

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Coos Bay
School District 9

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-039

I. BACKGROUND

On December 15, 2021, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from an interested individual (the Complainant) in the Coos Bay School District (the District). The Complainant alleged that the District systemically violated the IDEA. The Complainant 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 December 21, 2021, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated. At the District’s request, the Department granted a ten-day extension, establishing a *Response* due date of January 14, 2022.

The District submitted a *Response* on January 13, 2022, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following items:

1. District’s Written *Response* to Complaint, dated 1/14/22
2. Table of Contents, 1/13/22
3. District Contact Names, 1/13/22
4. Complainant Files (students mentioned in Exhibit 1-6 of the Complaint), 2018-2021
5. Representative Student Files, 2019-2021
 - a. Re-Evaluations with no new testing
 - b. Initial eligibilities
 - c. Re-Evaluations with new testing
6. Emails Corresponding with Exhibits 1-6, 9/11/20–12/1/21
7. District Flow Charts, undated

At the request of the Investigator to provide documents for 13 named students, the District submitted the following additional documents on February 11, 2022:

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

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

1. Cover Letter, 2/11/22
2. District Response to Additional Questions, 2/11/22
3. District Compliance Information, 2020–2022
4. District Protocol for School Based Evaluations from Itinerant Specialists, undated
5. Excerpt from “Description of the WJ IV ACH Tests and Clusters”, undated
6. District Assessment Center Process/Procedures, 2020/21
7. District Special Education System Performance Review & Improvement information, 2017–2021
8. Additional Student Documents, 2018–2022

At the request of the Investigator for supplementary information, the District submitted the following additional documents on February 24 and 28, 2022:

1. District Response to Additional Questions, 2/24/22
2. Consultants to the Board, 11/02/09
3. District Chart of Documents, undated
4. District Chart of Speech-Language Evaluations, 2021-2022
5. District Student Study Team Process, undated
6. Memorandum of Understanding, 8/26/19
7. Outside District Reports, 1/7/21
8. Excerpt from WJ-IV Tests of Achievement Examiner’s Manual, undated
9. Prior Written Notice for Student #4, 4/13/2020
10. Example Parent Communication Log, 2021
11. Example Referral Chart, 2020-2021
12. Email from Special Education Director to the Complainant, 9/13/21
13. Emails for Student #7, 2021
14. District Response to Additional Questions, 2/28/22
15. Evaluation Report for Exhibit 4 Student, 12/11/2020
16. Email for Student #6,
17. Educational Service District School Psychologist Report, 2/22/22
18. IEP Service Summary Page for Student #4, 2/12/20

The Complainant submitted documents on December 15, 2021 with the Complaint, which included exhibits of documents from six example students. The Complainant also submitted a *Reply* on January 17, 2022 to the Department and on January 20, 2022 to the District. In addition to the *Reply*, providing an explanation and rebuttal in support of the Complainant’s position, the Complainant submitted additional documents. The Complainant did not provide many of these documents to the District. Some documents were ultimately provided to the District by the Investigator. As communicated to Complainant during the investigation, documents not provided to the District by the Complainant were not considered. The Complainant submitted the following relevant items:

1. Complainant’s *Reply* to the District’s *Response to RFR*, 1/17/22
2. Student Documents Related to Allegations (for approximately 20 students, including the exhibit students), 2018-2021
3. Internal District Emails Related to Allegations
4. WJ-IV Cluster Chart, undated
5. WJ-IV Preview, Winter 2014

The Complaint Investigator interviewed the Complainant on February 6, February 25, and March 2, 2022. On January 20 and March 3, 2022, the Complaint Investigator interviewed District personnel regarding this matter. Virtual meetings were held instead of on-site interviews due to the Coronavirus 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.

On January 25, 2022, the 60-day Complaint timeline for the Department to issue a final Order was extended for exceptional circumstances related to the Complaint. The final Order due date was extended from February 11, 2022 to March 16, 2022. This Order is being issued in accordance with the extension determined necessary.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant’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 December 16, 2020, to the filing of this Complaint on December 15, 2021.

Allegations	Conclusions
<p>General Evaluation and Reevaluation Procedures</p> <p>The Complaint alleges that, for an indefinite period of time beginning at least as far back as December 2020 and continuing to the present, the District has violated the IDEA by failing to follow evaluation and reevaluation procedures.</p> <p style="padding-left: 40px;">a. Failure to fully complete assessments, specifically with subtests of the WJ-IV.</p> <p style="padding-left: 40px;">b. Failure to complete assessments required to determine eligibility, specifically medical or health statement and developmental history.</p> <p style="padding-left: 40px;">c. Failure to complete comprehensive evaluations, specifically by failing to conduct cognitive evaluations when warranted.</p> <p style="padding-left: 40px;">d. Failure to allow evaluations to proceed as determined by</p>	<p>Substantiated in Part</p> <p>The District did not follow evaluation procedures in some cases.</p> <p style="padding-left: 40px;">a. Not Substantiated. The District conducted the WJ-IV Tests of Achievement in accordance with the instructions provided by the producer of the assessment.</p> <p style="padding-left: 40px;">b. Substantiated. One case was identified in which the District did not have a medical or health assessment statement for a student’s eligibility determination. In some cases, the District failed to include required information in evaluation and eligibility documents.</p> <p style="padding-left: 40px;">c. Not Substantiated. There is insufficient evidence to conclude that the District failed to comprehensively evaluate students.</p> <p style="padding-left: 40px;">d. Substantiated. The</p>

<p>the evaluation planning team.</p> <p>e. Requiring parents to get medical or health statements for the evaluation and eligibility process at the parents' expense.</p> <p>f. Failure to comply with evaluation timelines.</p> <p>(OAR 581-015-2110; 34 CFR §300.304)</p>	<p>District interfered with evaluation decisions made by the evaluation planning team in some cases. The District amended Evaluation Consent forms and did not get written consent for the amended evaluation.</p> <p>e. Substantiated. In some cases, the District instructed parents to take their child to a medical provider for the purposes of obtaining a medical or health statement necessary for the child's eligibility determination, at the parents' expense.</p> <p>f. Substantiated. Two cases were identified in which the District did not meet the 60-day evaluation timeline.</p>
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REQUESTED CORRECTIVE ACTION

- The District needs a clarification of comprehensive evaluation, that:
 - the impact of disability upon cognitive is a required component,
 - completing all test instruments that parents have approved is required,
 - the preevaluation team determines the assessments, not the District Special Programs Director or any other staff not operating within their area of expertise.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before December 16, 2020. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Order.

Failure to fully complete assessments, specifically with subtests of the WJ-IV

1. The Complainant alleged that as part of the evaluation process the District consistently fails to fully complete assessments listed on the District "Assessment Plan and Consent for Evaluation" (Evaluation Consent) forms, which are developed by an evaluation planning team and signed by a parent. Specific allegations from the Complainant included:
 - a. The District fails to complete required tests of the Woodcock-Johnson IV Tests of

Achievement (WJ-IV). This primarily occurs with the omission of the word attack and oral reading standard battery tests, although additional tests are sometimes omitted as well.

- b. “[F]ailing to utilize all subtests of the [WJ-IV] weakens the evaluation and results in false measures of reading in the Cluster Score Areas of Reading Fluency and Basic Reading.”
 - c. Inaccurate WJ-IV test results are included in student evaluation reports, forcing parents and eligibility teams to rely on “incorrect information regarding student’s ability, negating appropriate determination of needs and goals.”
2. In the District’s Response (Response), it stated that “the specific choice of which subtest to use in any assessment tool is within the discretion of the evaluators and that the selection of specific subtests for a student is based on the student’s specific circumstances.” The District further noted that “although a specific subtest may be appropriate for one student, it may not be appropriate for another student, based on the differences between those two students.”
 3. Every District Evaluation Consent form that contained the WJ-IV included the same description: “[The WJ-IV] is designed to assess a broad range of academic skills in the areas of reading, oral language, math, and writing. Standard scores are calculated from raw scores...” The specific battery of tests to be completed are not identified.
 4. In all evaluation reports reviewed that included the WJ-IV:
 - a. The same WJ-IV description was included, along with a table of student test results from the battery of tests administered.
 - b. The table was followed by a list of the standard battery tests and a description of each.
 - c. Test descriptions were included in the evaluation report, typically regardless of whether the specific tests were administered.³
 5. In each report, the individual student’s name was used in many test descriptions, including word attack. The test descriptions stated the following, in relevant part:
 - a. “Word Attack: This test measures [the student’s] ability to apply the phonic and structural analysis skills to the pronunciation of unfamiliar words.”
 - b. “Oral Reading: This test is measure [sic] of story reading accuracy and prosody, a reading/writing ability.”
 6. The evaluation reports included results from the battery of tests that were completed, but did not explain why some tests were not completed.
 7. The District did not administer the word attack or oral reading tests in any evaluation submitted, except for three evaluations that were completed by the Complainant.
 8. To support this allegation, the Complainant submitted six exhibits with the Complaint as evidence of the District’s failure to complete WJ-IV tests.
 9. In response to these exhibits, the District stated, “a review of those specific cases shows that the evaluation tools that were used for those students were appropriate and in

³ A records review revealed one evaluation report that listed only the WJ-IV test descriptions that were administered.

compliance with the IDEA and the District's policies and procedures.”

The District's explanation for the omission of the WJ-IV word attack and oral reading tests for each exhibit was as follows:

- a. Exhibit 1: The word attack and oral reading subtests “were not administered as those subtests were not necessary for establishing the student's eligibility under the eligibility category that the evaluation planning team... had opted to pursue: Intellectual Disability. The team provided curriculum-based measurements that compared the student to peers of the same age in the areas of Passage Reading. The tests that were administered were sufficient to establish eligibility under Intellectual Disability.”
- b. Exhibit 2: “The subtests in Oral Reading and Word Attack were not administered and are not required to obtain a Broad Reading Score. The team provided curriculum-based measurements that compared this student to peers of the same age in the areas of Passage Reading.”
- c. Exhibit 3: The Student “moved into the District without standardized academic testing,” but previously qualified for special education under OHI. “Reading was not listed as a previous area of specially designed instruction, and the Student was a high school senior.” “Subtests scores from Oral Reading and Word Attack were not warranted and would not affect the student's eligibility outcome or specially designed instruction.”
- d. Exhibit 4: “Word Attack and Oral Reading Subtests were also not administered as those subtests were not necessary for establishing the student's eligibility under Intellectual Disability.”
- e. Exhibit 5: “Reading is an area of strength for the student (e.g., this information was shared by the case manager). As such, additional subtests in this area were not necessary based on the student's specific circumstances.”
- f. Exhibit 6: The word attack and oral reading subtests were not completed, as a broad reading score was obtained based on the other subtests that were completed. Further, “communication and collaboration with the IEP team provided information that suggested that subtest scores from Oral Reading and Word Attack were not warranted.”
 - i. When asked whether the District had documentation of the “communication and collaboration with the IEP team,” the District stated, “This is not formally documented in any form. Informal discussions with the Special Education Managers take place before evaluations are started and during the process of the evaluation. The previous IEP did not have Reading as a specially designed instruction. The Student's eligibility for services would not have been impacted based on the two subtests.”

10. During interviews, District personnel reported:

- a. The word attack and oral reading tests are omitted because the District obtains the information that would be gained from these subtests from other sources. The District uses District-wide progress monitoring data instead. This assessment data is more robust than the WJ-IV subtests.
- b. The District used the two subtests in the past, when it did not have the progress monitoring information that it has now.

