

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Eugene School District 4J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 17-054-010

**I. BACKGROUND**

On April 17, 2017, the Oregon Department of Education (Department) received a Letter of Complaint from the parent (Parent) of a student (Student) residing in the Eugene School District (District). The Parent requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on April 18, 2017.

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 sixty days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On April 25, 2017, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On May 9, 2017, the District, through Legal Counsel, timely submitted its *Response* to the *Request for Response*, both by email and by providing a hard copy of the *Response*, with accompanying documentation. On May 10, 2017, the Parent timely provided a *Reply* to the District's *Response*, by email. This order is timely.

The District provided the following documentation in its *Response*:

1. Prior Written Notice 1/20/17
2. Letter 3/20/17
3. Notice of Referral 4/7/17
4. Notice of Team Meeting 4/12/17
5. Prior Written Notice 4/19/17

The Parent provided the following documents in reply to the District's *Response* in this case:

1. Email communication 1/3/17, 3/23/17, 3/24/17, 4/10/17, 4/12/17, 4/13/17, 5/11/17

On May 21, 2017, the Department's Complaint Investigator requested by email, and sent to the District's Legal Counsel, further documentation of the District's statements within its written *Response*. In reply, the District, through Legal Counsel, provided the following by email:

1. Report Cards 2012-2013, 2014-2015, 2015-2016, 2016-2017
2. Notice of Referral 1/9/17
3. Notice of Team Meeting 1/11/17
4. Meeting Minutes 1/20/17
5. Progress Monitoring Data 2/15/17
6. Email Communication 3/15/17 – 4/7/17
7. Meeting Minutes 4/19/17
8. Consent for Individual Evaluation 4/19/17
9. Email Communication to contract Complaint Investigator 5/26/17

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

The Department's Complaint Investigator forwarded the foregoing documents and email communication to the Parent on May 31, 2017. The Complaint Investigator determined that on-site interviews of District staff were not necessary in this case. However, the Complaint Investigator interviewed the Parent by telephone on May 20, 2017. The Complaint Investigator reviewed and considered all of the documents received 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 Parent'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 April 18, 2016 to the filing of this complaint on April 17, 2017.

	Allegations	Conclusions
(1)	<p><b><u>Responsibility for Evaluation and Eligibility Determination; Evaluation and Reevaluation Requirements</u></b></p> <p>The Complaint alleges that the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability. Specifically, the Parent alleges that the Parent requested "IEP testing" for the Student on January 11, 2017, and again in April of 2017. The Complaint further alleges that the District met with the Parent in January of 2017 and refused evaluation and informed the Parent the District "wanted to start Response to Intervention [RTI] prior to testing". Additionally, the Complaint alleges that in April of 2017 the District again requested a meeting with the Parent in response to the Parent's request for "IEP testing", and has not initiated "IEP testing" for the Student.</p> <p>Relevant Law: OAR 581-015-2100, OAR 581-015-2105; 34 CFR 300.301, 34 CFR 300.303.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The information before the Evaluation Team on January 20, 2017 was insufficient for the Department to conclude that the District must have necessarily suspected a disability impacting the educational performance of the Student. The Student's previous performance in Math did not, alone, warrant a conclusion that the Student needed to be evaluated for Special Education.</p> <p>The District provided a Prior Written Notice (PWN) on January 20, 2017, which indicated the decision of the Team, including the Parent, that the District would not conduct a Special Education evaluation, but would proceed with Response To Intervention (RTI) strategies and progress monitoring to gather additional data to determine whether the Student should be evaluated for Special Education.</p> <p>District staff determined in March of 2017 that the Student's RTI progress needed to be reviewed and that a meeting should occur after spring break 2017, consistent with the PWN issued on January 20, 2017. The PWN indicated the Team would review data concerning the Student's progress in March of 2017. The District held an additional team meeting on April 19, 2017, which the Parent</p>

		refused to attend. At that time, the District determined that a Special Education evaluation was warranted. The Parent has signed consent for the evaluations, and the evaluation of the Student is now proceeding.
(2)	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The Parent alleges that the foregoing has resulted in a failure of the District to provide FAPE to the Student</p> <p>Relevant Law: OAR 581-015-2040; 34 CFR 300.101.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Department does not substantiate the Parent's allegations with respect to evaluation and the provision of PWN to the Parent; therefore there is no denial of FAPE based upon these allegations.</p>
(3)	<p><b><u>Prior Written Notice (PWN)</u></b></p> <p>The Parent alleges that the District failed to issue a Prior Written Notice (PWN) following the District's refusal to evaluate the Student.</p> <p>Relevant Law: OAR 581-015-2310; 34 CFR 300.503.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District issued a PWN on January 20, 2017 following the refusal to evaluate the Student.</p>
	<p><b><u>Proposed Corrective Action:</u></b></p> <p>The Parent requests the following Corrective Action:  "Special education evaluation, IEE (Independent Educational Evaluation)".</p>	<p>The Department does not order any Corrective Action in this case.</p>

### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently eight years old and is in the 3rd grade in the District. The Student transferred into the District in January of 2017.
2. On January 3, 2017, an Occupational Therapist (OT) from the Student's previous school district sent an email to the Parent advising that the OT had worked with the Student on December 13, 2016 regarding the Student's pencil grip, and "tried one which supported the optimum 'tripod' position of the thumb, index and middle finger. The OT stated he/she was not able to follow-up with the Student due to weather cancellation of school, and now the Student attends school in a different district. The OT offered to send two grips to the Parent for the Student to use. The Parent replied that she "will have 4j re evaluate [the Student] since you were unable to finish."

3. In January of 2017, the Parent requested a Special Education evaluation. On January 11, 2017, the District sent an email to the Parent acknowledging the Parent's request and advising the Parent that the District had put an envelope in the Student's backpack that day with some paperwork, including a meeting notice, a PWN and the Parent Rights booklet. The District provided to the Department's Complaint Investigator a copy of the Notice of Team Meeting, dated January 11, 2017, and a "Notice of Referral", dated January 9, 2017, stating that the District would hold an evaluation planning meeting on January 20, 2017.
4. The District issued a PWN dated January 20, 2017. The action taken by the District is described as "The Evaluation Team has determined that an evaluation of your child will not be conducted at this time." The explanation of the District's action is: "Information reviewed by the district and [the Student's] mother does not suggest that an educational disability is suspected at this time." The PWN states that the bases for the action included "Referral information, input from [the Student's] teacher and mother, available records, and recent classroom based assessment data." The PWN also states that "Conducting an evaluation was rejected as unnecessary due to the fact that existing data are sufficient to rule out a suspected educational disability at this time"; and that "The team has determined that [the Student] will participate in a math intervention group for 6-8 weeks with [the Student's] progress monitored regularly. [The Student's] mother also signed consent for an Occupational Therapist to conduct an observation and recommend possible accommodations and the interventions to support [the Student] with [the Student's] handwriting. The team has agreed to meet in early March of this year to review [the Student's] progress and determine possible next steps." At this time, the Student had attended school in the District for approximately five days.
5. The District provided to the Complaint Investigator some of the Student's "available records" referred to in the January 20, 2017 PWN, including report cards from previous school districts, from the 2012-2013, 2014-2015, 2015-2016 and 2016-2017 school years. The District reported that previous educational data considered at the January 20, 2017 IEP Meeting did not indicate any interventions had been implemented outside of reading intervention during the Student's kindergarten year. The District further stated that the Student began school in the District on January 20, 2017 and that the Student's teacher reported that the Student "was performing near the middle of [the] class with regard to math and [the teacher] did not have concerns at that time." The District did not have any additional progress data because the Student had only been attending school in the District for a few days at the time of the January 20, 2017 Evaluation Planning Meeting.
6. Meeting Minutes of the January 20, 2017 Evaluation Planning Meeting indicate that the District would begin a "Tier 3 Math Intervention" and review the Student's progress after 6-8 weeks; and that the Evaluation Team, including the Parent, agreed to meet again in March of 2017 to review the intervention results. The Meeting Minutes also identified the Parent concerns as fine motor deficits and math performance. The District and the Parent agreed the District would provide math intervention and monitor the Student's progress regularly for 6-8 weeks; and the Parent signed a consent for an Occupational Therapist to conduct an observation and recommend possible accommodations and interventions to support [the Student] with [the Student's] handwriting.
7. The Parent stated in a *Reply* that the Parent "only agreed to RTI [Response to Intervention] because the district was not willing to test and I was not aware they are not to use that as a reason not to test under idea law." The Parent confirmed this during a telephone interview with the Complaint Investigator. The Parent also stated during the telephone interview with the Complaint Investigator that although the District said it did not have much data concerning the Student, the Parent believes the District had sufficient data at that time, on January 20, 2017, to conclude that an evaluation for special education eligibility was necessary based on the records from the Student's previous districts.

