

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Central School District  
13J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 19-054-004

**I. BACKGROUND**

On February 22, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Central School District 13J (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.<sup>2</sup> This order is timely.

On February 27, 2019, the Department's Complaint Investigator (Investigator) sent a *Revised Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 13, 2019.

On March 13, 2019, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Parent's Complaint. In total, the District submitted the following items:

1. District Response in 19-054-004
2. Cover Page: Special Education Documents
3. Prior Notice about Evaluation/Consent for Evaluation, 05/08/2018
4. Meeting Notes, 05/08/2018
5. Letter from Pediatric Occupational Therapist, 05/09/2018
6. Authorization to Use and/or Disclose Educational and Protected Health Information, 06/08/2018
7. Authorization to Use and/or Disclose Educational and Protected Health Information, 05/08/2018
8. Prior Notice about Evaluation/Consent for Evaluation, 12/12/2017
9. Student Assessment List, 12/12/2017
10. Meeting Notes, 12/12/2017

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

<sup>2</sup> 34 CFR § 300.152(b); OAR 581-015-2030(12).

11. Parent provided information regarding (Student's) Developmental History
12. List of Special Education Documents: Prior Notices
13. Prior Notice of Special Education Action, 09/13/2018
14. Special Education Notice of Team Meeting, 09/06/2018
15. Prior Notice of Special Education Action, 06/15/2018
16. Special Education Notice of Team Meeting, 06/15/2018
17. Prior Notice of Special Education Action, 05/09/2018
18. Special Education Notice of Team Meeting, 05/04/2018
19. Prior Notice of Special Education Action, 03/23/2018
20. Special Education Notice of Team Meeting, 03/20/2018
21. Special Education Documents: Eligibility
22. Confidential Statement of Eligibility for Special Education (Emotional Disturbance 60) 09/13/2018
23. Email: "Meeting follow-up" 09/21/2018
24. Statement of Eligibility for Special Education (Other Health Impairment 80), 09/13/2018
25. Email: "Meeting follow-up" 09/21/2018
26. Statement of Eligibility for Special Education (Specific Learning Disability 90)
27. Email: "Meeting follow-up" 09/21/2018
28. Statement of Eligibility for Special Education (Other Health Impairment 80)
29. Letter from Parent to District, 03/25/2018
30. Meeting Notes, 03/23/2018
31. Special Education Documents: Meeting Notes
32. Meeting Notes, 09/13/2018
33. Meeting Notes, 06/15/2018
34. Meeting Notes, 05/08/2018
35. Meeting Notes, 03/23/2018
36. Communication Documents (Letters, Emails)
37. Communication: Letters
38. Letter from Parent to District, 03/25/2018
39. Letter from District to Parent responding to request for IEE, 04/03/2018
40. Letter from Parent to District, Re: (Student) IEP Meeting, 04/22/2018
41. Letter from District to Parent, 04/23/2018
42. Communication: Emails
43. Email: "Brief" 02/22/2018
44. Email: "Brief" 02/23/2018
45. Email: "document from meeting" 03/22/2018
46. Prior Written Notice of Special Education Action, 03/23/2018
47. Email: "document from meeting" 03/23/2018
48. Email: "document from meeting" 03/27/2018
49. Email: "document from meeting" 03/28/2018
50. Email: "document from meeting" 03/28/2018
51. Email: "(Student)" 03/29/2018
52. Email: "(Student)" 04/02/2018
53. Email: "(Student)" 04/03/2018
54. Email: "(Student)" 04/06/2018
55. Email: "(Student) Per Phone Conversation" 04/06/2018

