

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Redmond School District 2J	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 18-054-026

**I. BACKGROUND**

On April 10, 2018, the Oregon Department of Education (Department) received a Letter of Complaint (Complaint) from the parents (Parents) of a student (Student) residing and attending school in the Redmond School District (District). The Parents requested a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided a copy of the Complaint to the District by email on April 11, 2018.

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 23, 2018, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On May 7, 2018, the District submitted its *Response* to the *Request for Response*, with accompanying documentation. On May 18, 2018, the Parents acknowledged receipt of the District's *Response*, via email, but did not provide any additional materials to the Department.

On May 31, 2018, the issue date for this Order was extended to June 18, 2018 due to a family medical emergency experienced by Department staff responsible for the Order's issuance. The Department notified the Parent and the District of the extension.

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

1. Section 504 Accommodation Plan 11/15/16
2. Authorization For Use and Disclosure of Protected Health Information 4/17/17
3. Teacher Narrative with Vanderbilt Assessment Scale 4/24/17
4. Teacher Narrative with Vanderbilt Assessment Scale 4/21/17
5. Teacher Narrative with Vanderbilt Assessment Scale 4/19/17
6. Authorization For Use and Disclosure of Protected Health Information 11/6/17
7. Medical case/care notes, ending 8/1/17
8. 504 Meeting documents 4/14/17
9. "IEP Meeting" documents 5/18/17
10. Student Grade Book 5/18/17
11. Student Services Paperwork Procedural Checklist 5/15/17 – 5/18/17
12. Referral for Special Education 5/18/17
13. Prior Notice about Evaluation/Consent for Evaluation 5/18/17
14. IEP Meeting Attendance and Agenda 10/31/17
15. Notice of Team Meeting 10/23/17
16. Confidential Meeting Notes 10/31/17
17. Written Agreement between Parents and District 10/31/17

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

18. Eligibility Statement 10/31/17
19. Psycho-Educational Evaluation 10/31/17
20. Withdrawal from Special Services 10/31/17
21. Letter from District to Parents 4/5/18
22. Student Progress Report 11/30/17
23. Transcript 4/26/18
24. GED Test History 1/31/18, 3/21/18, 12/7/17, 11/28/17
25. Transcript 4/20/18
26. High School Credit/WorkKeys Completion Form 2/21/18
27. Transcript 1/12/18
28. Letter from District to Parents 1/23/18
29. Considerations for Modified Diploma 1/23/18
30. Period Student Attendance Profile 9/12/16 – 5/31/17
31. Period Student Attendance Profile 9/6/17 – 3/21/18
32. Letter re Student Withdrawal 1/10/18
33. Secondary Withdrawal Slip 1/10/18
34. Letter re Student Withdrawal 5/31/17
35. Period Student Attendance Profile 9/13/16 – 3/8/17
36. Student Discipline Profile 11/29/16, 3/1/17, 5/9/17, 5/15/17, 11/15/17
37. Email Communication, ending 1/23/18
38. List of Knowledgeable Persons

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

1. Email to Department 5/18/18

On June 14, 2018, the Investigator interviewed the Parents by telephone. The Investigator reviewed and considered all of the previously described documents and information in establishing the findings of fact and conclusions of law contained in this Order.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>2</sup> 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 11, 2017 to the filing of this complaint on April 10, 2018.

	<b>Allegations</b>	<b>Conclusions</b>
<b>(1)</b>	<p><b>Child Find, Free Appropriate Public Education (FAPE)</b></p> <p>The Parents allege that the District violated the IDEA when it failed to evaluate the Student, a child with a suspected disability. The Parents allege the District wrongfully failed to evaluate the Student despite the following: (1) specific requests by the Parents; (2)</p>	<p><b>Not Substantiated</b></p> <p>The District fulfilled its child find responsibilities by receiving the Parents' request for a special education evaluation, convening two meetings to engage in evaluation planning, and comprehensively evaluating the Student for potential special</p>

