evaluate the Student if the District had reason to suspect an IDEA disability and a need for special education consistent with 34 C.F.R. §300.111.

Issue #2

Whether the Student is entitled to protections for children not determined eligible for special education and related services pursuant to 34 C.F.R. §300.534.

Issue #3

If WDE finds the District violated its child find obligation in Issue #1, and as a result, the Student is entitled to protections under the IDEA, then WDE shall investigate the following:

Whether the District violated W.S. §21-3-110(a)(xxi) or the Department of Education Chapter 42 Rules, Seclusion and Restraint in Schools, pursuant to WDE's authority to investigate violations of Wyoming Law as granted by WDE Chapter 7 Rules, Section 7(b).

Investigatory Process:

- Review of records consisting of the following:
 - Original letter of complaint and supporting documents;
 - The District's response to the allegations;
 - The Student's education records;
 - The Student's special education records from the previous district of enrollment; and
 - The Complainant's additional submissions regarding the Student.
- Follow up inquiries with the Districts.
- Interviews with District staff.
- The Complainant provided responses to interview questions.
- The Districts and Complainant were given the opportunity to submit additional information to WDE for consideration throughout the investigation of this complaint.

Applicable Federal Regulations, State Statutes or Rules:

- 34 C.F.R. §300.8 Child with a Disability
- 34 C.F.R. §300.111 Child Find
- 34 C.F.R. §300.301 Initial Evaluations
- 34 C.F.R. §300.304 Evaluation Procedures
- 34 C.F.R. §300.503 Prior Written Notice
- 34 C.F.R. §300.534 Protections for Children Not Determined Eligible for Special Education and Related Services

Wyoming Statutes Title 21

Wyoming Department of Education Rules, Chapter 7

Wyoming Department of Education Rules, Chapter 42

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate alleged violations of law that occurred not more than one year prior to 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 17, 2011 to May 16, 2012.

Findings of Fact:

1. The Complainant enrolled the Student in the District on February 8, 2012, midway through his kindergarten year.
2. The Student commenced the 2011-2012 school year in kindergarten in another state until moving to Wyoming.
3. The Student was comprehensively evaluated during the fall of his kindergarten year by the previous district to determine if he was eligible for special education and related services.
4. The November 8, 2011 Psychoeducational Evaluation Report by the previous district documents the following relevant information:
 - a) “[Student] has been referred for an initial evaluation for special education by his mother due to concerns regarding [Student’s] academic and behavioral development.”
 - b) The area under consideration for [Student] is Specific Learning Disability.
 - c) Based on [Student’s] Full Scale IQ score of 88, his predicted level of achievement would be a core of 92 and a score of 71 and below would be considered a severe discrepancy. None of [Student’s] scores can be considered a severe discrepancy. Therefore, he does not qualify as a student with a Specific Learning Disability.
 - d) It is recommended to the Child Study Team that [Student] does not qualify for special education services. He does not evidence a discrepancy between his ability and achievement.
5. The Psychoeducational Evaluation Report addressed the behavioral concerns noted in the reason for referral through a series of behavioral plan recommendations for the Student.
6. The Assessment Team Evaluation Report dated November 8, 2011 summarized the results and concerns of the Behavior Assessment System for Children – Second Edition as follows:
 - a) Parent:
 - i. At Risk: Hyperactivity, Aggression, Depression, Anxiety
 - ii. Clinically Significant: None

b) Teacher:

- i. At Risk: Depression, Attention Problems
- ii. Clinically Significant: Hyperactivity, Aggression

c) Implications for Educational Planning:

i. [Student] displays a high number of hyperactive and aggressive behaviors at school. These behaviors have the potential to limit his availability for learning opportunities if he is disengaged from classroom instruction, and likely getting into trouble. These types of behaviors often affect the learning of other students in the classroom as well, due to their disruptive nature. [Student] would likely benefit from having a behavior plan put into place, which provides frequent reinforcement of desirable behaviors [Student] demonstrates, and discourages the inappropriate, maladaptive types of behaviors. [Student] may need direct teaching of some of the desired behaviors, since they may not currently be a part of his behavioral knowledge.

