

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lake Oswego School)
District 7J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-002

I. BACKGROUND

On January 14, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Lake Oswego School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on January 14, 2019.

On January 23, 2019, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 8, 2019. The District completed its *Response* and the Department's Contract Investigator (Investigator) received it electronically on February 7, 2019 and in hard copy on February 9, 2019. The *Response* included a narrative, exhibit listing, audio files and documents upon which the Investigator relied are as follows:

1. Dibels progress monitoring chart for school year 2017-2018
2. Notice of Team Meeting dated December 15, 2017
3. Student Attendance Profile School Year 2017-2018
4. Student Sign-In/Sign-Out log
5. Meeting Minutes dated January 10, 2018
6. Prior Written Notice of Evaluation dated January 10, 2018
7. Prior Written Notice of Referral dated January 10, 2018
8. Consent for Individual Evaluation dated and executed January 10, 2018
9. Notice of Team Meeting dated January 15, 2018
10. Eligibility Summary dated January 31, 2018
11. Disability Statement – Communication Disorder January 31, 2018
12. Speech Evaluation dated January 31, 2018
13. IEP dated January 31, 2018
14. Eligibility Meeting Minutes dated January 31, 2018
15. Special Education Placement Determination dated January 31, 2018
16. Prior Written Notice for IEP dated January 31, 2018
17. Prior Written Notice and Consent for Initial Provision of Special Education Services dated January 31, 2018
18. I-Team Meeting notes dated April 19, 2018
19. Inter-district emails dated April 2, 2018 through
20. Student Report card, Second Semester School Year 2017-2018
21. Student's reading support updated dated June 2018
22. IEP Progress Report – Measurable Annual Goals dated June 1, 2018
23. School year calendar for 2018-2019
24. Student Attendance Profile School Year 2018-2019
25. Dibels Performance profile school year 2018-2019
26. Parent letter to school principal dated August 27, 2018
27. Emails between the District and Parent dated August 30, 2018 through January 10, 2019
28. Parent letter to school principal dated September 12, 2019
29. Notice of Team Meeting dated September 14, 2018
30. Student Background and Developmental History dated September 24, 2018

31. Prior Written Notice of Evaluation dated September 25, 2018
32. Parent Consent for Individual Evaluation signed September 26, 2018
33. Memorandum of Test of Educational Achievement (KTEA III) results from September 27-28, 2018 testing -- memorandum undated
34. IEP Progress Period Detail dated October 12, 2018 (for Progress Period June 1, 2018)
35. Notice of Team Meeting dated November 2, 2018
36. Prior Written Notice dated November 13, 2018
37. Eligibility Meeting Minutes dated November 13, 2018
38. Eligibility Summary Statement dated November 13, 2018
39. Disability Statement (SLD) dated November 13, 2018
40. Disability Statement (CD) dated November 13, 2018
41. Initial Psycho-Educational Evaluation dated November 13, 2018
42. Audio Recording of IEP team meeting November 13, 2018
43. Notice of Team Meeting dated December 4, 2018
44. Special Education Placement Determination dated December 4, 2018
45. Draft IEP dated December 12, 2018
46. IEP team meeting minutes dated December 12, 2018
47. Authorization to Use and Disclose Educational and Protected Health Information dated December 12, 2018
48. Audio recording of IEP team meeting December 12, 2018
49. Prior Written Notice for IEP dated January 30, 2019
50. IEP/Placement Meeting Minutes dated January 30, 2019
51. Special Education Placement Determination dated January 30, 2019
52. Notice of Team Meeting dated January 30, 2019
53. Draft IEP dated January 30, 2019
54. Written Agreement between parent and District re: IEP Team Attendance Not Required Dated January 30, 2019
55. Prior Written Notice dated February 1, 2019 (curriculum refusal)
56. IEP dated January 30, 2019
57. Draft goals with revisions per IEP team members (not dated)
58. District Special Education IEP Policy (adopted April 14, 2018, re-adopted December 8, 2014, revised/reviewed March 7, 2016)
59. Examiner Record: Feifer Assessment of Reading dated October 18, 2018
60. Kaufman Test of Educational Achievement (KTEA) dated September 27, 2018
61. Student Evaluation Report prepared by Shine Learning Services dated September 11, 2018

At the request of the Investigator, the District submitted the following documents in advance of in-person interviews:

