

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of: )  
Hood River County School District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 18-054-049

**I. BACKGROUND**

On November 28, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation (Complaint) from the parents (Parents) of a student (Student) who receives special education services from the Hood River County School District (District). The Department confirmed receipt of the Complaint and forwarded it to the District by email on November 28, 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 60 days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parents 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.<sup>2</sup> Based on the date the Department received the Complaint, the relevant period for this Complaint is November 29, 2017 through November 28, 2018.

On December 4, 2018, the Department's Complaint Investigator (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 December 20, 2018.

On December 19, 2018, the District submitted a packet of materials to the Investigator. These materials are listed below:

1. District Response
2. Table of Contents
3. PWN Consent for Evaluation 12/18/17
4. Notice of Team Meeting 10/4/18
5. PWN Consent for Evaluation 10/11/18
6. Student Assessment Options
7. Notice of Team Meeting 10/11/18
8. Special Education Evaluation 10/24/18
9. Physician Statement
10. Statement of Eligibility for OHI 10/24/18
11. PWN 10/24/18
12. Meeting Minutes 10/24/18
13. Notice of Team Meeting 10/25/18
14. Special Education Evaluation 11/15/18
15. Statement of Eligibility for SLD 11/15/18
16. IEP 11/15/18

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

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

17. PWN
18. Transfer of Rights
19. PWN/Consent for Initial Placement in Special Education
20. Meeting Minutes
21. E-Mail Communication between 12/4/17 to 11/28/18
22. First Quarter Progress Report 11/8/18
23. Student Transcript
24. Report Card 12/13/18
25. Progress Report 11/2/17
26. Withdrawal 1/9/18
27. Attendance 2018-2019
28. District Secondary Calendar 2017-2018
29. District Calendar 2018-2019

The Investigator determined that on-site interviews were necessary. On January 7, 2019, the Investigator interviewed the Parents, a District administrator, a District school psychologist, and a District learning specialist. On January 8, 2019, the Investigator interviewed a general education teacher, another school psychologist, and another District administrator.

During the interview, the Parents gave the Investigator copies of the working draft of the Student's Individualized Education Program (IEP) from the November 15, 2018 IEP Meeting, a copy of the Student's out-of-state IEP dated September 30, 2016, and a copy of a comparison chart of the Student's recent testing results that the Parents generated. After the interviews, the District sent the Investigator a copy of the April 21, 2017 special education evaluation report.

The Investigator reviewed and considered all the previously-described 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.<sup>3</sup> 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 on the Discussion in Section IV.

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| <b>1.</b> | <p><b>General Evaluation and Reevaluation Procedures</b></p> <p>The Parents allege the District violated the IDEA when it did not complete a reevaluation within the 60-school day timeline.</p> <p>(34 CFR § 300.301 (c); OAR 581-015-2110 (5))</p> | <p><b>Substantiated</b></p> <p>The District did not convene an eligibility meeting within 60 school days of the Parents' consent to evaluation, and the District did not establish that there was any exception to it meeting the 60-day timeline.</p> |
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<sup>3</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

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| <p><b>2.</b></p> | <p><b>Child Find</b></p> <p>The Parents allege the District violated the IDEA when it failed to conduct an evaluation even though it had reason to suspect the Student had a disability. The District terminated the Student's eligibility for special education on April 24, 2017. The Parents allege that the District had reason to suspect the Student had a disability because the Student quit attending school and eventually failed five classes. The Parents allege the District ignored the Student's difficulties and thus failed to meet child find responsibilities.</p> <p>(34 CFR §300.111; OAR 581-015-2080 (2) (d))</p> | <p><b>Substantiated</b></p> <p>The District had reason to suspect the Student might have a disability but did not fulfill its child find obligations when it did not evaluate the Student in a timely fashion.</p>   |
| <p><b>3.</b></p> | <p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Parents allege that the District's failure to properly evaluate the Student within required timelines, when the District had reason to suspect a disability, resulted in a denial of FAPE.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>   | <p><b>Substantiated</b></p> <p>The District committed a procedural error when it did not complete the Student's evaluation within the 60-day timeline. This failure resulted in the Student's loss of educational opportunity. The Department substantiates this allegation.</p> |