- c. The two subtests do not affect eligibility, do not factor into broad reading scores, and are not part of the composite score.
 - d. One Case Manager stated that the District lets parents know that the District will utilize the information it already has on hand. The District lets parents know that the team is looking at reading, writing, and math. The District keeps the discussion in layman terms and the District does not go through every subtest with parents.
 - e. The Director of Special Programs [the Director] stated that parents sign consent for giving the WJ-IV, not for completing the entire battery. The choice of WJ-IV tests depends on the purpose of the evaluation.
11. When asked why the word attack and oral reading tests are included in evaluation reports although the subtests are not used, a District Case Manager reported:
- a. Possibly because the District's computer system does not allow staff to modify those sections.
 - b. Word attack and oral reading are listed because they are administered sometimes. The District might use them to showcase and support information it already has.
12. The District and the Complainant disagree as to whether the omission of the word attack and the oral reading tests affects a student's assessment results.
13. In its evaluation reports, the District only includes Broad Reading, Broad Math, and Broad Writing cluster scores.
14. The Complainant provided a table of WJ-IV tests needed for specific clusters. The word attack and oral reading tests were not listed as tests needed for a Broad Reading cluster score.
15. During interviews and in written statements provided after its Response, the District acknowledged that these subtests have "not been administered in the last year that can be recalled."
16. In Supplemental Responses provided on January 19, 2022, the District wrote the following:
- a. The selection of tests "has been up to the discretion of the evaluator based on the information obtained from conversations with the Special Education Case Manager or any member of the IEP team. After a file review and other input, if there is sufficient information from progress monitoring data, classroom performance, and teacher input that provides the evaluator with enough information in that area and would be more representative of their skill level in that area. [sic] The decision is then made not to administer the subtest in question."
 - b. "The district's progress monitoring system has phonemic awareness [sic] The information that is gained from the evaluation provides a comprehensive picture of the students [sic] present academic levels."
17. The District reported that the progress monitoring information used in place of the word attack and oral reading tests "is included in evaluation reports under district assessment and included in the information provided by teachers. Information is also shared during eligibility and may be included in staffing notes and in the present levels of IEP's [sic]."

18. When asked about documentation of discussions that occur with evaluation and eligibility teams, the District reported:
 - a. "The District does not keep [evaluation planning] meeting notes. Decisions are documented via Prior Written Notice [(PWN)] as appropriate."
 - b. "If a formal meeting occurs, the parent is always invited to participate and staffing notes are then taken for those meetings."
 - c. "The final decisions regarding a student's evaluation are documented via the [Evaluation Consent] and a PWN (if the team agrees on proceeding with an evaluation) or a Re-Evaluation Agreement and PWN (if the team agrees to use existing testing as part of the student's 3 year re-evaluation)."
19. PWNs provided by the District stated generally that the evaluation team decided to evaluate the child. These PWNs do not provide any information about specific assessments.
20. When asked if the District had any other notes, the District stated, "Meetings held during 'the pre-referral process are considered to be a General Education responsibility. Meeting notes may be taken at the school by the designee of the team. The [special education] consultation team members may take their own notes during the meeting to use in the evaluation report. These notes are not part of a student's educational file until information is included in the evaluation report."
21. The District did not provide any meeting or staff notes. As there were no evaluation planning meeting notices or notes, there was nothing in any student file reviewed to indicate whether an evaluation planning meeting occurred.
22. In a Supplemental Response from February 24, 2022, the District reported that, although it disagrees with the Complainant's claim that that the District needs to administer "all subtests for every evaluation, we will now include this disclaimer on our consent for evaluation paperwork: 'Ed. Consultant/School Psychologist will gather information from academic tests listed and, under their discretion, will determine which subtests may provide the most comprehensive picture of academic skills to assist with program planning and eligibility determination.'"

Failure to complete assessments required to determine eligibility, specifically medical or health statement and developmental history

1. The Complainant alleged that:
 - a. The District fails to complete all assessments included on signed Evaluation Consent forms, specifically when a medical statement and/or developmental history is listed.
 - b. District evaluation and eligibility documents indicate that a medical statement and/or developmental history was completed when it was not.
 - c. The District relies on medical statements that were five or more years old rather than obtaining a current medical statement.
 - d. The District made eligibility determinations without these required items.

2. The District denied that it has ever qualified a student without a medical statement if one was required for the eligibility category being considered.
3. In interviews, a District Evaluator reported that a new developmental history does not need to be completed with each reevaluation. The District can satisfy the requirement for the developmental history by doing a file review, as a student's developmental history is done once and does not change. Usually, the evaluator talks to the parents and gets updated information and current concerns, but the evaluator may reference this as a file review.
4. The District provided flow charts with instructions for District staff on the evaluation process, including specific charts for the categories of Other Health Impairment (OHI), Intellectual Disability (ID), Emotional Disturbance (ED), and Specific Learning Disability (SLD). These charts contained instructions on which assessments should be selected for initial eligibilities and reevaluations with new testing, as well as procedures for reevaluations with no testing. The charts included the following information, in relevant part:
 - a. For OHI, ID, and ED, the charts for reevaluations in which new testing is being conducted stated, "Medical Statement - Use the existing statement unless strong reason to believe it has changed – Consultant Responsibility."
 - b. Developmental history was not mentioned in these charts.
5. The Complainant stated, "The District asserts that a developmental history is part of the file review process... A Developmental History is conducted with a Parent to understand the growth and milestones that a child has met. A file review does not include this very specific interview with a parent."
6. The Complainant stated that if a developmental history is included with the assessments listed on the Evaluation Consent form and is required for an eligibility, the developmental history should be in the evaluation report. A statement in the evaluation report that a file review was completed is not sufficient.
7. Example Student 4: The Complainant alleged that this Student was found eligible under ID without a medical statement or developmental history.
 - a. Medical Statement: Documents provided by the District included a Medical Statement for this Student dated February 14, 2020. The Medical Statement was also noted in the Student's Evaluation Report and eligibility documents.
 - b. Developmental History: A signed Evaluation Consent for a reevaluation dated February 20, 2020 did not include a developmental history but listed file review and medical statement, among other things.
 - c. The Evaluation Report (incorrectly dated June 4, 2020 as it included evaluations completed in October and December 2020) did not mention a file review. In the section for developmental history ("Background, Medical and Developmental Information, Including Information Provided by Parents"), the Report stated, "[The Student's] mother and [the Student's] grandmother previously shared concerns regarding [the Student's] maturity level in comparison to [the Student's] peers along with [the Student's] academic progress. [The Student] was described by those who work with [the Student] as a kind and sweet young [child]. [The Student] is hardworking, follows teachers [sic] directions. [sic] gets [sic] along well with [the Student's] peers, and is well liked by peers."

- d. A January 22, 2021 Disability Statement (ID) indicated that a file review was completed and indicated that a medical or health assessment and developmental history were documented in the evaluation report as required sources of data for this eligibility determination.
 - e. No other information about the Student's file review or developmental history was included.
8. Exhibit 4 Student: For this Student, the Complainant alleged that a developmental history was not completed.
- a. The District only provided three special education documents for this Student, along with some internal District emails. However, the documents submitted reference additional documents that were not provided and required documents, such as a written disability statement for determining eligibility, were not provided.
 - b. A March 16, 2021 PWN - Decision to Evaluate indicated that additional information was needed for the Student's reevaluation.
 - c. A March 16, 2021 Evaluation Consent listed "File Review" and "Medical Release and Medical Statement," but developmental history was not listed.
 - d. The District provided an incorrectly dated December 11, 2020 Evaluation Report:
 - i. Although the Evaluation Report (Report) is dated December 11, 2020, it included assessments that were performed March and April 2021.
 - ii. The Report listed a March 8, 2018 medical statement, but a copy of this medical statement was not provided by the District.
 - iii. In the section for developmental history, the Report stated, "[Parent] expressed concern with [the Student's] limited communication skills and articulation both at school and at home. Referral started last Spring 2020 as per concerns with case manager and Life Skills Teacher, [the Teacher], in the areas of speech and communication difficulties as [the Student] has reduced overall speech and intelligibility."
 - iv. No other developmental history information was included in the Report and a file review was not mentioned.
 - e. The Student was found eligible for special education services under the category of ID on April 23, 2021. However, a written disability statement was not provided by the District.
 - f. No other special education documents were provided by the District.
 - g. It is unclear what, if any, developmental information was obtained either from the Parent or through a file review. It is not known what was listed on the 2018 medical statement as a copy could not be located.
9. Example Student 1: A review of records indicated that a medical or health statement and a developmental history were not obtained before the Student's March 13, 2021 eligibility determination.

- a. The Parent signed a Release of Information on November 5, 2020, giving the District permission to get information from the Student's medical provider, including permission to obtain a "Physician's Eligibility Statement" or "Health Assessment Statement."
- b. The list of assessments included in a December 17, 2020 signed Evaluation Consent for an initial evaluation included "Medical Release and Statement."
- c. On the Student's Evaluation Report (incorrectly dated January 26, 2021 as it included information dated in February and March 2021) the sections titled "Medical/Health Assessments" and "Background, Medical and Developmental Information, Including Information Provided by Parents" were left blank. A medical statement for the Student was not mentioned in the Report.
- d. On March 12, 2021, the Student was considered for three eligibilities: OHI, SLD, and Communication Disorder (CD). Although the three Disability Statements have different dates, the District reported that the disability determination for all three occurred on March 12, 2021.
- e. The Disability Statement for OHI included the following:
 - i. Under "required sources of data for this determination are documented in the above evaluation(s)," the box for "Medical or health assessment statement" is not checked.
 - ii. Boxes were checked to indicate that: (1) the Student exhibited limited strength, vitality, or alertness, (2) the Student's limited strength, vitality, or alertness was due to a chronic or acute health problem, and (3) the Student's condition is permanent or expected to last more than 60 calendar days.
 - iii. Boxes were checked to indicate that this was not due to limited English proficiency, lack of appropriate reading instruction, or lack of appropriate math instruction.
 - iv. However, it was concluded that the Student did "not meet the determination criteria for 80 – Other Health Impairment."
- f. The Disability Statement for SLD reported that the Student met the criteria for SLD. It also stated that a medical or health assessment statement was used for the determination.
- g. The Disability Statement for CD reported that the Student met the eligibility criteria for CD.
- h. A March 12, 2021 Special Education Staffing Report stated:
 - i. The Student is eligible for special education under CD and SLD.
 - ii. "[The Student] demonstrates articulation errors and language deficits that qualify [the Student] for speech/language therapy."
 - iii. "Based on cognitive strengths and weaknesses and academic deficits, the team has agreed to make [the Student] eligible under SLD."
 - iv. "[The Student's Parent] reports that [the Student] has an [Attention Deficit Disorder (ADD)] medical diagnosis, however a medical statement was not received. Should a medical statement be sent and received, the IEP team will make adjustments to [the Student's] eligibility."

