

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of:
Marcola School District 79J

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)

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**
Case No. 18-054-037

I. BACKGROUND

On September 21, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Parent (Parent) of a student (Student) who receives special education services from the Marcola School District 79J (District). The Student resides in the catchment area of another Oregon school district and attends a virtual charter school (Charter School) in the District. The Department confirmed receipt of the Complaint and forwarded it to the District on September 24, 2018.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint is September 22, 2017 through September 21, 2018.

On September 28, 2018, the Department's Complaint Investigator 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 October 12, 2018. The Final Order is due to be issued on November 20, 2018.

On October 12, 2018, the District submitted a packet of materials for the Department's Complaint Investigator (Investigator). These materials are listed in the chart below:

- | | Document Title |
|-----|---|
| 1. | Table of Contents |
| 2. | District Response |
| 3. | Meeting Records |
| 4. | Prior Written Notices |
| 5. | Consent Documents |
| 6. | Eligibility Evaluations |
| 7. | Documentation of Alternative Methods of Communication |
| 8. | Assessments to Measure Progress |
| 9. | Attendance and Grade Reports/Progress Reports |
| 10. | Requests for the Evaluation the Parent Submitted |
| 11. | Communications (Emails) |
| 12. | Other Documentation |

¹ 34 CFR § 300.152(a); Oregon Administrative Rule (OAR) 581-015-2030(12).

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

The Investigator determined that on-site interviews were necessary. On October 22, 2018, the Investigator interviewed the District Charter School Director and the Charter School Educational Facilitator. On the same day, the Investigator interviewed the District Superintendent, the Special Education Director, District Assistant Principal, and a School Psychologist from the District's educational service district (ESD). On October 24, 2018, the Investigator interviewed the Parent on the telephone. The Investigator interviewed the Parent by phone for a second time on November 10, 2018. In addition, the Parent submitted written answers to questions posed by the Investigator and separately submitted approximately fifteen emails.

The Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.³ The Parent's 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 on the Discussion in Section IV. This complaint covers the one-year period from September 22, 2017 through September 21, 2018.

1.	<p><u>Child Find</u></p> <p>The Parent alleges the District violated the IDEA when it did not identify and evaluate the Student as a student with a suspected disability in need of special education services.</p> <p>(34 CFR § 300.111; OAR 581-015-2080(2)(e))</p>	<p><u>Not Substantiated</u></p> <p>The District promptly engaged in evaluation planning and developed an evaluation plan. The District identified, located, and timely evaluated the Student. The Department does not substantiate this allegation.</p>
2.	<p><u>Parent Participation</u></p> <p>The Parent alleges the District violated the IDEA by repeatedly asserting it was not required to include the Parent in any part of the eligibility or IEP process and by attempting to hold meetings and make decisions regarding the Student's education without the Parent in attendance.</p> <p>(34 CFR § 300.501; OAR 581-015-2190)</p>	<p><u>Not Substantiated</u></p> <p>The District appropriately invited the Parent to each evaluation planning meeting and an introductory meeting. At each, the Parent was afforded the opportunity to share information and concerns regarding the Student's educational background. The Department does not substantiate this allegation.</p>
3.	<p><u>Responsibility for Evaluation and Eligibility Determination</u></p> <p>The Parent alleges that the District did not meet its responsibility to evaluate the Student and determine whether the Student was eligible for special education services.</p>	<p><u>Not Substantiated</u></p> <p>The District convened evaluation planning meetings and timely fulfilled its evaluation responsibilities upon obtaining parent consent to evaluate</p>