1. RTI form letter, undated without addressee

The Parent submitted the following documents to the Investigator on February 15, 2019:

1. Student's Kindergarten Report Card, Semester 2 for School Year 2016-2018
2. First Grade Writing Sample
3. Student's First Grade Report Card, Semester 2 for School Year 2017-2018
4. Confidential Meeting Minutes dated January 10, 2018
5. Prior Written Notice of IEP dated January 31, 2018
6. Prior Notice and Consent for Initial Provision of Special Education Services dated January 31, 2018
7. IEP dated January 31, 2018
8. Special Education Placement Determination dated January 31, 2018
9. "Strengths of Dyslexics" print-out, undated

10. Intervention Team referral: Classroom Intervention Grid, undated
11. Intervention Team Referral: Parent contact log with contacts notes dated February 2018 and April 2018
12. I-Team Meeting notes dated April 19, 2018
13. Hallinen Intervention Team Referral Form dated April 19, 2018
14. IEP Progress Period Detail dated June 1, 2018
15. Reading Support for Student's First Grade year dated June 2018
16. Correspondence to District requesting evaluation of Student under both IDEA and Section 504 dated August 27, 2018
17. Emails between the Parent and District dated April 6, 2018 to February 1, 2019
18. ODE screening for reading difficulties in grades 1-5 – Page 6 only, dated September 21, 2018
19. Student's Second Grade DIBELS Performance Profile, undated
20. IEP Plan recommendation for Student from Barbara Steinberg (undated)
21. Proposed Goals for Student from Tamara Boring submitted at Nov. 13, 2018 IEP meeting (undated)
22. Letter from Parent read during November 13, 2018 IEP meeting
23. Student dictated letter to Santa dated December 10, 2018
24. Student Writing sample dated January 28, 2019

The Parent also remitted the following articles and public documents:

25. Article: Endrew v. Douglas County: IDEA Means More by Peter Wright, Esq. created March 22, 2017, revised March 23, 2017
26. OSERS "Dear Colleague Letter" dated October 23, 2015
27. ODE Best practices for Screening Student for Risk Factors of Dyslexia and Providing Instructional Support dated September 21, 2018
28. Partial Power Point from National Center on Intensive Intervention (undated)
29. ODE Policy and Procedures for Special Education, Section 15, Full Educational Opportunity Goal dated 2007-2008
30. Letter from G. Emerson Dickman, Esq to OSERS dated November 16, 2001

The Investigator interviewed the Parent on February 26, 2019. The Investigator interviewed District personnel on February 28, 2019. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

The Department has jurisdiction to resolve this Complaint.¹ Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from January 15, 2018 to January 14, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

II. ALLEGATIONS AND CONCLUSIONS

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 the Discussion in Section IV.

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

	Allegations	Conclusions
1.	<p>Prior Written Notice</p> <p>The Parent alleges that the District violated the IDEA because it did not provide the Parent with a Prior Written Notice in September 2018 after the District declined to evaluate the Student for special education services.</p> <p>(34 CFR §300.503(a)(2), OAR 581-015-2310)</p>	<p>Substantiated</p> <p>On August 30, 2018, the Parent sent a written correspondence to the District requesting an evaluation for special education services, specifically dyslexia and other learning impediments that go along with it. On September 5, 2018, the District responded that it “does not evaluate students for dyslexia” and that the Parent was “welcome to have [the Student] privately tested.” In the correspondence, the District provided the Parent with helpful information about its dyslexia screening processes, and the District and Parent made progress toward evaluating the Student soon thereafter. Nevertheless, the District’s September 5, 2018 email was tantamount to a refusal to evaluate the Student and it did not contain the requisite components of a Prior Written Notice. The Department substantiates this allegation.</p>
2.	<p>Child Find</p> <p>The Parent alleges that the District violated the IDEA because it failed to fulfill its Child Find obligations during the complaint period, particularly after the Student’s teachers expressed concern that the Student exhibited characteristics of a reading disorder.</p> <p>(34 CFR § 300.111, OAR 581-015-2080)</p>	<p>Substantiated</p> <p>The District implemented various interventions in the general education environment to promote the Student’s progress in the area of reading. Nevertheless, during first grade, various warning signs arose that should have prompted the District to initiate the evaluation component of its Child Find obligations. The District did not do so until the beginning of the Student’s second grade year, in response to the Parent’s request. The Department substantiates this allegation.</p>
3.	<p>Failure to Evaluate</p> <p>The Parent alleges the District violated the IDEA because it failed to evaluate the Student for dyslexia after the Parent requested an evaluation at the beginning of the Student’s second grade year.</p> <p>(34 CFR §300.301, OAR 581-015-2105(3))</p>	<p>Not Substantiated</p> <p>The District’s failure to evaluate the Student during first grade as part of its Child Find obligations is addressed above. During the Student’s second grade year—after prompt communication between the District and the Parent subsequent to the District’s September 5, 2018 correspondence—the Student was evaluated in timely fashion and on November 13, 2018 found eligible for special education services under the category of Specific Learning Disability. The Department does not substantiate this allegation.</p>