- i. An April 27, 2021 Medical Statement from the Student's Medical Provider reported that the Student had a diagnosis of ADD.
- j. The District reported that the Student's team met again on May 21, 2021 with updated information from the Medical Statement and changed the Student's eligibility from SLD to OHI.
- k. When asked about the different eligibility dates and whether a PWN existed to explain the changes, the District stated:
 - i. "The District provided all information included in the student's official special education file."
 - ii. "We do not have information beyond that as it is not in the special education file."
 - iii. "To be eligible for an Other Health Impairment, a medical statement is a required source of data in which [the Evaluator] did not include as part of the required piece for eligibility."
- l. There were no written disability statements or any other information provided for the May 21, 2021 change in eligibility. It is unclear whether the Student no longer met the eligibility criteria for SLD or why the Student's SLD eligibility was terminated.
- m. In an interview with the Student's Parent, the Parent stated:
 - i. The April 27, 2021 Medical Statement was the only medical or health statement completed.
 - ii. The Parent expressed concern about the Student's attention span and the Parent suspected Attention-Deficit/Hyperactivity Disorder (ADHD) at the time of signing the December 17, 2020 Evaluation Consent.
 - iii. The Parent did not recall if there was a discussion on or prior to March 12, 2021 about OHI eligibility, a missing medical statement, or that a medical statement was needed.
 - iv. After hearing the about the Student's symptoms and ADD/ADHD concerns, a private provider suggested that the Parent might need to get a diagnosis from a medical provider.
 - v. The Parent took the Student to the Student's Medical Provider, expressed concerns, and the Student was diagnosed with ADD. The Parent provided a Medical Statement with the diagnosis to the District.
 - vi. The Parent reported that another meeting occurred before the end of the school year, and the Student was found eligible. It was not clear to the Parent why multiple eligibility meetings occurred, why the Student's eligibility was changed, or why the eligibility of SLD was removed.
- n. The District considered OHI eligibility on March 12, 2021 without first obtaining a medical or health statement.

10. Example Student 5: The Complainant alleged that this Student's eligibility was determined without a medical or health assessment statement.

The District alleged that the Complainant was the Evaluator in this case and "did not include a medical statement in the 1/26/21 evaluation report or include it on the 2/4/21 disability statement."

- a. A November 17, 2021 signed Evaluation Consent for a reevaluation included file review, developmental history, and medical statement, among other things. The list of assessment names included the Pragmatic Language Skills Inventory (PLSI), in relevant part.
- b. On December 2, 2021, the Evaluator emailed a private provider of the Student, stating, "I am evaluating [the Student] who has not had a comprehensive evaluation in TWELVE years! Our files are non-existent [sic], I do not have the original assessment or any other medical data for [the Student]. Do you have anything you can share with me in these areas?"
- c. A December 16, 2021 Disability Statement (ID) included:
 - i. Under documented required sources of data for this eligibility determination, "medical or health assessment" and "developmental history" were checked.
 - ii. A File Review dated November 26, 2021 and a Developmental History dated December 14, 2021 were listed.
- d. An Evaluation Report (incorrectly dated November 21, 2021 as it included evaluation information dated December 13, 2021) included:
 - i. The Report stated, "No Medical Statement was provided for this report."
 - ii. A March 12, 2013 "Health Assessment" is listed as the only medical or health assessment.
- e. The District did not provide a copy of a medical or health statement for this Student.
- f. When asked about the missing medical or health statement, the District stated, "A copy of the medical statement is not present." No additional information was provided.
- g. In an internal District email exchanged dated January 21, 2021 between a District Evaluator and an Educational Service District (ESD) Speech-Language Pathologist (SLP):
 - i. The Evaluator stated to the SLP, "we are going through files...I noticed on [the Student's] [Evaluation Consent] that there was a PLSI indicated [sic] did you get to administer that? I didn't see the results in the evaluation report or attached to the report."
 - ii. The SLP responded, "...I missed giving that assessment....So sorry about that. It's just a checklist, so I could fill it in right now and send you a copy to put with [the Student's] file."
- h. When asked about the PLSI (including whether it was completed, whether the family was notified that it was not completed at the time of the Student's eligibility determination, and whether there is documentation if it was completed since the January 21, 2021 email), the

District responded, "Further documentation is not available from the District's consultation team. The student's case manager may have a current evaluation report now from the SLP as they maintain the student's special education file."

- i. There is no evidence that the PLSI assessment was completed, or that the District notified the Student's Parent(s) about what happened. It is unclear whether a medical or health statement was used for the eligibility. The District alleged that this evaluation was completed by the Complainant.
11. Additional examples of information included in evaluation reports in the section for developmental history
- a. "None noted." The previous IEP stated that the Student liked skateboarding and listening to music.
 - b. No developmental history was included, and this section was left blank.
 - c. "In [the Student's] general education classroom setting, [the Student] struggles to stay on task often. [The Student] struggles to stay on task often. [The Student] is easily distracted throughout (their) day."
 - d. "[The Parent] shared concerns about [the Student] going to high school. [The Student] isn't being taught at grade level. [The Student] does well one-on-one. [The Student's] comprehension is low. [The Student] struggles with [the Student's] memory from one day to another. When asked what [the Student] likes about school, [the Student] noted that [The Student] likes to draw and used to dislike math but does not as much anymore."
 - e. "[The Student's] Parent would like to continue to see [the Student] receive academic support." "It was noted that [the Student] has struggled a bit lately with absences and has missed quite a bit of in person instruction. [The Student] has been working hard to get caught up, however at times (the Student can become easily distracted. [The Student] might benefit from organizational support to help [the Student] stay on task."
 - f. No developmental history was included, and this section was left blank.
 - g. "To support [the Student] however possibly [sic] in school to encourage positive growth success."
 - h. "[The Student] has difficulty following directions" and is not learning as the Student should.
 - i. "A final report card from [the Student's] 1st grade school year showed that [the Student] showed minimal inconsistent progress in the all [sic] areas of language and fine arts."
12. The Complainant additionally reported that the District fails to get updated medical statements, thereby inappropriately relying on medical or health statements for eligibility that are five or more years old.
13. In response, District special education staff stated in interviews:
- a. A medical statement can be used from years prior if nothing else has changed.
 - b. There is no hard and fast rule about the date of a medical statement. The District checks with the team to see if there is anything new that it does not know about.

- c. The Director stated that, as long as the District has written documentation from a doctor with a diagnosis or summary, the law does not require the District to get a new medical statement. It is part of the file review. If the District has evidence of a disability, it does not need the Student to go to the doctor.
14. A review of records revealed the reliance on medical or health assessment statements from 2013, 2014, and 2015.
- a. Example Student 5: While a medical statement was not provided for this student in the documents submitted by the District, a December 16, 2021 Disability Statement (ID) indicated that a March 12, 2013 Health Evaluation was used for the Student's eligibility.
 - b. Example Student 9: A Medical Statement dated May 8, 2014 was used for the Student's December 13, 2021 OHI eligibility.
 - c. Example Student 2: A January 28, 2019 Medical Statement was used for a February 7, 2019 ID eligibility determination. However, the Medical Provider only reported, "I have not seen this patient since Dec. 2012" and "speech delay noted in 2013 otherwise no diagnosis."
 - i. The District provided an unsigned October 25, 2021 Evaluation Consent for this Student's reevaluation. When asked if there was a signed version, the District reported that the October 25, 2021 Evaluation Consent was signed by a Parent on November 19, 2021.
 - ii. The District reported that the signed version of the Evaluation Consent "was not included with the previously submitted documents because this plan was to be used for the student's upcoming eligibility which was held on 2/3/2022." A copy of this signed Evaluation Consent was not provided.
 - iii. When asked whether there were any evaluation or eligibility documents for this Student dated after October 25, 2021, the date of the most recent document that the District submitted, the District reported that the evaluation was completed, and the Student's eligibility determination occurred on February 2, 2022. Copies of additional documents were not provided.
 - iv. It is unclear whether the 2019 medical statement mentioned above was also used for the February 2, 2022 eligibility.

Failure to complete comprehensive evaluations, specifically by failing to conduct cognitive evaluations when warranted

1. The Complainant alleged that the District does not conduct comprehensive evaluations, particularly by not administering cognitive testing. Specific allegations by the Complainant included that:
 - a. The District does not include cognitive evaluations in all initial assessments, specifically for students being evaluated in the area of OHI.
 - b. The District "has an unwritten policy that a comprehensive evaluation does not require cognitive evaluation. For example, a student with Other Health Impairment may never be required to have a cognitive evaluation as part of a comprehensive evaluation."

- c. Some eligibilities are not required to have more than one cognitive evaluation during the student's entire academic career. The District does not provide updated cognitive evaluation once an initial eligibility is determined. "The District falsely asserts that a cognitive evaluation results in an IQ score and areas of strengths and weaknesses that are unchangeable."
 - d. This school year, the Director has not allowed cognitive testing in reevaluations, "even if the [evaluation planning] team deems it necessary."
 - e. The District does not assess students in all areas related to the suspected disability. The evaluation team is only allowed to look at one area of need.
2. The District reported, "When cognitive ability is a required source of data for determining a special education eligibility, a cognitive assessment is included in the [Evaluation Consent]. As standard practice within [the District], a cognitive assessment is administered as part of an initial evaluation. For re-evaluations for an eligibility that does not require cognitive assessment, such as Other Health Impairment, the District may not complete an additional cognitive measure. Present levels guide the need for additional assessments."
 3. The District instructions for OHI, ID, ED, and SLD, in the flow charts previously mentioned, included the following information, in relevant part:
 - a. For initial eligibility:
 - i. Each chart stated, "Choose 1 cognitive Test."
 - ii. The OHI chart stated, choose one cognitive test, one academic test, a medical statement, adaptive scales, review of records, and "if deemed necessary an observation in classroom or other setting."
 - b. For reevaluations involving new testing:
 - i. The OHI and ED charts stated, "Choose 1 Cognitive Test if you have strong reason to believe scores have changed."
 - ii. The ID chart stated, "Choose 1 Cognitive Test if testing is over 4 years old or you have strong reason to believe scores have changed."
 - iii. The SLD chart stated, "Choose 1 Cognitive Test if testing is over 6 years old or you have strong reason to believe scores have changed."
 4. A review of records demonstrated that, for of all evaluations in which OHI was considered, cognitive testing was done in every initial evaluation. For all reevaluations, cognitive testing was not done. In one of these reevaluations, cognitive testing was removed after an Evaluation Consent was developed by the evaluation planning team and signed by a parent.
 5. The Complainant provided example students that allegedly had not had a comprehensive evaluation in many years. A review of records for students submitted revealed that these students were evaluated recently, the evaluations were comprehensive, and the evaluations included cognitive testing.

Failure to allow evaluations to proceed as determined by the evaluation planning team

1. The Complainant alleged that the District did not allow some evaluations to be conducted despite the evaluation team's determination that the assessments were necessary, and consent for those evaluations from a parent. Specific allegations from the Complainant included:
 - a. After the evaluation team finalizes an Evaluation Consent form and it is signed by a parent, the District requires that every Evaluation Consent be approved by the Director before the evaluation can start. If the Director disagrees with what is listed in the Evaluation Consent, District staff are required to make changes determined by the District.
 - b. Most commonly, the District requires changes to signed Evaluation Consent forms that include cognitive testing. The Complainant reported that the District regularly directed the Complainant to remove cognitive testing from Evaluation Consent forms.
 - c. By making changes to signed Evaluation Consent forms, the District overrides evaluation decisions made by the evaluation team, thus interfering with the parent's ability to participate. "The 'quality control' after the date of parent approval results in changes to [Evaluation Consent forms] that deny parents the opportunity to have input in those changes..."
2. The District reported that it "does not reject assessment plans created by a team of individuals focused on the unique needs of a child. Instead, the District has a system of checks and balances to ensure compliance with the IDEA and best practices in evaluations/assessments, so that District staff can provide parents with the information parents need to make informed decisions on behalf of their children."
3. The consultation team is generally comprised of the Director, a Behavior Specialist, an Educational Consultant, School Psychologists, and a Speech/Language Pathologist.
4. The District reported, "Once the [Evaluation Consent] is signed by the case manager and parent, it goes through the Special Education consultation team for quality assurance. [The Director] or designee signs off on the [Evaluation Consent] as an additional specialist who is knowledgeable and experienced in evaluation and education of children with disabilities."
5. The Complainant reported:
 - a. In consultation team meetings, the discussion is not framed in a way that the evaluation team has a choice on whether to change the Evaluation Consent or not. The District informs the evaluator that the assessment in question will not be performed, and that the Evaluation Consent needs to be changed.
 - b. When an Evaluation Consent is changed, the case manager and the parent are informed, but other members of the evaluation planning team are not necessarily notified or asked for input.
6. In interviews, District special education personnel stated the following, which included some conflicting information:
 - a. Before the Director signs off, on the Evaluation Consent, the consultation team looks over each signed Evaluation Consent form to make sure all service providers were included, confirm that all tests necessary for eligibility were included, and assess why the team is doing which evaluations.

