

Case No. DPH 1112-08

In the Matter of PARENT, on Behalf of STUDENT, v. MORA INDEPENDENT SCHOOLS

SUMMARY OF DECISION OF DECEMBER 1, 2011

Parents claimed that the District failed to meet its child-find obligation to identify Child as a student who may be eligible for services under the Individuals with Disabilities Education (IDEA) and to promptly evaluate Child. 20 U.S.C. §1412(a)(3)(A); 34 C.F.R. §300.111(c). Parents claimed that there were many warning signs during Child's kindergarten year that should have led the District to suspect that Child is a child with a disability and in need of special education.

The District claimed in response that at no time during Child's kindergarten year did anything trigger a responsibility on the part of the District to consider Child's eligibility for receipt of special education services or to evaluate Child. The District claimed that it properly addressed the needs of Child through its three-tier Student Assistance Team (SAT) process. According to the District, Child was performing fine academically and his behaviors were being addressed by the interventions adopted by the District's Student Assistance Team (SAT).

The hearing officer acknowledged that it is often difficult to know whether a kindergarten student's behavioral difficulties arise from a disability. In this case, however, the hearing officer was struck by both of Child's teachers' descriptions of the severity and frequency of Child's aggressive behaviors. All of the school staff who testified, even those with lengthy experience in kindergarten and elementary education, admitted to being at a loss as to how to effectively intervene with Child and as to why he was behaving so aggressively. Child's behavior was described as deteriorating throughout the year, despite interventions which worked well with other children.

Staff turned to a mental health counselor for assistance at one point, suggesting some degree of suspicion that a disability might be causing Child's behavior problems and his consistent failure to respond to interventions.

Although an SAT intervention process is good practice, teachers and staff must be aware of the obligations imposed by the IDEA to identify and evaluate children whose behavior suggests a disability and the need for special education services. *See Memorandum to: State Directors of Special Education*, OSEP 11-07, January 21, 2011. 111 LRP 4677; *Forest Grove School District v. T. A.*, ___ U.S. ___, 129 S. Ct. 2484, 2495 (2009). The hearing officer finds that the District delayed seeking an evaluation of Child past the point where its staff had ample reason to suspect that Child's escalating behavioral difficulties and lack of understanding of and response to consequences and other interventions were attributable to a disability requiring specialized instruction designed to meet Child's needs. By January or February of Child's kindergarten year, the District should have proceeded with an evaluation.