8. The District provided math intervention beginning January 25, 2017 to the Student; and additional "Tier 3 intervention" beginning February 15, 2017. On February 23, 2017, the District compiled progress monitoring data concerning the Tier 3 math intervention. On March 17, 2017, District staff communicated internally regarding the need to schedule a meeting after spring break, to review the Student's progress following the Parent's earlier request for a special education evaluation. On March 24, 2017, the Parent sent an email to the District noting that the Student "is really struggling with the math homework sent home. This has been a continuous concern [throughout] the years on top of OT plus the data I have showing [the Student] is significantly behind. At this time I am requesting [the Student] be fully tested for a IEP."

The District responded that it would convene a pre-referral screening meeting for the team to consider the Parent's request. The Parent replied by email that "We have (sic) been doing adjustments and to my understanding a meeting is not necessary not just up to [the School Psychologist]. [The Student's] school has been adjusted for a few years now with little to no progress on top of struggles with [the Student's] OT which is also documented. I don't understand why the staff is fighting a IEP so much for [the Student]." The District issued a Notice of Referral dated April 7, 2017 which states that "[the Student's] mother submitted a written request for special education evaluation in an email dated 03/23/2017", and that "The team will convene a meeting to discuss [the Parent's] request for evaluation."

9. On April 10, 2017, the Parent sent an email to the District stating that per a conversation with District staff and their agreement that a meeting is not required under the IDEA, the Parent does not agree to a meeting. The District replied by email stating "you are correct that a meeting is not required, but it is best practice to hold one. Our school staff will get together for a meeting to review the data and make a decision about whether to evaluate – if the team decides to evaluate, then we will proceed with eval planning. If the team decides to evaluate, then [the School Psychologist] will contact you to go over the proposed assessments and to obtain parental consent." The Parent replied by email stating "I declined the 2nd meeting for [the Student] because we had already met in January and as I mentioned I was not aware RTI was not a reason to deny testing. Also no prior written notice was given."
10. The District issued a Notice of Team Meeting dated April 12, 2017 scheduling a meeting on April 19, 2017. The District issued a PWN dated April 19, 2017, describing the action taken: "The Evaluation Team proposes to conduct an evaluation to determine whether your child qualifies or continues to qualify for Special Education." The explanation states: "Information reviewed by district suggests that [the Student] may meet eligibility criteria under suspected categories of Specific Learning Disability and/or Other Health Impairment and may require Special Education services as a result." The PWN states that the bases for the action were "Referral information, input from [the Student's] teacher and [the Student's] mother and available records." The PWN also states that the Student's "academic and behavioral progress within the general ed. curriculum warrants consideration for special education services."
11. During the telephone interview of the Parent by the Complaint Investigator, the Parent stated that he/she had signed consent for an OT evaluation, as well as consent for comprehensive evaluation of the Student to determine the Student's eligibility for Special Education services.

## IV. DISCUSSION

### 1. Responsibility for Evaluation and Eligibility determination; Evaluation and Reevaluation Requirements

The Complaint alleges that the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability. Specifically, the Parent alleges that the Parent requested "IEP testing" for the Student on January 11, 2017, and again in April of 2017. The Complaint further alleges that the District met with the Parent in January of 2017 and refused evaluation and informed the Parent the District "wanted to start RTI [Response to Interventions] prior to testing".

OAR 581-015-2080 provides that school districts must identify, locate and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of Special Education or Special Education services. In 2004, Congress amended the IDEA to permit use of a Response to Intervention (RTI) model in determining eligibility for Specific Learning Disabilities (SLD).<sup>2</sup> These regulations prohibit states from requiring districts to use a severe discrepancy model when evaluating students for SLD and compel states to allow districts to use the RTI model.<sup>3</sup> Additionally, the US Department of Education has said that local education agencies have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of a RTI strategy.<sup>4</sup> The Oregon Department of Education has also upheld this principle and prohibited districts from using RTI as a means to delay IDEA's Child Find, initial evaluation or the subsequent eligibility process requirements.<sup>5</sup>

Additionally, OAR 581-015-2100 provides that school districts are responsible for evaluating children and determining their eligibility for special education services. OAR 581-015-2105(3)(b) notes that a public agency must designate a team to determine whether an initial evaluation will be conducted. The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.<sup>6</sup> An initial evaluation must be conducted to determine if a child is eligible for Special Education services when a school district suspects or has reason to suspect that the child has a disability that has an adverse impact on the child's educational performance and the child may need Special Education services as a result of the disability. OAR 581-015-2105(3)(a)(A) and (B).