<sup>2</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

<p>Information provided by the Parent and District staff about the Student's medical diagnoses; (3) The Student's behavior; and (4) Mental health issues exhibited by the Student.</p> <p>The Complaint alleges that the District failed to properly consider information provided to the District concerning the Student during meetings held on and after April 14, 2017.</p> <p>The Complaint alleges that the foregoing resulted in a denial to the Student of Special Education services the Student needed to access and benefit from the Student's education; and resulted in a denial of FAPE to the Student.</p> <p>(34 CFR §§ 300.111, 300.101, 303.302, 300.301; OAR 581-015-2040, OAR 581-015-2080)</p>	<p>education eligibility. The Department does not substantiate this allegation.</p> <p>Between April and October 2017, the Parents meaningfully participated in three meetings revolving around the Student's potential eligibility for special education services. The Parents were also involved in providing rating scale input as part of the Student's psychoeducational evaluation. The Department does not substantiate this allegation.</p> <p>Finally, the District did not deny the Student a FAPE. The Student has a history of depression and anxiety, and has had irregular attendance during the 2016-2017 and 2017-2018 school years. The District developed a 504 Plan to accommodate the Student's anxiety in the school setting. After conducting a psychoeducational evaluation, a team, inclusive of the Parents, agreed on October 31, 2017 that the Student was not found eligible to receive special education services. The District did not deny the Student a FAPE. The Department does not substantiate this allegation.</p>
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**Proposed Corrective Action:**

The Complaint offers the following Proposed Solutions: "We believe our [Student's] belief [the Student's] only option for getting out of school was to achieve a GED, even though we specifically told the school we did not want that. However, due to many factors we were left with no choice. [The Student] passed [the Student's] GED in mid-March. We believe [the Student's] intellect allowed for upper level schooling & even scholarships that are not off the table. The District's negligence has taken both education & job opportunities away from our [Student] & financial compensation is due to [the Student]."

**III. FINDINGS OF FACT**

1. The Student in this case is presently seventeen years old. The Parents reside within the geographical boundaries of the District.
2. The Student has not been found eligible for special education services and as a consequence does not have an Individualized Education Program (IEP).

3. The Student has participated in Talented and Gifted Education programs while a student in the District. Through elementary and middle school, the Student consistently earned “Exemplary” scores, As and Bs, and read above grade level.
4. The Student has a history of depression and anxiety.
5. On November 16, 2016, the District developed a Section 504 Accommodation Plan for the Student. The District used a November 7, 2016 medical statement as a resource in developing the Student’s 504 Plan.
6. The 504 Plan cites “Anxiety Disorder” as the Student’s physical or mental impairment, noting that social interaction causes the Student anxiety. The Student dislikes crowds and has difficulty with deadlines. The Student’s 504 Team, which included the Parent, added accommodations such as extended time on tests and assignments, help with organization and time management, and access to quiet testing environments.
7. On March 21, 2017, the Parent sent an email to the Student’s high school Principal requesting that the Student “be formally evaluated for Asperger’s Syndrome.”
8. In response to the Parent request for evaluation, the District convened a Student Support Team (SST) meeting on April 14, 2017.
9. At the SST meeting, the Parents shared a report from the Student’s Grandparent, who is a special education teacher. The Parents also distributed a family medical history. The Parents requested the following possible assessments: (1) Autism (Asperger’s); (2) Other Health Impairment; (3) Executive Functioning; (4) Cognitive Ability–Academic Achievement; and (5) Classroom observations.
10. The SST added accommodations to the Students 504 Plan such as timeouts when needed and the ability to leave class early to avoid crowds. The SST also agreed to reconvene for a check-in after approximately three weeks.
11. On May 15, 2017, the District noticed a meeting to convene on May 18, 2017. The Parent and the Student participated in the meeting.
12. The Parent, the Student, and District staff covered various topics surrounding the Student’s education at the May 18, 2017 meeting, including the following: (1) school credits earned/remaining for graduation; (2) GED testing; (3) attendance; (4) essay writing; and (5) possible Autism Spectrum Disorder eligibility. The Student disagreed with a possible “Asperger’s Syndrome” eligibility and expressed displeasure with being evaluated for any special education eligibility.
13. District staff and the Parent agreed that any special education eligibility evaluations would occur during the following school year, as the Student needed to focus on current courses and the added stress of an evaluation could “result in failing test results.” The Parent and District staff discussed the different testing batteries that would make up the evaluation.
14. The Student’s high school attendance has been irregular during the 2016-2017 and 2017-2018 school years.
15. On May 18, 2017, the Parent signed a “Consent for Evaluation.” The noted reason for the evaluation is, “Parent requested an evaluation to see if their child qualifies for SPED services.” The consent for evaluation does not mention Autism Spectrum Disorder or Asperger’s disorder.

