

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School)
District)
)

FINDINGS OF FACT
CONCLUSIONS AND FINAL
ORDER
CASE NO. 21-054-013

I. BACKGROUND

On June 18, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Portland School District (District). The Parent 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 Parents 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 June 25, 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 July 9, 2021.

The District submitted a *Response* on July 9, 2021, denying the allegations, providing an explanation, and submitting supporting documents in support of the District's position. The Parents submitted supporting documents on or before July 16, 2021. In total, the District submitted the following items:

1. Exhibit List
2. District Response ODE 21-054-013, 7/9/21
3. IEP, 6/5/19
4. Special Education Placement Determination, 6/5/19
5. Meeting Minutes, 6/5/19
6. Notice of Team Meeting, 6/4/19
7. Prior Written Notice, 6/5/19
8. IEP, 6/4/20
9. Prior Notice of Special Education Action, 6/4/20
10. Informed Consent for Speech & Language Pathologist Tele practice with Portland Public Schools, 9/14/20
11. Individualized Family Service Plan (IFSP), 5/14/18
12. Early Childhood Special Education Speech and Language Evaluation Report, 4/18/17
13. Statement of Eligibility for Special Education (Communication Disorder 50) (unsigned), 4/18/17
14. Psychological Assessment Summary, 2/10/21
15. Expired Re-Eligibility, 3/1/21
16. Meeting Minutes, 3/30/21

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

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

17. Parent/Guardian Consent for Individual Evaluation, 3/30/21
18. SPED-Ivy School, Daily Attendance By Week, 7/1/20-6/4/21
19. IEP Progress Report, 1/29/21
20. The Ivy School, Student Permanent Record, 2020-2021
21. Email, re: student's evaluation/request for addition of supports to existing IEP, 2/23/21
22. Email, re: invitation evaluation planning, 2/26/21
23. Email, re: student report, 3/29/21
24. Email, re: eval planning meeting, 3/29/21
25. Email, re: today's meeting notes attached, 3/30/21
26. Email, re: permission to share report with testing center psychologist, 3/31/21
27. Email, re: hearing screening, 5/24/21
28. Email, re: student IEP, 5/27/21
29. Email, re: hearing screening, 5/27/21
30. Email, re: student IEP (medical statement), 5/27/21
31. Email, re: hearing screening, 5/27/21
32. Email, re; student IEP, 5/27/21
33. Email, re: support for process, 5/27/21
34. Email, re; student IEP, 5/27/21
35. Email, re: can we talk?, 5/28/21
36. Email, re; student IEP, 6/2/21
37. Special Education Eligibility Requirements, updated 3/16
38. Portland Public School Pattern of Strengths and Weaknesses Model for Identifying Specific Learning Disabilities-Parent Information Sheet, no date
39. Identification of Specific Learning Disabilities via Patterns of Strengths and Weaknesses, revised 10/20
40. Corrective Action Plan, revised 10/20
41. Section 6, IEP & Placement/LRE, revised 6/18
42. Email, re: student, 9/30/20
43. Email, re: child study weekly meeting, 10/5/20
44. Email, re: student evaluation/request for addition of support to existing IEP, 2/23/21
45. Email, re: updated invitation eval planning for student, 3/30/21
46. Email, re: permission to eval, 3/30/21
47. Email, re: testing center referral, 4/2/21
48. Email, re: update on 30 day past due processes-Ivy, 5/3/21
49. Email, re: ducks in a row, 6/7/21
50. Email, re: medical statement, 6/16/21
51. Student Intervention Tracking Form (RTI), 9/20/21
52. Meeting Notes, 10/5/20 and 10/12/20
53. Child Study Meeting for Student, 10/19/20
54. Child Study Meeting for Student, 10/26/20
55. Medical Statement, 6/29/21
56. Exhibit List, no date
57. 19-20 Fall Data Chart Goal Setting/Work Samples, 11/20/19
58. i-Ready Diagnostic Results, 5/11/21

In total, the Parent submitted the following items:

1. Request for a Complaint Investigation, 6/18/21
2. Email, re: student 9/27/20
3. Email, re: one-on-one, 1/11/21
4. Email, re: student evaluation information, 6/16/21
5. Email, re: student evaluation/request for addition of supports to existing IEP, 2/23/21
6. Psychological Assessment Summary, 2/10/21