³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

	(OAR 581-015-2100(1))	the Student. The Department does not substantiate this allegation.
4.	<p><u>Evaluation and Reevaluation Requirements</u></p> <p>The Parent alleges that the District did not evaluate the Student for eligibility for special education in response to Parent request. The Parent alleges the District gave a variety of reasons for not agreeing to evaluate the Student, that the District told the Parent it did not know how to evaluate the Student, was not required to evaluate a Student who could not take standardized tests, and, even though the Parent had presented evidence of the Student's hearing loss, the District stated it was not required to evaluate for hearing. The Parent further alleges the District would not include or consider information about the Student that the Parent offered from other professionals and individuals.</p> <p>(34 CFR §§ 300.301, 300.303; OAR 581-015-2105)</p>	<p><u>Not Substantiated</u></p> <p>At three evaluation planning meetings, District staff asked questions and allowed the Parent to provide input to better understand the Student's educational and medical history. The District requested and reviewed evaluation reports to best assemble an initial evaluation plan. The District considered all information the Parent provided. The Department does not substantiate this allegation.</p>
5.	<p><u>General Evaluation Procedures and Prior Written Notice</u></p> <p>The Parent alleges the District did not provide the Parent with Prior Written Notice after refusing to evaluate the Student. Additionally, the Parent alleges the District refused to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, refused to evaluate the Student in the Student's preferred mode of communication,⁴ and refused to evaluate the Student in all areas of suspected disability.</p> <p>(34 CFR §§ 300.304, 300.305; OAR 581-015-2110)</p>	<p><u>Not Substantiated</u></p> <p>Within the parameters of the Parent's consent, the District implemented appropriate evaluation procedures provided the Parent with prior written notice. The Department does not substantiate this allegation.</p>
6.	<p><u>IEP Team</u></p> <p>The Parent alleges the District refused to conduct an IEP team meeting with all appropriate team members included.</p>	<p><u>Not Substantiated</u></p> <p>The District held a total of four meetings to discuss special education issues with the Parent, three of which were evaluation planning meetings. An</p>

⁴ The Parent contends the Student has vision and hearing issues and is on the Autism Spectrum. The Parent states the Student uses American Sign Language (ASL) and other forms of communication.

	(34 CFR § 300.321; OAR 581-015-2210)	appropriate team was present at each of these meetings. The Parent was notified of the April 30, 2018 evaluation planning meeting, but did not attend. The Department does not substantiate this allegation.
7.	<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Parent alleges the culmination of the District's actions resulted in a denial of FAPE for the Student.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>	<p><u>Not Substantiated</u></p> <p>The District worked in timely fashion to obtain consent for an initial evaluation and move toward determining the Student's eligibility for special education services. The District did not deny the Student a free appropriate public education. The Department does not substantiate this allegation.</p>
8.	<p><u>A Parent's Request for Amendment of a Student's Educational Record</u></p> <p>The Parent alleges the District did not follow the appropriate process when the Parent asked to correct the Student's educational record.</p> <p>(34 CFR § 99.20; OAR 581-021-0300)</p>	<p><u>Not Substantiated</u></p> <p>The Parent asked the District to amend meeting minutes to reflect that the Parent had not given permission for a meeting to be held without the Parent. The District amended the record. The Department does not substantiate this allegation.</p>

Issues Outside the Scope of This IDEA Investigation

The Parent alleges the District refused to comply with Section 504 of the Rehabilitation Act of 1973. This allegation will not be investigated in the current investigation process. The Parent may address this issue by contacting Winston Cornwall, Civil Rights Education Specialist, 255 Capitol Street NE, Salem, OR 97310; phone: 503-947-5675 or fax: 503-378-5156.

The Parent alleges that the District has bullied and attempted to coerce the Parent into dropping the request for special education, to waive the Student's right to special education, and to sign forms declining special education. In addition, the Parent alleges the District attempted to coerce the Parent into signing forms supporting fraud on the part of the District. Besides those investigated in relation to the parent participation issue described in Section 2 above, these issues are not within the Department's jurisdiction under OAR 581-015-2030 and were not investigated in the current investigation. The Parent may address these issues with respect to individual District personnel by filing a complaint with Oregon Teacher Standards and Practices Division.

Requested Corrective Action

The Parent requests the following actions be implemented as resolutions to the Complaint:

- I propose that evaluations take place in a manner which is appropriate and accessible and does not create harm or distress for the Student so that [] can have an IEP which is both FAPE and executed immediately.
- I propose the education record be corrected.
- I propose all relevant IEP categories be addressed.

