

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of )  
Salem-Keizer School District 24J )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-012

**I. BACKGROUND**

On March 20, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation (Complaint) from the Parent (Parent) of a student (Student) who receives special education services in Salem-Keizer School District 24J (District). The Department confirmed receipt of the Complaint and forwarded it to the District.

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> 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. This timeline may be extended if the Parent and the District agree to an extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. This order is timely.

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 investigation is March 21, 2018 through March 20, 2019.

On March 26, 2019 the Department’s Special Education Legal Specialist and investigator in this matter (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 April 9, 2019.

On April 9, 2019, the District responded to the Parent’s Complaint and submitted responsive documents to the Investigator. These documents are listed below:

**Documents**

1. Student IEP, November 8, 2017
2. Student IEP Amendment, November 8, 2017
3. Student IEP Amendment, November 8, 2017
4. Student IEP, October 3, 2018
5. Conference Summary, September 26, 2017
6. Notice of Team Meeting, September 26, 2017

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

<sup>2</sup> OAR 581-015-2030(5).

7. Notice of Team Meeting, October 27, 2017
8. Conference Summary, November 8, 2017
9. Disability Statement, November 8, 2017
10. Special Education Placement Determination, November 8, 2017
11. Notice of Team Meeting, September 10, 2018
12. Conference Summary, September 17, 2018
13. Notice of Team Meeting, September 26, 2018
14. Conference Summary, October 3, 2018
15. Special Education Placement Determination, October 3, 2018
16. Notice of Team Meeting, November 20, 2018
17. Notice of Team Meeting, December 6, 2018
18. Conference Summary, December 10, 2018
19. Notice of Team Meeting, December 10, 2018
20. Notice of Team Meeting, December 14, 2018
21. Conference Summary, December 19, 2018
22. Disability Statement, December 19, 2018
23. Special Education Placement Determination, January 23, 2019
24. Special Education Contact Log, February 22, 2019
25. Prior Written Notice, September 26, 2017
26. Prior Written Notice, September 17, 2018
27. Prior Written Notice, October 9, 2018
28. Prior Written Notice, October 9, 2018
29. Prior Written Notice, February 8, 2019
30. District Calendar
31. Consent for Evaluation, September 26, 2017
32. Eligibility Summary Statement, November 8, 2017
33. Prior Notice and Consent for Initial Special Education Services, November 8, 2017
34. Consent for Evaluation, September 17, 2018
35. Eligibility Summary Statement, December 19, 2018
36. Evaluation Report, November 8, 2017
37. Evaluation Report, December 19, 2018
38. IEP Progress Report, June 16, 2018
39. IEP Progress Report, November 6, 2018
40. Report of Progress Monitoring
41. Letter to OHSU, February 28, 2019
42. Documents to Parents, March 20, 2019
43. Letter to Parent, March 22, 2019
44. Documents to Parent, April 8, 2019
45. District Email and Report of Progress Monitoring
46. Email Communications Between District and Parents Regarding IEP Implementation
47. District emails
48. Parent input form
49. Special Education Evaluation documents
50. Statement of Concern
51. Student Cumulative Record
52. Student Testing Information
53. List of Knowledgeable District Staff

On or about April 23, 2019, the Parent emailed the Investigator a written Reply to the District's *Response*, accompanied with Parent email communications to the District and an email from Childhood Health Associates of Salem. The Parent included the District's legal counsel in their Reply.

The Investigator determined that on-site interviews were necessary. On May 1, 2019, the Investigator interviewed the Student's classroom teacher, speech language pathologist, and school principal, a District school psychologist and a District special education coordinator. On May 9, 2019, the Investigator interviewed the Parent.

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 Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV.