<p>4.</p>	<p>Denial of FAPE</p> <p>The Parent alleges that the District violated the IDEA because it did not provide a “meaningful educational benefit” to the student and thus failed to provide the Student a free appropriate public education (FAPE) when during the complaint period the District used interventions for the students with dyslexia that the Parent alleges do not have proven efficacy.</p> <p>(34 CFR § 300.101, OAR 581-015-2040)</p>	<p>Not Substantiated</p> <p>Educators ultimately have the discretion of selecting methodology. The District moved away from one methodology that was not resulting in the Student making appropriate progress. The District has since changed methodologies and as a result the Student has made progress in light of the Student’s circumstances. The Department does not substantiate this allegation.</p>
<p>5</p>	<p>Parent Participation</p> <p>The Parent alleges that the District violated the IDEA because, since November 2018, it did not provide the Parent with information regarding the Student’s evaluation materials and intervention information thus preventing the Parent from engaging in a meaningful participation in the Student’s IEP.</p> <p>(34 CFR §300.501, OAR 581-015-2190)</p>	<p>Not substantiated</p> <p>The District has consistently and promptly communicated with the Parent regarding the Student’s educational program. The District has been receptive and responsive to the Parent’s input and inquiries throughout the IEP development process. The Department does not substantiate this allegation.</p>
<p>6.</p>	<p>Predetermination/IEP Content</p> <p>The Parent alleges that the District predetermined the Student’s educational standards and failed to individualize the Student’s IEP goals.</p> <p>(34 CFR §300.320, OAR 581-015-2200)</p>	<p>Not substantiated</p> <p>The Student’s IEP process was not completed and a final IEP was not complete when this Complaint was filed. The District and Parent were continuing to develop IEP goals and content. As such, the Department cannot and does not substantiate this allegation.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ol style="list-style-type: none"> 1. The Parent requests reimbursement for private tutoring expenses incurred since October 2018 as well as payment for all future private tutoring for the Student until the Student’s “educational gap is closed”. 2. The District should work in conjunction with the Student’s tutor to better ensure cohesion and timely success. Consider using the same program as the Student is currently using with the tutor or select a cohesive program that they can use together for the Student’s learning

needs. Communicate weekly to ensure the specialist and tutor are “on the same page” and to alleviate any continued confusion.

3. The District needs to immediately follow State and Federal law regarding identification and evaluation of students needing Special Education Services, including students with dyslexia.
4. The District needs to outline smart, time-sensitive, and proven procedures for evaluations and interventions (including RTI and intensive). By the start of the 2019-2020 school year, all teachers, administrators, and specialist at every school need to follow a clear protocol and understanding of these procedures and why they are important.
5. Intervention instruction (at all tiers), should have evidence based research backing their efficacy and use, and must include duration, intensity and frequency necessary per the way the program was intended. Assessment methodologies must be proven, stated in the IEP and timely. Teachers and reading specialists must be immediately trained and qualified in the delivery of all programs being used.
6. IEPs must be individualized, contain SMART goals, state which instructional approaches/systems will be used per each goal, have high benchmarks (based not just on the deficit but the ability of the child) and include appropriate time, duration, and frequency of instruction so these kids are truly given meaningful educational benefit and close the gap. (immediately)
7. The District needs to create a website/page as a useful and thoughtful hub for parents clearly outlining district procedures and best practices for dyslexic students by the start of the 2019-2020 school year.
8. The District should immediately consider hiring parent advocates to work as liaisons between administrators, teachers, specialists, and parents and attend all IEP and 504 meetings
9. The District needs to allocate appropriate dollars to ensure high standards can be implemented for struggling students in order to close the gap and provide meaningful educational benefit to all (hiring specialized instructors, training, parent advocates, RTI process etc). (immediately)
10. The State needs to fund necessary gaps between what costs are covered by the federal government under IDEA and what is left uncovered.

