

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Hood River County School )  
District )  
 )  
 )

CORRECTED  
FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 14-054-017

**I. BACKGROUND**

On May 5, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Hood River County School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on May 5, 2014 and provided the District a copy of the complaint letter.

On May 9, 2014, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of May 24, 2014. The investigator subsequently amended the RFR on May 12, 2014 and extended the date for the District response to May 27, 2014. The District submitted its timely *Response* to the Department and to the Parent. The District's *Response* included a narrative response, exhibit listing, and the following documents:

1. Correspondence, inclusive of emails between the District and Parents dated between May 3, 2013 and May 9, 2014;
2. Grade reports for the following dates:
  - A. May 7, 2014
  - B. March 12, 2014
  - C. February 19, 2014
  - D. January 31, 2014
  - E. December 12, 2013
  - F. November 8, 2013
  - G. October 2, 2013
  - H. June 13, 2013 (5<sup>th</sup> grade cumulative)
3. Notices of Team Meetings dated:
  - A. April 28, 2014 for May 7, 2014 Meeting
  - B. March 12, 2014 for March 12, 2014 IEP Meeting
  - C. February 3, 2014 for March 5, 2014 Team Meeting
  - D. November 14, 2013 for November 21, 2013 IEP Team Meeting
  - E. May 27, 2013 for Team Meeting for June 5, 2013
4. Prior Written Notices dated:
  - A. May 7, 2014
  - B. March 14, 2014 (2)
  - C. March 12, 2014
  - D. March 5, 2014
  - E. January 23, 2014 (2)
  - F. November 21, 2013 (2)
  - G. June 5, 2013

5. Meeting minutes and agenda dated:
  - A. May 7, 2014 (no agenda)
  - B. March 14, 2014 (no agenda)
  - C. March 12, 2014
  - D. March 5, 2014
  - E. January 23, 2014
  - F. November 21, 2014 (no agenda)
  - G. June 5, 2013
  - H. Undated handwritten notes authored by District Representative
6. Student's IEP dated June 5, 2013
7. Psychoeducational Evaluation Report dated May 7, 2014
8. 3 Year Speech Language Evaluation Summary dated March 12, 2014
9. Academic Testing Summary Kaufman Test of Educational Achievement 2<sup>nd</sup> Edition (KTEA II) dated February 19, 2014
10. CST Student Referral Form dated December 4, 2013
11. Statement of Eligibility dated March 12, 2014
12. Statement of Eligibility dated May 7, 2014
13. Copy of Procedural Safeguards Notice
14. Hood River School District policy IGBAG
15. Hood River School District Policy IGBAG-AR
16. Hood River School District Department Procedures for Independent Education Evaluations

The Parents remitted the following documents:

1. Children's Program Psychological Evaluation dated July 18, 2012
2. Tutorial Reports from The Blosser Center, Portland, Oregon dated January 2014 and March 17, 2014;
3. Emails between District and Parent dated:
  - A. January 17, 2014
  - B. January 21, 2014
  - C. January 29, 2014
  - D. February 25, 2014
  - E. March 10, 2014
  - F. March 11, 2014
  - G. March 12, 2014
  - H. March 19, 2014
  - I. March 20, 2014
  - J. April 28, 2014
  - K. April 30, 2014
4. Email to Investigator dated June 2, 2014

5. Student's writing samples, ungraded, graded and edited for a grade

The Department's complaint investigator determined that on-site interviews were required. On June 10, 2014, the Department's investigator interviewed District staff and the Parent. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

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; the timeline may be extended if the District and the Parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

The Department issued a timely Final Order on July 3, 2014. On August 5, 2014, the parents requested the Department make corrections to the order. This order includes corrections that we made pursuant to this request, which do not affect the conclusions that were determined in the previous order.

**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 in Section III and the Discussion in Section IV. This complaint covers the one year period from May 6, 2013 to the filing of this complaint on May 5, 2014.<sup>2</sup>

