

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the Redmond School     )  
District   )  
  )  
  )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 11-054-009

**I. BACKGROUND**

On February 25, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student residing and enrolled in the Redmond School District (District). The parents requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010) into special education practices and procedures within the District on behalf of the parents’ child. The Department confirmed receipt of this complaint by letter dated February 28, 2011 and provided the District a copy of the complaint by email on February 25, 2011. The parents’ complaint totaled 38 pages, which included three pages of narrative allegations and thirty-five pages of supporting documents.

On March 3, 2011, the Department sent a *Request for Response* (“RFR”) to the District identifying the specific allegations in the complaint that the Department would investigate. The District submitted its timely *Response* to the Department and to the parents on March 17, 2011, along with Exhibits identified “Exhibits A through L” totaling approximately 1000 pages of documents in support of its *Response* and pursuant to the request contained in the RFR. The parents did not submit a Reply.

The Department’s complaint investigator determined that on-site interviews were not required. On March 21, 2011, the Department’s investigator interviewed by phone both parents and spoke with the student’s mother again on March 29, 2011 and April 7, 2011. On April 8, 2011, the Department’s investigator interviewed by phone two District school psychologists, a District occupational therapist, a District speech and language pathologist and the District’s special education director. The Department’s complaint investigator reviewed and considered all of these documents, exhibits, and interviews.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint.<sup>1</sup> The Department may extend the timeline if the District and the parents agree to an extension to participate in mediation or if exceptional circumstances require an extension.<sup>2</sup> This order is timely.

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<sup>1</sup> 34 CFR §300.151 (2010).  
<sup>2</sup> OAR 581-015-2030(12) (2010)

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 and OAR 581-015-2030. The parents' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the one-year period from February 26, 2010 to the filing of this complaint on February 25, 2011.<sup>3</sup>

	<b>Allegations</b>	<b>Conclusions</b>
	<p>The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p><b>General Evaluation and Reevaluation Procedures</b></p> <p>The complaint alleges that the District failed to evaluate the student in all areas of suspected disability; specifically, the complaint alleges that the District failed to evaluate the student for deficits in auditory perception or for syntax, morphology, pragmatic, or semantic disorders.</p>	<p>Not Substantiated.</p> <p>The District had no reason to suspect that the student had auditory perception deficits or syntax, morphology, pragmatic, and semantic disorders which were not otherwise identified or evaluated by previous assessments. .</p>
2.	<p><b>Content of IEP</b></p> <p>The complaint alleges that the District failed to provide the student with appropriate special education and related services and supplementary aids and services to be involved and progress in the general education curriculum; specifically, the complaint alleges that, as a result of the District's failure to complete a comprehensive evaluation of the student, the student's IEP does not contain services addressing all of the student's needs.</p>	<p>Not Substantiated.</p> <p>The student's IEP provided adequate services and supports to be involved and progress in the general education curriculum.</p>

<sup>3</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

1.	<p><b><u>Requested Corrective Action.</u></b></p> <p>The parents are requesting that the District:</p> <ol style="list-style-type: none"> <li>1) Provide reimbursement for approximately \$8,000 in compensatory educational and therapeutic services;</li> <li>2) Perform full and complete evaluations at District expense;</li> <li>3) Submit to district-wide compliance monitoring by the Oregon Department of Education; and,</li> <li>4) Submit to district-wide audits on special education files by the Oregon Department of Education.</li> </ol>	Not Ordered
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### **III. FINDINGS OF FACT**

#### **Background**

1. The child is currently 10 years old. The child is a resident of the District and attended school within the District since kindergarten. The student is presently eligible for special education under the category of Communication Disorder. The three-year eligibility determination last occurred in February of 2009.
  
2. In January 2006, the District evaluated the student, reporting its results in "Language Evaluation Report." The District administered the Test of Language Development-Primary: Third Edition (TOLD-P3). This evaluation tests a student's expressive and receptive language in six areas of language, including spoken language, listening, organizing, speaking, semantics, and syntax. The student's results were in the first or second percentile, except for listening, where the student was in the eighth percentile. The Boehm Test of Basic Concepts - Third edition (Boehm-3) was used to assess knowledge of basic concepts and indicated [the student] knew 31 out of 50 concepts. The Goldman Fristoe-2: Test of Articulation (GFTA-2), used to evaluate speech production, indicated [the student] was at the fourth percentile, which indicated a need for speech therapy. An informal language sample indicated errors with past tense and that the student's speech was difficult to understand due to multiple speech sound errors. A hearing, voice, fluency, and oral-motor bilateral hearing screening was administered which noted no concerns with the student's "speech fluency, vocal quality or oral structures."

