

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Three Rivers School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-007b

I. BACKGROUND

On April 16, 2021, the Oregon Department of Education (Department) received a Letter of Complaint from the attorney (Attorney) of a student (Student) attending school and residing in the Three Rivers School District (District). The Attorney requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the complainant and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On April 28, 2021, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of May 12, 2021.

On April 28, 2021, the Student's Attorney, as part of the evidence for consideration in this matter, requested that the Department consider all of the documents and evidence provided in the investigation previously conducted as the result of the Attorney's previous complaint filed under ORS 343.193.

The District requested additional time to submit its *Response*. That request was granted. The District submitted a *Response* on May 14, 2021 denying the allegations, providing an explanation, and supporting documents for the District's position. The Student's Attorney submitted additional information on May 20, 2021. In total, the District submitted the following items:

1. District Response
2. Student IEP, 11/29/2018
3. Referral, 11/29/2018
4. Notice of Team Meeting, 11/29/2018
5. Prior Written Notice, 12/03/2018

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

6. Parent/Guardian Consent for Individual Evaluation, 12/03/2018
7. Prior Written Notice, 12/05/2018
8. Prior Notice and Consent for Initial Provision of Special Education Services
9. Student IEP, 12/05/2018
10. Special Education Placement Determination
11. District Graduation Requirements policy, revised, IKF-AR
12. Prior Written Notice, 12/05/2018
13. IEP team meeting minutes, 12/05/2018
14. Notice of Team Meeting, 12/14/2018
15. IEP team meeting agenda, 01/10/2019
16. Meeting minutes, 01/10/2019
17. Prior Written Notice, 01/10/2019
18. Student IEP Amendment, 12/05/2018
19. Special Education Placement Determination, 01/10/2019
20. Student Step In Plan, 12/5/2019 & 01/10/2019
21. Modified Day Notice and Acknowledgement, 01/10/2019
22. District Graduation Requirements policy IKF-AR
23. Parent/Guardian Consent for Initial Evaluation, 01/15/2019
24. Notice of Team Meeting, 01/22/2019
25. Agenda/Minutes for (Student), Step In Plan, 01/28/2019
26. Prior Written Notice, 01/28/2019
27. Notice of Team Meeting, 01/29/2019
28. Notice of Team Meeting, 02/04/2019
29. Agenda/Minutes for (Student), Step In Plan, 02/11/2019
30. Prior Written Notice, 02/11/2019
31. Notice of Team Meeting, 02/11/2019
32. Agenda/Minutes for (Student), Step In Plan, 02/25/2019
33. Prior Written Notice, 02/25/2019
34. Notice of Team Meeting, 02/25/2019
35. Agenda/Minutes for (Student), Step In Plan, 03/11/2019
36. Prior Written Notice, 03/11/2019
37. Notice of Team Meeting, 03/11/2019
38. (Student) Aug Com/FBA Meeting agenda, 04/08/2019
39. Student IEP Amendment, 12/05/2018
40. Student Step In Plan, Developed at IEP of 01/10/2019
41. Notice of Team Meeting, 03/22/2019
42. Meeting agenda, 04/15/2019
43. Prior Written Notice, 04/15/2019
44. Notice of Team Meeting, 04/17/2019
45. Notice of Team Meeting, 05/28/2019
46. Meeting agenda, 05/20/2019
47. Request for Student Services, 06/03/2019
48. Meeting agenda, 06/06/2019
49. Notice of Team Meeting, 06/06/2019
50. Prior Written Notice, 06/11/2019
51. Meeting agenda/minutes, 06/11/2019
52. Student ESY Summary, 2019
53. Student IEP Progress Report—Annual Goal
54. Student IEP Healthcare Plan, 09/04/2019

55. Notice of Team Meeting, 09/10/2019
56. Prior Written Notice, 09/16/2019
57. Notice of Team Meeting, 09/10/2019
58. Agenda/Meeting Minutes, 09/16/2019
59. Notice of Team Meeting, 09/17/2019
60. Prior Written Notice, 09/25/2019
61. Student Disability Statement, Intellectual Disability (10),
62. Eligibility Summary Statement, 12/05/2018
63. Student Communication Evaluation, 10/15/2015
64. Student Speech and Language Evaluation Report, 10/25/2012
65. Student Evaluation Consideration, 02/22/2010 & 03/10/2010
66. Student Medical Statement or Health Assessment, 10/16/2019
67. Developmental Disability Evaluation, 03/2019/2009
68. Student Psychological Evaluation, 07/29/2013
69. Student medical records, 2002--2003
70. Student medical records, 03/29/2019
71. Student medical records, 03/22/2019, 04/12/2017
72. Student Functional Behavior Assessment, 04/09/2019
73. Student Augmentative and Alternative Communication (AAC) Assessment, 04/10/2019
74. Functional Communication Report, 04/09/2019
75. Occupational Therapy Report
76. Vineland-3 Adaptive Behavior Scales, 04/09/2019
77. District Response to Department Case: 21-054-007b, 05/14/2021
78. District Petition for Reconsideration Regarding Three Rivers School District Under ORS 343.193
79. Email; Three Rivers School District, 04/16/2021
80. Request for Response in case 21-054-007b
81. Email; (Student) and Three Rivers School District, 04/06/2021
82. Email; (Student) Cave Junction, 03/26/2021
83. Email; Additional Documents re: Three Rivers Investigation, 01/26/2021
84. Email; Three Rivers RFR, 01/11/2021
85. District letter to Department, 01/11/2021
86. Letter from Student's attorney to District superintendent, 09/11/2020
87. Letter from District's attorney to Student's attorney, 09/1/2020
88. Letter from Student's attorney to District's attorney, 09/11/2020
89. Email; TRSD RFI-12-1-19 Supplement, 09/23/2020
90. Student IEP Amendment, 12/05/2018
91. Student Permanent Record
92. Email; TRSD IEE criteria, 08/16/2019
93. Email; (Student) TRSD, 08/19/2019
94. Letter from District's attorney to Student's attorney, Re: Residency Regarding (Student)
95. Meeting Minutes, 12/05/2018
96. Meeting Agenda, 01/10/2019
97. Prior Written Notice, 01/20/2019
98. Email; (Student), 09/11/2020
99. Letter from Student's attorney to District Superintendent, 09/01/2020
100. Letter from Department to District outlining outcome of investigation under ORS