	<b>Allegations</b>	<b>Conclusions</b>
1	<p><b>Evaluation and Reevaluation procedure</b> Parent alleges that the district failed to timely perform an evaluation of the Student for a specific learning disability (SLD) after Parent had made a request for evaluation.</p> <p>OAR 581-015-2105, OAR 581-015-2110, OAR 581-015-2170 and CFR 300.304 and CFR 300.309.</p>	<p><b>Unsubstantiated.</b> The District completed a timely reevaluation for the Student's Communication Disorder eligibility and suspected areas of disability and then started the evaluation process for SLD appropriately.</p>
2	<p><b>Conduct of Evaluation</b> Parent alleges that the District failed to use a variety of assessment tools to gather information to decide if the Student was a Student with a disability and that the District failed to assess the Student in all areas of suspected disability.</p> <p>OAR 581-015-2110(3), OAR 581-015-2110(4)(d) and CFR 300.304(b)(1) and CFR 300.304(c)(4).</p>	<p><b>Unsubstantiated.</b> The District did evaluate in all areas of suspected disability after obtaining the signed consent from Parent. District had no basis to suspect Student had SLD as Student performed well in school and met grade level standards. This allegation is not substantiated.</p>

<sup>1</sup> OAR 581-015-2030(12) (2008)

<sup>2</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

3	<p><b>Child Find</b> Parent alleges the District failed to identify and evaluate the Student for a specific learning disability and further failed to evaluate the Student after the Parent's request for an evaluation based on documented weaknesses in writing, spelling and reading.</p> <p>OAR 5810-015-2080 and CFR 300.304-300.111.</p>	<p><b>Unsubstantiated.</b> The District did locate, identify and evaluate the Student for special education services.</p>
4	<p><b>Independent Educational Evaluation</b> Parent alleges the District failed to provide them with information on an Independent Educational Evaluation (IEE) at public expense after the Student was denied any special education services and Parent disputed the eligibility evaluation.</p> <p>OAR 581-015-2305(2) and 34 CFR 300.503(2).</p>	<p><b>Unsubstantiated.</b> The District remitted IEE information to the Parent when so requested by the Parent. Further, the Parent received the Procedural Safeguards which also included information on how to obtain an IEE from the District; therefore the District did not fail its duty to provide IEE information to the Parent.</p>
5	<p><b>Free Appropriate Public Education</b> Parents allege the District failed to provide special education services to the Student resulting in a denial of a Free Appropriate Public Education (FAPE).</p> <p>OAR 581-015-2040, OAR 581-015-2110 and CFR 300.101.</p>	<p><b>Unsubstantiated.</b> The Student received special education services for Communication Disorder through March 12, 2014 when it was agreed that the Student was no longer eligible for services, hence there is no denial of FAPE. Because the Student had neither been qualified nor disqualified during the complaint period for special education services based on SLD, the Student does not have a claim for FAPE.</p>

1	<p><b>Requested Corrective Action.</b> The Parent is requesting that the District:</p> <p>The District will hand over the IEP process and the evaluation process to an external team.</p>	
2	<p>If the Student is found eligible for special education services, an IEP should be established by an IEP team independent of the District and the District should be compelled to follow the IEP developed by the independent team.</p>	

3	The District and school staff will be trained on IEP evaluations and assessments, the IEP process and the timeline applicable thereto.	
4	All parents within the District who request a special education evaluation for their children will receive a flow chart and standardized testing bell curve chart to help all parents going through the IEP process.	

### III. FINDINGS OF FACT

1. The Student is 12 years old and resides in the Hood River County School District. The Student currently attends a middle school and is in the sixth grade.
2. The Student was found eligible for special education services based on Communication Disorder on April 21, 2008.<sup>3</sup> The Student's eligibility for special education services was continued at the Student's first three year evaluation dated April 20, 2011.
3. The Student was found eligible for special education services based Communication Disorder (50) for syntax, morphology, pragmatic or semantic disorder at the Student's initial evaluation on April 21, 2008. However, at the three year evaluation dated April 20, 2011, the Student's eligibility was continued based not only on the previously mentioned criteria but the team also determined the Student had special education needs related to a phonological or articulation disorder.
4. The Student's last IEP dated June 5, 2013 contained the following Service Summary:

Specially designed instruction	Anticipated Amount/Frequency	Anticipated Location	Start date	End Date
communication and study skills	30 minutes each per month	regular ed classroom	6/6/2013	6/5/2014
Supplementary Aids/Services	Anticipated Amount/Frequency	Anticipated Amount/Frequency	Start date	End Date
Allow Student to preview texts (sic) or reading assignments	Whenever new assignments or reading material is given	All School Settings	6/6/2013	6/5/2014
Student to participate in timed tests for any academic subject	When time testing occurs	All School Settings	6/6/2013	6/5/2014

<sup>3</sup> Note that while outside of the jurisdiction of OAR 581-015-2030, historical information in this section is noted for analysis only as related to the allegations under investigation.