No	Allegations	Conclusions
1.	<p><b>Parent Participation</b></p> <p>The Parent alleges that the District violated the IDEA when it did not provide complete information to the Parent at or for the Student's IEP team meetings during the 2018-2019 school year.</p> <p>(34 CFR § 300.501; OAR 581-015-2190)</p>	<p><b>Not Substantiated</b></p> <p>At each meeting, knowledgeable District staff shared and explained data, evaluation findings, and observations regarding the Student. The Parent was provided with, and took advantage of the opportunity to play a meaningful role in the identification, evaluation, IEP development, and educational placement of the Student.</p>
2.	<p><b>Child Find</b></p> <p>The Parent alleges that the District violated the IDEA when it failed to fulfill its child find obligations by not evaluating the Student in response to memory and reading issues that were not being addressed in the Student's IEP.</p> <p>(34 CFR § 300.111; OAR 581-015-2080)</p>	<p><b>Not Substantiated</b></p> <p>In response to the Parent's stated concerns, the District evaluated the Student for additional special education eligibility in a timely and appropriate manner.</p>

<b>Requested Corrective Action</b>
The Parent proposed the following solutions to resolve the Complaint: 1. "Duplicate notices must be enforced for all appropriate parents" 2. "IEE at school expense" 3. "Appoint a different SKPS coordinator"

### III. FINDINGS OF FACT

1. The Student is nine years old and attends third grade in a District general education classroom. The Student is reported as kind and playful, with an easygoing attitude. The Student loves telling stories and has great compassion for others.
2. In November 2017, the Student was found eligible for special education services under the category of Communication Disorder. The Student demonstrates speech skills below developmental level and the Student's team determined speech therapy services would be beneficial to improve the Student's speech sounds and quality. The Student's November 8, 2017 Individualized Education Program (IEP) noted that the Student's speech and language needs can impact the Student's performance in reading and writing, and also draw unwanted attention to the Student in the classroom setting.
3. The Student's November 8, 2017 IEP included four speech goals and the team agreed on 120 minutes of monthly specially designed instruction in the area of "Communication" to be provided by a District Speech/Language Pathologist (SLP). Both of the Student's parents participated in the IEP's development.
4. The Student's June 18, 2018 IEP Progress Report indicated that the Student was making progress and/or maintaining accuracy on each of the Student's communication goals.
5. The Student's classroom teacher and SLP report that the Student has made substantial progress in the area of speech.
6. On September 5, 2018, the Parent sent an email to District staff notifying them that the District had not been sending out "duplicate mailings" to both parents.
7. On September 7, 2018, the Student's case manager contacted the Parent by email to arrange for attendance at an evaluation planning meeting. The Parent responded, agreeing to meet on September 17, 2018. On September 10, 2018, the Student's case manager circulated a meeting notice by email to both of the Student's parents outlining meeting information.
8. On September 17, 2018, the Student's Multidisciplinary Evaluation Team convened to review the Student's file and determine whether to conduct additional special

education evaluations. The Parent expressed concern about “speech errors, potential Dyslexia and academic difficulties.” The Parent also expressed concern about the Student’s memory. The Parent observed that the Student cannot remember multi-step instructions, incorrectly sets the dinner table silverware incorrectly, and will forget a story halfway through. The Student’s classroom teacher stated that the Student’s test scores revealed that the Student was “slightly behind.”

9. The District agreed to evaluate the Student, and on September 17, 2018, both parents signed a consent for evaluation.
10. On September 17, 2018, the District issued a Prior Written Notice indicating it would evaluate the Student to “investigate parent concerns about possible dyslexia,” that the Student “is not significantly behind academically” but because the Student “does have issues that raise concerns with parents . . . [the District] need[s] to gather information about [the Student’s] reading and writing difficulties.”
11. On or about September 18, 2018, the Student took a reading assessment, which indicated the Student’s reading comprehension was in the 34th percentile and reading fluency was in the 31st percentile. The Student’s classroom teacher has not observed these results to be indicative of the Student’s abilities, and the Student’s reading performance has improved to grade level during third grade.
12. On September 26, 2018, the Student’s case manager sent both parents an email with an attached meeting notice for the Student’s upcoming IEP, scheduled for October 3, 2018. The Student’s case manager also noted a copy was being sent by mail.
13. On October 3, 2018, the Student’s IEP team convened. The IEP team decided on two goals focused on speech intelligibility and included 120 minutes of monthly specially designed instruction in the area of “Communication” to be provided by a District SLP, as well as 30 minutes of consultation annually between the SLP and District staff. Both of the Student’s parents attended the October 3, 2018 IEP and engaged in the development of its content. The Student’s parents expressed concerns about the Student in the areas of “speech, reading progress, speaking with confidence, math, writing.”
14. On October 9, 2018, the District issued a Prior Written Notice, describing how the Student’s IEP team met and revised the Student’s IEP to reflect “current progress and goal targets in the area of communication.” This Prior Written Notice was sent to the Parent by email.
15. The Student’s classroom teacher observed that the Student reverses some letters when writing, but that this occurs infrequently and is consistent with other students in the general education environment. Overall, the classroom teacher did not note any academic concerns regarding the Student, with the exception of writing/penmanship and spelling.