- 343.193, 02/26/2020
101. District response to U.S. Department of Education, Office of Civil Rights, 01/23/2020
 102. U.S. Dept. of Justice, letter to District, 10/10/2019
 103. Letter from District to U.S. Dept. of Justice, Civil Rights Coordinator, 01/23/2020
 104. Letter from District to Department responding to District investigation under ORS 343.193(3)
 105. Letter from District to Student's attorney, Re: Residency of (Student), 09/25/2019
 106. Letter from Student's attorney to District, 10/23/2019
 107. Letter from Student's attorney to District, 09/01/2020
 108. Letter from District's attorney to Student's attorney, 09/01/2020
 109. Email; "TRSD RFI-12-10-19 Supplement," 09/23/2020
 110. Letter from Student's attorney to District's attorney, 10/23/2019
 111. Email; "Three Rivers/(Student) Residency," 09/25/2019
 112. Letter District's attorney to Student's attorney, "Re" Residency Regarding (Student)," 09/25/2019
 113. Email; "Three Rivers/(Student) IEP Meeting on Sept. 30, 09/19/2019
 114. Letter from District's attorney to Student's attorney, 09/10/2020
 115. District's, Criteria for Independent Educational Evaluations 2019-2020 school year
 116. Email; "(Student) TRSD," 09/19/2019
 117. Email; "TRSD IEE criteria," 09/16/2019
 118. Email; "Urgent: (Student) TRSD." 08/12/2019
 119. Email; "Re: (Student) TRSD," 08/05/2019
 120. Copies of Student's schedule for 2018-2019 school year to present
 121. Timeline of assistive technology provided to Student
 122. Student timeline
 123. List of staff knowledgeable about complaint
 124. Email; Fwd: Invoice for services, 06/06/2020
 125. Email; Fwd: Communication Consultation Report, 06/06/2020

On June 1, 2021, the Department's Complaint Investigator communicated with the Student's Attorney by email regarding the Complaint and obtained additional documentation in this matter. On June 3, 2021, the Department's Complaint Investigator interviewed the District's Director of Special Education. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The relevant allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from April 17, 2020, to the filing of this Complaint on April 16, 2021.

Allegations	Conclusions
<p>1) <u>Child Find</u></p> <p>The Student's Attorney alleges that the District violated the IDEA when the Student was eligible for special education services from the District, the District was aware of the Student's presence within the District's boundaries, but failed to identify, locate, and evaluate the Student.</p> <p>(OAR 584-015-2080; 34 CFR § 300.311)</p>	<p><u>Substantiated</u></p> <p>The District was on notice of the Student's presence in the District, and the Student's special education needs, but did not evaluate or provide special education services to the Student.</p>
<p>2) <u>IEP Team Considerations and Special Factors</u></p> <p>The Student's Attorney alleges that the District violated the IDEA when it failed to consider special factors such as the communication needs of the Student, and whether the Student required assistive technology devices and services. The Student's Attorney further alleges that the District failed to include information regarding assistive technology needs in the Student's IEP.</p> <p>(OAR 581-015-2205; 34 CFR §§ 300.320, 300.324(a)(1) & (2) & (b)(2))</p>	<p><u>Substantiated</u></p> <p>The District received evaluation data and assertions regarding the Student's need for special education services from the District. Despite the receipt of such information the District did not convene an IEP meeting to consider the evaluation data received.</p>
<p>3) <u>Assistive Technology</u></p> <p>The Student's Attorney alleges that the District violated the IDEA when it failed to make appropriate assistive technology devices available to the Student. Specifically, the Student's Attorney alleges that the District did not provide the Student with required augmentative communication devices.</p> <p>(OAR 581-015-2055; 34 CFR § 300.105)</p>	<p><u>Substantiated</u></p> <p>The District was provided an Independent Educational Evaluation (IEE) with assessment data and recommendations for the Student. Although the District reviewed this assessment data recommending augmentative communication devices, the District did not convene an IEP meeting to consider the recommendations and the Student's need for augmentative communication devices.</p>