7. The Evaluation Report concluded that the Student did not meet disability criteria and was not eligible for special education.
8. After the Student's enrollment in the District, the Principal reports receiving a telephone call from the previous district, describing the Student's Positive Behavior Reinforcement Plan (PBRP) utilized in the previous school. The District reports that an identical PBRP was implemented for the Student after five days of collecting baseline behavior data.
9. During the five days of baseline data collection, the following information regarding frequency and comments were documented:

Frequency of Noncompliance	Comments
13	<ul style="list-style-type: none">• Laid down for a while and wouldn't respond.• Locked self in bathroom.• Was removed from class. Locked self in the bathroom. Wouldn't come out. When he did, was rolling on the ground refusing to walk to the office. Escorted him to the square where he stood 45 minutes.
19	<ul style="list-style-type: none">• Refused to do work. Ripped paper up. Started hitting himself with a book and said he was "going to kill himself." Started smashing fingers with book. Went to square.• Kept having to ask to sit up, but for the

	<ul style="list-style-type: none"> most part followed directions. Only wanted to do pods. Tried to leave room when he had to do other work. Refused to work.
9	<ul style="list-style-type: none"> Hard time staying on task. Wouldn't go to booster club. Ran in bathroom. Sat in square. Read w/ [teacher]. Did well.
18	<ul style="list-style-type: none"> Made a good choice to go to booster club. Kept writing on smart board when asked not to. Lost Friday Free Play time. Hard transition from Friday Free Play to PE. Got a drink after PE. Walked over and spit it on another student.
21	<ul style="list-style-type: none"> Tore paper. Had trouble sitting up for calendar. Did well in centers. Testing most of time. Hid under table – count to 5.

10. According to the District, during the time period immediately after the Student's enrollment, the District's Special Education Case Manager thoroughly reviewed the assessments and reports conducted by the previous school district and agreed that the Student "did not qualify for special educational services, as specifically there was not a sufficient discrepancy between the Student's ability and achievement."
11. On February 22, 2012, a PBRP was developed by the District's Coordinated Early Intervention Services Team. The Student would receive smiley faces throughout the day for engaging in on-task behavior, and an unhappy face for inappropriate behavior. If the Student earned 10 smiley faces, he would get a sticker. If the Student did not get any unhappy faces, he would earn a Happy Meal from McDonalds.
12. The smiley face charts referenced above contained handwritten notes and descriptions of the Student's behavior, including:
- Had to go to the office for punching the wall and pushing over chairs.
 - Spitting water.
 - Not keeping hands to self.
 - Disrupting class – yelling this is boring, and not keeping hands to self.
 - Kicking student while walking to lunch.

- f) Not following directions (multiple entries).
 - g) Pink slip running from [staff], hiding in room, continuing to tell her no.
 - h) Office referral.
 - i) Started punching smart board because he didn't get a turn.
 - j) Started yelling during a test and kept other students from taking theirs. Started screaming and ripping things down when he didn't get to do tubs. Pinched me when I tried to call office. Office referral.
 - k) Called home.
 - l) Running from center he was supposed to be at.
 - m) Rolling around on floor being disruptive.
 - n) Ran and sat in doorway because he didn't get to pick the tub for his table.
13. On March 6, 2012, the District convened a meeting with the Complainant, the Student's teacher, the Principal, the Social Worker, and Behavior Interventionist. The District summarized the discussion during the meeting as addressing the significant stressors in the Student's life, his improved academic performance since enrollment, and the possible necessity of repeating kindergarten in order to "build social and writing skills." "Additionally, at this meeting with the Student's parents it was specifically addressed that in order to deal with the Student's behavior, in addition to the PBRP, that when the Student was severely disruptive he would be removed from the classroom and requested to stand in a taped off square in a District conference room with an adult present in the room, until such time that he was to regain control and could return to the classroom."
14. Notes of the Behavior Interventionist describe the "plan in place to deal with [Student's] behavior" as follows:
- [Student] leaves the room to stand in a taped off square. Once he has contained himself for a set amount of time he is asked why he is in the square and then what he should have done correctly in class. Once he leaves the square, he completes the work he missed and then some extra work as well. The goal is for him to realize leaving the classroom isn't fun.
15. The District reported that the taped off square was a technique used with other students in the building as well.
16. On April 20, 2012, a meeting was held with the Complainant, who indicated that she believed the student "suffered from low self-esteem." Also, according to the District's response to this complaint, the District discussed that "although the Student's behaviors