16. The first day of the 2017-2018 District school year was September 5, 2017. On September 11, 2017, the District sent an email to the Parents stating the District plans to evaluate the Student, but September 11, 2017 was the first day the Student came to school. Between September and October 2017, the Student's attendance record reflects tardies and both excused and unexcused absences on a daily basis. The District was unable to involve the Student in the evaluation process until mid-October 2017.
17. A District School Psychologist scheduled and completed a psychoeducational evaluation, issuing a report on October 31, 2017. The portions of the assessments requiring the Student's availability were administered on October 18, 19, and 30, 2017.
18. As part of the psychoeducational evaluation, the District School Psychologist administered different subtests and distributed rating scales to the Parents and the Student's teachers. The School Psychologist met with the Student for approximately 3-4 hours over several testing sessions and reported a previous relationship with the Student. The District School Psychologist described the Student as "friendly, introspective, cooperative, and focused." The Student's Reading, Math, and Writing skills were found to be in the "average" to "very superior" range.
19. The District School Psychologist concluded the Student is a "very intelligent young person" who is "experiencing a high level of independence." The District School Psychologist recognized that the Student presented a unique and complex picture, but based upon the information gathered over the course of the evaluation, found that the Student did not meet an eligibility criteria for special education, specifically finding the Student ineligible under the category of Emotional Disturbance. The School Psychologist further concluded that the Student's irregular attendance was the only issue adversely impacting the Student in the school setting.
20. On October 23, 2017, the District noticed a meeting for October 31, 2017 to discuss the results of the Student's psychoeducational evaluation.
21. The Parents attended the October 31, 2017 meeting. The District School Psychologist discussed the results of the psychoeducational evaluation and shared the evaluation's conclusion that the Student does not qualify for special education services under any eligibility category, specifically mentioning non-eligibility for Emotional Disturbance. The members at the meeting agreed with the School Psychologist's conclusions and agreed to continue monitoring the Student's high school progress. The Parents both signed the District eligibility statement, checking a box indicating that they agree with the District's conclusions that the Student does not qualify for special education in the area of Emotional Disturbance.
22. Other topics covered at the meeting included the Student's attendance, behavior, graduation plans, post-high school plans, and counseling resources for the Student. The meeting lasted approximately 1.5 hours.
23. Between November 2017 and March 2018, the Student took, and passed, each of the four subject areas of the General Equivalency Diploma (GED) exam. The District maintains that the Student can continue to earn credits toward a high school diploma, even after obtaining a GED.

## IV. DISCUSSION

### A. Child Find

The Parents allege that the District violated the IDEA when it failed to evaluate the Student, a child with a suspected disability, despite: (1) specific requests by the Parents; (2) information provided by the Parent and District staff; and (3) mental health issues exhibited by the Student. School districts have an obligation to 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 services.<sup>3</sup>

The District fulfilled its child find responsibilities. On March 21, 2017, the Parent sent an email to the Student's high school Principal requesting that the Student "be formally evaluated for Asperger's Syndrome." In response to the Parent request for evaluation, the District convened a Student Support Team (SST) meeting on April 14, 2017, which included the Parent. The SST discussed possible assessments, added accommodations to the Student's existing 504 Plan, and agreed to reconvene in approximately three weeks.

On May 18, 2017, a noticed meeting convened to engage in evaluation planning. The Parent and the Student both participated in the meeting. The meeting covered various topics, including the Student's possible Autism Spectrum Disorder eligibility. The District and Parent agreed that the District would conduct an evaluation to see if the Student qualifies for special education services. On May 18, 2017, the Parent signed a "Consent for Evaluation" form stating as much. The Parents and District staff agreed that any special education eligibility evaluations would not commence until the 2017-2018 school year, as the Student needed to focus on current courses and the added stress of an evaluation could "result in failing test results."