- b. If the Evaluation Consent needs to be changed, someone from the consultation team or the case manager calls the parents to let them know that the test in question does not need to be administered.
 - c. The special education team typically communicates with parents over the phone, but if a parent or the team requests a meeting, a meeting will be held. Parents usually like to communicate over the phone. The District has never had a problem with parents disagreeing.
 - d. The Director stated:
 - i. "Yes, we make changes." It has not happened much except in the last year or two and that is because of a staffing issue.
 - ii. The District does not want to test every student in every area, including areas that are not impacting the IEP. The team wants to make sure the District is doing assessments individualized to that student.
 - iii. The consultation team makes sure that the District is testing in the right areas. It looks at why the District would do a particular assessment if it is not necessary in the area that the student should be evaluated.
 - e. If the consultation team does not approve an Evaluation Consent, the evaluation is put on hold. The District does not start the evaluation until it has gone back and worked with the team to get it right.
 - f. The special education teacher contacts the parent because they typically have the best rapport with parents.
7. In an interview, a Case Manager reported the following about this process:
- a. The Case Manager gets information from the consultation team about what needs to be changed on the Evaluation Consent form.
 - b. The Case Manager contacts the parent unless the change needs to be explained by a specialist. The Case Manager calls the parent and explains why the Evaluation Consent is being revised and asks if the parent has any questions.
 - c. The evaluator on the case makes the changes in conjunction with the Director.
 - d. Once the Evaluation Consent is amended, the Case Manager notes that the parent gave verbal consent in the previous phone call. The District accepts these changes based on the verbal permission given from the phone call with the parent.
8. This Case Manager, as well as the Complainant, reported that a Case Manager is in charge of a student's special education file. The files are kept in a cabinet in the Case Manager's classroom. There is a list of District personnel that have the authority to view the student files but putting documents in the file and taking them out is done through the Case Manager. When an Evaluation Consent form is signed, the original goes to the Case Manager and a copy is sent to the District for the consultation team review meetings. Once the signed Evaluation Consent form is in the file, there should be no reason for it to be removed.

9. The District reported the following about this process in responses dated February 11, 2022:
 - a. "The Consultation Team is not designed to supplant or superseded [sic] the [evaluation planning] team. Instead, it is designed to double-check the work of the [evaluation planning] team (and offer feedback, when necessary)."
 - b. "The Consultation Team will offer suggestions to what amendments might be appropriate for the [evaluation planning] team to consider. Ultimately, it is within the discretion of the [evaluation planning] team whether they will make the proposed amendment."
 - c. "The evaluator would make the correction on the [Evaluation Consent] and communicate with the case manager and parent to make sure the correction is understood and approved by the family prior to assessment."
 - d. The content of the conversation with the parents "depends on the unique circumstances and the feedback from the parent and case manager."
 - e. The evaluation planning team determines whether another meeting is necessary or appropriate.
10. The District reported, "Any communication with parents is documented by the individual employee in a private log or in the synergy system in general. Consultation staff and specialists have been directed to have regular meetings or check-ins with case managers to plan in advance of the meeting and to try to align evaluations with IEP dates."
11. When asked about consultation team notes, the District reported that it uses excel spreadsheets to document information but not notes. "Each member of the team was encouraged to take individual notes for personal records as a means of tracking their own workload or pertinent information discussed during the meeting."
12. The District did not provide documentation of communication with parents, documentation of meetings or check-ins with Case Managers, PWNs, or any other documentation explaining changes made to signed Evaluation Consent forms.
13. The District flow chart with instructions for reevaluations stated the following, in relevant part:
 - a. The reevaluation process starts with a file review and conversation with the Case Manager.
 - b. If new testing is needed, the evaluator initiates the Evaluation Consent and PWN to evaluate.
 - c. The Case Manager is responsible for obtaining parent signature and returning the consent to the District office.
 - d. The Evaluator is responsible for writing and finalizing the evaluation report, disability statement, and eligibility summary.
14. There is no indication on the chart what role parents have in the process, except that the case Manager gets the parent's signature on the Evaluation Consent form.
15. Example Student 9: The Complainant reported that this Student's Evaluation Consent was amended twice. Specifically, Complainant reported that the evaluation team determined that

the Student needed cognitive testing as part of a reevaluation, it was submitted to the consultation team, and the District forced the Complainant to remove cognitive testing.

- a. The Complainant reported that the initial October 25, 2021 Evaluation Consent form included cognitive testing and was signed by a Parent.
- b. The District provided two versions of an Evaluation Consent dated October 25, 2021, both labeled as “revised.” Neither of these forms was signed by a Parent.
- c. The first Revised Evaluation Consent did not include cognitive testing but listed other assessments, including the Adaptive Behavior Assessment (ABAS).
- d. The second Revised Evaluation Consent did not include cognitive testing, and the ABAS was crossed out by hand on December 13, 2021. It also included a handwritten note indicating that the Parent gave telephonic permission for the revised evaluation on December 9, 2021.
- e. When asked about other versions of the Evaluation Consent, the District reported that it “found a previous [Evaluation Consent] in an unofficial file that had a parent signature date of 11/17/21. The correction of the [Evaluation Consent] was the responsibility of [the Evaluator] for this evaluation. The only signed [Evaluation Consent] that includes the parent signature is on the plan that was created with tests that are not required for this student’s eligibility. [The Evaluator] did not obtain a new parent signature on the revised plan, but signed the parent’s name that they agreed telephonically.”
- f. The District did not provide a copy of this Evaluation Consent signed on November 17, 2021.
- g. Although the evaluations listed in the Revised Evaluation Consent form were completed by the District, the Complainant alleged that the District did not have written consent for the revised evaluation.
- h. The District alleged that the Complainant was the Evaluator on this case, adding, “the Complainant did not obtain a new parent signature on the revised plan, but signed the parents [*sic*] name that they agreed telephonically.”
- i. The Complainant reported that it was common with amended Evaluation Consents for District staff to not obtain written consent.

16. Example Student 8: The Complainant alleged that the evaluation team developed an Evaluation Consent form, it was signed by the Parent, and submitted to the consultation team. However, Complainant reported, the consultation team determined that the Student would not be evaluated at that time.

- a. The Complainant reported that the Student’s teacher approached the Complainant because the teacher thought the Student could spend more time in the regular education environment. The purpose of the evaluation was to determine whether the Student should be placed in a less restrictive environment.
- b. The Complainant reported that the evaluation team, including the Parent, met and developed an Evaluation Consent for a reevaluation dated November 9, 2021, which was signed by the Parent. It then went to the consultation team for review.

- c. The Complainant reported that in the consultation team meeting, the District stated that it would be too disruptive to change the Student's placement at that time.
 - d. A December 14, 2021 PWN stated, "[The Student's] success may lead to a return to [the Student's] homeschool [sic]. Given that possibility, waiting to assess [the Student] in the spring will make a transition easier than a midyear change of placement. A new [Evaluation Consent] will be provided in spring 2022."
 - e. When asked about the "new" Evaluation Consent and whether there was a recent Evaluation Consent not provided, the District reported "Parent signed consent on 1/24/2022. This was signed after the District provided copies of the student's file."
 - f. The District submitted copies of this Student's documents to the investigator on February 11, 2022.
 - g. The District did not provide a copy of the Evaluation Consent signed on January 24, 2022.
17. Example Student 6: The Complainant alleged that the District forced changes to a signed Evaluation Consent that was created by the evaluation planning team for this Student's reevaluation.
- a. In an internal District email exchange dated December 14, 2021 from the Complainant to the Student's Case Manager, the Complainant wrote, "Attached is a revised [Evaluation Consent] for [the Student], along with the original PWN Please [sic] sign and get parent to sign." This email was provided by the Complainant and was not included in the documents provided by the District for this Student.
 - b. When asked about a December 2021 Evaluation Consent, the District reported that "[a] signed [Evaluation Consent] dated 12/14/2021 was never received back from the parent to the Case Manager. Another evaluator took over this referral... Without a signature from the parent for new testing as listed on the 12/14/21 [Evaluation Consent], the District had to use previous and valid testing to continue the student's eligibility when [the Student's] re-evaluation was due."
 - c. The District did not state when the Student's eligibility determination was made.
 - d. The District did not provide any recent special education documents for this Student. The most recent special education document provided by the District was dated May 12, 2020.
 - e. The District reported that the Complainant was the initial evaluator for this evaluation.
18. Example Student 13: The Complainant alleged that the evaluation planning team met and decided to evaluate the Student, but the District would not allow the team to proceed with the evaluation.
- a. The District provided an unsigned Evaluation Consent for a reevaluation dated November 16, 2021.
 - b. The District provided a PWN – Decision to Evaluate dated November 16, 2021, which stated that the team decided to collect additional data on the Student because it needed additional information to determine whether or not the Student continued to be eligible for special education services. The PWN also stated that "Deciding not to evaluate was

rejected due to the fact that the district suspects that [the Student] may have an educational disability.”

- c. In an internal District email dated November 16, 2021 between the Director and the Complainant, the Complainant reported that the Student’s family asked the District to evaluate the Student before the family moved. The Complainant reported that the Student’s reevaluation was due in May 2022. The Director stated that evaluations are not moved up “because a family is moving. Most districts want to do there [sic] own testing... Bring this up at consultation meeting [sic] to talk about before proceeding.”
- d. In an internal District email dated November 16, 2021 to the Student’s Case Manager, the Complainant wrote, “Don’t send it yet, [the Director] is thinking about it...”
- e. The Complainant reported that the Case Manager sent the PWN to the family.
- f. The District did not provide any documents for this Student dated after November 16, 2021.
- g. When asked if there was a signed version of the November 16, 2021 Evaluation Consent, the District only stated, “Student unenrolled on 2/9/22 from [the District]. The District never received parent signatures on an [Evaluation Consent form].”
- h. The District referred to this example case in a written response which stated, “Prior to any [Evaluation Consent] being signed or finalized, the consultation team recommended not moving forward with an early evaluation as the student was moving to a new district and the consultation team believed the new district would likely want to conduct its own evaluation...”
- i. The Complainant reported that the consultation team does not review a student’s Evaluation Consent until it is signed by a parent and therefore would not have seen this Student’s Evaluation Consent unless it was signed.
- j. The District reported that the Complainant was the Evaluator in this case.