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| <p><b>Requested Corrective Action</b></p> <p>The Parents request the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> <li>1. Compensatory education for the educational opportunity lost based on the minimum of one hour for every day that [ ] lost. This could be in the form of a certified teacher offering tutoring to support [the Student's] effort to make up classes/credits [ ] lost.</li> <li>2. Reimbursement for counseling, which totaled \$1,350.00 to deal with the most dire period of distress. As mentioned above, this counseling was initiated because [the Student] was despairing and depressed about failing; [ ] had lost all confidence in self, lost trust in the school and [the] teachers. [The Student] didn't even want to get out of bed to either go to school or to do anything.</li> <li>3. Training for District staff to understand student rights and responsibilities under IDEA, especially in the following areas: <ol style="list-style-type: none"> <li>a. The IDEA evaluation process, particularly with regard to determining adverse impact on learning. Students who are performing well academically should not be denied support, especially when their performance has been dependent on receiving support.</li> <li>b. The procedural timelines under IDEA, especially for students how have dropped out of school, due directly to their lack of support under IDEA. On more than one occasion we were told by school staff that they were well within the 60-day timeframe for evaluation because they only counted the days that [the Student] was physically present in school or participating in the online academy during the school year.</li> </ol> </li> </ol> |
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- c. The need to keep a close watch on students who have been determined ineligible, especially those with a disability whose disability appears to have no adverse impact. As soon as these students show a danger of falling from the level of academic performance they had with support, *the school* should initiate support.
4. We would like to be notified when training occurs and would like a copy of the training materials.

### III. FINDINGS OF FACT

1. The Student is seventeen years old, in the eleventh grade, and resides and attends school within the Hood River County School District (District).
2. The Student is imaginative, artistic, and particularly skilled in video filmmaking. The Student is athletic, enjoys mountain biking, and expresses kindness and empathy toward others.
3. The Student is eligible for special education as a student with an Other Health Impairment (established on October 24, 2018) and a Specific Learning Disability (established on November 15, 2018.) The Student has a diagnosis of mild to moderate Attention-Deficit/Hyperactivity Disorder (ADHD). An evaluation conducted in October 2018 revealed the Student to show indications of anxiety, depression, and attention problems.
4. The Student enrolled in the District in February of 2017 as a ninth grade student. At that time, the Student was eligible for special education as a student with a Specific Learning Disability, established in another state. The Student's IEP called for 30 minutes of Specially Designed instruction in reading in a Learning Support Center. During the first semester at the previous out-of-state school, the Student earned grades of As and Bs in general education classes.
5. The District evaluated the Student in April 2017 to determine whether the Student continued to be eligible for special education services. On April 24, 2017, an eligibility meeting convened and the team decided the Student was no longer eligible for special education. The team concluded that although the Student demonstrated a pattern of strengths and weaknesses, these had no adverse effect on the Student's educational performance and the Student did not need special education as a result of the Student's disability.
6. According to one of the Student's evaluators, the Student voiced a perceived need to remain eligible for special education services for "support in the Learning Center and help with improvement in grades". The team agreed to write a Section 504 plan for the beginning of the 2017-2018 school year.
7. The Student began the 2017-2018 school year and struggled immediately. The Student did not attend all or part of approximately 50% of school days in November 2017. At the mid-term progress reporting period on November 2, 2017, the Student had earned a C- in English, a D+ in Geometry and Chemistry, and a C- in Global Studies. In English and Geometry class, the teachers noted the Student had low test scores, missing assignments, uncompleted tests.
8. After the first five school days in December 2017, the Student stopped attending school. On December 5, 2017, the Parents and the Student met with a District administrator to address the Student's difficulties. During the meeting, the Student shared having difficulties getting out of bed to go to school, wanting to quit school because no "learning center" support was provided, and feeling unable to understand school expectations and due dates. During this

meeting, and in an email dated December 5, 2017, the Parents (each Parent individually and jointly are referred to here as “Parents”) requested a new special education evaluation. The Parents also requested a meeting with the school counselor and online school principal to discuss enrollment in a District online program.