Notwithstanding the Student's irregular attendance record at the beginning of the 2017-2018 school year, the District School Psychologist was able to administer a comprehensive psychoeducational evaluation. The District School Psychologist administered different subtests, obtained completed rating scales from the Parents and Student's teachers, and spent approximately 3-4 hours with the Student as part of arriving at a conclusion that the Student "does not appear to meet the core criteria in establishing special education eligibility." A meeting convened on October 31, 2017 to review and discuss the District School Psychologist's findings.

The District appropriately identified, located, and evaluated the Student. The Department does not substantiate this allegation.

### B. Parent Participation

The Parents also allege that the District failed to properly consider information provided to the District concerning the Student during meetings held on and after April 14, 2017. A school district must provide one or both parents with an opportunity to meaningfully participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.<sup>4</sup>

The District afforded the Parents a meaningful opportunity to participate in the process of identifying and evaluating the Student. In response to a Parent email from March 21, 2017, the District convened two meetings before the end of the 2017-2018 school year to discuss the Student. At the meetings, the Parents shared a report from the Student's Grandparent, who is a special education

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<sup>3</sup> OAR 581-015-2080(2)(a).

<sup>4</sup> OAR 581-015-2190.

teacher. The Parents also distributed a family medical history. The Parents requested the following possible assessments: (1) Autism (Asperger's); (2) Other Health Impairment; (3) Executive Functioning; (4) Cognitive Ability–Academic Achievement; and (5) Classroom observations. The Parents completed rating scales as part of the evaluation, which were incorporated in the District School Psychologist's psychoeducational evaluation report. The Parent was also a participating member in the October 31, 2017 meeting where the District School Psychologist shared the psychoeducational evaluation's findings. The Parents both signed the District eligibility statement indicating that they agree with the District's conclusions that the Student does not qualify for special education in the area of Emotional Disturbance.

The Parents meaningfully participated in the meetings and process surrounding the Student's identification and evaluation for special education eligibility. The Department does not substantiate this allegation.

### **C. FAPE**

Finally, the Parents allege that the foregoing District violations resulted in a denial to the Student of special education services the Student needed to access and benefit from the Student's education, constituting a denial of a free appropriate public education (FAPE). With limited exception, school districts must provide a FAPE to all school-age children with disabilities for whom the school district is responsible.<sup>5</sup> To provide a FAPE, a school district must offer an IEP reasonably calculated to enable a student to make progress in light of the student's circumstances.<sup>6</sup>

The District did not deny the Student a FAPE. The Student has participated in Talented and Gifted Education programs while a student in the District. Through elementary and middle school, the Student consistently earned "Exemplary" scores, As and Bs, and read above grade level. The Student also has a history of depression and anxiety, which prompted the District to develop a 504 Plan to provide accommodations to ameliorate anxiety in the school setting (e.g., extended time on tests and assignments, help with organization and time management, and access to quiet testing environments). In the course of evaluating the Student for special education eligibility, the District School Psychologist found the Student to be intelligent and independent, and that the only adverse impact on the Student's progress in the school setting is the Student's irregular attendance. The Student passed all of the General Equivalency Diploma (GED) exam subjects. Nevertheless, the District maintains that the Student can continue to earn credits toward a high school diploma.

On October 31, 2017, District staff and the Parent convened at a meeting where they reviewed the School Psychologist's psychoeducational evaluation findings and agreed that the Student did not meet the criteria for special education eligibility. The District did not deny the Student a FAPE. The Department does not substantiate this allegation.

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<sup>5</sup> OAR 581-015-2040.

<sup>6</sup> *Endrew F. v. Douglas County School District RE-1*, \_\_\_ U.S. \_\_\_ (2017).

**CORRECTIVE ACTION<sup>7</sup>**  
*In the Matter of Redmond School District*  
Case No. 18-054-026

The Department does not order corrective action in this matter.

Dated this 18th Day of June, 2018



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

Mailing Date: June 18, 2018

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

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<sup>7</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)).