56. Email: "Re: (Student)" 04/03/2018
57. Email: "(Student) Per Phone Conversation" 04/10/2018
58. Email: "Re: (Student)" 04/10/2018
59. Email: "(Student)" 04/11/2018
60. Email: "(Student)" 04/16/2018
61. Email: "(Student)" 04/17/2018
62. Email: "(Student)" 04/20/2018
63. Email: "(Student)" 04/20/2018
64. Email: "(Student)" 04/22/2018
65. Email: "(Student)" 04/24/2018
66. Email: "(Student)" 04/24/2018
67. Email: "Release/exchange of information" 05/04/2018
68. Email: "Forms/information" 05/09/2018
69. Email: "(Student)" 05/10/2018
70. Email: "Forms/information" 05/10/2018
71. Email: "Request for Screening—Home School Student" 05/14/2018
72. Email: "Forms/information" 05/15/2018
73. Email: "FWD: Teacher Assessment" 05/17/2018
74. Email: "Testing" 06/08/2018
75. Email: "Testing" 06/14/2018
76. Email: "Prior Written Notice following today's meeting" 06/15/2018
77. Email: "Prior Written Notice following today's meeting" 06/19/2018
78. Email: "Meeting document" 09/13/2018
79. Email: "Meeting follow-up" 09/20/2018
80. Email: "Meeting follow-up" 09/21/2018
81. Email: "Meeting follow-up" 09/25/2018
82. Email: "Meeting follow-up" 09/25/2018
83. Evaluation Information and Report Documents
84. Confidential Evaluation Report, 09/13/2018
85. Comprehensive Test of Phonological Processing-II (Central School District)
86. Might Oaks Letter (Parent) 05/09/2018
87. OSHU-CDRC Developmental Pediatrics Report (Parent), 04/11/2018
88. Confidential Evaluation Report (Central School District), 03/23/2018
89. Speech and Language Screen Summary (Central School District) 11/13/2017
90. Occupational Therapy Observation (Central School District), 10/19/2107
91. Special Education Teacher Observation (Central School District), 10/02/2017
92. Special Education Teacher Observation (Central School District), 09/21/2017
93. Health/Medical Information Form (Central School District), 09/20/2017
94. Mighty Oaks Speech Language Goals, 04/05/2017
95. Mighty Oaks Occupational Therapy Evaluation (Parent), 02/15/2017
96. Speech and Language Screen (Central School District), 10/05/2016—10/13/2016
97. Educational Impact: Language (Speech Screen) (Central School District, 10/28/2016
98. OHSU-Pediatrics Eye Summary (Parent) 08/25/2016
99. OHSU-CFRC Speech Language Pathology Report (Parent), 07/19/2016
100. OHSU-CDRC Developmental Pediatrics Report (Parent), 05/17/2016
101. Staff Contact Information Documents

The Investigator interviewed the Parents (each Parent individually and jointly are referred to here as “Parents”) on March 28, 2019. The Parents provided additional documentation at that time. The Investigator determined that onsite interviews were not necessary. On April 4, 2019, the Investigator interviewed the District’s Special Education Director, Superintendent, Behavior Specialist, Principal, First Grade Teacher, and Kindergarten Teacher. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>3</sup> The Parents’ allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from February 23, 2018, to the filing of this Complaint on February 22, 2019.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1.</b>	<p><b><u>Child Find</u></b></p> <p>The Parents allege that the District violated the IDEA when it failed to recognize and or identify the Student’s disabilities or needs. Specifically, the Parents allege that the District failed to find the following disabilities: Expressive Language Disorder, Anxiety, Sensory Processing Disorder, Specific Learning Disorder with a reading impairment, and difficulty writing.</p> <p>(34 CFR §§ 300.111, 303.302, 300.301; OAR 581-2080(d))</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District considered a host of issues and concerns raised by the Parents, including medical information and outside assessments. The District is required to consider whether various diagnoses have an impact on the Student’s education. The District provided documentation of numerous evaluations and meetings where this question was considered.</p>
<b>2.</b>	<p><b><u>Evaluation Planning</u></b></p> <p>The Parents allege that the District violated the IDEA when it failed, as part of the Student’s initial evaluation or reevaluation, to consider relevant evaluation data provided by the Parent. The Parents alleged that the District failed to consider such information as reports from Oregon Health Science University—Child Development and Rehabilitation Center (OHSU-CDRC) or failed to properly</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District considered all information provided by the Parent, including information from OHSU-CDRC. The District obtained consent from the Parent to correspond with the OHSU evaluator. The assessment data received was adequately evaluated by numerous staff at the District including a Licensed Clinical Social Worker and a School Psychologist.</p>