9. On December 18, 2017, the Parents signed a consent for the District to conduct a special education evaluation since the Student was “presenting with behaviors (inattention, depressive mood, anxiety) that impact [the Student’s] attendance and education.” As part of the explanation for conducting an evaluation, the District noted the Student was having “difficulties maneuvering classroom expectations and requirements.”
10. In the December 18, 2017 consent for evaluation, the District notes that the Student “is at home and not accessing [ ] education.”
11. The District recessed for Winter Break between December 23, 2017 and January 7, 2018.
12. The Student did not attend school on January 8, 2018 or January 9, 2018. On January 9, 2018, the high school attendance team called the Parents to discuss the Student’s absences. The District’s records note that the Parents shared that the Student might withdraw from school. On January 16, 2018, the District unenrolled the Student from the high school pursuant to its “10-day drop” policy.<sup>4</sup> On February 16, 2018, a District administrator spoke with the Parents because the Student’s name had been mentioned in a post on a social networking site. The Parents told the administrator the Student was okay and at home. The Student did not participate in any specific homeschool program or online school program between January and May 2018.
13. The Parents brought the Student to a clinical psychologist to address the Student’s difficulties in school and the Student began attending therapy. On May 31, 2018, the clinical psychologist prepared a letter noting the Student had an ADHD diagnosis.
14. On May 23, 2018, the Student re-enrolled in the District and began taking classes through the District’s online school. During the Spring and Summer of 2018, the Student completed two classes for credit at the online school. On three occasions—May 23, 2018, June 13, 2018, and August 5, 2018—the Parents requested that the District re-initiate its special education eligibility evaluation. The Parents requested the evaluation by email in the first two instances, and in person with a District administrator on August 5, 2018.
15. On August 28, 2018, District staff met with the Parents as part of an evaluation planning meeting. At this meeting, the Parents signed consent for the District to evaluate the Student for special education in the area of Other Health Impairment (OHI). On October 12, 2018, the evaluation planning team met again, and the Parents signed consent for the District to evaluate the Student for eligibility in the area of Specific Learning Disability (SLD).
16. Between October 15, 2018 and October 24, 2018, the District evaluated the Student for OHI eligibility. Between October 18, 2018 and November 14, 2018, the District evaluated the Student for SLD eligibility. The IEP Team met on two occasions: (1) October 24, 2018 to discuss the evaluation results relating to OHI; and (2) November 15, 2018 to discuss the

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<sup>4</sup> Oregon School Finance Administrative Rules note that a “student must be withdrawn from the active roll on the day following the tenth consecutive full school day of absence but may be retained on the inactive roll at the district’s option.” (OAR 581-023-0006(4)(b)).

evaluation results relating to SLD. The Student was found eligible for special education services under both OHI and SLD.

17. On November 15, 2018, the Student's IEP was developed. The IEP Team wrote one goal for the Student in the area of Reading, focusing on reading comprehension. The IEP Team agreed that the Student would receive 60 minutes per week of specially designed instruction (SDI) in a Learning Center environment because the Student is "currently below grade level in the academic areas of reading" and needs SDI "in those areas to develop skills in order to gain the abilities to be successful within the general education setting and gain access to the core curriculum."
18. Currently, the Student is attending classes at a District online school as well as at the District high school. The Student is on a regular diploma track, plans to take state and district assessments with accessibility supports, and receives a variety of supplementary aids/services and accommodations through the Student's IEP.
19. As of the District progress report dated November 11, 2018, the Student was earning As in Art and Personal Fitness, Bs in Multimedia Design, Global Studies, English, and Investigating Careers, and had a grade of C in Algebra.
20. The Parents filed this Complaint on November 28, 2018.

#### IV. DISCUSSION

##### A. Evaluation and Reevaluation Requirements

The District did not evaluate the Student in a timely fashion. A school district must complete a special education evaluation and meet to consider eligibility within 60 school days of obtaining parent consent for evaluation.<sup>5</sup> A school day means any day—including partial days—that students are in attendance for instructional purposes.<sup>6</sup> The IDEA prescribes two exceptions to the evaluation timeline: (1) the parent repeatedly fails or refuses to produce the student for the evaluation; and (2) the student enrolls in another school district after the evaluation timeline has begun, and before the student's previous school district determines whether the student is eligible for special education services.<sup>7</sup> Under Oregon's Administrative Rules, the evaluation timeline may be completed in more than 60 days if the school district and parents agree in writing to extend the evaluation timeline, or for other circumstances outside the school district's control.<sup>8</sup>

The Parents signed a consent for evaluation on December 18, 2017. The Student did not attend school between December 19, 2017 and December 22, 2017. The District recessed for Winter Break between December 23, 2017 and January 7, 2018. The Student did not attend school on January 8, 2018 or January 9, 2018. On January 9, 2018, District staff contacted the Parents to discuss the Student's absences. The Parents shared that the Student might withdraw from school, but the Parents did not affirmatively withdraw the Student from school. On January 16, 2018, the District disenrolled the Student pursuant to its "10-day drop" policy. On February 16, 2018, a District administrator spoke with the Parents because the Student's name had been mentioned in a post on a social networking site. The Parents assured the District administrator that the Student

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<sup>5</sup> 34 CFR § 300.301; OAR 581-015-2110(5).