needed continued interventions, academically the Student had shown such growth and improvement that the prior plan of March 6, 2012 to retain the Student was abandoned."

17. The Coordinated Early Intervention Services team decided to modify the Student's prior PBRP so that the Student would take the daily smiley face behavioral charts to a front office staff member in order for the Student to receive outside positive feedback.
18. Notes of the Behavior Interventionist document that on April 24, 2012 the Student was removed from class for disciplinary purposes. The following is, in relevant part, the Behavioral Interventionist's description of the incident:

[Special Education Case Manager] and I were called down to [Kindergarten Teacher's] room to remove [Student] during reading time. He was rolling around and crying. He was not following directions or teacher requests. [Special Education Case Manager] asked him to walk down to the office with us. He would not get up off the floor and continued to kick at the file cabinet. [Special Education Case Manager] took [Kindergarten Teacher's] chair that had wheels on it. She asked [Student] to get into the chair. He refused and then got into the chair. We wheeled him down the hall. He tried to slither out of the chair and she turned the chair around to face her so his feet would drag and not bend back the wrong way.

19. District records indicate that the Student received 2 "pink slips," which according to the Student Handbook, represent minor disciplinary infractions. The District reported the following major infractions resulting in an office referral: (The list provided by the District omits the April 24, 2012 incident described above.)
 - a) 3/14/12 Insubordination
 - b) 3/28/12 Insubordination
 - c) 3/29/12 Insubordination
 - d) 4/26/12 Harassment/bullying
 - e) 4/27/12 Insubordination
 - f) 5/3/12 Harassment/bullying
 - g) 5/7/12 Insubordination
 - h) 5/9/12 Insubordination/harassment
20. A handwritten, unsigned note dated April 24, 2012 in the District's file indicated that the Complainant requested that the Student be tested for a disability.

21. Another handwritten, unsigned note from the District's file indicated a verbal request for evaluation was made on April 25, 2012. The request was verbally declined on April 26, 2012.

22. On April 26, 2012, the Complainant wrote a letter to the Principal to tell the school that the "we are working with a Dr. on [Student's] issues." The Complainant also expressed other concerns, including that the Student was made to read an apology to the entire class.

23. The Principal provided a description of an incident occurring on April 26, 2012 when she was called down to get the Student from class. The Principal stated: (in relevant part)

He was running with a sharp pencil saying he was going to stab [another student]. He also said he was going to kill himself. [Student] was in the kindergarten hall, I told him to get up and come down to the office with me. He refused. I got [Kindergarten Teacher's] chair with wheels. Told him to sit in the chair, he did and we ([Assistant] and I) rolled him down to the office. [Student] stated his mom was going to sue the school and he was going to get a lawyer.

24. The District issued a Prior Written Notice to the Complainant on April 27, 2012. The description of the action the District proposed or refused to take states:

On 4-24-2012, I was notified that [Complainant] was requesting an evaluation for [Student]. I left a message on 4-25-2012 at 3:30 on [Complainant's] phone. Records from [preceding state] were being reviewed again in response to this request. [Complainant] indicated in person on 4-26-2012 that she no longer wanted an evaluation, as they are moving back to [other state] at the end of the school year. The school district is in agreement with the mother that no evaluation will be completed at this time.