<p>4) <u>General Evaluation and Reevaluation Procedures</u></p> <p>The Student's Attorney alleges that the District violated the IDEA when the District reported that the Student was no longer residing within the District boundaries, and instead within the boundaries of the Grants Pass School District, and failed to coordinate pending assessments with the Grants Pass School District.</p> <p>(OAR 581-015-2110(5)(d)(A); 34 CFR §§ 300.304 & 300.305)</p>	<p><u>Not Substantiated</u></p> <p>There is no evidence in the record that the Student transferred to another district.</p>
<p>5) <u>Placement of the Child</u></p> <p>The Student's Attorney alleges that the District violated the IDEA when the District exceeded 365 days between educational placement determinations. The Student's Attorney specifically alleges that in not making this determination, the District failed to consider the proximity of the Student's home to the Student's IEP then in effect.</p> <p>(OAR 581-015-2250; 34 CFR §§ 300.116 & 300.327)</p>	<p><u>Substantiated</u></p> <p>This District was placed on notice that the Student required services and the District obtained evaluation data for the Student. Despite this information the District did not convene an IEP meeting for the student to determine educational placement.</p>
<p>6) <u>Free Appropriate Public Education (FAPE)</u></p> <p>The Student's Attorney alleges that the District:</p> <p>(a) Failed to consider the Student's communication needs and, review, revise, and provide needed assistive technology to the Student; and</p> <p>(b) Failed to appropriately consider the Student's educational placement, thereby violating the IDEA by denying the Student a FAPE.</p> <p>(OAR 584-015-2040; 34 CFR § 300.101)</p>	<p><u>Substantiated</u></p> <p>(a) The District received evaluation data, assertions regarding the Student's residency, and evidence of the need for special education services. Despite these contacts the District did not identify, locate, or evaluate the Student.</p> <p>(b) The District has not served the Student since September 25, 2019. Despite the receipt of evaluation data and opinions from experts</p>

	regarding the Student's needs, the District has not further evaluated, assessed, or developed an IEP for the Student.
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III. FINDINGS OF FACT

Background

- 1) The Student in this case is a 20-year-old student who attended school in the District beginning in the third grade. With some exceptions, the Student attended elementary, middle, and high school in the District.
- 2) The Student qualified for special education services beginning in elementary school under the category of Intellectual Disability (ID). The Student displays early language skills. The Student demonstrates difficulty expressing wants and needs to others.
- 3) The Student also suffers from medical conditions that may at times affect their ability to complete the school day. The Student takes medication and sees a physician for ongoing maintenance of this condition.
- 4) The District attempted to assess the Student during their eighth grade year but was unable to do so due to the Student's inability to understand the assessment methodology. The Student is largely nonverbal. The District moved to devise a communication system for the Student. The Student understands more than they can communicate verbally. The Student's challenges with fine motor skills present an obstacle to the creation of a communication system due to the need to be able to manipulate technology or a pictorial communication system in order to effectively use such a system.
- 5) On April 10, 2019, the District completed an Augmentative and Alternative Communication (AAC) assessment. This assessment came about as the result of further discussion of alternative communication devices that may be of benefit to the Student. The report documented the Student's limitations with communication. The report recommended the initial use of a physical two-dimensional representation system utilizing photographs, with an eventual progression to picture symbols to meet the Student's wants and needs.
- 6) District staff and the Student's family agreed that the Student requires assistance with the activities of daily living. District staff observed that the Student had difficulty with toileting, fine motor skills, and understanding their own strength. The Student's family agreed that the Student had difficulty with unfamiliar places, required assistance with toileting, and was not able to communicate with strangers or navigate on their own.

- 7) The Student received behavior support services during their last year of school in the District. These included lessons on appropriate behavior with familiar and unfamiliar people. The Student also received services in expressive communication, such as expressing discomfort, comfort, interest in others, protest, or continued action; obtaining more of a desired thing; and attracting attention. The Student also received a variety of relevant supplementary aids and services, especially related to life skills.
- 8) Upon turning 18, the Student became their own legal guardian. Prior to that, the District recognized the Student's grandmother as the Student's legal guardian because the Student resided with the grandmother.
- 9) The Student's most recent placement determination was made on January 10, 2019. The Student's IEP team determined that the Student would receive special education services in a self-contained special classroom. This placement determination was based on the Student's unique needs and past behavior, such as escaping and inappropriate exposure.
- 10) In creating the most recent IEP, the IEP team determined that the Student would require special education services after graduation. The Student was to receive an "alternative certificate" rather than a diploma. Special education services provided to the Student after graduation would include in-home training leading to vocational training with communication and behavior supports. Community organizations would assist the Student with social integration into the community, with the intention of eventually enabling the Student to participate in supported employment or volunteer activities.
- 11) During the 2018-19 school year, based on certain behavioral concerns, the family voiced the preference that the District provide services to the Student in the home. The hope was that, once these behavioral concerns were addressed, the Student would be able to transition back to receiving services in school buildings. On January 10, 2019, the Student's IEP was amended to reflect the move to home instruction. Beginning January 14, 2019, the District began providing services to the Student in the home of the Student's grandmother. This decision was made in part due to the Student's difficulties with transitions. The Student's IEP team determined that slowly introducing staff to the Student and building relationships would allow the Student to transition back to receipt of services in the school environment.
- 12) The District provided direct instruction to the Student in the home. The District provided specially designed instruction (SDI) in the areas of behavior and functional life skills to the Student in the Student's home on a weekly basis. A variety of additional supportive services were provided to the Student as well. The District also coordinated with community agencies in areas such as adult psychiatric services and assisting the family with accessing additional needed services.
- 13) As part of the District providing services in the home, District staff kept a log of service dates and relevant observations or cancellations. Of the approximately 57 scheduled service days, 28 were cancelled by the family. The Student's grandmother sometimes reported that the cancellation was due to the Student being with their mother and unable to travel to the grandmother's home for services. In March 2019,

