

The Parent submitted a *Reply* on May 14, 2021, providing an explanation and rebuttal, and submitting supporting documents in support of the Parent’s position. The Parent submitted the following relevant items:

1. Parent’s *Reply* to the District’s *Response* to *RFR*, 5/14/21
2. Letter from the Student’s Pediatrician, 2/2/21
3. Email exchange between the Parent and the Developmental Disability Program Services Coordinator, 2/18/21 – 2/22/21

On June 2, 2021, 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. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from April 21, 2020, to the filing of this Complaint on April 20, 2021.

Allegations	Conclusions
<p>1. Independent Educational Evaluation</p> <p>The Parent alleged that the District violated the IDEA by not providing an independent educational evaluation at public expense when requested by the Parent, despite the Parent’s disagreement with evaluations obtained by the District.</p> <p>(OAR 581-015-2305; 34 CFR § 300.502)</p>	<p>Substantiated</p> <p>The District did not provide an independent educational evaluation (IEE) at public expense when requested by the Parent. Because the Parent disagreed with an evaluation obtained by the District, the District was required to provide an IEE at public expense.</p>

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 April 21, 2020. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

1. The Student is 11 years old and in the fifth grade. The Student lives within the District boundaries.

2. The Student is eligible for special education as a child with Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI). The Student has a history of medical diagnoses, including hip instability, developmental coordination disorder, neurological gait dysfunction, post-traumatic stress disorder (PTSD), adjustment disorder, dysarthria, and speech and airway disorders.
3. In February 2020, the Student transferred to the District from an online charter school (Charter School) sponsored by another school district located in Oregon (Charter School District).
4. On March 3, 2020, the District drafted a Consent for Individual Evaluation (evaluation consent) without conducting evaluation planning. The District did not provide the Parent with an opportunity to provide input.
5. The evaluation consent, dated March 3, 2020, stated that the evaluation would include observations, diagnostic teaching, gross motor assessment, and fine motor assessment. The consent identified no specific assessments.
6. On March 3, 2020, the District sent the Parent an email proposing to conduct a few observations of the Student and “have [the Student] participate in the resource room for diagnostic teaching in order to better assess [the Student’s] needs. We have created a consent and will send it home today.”
7. In its *Response*, the District stated that on or about March 3, 2020, the District provided the Parent with a copy of the evaluation consent. Although the evaluation consent is dated March 3, 2020, the first evidence available that the form was sent to the Parent is on August 11, 2020.
8. On August 11, 2020, the District emailed the evaluation consent to the Parent, which the Parent immediately signed and emailed to the District.
9. The District Occupational Therapist (OT) completed an “Occupational Therapy Evaluation” report on December 7, 2020, which included in relevant part:
 - a. The OT conducted a file review of assessments completed by the Charter School;
 - b. The OT conducted a virtual observation of the Student;
 - c. An informal fine motor assessment was not completed due to scheduling conflicts; and
 - d. The OT did not feel that information gained from an informal fine motor assessment would change her recommendations for accommodations and consultative OT services to support the Student.
10. In a December 7, 2020 internal District email exchange, the District Physical Therapist (PT) reported that he completed a file review and an observation of a video sent by a District learning specialist, and otherwise did “not have any present level data to determine a need for school based physical therapy. At this time there is no justifiable direct or consult school based PT.” The District PT suggested a different PT assessment, stating the District was waiting for written consent from the Parent.
11. In a December 7, 2020 email to the Parent, the District requested the Parent’s consent to conduct a different PT evaluation (PEDICAT) instead of what was listed (functional gross

motor assessment) on the consent form, signed 8/11/2020. The Parent replied by email that she consented to conducting the PEDICAT assessment.