<sup>3</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>interpret that information.</p> <p>(34 CFR § 300.305; OAR 581-015-2115)</p>	
<p><b>3.</b></p>	<p><b><u>Determination of Eligibility</u></b></p> <p>The Parents allege that in the process of determining whether the Student is a child with a disability under OAR 581-015-2130 through OAR 581-015-2180, that the District erred in several ways:</p> <p>a) The Parents allege that the District violated the IDEA when the Student’s IEP Team lacked a person qualified to interpret data on the Student. Specifically, the Parent alleged that the IEP Team should have included a psychologist to interpret relevant data.</p> <p>b) The Parents allege that the District violated the IDEA when it failed to recognize how all the Student’s disabilities impacted the Student, and that the IEP thereby formulated by the District did not take into consideration all the Student’s special education needs.</p> <p>(34 CFR §§ 300.306; 300.308; 300.111 OAR 581-015-2120)</p>	<p><b><u>Not Substantiated</u></b></p> <p>a) The District convened a group of qualified individuals to review information gathered to determine whether the Student was eligible for special education. In response to the Parents’ concern that the District had not included a school psychologist, the District later held a meeting with a school psychologist in attendance.</p> <p>b) The testing and observations utilized by the District found that the Student performed at average levels in areas of analysis and therefore did not exhibit a need for special education.</p>
<p><b>4.</b></p>	<p><b><u>Independent Educational Evaluation</u></b></p> <p>The Parents allege that the District violated the IDEA when it did not consider educational evaluations that the Parent provided to the District. The Parents allege that the documents that the District failed to consider included private medical evaluations from the OHSU-CDRC and the child therapy center then treating the Student.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The District did consider educational evaluations provided by the Parents and corresponded with those evaluators about their observations as compared to the District’s observations of the Student. The Department does not substantiate this allegation.</p>

	(34 CFR § 300.502; OAR 581-015-2305)	
5.	<p><b><u>General Evaluation and Reevaluation Procedures</u></b></p> <p>The Parents allege that the District violated the IDEA when it neglected to conduct a comprehensive evaluation of the Student encompassing all areas related to the Student’s suspected disability. The Parents allege that the District’s evaluations should have taken into account such considerations as health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities.</p> <p>(34 CFR §§ 300.304; 300.305; OAR 581-015-2110)</p>	<p><b><u>Not substantiated</u></b></p> <p>The District evaluated areas of suspected disability for which the Parent raised concerns. The Parents’ observations and impressions of the Student’s abilities differed from the observations of District staff. Meeting minutes of the various meetings conducted to determine eligibility evidence that the District considered a variety of considerations, including the Student’s health status, academic performance, and behavior in the classroom.</p>

### III. FINDINGS OF FACT

1. The Student in this case is in the second grade and resides in the District. The District has determined that the Student is not eligible for special education services. The Parents have chosen to homeschool the Student.
2. On May 17, 2016 the Student was seen at the Oregon Health Science University-Child Development and Rehabilitation Center (OHSU-CDRC) by a Developmental Pediatrician. The Student was five years of age at the time and was attending preschool. The pediatrician’s report documented that the Parents interpreted the Student’s progress as approximately eight months behind where the Student should be developmentally. The pediatrician further documented that the Student had a history of language delay, communication difficulties, and behavior indicators that could potentially indicate Autism and difficulty learning at school. While the pediatrician noted that further assessments were needed, the Student was provided with preliminary diagnoses of Autism Spectrum Disorder (preliminary), language disorder, articulation disorder, delay of cognitive development (primarily verbal), and learning difficulty.
3. On July 19, 2016, the Student was seen at OHSU for an assessment by a Speech Language Pathologist (SLP). The SLP concluded that the Student displayed “average expressive syntax skills on standardized tests of language abilities, but many more functional deficits in spontaneous language sampling. [The Student] would benefit from communication intervention through [the Student’s] school with a focus on strategies to

organize narratives, active listening skills, and conversation repair, as well as a focus on grammatical targets in the context of the classroom. [The Student] would also benefit from social skills training as part of [the Student's] communication intervention." The SLP's report goes on to note that "[the Student's] performance on language testing today suggest that [the Student's] communication profile may be influenced by behavioral factors, such as performance anxiety or executive function challenges."