III. FINDINGS OF FACT

1. The Student is eleven years old and is in the sixth grade. The Student has previously been homeschooled by the Parent. At the time the Complaint was filed, the Student was enrolled in a virtual charter school, Teach Northwest (TNW) in the Marcola School District (District).
2. The Student had never been found eligible—nor had the Student been evaluated for—special education services. However, the Parent reports the Student’s history is replete with multiple health issues. The Parent furnished District staff with several reports documenting the Student’s medical history and provided additional information during an April 3, 2018 initial meeting with the District.⁵ The Parent told District staff that the Student had a difficult birth and was without oxygen for a period after birth. The Student experienced/witnessed abuse at a young age, and as a result stopped developing language skills and was later diagnosed with Post Traumatic Stress Disorder. After a stroke and difficulty with vaccinations, the Parent reported the Student evidenced behaviors attributed to Autism.⁶ The Parent reports the Student was diagnosed by medical personnel as having Autism at three years old. Medical documents the Parent presented to the District note a diagnosis of Autism, but the Parent did not provide the District with any original paperwork describing how the Autism diagnosis was reached. The Parent describes the Student as having auditory neuropathy.⁷ The Parent stated the Student qualifies as Hearing Impaired under federal law but not State law.
3. The Parent reports that the Student’s ability to read, speak, or write English is severely delayed, and only really started developing four years ago. The Parent attributes this to the Student’s auditory neuropathy. The Parent sent the District several videos demonstrating elements of the Student’s homeschooling program in which the Student can be seen using sign language to explain the classroom area and using Legos. The Parent states that in one year the Student progressed from learning how to count to five to completing college-level mathematics.
4. On or about March 16, 2018, the Parent initiated contact with the Director of TNW. The Parent and the TNW Director exchanged emails about the Student’s proposed Instructional Learning Plan (ILP), which is each individual student’s learning program plan at TNW.

⁵ The Parent has always communicated with District staff and with the Investigator using email or Text Telephone (TTY). The District arranged live captioning for two meetings.

⁶ The Parent did not provide any evaluation report that describe who reached the diagnosis of “Level 3 Autism”, or of PTSD.

⁷ Auditory neuropathy is a hearing disorder in which the inner ear successfully detects sound but has a problem with sending sound from the ear to the brain. It can affect people of all ages, from infancy through adulthood. (www.nidcd.nih.gov/health/auditory-neuropathy)

5. On March 20, 2018, the Parent informed the District that four letters⁸ about the Student's previous educational experiences would be faxed to the District. In the email, the Parent stated the letters would be relevant to the educational planning process. The letters are descriptive of the Student's behavior but do not provide details about the Student's academic levels.
6. On March 22, 2018, the Parent sent an email to one of TNW's Educational Facilitators. In the email, the Parent acknowledged leaving a comment for the Educational Facilitator on Facebook under a different name, to which the Facilitator had replied. The Parent asked about developing an ILP so the Student could attend TNW. The Educational Facilitator forwarded the email to TNW's Director, who wrote to the Parent and suggested the Parent meet with the District team.
7. On April 3, 2018, the District Special Education Director emailed the Parent asking if the Parent wanted an ASL interpreter for a meeting set for that date. The Director also asked the Parent to send copies of any educational records, evaluations, the Parent might have. The Director explained the Parent would need to give consent for an educational evaluation, which would need to be completed before the Student's Individualized Education Program (IEP) Team could determine eligibility and develop an IEP. Finally, the Director informed the Parent that the Student could start classes while the IEP development process was underway.
8. Within fifteen minutes, the Parent replied to the District's email, noting that the meeting should be conducted by live captioning and the Parent would be able to type responses and questions. The Parent also stated it would not be possible for the Student to access any classes without accommodations as set forth in an IEP.
9. On April 3, 2018, the Student's Team met for an introductory meeting.⁹ The Team used a live captioning system to communicate with the Parent. The Parent provided the Team with documentation and information about the Student's educational and medical history. During the meeting, the District offered to evaluate the Student for special education eligibility, focusing on the following categories: Autism, Emotional Disturbance, and Hearing.
10. The District also described TNW's curriculum materials in various content areas, the use of a stipend available for the Student to attend an ASL summer camp, and technology options, including the use of an I-Pad or Google Chromebook.
11. During the April 3, 2018 meeting, the District also clarified that the people attending the meeting would constitute the Student's IEP Team (District Special Education Director, TNW Program Director, Educational Facilitator, Parent and Student). The Team also had a lengthy discussion about some of the Student's behavioral needs and about how the Student needed intensive instruction in ASL. At the end of the meeting, the Parent and the Director agreed the Director would visit the family in two days for further discussion of the special education evaluation. No agreement about special education evaluations was reached at this introductory meeting.
12. On April 5, 2018, the District Special Education Director met the Parent and the Student at their home. The District Special Education Director told the Parent that the Student could receive ASL services under a special education eligibility such as Autism Spectrum Disorder if the Student needed such services. The Director brought a consent for special education