25. The Prior Written Notice dated April 27, 2012 also documents under "other relevant factors" that "[Complainant] is seeking medical assistance for [Student] outside of school."

26. There is no indication in the file that the Complainant was provided with notice of her Procedural Safeguards at this time.

27. On April 30, 2012, the Complainant wrote the Principal a letter expressing several concerns, including the Student's teacher stating he would be a failure if he did not get the right answers and would have to go to "failure" class; the teacher misleads the Student; the Student is being bullied at school by other students calling him a "bastard"; the Student should be considered for a Section 504 plan; and some explanation as to the "plan" for all the write-ups.

28. Typed notes dated May 2, 2012 (author unknown) indicate that several messages were left for the Complainant in response to the April 30th letter. In summary, the District responded that the school does not have a “failure class,” the Student did not report the bullying to an adult; and that documentation regarding behavior was required, and that is the reasons for the write-ups. “With her inquiry into Section 504 I told her there needs to be a need that interferes with his ability to function at school such as ADHD, a broken arm, Asthma. If he has a condition the school would be happy to do a 504 for him.”
29. An incident occurred on May 9, 2012 in which the Student kicked over chairs, took things out of the teacher’s desk drawers, hit his head on the paper towel dispenser, put hand sanitizer in another student’s eye, and put his arms around another student refusing to let go. The Student was required to complete 8 hours of In School Suspension in response to this behavior. However, the Student became ill and was sent home.
30. The Complainant wrote to the District on May 11, 2012 requesting a copy of the District policy on restraint, seclusion and anti-bullying, copies of incident reports when the Student was restrained and/or secluded, and also requested another meeting to address the Student’s “disability needs.”
31. The District’s response to this complaint indicates that the Director of Special Education contacted the Complainant on May 25, 2012 and offered to have the District conduct an evaluation of the Student. The Complainant declined the offer to reevaluate the Student.
32. Comments on the Student’s report card issued May 29, 2012 documented that the Student’s behavior impacted his learning, and that he does not follow directions.
33. District attendance records in PowerSchool indicate the Student was absent from school for 15 full days and 2 partial days during the period of his enrollment out of a potential 67 days. (There is a discrepancy between the Student’s attendance as reported on page 5 of the District’s response to the complaint, where it indicates that the Student attended 40 days of school during the period of enrollment, and the PowerSchool records, which indicate the Student attended 50 full days of school during the period of his enrollment.)
34. The Principal and Case Manager were interviewed as part of this investigation. Both described the transport of the Student to the office in the wheeled chair as voluntary on the part of the Student, indicating he “liked” the wheeled chair.
35. In the Complainant’s interview responses, she reported that she “stopped [Student] from going to school after I learned of the abuse my son had to endure that morning.” The Complainant was referring to the May 9, 2012 incident resulting in the In School Suspension.

36. The Complainant further noted: "I am also aware of the fact that my son was restrained numerous times by school officials to be taken to the office." The Complainant indicated that she did not offer her consent for the use of a wheeled chair or restraint with the Student.
37. The Complainant reported that the Student was frequently ill, prompting her to seek medical attention for the illnesses.
38. The Student was withdrawn from the District on May 24, 2012 after being absent for 10 consecutive days. According to the District, the Student last attended school on May 9, 2012.

Conclusions:

Issue #1

1. The Student has not been identified as a learner with a disability under the Individuals with Disabilities Education Act (IDEA).
2. The Student was evaluated for IDEA eligibility in the preceding district of attendance and was determined not eligible under the IDEA in the area of specific learning disability.
3. The District, as the resident district for the Student, continued to have ongoing responsibility for child find activities pursuant to 34 C.F.R. §300.111.
4. Child find remains the ongoing obligation of the District for all students who are suspected of having an IDEA disability and the need for special education, even if they are advancing from grade to grade. See 34 C.F.R. §300.111(c). 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. The child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. See *71 Federal Register 46584*.
5. Although the request for initial evaluation to determine whether a student is a child with a disability can be made by either the parent or the school district (See 34 C.F.R. §300.301(b)), because the child find obligation is an affirmative one, a parent is not required to request that a district identify and evaluate a child. *Robertson County Sch. System v. King*, 24 IDELR 1036 (6th Cir. 1996).
6. The affirmative child find obligation co-exists with any response to intervention or behavioral intervention model. When there is reason to suspect the student may have a disability and need special education and related services as a result, the IDEA's initial evaluation provisions control, regardless of whether the district plans to or is currently utilizing RTI

strategies with the student. See *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011).