4. On August 24, 2016, the Parents sent the District an email informing the District of upcoming evaluations, SLP diagnoses, and future planned evaluations. The Parents requested that the District consider a 504 plan to accommodate the Student's needs around food allergies, or an IEP if the Student qualified.
5. The Student began kindergarten in the District during the 2016-2017 school year. On October 5, and October 13, 2016, the District administered a Speech-Language Screener.
6. The Student's Kindergarten Teacher described the Student as reserved, especially the first few days of school. The Kindergarten Teacher observed that much of the Student's hesitancy was associated with the Student's food allergies. Upon questioning, the Student voiced concern about interactions due to food allergies. The Kindergarten Teacher engaged in conversation with the Student, which appeared to have the effect of triggering the Student to self-advocate around issues of snacks and food. The Kindergarten Teacher observed that the Student was quite average, with some noted hesitancy which at that age could be attributed to personality type. The Kindergarten Teacher was aware of the Parents' concerns regarding the Student struggling with sensory issues. The Kindergarten Teacher reported not requiring any special interventions to prompt the Student to advocate for a sensory break, such as asking to take a walk. The school briefly used a color chart provided by a community service provider to indicate the Student's level of escalation. The Kindergarten Teacher observed that within the first few weeks of school the Student no longer needed such tools and advocated for themselves. Behavior issues were not observed in class.
7. The District provided the Student with accommodations for the Student's food allergies.
8. On February 15, 2017, the Student was evaluated by a community Occupational Therapist. The Occupational Therapist recorded the Parents' concerns regarding the Student's activities of daily living, including sensory needs. The occupational therapy report noted that the family has another child with sensory needs and already had a sensory room in their home, and that the Student "absolutely loved that room." The Occupational Therapist recommended occupational therapy services for the Student twice monthly to participate in structured therapeutic activities, and to understand zones of regulation, and self-regulation skills. This assessment was provided to the District.
9. On April 5, 2017, the Student's community SLP provided a treatment plan for the Student. The Parents provided the treatment plan to the District. The plan addressed articulation and language skills.

On September 21, 2017, as part of the District's special education evaluation of the Student in response to the Parents' request, the Student was observed in the first-grade classroom. The Student was not observed to have difficulty in the learning environment.

10. On October 2, 2017, the District conducted a second observation of the Student in the classroom. The Student was not observed to have difficulty in the learning environment.

The Student's First Grade Teacher was similarly aware of the Parents' concerns and had ongoing communications with the Parents regarding those concerns. The First Grade Teacher observed that the Student entered first grade performing at grade level in reading and math. The First Grade Teacher described the Student as a leader in their reading group in the class. The First Grade Teacher reported having not observed the behaviors the Parents were concerned about such as shutting down or not participating in class. While the Parents expressed concern the Student was failing to self-advocate, that was not seen in school. The First Grade Teacher clearly articulated the Parents concerns, reported watching for them, but behaviors or academic performance of concern were not observed in school.

11. On October 19, 2017, the District conducted an occupational therapy observation of the Student. The observation was conducted by an occupational therapist from the Willamette Education Service District. The occupational therapist concluded that the Student was part of the "classroom community. [The Student] is interactive with [the Student's] peers and participated readily in classroom activities . . . At no time during the observation did [the Student] appear to be disinterested or present significant behavior(s) that impeded [the Student] or other students learning. [The Student] has developed strategies to obtain the movement [the Student] needs that are not excessive and do not at this time make [the Student] appear different from [the Student's] peers."
12. On November 8, 2017, the District completed a classroom observation of the Student. The observer did not record any concerning behaviors or difficulties with the learning environment on the part of the Student.
13. On November 13, 2017, the District completed a Speech Language Screening Summary for the Student in response to the Parents request. The screening was conducted by a Speech Language Pathologist (SLP) from the Willamette Education Service District. The SLP had reviewed the evaluation completed at OHSU, as well as the Student's local community SLP provider. The SLP noted that the Student's teacher reported that the Student was "understood in the classroom between 90% and 100% of the time." The Student "does not appear reluctant to talk in class. [The Student] can be quiet, but shares and offers conversation on a regular basis." The SLP went on to note that, "no specific articulation errors have been noticed by [the Student's] teachers at this time." The SLP also observed that, "no educational concerns were noted as related to [the Student's] communication in the school setting."
14. The SLP's conclusions were as follows: "Based on the results from both formal and informal assessment tools, it appears that [the Student's] speech and language skills are

adequate to meet the educational standards of [the Student's] classroom curriculum. There does not appear to be significant educational impact as related to communication skills at this time" and that the Student's "speech and language abilities can best be met in the general education classroom." The SLP made a series of recommendations to support the Student's "continued educational growth . . . ."