III. FINDINGS OF FACT

1. The Student is eight years old and in the second grade. The Student is curious and tenacious, enjoys solving problems, and building with Legos. The Student has an aptitude for math and design, and is interested in becoming an engineer.
2. During kindergarten, the Student received tier one reading interventions, which included working in a small reading group with the Student’s first grade teacher.
3. During the 2017-2018 school year—while in first grade—the Student was referred for a special education evaluation by the Student’s teacher due to identified articulation issues, which were

affecting the Student's spelling and reading.

4. The Student was found eligible for special education services under the category of communication disorder. The Student's initial IEP was completed on January 31, 2018. The Student did not receive any modifications or accommodations to classroom curriculum, but did spend 90 minutes per month with a District Speech and Language Pathologist to assist with speech and formation of words.
5. When the Student entered first grade, the Student's teacher did not immediately transition the Student from tier one to tier two interventions because the teacher was unsure of the nature of the Student's reading deficits. The Student's teacher worked with the Student in a small group on tier one reading interventions, then later in the year moved the Student on to tier two interventions. Tier two interventions included working with a District reading specialist.
6. The Student participated in standardized testing to assess reading fluency skills and progress. During first grade, the Student's results were as follows:
 - Fall: Correct Letter Sounds: 16 (benchmark goal = 25) / Intensive level
 - Fall: Words Read Correctly: 3 (benchmark goal = 2) / Core Level
 - Winter: Words Correct Per Minute: 3 (benchmark goal = 19) / Intensive Level
 - Winter: Reading Accuracy: 33% (benchmark goal = 78%) / Intensive Level
 - Spring: Words Correct Per Minute: 11 (benchmark goal = 47) / Intensive Level
 - Spring: Reading Accuracy: 55% (benchmark goal = 91%) / Intensive level
7. During the second half of the 2017-2018 school year, the Student's first grade teacher recognized the Student was exerting great effort, but was not making sufficient progress in the area of reading.
8. In April 2018, the Student's first grade teacher referred the Student to the "I-Team."
9. During the 2017-2018 school year, the District deployed "I-Teams." An I-Team consists of Response to Intervention (RTI) specialists that visit different District elementary school programs implementing interventions for students struggling with reading. RTI specialists also coach teachers and specialists. The I-Team preceded the District's implementation of an RTI program, which was rolled out during the 2018-2019 school year.
10. On April 19, 2018, the I-Team met and discussed the Student's reading ability and noted that the Student "works extremely hard" and "wants to do well," but that the "[o]utcome is low (even with working hard)." The Student "[g]ets confused about letters/letter sounds", "often guess[es] and go[es]" with sight words, and that the Student recognizes that the Student is a lower reader, and reading and writing are "now non-preferred activities."
11. The I-Team developed a plan to spend 20 minutes per day working with the Student on vowel patterns and phonics, and to push confidence and positive interactions. Additionally, the Student began working with a District literacy specialist using the "Reading Mastery" program in a small group for approximately 25 minutes per day.
12. The plan was that after four to six weeks working with the literacy specialist, the Student would be assessed to determine whether additional support would continue.
13. The Student only made minimal progress in response to the above-described interventions. The Student continued to show areas of deficit in basic reading, fluency, and reading comprehension. The RTI reading specialist noted in a June 2018 progress report that the Student showed "indicators of dyslexia." The Student's first and second grade teachers noted

that the Student read at a mid-kindergarten level.