7. "School personnel should refer children for evaluation through the agency's child find or special education referral system when the child's behavior or performance indicates that they may have a disability covered under the [IDEA]." 71 *Federal Register* 46727.
8. As applied to the Student in this complaint, the District amassed a large quantity of anecdotal behavioral information regarding the Student in a relatively short period of enrollment. This information, in addition to the records received from the preceding school district, should have caused the District to suspect an IDEA disability and the need for special education. Factors weighing heavily toward suspecting an IDEA disability and a need for special education include:
 - a. Records received from the previous district expressing concerns regarding the Student's difficulties with attention and behavior, specifically:
 - i. The reason for referral for the November 2011 evaluation indicate "academic and behavioral development."
 - ii. The results of the Behavior Assessment System for Children, Second Edition in the Clinically Significant range, suggesting a high level of maladjustment in the areas of Hyperactivity and Aggression.
 - iii. The Evaluation Report from November 2011 concluding that the Student displays a high number of hyperactive and aggressive behaviors at school.
 - b. The Student's continued behavioral difficulties on a near daily basis after enrolling in the District.
 - c. The need to remove the Student from the learning environment with the use of regulated procedures to interrupt the Student's inappropriate behavior on a number of occasions.
 - d. The need for repeated assistance from a special education case manager to intervene with the Student's behavior.
 - e. The Student's expressions of self-harm, stating he was going to kill himself.
 - f. The Student's report card that indicates: "Behavior impacts learning."
 - g. The Complainant's repeated expressions of concern regarding the Student's behavior and learning opportunities, and her requests for evaluation.
 - h. The District's knowledge as evidenced in the Prior Written Notice that the Complainant was seeking assistance from a medical doctor for the Student's behavior.

- i. The District's position that if the Complainant could produce evidence of some medical condition, then the District could act on it.
 - j. The Student's escalating behavior that resulted in an In School Suspension.
9. Based on the totality of the factors noted above, the District's should have suspected an IDEA disability and the need for special education, prompting the District to undertake an initial comprehensive evaluation of the Student's academic and functional performance to determine if the Student was eligible under the IDEA as a child with a disability pursuant to 34 C.F.R. §300.8.
10. Further, based on the fact that the Student's concerns were primarily behavioral in nature, the District cannot avoid its child find obligation based solely on the fact that the Student made academic gains. IDEA eligibility is much broader than academic performance, and child find obligations remain ongoing even if the Student advances from grade to grade. See 34 C.F.R. §300.111(c).
11. Once the child find obligation was triggered, the District had an obligation to propose a comprehensive initial evaluation consistent with 34 C.F.R. §300.301.
12. A comprehensive evaluation for eligibility purposes must include assessments "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 C.F.R. §300.304(c)(4). The District cannot require the parents to obtain their own evaluation. See *N.B. v. Hellgate Elementary Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008). Districts cannot shift their evaluation responsibilities to parents. Rather, a district must arrange for a medication evaluation by a licensed physician if such an evaluation is necessary to determine the Student's IDEA eligibility. See *M.J.C. v. Special Sch. Dist. No. 1*, 58 IDELR 288 (D. Minn. 2012).
13. The conclusion that the District violated its child find obligation does not mean, in and of itself, that the Student ultimately would have been determined eligible for special education. That decision is left to the team of qualified professionals, including the parents, after a comprehensive initial evaluation. See 34 C.F.R. §§300.301 through 300.306.