the Student's grandmother inquired whether services could be provided at the Student's mother's home. District staff observed the Student's mother, on at least two occasions, bring the Student to the grandmother's home when services were scheduled to be delivered. On other occasions, the Student's mother was also present at the grandmother's home when District staff delivered services.

- 14) Due to the Student's complex needs and challenges in the area of communication, the Student's Attorney and the District began to discuss alternative communication systems and evaluations. On August 9, 2019, the District's Legal Counsel informed the Student's Attorney that, given questions of consent and the Student's capacity, an Independent Educational Evaluation (IEE) may be a more appropriate route to evaluate the Student. The parties agreed that an IEE should be administered, given the disagreement of the parties about the sufficiency of the evaluations previously conducted by the District, and questions regarding whether and who had legal authority to sign consent for evaluation on behalf of the Student.
- 15) On August 12, 2019, the District's Legal Counsel sent an email to the Student's Attorney inquiring whether it was accurate that the Student was living with the Student's mother outside of the District's boundaries.
- 16) On August 16, 2019, the District's Legal Counsel inquired of the Student's Attorney, "...if you could let me know what you find out about where [the Student] is currently living that would be great. I know we don't want there to be any delays in starting with home instruction when the school year starts."
- 17) On August 16, 2019, the Student's Attorney sent an email to the District regarding evaluations of the Student suggested by the family. As part of this communication the Student's Attorney stated, "...I believe that [the Student] spends most of [their] time at [the grandmother's] home, but some portion of it with [their] mom. I will let you know if I learn anything different next week."
- 18) On August 16, 2019, the District's Legal Counsel and the Student's Attorney exchanged emails regarding the terms of an IEE. The Student's Attorney selected an evaluator outside the usual geographical area prescribed by the District and the two sides were in discussion regarding the use of that evaluator. At part of this communication, the Student's Attorney communicated to the District that he would thereafter leave the details of conducted the IEE to the evaluator and the District's Director of Special Education.
- 19) Subsequent to the August 16, 2019 communication, the identified evaluator conducted an evaluation of the Student that included their traveling to the area, visiting the Student at their home, and meeting with the District's Director of Special Education.
- 20) On August 19, 2019, the Student's Attorney sent an email to the District's Legal Counsel stating that the Student's "mother has been assuming some of the care responsibilities during the day while [the Student's grandmother] recovers from surgery, but [the Student] continues to live with [the grandmother] and sleep at her place every night."

- 21) On September 25, 2019, the District sent a letter to the Student's Attorney informing them that the District had determined that the Student was no longer a resident of the District. The District came to this conclusion after hiring a private investigator. The private investigator documented the Student spending nights with family outside of the District boundaries. The District determined that, based on this behavior, the Student no longer resided within District boundaries. That letter recounted prior correspondence between the parties regarding the residency issue. The District encouraged the Student to enroll in the neighboring district in which the District believed the Student resided.
- 22) On September 25, 2019, the District sent the Student's mother a prior written notice (PWN), at the mother's address in Grants Pass, Oregon. The PWN stated that the District would no longer be providing special education or regular education services to the Student effective September 26, 2019.
- 23) On October 23, 2019, the Student's Attorney sent the District's Legal Counsel a letter stating their belief that the District's conclusion was inaccurate and that "the District continues to be responsible for [the Student's] education."
- 24) On July 6, 2020, the District received a copy of the IEE. The evaluator provided the report and, in the accompanying email wrote, "Gratitude for the chance to meet [the Student] and [their] family, and share my findings and recommendations. Please call me if you need any urgent support...I am pleased to resume service of [the Student], [their] family, and the professionals who are serving [the Student]."
- 25) On September 1, 2020, the Student's Attorney sent the District's Superintendent a letter addressing the Student's history of enrollment in the District and the Student's receipt of special education services from the District. The Student's Attorney also addressed issues relevant to services the Student might require that were under discussion as the District made inquiries regarding the Student's residency status. The Student's Attorney observed that the Student had received no special education services since the District's September 25, 2019 determination that the Student was not a resident of the District. The Student's Attorney went on to enumerate the services sought from the District. The Student's Attorney stated specifically that the Student's "welfare and educational needs are supported by [the grandmother] and primary caregiver for many years, and their extended family."
- 26) On September 10, 2020, the District's Legal Counsel responded to the Student's Attorney, observing that requests for services sought should be directed to the current district in which the Student then resided. The District's Legal Counsel also observed that the only information provided to refute the District's conclusion regarding residency were the assertions of the Student's Attorney.
- 27) On September 11, 2020, the Student's Attorney sent a letter to the District's Legal Counsel writing in relevant part, "...you restated the District's previous understanding of [the Student's] status as a resident of [the District]. That understanding was inaccurate when originally stated and continues to be inaccurate today. In support of that conclusion...I noted that those supporting facts could have been easily