Requiring parents to get medical or health statements for evaluation and eligibility purposes at the parents’ expense

1. The Complainant alleged that the District requires parents to take their child to a doctor to get a medical statement at the parents’ expense, even when the parent has already submitted a medical statement. Specific allegations by the Complainant include:
 - a. The District rejects a medical statement if it does not contain the diagnosis that the District wants.
 - b. The District directs parents to a particular doctor (the Doctor), and District staff communicate directly with the Doctor about students’ medical statements and preferred diagnoses.
 - c. The District has a medical liaison [the Nurse Liaison] who gets medical statements for the District. The Nurse Liaison is married to the Doctor.
2. In a Supplemental Response, that District stated that it does not reject medical statements. “Instead, the District may ask for further elaboration or additional medical information not listed

on the received statement.” Additionally, the District reported:

- a. “For example, if the District receives a medical statement that includes a diagnosis (such as one of Asperger’s Syndrome or notes, ‘behavior concerns’), the District may request additional information/elaboration based on that initial feedback so that the eligibility team may fully consider and understand that information provided to the District.”
- b. The District does not direct parents to get a new medical statement. “The District may, however, work with the family to get whatever supplemental information that may be appropriate based on the medical statement initially provided to the District.”
- c. The District does not direct parents to specific medical providers. “The District accepts medical statements from any and all providers who (a) meet the necessary credentialing outlined in the OARs, and (b) whom parents choose to work with. That being said, the District has recommended specific providers when asked by parents in the past based on the student’s/parent’s specific circumstances.”
- d. “The District may communicate with medical providers if necessary so long as the District has a current release of information.”
- e. “The District does not request specific diagnosis [sic] for students, nor does the District recommend any diagnoses. Only medical providers provide the diagnosis... Instead, the District may communicate with medical providers to provide information that medical providers are requesting in order for the medical provider to reach a diagnostic impression of a student.”

3. In District interviews, a District Evaluator reported:

- a. There was an example in the documents submitted of a student that provided a medical statement that only stated “Asperger’s.” The District sent it back out for a new medical statement because the team needed a DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) diagnosis.
- b. If the team gets a medical statement that lists “behavior concerns,” the District cannot use that because it is not a DSM-5 diagnosis. In that situation, the District would call the parent and ask if there is another doctor that the student sees, and the District would get a release of information.

4. In an interview with a District Case Manager:

- a. When asked what is communicated to parents when a medical or health statement is needed, the Case Manager reported that they tell parents that the medical statement is necessary to continue the student’s eligibility or to find the student eligible for special education.
- b. In some cases, a student may need a medical appointment to get a medical statement. When asked what is communicated to the parent, the Case Manager stated that they tell the parent “to make an appointment.”
- c. Once the District is notified that the child has seen a pediatrician, the District faxes a medical statement form to the provider.

5. In an interview, a different District Case Manager stated that, in some cases, a family needs

help getting a medical statement. For example, the family will only have 15 minutes with a medical provider and the family does not know how to articulate their concerns to the medical provider. The District offers a medical liaison as an option to communicate with the medical provider to get a clear diagnosis.

6. In response to the question of how often, if ever, the District pays for a student's medical visit to obtain a medical statement, the District stated, "The District may pay for a medical visit. If a medical statement is a required component of an evaluation, the District may pay for the cost of the medical visit."
7. When asked again, how often, if ever, the District pays for a student's medical visit to obtain a medical statement, the District reported, "The District does not recall a time when this happened in the past year or during the Complaint period. The District will pay for the visit if the visit is necessary to the evaluation of the student and the parent requests that the District cover the cost of the visit."
8. The Complainant reported that the District does not inform parents if or when the District is obligated to pay for a medical visit. The District does not give any information to parents about this, either in written or verbal form.
9. In documents and interviews, the District almost exclusively uses the term "medical statement," rather than "medical or health assessment statement."
10. A review of Evaluation Consent forms provided revealed that every relevant Consent form exclusively used the term "medical statement." The term "health assessment statement" was not included.
11. It is unclear whether parents are exclusively told that they need to obtain a medical statement from a doctor, or if parents are also told that they have the option to get a health assessment statement from a medical assistant or nurse practitioner. It is unclear whether parents are informed when the District may be obligated to pay for a medical visit to obtain information needed for an evaluation.
12. When asked about a medical liaison, the District reported that it has a Nurse Liaison Mutual Operation of Understanding between a local clinic (the Clinic) and the District. "The Nurse Liaison is responsible for the job duties agreed upon by [the Clinic] and [the District]." The Nurse Liaison is not a District employee, but is "available to help district staff obtain medical statements if the team encounters a challenge with obtaining a statement before a meeting. The Nurse Liaison works with all medical providers in the area and works closely with all three district nurses."
13. The MOU between the District and the Clinic included the following, in relevant part:
 - a. The purpose of the MOU is to provide "appropriate pediatric services for students and families of the district."
 - b. "The school district agreed to provide referral and access to students deemed beneficial for pediatric case management services as described. Services are provided directly and on behalf of [the Clinic and a coordinated care organization]."
 - c. "No student will be denied services due to their inability to pay." The Clinic may collect insurance info for potential reimbursement. "[The District] will not be held financially responsible for services provided."

14. The District reported that the Doctor is the “pediatrician of record” and serves as a consultant to the School Board. The Doctor is also the “primary local pediatrician who completes medical Autism Spectrum Disorder evaluations,” and the Doctor works at the Clinic.
15. In a letter dated February 17, 2022, the Doctor reported: “I will get medical statements faxed to me by the school. If I have seen the patient and am confident of the diagnosis, I will gladly fill them out. If I have not seen the child, I refuse to enter a diagnosis. Never am I asked or coached to put in a specific diagnosis...With a release of information, I will occasionally call the school staff for clarification on the concerns being evaluated, especially if there has been academic or neuropsychological testing. These conversations come from my requests for more information. These conversations only occur with children that I have a doctor-patient relationship with; that is children I have already seen or have been scheduled to evaluate.”
16. The District did not provide any documentation of notes or communication between District staff and medical providers.
17. The Complainant provided the names of example students that allegedly were required to get medical statements for evaluation and eligibility purposes, at the parents’ expense.
18. Example Student 10: The Complainant alleged that the Student was required to get a second medical statement.
 - a. The Complainant alleged that District staff had inappropriate conversations with the Doctor, discussing what diagnosis the District wanted on the Student’s medical statement.
 - b. A February 22, 2021 Medical Statement marked that the Student had physical or sensory factors that may affect the child’s education performance, specifically “Asperger’s.” This statement was completed by one of the Student’s existing medical providers.
 - c. The Complainant reported that the Parent had concerns about possible ASD and wanted the Student to be evaluated for special education.
 - d. A March 12, 2021 Evaluation Consent for an initial evaluation was signed by a Parent on May 20, 2021 and approved by the District on August 31, 2021. The Evaluation Consent listed medical statement but did not include assessments related to ASD.
 - e. An internal District email exchange from May 3, 2021 included the following:
 - i. A District teacher completed an Autism Checklist Behavior form for the Student.
 - ii. “The screener indicated low probability of autism rated by [the teacher], but the scores were really high from the parents. My thought is that Autism is probably not the cause for [the Student’s] struggle in school based on the scores from [the teacher]. I wasn’t at the meeting when this was discussed so I’m not sure if we were to have another meeting to explain to the parents the results of the screener and then decide our next steps.”
 - iii. Another staff member responded, “I did an observation last week and, although I agree this student needs support, I am not seeing anything in the classroom that would warrant an evaluation in the area of Autism at this time.”
 - f. A May 11, 2021 internal District email stated, “It is my understanding that we’re not moving

forward with the Autism diagnosis and moving forward with other health impairment... I guess I should be asking who is getting the diagnosis information from the doctor since the most recent paperwork only states Asperger's and not ADHD."

- g. A May 12, 2021 internal District email indicated that the Parent told the District that the Student had a diagnosis of ADHD, but the District did not have a medical or health statement to confirm this.
- h. An internal District email dated May 13, 2021 indicated that District staff contacted the Medical Provider who completed the February 22, 2021 Medical Statement. The District Nurse shared that there was an ADHD diagnosis reported by the family but that the current Medical Statement from the Medical Provider "was not supportive of what was seen in the school." The Medical Provider's response was, "[the Student] does not qualify for a diagnosis of ADHD based on the information that I have. [The Student] has been referred to CDRC for further evaluation but that is a slow process unfortunately. I can't really come up with any diagnosis other than Aspergers [sic] at this time."
- i. A May 13, 2021 internal District email from the Director to staff stated, "FYI Asperger's is no longer in the DSM and in the past was considered high functioning autism and often involved a 504 and accommodations and rarely met Autism criteria for sped [sic] eligibility." "Since a school district only looks at eligibility and does not diagnose a disability that is why we need medical statements. Those statements are required by law in special ed [sic] in particular eligibility categories. If we are going to require the parent to provide a medical statement we need to be prepared to pay for it.. [sic] We work with the pediatrician or we can utilize the school based health center on occasion if they [sic] family does not have insurance. If the parent will not comply or the doctor diagnose we cannot make them get a statement only offer. We also cannot make them eligible without it if it is a required as [sic] part of the eligibility criteria... If there is no medial [sic] statement be prepared they will not qualify no matter what the testing says without it.. [sic]"
- j. A June 4, 2021 Medical Statement from a second medical provider (the Doctor) stated, "Has many traits, there are concerns. No diagnosis at this time. Please consider [Autism Diagnostic Observation Schedule] (ADOS)."
- k. An internal District email dated October 15, 2021, stated that "looking at scores, it doesn't appear as if [the Student] will qualify."
- l. An October 26, 2021 PWN stated that the District's evaluation team "found that [the Student] does not have an educational disability and does not require Special Education services" in the areas of OHI and DD.
- m. An October 28, 2021 Eligibility Summary Statement indicated that the District considered eligibility categories of OHI and Developmental Disability (DD). The Student was not considered for eligibility in the category of ASD.
- n. The October 28, 2021 Eligibility Summary Statement reported that the Parent was invited, but the Parent is not listed under "Eligibility Team Member Determination" and it does not state whether the Parent agreed or disagreed with the determination.
- o. When asked about the Doctor's ADOS recommendation, the District stated, "[The Doctor's] recommendations were taken into consideration by the team and an Autism checklist was completed by classroom [sic] teacher and the SLP which showed that Autism was not likely affecting the student's educational performance."

- p. When asked if the District's decision to not conduct evaluations related to ASD concerns was discussed with the Parent, the District stated that "following up on the scheduling of this type of meeting would have been [the Evaluator's] responsibility. It appears that [the Evaluator] did not fulfill [their] obligation to ensure a meeting was going to be scheduled. This information was therefore presented to the parent during the completion of the rest of the evaluation in the current school year."
 - q. There is no documentation concerning what was discussed with the Parent. The PWN provided did not communicate anything about ASD concerns or that the District decided not to evaluate in the area of ASD.
 - r. The District reported that the Complainant was the Evaluator on this case during the 2020-21 school year.
19. Example Student 11: For this Student, the Complainant alleged that the District forced the Parent to go back to the Student's medical provider a second time, after the Parent already provided a medical statement, at the Parent's expense.
- a. In response to the Department's request for records for this Student, the District stated that the Student unenrolled from the District in Fall 2021, and no documents were provided.
 - b. When asked why no documents were provided, the District stated that it "only has what is available in our online student special education record database. These documents are unsigned and unofficial documents. Official files are sent to the new district when we receive a request for records."
 - c. The Parent provided copies of the Student's documents.
 - d. The Parent submitted an April 22, 2021 Medical Statement to the District from the Student's Medical Provider, which indicated that the Student had a diagnosis that affects educational performance and the Medical Provider listed "psychosocial issues," among other things.
 - e. A handwritten note at the bottom of April 22, 2021 Medical Statement says, "Spoke to [the Medical Provider]... [Parent]: Depression... No Developmental Delay... No Diagnosis."
 - f. On June 3, 2021, the Student's Case Manager faxed the Medical Provider, asking the Medical Provider to complete the District's Medical or Health Assessment Statement form.
 - g. The Medical Provider submitted a Medical Statement dated June 8, 2021, which listed a diagnosis of ADD.
 - h. An Evaluation Report (incorrectly dated April 20, 2021 as it included information from June 2021) stated the following:
 - i. "[The Medical Provider] provided a medical statement that required clarification on 4/21/2021. [The Evaluator] spoke with [the Medical Provider] telephonically on 4/22/21. [The Medical Provider] clarified that the medical statement indicated that [the Student's Parent] was diagnosed with anxiety and depression... [The Medical Provider] had no diagnosis for [the Evaluator] that would provide eligibility for special education services... [The Case Manager] contacted [the Medical Provider] to ask

[the Medical Provider] to reconsider [the Student's] needs. [The Medical Provider] met with [the Student] and provided a second Medical Statement on 6-08/21 [sic] indicating that [the Student] has ADD."