12. The Parent did not waive the District's obligation to complete the remaining evaluations listed on the evaluation consent form signed on August 11, 2020.
13. The District asserts that the PEDICAT was added because the Parent did not make the Student available for proposed or scheduled evaluation sessions.
14. The District also asserts in the current Complaint that the District added the PEDICAT because it determined "that having some current assessment information was preferable to having no current assessment information for the upcoming meeting."
15. The Parent filled out the questionnaire and the PEDICAT assessment was completed.
16. At an IEP meeting, started on December 8, 2020 and completed on January 7, 2021, the Student's direct PT and OT services were removed over the Parent's objections. The Parent stated that she would contest the decision.
17. On January 25, 2021, the Parent provided the District with a letter from the Student's Developmental-Behavioral Pediatrician, stating that the District should do additional fine motor assessments before decreasing OT services at school. The Pediatrician conveyed his belief that the District failed to conduct any direct, standardized assessments and the asynchronous video observation completed by the District of the Student was insufficient.
18. On February 11, 2021, the District and Parent convened a meeting and discussed conducting a comprehensive evaluation once students were allowed to return to school in person.
19. At the February 11, 2021 meeting, "the [District] specialists described the limitations of the partial evaluation, specifically with asynchronous video observations and without a direct standardized assessment. The team additionally discussed that the previous assessment results from [the Charter School] were dated and potentially did not accurately portray current levels of performance."
20. The District reports that it proposed conducting a comprehensive evaluation of the Student at meetings on 12/8/20, 1/7/21, and 2/11/21.
21. The Parent first requested an Independent Educational Evaluation (IEE) at public expense on February 22, 2021.
22. The Parent filed Complaint #21-054-002 on March 5, 2021. The Parent's allegations included:
 - a. The District did not provide required services as listed in the Student's IEP;
 - b. The District did not review and revise the Student's IEP as needed;
 - c. The District unilaterally removed services from the Student's IEP;
 - d. The District did not provide the Student with services and accommodations required to address the Student's individual special education needs;
 - e. The District did not provide the Parent with an opportunity to meaningful participate in the

Student's educational program;

- f. The District failed to evaluate the Student before removing services from the Student's IEP;
 - g. The District did not implement the Student's out-of-district IEP and did not provide the Student with comparable services; and
 - h. The District's failure to implement the Student's IEP deprived the Student of educational opportunities, resulting in a denial of a Free Appropriate Public Education (FAPE).
23. The Department substantiated all of the allegations made by the Parent in Complaint #21-054-002, except for the claims related to Parent Participation, which were substantiated in part.
24. In an April 7, 2021 email, the Parent asked about the status of the Parent's IEE request. In response, the District wrote that the District must conduct its own evaluation first.
25. In an April 8, 2021 email to the District, the Parent asked that the District complete the IEE that the Parent requested on February 22, 2021. In response, the District asked to discuss the issue in-person.
26. On April 9, 2021, the District and the Parent informally met in person to discuss the Parent's IEE request. The Parent told the District that the Parent's February IEE request was a separate issue from the plan to conduct comprehensive evaluations moving forward. The Parent was told that the District's Special Education Director would contact her.
27. In an April 11, 2021 email to the District, the Parent wrote that (1) she did not agree with the PT and OT assessments that were done in November and December 2020, (2) she requested an IEE on February 22, 2021, (3) she was waiting on the District to provide an IEE, as the District has not filed a due process complaint to defend its assessments, and (4) the IEE issue is separate from the plan for the District to conduct comprehensive evaluations.
28. On April 13, 2021, the District met with the Parent to discuss a comprehensive evaluation. The Parent asserts that, at this meeting, the District Special Education Director told her that the assessments completed by the District were "not up to par."
29. In an April 15, 2021 email to the District, the Parent stated that the November and December 2020 PT and OT assessments were not conducted appropriately.
30. In an April 16, 2021 email to the District, the Parent expressed concern that the District has not provided the Parent with IEE contact information, among other things, and requested an emergency IEP meeting.
31. On April 16, 2021, the Parent filed a complaint with "[the District] Building Administrator or Supervisor," based on the District's failure to provide contact information for the IEE requested by the Parent on February 22, 2021 and April 13, 2021.
32. In an April 19, 2021 email to the District, the Parent reiterated the request for an emergency IEP meeting to discuss her concerns, including that the District has not followed IEE requirements.