⁸ Three of the letters are written by instructors at the School of Rock in Bentonville, AR. One instructor is the guitar instructor, one is the music director, and the third is the general manager of the school. The fourth letter is from an Acting Coach at MDA Central Casting Studios. (Physical location is not defined.)

⁹ This was an introductory meeting, as opposed to an evaluation planning or IEP team meeting.

evaluation, but asked the Parent not to sign it at that time. The District Special Education Director wanted to clarify the evaluation plan with the School Psychologist. Finally, the Director suggested the Parent work with the TNW Program Director and the Educational Facilitator to plan some beginning classes for the Student.

13. The District convened an evaluation planning meeting on April 16, 2018 after sending the Parent a meeting notice on April 10, 2018. The meeting was conducted using the BlueJeans Meeting platform.¹⁰ The Parent attended the meeting and was accompanied by an advocate. The District Special Education Director, TNW Director, District Superintendent, Educational Facilitator, and School Psychologist were all in attendance.
14. In the meeting, the evaluation planning Team could not decide on an evaluation plan. District staff explained to the Parent that the Student only needed to be eligible in one special education category to receive the special education services the student needs as a result of the disability. The Parent disagreed and stated a reluctance to sign any document that did not include all the Student's areas of eligibility. The Team discussed pursuing an Other Health Impairment (OHI) eligibility, but the Parent disagreed.
15. The Team also discussed a timeline for evaluation and the Special Education Director told the Parent that it would probably be the Fall before the evaluation could be completed. When the Team could not reach an agreement on evaluation, the District suggested scheduling another meeting and perhaps going to mediation. The Parent told the Team the Parent would not attend another meeting.
16. Later on April 16, 2018, the Parent sent the TNW Director an email agreeing to the following: (1) Sign a form to have the Student evaluated if the District would provide the form; (2) Assist an evaluator to maximize the evaluations success; (3) Incorporate the Student's hearing issues under the category of OHI; and (4) Waive the evaluation for a Hearing Impairment. The Parent also stated that if ASL was listed on the Student's IEP as an accommodation for the Student, the Parent would agree to meet with the School Psychologist to discuss the IDEA eligibility categories, have the Student evaluated for anxiety issues, and discuss whether the Student might be eligible under the category of "Multiple Disabilities."¹¹
17. The TNW Director replied, thanking the Parent and offered to share the information with the evaluation planning Team. The District sent the Parent a prior written notice (PWN) on April 16, 2018, informing the Parent the Team was unable to complete evaluation planning at the meeting and would schedule a follow-up meeting.
18. On April 23, 2018, the District sent a meeting notice to the Parent for another evaluation planning meeting to take place on April 30, 2018.
19. In an email to the Parent, the Special Education Director included a document outlining the rules for evaluation planning. The Parent wrote back on April 24, 2018, protesting the scheduling of the meeting. In the email, the Parent alleged that the District was only holding the meeting to "circumvent the legal requirement for my written consent in order to delay evaluations." The Parent stated that holding the meeting the Parent's absence compromised the Parent's participation as an equal partner. The Parent asked the District to assign a facilitator to the process.