- i. A June 14, 2021 Disability Statement (OHI) and PWN both indicated that the Student was found eligible for special education under the category of OHI.
- j. In a telephone interview, the Parent stated:
 - i. The Parent had to go to the Medical Provider twice. After providing the first Medical Statement, the District talked to the Parent about its suspicion that the Student might have ADHD.
 - ii. The District told the Parent they needed to take the Student back to the Medical Provider in order for the Student to get a diagnosis. At the second visit with the Medical Provider the Student was diagnosed with ADD. The Parent provided the second Medical Statement to the District.
 - iii. The Parent stated that they thought the second medical visit seemed unnecessary, but the District said it needed the diagnosis.
 - iv. The District did not offer to pay for the appointment with the Medical Provider, nor did it mention this as a possibility.

20. Example Student 3:

- a. A September 9, 2021 Evaluation Consent for a reevaluation, signed by a Parent on October 17, 2021, listed "Medical Release and Statement."
- b. A November 17, 2021 Medical Statement from the Doctor listed a diagnosis of ADHD. The Doctor also checked a box indicating that the Student had ASD.
- c. An internal District email dated November 22, 2021 stated, "I remember we were going to try and change [the Student's] eligibility to OHI."
- d. A December 2, 2021 Special Education Staffing Report stated, "Both medical statements have autism checked, however this was from preschool testing. The team has not observed autism at this time."
- e. When asked if a second medical statement existed for this Student, as it is mentioned on other documents, the District stated that was an error and "there is only one current medical statement."
- f. When asked why the December 2, 2021 Eligibility Summary Statement reported that the Parent did not attend and whether attempts to contact the Parent were documented somewhere, the District stated that "the case manager made three documented attempts to contact the parent prior to the meeting." The District listed the three dates that the attempts were made, but documentation of the attempts was not provided.
- g. There is no additional information in the documents provided to explain what happened in this case.

21. Example Student 7: The Complainant alleged that the Student had to get another medical

statement when the first did not include that diagnosis that the District wanted.

- a. A February 4, 2021 Evaluation Consent for an initial evaluation, signed by a Parent on February 5, 2021, listed “Medical Statement.”
- b. A March 9, 2021 Evaluation Report did not mention a medical or health assessment statement.
- c. An incorrectly dated Disability Statement (OHI) (dated April 6, 2021 but other documents indicate that the eligibility determination took place on April 30, 2021) had contradictory information about the existence of a medical or health assessment statement:
 - i. The box for “Medical or health assessment statement” was checked as a required source of data for the eligibility determination.
 - ii. Under “Specific assessment conducted for required sources of data as checked above,” a medical or health statement is not listed.
- d. A Medical Statement dated April 8, 2021 from a medical provider listed ASD and behavior concerns but indicated that the Student did not have any other diagnosis or condition that would affect educational performance.
- e. An internal District email exchange dated April 9 to 13, 2021, included the following information, among other things:
 - i. The Evaluator mentioned that a recent medical statement created a new issue with the possibility of autism.
 - ii. Another District employee wrote that the April 8, 2021 Medical Statement cannot be used for OHI.
 - iii. A third District employee reported that they believed that the Student gets medication for ADHD from a different medical provider.
 - iv. One of the employees reported getting a new medical statement from the second Medical Provider on April 13, 2021.
- f. A second Medical Statement dated April 12, 2021 from a different medical provider listed an ADHD diagnosis.
- g. When asked about the first Medical Statement, the District stated, “The District has only what is in the student’s official special education file. Since [the Evaluator] did not include a summary of the medical statements in the evaluation report or note the medical statements in the Other Health Impairment eligibility document, the District is not able to address a document that the District does not have information on. The student’s psychiatrist completed the medical statement in the documents submitted. Possibly, the additional medical statement, which the District does not have, includes one from the student’s primary care provider and may not include a DSM-5 medical diagnosis.”
- h. Although the District wrote that it did not have a copy of the April 8, 2021 Medical Statement, it was included in the emails that the District provided at the same time.
- i. The Student’s records demonstrate that the District did not ask a Parent to get a second

medical statement. Rather, the District got the second Medical Statement directly from the second Medical Provider. It is unclear what was communicated to the parent about this.

- j. The District reported that the Complainant was the Evaluator on this case.

Failure to comply with evaluation timelines

1. The Complainant reported that the District failed to meet the 60-day evaluation timeline in some cases, particularly with Evaluation Consents that were signed before the spring 2020 school closures for COVID-19.
2. The Complainant reported that the District told staff not to worry about cases in which consent was signed before COVID-19 or missing evaluation timelines.
3. In interviews, District staff reported the following:
 - a. Evaluation timelines were not met because of the COVID-19 pandemic and school shutdowns.
 - b. The District did not do any evaluations in spring 2020, virtually or in-person. The Evaluation Consents that were signed right before COVID-19 that did not meet the timeline were extended.
 - c. Some students returned in person at the start of the 2020-21 school year, but evaluations could not start until the District developed protocols on how to conduct evaluations safely during the COVID-19 pandemic.
 - d. PWNs were sent out to families in Spring 2020 to notify parents that evaluations were not currently being conducted and evaluations would reconvene when schools were back to the traditional model.
 - e. A District Evaluator noted that in the case of one student (Exhibit 1 Student), the District could not start evaluating the student until after protocols had been put in place, which is why the first assessment conducted for the Student was on October 26, 2020.
4. When subsequently asked about evaluation timelines, the District reported in writing on February 11, 2022:
 - a. "The District resumed in-person evaluations after a comprehensive COVID-19 testing protocol was created by the District and submitted to ODE."
 - b. "The District conducted only in-person evaluations in the areas of cognitive and academic assessment. Within the timeframe that the District moved from school closure to comprehensive distance learning to hybrid learning, the District considered virtual cognitive and academic assessments; however, insufficient planning and training time led the District to explore other options (such as existing testing and considering curriculum based measurements for present levels for students). Online options were used for other areas of assessment such as in the areas of adaptive and behavior assessment."
 - c. "For evaluations that were due in the Spring 2020, ...the team reviewed previous data and discussed with parents the option of using previous information for eligibility (since all school buildings were closed for staff and student access, including any in-person testing)."

5. The District reported that only two students were flagged as not meeting the 60-day timeline for initial evaluations. “An in-depth review of those two students demonstrated that the evaluation testing for both students was completed within the 60-day school timeline. However, the parents for both of those students did not show up for the eligibility meetings.” The District made several attempts to reschedule the eligibility meetings with the parents. Eligibility for both students occurred after the 60-day timeline.
6. In responses dated February 24, 2022, the District reported:
 - a. “The District did not complete virtual evaluations when students received instruction through Distance Learning. Staff worked from home. Evaluations did not resume until In-Person learning resumed for students.”
 - b. During the pandemic, no initial evaluations went beyond 60 days. Additionally, only the two re-evaluations that have previously been discussed went beyond the 60 days (and, as previously discussed, those were actually conducted within 60 days).”
 - c. “Re-evaluations for students during Comprehensive Distance Learning were completed using previous testing since student and staff were not allowed on campus or allowed to work in person in a setting with another person.”
7. The student documents initially submitted with the District’s Response did not include any PWNs related to notifying parents that a student’s evaluation would be delayed because of distance learning or COVID-19 restrictions.
8. When asked about PWNs related to missed evaluations, the District stated, “Staff developed and sent Prior Written Notices to parents explaining the school closures and timeline of evaluations not met” and the District provided an example of a PWN.
9. The Complainant reported that a few parents called the Complainant to ask about evaluations and the District directed the Complainant to tell parents that the District would pick up the evaluations as soon as the students came back in person. The Complainant did not think anything was communicated to parents unless the parents called and asked about an evaluation.
10. A review of approximately 35 student records revealed two examples of the District not meeting the 60-day timeline for a reevaluation.
11. Example Student 4:
 - a. On February 12, 2020, a Parent signed an Evaluation Consent form for a reevaluation.
 - b. An eligibility determination for this Student did not occur until January 22, 2021, when the Student was found eligible in the categories of ID and CD.
 - c. According to the January 22, 2021 Disability Statement (ID), the first assessment conducted on the Student following spring 2020 school closures was on October 26, 2020. The last assessment listed was conducted on December 8, 2020.
 - d. An April 13, 2020 PWN for the Student stated, “School buildings are closed and not currently holding meetings to review evaluations, due to the coronavirus pandemic. [The District] was unable to complete and/or review the agreed-upon evaluations within sixty

(60) school days. The District is extending the timeline to review your student's evaluation results. A meeting to review the evaluation results will be scheduled as soon as practicable."

- e. The PWN also stated, "[The District] may begin holding meetings (via phone or video conference) during school closure. Should we begin conducting virtual meetings, your student's case manager will contact you."
- f. When asked, the District reported, "This student was not flagged as one of the two students previously identified..." The student received special education services from the District prior to the pandemic, under the eligibility category of CD. "That eligibility did not need to be re-evaluated (as part of the three year re-evaluation process) until 4/3/21. However, the student's team initiated an additional evaluation to determine whether other factors were impeding the student's academics."
- g. The District reported that the Student maintained a current eligibility at all times and services were never interrupted. "The District continued to implement SDI in these areas pending the additional evaluation, which took longer than usual given the implementation of mandatory COVID protocols."

12. Example Student 14: This Student was included in the initial documents provided by the District, in a selection of unnamed representative files.

- a. An Evaluation Consent for an initial evaluation was signed by a Parent on November 9, 2020.
- b. Another Evaluation Consent was signed by a Parent on March 3, 2021. The second Evaluation Consent listed the same assessments as the first, except that two speech and language assessments were added.
- c. An Evaluation Report was provided that was dated December 16, 2020 and October 7, 2021. The evaluation dates included in the Report are from December 2020, January 2021, and April 2021.
- d. Eligibility for the Student occurred on October 29, 2021. The Student was found eligible for Early Childhood Special Education services under the category of ASD.
- e. When asked about this case, the District reported, "After completing some of the assessments it was determined that additional speech and language testing was needed. Therefore, as listed on the consent for evaluation signed 3/3/21 the additional tests were added... The team met at the end of [the 2020/21] school year to discuss the findings of the speech and language testing before the 60 day timeline. The parents were notified that there was a temporary pause in the Autism testing because the test administration would be standardized due to the COVID-19 protocols....The team met on 10/29/21 to determine eligibility under the category of Autism."
- f. The District submitted "guidance from the co-author of the ADOS-2 and the reason why the District did not proceed with ADOS-2 evaluations," which stated that "it is not appropriate to administer the ADOS-2 with a mask on." It also stated, "If the team proceeds with an ADOS-2 administration in-person using a clear barrier and/or face mask, social distancing and/or other safety measures it will be important to disclose those measures in the evaluation report - indicating that the results should be interpreted with caution because of the way in which these elements may have impacted the social interaction

between child/student and examiner.”