33. On April 20, 2021, the Parent filed this Complaint.
34. On April 22, 2021, the District and Parent met to plan for future evaluations and review the evaluations listed on the District's proposed evaluation consent form.
35. At the April 22, 2021 meeting, the Parent asked about her IEE request. The Parent disagreed with the District's assertion that the evaluations currently proposed needed to be completed before an IEE could occur. The Parent requested that the IEE occur immediately.
36. On April 22, 2021, the District emailed the Parent a copy of the evaluation consent form that the District and the Parent discussed early that day, as well as a Prior Written Notice (PWN).
37. The April 22, 2021 evaluation consent stated that the District was proposing to evaluate the Student in the areas of: achievement, fine motor, observation, developmental history, social/emotional/behavioral, file review, teacher input, developmental update, social communication, written language, academics, and Autism Spectrum Disorder (ASD). The evaluation consent also stated that the "evaluation will be conducted to determine needs for program planning purposes only and is not to determine eligibility for Special Education."
38. The April 22, 2021 PWN stated that (1) the District is now proposing to conduct a comprehensive evaluation, (2) the District previously proposed conducting a comprehensive evaluation once school was back in session at the December 2020 and February 2021 IEP meetings, and (3) the District PT and OT attempted to evaluate the Student during comprehensive distance learning (CDL) but were unable to because of a lack of access to the Student. The PWN does not mention the Parent's request for an IEE.
39. On April 22, 2021, the Parent emailed the District stating, "I have disagreed vociferously with the physical therapy evaluations and occupational therapy evaluations of [the District PT] (11/10/20, 12/6/20, file review, 12/2/20, and pedi-cat 12/7/20) and sent an email to you and other district officials on 2/22/21 asking for an IEE at public expense. I was just told... that the District will not be providing me with this information until you do another assessment. [The District] believes that because the evaluations done by your PT and OT were not comprehensive, however, these same non-comprehensive assessments were used to remove services from [the Student's] IEP... I asked [the District] to provide a denial of IEE if [the District] wishes to delay this, but [the District] has refused... Please provide a denial of the requested IEE as I have requested this many, many times now."
40. In response, the District stated, "We are not denying [the Student] of an IEE... we will conduct a comprehensive evaluation first. It doesn't make sense to perform two evaluations on the same child in the same areas at the same time. When our evaluation is completed and we review the results, if you disagree with those findings, that is the time for an IEE."
41. The District asserts that it is ready to evaluate the Student but the Parent has prevented access to the Student.
42. The District asserts that it will not consider an IEE until a comprehensive evaluation of the Student has been completed by the District.
43. The District has not issued a PWN for its refusal to provide the IEE requested by the Parent.

IV. DISCUSSION

1. Independent Educational Evaluation

The Parent alleged that the District violated the IDEA by not providing an independent educational evaluation at public expense when requested by the Parent, despite the Parent's disagreement with evaluations obtained by the District.

"Evaluation" is defined as procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.³ In determining whether a child has a disability, the IDEA requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student.⁴ A district must identify all of the child's special education needs, whether or not commonly linked to the disability category in which the child has been classified.⁵ The evaluation must include assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.⁶

"Independent educational evaluation (IEE)" is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the child in question.⁷ A parent of a child with a disability or suspected disability has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school district.⁸ If a parent requests an IEE at public expense, the school district must provide information to the parent about where an IEE may be obtained, as well as the school district's criteria for IEEs.⁹ If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure that an IEE is provided at public expense, or initiate a due process hearing to show its evaluation is appropriate.¹⁰ "This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability."¹¹