¹⁰ BlueJeans Meetings is a video, audio, and web conferencing program.

¹¹ Multiple Disabilities is not an IDEA category in Oregon.

20. On May 1, 2018, the District Special Education Director sent a letter to the Parent. In the letter, the District Special Education Director noted the evaluation planning Team had met on April 30, 2018 and had decided to proceed with an evaluation centered on the eligibility categories of Autism, Communication Disorder, and Other Health Impaired. The District Special Education Director included the following seven attachments: (1) Evaluation Planning Letter; (2) PWN; (3) Meeting Notes from the April 30, 2018 meeting; (4) Evaluation Consent form; (5) Assessment List; (6) Rationale for Assessments; and (7) a copy of the Parent's Procedural Safeguards. The District Special Education Director asked the Parent to sign the evaluation consent form, informed the Parent that the evaluation would be completed within sixty school days, and that an eligibility meeting would be scheduled with the Parent when the evaluation was completed.
21. On May 4, 2018, the Parent emailed the Director. In the email, the Parent stated the assessment list contained tests that were not in the Student's native language (ASL) and that Communication Disorder was an inappropriate category for evaluation. For these reasons, the Parent refused to sign the consent for evaluation. The Parent asked the Director not to use email to communicate in the future. The Director replied on May 14, 2018, acknowledged the Parent's concerns, stated the District would provide ASL, and offered to convene another evaluation planning meeting with the assistance of a facilitator.
22. On May 22, 2018, the District Superintendent held a TTY conversation with the Parent to arrange for a facilitated evaluation planning meeting.
23. A facilitated evaluation planning meeting was held on June 13, 2018. The notice for this meeting was sent to the Parent on June 8, 2018. Participants used Zoom video technology with a closed captioning transcriptionist so the Parent could make written comments on the computer and the Team could see them transcribed on a screen. The District provided District staff to spend the time with the Student during the meeting. Before the meeting, the Parent gave the District evaluation reports relating to the Student ranging in dates between 2015 and 2017.
24. During the June 13, 2018 evaluation planning meeting, the Team discussed these reports and concluded it could find the Student eligible for special education based on the records under the category of OHI. The Team asked the Parent to consent to a file review to complete the evaluation. The Parent signed a consent to evaluate the Student for eligibility under OHI by completing a file review. The District provided the Parent with a PWN confirming this decision.
25. On August 28, 2018, the School Psychologist completed a file review and wrote a summary report. The School Psychologist concluded the review of the Student's file, video evidence, and Parent information indicated the Student would meet criteria for eligibility for special education as a student with OHI.
26. On September 20, 2018, the District sent the Parent a meeting notice for an IEP Team meeting to be held on October 9, 2018 to decide on the Student's eligibility for special education.
27. The Parent filed this Complaint on September 21, 2018.

III. DISCUSSION

A. Child Find

The Parent alleges the District violated the IDEA when it did not identify and evaluate the Student as a student with a suspected disability in need of special education services. A District meets its responsibility to a student with a potential educational disability when it identifies, locates, and evaluates all children with disabilities for whom they are responsible, regardless of the severity of the disability. This includes students enrolled in public charter schools.¹²

In mid-March 2018, the Parent reached out to the District about enrolling the Student in TNW. Upon informing the District that the Student might be eligible for special education services, the District initiated its Child Find processes. An introductory meeting was held on April 3, 2018, followed by an April 5, 2018 in-home visit. On April 16, 2018, an evaluation planning meeting convened, with another one convening on April 30, 2018. The Parent did not attend the April 30, 2018 evaluation planning meeting. When it became apparent that the Parent and the District were not in agreement on evaluation procedures—as evidenced by the Parent not signing a consent to initial evaluation—the District contracted with an education professional to facilitate a June 13, 2018 evaluation planning meeting. The outcome of that meeting was the Parent signing a consent to evaluate, which permitted the School Psychologist to complete a file review and write a summary report for an eligibility meeting at the beginning of the 2018-2019 school year.

