

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Central SD

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 14-054-004

I. BACKGROUND

On January 23, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing and attending school in the Central School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On January 31, 2014, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On February 14, 2014, the District submitted its *Response to the Request for Response*, with accompanying documentation (145 pages). The Parents did not submit a written *Reply* in this case. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that an onsite investigation would be necessary. On March 4, 2014, the complaint investigator separately interviewed the Parent and District staff, including the Student's classroom teacher, Principal, English language Coordinator, Behavior Specialist, ESD case manager, office assistant, and Speech Language Pathologist (SLP). The complaint investigator also interviewed a county mental health counselor. The District provided additional documentation during the interviews. The complaint investigator reviewed and considered all of the interviews and documents in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from January 24, 2013, to the filing of this complaint on January 23, 2014.<sup>2</sup>

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<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153  
<sup>2</sup> OAR 581-015-2030(5)

No.	Allegations	Conclusions
1.	<p><b><u>Evaluation and Reevaluation Requirements</u></b></p> <p>(a) The complaint alleges the District violated the IDEA by failing to consider private evaluations or evaluate the Student to determine all areas of eligibility and to determine the appropriate level of special education required for the Student to ensure a Free Appropriate Public Education (FAPE), since the beginning of the 2013-2014 school year.</p> <p>(b) The complaint alleges the District violated the IDEA by failing to timely evaluate the Student's special education needs.</p> <p>Relevant Law: OAR 581-015-2105; OAR 581-015-2110, OAR 581-015-2115 and 34 CFR 300.301 and 34 CFR 300.303; OAR 581-015-2040 and 34 CFR 300.101</p>	<p><b><u>Not Substantiated</u></b></p> <p>(a) Concerning the allegation that the District failed to consider private evaluations, in this case, the Parent did not provide any private evaluations to the District. Additionally, the Parent indicated that the Student's medical doctor believed the Student needed services in communication and the District determined that the Student required communication services based upon the Student's eligibility of Communication Disorder. The Department thus does not sustain the allegation that the District failed to consider private evaluations.</p> <p>Concerning the allegation that the District failed to determine all areas of eligibility, the Department finds that no areas of disability, in addition to the area of the Student's communication, are suspected by either the Parent or the District. The Department does not sustain the allegation that the District failed to evaluate appropriately to determine all areas of eligibility.</p> <p>(b) Concerning the allegation that the District failed to timely evaluate the Student's special education needs, the Parent consented to the Functional Behavior Assessment (FBA) on November 19, 2013 and the District met on February 13, 2014 to discuss the FBA and the Behavior Support Plan. This is well within the 60 school days required.</p> <p>Additionally, no other specific evaluations were requested or anticipated. The Department does not sustain the allegation that the District failed to timely evaluate the Student's education needs.</p>
2.	<p><b><u>Child Find</u></b></p> <p>The complaint alleges the District violated the IDEA when it did not identify, locate, and evaluate a resident child with a disability who is in need of special education services.</p> <p>Relevant law: OAR 581-015-2080 and</p>	<p><b><u>Not Substantiated</u></b></p> <p>The documentation in this case clearly demonstrates that the District timely adopted and implemented an IEP for the Student, addressing the Student's communication needs. The fact that the Student initially experienced behavior issues does not mean the District did not provide the communication</p>

	34 CFR 300.111.	services as provided in the Student's IEP. As noted in the factual findings above, the Student's improved behavior and progress in the classroom may be attributed to various circumstances, including the Student's acclimation to the kindergarten classroom, the interventions suggested by the Behavior Specialist and the SLP and the educational assistant's work with the Student. The Department does not sustain the allegation that the District failed to identify and evaluate a student in need of special education services.
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	<p><b><u>Proposed Corrective Action</u></b></p> <p>The complainant requests the following corrective action: determine appropriate special education eligibility and provide appropriate special education and related services to the Student.</p>	No Corrective Action is ordered in this case.
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### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently 6 years old, and attends the District's afternoon kindergarten classroom. The Student is eligible for special education under the category of Communication Disorder. The Student previously received services through Willamette ESD's ECSE program, with eligibility under Developmentally Delayed and Communication Disorder.
2. On April 30, 2013, District and ESD staff attended a transition meeting, to adopt an IEP for the Student's transition to kindergarten at the District to begin during the 2013-2014 school year. The Student's April 30, 2013 IEP provides a placement of "General education classroom with pullout for special education instruction." The Service Summary of the Student's April 30, 2013 IEP states that the Student is to receive Specially Designed Instruction (SDI) in communication 80 minutes per month in the speech room. The IEP includes "Supplementary Aids/Services; Modifications; Accommodations" of "Peer modeling," "specific, concrete directions," "advanced warning for transitions." Finally, the Services Summary section of the IEP includes staff consultation of 30 minutes per grading period.