If a parent requests an evaluation in an area in which they have not previously expressed concern, the district does not have the opportunity to first conduct an evaluation in the particular area.¹² "The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE."¹³ A school district is not allowed "to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show its evaluation was appropriate."¹⁴ If a school district failed to ensure that its evaluation was sufficiently comprehensive, a parent has the right to request an IEE to fill in the gaps that were not covered by the district.¹⁵

In the present case, the evaluation consent drafted by the District on March 3, 2020 was vague and did not identify specific assessments to be conducted. The assessments listed on the

³ OAR 581-015-2000(11); 34 CFR § 300.15

⁴ OAR 581-015-2110(3)(a); 34 CFR § 300.304(b)(1)

⁵ OAR 581-015-2110(4)(e); 34 CFR § 300.304(c)(6)

⁶ OAR 581-015-2110(4)(f); 34 CFR § 300.304(b)

⁷ OAR 581-015-2305(1)(a); 34 CFR § 300.502(a)(3)(i)

⁸ OAR 581-015-2305(1); 34 CFR § 300.502(b)

⁹ OAR 581-015-2305(2); 34 CFR § 300.502(b)

¹⁰ OAR 581-015-2305(4); 34 CFR § 300.502(b)

¹¹ Letter to Carroll, 68 IDELR 279 (OSEP 10/22/16)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Letter to Baus, 65 IDELR 81 (OSEP 2/23/15)

evaluation consent form were not sufficiently comprehensive to identify all of the Student's special education needs. The District decided to focus on the Student's gross and fine motor skills, ignoring potential functional, developmental, and academic needs of the Student. Although the Student is eligible for special education under the categories of Other Health Impairment and Autism Spectrum Disorder, no assessments were included for any other potential area of need outside of PT and OT.

It is difficult to determine which evaluations the District completed of those listed on the March 3, 2020 evaluation consent. However, the record contains sufficient evidence to conclude, at the very least, that the District completed the PEDICAT assessment. Because the District completed an evaluation, the Parent has the right to object to the District's evaluation and request an IEE at public expense.

Notwithstanding the District's failure to conduct evaluation planning and develop an evaluation consent sufficiently comprehensive to identify all areas of potential need, the District cannot now delay the Parent's IEE request based on the argument that the District must conduct its own comprehensive evaluation of the Student first. The District is not afforded the opportunity to cure the deficiency of its own evaluation before either granting the Parent's request for an IEE or filing a due process complaint to defend the appropriateness of its evaluation. Conducting an evaluation now does not negate the Parent's right to an IEE.¹⁶

The District failed to ensure that an IEE was provided to the Student at public expense or initiate a due process hearing to show that the District's evaluation was appropriate.

The Department substantiates this allegation.

V. CORRECTIVE ACTION¹⁷

*In the Matter of North Clackamas School District
Case No. 021-054-002*

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

Action Required	Submissions	Due Date
1. Provide information to the Parent about (a) where an IEE may be obtained and (b) the District's criteria for an IEE.	Evidence showing that this information was provided to the Parent to County Contact for review.	July 2, 2021

¹⁶ Letter to Carroll, 68 IDELR 279 (OSEP 10/22/16)

¹⁷ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<p>2. Training on IEEs for (a) special education administrators and (b) educational specialists supporting learning specialists, to include:</p> <ul style="list-style-type: none"> • IEE requirements as established in OAR 581-015-2305 and 34 CFR § 300.502; • Content of Procedural Safeguards related to IEEs; and • Any and all district policies, practices, and procedures related to IEEs. 	<p>Training agenda/materials to County Contact for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>September 1, 2021</p> <p>June 21, 2022</p>
<p>3. Facilitated IEP Meeting to discuss the IEE report(s) once completed.</p>	<p>Evidence showing the Facilitated IEP meeting was completed.</p>	<p>Within 30 days of the school district receiving the IEE report(s).</p>

Dated: this 18th Day of June 2021



Sara Green
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 21, 2021

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