<sup>6</sup> OAR 581-015-2000(6)(b).

<sup>7</sup> 34 CFR § 300.301(d)(1)-(2); see also *Integrated Design & Elecs. Acad. Pub. Charter Sch. v. McKinley*, 570 F. Supp. 2d 28 (D.C. Cir. 2008).

<sup>8</sup> OAR 581-015-2110(5)(c).

was safe and at home. On May 23, 2018, the Student re-enrolled in the District. The District evaluated the Student in October and November 2018, and the District convened eligibility meetings on October 24, 2018 and November 15, 2018.

The District did not meet to consider the Student's eligibility for special education within 60 school days of obtaining the Parents' consent for evaluation. The Parents signed a consent for evaluation on December 18, 2017. Sixty school days later—April 9, 2018—no eligibility meeting had taken place, nor would one take place for another six months. There is no indication that: (1) the Parents repeatedly failed or refused to produce the Student for evaluation; (2) the Student enrolled in another school district; (3) the District and the Parents agreed in writing to extend the evaluation timeline; or (4) there existed circumstances outside the school district's control that prevented the evaluation from moving forward.

Indeed, the Student's absences presented obstacles to the District completing a special education evaluation. But it was the District—not the Parents—that disenrolled the Student on January 16, 2018. The District did not exert efforts to proceed with the evaluation during the first half of 2018. The District did not call, email, or otherwise correspond with the Parents to inquire whether the Parents were agreeable to the evaluation going forward. The District did not issue a prior written notice to the Parents indicating it was now refusing to evaluate the Student because of the Student's absenteeism. Meanwhile, the Student remained living within the District's boundaries. The District was aware of this, at minimum, on February 16, 2018 after a District administrator spoke with the Parent.

The Parents consented to the District evaluating the Student for special education eligibility. An eligibility meeting did not convene within 60 school days, and the District did not establish that there was any exception to it meeting the 60-day timeline. The Department substantiates this allegation.

## **B. Child Find**

The District did not fulfill its child find obligations. A school district must “identify, locate and evaluate all resident children who may have disabilities and be in need of special education.”<sup>9</sup> An evaluation must be conducted when a school district suspects or has reason to suspect that a 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.<sup>10</sup> A school district's child find obligation extends beyond students enrolled in its schools, and includes migrant children, homeless children, homeschooled children, and children “above the age of compulsory school attendance who have not graduated with a regular high school diploma.”<sup>11</sup>

Here, the District did not fulfill its child find requirement to evaluate the Student, a District resident for the entire Complaint period timeframe who is of compulsory school attendance age and has not yet earned a regular high school diploma. By early December 2017, the District was aware of the following: (1) the Student previously had an IEP; (2) the Student was attending school sporadically; (3) the Student's mid-term progress report grades were low Cs and Ds with missing assignments and uncompleted tests; and (4) the Student wanted to quit school because no “Learning Center” support was being provided. The signed December 18, 2017 consent for evaluation noted that the Student was “presenting with behaviors (inattention, depressive mood, anxiety) that impact [the Student's] attendance and education.” As part of the explanation for

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<sup>9</sup> ORS 343.157.

<sup>10</sup> OAR 581-015-2105(3).

<sup>11</sup> OAR 581-015-2080.

conducting an evaluation, the District noted the Student was having “difficulties maneuvering classroom expectations and requirements.”

This accumulation of information reasonably leads to a conclusion that by early December 2017 the District suspected the Student had a disability that was adversely impacting the Student’s educational performance and was in need of special education services. However, as described above, no evaluation was completed until October 2018, and no IEP was developed until November 15, 2018. The District did not fulfill its child find obligation. The Department substantiates this allegation.