15. On November 16, 2017, the Parent sent an email requesting that the District formulate an Individualized Education Program (IEP) for the Student and expressing concern that the District had not provided additional support to the Student, leaving the Parents to provide speech and occupational therapy through a community provider.
16. The District began the process of obtaining consent from the Parents to begin planning the necessary assessments for concerns expressed by the Parent. The Parents provided written consent for the evaluations in December 2017.
17. During November 2017, the Parents withdrew the Student from school in the District and began homeschooling the Student. The Student did not return to school after the Thanksgiving break.
18. During the Department's interview with the Parents for this special education complaint investigation, the Parents reported that the Student exhibited a variety of behaviors outside of school. The Parents noted that these were particularly pronounced immediately after school, and that these behaviors included violent outbursts. The Parents also reported that the Student voiced displeasure with school and a preference not to return.
19. On December 12, 2017, the Parents consented to the District evaluating the Student in response to the Parents' stated "concerns regarding [the Student's] progress in the school setting due to sensory issues, attention, executive functioning, and understanding language used in the classroom. Parents also suspect areas of heightened exceptional abilities with cognitive processing."
20. On December 12, 2017, the District met with the Parents to determine the Student's evaluation needs. Present for the meeting were the Parents, the Student, the Principal, Special Education Program Assistant, and the District's Director of Special Programs. At the conclusion of the meeting the team determined it would proceed with a special education evaluation utilizing various assessment tools, including behavior assessments, (BASC-3, BRIEF), assessments of cognitive abilities (Verbal: WISC, Non-verbal: KABC), assessment of academic achievement (WJ-IV), observations, and sensory profiles.
21. The Student was assessed through a variety of tests, observations, and interviews with Parents and teachers. The team decided to reconvene in 60 days to review the evaluation data.
22. On March 23, 2018, the District produced an evaluation report regarding the Student and held an eligibility meeting. The team discussed the evaluation results and determined that the Student was not eligible for special education.

23. On March 23, 2018, the District sent the Parents prior written notice that the Student was not eligible for special education under the category of Other Health Impairment.
24. In a letter dated, April 11, 2018, the Student's community Developmental Pediatrician provided the following additional information on the Student's diagnoses and recommendations:
  - a. The Student was initially seen on May 17, 2016 for initial diagnosis. The April 11, 2018 appointment was a follow-up to the initial diagnosis and "check on services provided through school." The Student was initially diagnosed with expressive language disorder, the assessment having ruled out an Autism diagnosis. The assessment also found that the Student "had problems with anxiety and executive functioning . . ."
  - b. Regarding the Student's anxiety, the evaluator noted that anxiety was primarily related to school and that after the Student "was removed . . . and started home school program, this improved significantly."
  - c. The evaluator noted that the Student was then attending a home school program, going on to observe that when the Student, "started first grade, [the Student] began having more difficulty with [ ] learning. [The Student] had trouble with interactions with the teacher . . . [and] was not learning in the class. It got to the point where [the Student] was refusing to school (sic) and when was there [ ] would shut down. This usually occurred when [the Student] was having difficulty with academic work. Home school started after Thanksgiving. [The Student's] social interaction improved greatly. [The Student's] interaction with adults and other children also improved. [The Student] is able to read some sight words, but does not have good decoding skills. [The Student] is not reading sentences at this time. [The Student] does have good comprehension. Writing has been difficult . . ."
  - d. The evaluator noted that the Student has not had any behavior issues.
  - e. The evaluator noted that the Student's, "educational testing supports the diagnosis of a learning disability in reading. [The Student] is at risk for learning disorders . . ."
  - f. The pediatrician's observations regarding the Student's academic performance came from Parents' reports.
25. On May 8, 2018, the District, following receipt of new medical information regarding the Student, initiated a referral meeting.
26. On May 9, 2018, the District sent the Parents a prior written notice informing the Parents that the District had not found the Student eligible for special education services.
27. On May 10, 2018, the District received consent for an initial comprehensive evaluation, which included an Expressive Communication Screening.
28. On June 15, 2018, the District sent the Parents a prior written notice after it performed screenings for Autism Spectrum Disorder and Expressive Language Disorder. As a result of these assessments, the District did not find that the Student qualified for special education under either eligibility category because the Student's disability did not then "show educational impact" according to either area of eligibility.

In a letter dated, May 2, 2018, the Student's community Occupational Therapist suggested that the District provide an IEP to the Student. That letter read in part, "[Student] has the diagnoses of ADHD (inattentive type), anxiety, expressive language disorder, specific learning disorder with reading impairment, difficulty writing, and executive function deficit. It is my professional opinion, an IEP will assist [Student] in [ ] educational goals and help foster the appropriate learning environment. Recently, a Sensory Profile was filled out by [the Parents]. These results offer some insight into what this optimum learning environment may be. [Student] shows "definite difference" in the following areas; sensory seeking, low tone/endurance, and inattention/distractibility. [The Student] also scored, "probable difference" in the area of emotionally reactive. These areas will impact [the Student's] learning. Provided the appropriate reasonable accommodations, [the Student] would be more successful academically . . . it is my professional opinion that an IEP is medically necessary for independence in self-regulation, educational success, and overall improvement with self-calming and self-regulation."