Issue #2

14. Based on the conclusion above that the District should have suspected an IDEA disability and the need for special education, thereby violating its child find obligation, the question now turns to whether the Student was entitled to protections for children not yet determined eligible under the IDEA.

15. Pursuant to 34 C.F.R. §300.534, a child who has not been determined eligible and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Part B of the IDEA if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
16. The District must be deemed to have knowledge that the child was a child with a disability if, in relevant part:
 - a. The Complainant expressed concern in writing to supervisory or administrative personnel of the District, or to the Student's teacher, that the Student was in need of special education and related services;
 - b. The Complainant requested an evaluation; or
 - c. The Student's teacher, or other personnel of the District, expressed specific concerns about a pattern of behavior demonstrated by the Student directly to the Director of Special Education or other supervisory personnel of the District. See 34 C.F.R. §300.534(b).
17. As applied to this Student, the Complainant repeatedly expressed concern and her belief that the Student was in need of special education to the Student's teacher and the Principal, and the Complainant also requested that the Student be evaluated. The Complainant's expression of concern and requests for evaluation continued throughout the time of the Student's enrollment in the District from February to May 2012, during the same period of time the Student was subjected to disciplinary removals for violations of the District's and school's code of conduct.
18. The requirements of 34 C.F.R. §300.534(b) are met, and the Student should have been entitled to the protections of the IDEA. This conclusion speaks only to the Student's entitlement to the protections of the IDEA, not to the Student's actual eligibility under the IDEA. As noted above, the eligibility decision is reserved for the team of qualified professionals, including the parents, after a comprehensive initial evaluation. See 34 C.F.R. §§300.301 through 300.306.
19. With respect to this complaint, the Student and Complainant are free to access all protections afforded under the IDEA and the Federal Regulations, including, but not limited to:
 - a. The state complaint provisions in 34 C.F.R. §§300.151 through 300.153;
 - b. The discipline and change of placement provisions in 34 C.F.R. §§300.530 through 300.536; and

- c. The procedural safeguards in 34 C.F.R. §§300.500 through 300.520.
- 20. The District may attempt to assert that one of the exceptions to this protection applies consistent with 34 C.F.R. §300.534(c), which states that a public agency would NOT be deemed to have knowledge that the Student was a child with a disability if –
 - a. The parent of the child
 - i. Has not allowed an evaluation of the child pursuant to 34 C.F.R. §§300.300 through 300.311; or
 - ii. Has refused services under this part; or
 - b. The child has been evaluated and determined to not be a child with a disability.
- 21. Because the IDEA requires that proposals for evaluation be in writing in the form of a Prior Written Notice (34 C.F.R. §300.503), any position that the exception was triggered based on the Complainant's verbal withdrawal of her request for an evaluation would not be persuasive or act to negate the District's responsibility. Consistent with recent Federal court interpretations, the failure to propose evaluations in writing would not satisfy the informed consent requirement that the parent be fully informed of the activity about which her consent was sought. See *Plainville Bd. Of Educ. v. R.N.*, 58 IDELR 257 (D. Conn. 2012), and see 34 C.F.R. §300.9. If the District did not explain exactly what conditions, including academic, behavioral, or medical, that it sought to identify through an evaluation, the Complainant was unable to offer her informed consent. See *M.J.C. v. Special Sch. Dist. No. 1*, 58 IDELR 288 (D. Minn. 2012). Therefore, WDE is unable to conclude that the Complainant would not allow the Student to be evaluated.
- 22. Next, any position that the Student had been evaluated and determined to not be a child with a disability is also not persuasive. The evaluation took place in another state, meaning that the Student was never determined not to be a child with a disability in Wyoming. Likewise, the previous evaluation from another state would not have been sufficient to determine eligibility. Even children with IEPs in place must receive an initial evaluation when moving to Wyoming in order to determine their eligibility according to the criteria of this state. See *Federal Register* 46682.
- 23. Further, the previous evaluation conducted in another state ruled out eligibility in the category of specific learning disability only. It would be illogical to conclude that because a student was determined not eligible for specific learning disability that the same student couldn't be determined eligible at a future point in a distinct disability category.
- 24. Therefore, the exceptions noted in 34 C.F.R. §300.534(c) are not operative with respect to the Student. WDE concludes that the Student was entitled to the protections of the IDEA.