### **C. Free Appropriate Public Education**

The Parents allege that the District’s failure to properly evaluate the Student within required timelines, when the District had reason to suspect a disability, resulted in a denial of FAPE. Each school district must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the school district is responsible.<sup>12</sup> A school district’s procedural violation during the IEP process rises to a denial of FAPE if it results in a student’s loss of educational opportunity.<sup>13</sup>

The District denied the Student a FAPE during the 2017-2018 school year. Prior to attending school in the District, the Student had an IEP in an out-of-state school district for a specific learning disability. While at the out-of-state school, the Student received 30 minutes of reading SDI in a Learning Support Center. The Student earned As and Bs in general education classes. Soon after enrolling in the District, the Student was exited from special education. Thereafter, the Student earned Cs and Ds, and exhibited problematic attendance patterns. During a December 5, 2017 meeting with the District, the Student expressed a desire to quit school because no “learning center” support was provided. On December 18, 2017, the Parents consented to a special education evaluation, but an IEP was not developed for the Student until November 15, 2018. That IEP indicated that the Student would receive 60 minutes per week of SDI in a Learning Center environment because the Student is “currently below grade level in the academic areas of reading” and needs SDI “in those areas to develop skills in order to gain the abilities to be successful within the general education setting and gain access to the core curriculum.” After implementation of an IEP, the Student’s grades and participation have both improved and reflect the successful academic performance levels from when the Student was previously on an IEP.

The District committed a procedural error when it did not complete the Student’s evaluation within the 60-day timeline. This failure resulted in the Student’s loss of educational opportunity. The Department substantiates this allegation.

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<sup>12</sup> OAR 581-015-2040.

<sup>13</sup> *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 909 (9th Cir. 2009).

**V. CORRECTIVE ACTION<sup>14</sup>**  
*In the Matter of Hood River County School District*  
Case No. 18-054-049

The Department orders corrective action in this matter.

|           | <b>Action Required</b>  | <b>Submissions<sup>15</sup></b>   | <b>Due Date</b>  |
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| <b>1.</b> | <p>a. With the Parent, the Student, the Student’s School Counselor, and others as determined by the District and the Parent, review the Student’s transcript and projected graduation date, to verify number and types of credits needed to remain on track for graduation with a regular diploma.</p> <p>b. In conjunction with the plan development, convene an IEP Team Meeting, with Student invited, to review and revise any instruction, accommodations, or services needed to support the Student’s credit recovery and achievement in general education and progress toward timely graduation.</p> <p>c. Monitor the Student’s learning and acquisition of credit toward graduation and report to the Parents and Student according to the Plan’s timelines.</p> | <p>a. Submit to the Department a copy of the plan, signed by the Parent and a District representative to indicate agreement. Include a schedule of the District’s regular progress reporting periods.</p> <p>b. Submit to ODE and the Parents, a copy of the entire IEP, with revisions highlighted, and a copy of any resulting prior written notice.</p> <p>c. Submit report copies to the Department</p> | <p><b>February 14, 2019</b></p> <p><b>February 21, 2019</b></p> <p><b>According to the Plan’s timelines or the District’s regular progress reporting schedule through January 24, 2020</b></p> |
| <b>2.</b> | Provide consultation, updated information, and professional development to District staff who   | Submit to the Department copies of materials and information,   | <b>March 15, 2019</b>  |

<sup>14</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)).

<sup>15</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeannray@state.or.us](mailto:raeannray@state.or.us); fax number (503) 378-5156.

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|           | are responsible for, or may be involved in, the evaluation and eligibility determination of out-of-state transfer students. (These activities may be differentiated by role responsibilities.)  | meeting agendas, and signed participant logs.                                      |                       |
| <b>3.</b> | With assistance from the Department, including Dispute Resolution and County Contact staff, review, and revise as needed, the District's policies, procedures, practices, and timelines for conducting evaluations, reevaluations, and eligibility determination, including out-of-state transfer students. Include processes to ensure that concerns of parents regarding children's mental health or related issues are considered in referrals for special education evaluation/re-evaluation. | Submit to the Department for approval, copies of documents and proposed revisions. | <b>March 15, 2019</b> |

Dated: this 25th day of January 2019

*Candace Pelt, Ed.D*

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Candace Pelt, Ed.D  
Assistant Superintendent  
Office of Student Services

Mailing Date: January 25, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 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).)