- g. While the team may have met to discuss the added speech and language assessments at the end of the 2020-21 school year, assessments listed in both Evaluation Consent forms were not completed at that time, and an eligibility determination did not occur until October 29, 2021.
- h. While the District said that the Parents were notified of the “temporary pause in Autism testing,” no PWN or other documentation was provided to demonstrate this decision.

IV. DISCUSSION

General Evaluation and Reevaluation Procedures

The Complaint alleges that, for an indefinite period of time beginning at least as far back as December 2020 and continuing to the present, the District has violated the IDEA by failing to follow evaluation and reevaluation procedures.

Failure to fully complete assessments, specifically with subtests of the WJ-IV

School districts must conduct an evaluation or reevaluation process before (1) determining that a child is, or continues to be, a child with a disability, (2) changing the child’s disability, or (3) terminating the child’s eligibility.⁴ Before conducting any evaluations of a child, districts must (1) conduct evaluation planning, (2) provide notice to the parent that describes any evaluation procedures the district proposes to conduct, and (3) obtain written consent for evaluation.⁵

“Consent” means that the parent or adult student (1) has been fully informed of all information relevant to the activity for which consent is sought, (2) understands and agrees in writing to the activity and the consent describes the activity, and (3) understands that granting consent is voluntary and may be revoked at any time.⁶ For a parent to “understand,” it is not required that the parent know “the precise nature of all of the services or activities that would be included” with the activity for which consent is sought.⁷ Rather, the parent’s consent signifies that the parent has a general understanding of the activity, such as an initial evaluation, reevaluation, or provision of special education and related services.⁸

In conducting an evaluation, districts must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information and concerns from the parent.⁹ School districts must ensure that assessments and other evaluation materials are administered (1) by trained and knowledgeable personnel and (2) in accordance with any instructions provided by the producer of the assessment.¹⁰

⁴ OAR 581-015-2105; 34 CFR § 300.305

⁵ OAR 581-015-2110; 34 CFR § 300.300 and 305

⁶ OAR 581-015-2000(5); 34 CFR § 300.300(9)

⁷ Letter to Johnson, 56 IDELR 51 (OSEP 6/3/2010)

⁸ Letter to Johnson, 56 IDELR 51 (OSEP 6/3/2010)

⁹ OAR 581-015-2110; 34 CFR § 300.304

¹⁰ OAR 581-015-2110; 34 CFR § 300.304

The IDEA “does not prescribe specific tests or procedures to be used” in individualized situations.¹¹ While a district has discretion in choosing assessments, once the evaluation team has agreed on which assessments will be done and a parent has signed consent, the district must administer the chosen assessments in accordance with the instructions provided by the producer of the assessment.¹²

The assessment at issue is the Woodcock-Johnson IV Tests of Achievement (WJ-IV). The WJ-IV includes 20 tests for measuring four academic areas (reading, written language, mathematics, and academic knowledge). The WJ-IV has eleven Standard Battery tests, which are the most frequently used, and nine Extended Battery tests that can be added on if needed. The WJ-IV includes a “procedure for determining relative strengths and weaknesses within tests and clusters from three core areas of achievement. To use the procedure, evaluators administer Tests 1-6 in the Standard Battery.”¹³

In the area of academic testing, the District predominantly uses the WJ-IV. Information on administering the WJ-IV indicated that there is an option to administer solely Tests 1-6. The word attack and oral reading tests are needed for two of the six reading clusters, the Basic Reading Skills and Reading Fluency clusters. In the evaluation reports reviewed, the District almost exclusively reported cluster scores for Broad Reading, Broad Mathematics, and Broad Written Language. For the Broad Reading cluster, three tests are required - word identification, passage comprehension, and sentence reading fluency. The word attack and oral reading tests are not required for the Broad Reading cluster and do not factor into the Broad Reading cluster score.¹⁴ Because the WJ-IV instructions state that the evaluator has the option to administer Tests 1-6, the District administered the WJ-IV in accordance with the producer’s instructions.

The District’s Evaluation Consent forms list the areas to be evaluated and identify the names of the tests to be conducted. The District stated that when a parent signs consent, they sign consent for the WJ-IV to be used to evaluate their child and not for any particular combination of specific subtests. The District has discretion in determining which specific assessments to conduct in the evaluation areas that the evaluation planning team determined were necessary. The District provided a reasonable explanation for the decision to use progress monitoring data in place of the word attack and oral reading tests.

The District does not take evaluation planning meeting notes and student special education files do not include any documentation of what was discussed with parents concerning the evaluation. Consequently, there is insufficient evidence to determine whether parents were informed of the District’s decision to omit specific tests or the reason for the decision. However, the Evaluation Consent forms contained sufficient information to provide parents with a general understanding that the District was requesting permission to evaluate their child in specific areas for the purpose of determining eligibility for special education services.

The Department does not substantiate this portion of the allegation.

Failure to complete assessments required to determine eligibility, specifically medical or health statement and developmental history.

¹¹ Letter to Shaver, 17 IDELR 356 (OSERS 11/23/1990)

¹² Letter to Anonymous, 20 IDELR 542 (OSEP 9/17/1993)

¹³ Woodcock Johnson IV Preview, Winter, 2014, Vol.1

¹⁴ Woodcock-Johnson IV Tests of Achievement Tests and Clusters Chart, Riverside Insights

“The regulations and formal comments do not suggest a difference between the scope of a preplacement evaluation and the scope of a reevaluation. It is not inappropriate, however, to obtain purely historical information (for example, finding out when the child first achieved a particular skill) only once.”¹⁵

“Developmental History” means gathering information regarding the child’s prenatal and birth history, meeting of developmental milestones, socialization and behavioral patterns, health and physical/medical history, family and environmental factors, home and educational performance, trauma or significant stress experienced by the child, and the display of characteristics of any additional learning or behavior problems.¹⁶ While multiple eligibility categories include the requirement for a developmental history, no additional guidance is provided.

A “medical or health assessment statement” is a required evaluation for several eligibility categories. “Medical statement” means a written statement issued by a physician licensed by a State Board of Medical Examiners.¹⁷ “Health assessment statement” means a written statement issued by a nurse practitioner (NP) licensed by a State Board of Nursing specially certified as a nurse practitioner, or physician assistant (PA) licensed by a State Board of Medical Examiners.¹⁸ The individual eligibility categories provide some clarification on the medical or health statement requirement. Generally, the statement is required to indicate or describe whether there is a medical or health concern that may be affecting the child’s educational performance (i.e., diagnosis or description of an impairment, relevant medical issue, sensory or physical factors, permanent or long-term condition, etc.).

There is no rule or regulation to advise how current a medical or health assessment must be, or any language that would prohibit reliance on an older statement. However, since the purpose of an evaluation is to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs, a medical or health statement should be relevant. The relevance of a medical or health statement depends on its content, whether the information is still applicable in the context of the specific student and the eligibility category being considered. While it may be suitable to rely on an older medical or health statement in some cases, it will depend on the circumstances and unique needs of the individual student.

Once an evaluation is completed, a team must determine (1) whether the student is eligible for special education services and (2) the educational needs of the child. The team must prepare an evaluation report and a written statement of eligibility. The evaluation report must describe and explain the results of the evaluation conducted. The written statement of eligibility must include a list of the evaluation data considered, a determination of whether the student meets the minimum criteria for the eligibility being considered, and a determination of whether the student needs special education services. For a child who may meet eligibility under more than one category, the team need only qualify the student under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities.¹⁹

Some of the District’s evaluation reports failed to include required information relating to a

¹⁵ Letter to Feehley, 211 IDELR 415 (OSEP 10/20/1986)

¹⁶ OAR 581-015-2000(8)

¹⁷ OAR 581-015-2000(20)

¹⁸ OAR 581-015-2000(13)

¹⁹ OAR-581-015-2110(4); 34 CFR § 300.306

developmental history. A review of student records uncovered some examples of developmental histories that were either not included in an evaluation report or were incomplete. In some examples an Evaluation Consent listed a file review but not a developmental history; however, a file review was not mentioned in the evaluation report. In many cases, the developmental history included in the evaluation report did not include information required under the OAR definition of developmental history. While the District may only need to gather historical information once, particularly with prenatal/birth history and meeting of developmental milestones, the District did not include this information in a large portion of evaluation reports reviewed. In a few cases, it is uncertain what occurred because an evaluation report or written disability statement was not located in the students' file.

The District made an eligibility determination without a medical or health statement in one identified case. A medical statement was listed on the Student's signed Evaluation Consent form, but one was not obtained. The District moved forward with the OHI eligibility determination without acquiring a medical or health statement. While the Student otherwise met the criteria on the Disability Statement for OHI, the Student was found ineligible. Once a medical statement was obtained, the District reported that the team changed the Student's eligibility, adding an OHI eligibility and removing the Student's SLD eligibility. However, the District was unable to provide any written disability statements, evaluation report, PWN, or other information to explain what occurred at the second eligibility meeting. There is no indication of whether the Student no longer met eligibility under SLD, or the reason for the termination of this eligibility category.

The District stated that there is no rule for how old a medical statement can be. The District reevaluation guidance for the categories of OHI, ID, and SLD stated that the existing medical statement should be used unless there is strong reason to believe it has changed. In one example case, a medical statement was used for ID eligibility which did not include any information except that the medical provider had not seen the student in 12 years and a speech delay had been noted 11 years prior. In another case, it was noted that an eight-year-old health assessment statement was used for a student's ID eligibility, but the District could not locate a copy of it and no information was available to indicate what information the statement contained. The District could not provide relevant medical or health assessment statements in some cases that were required for the student's eligibility determination.

The Department substantiates this portion of the allegation.

Failure to complete comprehensive evaluations, specifically by failing to conduct cognitive evaluations when warranted

A full and individual evaluation of the student's needs must be conducted in accordance with IDEA requirements. However, there is no requirement that a reevaluation be identical to the initial evaluation. The "selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities."²⁰ It might not be possible, or appropriate, to use the same tests on the reevaluation that were used with the initial evaluation.²¹ "[The IDEA] does not include any special requirements for the reevaluation of a child with the most significant cognitive disabilities who is assessed against alternative achievement standards."²² Rather, the reevaluation "must be individualized so that it meets the child's present needs."²³

²⁰ Letter to Anonymous, 20 IDELR 542 (OSEP 9/17/1993)

²¹ Letter to Shaver, 17 IDELR 356 (OSERS 11/23/1990)

²² 71 Fed. Reg. 46640 (2006)

²³ Letter to Shaver, 17 IDELR 356 (OSERS 11/23/1990)

The Complainant made allegations concerning both specific students and District procedures. No evidence was found to support the Complainant's claims regarding specific students that were not evaluated comprehensively in many years. A review of these particular example students established that they were evaluated recently and assessed in multiple areas, including cognitive testing.

The Department does not substantiate this portion of the allegation.