3. Between November 2008 and January 2009, the District completed a Speech and Language Evaluation Report. The Photo Articulation Test-3 (PAT-3), used to measure a student's ability to make speech sounds correctly, indicated that the student was at the fiftieth percentile. The Oral and Written Language Scales (OWLS), which measures receptive and expressive language development, resulted in scores within the normal range for listening comprehension but below average in oral expression. The Language Processing Test-Revised, which is used to assess expressive language skills and ability to understand meaning using oral language, indicated an overall test performance in the eighth percentile. The pure tone hearing screening indicated no deficits at various frequencies. The summary stated that the student's articulation skills and receptive language scores were within normal ranges, but the student's overall expressive language skills are significantly delayed.
4. In January 2009, the District completed additional assessments in anticipation of the student's three-year reevaluation. Among the evaluations completed was the Universal Nonverbal Intelligence Test (UNIT), which is not language based and is used to assess the intelligence of children who have speech and language impairments and different cultural or linguistic backgrounds. The student's percentile scores ranged from the twelfth percentile to the third percentile, with a Full Scale IQ of 74 (fourth percentile). The District administered the Woodcock-Johnson Tests of Cognitive Ability-III (WJ COG-III). The results indicated difficulty in processing speed, phonemic awareness, long-term retrieval, fluid reasoning, visual-spatial thinking, comprehension-knowledge, and short-term memory. The student's general intellectual ability was assessed at less than the first percentile. The student also completed the Woodcock-Johnson Tests of Achievement-Third Edition (W-J ACH-III) which assesses achievement and performance levels in reading, math, and written language. In the areas of broad reading, broad math, and broad written language, the student performed below the first percentile. Classroom observations noted that the student persisted with tasks, paid attention, remained on-task, and completed daily work but continued to progress slowly.
5. On February 6, 2009, the IEP team met to consider the student's eligibility under Communication Disorder. The team considered the following speech and language assessments: the Language Processing Test, the OWLS, and the PAT-3. The team considered the pure tone hearing screening. The team used the language sample to assess syntax, morphology, semantics, or pragmatics. The team also relied on the W-J COG-III and the W-J ACH-III to assist in identifying the student's educational needs. The team determined that the student was eligible under the syntax, morphology, pragmatic, or semantic disorder criteria based on a significant discrepancy, substantiated by a language sample and a standardized test (OWLS). The team also determined that the disorder was not the result of another disability. On the same day, the team considered and determined that the student was not eligible as a student with a Specific Learning Disability.

6. On January 21, 2011, the Department issued a Final Order titled, *In the Matter of Redmond School District 2J*, Case No. 10-054-032 (hereinafter referred to as "Order 10-054-032"). The Findings of Fact, and Conclusions of Order 10-054-032 are incorporated in this Final Order as if set forth fully herein.

### **2009-2010 School Year**

7. The student's IEP team met on June 2, 2010. During the meeting, the team addressed a number of issues, including a revision of the February 2010 IEP and consideration of various evaluations. The IEP team did not specifically address an evaluation for deficits in auditory perception or for syntax, morphology, pragmatic, or semantic disorders. The IEP team discussed an evaluation of the student's assistive technology (AT) needs and a vision evaluation. The parents also requested an Independent Educational Evaluation (IEE) to determine the extent of the student's vision deficits.

### **2010-2011 School Year**

8. In July 2010, a Doctor of Optometry (O.D.) evaluated the student on at least two dates at the parents' request. The O.D. authored two reports. The District received a report referencing an evaluation date of July 12, 2010 on December 15, 2010, during the investigation resulting in Order 10-054-032 (O.D Report #1). The District received a second report, referencing evaluation dates of July 12, 2010 and July 19, 2010, on February 25, 2011 as an exhibit to the present complaint (O.D. Report #2). The parents had not provided O.D. Report #2 to the District until it was attached to the present complaint.
9. The two reports contain much of the same evaluation information. Relevant to the present complaint is that O.D. Report #2 included the evaluation results of the "Rosner Auditory Analysis Test."<sup>4</sup> While there is no reference to this test in O.D. Report #1, O.D. Report #2 states, "AUDITORY PERCEPTION The Rosner Auditory Analysis Test was performed to evaluate [the student's] auditory perceptual skills with language output. [The student] scored at less than 1<sup>st</sup> grade level." The report did not include any recommendation for further audiological evaluations. The report did not include any recommendations for audiological therapy.
10. The District sent the student's parents a Parental Consent for Evaluation dated September 13, 2010 to obtain consent for the following evaluations: "Orthopedic: observation/screening, informal and/or formal testing by an Occupational Therapist and/or a Physical Therapist to determine Orthopedic support services needed for educational access." One of the student's parents wrote in, after the heading "Other," "Vision, Hearing and Technology." The parent signed the form

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<sup>4</sup> See, Academic Therapy Publications website:  
<http://www.academictherapy.com/detailATP.tpl?action=search&egskudatarq=630-4>.

but did not date the consent. The parent handwrote on the consent form, "Back dated to IEP Team Meeting agreement of June, 2010."