with time allowed for completion (Exception is DIBELS)				
Student should not be required to read aloud in class	Whenever reading out loud occurs	All School Settings	6/6/2013	6/5/2014
No spelling tests	When spelling testing occurs in class	Regular classroom	6/6/2013	6/5/2014
Provide appropriate speech/language modeling	When Student has said a sound or sentence structure in error	Regular Classroom	6/6/2013	6/5/2014
Repeat (sic)/rephrase instructions, checking frequently for understanding	When new instructions are given	All School settings	6/6/2013	6/5/2014

5. The Student did not need any related services according to the June 5, 2013 IEP; however, it is noted on the IEP that a print option should be requested for the math portion of the OAKS test.
6. The Student's June 5, 2013 IEP, notes in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) statement that Student participates in Orton Gillingham tutorial services at the Blosser Center for Dyslexia Program in Portland, Oregon. The section further notes Student is making progress in spelling due to this program and is working on phonemic skills and performing grade level expectations. This statement further noted Student met OAKs standards for reading but did not meet math standards by one point.
7. The June 5, 2013 IEP also included information the Parent obtained from a private evaluation which was conducted by the Children's Program in Portland on July 18, 2012 in order to better understand Student's difficulties in spelling and writing. This included information from a private Educational Psychologist who conducted a number of assessments on the Student including: Wechsler Intelligence Scale for Children- Fourth Ed. (WISC-IV), a Woodcock-Johnson III Test of Cognitive Ability, Wide Range of Assessment of Memory and Learning - Second Edition, Woodcock-Johnson III Tests of Achievement, phonics inventory, DIBELS, Clinical Evaluation of Language Fundamentals (CELF-4) for the Student. This information yields that Student demonstrates difficulty with phonemic skills, and memory for language which affects the ability to spell, read, write, and remember specific details in the classroom without additional support/ practice.
8. The June 5, 2013 IEP also noted that Student would take all statewide assessments but with an option to print for listening to text (sic) for the mathematics assessments.
9. The Student's June 5, 2013 IEP contains two measurable annual goals, the first in Study Skills and the second in Speech and Language:
  - a) **Study Skills:** The Student will demonstrate functional use of at least three strategies to improve memory in the classroom, to include strategies for active listening in four out of five opportunities based on teacher/ student report and observation. With the measurable

short term objectives:

- i. Given learning situation/scenario, the Student will identify which study/memorizing technique would be appropriate 90% accuracy;
- ii. The Student will demonstrate successful use of a study/memorization technique:  
a) in a structure setting; b) classroom setting on 4/5 opportunities.

Techniques include but not limited to: mnemonics, rehearsal, visual organizers, read-cover-recite-check, summarizing.

- b) **Speech and Language:** The Student will demonstrate self-advocacy skills by:
- i. Identifying what supports [the Student] needs as a learner:
  - ii. asking questions and/or sharing . . . needs as a learner with a school staff member

10. The subsequent placement determination selected a general education classroom placement with support from the SLP in designated area as the best selection for meeting Student's goals. The IEP noted Student would receive specially designed instruction for study skills and communication and no related services. The IEP allows Student to receive supplementary aides and services of: preview texts of reading assignments, not required to read aloud in class, provide appropriate language/speech modeling, Student given time to complete timed tests, repeat/rephrase instructions/ check frequently for understanding, and consultation with speech pathologist to classroom staff for 15 minutes per quarter.
11. The student was included in state SECC Child Count reports for IDEA purposes during 2008, 2009, 2010, 2011, 2012, and 2013.
12. The report from the private evaluation that was completed by the Children's Program July 18, 2012 noted that the Student had "considerable variation in performance across the test areas," and had a weakness in working memory which is "common among children diagnosed with reading disorders or Dyslexia." The Student scored well above average in verbal memory, spatial problem solving, and nonverbal abstract reasoning. The Student showed a "significant weakness" in the area of phonological processing and was slower than average in the rapid naming portion of the Woodcock Johnson Cognitive Ability III Test. "A deficit in rapid automatic naming and phonological processing and some aspect of memory such as sound/symbol memory are common underpinnings of Dyslexia in children and adults." The Student is also functioning well below grade level and grade expectancy in the area of Letter-Word Identification.
13. In the area of math, the Student, per the Children's Program evaluation dated July 18, 2012, was at age and grade appropriate level for calculation skills but was extremely slow in the area of math computation.
14. The 2012 private evaluation noted that Student is "...well below age and grade expectancy levels in spelling skills." Further, the Woodcock Johnson portion of the private evaluation testing noted Student did not consistently write using complete sentences. The evaluation also noted that the student had difficulty with Letter-Word recognition and with blending sounds together to form words.
15. The licensed clinical psychologist at the Children's Program gave the Student two Axis I diagnoses: 315.0 Reading Disorder and 315.2 Disorder of Written Expression. The psychologist found that the Student had a "significant discrepancy between . . . cognitive ability and [the] level of achievement in reading decoding and spelling. [The Student] meets the diagnostic criteria for learning disabilities in these areas." Further, the psychologist states that the Student's learning disabilities may be characterized as the Dyslexic type" and that