confirmed by the District had it spoken with the obviously relevant individuals rather than relying on the incomplete and ill-informed observations and conclusions of a private detective.” The Student’s Attorney went on to explain that, despite sometimes spending the night with family outside of the District’s boundaries, the Student continued to reside within the District’s boundaries.

The Student’s Attorney provided additional information in support of the contention that the District’s residency determination for the Student was incorrect. It was observed that the Student’s grandmother has been the Student’s primary caregiver for most of the Student’s life with the knowledge and consent of the Student’s mother. In that role, the Student’s grandmother had attended all the Student’s IEP meetings in the District. During this time, the Student resided with the grandmother in the District’s boundaries. During the time the Student lived with their grandmother, they also spent time with their mother outside of the District boundaries.

In the Spring of 2019, the Student’s grandmother underwent surgery that necessitated that the Student spend more time with the Student’s mother, as their grandmother was unable to provide the same level of care during their recuperation. During this time, the Student spent most nights with their mother outside of the District boundary. The Student’s Attorney observed that it was during this period that the District collected information through a private investigator, who observed the Student spending nights outside of the District boundary. Since the District’s determination, the Student spends time in both households, but resides most often with the grandmother, in the District boundary due to the mother working nights.

- 28) On December 10, 2020, the Student’s Attorney filed with the Department a report under ORS 343.193 from the attorney of a student (Student), stating their belief that there was a child with a disability in the Three Rivers School District who was eligible for, but not enrolled in, a special education program in the District. Under ORS 343.193, “upon receipt of a report under subsection (1) of this section, the Superintendent of Public Instruction shall verify whether the child is enrolled in a special education program and may cause an investigation, including an evaluation under ORS 343.146, to be made to determine whether the child is eligible for a program under ORS 343.221.”
- 29) On December 30, 2020, the Department sent a *Request for Response* to the District seeking its response to the Report filed under ORS 343.193.
- 30) On January 11, 2021, the District provided a letter to the Department responding to the Department’s December 30, 2020 *Request for Response* in this matter. The District observed that the Student “likely remains eligible for special education instruction and related services” but is “not currently receiving those services from the [District] because [the Student] is not a resident of [the District].”
 - a) The District’s response letter indicated that the District made its final residency determination in part based on what it considered incomplete or contradictory responses from the Student’s Attorney, and based on observations of District staff and additional evidence. The District gathered additional evidence from a private investigator who observed the Student’s mother’s home. The Student

was observed spending the night at the mother's home on weekends and weekdays.

- b) The District also noted that, at the time the District made the residency determination for the Student in September 2019, the District "was of the understanding that [the Student] was residing within the boundaries of the Grants Pass School District..."
 - c) As part of the District's response in that matter, it provided the Department with a copy of the Student's service schedule for the 2018-19 and 2019-20 school years. The schedule included dates when services were cancelled or interrupted for various reasons. The schedule also noted that around March 18, 2019, the Student's grandmother asked District staff whether the District could provide services to the Student at the Student's mother's home outside of the District boundaries. District staff also recorded occasions where they observed the Student arrive at the grandmother's home for services, or when the grandmother reported that the Student's mother was unable to transport the Student to the grandmother's home to receive services.
- 31) On January 22, 2021, the Department's Investigator interviewed the Student's grandmother. The Student's grandmother reported that the Student has lived with her continuously and continues to live with her. The Student's grandmother confirmed that during 2019 she experienced medical issues that necessitated other family members assist her with the Student's care. The Student's grandmother further reported that the Student commonly visited their mother and siblings. Such visits included overnights and weekends. The Student's grandmother reported that she was the primary caregiver for the Student and always had been.

The Student's grandmother confirmed that the Student has numerous siblings, and that the Student's care needs necessitated the grandmother's assistance to the family. The Student's grandmother explained that the family had not yet determined who would become the Student's legal guardian. The grandmother expressed the family's preference to find an appropriate guardian in the future and explained that the family chose to wait to make that determination until such time as a plan was in place for the Student's long-term future.