#### Evaluation and Reevaluation Requirements and Child Find

3. The Student's school year began on September 9, 2013, which was the first day of kindergarten classes at the District. The Student is in a bilingual kindergarten classroom, with instruction provided almost entirely in Spanish. On September 13, 2013, the Student presented a behavior issue by refusing to move off a play structure and running off the playground around the school building. The District also called the Parent to pick up the Student due to concerns with the Student riding the bus home. The Student's teacher consulted with the Student's ECSE teacher

concerning support and intervention needs. The Student's former teacher reported that the Student did not present behavioral issues in the ECSE program, and the Student's ECSE and District teacher concluded that the differences between the Student's preschool program provided through the ECSE program and the kindergarten program provided by the District were likely the cause of the Student's behavior difficulties. The preschool classroom and kindergarten classroom are decidedly different and the kindergarten environment requires multiple transitions with fewer choices for the Student. Following the behavior incidents, near the end of September, 2013, the Student's teacher contacted the District's Behavior Specialist and the Behavior Specialist began observing the Student the following week. The Student presented two additional behavior issues on October 17, 2013 and October 29, 2013, so the Parent picked up the Student from school 10 minutes early on October 17, 2013 and an hour early on October 29, 2013. Both of these behavior issues involved the Student refusing to transition into another activity. The Student's afternoon kindergarten class begins at 11:35 a.m. and ends at 2:50 p.m. The Behavior Specialist observed the Student experiencing difficulty with transitions to various activities. The Behavior Specialist suggested various behavior interventions for the Student, but the Student's behavior did not improve as much as desired, and in early November of 2013 the Parent expressed concerns about the Student's behavior requiring the Student to come home early. The Parent, the teacher and the Principal discussed the issue on November 13, 2013, and scheduled an IEP meeting for November 19, 2013.

4. On November 19, 2013, the IEP team discussed the Student's behavior and the Parent signed a consent for a Functional Behavior Assessment (FBA). The District completed the FBA by February 13, 2014 (within 60 school days of the November 19, 2013 consent) and discussed the FBA and Behavior Support Plan at an IEP meeting on February 13, 2014. The District was in the process of completing the FBA when the Parent initiated the complaint in this case, on January 23, 2014.
5. On December 17, 2013 the Parent provided forms for the District to complete for the Student's medical doctor and the District completed the forms and returned them in the Student's backpack on December 18, 2013. At the November 19, 2013 IEP meeting the Parent had mentioned that the Student's doctor had met with the Student and stated the Student did not know many of the letters and numbers shown to the Student during the medical examination. The Parent stated that the Parent could provide additional information from the Student's doctor if needed District did not receive any reports or communication from the Student's medical doctor following completion of the requested form on December 18, 2013. The District understood from the Parent that the Student's doctor believed the Student needed instruction in speech; and the Parent also confirmed during the on-site investigation that the Student's doctor believed the Student needed instruction in speech.
6. The District began providing communication specially designed instruction (SDI) on September 19, 2013. The SLP's log indicates the SLP first met with the Student in early September of 2013 to establish rapport with the Student and discuss speech goals for the upcoming year. The SLP provided SDI to the Student on September 19, 2013, September 26, 2013, October 3, 2013, October 17, 2013, October 24, 2013, October 31, 2013, November 21, 2013, December 5, 2013, December 12, 2013, January 9, 2014, January 23, 2014, January 30, 2014, February 13, 2014, and February 27, 2014. The SLP reported that the Student is making progress toward the Student's goal and objectives, and reported on the Student's progress on November 22, 2013. The next date to report on the Student's progress is the day after the March 4, 2014 on-site interviews in this case.
7. Additionally, on December 2, 2013, the District, in response to the behavior issues presented by the Student and one other student, provided an educational assistant to work with the Student