"[S]tudent's primary academic weaknesses lie within the areas of reading decoding and spelling.

16. The 2013 grade reports notes one D in math,<sup>4</sup> but the Student otherwise had As, Bs, and Pass grades. Notably, the Student earned As in language arts during this time.
17. The Parent attended the Student's annual IEP meeting on June 5, 2013. The District Representative at that meeting was also an administrator at the middle school, the school that the Student would be attending starting in the fall of 2013. During the June 5, 2013 IEP meeting, the Parent discussed with the administrator the need for the Student to be released during the last period of the day so that the Student could travel to Portland in order to participate in Orton Gillingham tutoring, which was instruction specifically to address the Student's Dyslexia. The Parent also voiced concern about the Student's poor spelling skills and inquired about assistive technology at this time.
18. Prior to the Student starting 6th grade in September 2013, the Student's Parent emailed the Student's homeroom and social studies teachers advising the teachers of the Student's weakness in writing and spelling and also noted that the Student was self-conscious about reading out loud in class. The Parent also noted that the Student was participating in Orton-Gillingham tutoring to help with the Student's reading skills because the Student had been diagnosed with Dyslexia. The Student's social studies teacher confirmed that the Student's "plan" had been disseminated to staff but instructed the Parent to email the Student's literacy teacher as well to advise them of these concerns. The Parent then emailed the Student's literacy teacher noting that the Student had been diagnosed with Dyslexia and asking for strategies to use with Student. The Student's literacy teacher responded to the Parent and conveyed an understanding of the Student's described situation to the Parent.
19. On November 13, 2013, the Parent contacted the District raising concerns about the Student's written expression, spelling and reading. The Parent wanted the Student's IEP amended to address problems in math and spelling and to assist with proof reading and note taking concerns as well. District arranged a meeting with Parent. During the November 21, 2013 meeting, the team agreed that the reevaluation process for the Student would begin. The meeting notes indicate that Student "is having a great year." The notes further indicate "...[P]arent is concerned about [S]tudent losing IEP." The notes indicate a Children's Study Team (CST) will convene for Student to address parental concerns. The Student was due for reevaluation on April 20, 2014.
20. Pursuant to the Parent's concerns, the District decided to convene a CST meeting for the Student specifically for concerns related to spelling and writing. A PWN was sent to Parent for the CST process on November 21, 2013. On December 4, 2013, the District began the CST process for the Student. The team also noted Student was making progress in general education classes so no further evaluations were recommended by staff at this time.
21. The Student was placed in a core math class. The core support class is a general education, elective class that is offered to all students at the school who may need additional support in their core academic subject(s).
22. The Parent executed the consent for reevaluation on November 21, 2013. On this form, the Parent consented to the following reevaluation procedures: "file review, hearin (sic) screening, Comprehensive Assessment of Spoken Language (CASL) (use and

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<sup>4</sup> Note the D + in math, the D in Social Studies, and F in Keyboarding all appeared on Interim Grade Reports not on the 2013 Grade Report.

understanding of grammar and vocabulary and social language)." Additionally, the team decided to review information from Parents, OAKs scores, class grades, and classroom performance.

23. On January 16, 2014, the Parents sent correspondence to the District requesting additional testing because they stated the CASL was an oral language assessment and, based on the Student's accommodations contained in the June 5, 2013 IEP, the Student had a need for support in reading, writing and spelling. The Parents requested using the Clinical Evaluation of Language Fundamentals 4 (CELF).
24. The District responded by holding an IEP Team meeting on January 23, 2014. At that meeting, the Parent executed a Written Agreement waiving the attendance of the Student's literacy teacher, at the point that she needed to leave the meeting, after having presented her oral report. The Parent also signed a Prior Written Notice (PWN)/Consent for Evaluation on January 23, 2014. The purpose of this form is to give prior written notice about the evaluation or reevaluation process, and the request of informed written consent of the Parent for listed evaluations and procedures. This form states:

"This is a reevaluation and will be used to decide your child's continued eligibility and/or education needs. We plan to use the following evaluation procedure(s), assessments and/or tests: "KTEA II assesses academic in area of math, reading, writing phonological process, classroom performance review based on teacher & classroom based assessments - file review, observation and "Clinical Evaluation of Language Fundamentals - 4". The PWN notes that the reevaluation was done at the behest of the Parent.