- 32) On January 29, 2021, the Department's Investigator interviewed one of the Student's personal support workers (PSW). The PSW contracts through the Oregon Department of Human Services, Office of Developmental Disabilities Services, to provide assistance and evaluation of the Student's needs for the development of a behavior support plan for the home. The Student's PSW indicated they had visited the grandmother's home and observed the Student's room and living situation there. Their work included attendance at IEP team meetings in the District. The PSW indicated that their direct interface with the Student ceased prior to the District's determination of residency for the Student. The PSW directed the Department to the Student's Caseworker with the Office of Developmental Disabilities Services and suggested that they could provide additional documentation.

- 33) On February 4, 2021, the Department's Investigator confirmed with the Oregon Department of Human Services (DHS), Office of Developmental Disabilities, that since May 18, 2020, the Student was enrolled in Intellectual Developmental Disability Community Living Supports. DHS confirmed that those services were provided to the Student in the grandmother's home.
- 34) On February 26, 2021, the Department completed its investigation of the December 10, 2020 report received from the Student's Attorney, pursuant to ORS 343.193, that the Student may be a child with a disability in the District who was eligible for, but not enrolled in, a special education program in the District. The Department determined that the Student was eligible for a special education program under ORS 343.221. The Department further concluded that the "fact that the District determined the Student was not a resident of the District did not relieve the District and the District employees of the obligation to comply with ORS 343.193(1)." Furthermore, the Department recommended to the District that it provide or cause to be provided one year of compensatory services to the Student in addition to ongoing services.
- 35) On April 16, 2021, the Department received this request for a complaint investigation.
- 36) On June 3, 2021, the Department's complaint investigator interviewed the District's Director of Special Education and Student Services.
 - a) As part of the interview the Director indicated that the Student has not attempted to enroll in the District since the District determined that the Student was no longer residing within the District boundaries. In addition, the Director noted that they were familiar with other members of the Student's family who had transferred to the neighboring school district. In those cases the neighboring district had requested records for those students. One of the Student's siblings remained within the District, but was absent from school for a time. The Director noted that, in that case, they called the neighboring District to inquire whether that sibling had transferred to the neighboring district.
 - b) The Director also noted that they received the IEE report from the evaluator chosen by the Student's Attorney on approximately July 6, 2020. The District's Director further noted that an explanation regarding its delayed submission was contained in the report.

IV. DISCUSSION

1. Child Find

The Student's Attorney alleged that the District violated the IDEA when the Student was eligible for special education services from the District, the District was aware of the Student's presence within the District's boundaries, but failed to identify, locate, and evaluate the Student.

A school district must have procedures in place to ensure that all children with disabilities

are “identified, located, and evaluated.”³ This responsibility includes children above the age of compulsory school attendance who have not graduated with a regular high school diploma.⁴ This responsibility also applies to all children unless they are no longer entitled to a free appropriate public education under OAR 581-015-2040 through OAR 581-015-2050.⁵ The scope of this duty is limited to those children who are residents of the District. The IDEA defers to state law in establishing the educational responsibilities of school districts, such as determining residency.⁶ Under Oregon law, a student may be a resident as the result of the residency of a person in a parental relationship to the student.⁷ Students who are considered legally emancipated are considered residents of the district in which they reside.⁸ The responsible education agency must develop and implement a method to determine which children are currently receiving needed special education and related services.⁹

Although the Department is unaware of a case that addresses this specific situation, courts have recognized that districts have an ongoing responsibility to identify and serve eligible students within the district. That responsibility is largely determined with reference to when the district “has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.”¹⁰ When a district is placed on notice that a child may have a disorder, it must assess the child.¹¹ “That notice can be in the form of expressed parental concerns about a child’s symptoms...expressed opinions by informed professionals...or...the child’s behavior in or out of the classroom.”¹² When outside experts are consulted, “even if the school district disagrees with the...suspicions” the requirement to assess is triggered.¹³

The District contends in its *Response* that the District has had no child find obligations for the Student in the last 365 days. The District made its residency determination on September 25, 2019, and alleges that it received no information “indicating that the Student’s residency status [had] changed and that the Student has resided in the District within the last 365 days (e.g. the Student did not try to re-enroll in the District at the beginning of this school year).” However, the Student’s Attorney communicated with the District on several occasions challenging the District’s residency determination and asserting that the Student lived within the District’s boundaries. The District also received an Independent Educational Evaluation (IEE) that identified the Student’s home as within walking distance of one of the District high schools, and offering to assist the District in serving the Student. Following the communication of the IEE to the District, the Student’s Attorney wrote to the District Superintendent again in September 2020 asserting that the Student was a resident of the District and entitled to services.