11. At the October 13, 2010 IEP meeting, the parents objected to an outside evaluator's report dated August 5, 2010. For the reasons stated in Order 10-054-032, Section 3, page 13, the Department does not consider this evaluation as the parents' IEE. However, this report, titled "Psychological Evaluation," includes a number of evaluations, among them the Wechsler Intelligence Scale for Children-4<sup>th</sup> Edition (WISC-4). The following subtests comprise the WISC-4, with the student's percentile scores in parenthesis: Verbal Comprehension Index (first percentile); Perceptual Reasoning Index (fourth percentile); Working Memory Index (below the first percentile); Processing Speed Index (fourth percentile). The student's full scale IQ was measured at 61 (below the first percentile).
12. The student's most recent IEP, dated January 27, 2011, includes specially designed instruction in the following areas and amounts: Speech/Language (160 minutes/month)<sup>5</sup>; Reading (150 minutes/week); Mathematics (150 minutes/week); Written Language (150 minutes/week). Speech Pathologist Consultation of 15 minutes per trimester is included as a Support for School Personnel.

#### **IV. DISCUSSION**

##### **1) General Evaluation and Reevaluation Procedures**

The parents allege that the District failed to evaluate the student in all areas of suspected disability; specifically, the complaint alleges that the District failed to evaluate the student for deficits in auditory perception or for a syntax, morphology, pragmatic, or semantic disorder.

OAR 581-015-2105(4) provides that a reevaluation of a child with a disability must occur if the "public agency determines that the educational or related services needs" of the child warrant a reevaluation or "[i]f the child's parents or teacher requests a reevaluation." Additionally, OAR 581-015-2110(4)(d) provides that school districts must ensure that "the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." OAR 581-015-2110(4)(d) provides that school district evaluations must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." Finally, OAR 581-015-2000(10) provides that "'Evaluation' means

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<sup>5</sup> The speech/language specially designed instruction in the student's 2011 IEP is 40 minutes per month less than the speech/language specially designed instruction contained in the February 2010 IEP. The other specially designed instruction is the same in the 2010 and the 2011 IEPs.

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.”

The Department concludes that the District adequately evaluated the student for deficits in auditory perception or for a syntax, morphology, pragmatic, or semantic disorder. The District first evaluated the student’s auditory perception issues in 2006 with the TOLD:P-3. The District administered the OWLS to the student between November 2008 and January 2009. In January 2009, the District administered the WJ-Cognitive–III to the student. The outside evaluator administered the WISC-IV to the student in July 2010. Each of these assessments included an evaluation of the student’s auditory processing and auditory perception.

In addition, a Doctor of Optometry, chosen by the parents, administered the Rosner Auditory Analysis Test<sup>6</sup> in July of 2010, but the District did not receive this report until the parents filed this complaint in February of 2011. If the findings of the optometrist-administered Rosner test were the only measures of the student’s auditory perception available to the student’s IEP team, then the Department’s analysis in this Order might be different. However, the student had been evaluated with four instruments addressing auditory perception.

Similarly, the analysis of this allegation would be different if the parents had clearly requested the administration of an auditory perception evaluation at the June 2010 IEP/Evaluation planning meeting. The District would be required to conduct the evaluation or issue a prior written notice of the refusal to conduct the evaluation as it did following the June 2010 meeting when the parents requested a vision evaluation. (See, Order 10-054-032).

Regarding the parents adding to the September 2010 Consent for Evaluation the “Vision, Hearing and Technology” interlineation, such an addition does not impose upon the District the obligation to conduct additional evaluations without more information. The purpose of the evaluation planning process is for the IEP team to come to a consensus on the types of evaluations that the District should administer. After the fact interlineations, with an attempt to back date the consent, does not impose an obligation on the District. (See, Order 10-054-032, Discussion Sections 1 & 2, pages 10-13.)

If the parents had provided the O.D. Report #2 to the District before they filed this complaint, then the parents could argue that there was some suspicion, with supporting corroboration, of the student’s deficit in this area, which may require the District to conduct additional evaluations. These scenarios are not the facts in this case. The District tested the student with four different assessments evaluating the student’s auditory perception between 2006 and 2010. The Department also concludes that the District adequately evaluated the student for syntax, morphology, pragmatic, and semantic disorders and that the parents did not request any additional evaluations in

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<sup>6</sup> The Department notes that the publisher of this test indicates the appropriate age range is five years to eight years. The student was ten years old at the time the optometrist administered the test.

those areas. Therefore, the Department does not substantiate that the District did not evaluate in all areas of suspected disability.

## **2) IEP Content**

The parents allege that the District did not provide the student appropriate special education and related services and supplementary aids and services to be involved and progress in the general education curriculum; specifically, the complaint alleges that, as a result of the District's failure to complete a comprehensive evaluation of the student, the student's IEP does not contain services addressing all of the student's needs.

An IEP must include, among other things, a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and children without disabilities.<sup>7</sup>

The parents support their allegation on the same basis as the initial allegation that the District did not complete a comprehensive evaluation of the student. Since the Department has concluded that the District did provide appropriate and comprehensive evaluations of the student, the Department does not substantiate the parents' allegation that the student's IEP failed to provide appropriate special education and related services and supplementary aids and services for the student to be involved in and progress in the general education curriculum.

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<sup>7</sup> OAR 581-015-2200 (1) (d)

**CORRECTIVE ACTION**

*In the Matter of Redmond School District*  
Case No. 11-054-009

The Department does not order any Corrective Action resulting from this investigation.

Dated: April 21, 2011

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Nancy J. Latini, Ph.D.  
Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: April 21, 2011

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.