29. On September 13, 2018, the District completed a special education evaluation report. The District had initiated additional testing for the Student at the Parent's request. The team reviewed existing information from the Parents, the Student's cumulative records, the Student's community pediatrician, the District's Behavior Specialist, as well as observations from the classroom, and the home school environment. The District administered such tests as the Kaufman Test of Educational Achievement, the Woodcock-Johnson Test of Achievement and Cognitive Abilities, the Behavior Rating Inventory of Executive Function (BRIEF) and the Wechsler Intelligence Scale for Children. At the conclusion of the tests, the team determined that the Student did meet eligibility criteria for a child with an emotional disturbance but did not observe that the disability had an adverse impact on the Student's educational performance.
30. The report included a review of testing conducted by OHSU-CDRC, which reviewed prior speech language pathology, Parents' observations, an Autism screening, standardized tests, evaluation by an Occupational Therapist, and assessment of the Student's social/emotional development and additional medical consideration.
31. The District convened an initial eligibility meeting on September 13, 2018 to consider additional information, including concerns of the Parents regarding the Student's eligibility for special education. The meeting was attended by the District's School Psychologist. The District reviewed observations and testing data gathered from the home school environment. Finding that the Student continued to make progress, the District determined that the Student remained ineligible for special education.
32. On February 22, 2019, the Department received this Complaint.
33. The Student's Kindergarten Teacher, First Grade Teacher, Principal, and Special Education Director all noted that the only behavior issues observed were when the Parents were present at school. On occasions when the Parents were present, the Student would behave younger than the Student was, or would appear to cling to family members.

## IV. DISCUSSION

### A. Child Find

The Parents allege that the District violated the Individuals with Disabilities Education Act (IDEA) when the District failed to recognize or identify the Student's specific disabilities or needs. Specifically, the Parents allege that the District failed to find the following disabilities: Expressive Language Disorder, Anxiety, Sensory Processing Disorder, and Specific Learning Disorder with a reading impairment, and difficulty writing.

School districts must identify, locate and evaluate all children with disabilities for whom they are responsible **who need special education services**.<sup>4</sup> This requirement extends to a host of children and circumstances, including children who are homeschooled.<sup>5</sup> School districts must have in effect policies and procedures to ensure that such children are identified, located, and evaluated.<sup>6</sup>

The District reports that there was disagreement about whether the Student's disability had an educational impact. The District does not dispute that the Parents provided documentation from outside experts regarding the Student's various diagnoses. Rather, the District points out that the Student's IEP Team did not find that the Student's diagnoses impaired the Student's academic ability in the classroom. District staff was aware of the Parents' concerns and reported having not observed such concerns reflected in the Student's academic performance and behavior in the classroom environment. At the Parents' request, beginning December 12, 2017, the District conducted a variety of evaluations and observations to evaluate the Student's eligibility for special education. In response to Parents' concerns, the District subsequently held eligibility meetings to review information provided by the Parents and assessment data on March 23, 2018, May 8, 2018, June 15, 2018, and September 13, 2018.

The District began assessments in 2017 and continued to assess the Student in response to the Parents' requests. The initial December 12, 2017 prior notice for beginning the assessments noted that school staff did not have concerns or suspect disabilities. The District did not fail to identify the Student as a child with a disability. Rather, District staff did not suspect or observe that the Student required further evaluation. In response to Parents' concerns, the District performed multiple assessments and reviewed information provided by the Parents. The District fulfilled its child find obligations. The Department does not substantiate this allegation.

### B. Evaluation Planning

The Parents allege that the District violated that IDEA when the District failed—as part of the Student's initial evaluation or reevaluation—to consider relevant evaluation data provided by the Parents. The Parents allege that the District failed to consider such information as reports

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<sup>4</sup> OAR 581-015-2080(2) (Emphasis added).

<sup>5</sup> OAR 581-015-2080(2)(a)-(f).

<sup>6</sup> 34 CFR § 300.111.

from Oregon Health Science University-Child Development and Rehabilitation Center (OHSU—CDRC) or alternatively failed to properly interpret that information.