7. Email, re: student, 6/15/21
8. Parent's Reply, 7/12/21
9. Questions and Answers on Providing Services To Children With Disabilities During The Coronavirus Disease Outbreak 2019, March 2020

The Complaint Investigator interviewed the Parent on July 16, 2021. On July 23 and 30, and August 4, 2021, the Complaint Investigator interviewed the District's speech language pathologist, the charter school director, and a District administrator regarding this matter. Virtual meetings were held instead of on-site interviews due to the COVID-19 pandemic. The Complaint Investigator reviewed and considered all of 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 Parent's 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 June 19, 2020, to the filing of this Complaint on June 18, 2021.

The written Complaint alleges that the District violated the IDEA in the following ways:

Allegations/Findings	Conclusions
<p><u>Child Find</u></p> <p>The Parents allege that the District violated the IDEA when it failed to identify and evaluate the Student with a disability in all areas of suspected disability.</p> <p>(OAR 581-015-2080 and CFR § 300.111)</p>	<p>Not Substantiated</p> <p>The Student was already eligible for special education. Therefore, child find requirements do not apply.</p>
<p><u>Content of IEP</u></p> <p>The Parents allege that the District violated the IDEA when it failed to amend the Student's individualized education program (IEP) after receiving information provided by the Parents about the Student's educational needs.</p> <p>(OAR 581-015-2105(4)(A), 581-015-2120(4), 581-015-2200(A)(B) and CFR §§ 300.303(a), 300.305(a)(1)(i), 300.305(a)(2)(iv), 300.320(a)(2))</p>	<p>Not Substantiated</p> <p>The IEP team considered the information provided by the Parents and made a determination that additional assessments needed to be conducted prior to amending the IEP.</p>
<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Parents allege that the District violated the IDEA in ways that amounted to a denial of a FAPE when the District failed to:</p> <p style="padding-left: 40px;">a. Identify and evaluate the Student, and</p>	<p>Substantiated</p> <p>The District's failure to conduct a comprehensive evaluation at the time of the Student's triennial eligibility amounts to a denial of FAPE because the determination of appropriate services is dependent on</p>

b. Amend the Student's IEP. (OAR 581-015-2040 and CFR § 300.101)	the evaluation.
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REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • The Oregon Department of Education should issue an order finding that District is in violation of IDEA for failure to identify Student as a student with a disability in all areas of need. • The Oregon Department of Education should issue an order finding that District is in violation of IDEA for failure to serve Student in all areas of special education needs. • The Oregon Department of Education should issue an order finding that District is in violation of IDEA for denying Student a FAPE throughout the 2020-21 academic year. • The Oregon Department of Education should require training for District teachers and administrators in child find and evaluation requirements. • The Oregon Department of Education should award compensatory education for Student for the 2020-21 academic year. • The Oregon Department of Education should order a facilitated IEP meeting, at District expense.

III. FINDINGS OF FACT

Background

1. The Student is 7.5 years old and will be in the second grade. The Student attends a Department-sponsored Montessori charter school located within the District.
2. The Student is eligible for special education and related services due to a Communication Disorder.
3. The Student is very physically coordinated, vivacious, and self-assured. The Student is strong and active and likes to run outside, paint, and draw.
4. The Student's articulation errors may limit their ability to be understood while participating in general education activities.
5. During the Spring 2020 Extended School Closure, the Student received instruction remotely. During the 2020-21 school year, the Student received instruction through a combination of remote and limited in-person instruction.
6. The Student receives Specially Designed Instruction (SDI) in the area of communication, due to articulation.
7. The Student's special education placement determination for the most recent IEP is that the Student will participate in the general education setting all of the time, except for delivery of communication services.