The District promptly initiated and fulfilled its Child Find obligations. The Department does not substantiate this allegation.

B. Parent Participation

The Parent alleges the District violated the IDEA when it repeatedly asserted that the District did not have to include the Parent in any part of the eligibility or IEP process and on multiple occasions attempted to hold decision-making meetings without the Parent in attendance. A school district must provide a parent with the opportunity to participate in meetings when the identification, evaluation, IEP, or educational placement is being considered for a student with a disability.¹³ Reviews of existing evaluation data can occur without a meeting. However, if a school district holds such a meeting, parents must be invited.¹⁴ An evaluation planning meeting that does not involve placement decisions or development of an IEP may be conducted without the Parent as long as the Parent is provided proper notice.¹⁵

On April 3, 2018, the District convened an introductory meeting in which the Parent provided a detailed background of the Student's medical and educational history. The District convened an evaluation planning meeting on April 16, 2018 after sending the Parent a meeting notice on April 10, 2018. The meeting was conducted using the BlueJeans Meeting platform. The Parent attended the meeting, actively participated, and was accompanied by an advocate. On April 23, 2018, the District sent a meeting notice to the Parent for another evaluation planning meeting to take place on April 30, 2018. The Parent did not attend this meeting, but was sent a PWN the following day detailing what transpired at the meeting. When the District and the Parent could not agree on evaluation planning, the District held a facilitated evaluation planning meeting on June 13, 2018. The notice for this meeting was sent to the Parent on June 8, 2018. Participants used

¹² 34 CFR § 300.111; OAR 581-015-2080(2)(e).

¹³ 34 CFR § 300.501; OAR 581-015-2190.

¹⁴ OAR 581-015-2115.

¹⁵ OAR 581-015-2190.

Zoom video technology with a closed captioning transcriptionist so the Parent could make written comments on the computer and the Team could see them transcribed on a screen. The District provided District staff to spend the time with the Student during the meeting.

The District provided the Parent with sufficient written notice of each evaluation planning meeting, and at each meeting provided the Parent with a meaningful opportunity to participate in the Student's evaluation planning processes.

The Department did not find any evidence that the Department attempted to hold decision-making meetings without the Parent's involvement. The Department does not substantiate this allegation.

C. Responsibility for Evaluation and Eligibility Determinations

The Parent alleges that the District did not fulfill its responsibility to evaluate the Student and determine whether the Student was eligible for special education services. A school district is responsible for evaluating school-age children for educational disabilities and for determining their eligibility for special education services.¹⁶

Here, the District held an introductory meeting to gather information about the Student, two evaluation planning meetings and one facilitated evaluation planning meeting. The Parent signed a consent to evaluate form for the first time on June 13, 2018, allowing for a file review. The Parent did not agree to any other type of assessment. The District completed its file review in timely fashion and sent a notice to the Parent for a meeting to discuss the Student's special education eligibility.

The District fulfilled its evaluation responsibilities with respect to the Student. The Department does not substantiate this allegation.

D. Evaluation and Reevaluation Requirements

The Parent alleges that the District did not evaluate the Student for eligibility for special education when the Parent requested such an evaluation. The Parent alleges the District gave a variety of reasons for not agreeing to evaluate the Student. The Parent alleges that the District told the Parent it did not know how to evaluate the Student, did not have to evaluate a Student who could not take standardized tests, and, even though the Parent had presented evidence of the Student's hearing loss, the District stated it was not required to evaluate for hearing. Additionally, the Parent alleges the District did not include or consider information about the Student the Parent offered from other professionals and individuals.

A school district must conduct an evaluation before determining whether a student has an eligible disability.¹⁷ At each of the three evaluation planning meetings, District staff asked questions and allowed the Parent to provide input to better understand the Student's educational and medical history. The District requested and reviewed evaluation reports to best assemble an initial evaluation plan.

The District considered all information the Parent provided. The Department does not substantiate this allegation.