As part of an initial evaluation, the child’s IEP team and other qualified professionals as appropriate must review existing evaluation data on the child.<sup>7</sup> Such data includes evaluations and information provided by the parents, current classroom-based, local, or state assessments and classroom-based observations.<sup>8</sup> Based on this body of information and input from parents, the team must determine whether the child is a child with a disability who needs special education services.<sup>9</sup>

In carrying out its evaluations, the District reviewed and referred to data provided by the Parents, as well as assessments conducted by community providers. Meeting notes reflect that the District and the Parent discussed and considered evaluations and observations of the Student that were conducted by the Student’s Pediatrician and community SLP and Occupational Therapist. The District convened four meetings where this evaluation data was considered by qualified individuals. The Department does not substantiate this allegation.

### **C. Determination of Eligibility**

The Parents allege that in the process of determining whether the Student is a child with a disability, the District violated the IDEA when it erred in the following ways: (1) The Student’s IEP Team lacked a person qualified to interpret data on the Student. Specifically, the Parent alleges that the IEP Team should have included a psychologist to interpret relevant data; and (2) The Parents allege that the District violated the IDEA when it failed to recognize how the Student’s disabilities impacted the Student, and that the IEP formulated by the District did not take into consideration all the Student’s special education needs.

Upon completing the administration of assessments and other evaluation materials, a team must determine whether the child is a child with a disability under OAR 581-2130 through 581-015-2180 and the educational needs of the child.<sup>10</sup> The team must include the parent, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability.<sup>11</sup> If the child is suspected of having a specific learning disability, the team must meet additional evaluation requirements.<sup>12</sup> The IDEA requires that the group making the determination whether the child suspected of having a specific learning disability is a child with a disability must be made by the child’s parents and a team of qualified professionals which must include the child’s general education teacher, or a teacher qualified to teach a child of their age, and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.<sup>13</sup>

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<sup>7</sup> OAR 581-015-2115(1)(a).

<sup>8</sup> OAR 581-015-2115(1)(a)(A)-(B).

<sup>9</sup> OAR 581-015-2115(1)(b)(A)-(C).

<sup>10</sup> OAR 581-015-2120(1).

<sup>11</sup> OAR 581-015-2120(1)(a).

<sup>12</sup> OAR 581-015-2120(1)(b).

<sup>13</sup> 34 CFR §300.308(a) & (b).

## **1. Person Qualified to Interpret Data**

The Parents allege that the District violated the IDEA when it failed to have a school psychologist present at the March 23, 2018 meeting when assessments and data collected on the Student were considered for eligibility purposes. The purpose of the meeting was to determine whether the Student qualified for special education. Following the meeting, the District sent the Parents a prior written notice documenting the District's decision that the Student was not eligible under the category of Other Health Impairment. At the first eligibility meeting the District included a Behavior Specialist who is also a Licensed Clinical Social Worker, and an Occupational Therapist. After the Parents raised the concern that the information provided by OHSU required a school psychologist's analysis, on September 13, 2018, the District conducted a meeting with the School Psychologist in attendance. The District had earlier convened two meetings with additional specialized staff in attendance. The District expressed willingness to consider accommodations for the Student should the Parents chose to return the Student to school. The School Psychologist provided input on the team decision to not find the student eligible under the category of Specific Learning Disability but provide accommodations for sensory needs if needed. The Department does not substantiate this allegation.

## **2. Impact of Disability in Educational Environment**

The Parents further allege that the District violated the IDEA by considering all the Student's disabilities separately, rather than how the various diagnoses together potentially impacted the Student's learning. The assessments of the Student included teacher observations and observations in the homeschool environment. These observations repeatedly showed that the Student was performing at grade level. The District convened five meetings to discuss the Student's diagnoses, test results, evaluation reports, and the Parent's input. The District's assessments included those conducted by a Speech Language Pathologist, Occupational Therapist, Licensed Clinical Social Worker, and licensed educators familiar with the Student. In response to the Parents concern that a school psychologist had not been present at earlier meetings, on September 13, 2018, the District included a School Psychologist at an eligibility meeting. Following the September 13, 2018 meeting, the District again concluded that the Student did not need special education services.

The District reviewed the information provided by the Parents in the form of outside evaluations and the Parents' observations and concerns. By the September 13, 2018 meeting, the District documented seeing continued educational improvement in the home school setting. The District noted that if the Student were returned to school, supporting such a transition may be necessary and that the District was willing to provide these services. A team of qualified individuals undertook appropriate practices to determine the Student's special education eligibility. The Department does not substantiate this allegation.

## **D. Independent Education Evaluation**

The Parents allege that the District violated the IDEA when it did not consider educational evaluations that the Parents provided to the District. The Parents alleges that the documents

that the District failed to consider include private medical evaluations from the Oregon Health Science University—Child Development and Rehabilitation Center (OHSU—CDRC) and the child therapy center then treating the Student.