14. During the 2017-2018 school year, the Student's first grade teacher shared with the Parent the possibility that the Student had dyslexia.
15. The Student's first day of second grade fell on August 27, 2018.
16. On August 30, 2018, the Parent emailed the Student's principal an attachment that contained a letter dated August 27, 2018. In it, the Parent requested that the Student "be evaluated for special education services under the Child Find obligations of the Individuals with Disabilities Education Act (IDEA)." The Parent specifically requested that the Student be evaluated "for dyslexia and any learning impediments that might go a long (sic) with it."
17. On September 5, 2018, the Student's Principal responded to the Parent by email, stating that the District "does not evaluate students for dyslexia," and went on to note that literacy assessments were given at the beginning of each year and, depending upon the results of those evaluations, the District would determine whether the Student needed further evaluations. The Principal further stated that the Parents were "welcome to have [the Student] privately tested."
18. On September 12, 2018, the Parent again requested the Student be evaluated to determine whether the Student would qualify for special education services.
19. On September 13, 2018, the District began to plan an assessment meeting with the Parent in response to the Parent's second request for an evaluation.
20. On September 25, 2018, a Multidisciplinary Evaluation Team meeting convened. On the same day, the District provided the Parent with a Prior Written Notice indicating that "Information/data shows that [the Student] is having difficulty with reading. We need additional testing to determine [the Student's] eligibility under Specific Learning Disability."
21. On September 26, 2018, the Parent signed a Consent for Evaluation and returned it to the District on September 27, 2018. The District proceeded with its evaluation of the Student.
22. During the first half of the Student's second grade year, the Student was working in a small group for 25 minutes per day, four times per week, in the area of reading.
23. On November 13, 2018, an eligibility meeting convened. The team concluded that the Student met the criteria for a Specific Learning Disability eligibility. At that meeting, the Parent and the Parent's advocate suggested goals around decoding, sight words, and reading fluency. The Parent also disagreed with the District's suggestion of using 80% as a completion level for goal setting—suggesting 90%, to which the District responded that 90% would be acceptable if it is what the team decided.
24. By November 13, 2018, the Student had made progress in reading, but was still in the "red zone" or "Intensive Range."
25. After the November 13, 2018 IEP Team Meeting, the District implemented pull-out services for the Student with a District Learning Specialist. The District Learning Specialist has used various methodologies and materials with the Student to work on improving the Student's reading skills. The Student is now reading at a mid-first grade level, having improved both reading speed and reading fluency.

26. On December 12, 2018, the IEP Team met to review a draft of the Student's IEP. The Parent and the Parent's advocate prepared a revised draft IEP and presented it at the IEP Team Meeting, requesting that the District implement the Parent's version of the IEP.
27. At the December 12, 2018 IEP Team Meeting, the Parent insisted that the reading method the Student was using during private tutoring be continued at school. The District offered to work with the Student's private tutor to interface between the private tutoring service and the elementary school teachers to provide a consistent learning experience for the Student. The District also offered collaboration with the Student's tutors in developing a reading program and IEP goals.
28. The Student's tutors and District personnel worked together to draft reading goals for the Student's IEP.
29. The District uses a mixed methodology for teaching students with dyslexia. The District is amenable to using different methods for teaching students with dyslexia, so long as the methods are evidence-based.

IV. DISCUSSION

A. Prior Written Notice

The Parent alleges that the District violated the Individuals with Disabilities Education Act (IDEA) because the District did not provide the Parent with a Prior Written Notice when it refused the Parent's request that the Student be evaluated for special education eligibility. A school district must provide a parent with Prior Written Notice within a reasonable period of time before it refuses to initiate an evaluation of a child. A Prior Written Notice must contain certain content, including a description of what action the school is refusing to take, why it is refusing such action, what the school district used as a basis for its refusal, a statement regarding the parent's protection under the IDEA's procedural safeguards, sources for the parent to contact to obtain assistance in understanding procedural safeguards, as well as other options considered and why those options were rejected.²

On August 30, 2018, the Parent sent the Student's Principal an email with an attached letter dated August 27, 2018. In it, the Parent requested that the Student "be evaluated for special education services under the Child Find obligations of the Individuals with Disabilities Education Act (IDEA)." The Parent specifically requested that the Student be evaluated "for dyslexia and any learning impediments that might go a long (sic) with it." On September 5, 2018, the Student's Principal responded to the Parent by email, stating that the District "does not evaluate students for dyslexia," and went on to note that literacy assessments were given at the beginning of each year and, depending upon the results of those evaluations, the District would determine whether the Student needed further evaluations. The Principal further stated that the Parents were "welcome to have [the Student] privately tested."

The September 5, 2018 District email does not explicitly state that the District was refusing to initiate an evaluation in response to the Parent's request. But the combination of the District message that it "does not evaluate students for dyslexia" and that the Parent was "welcome to have the [the Student] privately tested" sensibly leads to a conclusion that the District was refusing the Parent's evaluation request. In such circumstances, the District must provide the Parent with Prior Written Notice, which includes the above-described content. The District did not include such

² 34 CFR § 300.503; OAR 581-015-2310.

content in its September 5, 2018 email.