and another student in the classroom, to assist them with transitions during the kindergarten class and to ensure that the students understood the instruction received from the teacher. The Student's behavior improved following the October 29, 2013 behavior issue, and continued to improve after the educational assistant began working with the Student and one other student on December 2, 2013. The teacher, the Special Education Director and the Parent agree that the Student is no longer presenting behavior issues and has not since November of 2013. The Parent also stated during the on-site investigation that the Student's disability requires services in communication, and that no other areas of suspected disability are apparent. The teacher and Special Education Director attribute the Student's improved behavior to acclimation to the kindergarten classroom, the interventions suggested by the Behavior Specialist and to the SLP and educational assistant's work with the Student.

#### **IV. DISCUSSION**

##### **Evaluation and Reevaluation Requirements**

The complaint alleges the District violated the IDEA by (a) failing to consider private evaluations or evaluate the Student to determine all areas of eligibility and to determine the appropriate level of special education required for the Student to ensure a Free Appropriate Public Education (FAPE), since the beginning of the 2013-2014 school year; and (b) by failing to timely evaluate the Student's special education needs.

Concerning the allegation that the District failed to consider private evaluations, the process for reevaluation is set forth in OAR 581-015-2110, and requires that the District consider information provided by the parent that may assist in determining the content of the student's IEP. However, in this case, the Parent provided no private evaluations to the District. Additionally, the Parent indicated that the Student's medical doctor believed the Student needed services in communication and the District determined that the Student required communication services based upon the Student's eligibility of Communication Disorder. The Department thus does not sustain the allegation that the District failed to consider private evaluations.

Concerning the allegation that the District failed to determine all areas of eligibility, the Department finds that no areas of disability in addition to the area of the Student's communication are suspected by either the Parent or the District. The Department does not sustain the allegation that the District failed to evaluate appropriately to determine all areas of eligibility.

Concerning the allegation that the District failed to timely evaluate the Student's special education needs, OAR 581-015-2110(5) provides that reevaluation must be completed within 60 school days "from written parent consent" to the date of the meeting to consider the Student's educational needs. In this case, the Parent consented to the FBA on November 19, 2013 and the District met on February 13, 2014 to discuss the FBA and the Behavior Support Plan. This is well within the 60 school days required. Additionally, no other specific evaluations were requested or anticipated. The Department does not sustain the allegation that the District failed to timely evaluate the Student's education needs.

The complaint also alleges that the District violated the IDEA when it failed to identify, locate and evaluate a resident child with a disability who is in need of special education services. This allegation is based upon the Parent's assertion in the complaint that the District failed to provide special education services to the Student from the time the Student began kindergarten on September 9, 2013 until after the November 19, 2013 IEP meeting. OAR 581-015-2080 requires

school districts identify, locate and evaluate all resident children with disabilities who are in need of special education services.

The Department finds that the District complied with its "child find" obligations in this case. The Student previously received services from an ECSE program and the District met with that program and determined the Student's eligibility and created and implemented an IEP which addressed the Student's disability of Communication Disorder. The Parent continues to believe that the District did not provide communication services to the Student until after the Parent called a staff person at the Department in November of 2013 and believes that without the call to the Department, the District would not have provided services to the Student. However, the documentation in this case clearly demonstrates that the District timely adopted and implemented an IEP for the Student, which addressed the Student's communication needs. The fact that the Student initially experienced behavior issues in kindergarten does not mean the District did not provide the communication services as provided in the Student's IEP. As noted in the factual findings above, the Student's improved behavior and progress in the classroom may be attributed to various circumstances, including the Student's acclimation to the kindergarten classroom, the interventions suggested by the Behavior Specialist and the SLP, and educational assistant's work with the Student. The Department does not sustain the allegation that the District failed to identify and evaluate a student in need of special education services.

**CORRECTIVE ACTION<sup>3</sup>**

*In the Matter of Central School District*  
Case No. 14-054-004

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

Dated this 21st Day of March, 2014



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Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: March 21, 2014

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<sup>3</sup> 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)).