26. Neither of the forms that were completed by the Parents on January 23, 2014 included an agreement to extend the evaluation time for the extra SLD reevaluation.
27. During the January 23, 2014 IEP team meeting, the Student's literacy teacher was present and commented that the Student was engaged in class but "struggled to follow or taking (sic) the notes. [The Student] can take notes from the screen. [The Student] has interactions where [Student] struggles to remember what [Student] needs to do.
28. The Student was initially evaluated using the Comprehensive Assessment of Spoken Language (CASL),<sup>5</sup> Kaufman Test of Educational Achievement (KTEA II)<sup>6</sup> and Clinical Evaluation of Language Fundamentals (CELF 4)<sup>7</sup> evaluations between the dates of December 17, 2013 and February 20, 2014. The SLP for the District compiled a 3 Year Speech Language Evaluation Summary. This report contains two report dates: February 20, 2014 and March 12, 2014. The CASL subtests were administered in the following areas:

- A. Antonyms
- B. Syntax construction
- C. Grammatical Morphemes
- D. Sentence Comprehension
- E. Grammatical Judgment
- F. Non-literal Language
- G. Pragmatic Language

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<sup>5</sup> Comprehensive Assessment of Spoken Language (CASL) – a research-based oral language assessment tool

<sup>6</sup> Kaufman Test of Educational Achievement – individually administered battery of key academic skills

<sup>7</sup> Clinical Evaluation of Language Fundamentals – comprehensive assessment of oral expressive and receptive language skills

The District's SLP conducted the CASL testing as well as a hearing test for the Student.

29. The student's results from the Kaufman Test of Educational Achievement (KTEA II) which was administered on February 19, 2014, note that the student is in the average range for comprehensive achievement. The student scored average in each academic area related to reading and math, except for letter and word recognition, which indicated a below average score. However, the student's Reading Composite score was still in the average range.
30. The CELF which was administered in February 2014 showed the Student tested above typical in Word Definitions, Understand Spoken Paragraphs and Sentence Assembly. However, the Student was mildly impaired in Familiar Sequences and Number Repetition; the Student's Number Repetition score had decreased from the last CELF test the Student took in June 2012. The CELF 4 English evaluation showed the Student to be typical or above typical in all areas except Working Memory which was mildly impaired. The CASL showed the Student to be in the typical range in all areas except Syntax Constructions which showed the Student as mildly impaired.
31. The Three Year Speech Language evaluation also contained teacher comments that stated the Student did misspell words although it is largely dependent upon the word. The Student's instructors do not see the Student as a student who needs specially designed instruction but believe the Student does benefit from being given additional time to complete assignments and by having a teacher check in with the Student. Finally, the Student's instructors noted the Student does ask to have information repeated more than other students.
32. On March 5, 2014, the IEP team held a meeting wherein the Parents were advised that the Student was no longer eligible for services under Communication Disorder (CD). The District cited the facts that the Student's grades were good, the Student had met standards of OAKS testing and that the Student "has went up (sic) in most categories on the CELF." At that point, the Parents refused to sign the consent to terminate CD services for the Student and requested additional time to review the testing data upon which the termination of services were based. A PWN was completed on March 5, 2014 stating that the Parent's requested additional time to review the test results and that the Parents did not sign the consent related to the termination of CD services.
33. On March 12, 2013 another IEP meeting was held regarding the Student's eligibility. At that point, the Parents did sign the consent to terminate the Student's services for CD but questioned the District as to why the original reevaluation begun on November 21, 2013 did not include any information regarding a Specific Learning Disability based on the Student's Dyslexia.
34. The Student stopped receiving special education services for CD on March 13, 2014.
35. On March 14, 2014, the Parent requested an SLD evaluation based on the Student's abilities and requested that the Student's writing samples be included as part of the evaluation process. The Parents were then presented a Consent for Evaluation and a Release to share information form for the Children's Program which they signed.
36. The Consent form that was executed by the Parents shows that the Procedural Safeguards Notice had been given to the Parents on March 14, 2014. Moreover, after the March 5, 2014 IEP meeting, the Parents continually received PWNs and were given the option of receiving Procedural Safeguard Notices at every meeting.
37. On March 17, 2014, the Student's Parents provided a developmental history for the Student

for the SLD evaluation. On April 2, 2014, the District performed a file review in regard to the SLD evaluation. The District reviewed the Student's attendance history, transcripts from 1st through 6th grade (including the most recent grades for the Student as of the third quarter of the 2013-2014 school year) and the Student's previous DIBELS score and OAKS testing scores to aid in the academic review.