Child Find

6. The Student was found eligible for special education due to a Communication Disorder on April 18, 2017.

Determination of Eligibility

7. The Student's IEPs dated June 5, 2019 and June 4, 2020 indicate the Parents shared concerns that the biological father of the Student has severe dyslexia.
8. The Student's IEPs dated June 5, 2019, and June 4, 2020, both indicate the Student "is not doing much with letters and numbers at this point. The Student writes letters and numbers upside down and backward and adds extra lines to E, though the Student has great hand-eye coordination."
9. The Student's second semester kindergarten report card indicated the Student "does not demonstrate" the following reading skills: recognizes and names all the upper- and lower-case letters, produces all consonant and short vowel sounds, uses letter-sound knowledge to read, reads kindergarten text accurately.
10. The Student's second semester kindergarten report card indicated the Student "does not demonstrate" the following mathematic skills: counts to 100 by ones and tens, reads and writes numbers from 0-20, counts forward, and counts up to 20 objects.
11. The Student's first grade report card indicated the Student was meeting or exceeding reading standards with the exception of demonstrating knowledge of grade-level phonics and reads first grade text accurately and fluently.
12. The Student's first grade report card indicated the Student was meeting or exceeding mathematics standards for all but two areas in the first semester: math reasoning and counting to 120. These two areas were reported as meeting standards for second semester.
13. The Oregon Kindergarten State Assessment was administered to the Student on November 20, 2019, while the Student was in pre-kindergarten.
14. The iReady Diagnostic Assessment was administered to the Student on May 11, 2021.
15. The Student's kindergarten and first grade teachers both had academic concerns for the Student and interventions were started.
16. The Student was placed in an academic intervention program starting the second semester of kindergarten and continuing into first grade.
17. The Student's triennial eligibility due date for a Communication Disorder was April 16, 2020.
18. On June 4, 2020, and March 1, 2021, the District issued two prior written notices (PWN) indicating the District did not complete a review of the Student's eligibility and in-person evaluations were required. The March 2, 2021 PWN stated that due to the Coronavirus Pandemic, the District was extending the timeline to review the Student's eligibility until in-person evaluations could be completed.
19. The Parents communicated concerns to the District about the Student possibly having dyslexia on September 30, 2020.
20. The procedures for special education eligibility requirements contained in the District's special education manual stipulate that "research indicates that students with [Specific Learning Disability] SLD often have a coexisting Communication Disorder (CD). Students with SLD may have a primary or secondary eligibility of CD. A student with CD who is

experiencing academic difficulties suggesting the need for specially designed instruction (SDI) in one or more academic areas needs to go through a full evaluation before academic services are added to the student's IEP. This ensures full consideration of intervention and progress monitoring data, determination of needs, and clear baseline for developing goals and objectives.”

21. The District's procedures for CD-only eligible students receiving SDI in academics, or for whom academic services are being considered, "should be evaluated for SLD at their first school-age eligibility meeting (not including kindergarten transition)."
22. An evaluation planning meeting was held on March 30, 2021.
23. Consent for individual evaluations was obtained from the Parents on March 31, 2021. The triennial evaluation will assess the student for the following disabilities: Communication Disorder, Specific Learning Disability, Emotional Behavior Disability, and Other Health Impairment.

Content of IEP

24. The Parents provided the District with assessment results and recommendations from a private evaluation on February 23, 2021. The Parent also requested that the Student's IEP be updated to take into account the Student's reading, writing, and math challenges.
25. The private evaluation indicated the Student had exceptionally low academic skills in the areas of early reading, basic reading, word reading, and spelling.
26. There is no evidence that the District issued a PWN refusing to add services to the Student's IEP until a District-provided evaluation could be completed.

Prior Written Notice

27. The Parents expressed concerns about how the student was doing in first grade to the classroom teacher, the District, and charter school staff on September 30, 2020.
28. The Parents requested the Student's IEP be updated to take into account the Student's reading, writing, and math challenges in an email dated February 23, 2021. At the same time, the Parents provided the District with an evaluation report from an outsider practitioner that substantiated the Parent's concerns.
29. The Parents requested the Student's IEP be updated at the March 31, 2021 meeting that was held to review the results of the private evaluation.
30. The Parents requested the Student's IEP be finalized by the end of the 2020-21 school year in an email dated May 27, 2021.

IV. DISCUSSION

Child Find

The Parents allege that the District violated the IDEA when it failed to identify and evaluate the Student with a disability in all areas of suspected disability.