Fortunately, the Parent sought clarification of the District's September 5, 2018 email, which prompted productive communication and led to the Student being timely evaluated for special education eligibility arising from the Student's suspected dyslexia. Nevertheless, the District's September 5, 2018 refusal to evaluate constituted an action that required the District to issue a Prior Written Notice, which it did not do in conformity with the IDEA's requirements. The Department substantiates this allegation.

B. Child Find

The Parent alleges that the District violated the IDEA because it failed to fulfill its Child Find obligations. Specifically, the Parent alleges that this violation occurred after the Student's teachers expressed concern that the Student exhibited characteristics of a reading disorder. A school district has an obligation to identify, locate, and evaluate children for special education eligibility if the school district suspects the child of having a disability and in need of special education.³ A Specific Learning Disability is defined as a disorder where one or more of the basic psychological processes involved in understanding or using language, spoken or written, may manifest itself in an imperfect ability to, among other functions, read. Specific Learning Disability includes conditions such as dyslexia.⁴

During the 2017-2018 school year, the District was on notice of the following facts, the culmination of which constitutes reason to suspect the Student had a disability and was in need of special education: (1) The Student's first grade teacher moved the Student from "tier one" interventions to "tier two" interventions; (2) The Student's reading fluency and skills progress fell within the lowest, "intensive" zone for "Correct Letter Sounds," "Reading Accuracy," and "Words Correct Per Minute" in the fall, winter, and spring; (3) the Student's first grade teacher observed that the Student exerted great effort, but was not making sufficient progress in the area of reading; (4) the "I-Team" observed that the Student's reading ability was low despite working hard and that reading had become a non-preferred activity for the Student; (5) the Student continued to show deficits and made minimal progress in response to the I-Team interventions; (6) the Student's RTI reading specialist noted in June 2018 that the Student showed "indicators of dyslexia;" (7) the Student's first grade teacher shared with the Parent the possibility that the Student had dyslexia; and (8) the Student was already receiving specially designed instruction in the area of "communication-speech" for an identified articulation issue that was affecting the Student's reading.

The District was proactive in referring the Student to general education interventions to address reading difficulties the Student was experiencing. However, when the Student did not make sufficient progress over the course of the 2017-2018 school year, it was incumbent on the District to refer the Student for special education eligibility based upon the Student's demonstrated challenges in reading. The Department substantiates this allegation.

C. Failure to Evaluate

The Parent alleges the District violated the IDEA when it failed to evaluate the Student for special education eligibility after the Parent requested an evaluation at the beginning of the Student's second grade year.⁵ A parent or public agency may initiate a request for an evaluation to

³ OAR 581-015-2080(2).

⁴ OAR 581-015-2000(4)(b)(I).

⁵ The District's failure to evaluate the Student during first grade as part of its Child Find obligations is addressed in Section B.

determine if a child is a child with a disability.⁶ A school district must conduct an evaluation to determine if a child is eligible for special education services when a public agency 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. A special education evaluation must be completed within 60 school days from parent's written consent to the date of the meeting to consider eligibility.⁷

On August 30, 2018, the Parent contacted the District via email and requested an evaluation for special education services, focusing specifically on the Student being evaluated for "dyslexia" and other associated "learning impediments." After an initial response from the District that it "does not evaluate for dyslexia," the District and the Parent engaged in prompt and productive communications that resulted in the District initiating evaluation meeting plans on September 13, 2018 and convening a Multidisciplinary Evaluation Team Meeting on September 25, 2018. At the meeting, the District agreed to evaluate the Student based on the Student's "difficulty with reading," and obtained the Parent's Consent for Evaluation the following day. The District conducted an evaluation it determined to be appropriate and on November 13, 2018 convened an eligibility meeting in timely fashion—within the 60 school day timeline from the Parent's initial request on August 30, 2018. The Department does not substantiate this allegation.