Issue #3

25. Finally, by virtue of WDE's authority to investigate other violations of Wyoming law as granted by WDE Chapter 7 Rules, Section 7(b), WDE must now determine whether the District violated W.S. §21-3-110(a)(xxi) or the Department of Education Chapter 42 Rules, Seclusion and Restraint in Schools.
26. It must be determined if the District's description of the Student's removal from class and transport in a wheeled chair to a 2 X 2 taped square on the floor of an office conference room where the Student spent time calming down meets the definition of any regulated procedures in the Wyoming Rules on Seclusion and Restraint in Schools.
27. According to the WDE Chapter 42 Rules, Section 6(k), "Restraint" means the use of physical force, with or without the use of any device or material, to restrict the free movement of all or a portion of a student's body. Restraint does not include comforting or calming a student, holding the hand or arm of a student to escort the student if the student is complying, intervening in a fight or using an assistive or protective device prescribed by an appropriately trained professional or professional team.
28. There is a disparity between the written descriptions provided by the District in response to this complaint and the interviews of District staff. Inconsistencies were resolved by relying on the written record.
29. The use of an office chair to involuntarily transport the Student to the conference room location (as described by the Behavior Interventionist on April 24, 2012 and as described by the Principal on April 26, 2012) constitutes the use of physical force with the use of a device, restricting the Student's free movement. Therefore, the use of the office chair to transport the Student on those two dates is a regulated procedure under Wyoming Rules.
30. It must also be determined if removing the Student to the conference room in response to his behavior meets the definition of any regulated procedures as defined in the Wyoming Rules on Seclusion and Restraint.
31. According to the WDE Chapter 42 Rules, Section 6(n), "Seclusion" means removing a student from a classroom or other school activity and isolating the student in a separate area. Seclusion occurs when a student is placed in a room or location by school personnel, purposefully separated from peers, and prevented from leaving that location. Separation in an area where the student is prevented from leaving is always considered seclusion. There are two distinct categories: i) Seclusion from the Learning Environment, and ii) Isolation

- Room. The term does not include a student requested break or in-school-suspension, detention or other appropriate disciplinary measure.
32. Seclusion from the learning environment is further defined as visually or auditorily isolating the student from the classroom or other school activity, away from peers in an area that obstructs the student's ability to participate in regular classroom or school activities. The student is prevented from rejoining the learning environment or school activity until directed by staff.
 33. When the Student was disruptive he would be removed from the classroom and requested to stand in a taped off square in a District conference room (as described in the written record) with an adult present in the room, until such time that the Student was to regain control and could return to the classroom. The use of the conference room in this manner as part of a disciplinary removal is a regulated procedure under Wyoming Rule.
 34. The District's authority to utilize regulated procedures is dependent upon the adoption of a District level policy, requisite training levels of staff, and compliance with the documentation requirements.
 35. The District demonstrated compliance with the policy requirement.
 36. It is unclear if the staff involved in the restraint possessed the minimum level of training required by Wyoming Rules.
 37. Since no documentation was maintained regarding the use of the restraints, and only anecdotal records were provided describing the events after they happened, WDE concludes that the mandatory documentation requirements in Section 7 of WDE Chapter 42 Rules were not met.
 38. Finally, there is no evidence that the parent was informed each time a regulated procedure was utilized with the Student, in contravention of Section 7(d) of WDE Chapter 42 Rules.

Decision:

Issue #1

Whether the District violated its child find responsibility by failing to identify and evaluate the Student if the District had reason to suspect an IDEA disability and a need for special education consistent with 34 C.F.R. §300.111.