The requirements of child find apply to all children unless they are no longer entitled to a free appropriate public education.³ School districts must identify, locate, and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services, including children enrolled in public charter schools.⁴ The district in which the charter school is located is responsible for child find for students enrolled in the charter school, regardless of parental resident district.⁵

The Student was initially found eligible for special education and related services due to a Communication Disorder on April 18, 2017. The Student was already eligible for special education and related services during the complaint period.

The Department does not substantiate this allegation.

Content of IEP

The Parents allege that the District violated the IDEA when it failed to amend the Student's IEP after receiving information provided by the Parents about the Student's educational needs.

The IEP must include a statement of the child's present level of academic achievement and functional performance, including how the child's disability affects the child's performance and progress in the general education curriculum. A statement of measurable annuals goals, including academic and functional goals designed to: meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability must also be included.⁶

The Parents provided the District with an evaluation report from a private evaluator on February 23, 2021 and requested that the Student's IEP be updated to take into account the Student's reading, writing, and math challenges. The District responded to this request by scheduling an evaluation planning meeting for March 30, 2021. At the evaluation planning meeting, the Parent again expressed her concern that the Student receive the services needed to learn. The outcome of the meeting was that no services were added to the IEP and the District sought permission to conduct a triennial evaluation to consider multiple eligibilities including Communication Disorder, Specific Learning Disability, Other Health Impairment, and Emotional Behavior Disability.

The IEP team considered the information provided by the Parents and determined additional information was necessary to make decisions regarding educational planning and IEP development for the Student.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parents allege that the District violated the IDEA in ways that amounted to a denial of FAPE when the District failed to identify and evaluate the Student and amend the Student's IEP.

³ OAR 581-015-2080(1)

⁴ OAR 581-015-2080(2),(2e)

⁵ OAR 581-015-2080(3)

⁶ OAR 581-015-2200(1a)(1b)(1bA)(1bB)

School districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible.⁷

The Student's special education triennial evaluation, due to a Communication Disorder, was required to be completed by April 16, 2020. The District failed to complete the reevaluation and eligibility process by the due date. This date is outside the complaint investigation window of June 19, 2020, through June 18, 2021. However, the Student remains eligible for special education services at this time and an eligibility determination was required within the complaint investigation window.

In this case, the District developed a kindergarten and first grade IEP, in which the Parents expressed concerns about the Student having dyslexia; both the kindergarten and first grade teachers had concerns about the Student's academic skills in reading; the Student was receiving academic interventions; and the Student's curriculum-based assessments indicated the Student was below grade level in reading. The District had sufficient data to determine that the Student should have been evaluated for SLD at the time of the three-year eligibility determination. The District's failure to complete the Student's reevaluation and eligibility process by the time it was due potentially prevented the Student from receiving required special education services. This situation amounts to a denial of FAPE for the period of time the Student's eligibility was delayed.

The Department substantiates this allegation.

V. ADDITIONAL FINDINGS

Evaluation and Reevaluation Requirements

During the investigation, it was discovered that the Student's triennial evaluation and eligibility process was not completed by the due date of April 16, 2020. A school district must conduct a reevaluation process before determining that a child continues to have a disability or changing the child's eligibility.⁸ The school district must ensure that a reevaluation of each child with a disability is conducted: if the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parents or teachers requests a reevaluation. A reevaluation for each child with a disability must occur at least every three years, unless the parent and school district agree that a reevaluation is unnecessary.⁹

The District did not initiate a reevaluation or eligibility process by the required date of April 16, 2020. The District issued a PWN on June 4, 2020 indicating the District was unable to review the Student's eligibility for special education prior to the due date. The notice further indicated that the District was extending the timeline to review the Student's eligibility and the Student would remain eligible for services under a Communication Disorder.

On March 1, 2021, the District issued a second PWN notice indicating the District was unable to review the Student's eligibility, the Student would remain eligible for services pending an evaluation and eligibility meeting, and an evaluation planning meeting was scheduled for March 30, 2021, to consider other eligibilities. The March 1, 2021 PWN also indicated that the evaluation and eligibility timelines were pushed back due to the COVID-19 pandemic. The District received Parent consent for the triennial evaluation on March 31, 2021.