³ OAR 581-015-2080(2), *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1183 (9th Cir. 2010) (quoting 20 U.S.C. § 1412(a)(3)(A))

⁴ OAR 581-015-2080(2)(h)

⁵ OAR 581-015-2080(1)

⁶ *Los Angeles Unified School District v. Michael Garcia*, 741 F.3d 922, 928 (9th Cir. 2014)

⁷ ORS 339.133(2)(a)

⁸ ORS 339.133(3)

⁹ 34 CFR § 300.111(b)

¹⁰ *G.M. ex rel. G.M. v. Saddleback Valley Unified Sch. Dist.*, 583 Fed. App 702, 703-04 (9th Cir. 2014), citing *Dept. of Educ., Haw. v. Carl Rae S.*, 158 F.Supp 2d 1190 (D. Haw. 2001)

¹¹ *Timothy O., v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1110 (9th Cir., 2016)

¹² *Id.* at 1121

¹³ *Id.* at 1120, citing *Pasatiempo v. Arizona*, 103. F.3d 796 (9th Cir. 1996)

The District's Director of Special Education and Student Services related that they made inquiries regarding one of the Student's siblings' enrollment, but did not do the same for the Student, despite similar suspicions regarding city of residency and the fact that the neighboring school district did not request records. The District did receive numerous communications from the Student's Attorney asserting that the District's residency determination was incorrect and that the District continued to have a duty to serve the Student. Additionally, the Oregon Department of Human Services confirmed that the Student has received services in the grandmother's home since May 18, 2020.

The Department determined on February 26, 2021 that the Student is eligible for special education services. The Department also determined that District staff were aware that the Student was eligible for special education and not enrolled in a special education program. In the Department's February 26, 2021 determination letter, the Department also concluded that the District was aware that "no other district had contacted the District to request a transfer of records for the Student."

The evidence in the record indicates that the District's residency determination made on September 25, 2019 was erroneous. The Student's residency in the District never terminated. Therefore, the District's obligation to provide educational services to the Student never ceased, nor did the District's obligation to evaluate the Student once information demonstrating the potential need for such evaluation was received.

The Department substantiates this allegation.

2. IEP Team Considerations and Special Factors

The Student's Attorney alleges that the District violated the IDEA when it failed to consider special factors such as the communication needs of the Student, whether the Student required assistive technology devices and services, and failed to include such information in the Student's IEP.

In developing a student's IEP, the IEP team must consider many factors.¹⁴ These include the strengths of the student, the concerns of the parent, the results of initial or more recent evaluations, and the academic, developmental, and functional needs of the child.¹⁵ The team must also consider a variety of other special factors that may be relevant to the student's needs.¹⁶ In considering special factors while developing the IEP, if the team determines that a student needs a particular device or service, it must be included in the student's IEP.¹⁷

The District previously found the Student eligible for special education under the category of Intellectual Disability. Following the District's September 25, 2019 residency determination for the Student, the District held no further IEP team meetings for the Student. Despite receiving an evaluation for the Student on July 6, 2020, and numerous requests from the Student's Attorney for the District to serve the Student, the District did not convene an IEP team meeting to consider the evaluation data received, or those

¹⁴ OAR 581-015-2205(1)

¹⁵ OAR 581-015-2205(2)(a)-(d)

¹⁶ OAR 581-015-2205(3)

¹⁷ OAR 581-015-2205(4)

recommendations for communication services.

The Department substantiates this allegation.

3. Assistive Technology

The Student's Attorney alleges that the District violated the IDEA when it failed to make appropriate assistive technology devices available to the Student. Specifically, the Student's Attorney alleges that the District did not provide the Student with required augmentative communication devices.

School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services.¹⁸ Assistive technology devices are any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability.¹⁹ Assistive technology services are those services that directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device.²⁰ Assistive technology services include the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment.²¹

On September 25, 2019, the District sent the Student a prior written notice of its intent to cease services to the Student on September 26, 2019. Following this date, the District did not provide services to the Student, including assistive technology services. Prior to September 26, 2019, the District found the Student eligible for and in need of assistive technology. The Student received an independent educational evaluation (IEE) to assess the Student for a symbolic communication system. As part of that assessment the evaluator met with the Director of Special Education and discussed the Student's needs. The evaluation report included recommendations for assistive technology that could benefit the Student. Recommendations included in an IEE do not necessarily warrant inclusion of a specific elements in a student's IEP. However, the results of the IEE must be considered by the school district.²² After receiving the report, the District did not convene an IEP team meeting to consider the results, nor did it further evaluate the needs of the Student.

The Department substantiates this allegation.

4. General Evaluation and Reevaluation Procedures

The Student's Attorney alleges that the District violated the IDEA when the District reported that the Student was no longer residing within the District boundaries, and instead within the boundaries of the Grants Pass School District, and failed to coordinate pending assessments with the Grants Pass School District.

¹⁸ OAR 581-015-2055(1)

¹⁹ OAR 581-015-2000(2)

²⁰ OAR 581-015-2000(3)

²¹ OAR 581-015-2000(3)(a)

²² OAR 581-015-2305(7)(a)

When a child with a disability transfers from one school district to another school district in the same school year, the previous and current school district must coordinate any pending assessments as necessary.²³ This coordination should occur as expeditiously as possible to ensure prompt completion of the evaluation.²⁴

Despite the District's purported belief regarding the Student's residence in a neighboring District, there is no evidence in the record that the Student transferred to or enrolled in another school district. The rule requires a district to coordinate assessments when a student has transferred.

The Department does not substantiate this allegation.