Failure to allow evaluations to proceed as determined by the evaluation planning team

As part of an evaluation, the child's IEP team or other qualified professionals must review existing evaluation data on the child. On the basis of the review, and input from the parents, the team must identify what additional data, if any, are needed to determine (1) whether the child is, or continues to be, a child with a disability, (2) the present levels of academic achievement and related developmental needs of the child, and (3) whether the child needs, or continues to need, special education services. In the case of a reevaluation, the team must also determine whether the child needs any additions or modifications to special education and related services to enable the child to meet measurable annual goals in the student's IEP and to participate, as appropriate, in the general education curriculum. If the team determines that additional data are needed, the district must administer tests and other evaluation materials as may be needed to produce the additional data identified by the team.²⁴

This review may be conducted without a meeting, but if a meeting is held, parents must be invited to participate. If the team determines that additional data are not needed, the district must notify the parents of that determination, the reason for it, and the right of the parents to request an assessment.²⁵

While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."²⁶ A school district must provide parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the student, as well as the provision of a free appropriate public education (FAPE).²⁷ A school district must provide written notice of the time and purpose of a meeting, notify the parent who will attend, and allow the parent to bring others knowledgeable about the child.²⁸

A district must provide parents with PWN within a reasonable period of time before it proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE.²⁹ Reasonable time is required to provide parents "time to fully consider the change and respond to the action before it is implemented."³⁰ The PWN must include a description of the action proposed or refused and an explanation of why the district proposes or refuses to take the action.³¹ This "formal requirement has an important purpose that is not merely technical, and therefore...it should be enforced rigorously."³² This requirement "creates

²⁴ OAR 581-015-2115; 34 CFR § 300.305

²⁵ OAR 581-015-2115; 34 CFR § 300.305

²⁶ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

²⁷ OAR 581-015-2190(1); 34 CFR § 300.322(a)

²⁸ OAR 581-015-2190(2)(b)(A) and (B); 34 CFR § 300.322 (b)

²⁹ OAR 581-015-2310(2); 34 CFR § 300.503(a)

³⁰ Letter to Chandler, 59 IDELR 110 (OSEP 4/26/2012)

³¹ OAR 581-015-2130(3); 34 CFR § 300.503(b)

³² *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994)

a clear record that will do much to eliminate troublesome factual disputes ...”³³ Providing parents with verbal notice of a change to the identification, evaluation, educational placement, or provision of FAPE is insufficient.³⁴

School districts must allow parents to inspect education records of their child, including all education records with respect to the identification, evaluation, educational placement, and provision of FAPE.³⁵

Inconsistent information was provided on the consultation team review process, including who makes the decision to change an Evaluation Consent, who amends the document, who communicates the change to the parents, what is communicated to parents, and the nature of the consent provided by parents.

The District stated that it occasionally makes changes to Evaluation Consent forms that were developed by the evaluation team and signed by the parent. District staff reported consistently that this rarely occurs. In one case, the District stated that consent was signed by a parent, but the Evaluation Consent contained tests that were not required for the student’s eligibility. A revised Evaluation Consent was issued, and the evaluation proceeded with the revised list of assessments. However, the revised Evaluation Consent was never signed by a parent. In other cases, it is difficult to determine what occurred as the documents provided for some students were incomplete. Some versions of Evaluation Consent forms were either missing or unsigned. Except in one case, in which “revision” was handwritten at the top, the revised Evaluation Consents forms are not identified or labeled as amended versions.

District staff reported that a parent has never questioned the need for a change to an Evaluation Consent. They also reported that they have never received a parent request for a meeting to discuss the changes. Multiple District staff reported that with the revised Evaluation Consent forms, the regular practice is to obtain telephonic permission but not written consent. One Case Manager reported that when a signed Evaluation Consent needs to be amended, they call the parent to discuss the change.

Nothing in the IDEA gives the District the authority to interfere with evaluation decisions made by the evaluation team. Without evaluation planning meeting notices, meeting notes, or any other documentation, there is nothing in the District files provided to indicate if or when an evaluation planning meeting has occurred. No evidence was provided to demonstrate that the evaluation team, including the parent, made the decision to amend an Evaluation Consent form. It is not clear whether all evaluation planning team members were notified of changes or given the opportunity to provide input. No evidence was provided to demonstrate that parents gave informed, written consent for the changes made to their child’s Evaluation Consent. The District did not provide any PWNs related to changes made to an Evaluation Consent form or other documentation of notice provided to parents.

The Department substantiates this portion of the allegation.

Requiring parents to get medical or health statements for the evaluation and eligibility process at the parents’ expense

³³ *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994)

³⁴ *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994)

³⁵ OAR 581-015-2315; 34 CFR § 300.613

A FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge.³⁶

“There is no explicit requirement in the IDEA or the Part B regulations to include a medical diagnosis as part of the eligibility determination for any of the disability categories...in conducting the evaluation, the public agency must use a variety of assessment tools and strategies...That information could include information from a physician, if determined appropriate, to assess the effect of the child’s medical condition on the child’s eligibility and educational needs. However...no single measure or assessment may be used as the sole criterion for determining an appropriate educational program for the child.”³⁷ With the category of OHI, there is no requirement that the evaluation team “consider only health problems that are universally recognized by the medical profession.”³⁸

“Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD. If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents.”³⁹ A school district “may impose a requirement... that a medical evaluation by a licensed physician is conducted as part of an evaluation. This medical evaluation, however, would have to be at no cost to the child or his/her parents.”⁴⁰

“Related Services” includes “medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children.”⁴¹ “Medical services” means services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.⁴² The school district’s requirement to provide a FAPE to all school-age children with disabilities for whom the district is responsible includes “related services.” A school district has an obligation to ensure that a student is evaluated in all areas of suspected disability, including evaluations that are referred to an outside entity and not conducted by the district.⁴³ The district’s obligation includes an affirmative duty to give parents notice that the district will pay for evaluations that are deemed necessary.⁴⁴

The record shows that the District generally starts the evaluation process by getting a release of information from a parent. The District first attempts to get a medical or health statement through a student’s existing medical provider. However, when this is unsuccessful, the example cases demonstrate that the District instructs parents to make a medical visit for the purpose of obtaining a medical statement. There is also evidence to demonstrate that parents are told they need a medical statement with a medical diagnosis.

District interviews and documents indicated a belief that a medical statement should contain a medical diagnosis. The District stated on several occasions that a medical statement lacking a

³⁶ 34 CFR § 300.17

³⁷ Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations (OSERS, Revised September 2011)

³⁸ 71 Fed. Reg. 46,550 through 73 Fed. Reg. 46,551 (2006)

³⁹ Letter to Williams, 21 IDELR 73 (OSEP 3/14/1994)

⁴⁰ Letter to Williams, 21 IDELR 73 (OSEP 3/14/1994)

⁴¹ OAR 581-015-2000(29); 34 CFR § 300.34(a)

⁴² 34 CFR § 300.34(c)(5)

⁴³ *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008)

⁴⁴ *Id.*

DSM diagnosis was inadequate. In one example, an initial medical statement listed Asperger syndrome. Because it did not contain a DSM diagnosis, the District reported that it was insufficient, and a different medical statement was needed. The Parent reported being told to go to the Student's medical provider to obtain a medical statement with a diagnosis.

In another case with an initial medical statement that did not contain a diagnosis, a District Case Manager contacted the Student's Medical Provider and asked them to reconsider the Student's needs. The Parent subsequently took the Student to the Medical Provider for the purpose of obtaining another medical statement with a diagnosis, at the Case Manager's request. No offer was made by the District in either case to pay for the Student's medical visit. The District reported that it does not recall a time that it paid for a student's medical visit to obtain a medical statement during the Complaint period.

A medical diagnosis is not a required element for a medical or health statement. The District can impose additional requirements, but if the District directs parents to seek medical services for an evaluation, the District must pay for it. The District asserted that the District "will pay for the visit if the visit is necessary to the evaluation of the student and the parent requests that the District cover the cost of the visit." However, it is inappropriate for the District to condition its obligation to pay for medical services on the parent's request.

The Department substantiates this allegation.

Failure to comply with evaluation timelines

Initial evaluations and reevaluations must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility unless an exception applies. Exceptions include when the parents of a child repeatedly fail or refuse to produce the child or for other circumstances outside the school district's control, or if the district and parents agree in writing to extend the evaluation timeline.⁴⁵ A reevaluation must occur at least every three years, unless the parent and district agree otherwise.⁴⁶

In response to the COVID-19 pandemic challenges, the Department issued guidance on how school districts should address any lapses in required timelines due to school closures. "The timeline for evaluation is 60 School Days from the time consent is obtained. Days when schools, districts, or ECSE programs are closed (e.g., during the Statewide School Closure announcement on March 12) do **not** count toward the timeline. If the student is not present during the evaluation window after schools begin Distance Learning for All and special education service delivery on April 13, 2020, the district would note the attempts to conduct the evaluation, the reason for the delay beyond the required 60 days, and complete the evaluation when the student returns."⁴⁷ The Department's guidance did not include any exceptions to the evaluation timeline. Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a [FAPE] is provided to all children with disabilities."⁴⁸

The review of student records uncovered two cases in which the District did not meet the 60-

⁴⁵ OAR 581-015-2110(5); 34 CFR § 300.301(d)

⁴⁶ OAR 581-015-2105; 34 CFR § 300.303(b)

⁴⁷ Oregon's Extended School Closure Special Education Guidance, Frequently Asked Questions: Regarding Special Education in Light of the Coronavirus (COVID-19) Outbreak, May 11, 2020 (Updated)

⁴⁸ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

day timeline. In the first case, the Evaluation Consent was signed by a parent on February 12, 2020, and the eligibility determination occurred on January 22, 2021. However, the amount of time that the eligibility was overdue within the Complaint period was only approximately 15 school days. In the second case, the Student had two different Evaluation Consent forms, one signed November 9, 2020 and the other signed on March 3, 2021. The last assessment was completed on October 7, 2021. The eligibility determination occurred on October 21, 2021. The District reported that the delay was due to a “temporary pause in Autism testing.”

It is not clear what the District meant when it stated in interviews and records that the District “extended the evaluation” timeline during COVID-19 delays. The 60-school day evaluation timeline did not change with COVID-19, except that the days that districts were shut down do not count towards the 60 school days.

The Department substantiates this allegation.

V. CORRECTIVE ACTION⁴⁹

*In the Matter of Coos Bay School District
Case No. 021-054-039*

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

Action Required	Submissions	Due Date
<p>1. The District shall develop a training plan for building and program administrators responsible for supervising special education, any district staff who serve as district representatives in IEP meetings, special education staff, related services providers, and any other potential evaluators, to include at least the following topics:</p> <ul style="list-style-type: none"> • Evaluation procedures; • Evaluation planning; • Meeting notice requirements; • Parental consent requirements; • Parent participation requirements; • PWN requirements; • Evaluation timelines; • Determination of eligibility and eligibility criteria 	<p>Submit to ODE copies of training plan, including at least the following:</p> <ul style="list-style-type: none"> • Date, start time, and end time; • Specific learning outcomes; • Agenda; • Instructional plan; • Instructional materials; and • Assessment plan 	<p>June 16, 2022</p>

⁴⁹ 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)).

2. The District must secure ODE approval of the training plan prior to implementation.	Submit to ODE copy of training plan.	July 16, 2022
3. The District must implement the approved training plan with fidelity.	Submit evidence of completion of training, including a signed attendee list, which must include the name and position/role of each attendee, presenter(s), materials used, assessment results, and any meeting notes or minutes.	March 15, 2023

Dated: this 16th Day of March 2022



Eric B. Wells, Ed.D.
 Director, IDEA Programs
 Office of Enhancing Student Opportunities

E-mailing Date: March 16, 2022

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).)