D. Denial of FAPE

The Parent alleges that the District violated the IDEA and denied the Student a free appropriate public education (FAPE) when it used interventions for dyslexia that the Parent contends do not have proven efficacy and are not "evidence based." The IDEA "accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide [a student] with educational benefit".⁸

During the Student's first grade year, the District attempted different interventions in different settings in order to address the Student's challenges with reading. The Student did not make sufficient progress. Thereafter—during second grade—the District used different methodologies under one particular program with the Student. The Student has made some progress, particularly in the areas of fluency and short vowel sounds. The Student is now reading at a mid-first grade level, having improved both reading speed and reading fluency. The District did not wait until an IEP was finalized to begin providing intensive services from the District Learning Specialist, who has been extensively trained to work with students with Specific Learning Disabilities. Educators ultimately have the discretion of choosing methodology. The District abandoned an approach that was not resulting in the Student making sufficient progress and switched to a method whereby the Student began to make progress. The Department does not substantiate this allegation.

E. Parent Participation

The Parent alleges that the District violated the IDEA because, since November 2018, it did not provide the Parents with information regarding the Student's evaluation materials and intervention information, thus preventing the Parent from meaningfully participating in the Student's IEP. School districts are responsible for providing parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, placement, and provision of FAPE to a child.⁹ Additionally, the school district must obtain informed written consent from a parent before conducting an evaluation.¹⁰ The school district must ensure the parent understands and agrees

⁶ OAR 581-015-2105.

⁷ OAR 581-015-2110.

⁸ *R.P. v. Prescott Unified School District*, 631 F.3d 1117, 1122 (9th Cir. 2011).

⁹ 34 CFR § 300.501; OAR 581-015-2190.

¹⁰ OAR 581-015-2090.

to the carrying out of the activity for which consent is sought, but is not responsible for assuring that the parent understands the precise nature of all services or activities that would be included in a student's IEP.¹¹

The District has consistently and promptly communicated with the Parent regarding the Student's educational program. At IEP Team meetings, the District has been receptive and responsive to the Parent's input and inquiries as the Student's IEP was developed. The District listened to and adopted some of the Parent's suggestions during goal drafting. And in email exchanges outside of IEP Team meetings, the District has been responsive to the Parent's inquiries about the kind of programs and interventions the District intended to provide to address the Student's identified reading needs. The Parent has consistently been a valued, participatory, and informed member of the Student's IEP Team. The Department does not substantiate this allegation.

F. Predetermination/IEP Content

The Parent alleges that the District predetermined the Student's educational standards and failed to individualize the Student's IEP goals. The relevant period for investigation of—and findings related to—violations of IDEA in this matter is one year back from the day the complaint is received by the Department.¹² The relevant period for this matter is January 15, 2018 through January 14, 2019. At the time the Parent filed this Complaint, the Student's IEP was still being developed. The Parent's allegations regarding the District's predetermination of, or failure to develop appropriate IEP content are not ripe for investigation, and thus are not substantiated here.

V. CORRECTIVE ACTION¹³

In the Matter of Lake Oswego School District
Case No.19-054-002

Based on the facts provided, the following corrective action is ordered.

	Action Required	Submissions¹⁴	Due Date
1.	Compensatory Services a. Provide 30 hours of reading/literacy support and instruction based on the student's evaluation results, most recent IEP goals, and current reading comprehension and fluency measures to be provided by the District learning specialist or other similarly qualified educator with	Submit to ODE a copy of the schedule, signed by a District representative and the Parents.	April 7, 2019 Submit progress reports every 3 months until completed.

¹¹ *Letter to Johnson*, 56 IDELR 51 (June 3, 2010).

¹² OAR 581-015-2030(5).

¹³ The Department's order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (OAR 581-015-2030(15).) The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. (OAR 581-015-2030(17)-(18).)

¹⁴ 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: raeann.ray@ode.state.or.us fax number (503) 378-5156.

	<p>specialized training in reading and literacy.</p> <p>b. With the Parent, develop a schedule for providing these services during non-instructional hours. Using the baseline reading level reported in this order, track reading progress trend lines throughout the compensatory services period. The compensatory period shall extend through the end of the 2019-2020 school year and compensatory services will become unavailable should the Student withdraw from the District.</p>		
2.	<p>Procedure revision and Professional Development</p> <p>In consultation with ODE, draft a referral procedure that addresses the timely consideration of referrals for children participating in an RTI process as described in:</p> <p>https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf</p>	Submit draft procedures for ODE for review.	April 15, 2019
3.	Following ODE approval of the draft, provide training and information to district staff involved in responding to requests for evaluation	Provide evidence of completed training.	May 7, 2019

Dated the 15th Day of March 2019

Candace Pelt, Ed. D

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

Mailing Date: March 15, 2019

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).)