⁷ OAR 581-015-2040(1)

⁸ OAR 581-015-2105(1)(1b)(1c)

⁹ OAR 581-015-2105(4a)(4bA)(4bB)(4B)

Prior to the April 16, 2020, deadline for the Communication Disorder eligibility, the District made no attempts to conduct an evaluation or initiate the triennial eligibility process. The first PWN, issued June 4, 2020, was provided to the Parents seven weeks after the Communication Disorder eligibility determination was required to be completed. The District attempted to obtain Parent consent to conduct an evaluation for the triennial eligibility 11.5 months after the Communication Disorder eligibility determination was due. This is an unreasonable delay. There are no federal or State waivers due to the COVID-19 pandemic that relieve the District of evaluation and eligibility requirements or timelines.

Prior Written Notice

During the investigation, it was discovered that the District did not issue a PWN with its refusal to add additional special education services to the Student’s IEP prior to the completion of a formal and full evaluation. Prior written notice must be given to the parent of a child within a reasonable period of time before a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.¹⁰

The Parents made four requests between September 30, 2020, and May 27, 2021 for additional IEP services to be added to the Student’s IEP. The Parents continue to desire these services to be added to the IEP. The District has not added special education services to the IEP as requested by the Parents. Based on the District’s actions, the District has refused to add additional special education services to the Student’s IEP until the District has completed a full evaluation. A PWN should have been issued memorializing this decision.

VI. CORRECTIVE ACTION³

*In the Matter of Portland School District
Case No. 21-054-013*

The Department orders the following corrective action in this matter.

Action Required	Submissions	Due Date
1. The District must complete the pending reevaluation and hold a meeting to determine eligibility.	The District shall submit the following: <ul style="list-style-type: none"> • All Evaluation Reports • All completed Statements of Eligibility for Special Education 	September 17, 2021
2. The District must hold a Facilitated IEP Meeting to develop an IEP that enables the Student to receive FAPE.	The District shall submit the following: <ul style="list-style-type: none"> • All IEP meeting paperwork 	October 1, 2021

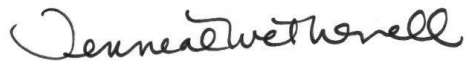
¹⁰ OAR 581-015-2310(2)(2b)

³ 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)).

<p>3. If additional services are added to the IEP, the District must provide compensatory education in an amount equitable to the amount that would have been provided between June 19, 2020 and June 18, 2021. In the event that the IEP team cannot agree with the specific amount of compensatory education required to provide equitable relief, the Department will determine the appropriate number at the request of District or Parent.</p>	<p>The District shall submit the following:</p> <ul style="list-style-type: none"> • Specific information about any compensatory education required, if the IEP team agrees on the compensatory education that provides equitable relief for any services missed. • Logs showing compensatory education was provided. 	<p>October 15, 2021</p> <p>August 1, 2022</p>
<p>4. The District must review its special education manual sections related to Evaluation and Eligibility for Communication Disorder and Specific Learning Disability, update any information required to ensure compliance with IDEA, and provide training for all relevant staff on updated components.</p>	<p>The District shall submit the following:</p> <ul style="list-style-type: none"> • All reviewed sections of the special education manual • Summary of changes to special education manual • Training materials, agendas, and sign in sheets 	<p>November 30, 2021</p>
<p>5. Staff training for all district staff who participate in IEP meetings as either: (a) the special education teacher or special education provider of the child; or (b) a representative of the school district who is qualified to provide, or supervise the provision of, specially designed instruction; knowledgeable about the general education curriculum; knowledgeable about district resources; and authorized to commit district resources and ensure that services set out in the IEP will be provided in each of the following areas:</p> <p>a. District procedures to ensure that</p>	<p>The District shall:</p> <ol style="list-style-type: none"> a. Submit a training plan to the Department for approval, b. Complete the training according to the approved plan, c. Submit evidence of completed training, materials, agenda, and sign-in sheets. 	<p>November 30, 2021</p> <p>Training plan must be submitted to the Department for approval no later than September 15, 2021.</p> <p>Training must be completed consistent with timelines established in the plan, but not later than November 30, 2021.</p>

<p>evaluations are completed appropriately and in a timely fashion.</p> <p>b. District procedures to ensure that prior written notices are sent when required.</p>		<p>Evidence of completed training must be submitted by November 30, 2021.</p>
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Dated: this 16th Day of August 2021



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: August 16, 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).)