5. Placement of the Child

The Student's Attorney alleges that the District violated the IDEA when the District exceeded 365 days between determinations regarding the Student's educational placement. The Student's Attorney specifically alleges that in not making this determination, the District failed to consider the proximity of the Student's home and the Student's IEP then in effect.

The educational placement of a child with a disability is determined by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.²⁵ A student's educational placement must be made in conformity with least restrictive environment provisions.²⁶ The placement must also be based on the Student's current IEP.²⁷ "Educational placement' means the general educational program of the student."²⁸ Placement determinations must be made at least once every 365 days.²⁹

The Student's Attorney suggests that the District failed to assess the Student's educational placement within the 365 day requirement. The Student's Attorney suggests that this occurred following the District's residency determination for the Student on September 25, 2019. Following this date the District provided no additional services to the Student, including not holding IEP team meetings. The District asserts that the Student was not a resident of the District and therefore the District did not have IEP or FAPE obligations to the Student after the September 2019 residency determination.

The Department has previously investigated the Student's residency and special education services and determined that District officials had knowledge that the Student was not receiving services.

The Department substantiates this allegation.

²³ OAR 581-015-2110(5)(d)(A)

²⁴ *Id.*

²⁵ OAR 581-015-2250(1)(a)

²⁶ OAR 581-015-2250(1)(b)

²⁷ OAR 581-015-2250(1)(c)

²⁸ *N.D. v. Hawaii Department of Education*, 600 F.3d 1104, 116 (9th Cir. 2010)

²⁹ OAR 581-015-2250(1)(d)

6. Free Appropriate Public Education (FAPE)

The Student's Attorney alleges that the District failed to consider the Student's communication needs and, review, revise, and provide needed assistive technology to the Student. The Student's Attorney also alleged that the District failed to appropriately consider the Student's educational placement. As a result of these alleged failures, the Student's Attorney alleges that the District violated the IDEA by denying the Student a FAPE.

School Districts are required to provide a FAPE to all school aged children with disabilities for whom the district is responsible.³⁰ "The IDEA was passed 'to ensure that all children with disabilities have available to them a free appropriate public education ... designed to meet their unique needs.'³¹ A FAPE is defined as an education that is provided at public expense, meets the standards of the state educational agency, and is in conformity with the student's IEP.³² In creating an IEP, a school district is procedurally required to conduct individual evaluations (and reevaluations) of the student, using "a variety of assessment tools and strategies" to gather information to determine the content of the IEP.³³³⁴

In determining whether a District has denied a student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.³⁵ While harmless procedural errors do not constitute a denial of FAPE,³⁶ "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."³⁷

In this matter the District ceased serving the Student based on a residency determination made September 25, 2019. Despite receiving information that this residency determination was made in error, the District did not further inquire about the Student's residence. Furthermore, following the receipt of evaluation data regarding the Student's communication needs on July 6, 2020, the District did not evaluate the Student to determine their special education needs. Following the receipt of new assessment data, the Student's Attorney sent additional communications to the District asserting the Student's eligibility for services from the District. Despite these contacts, the District has not moved to identify, locate, or evaluate the Student.

At no time after September 26, 2019, did the District attempt to locate, evaluate, serve, or develop an IEP for the Student. The Student's Attorney repeatedly requested that the District serve the Student, including having an IEE completed and transmitted to the District. Despite these contacts, the District did not hold an IEP team meeting for the Student after September 26, 2019. As a result, the District also did not give consideration to the Student's placement during this time.

³⁰ OAR 581-015-2040(1)

³¹ 20 U.S.C. § 1400(d)(1)(A)

³² *Id.* § 1401(9)

³³ *Id.* § 1414(b)(1)-(2)

³⁴ *Basquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179, 1184 (9th Cir. 2016)

³⁵ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (U.S. 1982)

³⁶ *L.M. v Capistrano Unified Sch. Dist.*, 556 F3d 900, 910 (9th Cir. 2008)

³⁷ *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1079 (9th Cir. Ariz. 2003)

The Department substantiates this allegation.

V. CORRECTIVE ACTION³⁸

*In the Matter of Three Rivers School District
Case No. 021-054-007(b)*

Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions	Due Date
1. The District is to convene an evaluation planning meeting to determine what, if any, evaluations need to be conducted in order to determine the Student's current educational needs.	Documents developed during the meeting, including evaluation consent forms. All submissions to be made to County Contact.	July 15, 2021
2. The District shall convene an appropriate team to determine whether the Student remains eligible for special education.	Prior Written Notice documenting the eligibility decision.	September 15, 2021
3. If eligible, the District is to conduct an IEP meeting upon the completion of necessary evaluations to complete a new IEP for the Student.	Meeting notice, minutes of meeting, new IEP.	September 15, 2021
4. Regardless of ongoing eligibility, the District is to provide one year of compensatory education to the Student.	Specific plan developed in collaboration with the Student at the eligibility or IEP meeting referenced above.	September 15, 2021
	Log of all compensatory services provided to the Student.	June 14, 2022

³⁸ 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)).

Dated: this 15th Day of June 2021

A handwritten signature in cursive script that reads "Sara Green".

Sara Green
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 15, 2021

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030(14).)