38. On April 24, 2014, the District performed an in class observation of the Student during the Student's literacy class for the SLD evaluation. The Student was observed for approximately 30 minutes while the Student's class worked in an individual capacity on a writing assignment. The observation gave context to the Student's functioning in an academic setting and illustrated whether the Student could engage in a classroom environment. The observer noted that the Student worked diligently and asked for assistance both from the teacher and from peers in the work group. The observation did not include notations on the Student's work samples, writing or spelling ability.
39. During the SLD evaluation process, the Parents provided copies of tutoring progress reports from the Blosser Center, where the Student is tutored twice per week during the school year, to the District.
40. On May 2, 2014, the District provided an Intervention History and Student Response as part of the SLD evaluation process.<sup>8</sup>
41. The Student's grade reports reviewed for the 2014 school year<sup>9</sup> indicate that Student made mostly As and Bs. The Student only had D grades in math and consistently made As and Bs in language arts. The final grades for 2014 were all As and Bs.

#### IV. DISCUSSION

##### I. Evaluation and Reevaluation Procedure

Parent alleges that the district failed to timely perform an evaluation of the Student for a Specific Learning Disability after Parent had made a request for evaluation.

A public agency must conduct a reevaluation of a child with a disability if the child's parents request a reevaluation. OAR 581-015-2105(4)(B). A reevaluation must occur at least once every three years, unless parent and public agency agree it is unnecessary. 34 CFR 300.303(b) Pursuant to OAR 581-015-2110 (5)(b), a reevaluation must be conducted within 60 school days of the date the parents first request the reevaluation or the date the reevaluation is commenced. The time to complete an evaluation may be extended if the district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.<sup>10</sup> A reevaluation must be individualized, and must take into account the Student's then-current needs.<sup>11</sup> During reevaluation, a district must examine whether the child continues to have the disability and the educational needs of the child. 34 CFR 300.305(q)(2)(i)(B). A district must also examine whether the child continues to need special education and related services.<sup>12</sup>

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<sup>8</sup> Note that the SLD evaluation process was completed after the filing of this complaint.

<sup>9</sup> Note the last grade report submitted during this investigation's timeframe for the 2014 school year included grades from Quarter 1 and Quarter 2.

<sup>10</sup> OAR 581-015-2110(5)(c)(C)

<sup>11</sup> Letter to Shaver, 17 IDELR 356 (OSERS 1990).

<sup>12</sup> 34 CFR 300.305(a)(2)(iii)(B).

In this case, the Parent contacted the District via email on November 13, 2013 and requested a meeting regarding the Student. At the November 21, 2013 IEP meeting both Parent and District discussed the need to reevaluate the Student for IDEA eligibility. Parent expressed concerns related to Student's written language and District noted that Student was making grade level progress. The Prior Written Notice dated November 21, 2013 indicates the team discussed the reevaluation for the Student and the Child Study Team (CST) and noted the District would review: the Student's progress, grades, OAKs tests, file review and input. The IEP meeting notes indicate that the Student was having a great year, but Parent was concerned about Student losing the IEP and is concerned about written expression. The notes further indicate a CST would start with the sixth grade team and that the team would conduct a pre-evaluation. During this meeting, the Parent also signed a consent for the reevaluation process to begin which was dated November 21, 2013. The Prior Notice about Evaluation/Consent for Evaluation dated November 21, 2013 notes Student will be reevaluated to determine how Student's skills compare to same age peers. The notice indicated the team looked at OAKs scores, attendance, first quarter grades (which were all As except for math which was a D), and further stated the District would use a file review, hearin (sic) screening, comprehensive assessment of spoken language (use and understanding of grammar and vocabulary and social language). This PWN does not articulate the need for or use of any written or spelling exams nor do the meeting minutes indicate that Parent expressed an interest in this form of evaluation at that time. The Parent signed the consent form and was aware of the evaluation process that was in place. The Student was also performing well in language arts at this time and making A grades related to reading and writing. Therefore, despite the private Dyslexia evaluation form 2012, the Student did not demonstrate any current needs related to testing for a Specific Learning Disability. The team looked at diverse measures related to all areas of Student's needs and suspected disability and the evaluation means used were sufficiently comprehensive to identify all of the special education and related services needs, particularly in light of the Student's current grade level progress. The CST team also met to discuss the Student's needs, and helped the Student obtain assistance in math (the only area of current need) via an elective general education math tutoring course.