A parent of a child with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.<sup>14</sup> An independent education evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district.<sup>15</sup> The school district must provide information to the parent about where an independent educational evaluation may be obtained, if the parent requests one.<sup>16</sup> If the parent shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the district in a decision made with respect to the provision of a free appropriate public education.<sup>17</sup>

On April 3, 2018, the District, responding to the Parents' March 29, 2018 request, sent the Parents information on obtaining an Independent Educational Evaluation (IEE). The District provided the Parents with the information regarding the process, qualifications, costs, approved assessment instruments, and list of independent evaluation providers. During the May 8, 2018 meeting, the Parents expressed interest in pursuing an IEE. The Parents did not obtain an IEE. During the interview with the Investigator, the Parents reported that the evaluations previously obtained and presented to the District at the Parents expense were conducted by an evaluator on the list of evaluators provided by the District, the OHSU—CDRC.

The District considered outside evaluations that the Parents shared with the District. On May 6, 2018, the Parents signed an authorization to allow the District to communicate with the Student's Pediatrician regarding the assessment. District staff reported to the Investigator that District staff communicated with the Student's Pediatrician regarding differences observed in the classroom environment and the Parents' reports of their observations of the Student in the home environment. The District is required to provide special education when the Student's disability has an adverse impact on the Student's educational performance.<sup>18</sup> The District conducted numerous evaluations and observations, both by District employees and those from the Education Service District, and none reflected the concerns raised by the Parents. The Department does not substantiate this allegation.

## **E. General Evaluation and Reevaluation Procedures**

The Parents allege that the District violated the IDEA when the District neglected to conduct a comprehensive evaluation of the Student encompassing all areas related to the Student's suspected disability. The Parents allege that the District's evaluations should have explored such considerations as health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

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<sup>14</sup> OAR 581-015-2305(1).

<sup>15</sup> OAR 581-015-2305(1)(a).

<sup>16</sup> OAR 581-015-2305(2).

<sup>17</sup> OAR 581-015-2305(7).

<sup>18</sup> OAR 581-012-2105(3)(a)(A).

Before conducting any evaluation or reevaluation of a child, the district must conduct evaluation planning.<sup>19</sup> Before conducting an evaluation, a school district must provide notice to the parents, obtain informed written consent, and provide the parents with prior written notice.<sup>20</sup> In conducting evaluations, school districts must utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information from the parents.<sup>21</sup> Each school district must also ensure that evaluations are sufficiently comprehensive to identify all of the student's special education and related service needs.<sup>22</sup>

On December 12, 2017, the Parents signed a consent for the District to conduct testing and assessments of the Student. On the same date, the District sent the Parents prior written notice documenting the District's proposed evaluation of the Student. The prior written notice proposed the following evaluation procedures, tests, records and reports: "Parent and staff input. Team meetings to discuss parent concerns. Classroom data and information. Speech and Occupational Therapy screening information. Updated home schooling observations. Parent provided evaluation information. Parent request."

The District prepared a written assessment list detailing five standardized assessments to be used, in addition to observations, interviews of Parents and District staff, and other tools. On December 12, 2017 the District convened a meeting to determine the Student's evaluation needs. That meeting included the Parents, the Student, the Principal, Special Education Program Assistant, and Director of Special Programs. The District convened an initial eligibility meeting on March 23, 2018 to consider assessment data. Present for the meeting were the Parents, Special Education Teacher, the Student's former Classroom Teacher, Behavior Specialist, Director of Special Education, Occupational Therapist, and Principal. The Parents shared their observations and medical information regarding the Student. The assessment data was considered by the team, which determined that the Student was not eligible for special education due in large part to academic performance and assessments that evidenced that the Parents' concerns were not reflected in the educational environment. The District does not substantiate this allegation.

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<sup>19</sup> OAR 581-015-2110(1).

<sup>20</sup> OAR 581-015-2110(2)(a), (2)(b), and (2)(c).

<sup>21</sup> OAR 581-015-2110(3)(a).

<sup>22</sup> OAR 581-015-2110(4)(e).

## V. CORRECTIVE ACTION<sup>23</sup>

*In the Central School District #13J  
Case No. 19-054-004*

The Department does not order corrective action in this matter.

Dated: this 23rd Day of April 2019

*Candace Pelt, Ed.D.*

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

Mailing Date: April 23, 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).)

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<sup>23</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)).