WDE finds that the District had reason to suspect that the Student was a child with an IDEA disability and in need of special education, but it did not propose a comprehensive initial evaluation to determine eligibility for services under the IDEA. Therefore, the District's child find obligation was violated.

Issue #2

Whether the Student is entitled to protections for children not determined eligible for special education and related services pursuant to 34 C.F.R. §300.534.

WDE finds that the Student was entitled to the protections of the IDEA pursuant to 34 C.F.R. §300.534.

Issue #3

If WDE finds the District violated its child find obligation in Issue #1, and as a result, the Student is entitled to protections under the IDEA, then WDE shall investigate the following:

Whether the District violated W.S. §21-3-110(a)(xxxi) or the Department of Education Chapter 42 Rules, Seclusion and Restraint in Schools, pursuant to WDE's authority to investigate violations of Wyoming Law as granted by WDE Chapter & Rules, Section 7(b).

WDE finds that the District engaged in a series of regulated interventions with the Student. Specifically, restraining the Student on two occasions, and secluding the Student from the learning environment on several occasions constituted the use of regulated procedures. The District failed to follow the minimum requirements necessary to be in compliance with the WDE Chapter 42 Rules on Seclusion and Restraint in Schools.

Corrective Action Plan:

1. Since the Student is no longer residing within the District boundaries and has moved to another state, the District shall offer to fund an independent expert to conduct a behavioral evaluation of the Student and develop interventions to be utilized with the Student in his current location. This requirement includes:
 - a. The District and Complainant shall jointly choose the expert evaluator to be utilized for the behavioral evaluation.
 - b. In the event that the Complainant declines to have the Student participate in the behavioral evaluation, the District is relieved of the responsibility for funding the evaluation.
 - c. In the event that the District and Complainant are unable to jointly choose the expert evaluator, the following process shall be utilized:

- i. District shall submit a list of three (3) independent and appropriate evaluation sources to the Complainant with a copy to WDE within fifteen (15) days of the date of this decision;
 - ii. The Complainant shall choose the evaluator from the list provided by the District within ten (10) days of receipt from the District;
 - iii. The District shall notify WDE within five (5) days of receiving notice of the Complainant's choice and the specific details and dates for the evaluation.
 - d. The evaluation shall be conducted and the Complainant provided with a copy of the results of the evaluation to utilize with the Student's new school district within ninety (90) days of the date of this decision;
 - e. Confirmation of the evaluation completion shall be submitted to WDE within ten (10) days of the conclusion of the evaluation and receipt of the report; and
 - f. The Complainant must sign all necessary consents and releases in order to facilitate the evaluation according to the steps above. Failure of the Complainant to sign necessary consents and releases shall constitute a waiver of this expert evaluation requirement.
2. The District shall provide at least eight (8) hours of inservice training to all special education staff regarding the child find process, procedural safeguards, and the requirements to be in compliance with Wyoming's Rules on seclusion and restraint. The requirements include:
 - a. The inservice training must be completed by October 1, 2012. The District shall provide WDE with the following documentation:
 - i. The date, time, location, agenda and presenters ten (10) days prior to the training; and
 - ii. Copies of any materials or handouts used, in addition to sign-in sheets documenting the attendance of special education staff within ten (10) days of completion of the mandatory inservice training.

All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainant. Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Division at 307-857-9285 or 800-228-6194.

Recommendation: In an effort to assist the District with implementation of a school wide model of positive behavior supports, WDE offers the assistance of its Positive Behavior Intervention

and Supports (PBIS) Coordinator to consult with District personnel. WDE encourages the District to contact Christine Revere at 307-857-9262 to review its current model and assist with future implementation.

Sincerely,



Stephanie Weaver
Deputy Director of Special Education
Special Programs Division

cc: District Superintendent
 , District Board Chair
Cindy Hill, Superintendent of Public Instruction
Samuel Shumway, WDE Legal Counsel
Christine Steele, Instructional Leader, Operations