Additionally, as part of the three year reevaluation which was conducted for the Student, the District did initiate evaluations related to academic performance in reading and math, specifically the Kaufman Test of Academic Achievement (KTEA II). The student scored in the average range for reading and math on this assessment, which is further evidence that the District was not aware of any need to evaluate the student for a specific learning disability at this time.

The Eligibility team meeting for the Student was held March 5, 2014 to review the reevaluation results, but the Parent wanted more time to review paperwork before signing so another meeting was held on March 12, 2014. At this meeting, the team discussed the results for all of the testing that was conducted during the reevaluation process, including academic testing that was related to the Student's suspected disability. The reevaluation process was completed at this time, which was within 60 school days of the signed consent form.

Because the District performed the reevaluation of the Student within 60 school days of the Parent signing the consent, and because the District assessed the child in all areas of suspected disability, this portion of the allegation is not substantiated.

## **2. Conduct of Evaluation**

Parent alleges that the District failed to use a variety of assessment tools to gather information to decide if the Student was a Student with a disability and that the District failed to assess the Student in all areas of suspected disability.

OAR 581-015-2110(3) states that in conducting an evaluation a public agency must use a variety

of assessments, tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether the child is a child with a disability and the content of the child's IEP including information related to enabling the child to be involved in and progress in the general education curriculum. District may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.<sup>13</sup> A district that conducts a wide ranging evaluation and utilizes a variety of tests and assessment tools including school records, report cards, and teacher reports complies with IDEA's evaluation requirements.<sup>14</sup>

Here, the District clearly reviewed a variety of assessments related to the child's needs. They also incorporated the private evaluation obtained by the Parent in July 2012 into the 2013 IEP and stated the results of the private evaluations in the Present Levels statement for the Student.

The District also conducted a three year reevaluation of the Student which was initiated on November 21, 2013 and completed on March 12, 2014 (as detailed above). This evaluation consisted of a file review, a clinical evaluation of language fundamentals (CELF-4), a comprehensive assessment of spoken language (CASL), a language sample, a hearing screening, information from the Parents, OAKS scores, grades, classroom performance, and the KTEA II. After the Parent requested an initial evaluation for Specific Learning Disability in addition to the reevaluation for Communication Disorder, the District initiated another evaluation on March 14, 2014. This evaluation consisted of reviewing information from Parents, developmental history, classroom observations, Parent's concerns, intervention history and student response, academic assessments, KTEA II, file review, specialized instruction summary, mobility history, student attendance, transcript review, DIBELS, class data, SRI, and any applicable behavioral referrals. Clearly, a sole instrument was not used in this process, and the instruments used are technically sound.

This allegation is not substantiated.

### 3. Child Find

Parent alleges the District failed to identify and evaluate the Student for Specific Learning Disability and further failed to evaluate the Student after the Parent's request for an evaluation based on documented weaknesses in written expression, spelling and reading. OAR 581-015-2080 and CFR 300.304-300.111.

A district has an obligation to identify, locate and evaluate resident children for special education services if the district knows or should have reason to suspect the resident child has a disability, regardless of the severity of the disability, if the child is in need of special education or special education services. Child Find duties must also include children who are suspected of having a disability and in need of special education, even though the child is advancing from grade to grade. It is irrelevant whether parents make a request for an evaluation in relation to the district's Child Find obligation. See OAR 581-015-2080 and 34 CFR 300.111. The Child Find duty is triggered when the state (or LEA) has a reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. A state or LEA "shall be deemed to have knowledge that the child is a child with a disability if (among other things)... the behavior or performance of the child demonstrates the need for such services." Nothing in IDEA

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<sup>13</sup> OAR 581-015-2110(3)

<sup>14</sup> *Council Rock Sch. Distr. V. Bolick*, 110 LRP 75227 (E.D. Pa. 12/22/10)

requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under IDEA.<sup>15</sup> Therefore, Child Find requirements are general in nature and these specific regulations do not require multiple disabilities to be noted once a child has been found eligible for IDEA and is receiving appropriate special education and related services.