¹⁶ OAR 581-015-2100(1).

¹⁷ OAR 581-015-2105.

E. General Evaluation and Reevaluation Procedures and Prior Written Notice

The Parent alleged the District did not:

- i. Provide the Parent with Prior Written Notice after it refused to conduct an evaluation to determine the Student's eligibility for special education;
- ii. Agree to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information;
- iii. Agree to assess the Student in the Student's preferred mode of communication; and,
- iv. Agree to assess the Student in all areas of suspected disability.

Special education evaluation procedures requires that a school district undertake specific procedures when evaluating children for special education eligibility. If a school district refuses to evaluate a child, it must provide the Parent with prior written notice detailing its refusal.¹⁸ Evaluators must "use a variety of assessment tools and strategies to gather relevant" information about the child, "including information provided by the parent. . . ."¹⁹ Evaluations must also be "provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information"²⁰

The District provided the Parent with timely prior written notice about its evaluation planning decisions. At no time did the District refuse to evaluate the Student. Additionally, the District offered the services of an ASL interpreter and offered to assess in several areas of suspected disability. The District suggested a wide variety of assessment tools and strategies. The Parent only consented to evaluation by file review.

The District met its responsibility to implement appropriate evaluation procedures and did provide the Parent with prior written notice of its actions. The Department does not substantiate this allegation.

F. IEP Team

The Parent alleges the District refused to conduct an IEP Team meeting including all appropriate Team members. For initial evaluations, a school district must "designate a team to determine whether an initial evaluation will be conducted." This 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."²¹

The District held a total of three evaluation planning meetings to discuss special education issues with the Parent. At each, the Team included more than two educational professionals, and at each there was a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

The Parent did not attend the April 30, 2018 evaluation meeting, despite receiving sufficient notice. The Department does not substantiate this allegation.

¹⁸ OAR 581-015-2310.

¹⁹ OAR 581-015-2110(3)(a).

²⁰ OAR 581-015-2110(4)(a)(B).

²¹ 34 CFR § 300.321; OAR 581-015-2210.

G. Free Appropriate Public Education (FAPE)

The Parent alleged the combination of all the above actions resulted in a denial of a free appropriate public education (FAPE) for the Student. A school district must provide a FAPE to school-age children for whom the district is responsible.²²

At the time the Student enrolled with TNW, the Student had not previously been evaluated for special education, nor had the Student ever had an IEP. Promptly after enrolling, the District initiated its processes toward planning an evaluation for special education eligibility and potential IEP development that would inform delivery of special education instruction to the Student. After three evaluation planning meetings, the Team reached a consensus for an evaluation and obtained the Parent's consent. The School Psychologist conducted a file review and prepared an evaluation report just before the Parent filed this Complaint. The District worked promptly toward determining the Student's eligibility for special education upon the Student's enrollment at TNW.

The District did not deny the Student a FAPE. The Department does not substantiate this allegation.

H. A Parent's Request for Amendment of a Student's Educational Record

The Parent alleges the District did not follow the required process when the Parent asked to correct the Student's educational record. A parent may ask a school district to amend a student's educational record when the parent believes the record contains information that is inaccurate, misleading or in violation of the student's rights to privacy. The school district must decide whether to amend the record as requested.²³

Here, the Parent requested that the District amend its meeting minutes to reflect that the Parent had not given permission for a meeting to be held without the Parent.

The District complied in making this change. The Department does not substantiate this allegation.

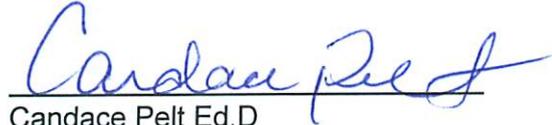
²² 34 CFR § 300.101; OAR 581-015-2040.

²³ OAR 581-021-0300.

CORRECTIVE ACTION²⁴
In the Matter of Marcola School District 79J
Case No. 18-054-037

The Department does not order corrective action in this matter.

Dated: this 20th day of November 2018



Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: November 20, 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).)

²⁴ 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)).