The federal regulations also allow a parent to request an initial evaluation at any time, to determine if a child is a child with a disability.<sup>7</sup> If the District does not suspect the child has a disability, and denies the request for an initial evaluation, the District must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision.<sup>8</sup> Also, as noted above, the US Department of Education has stated that it is critical that the identification and evaluation of children with disabilities, regardless of the severity of the disability, must occur in a timely manner, and that no procedures or practices may occur that result in delaying or denying this identification.<sup>9</sup>

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<sup>2</sup> See *Michael P. v. Dep't of Educ.*, 656 F.3d 1057, 1061 (9<sup>th</sup> Cir. 2011).

<sup>3</sup> 34 CFR 300.307(a)(1)

<sup>4</sup> OSEP Letter 11-07, January 2011

<sup>5</sup> ODE Final Order 14-054-019

<sup>6</sup> OAR 581-015-2105(3)(b)(A)

<sup>7</sup> 34 CFR 300.301(b)

<sup>8</sup> 34 CFR 300.503(a) and (b)

<sup>9</sup> US Department of Education, Office of Special Education and Rehabilitative Services, OSEP Letter 11-07

The District did not have information that led the District to reasonably suspect that the Student was a student with a disability that triggered the obligation to initiate a Special Education evaluation at the time of the January 20, 2017 Evaluation Planning Meeting. The Evaluation Team, including the Parent, addressed the Parent's concern of fine motor deficits when the Parent consented to an OT evaluation of the Student. Additionally, the Evaluation Team agreed to proceed with a math intervention and regularly monitor the Student's progress during a 6-8 week period to see if the Student's progress warranted a Special Education evaluation. These interventions were conducted to gather more information about the Student rather than to delay a Special Education evaluation. The Student's performance in math in previous school districts did not alone necessitate a conclusion that the Student should be evaluated for Special Education.

In April of 2017 the District requested a meeting with the Parent in response to the Parent's request for "IEP testing". District staff internally determined in March of 2017 that the Student's RTI progress needed to be reviewed and that a meeting to do so should occur after spring break 2017, consistent with the PWN issued on January 20, 2017, which indicated the Evaluation Team would again review data concerning the Student's progress in March of 2017. The District held an additional team meeting on April 19, 2017, despite the Parent's refusal to attend, and the District has determined that a Special Education evaluation is now warranted. The Parent has signed consent for the evaluations and the evaluation of the Student is now proceeding.

The Department does not substantiate this allegation.

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

The Complaint also alleges that the foregoing has resulted in a failure of the District to provide FAPE to the Student.

School districts must provide a FAPE to school-age children with disabilities.<sup>10</sup> To be eligible for services under the IDEA a student must both be evaluated and eligible for services along with demonstrating a need to receive Special Education or Special Education services as a result of one of IDEA's enumerated disabilities. See OAR 581-015-2040. The IDEA's FAPE requirements apply to all school-age children with disabilities for whom a district is responsible, including children with disabilities who attend a Charter School located within the District.<sup>11</sup>

In this case, the District did not unreasonably fail to initiate a Special Education evaluation of the Student following the Parent's request in January of 2017; and has timely initiated evaluation of the Student based upon data gathered during the RTI process as well as an additional request for evaluation of the Student by the Parent, made in March of 2017.

The Department does not substantiate this allegation.

## **3. Prior Written Notice (PWN)**

The Complaint alleges that the District failed to issue a Prior Written Notice (PWN) following the District's refusal to evaluate the Student.

OAR 581-015-2310 provides that a PWN must be given to a parent of a child within a reasonable period of time before a school district proposes to initiate or change or refuses to initiate or change the identification, evaluation, of educational placement of a child or the provision of a free

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<sup>10</sup> OAR 581-015-2040.

<sup>11</sup> OAR 581-015-2040(1)

appropriate public education of a child. Additionally, OAR 581-015-2310(1) provides that school districts must give parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year, except that a copy must be given to the parents upon initial referral or parent request for evaluation.

The District timely provided a PWN on January 20, 2017, which indicated the decision of the team, including the Parent, that the District would not conduct a Special Education evaluation but would proceed with RTI and progress monitoring to gather additional data to determine whether the Student should be evaluated for Special Education. The January 20, 2017 PWN properly indicated this decision.

The Department does not substantiate this allegation.

**CORRECTIVE ACTION<sup>12</sup>**  
*In the Matter of Eugene School District*  
Case No. 17-054-010

The Department orders no Corrective Action in this matter.

Dated this 6th Day of June, 2017



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

Mailing Date: June 6, 2017

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<sup>12</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)).