Here, the Student has been evaluated, identified, and located for special education services within the district with Communication Disorder eligibility for some time. The Student has been included in District child count in December 2008, 2009, 2010, 2011, 2012, and 2013. The district took appropriate steps to end the Student's eligibility when needed based on the Student's progress and ability to meet grade level standards. Student was found ineligible for special education services under the eligibility of Communication Disorder on March 12, 2014.

The Department does not substantiate this allegation.

#### **4. Independent Educational Evaluation**

Parent alleges the District failed to provide them with information on an Independent Educational Evaluation (IEE) at public expense after the Student was denied any special education services and Parent disputed the eligibility evaluation. OAR 581-015-2305(2) and 34 CFR 300.503(2).

Pursuant to OAR 581-015-305(2), if a parent requests an IEE at public expense, the school district must provide information to parents about where an IEE may be obtained, and the school district criteria applicable for IEE.

The District has provided IEE information to the Parents when requested and throughout the reevaluation process. Beginning with the SLD evaluation consent, executed by the Parents on March 14, 2014, the form specifically shows that the Parents were given a Procedural Safeguards Notice which is published by the Oregon Department of Education and which contains information on obtaining an IEE. (See specifically page 10 which states, "You have the right to get an independent education evaluation (IEE) if you disagree with the evaluation of your child by the school district"). The notice further goes on to explain the workings of the IEE and how to obtain an IEE. The Parent has also stated that throughout the process from approximately March 5, 2014 forward, the District has always either offered or given the Parent a copy of the Procedural Safeguards Notice which contains IEE information.

Further, the Parents have also received documentation of a listing of providers who will be able to conduct an IEE for the Student. The District has provided this information to the Parent upon request by the Parent and has not delayed producing this information to the Parent.<sup>16</sup>

Because the District has timely remitted IEE information to the Parent when so requested by the Parent and because the Parent received the Procedural Safeguards Notice which also includes information on how to obtain an IEE, the District has not failed its duty to provide IEE information to the Parent, therefore this allegation is not substantiated.

#### **5. Free Appropriate Public Education (FAPE)**

Parents allege the District failed to provide special education services to the Student resulting in a

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<sup>15</sup> 34 CFR 300.111(d)

<sup>16</sup> Note this is outside the jurisdiction of the complaint under investigation as the materials were provided March 7, 2014 after the evaluation meeting which was held two days after the complaint was filed but is noteworthy for this analysis.

denial of FAPE

The legal requirement regarding free appropriate public education (FAPE) can be found in OAR 581-015-2040 and 34 CFR 300.101. School districts must provide special education and related services to all resident school-aged children with disabilities. In determining whether a District has denied Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.<sup>17</sup> While harmless procedural errors do not constitute a denial of FAPE,<sup>18</sup> "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."<sup>19</sup> The IDEA requires school districts to provide a "basic floor of opportunity" to disabled students, consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit" to the child with the disability.<sup>20</sup> A student's IEP need not address every medical diagnosis that a student receives or every condition that he has. Instead the IEP must address the unique special education and related service needs that arise from a student's qualifying disabilities.<sup>21</sup>

In this case, the Student no longer qualified for services for Communication Disorder as of March 12, 2014. The District had reevaluated the Student and found that the Student was no longer eligible. The Parents disagreed with this decision; however, the Student's grades and teacher reports indicate that Student was making progress on IEP goals and was meeting grade level standards. There is no evidence that Student did not receive an educational benefit at any time during this investigation, to the contrary, Student's grades reflect that Student was doing well in class and enjoying school.

Because the Student received special education services for the IEP in effect through the termination of eligibility on March 12, 2014 and there is no indication that the Student did not receive educational benefit, this allegation is unsubstantiated.

## V. CORRECTIVE ACTION<sup>22</sup>

*In the Matter of Hood River County School District  
Case No. 14-054-017*

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

Dated this 24th Day of September 2014

  
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Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Learning/Student Services

Mailing date: September 24, 2014

<sup>17</sup> Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (U.S. 1982)

<sup>18</sup> L.M v Capistrano Unified Sch. Dist., 556 F3d 900, 910 (9<sup>th</sup> Cir. 2008)

<sup>19</sup> Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, 317 F.3d 1072, 1079 (9th Cir. Ariz. 2003)

<sup>20</sup> Rowley, 458 U.S. at 200

<sup>21</sup> North St. Paul- Maplewood Indep. Sch. Dist. #622, 110 LRP 40253 (SEA MN 06/07/10).

<sup>22</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).