16. The Student has made positive progress on speech goals and improving various sounds. The Student is punctual to each speech session and takes on the responsibility of gathering other students participating in speech sessions from other classrooms.
17. Between October and December 2018, the Student was evaluated for additional special education eligibility. The Student was “cooperative, polite, and pleasant” during testing. In class, the Student was observed as “prepared for class,” “attended to teacher instructions,” and “began working promptly after directions were given.”
18. The Student’s November 6, 2018 IEP Progress Report indicated that the Student was making progress and/or performing at or above what was required to meet the Student’s goal by the next review. This progress report was sent to the Parent by email on or about November 30, 2018.
19. On November 14, 2018, the Parent sent an email to District staff requesting “any and all test results, file notes, and the like for all of the grades in which they are kept on [the Student].”
20. On November 16, 2018, the Student’s school principal responded to the Parent’s request by email, sending the Parent testing information regarding the Student as well as the Student’s “Elementary Progress Report” from kindergarten, first, and second grade. The District re-sent this information to the Parent by email on December 14, 2018.
21. On December 10, 2018, the Student’s team convened to review evaluation results. The Parent expressed concern about the District’s practice of delivering homework and other information home to both parents. The Parent noted a concern that the Student was not referred for special education evaluation earlier and was not screened for dyslexia. The Student’s classroom teacher responded that the Student’s reading and other academic achievement are at grade level. As part of the Student’s special education evaluation, the District added another subtest to evaluate the Student’s overall intellectual functioning and specific cognitive abilities.
22. On December 19, 2018, the Student’s school principal provided the Parent with additional documents responsive to the Parent’s November 14, 2018 records request, consisting mostly of Student work samples from kindergarten, first, and second grade.
23. On December 19, 2018, the Student’s IEP team convened to review the results of the District’s evaluation. Both of the Student’s parents attended the meeting. The District School Psychologist reviewed the evaluation with the team.
24. The Student’s cognitive processes fell within average range. In response to the Parent’s concerns about the Student’s memory, the District conducted assessments to look specifically at the Student’s abilities in the areas of story recall, visual-auditory learning, long-term storage and retrieval, working memory, and auditory processing. The Student will occasionally forget which day the Student’s reading group

convenes and also forget to deliver classroom papers to the Student's parents. At the same time, the Student demonstrated proficient oral recall, remembering 15 out of 16 spelling words as tested by the classroom teacher. Overall, the Student fell within the average range on memory assessments.

25. After discussing the District's evaluation processes and results, the team concluded that the Student did not meet the eligibility criteria for specific learning disability. The team agreed that the Student was academically at or close to grade level in all areas of academics, and that the Student's rate of academic progress was sufficient.
26. The team made the following observations: (1) The Student recognizes when words in sentences are reversed; (2) The Student's writing of letters is inconsistent with respect to size and penmanship requires attention; (3) The Student may require supports in the classroom to connect visual and auditory information; and (4) those supports will be in place in the classroom.
27. On March 15, 2019, the District issued a Prior Written Notice, indicating that corrections had been made in response to errors that had been made during the course of a records request, and that the corrections were outlined in a February 28, 2019 correspondence to the Student's parents.
28. On March 20, 2019, the Department received this Complaint.

## **IV. DISCUSSION**

### **A. Parent Participation**

The Parent alleges the District violated the Individuals with Disabilities Education Act (IDEA) when it did not provide complete information to the Parent at or for the Student's IEP team meetings during the 2018-2019 school year. Specifically, the Parent contends that the Parent was unable to meaningfully participate in the IEP process because the District did not provide "duplicate mailings" to both parents and failed to provide the Parent with complete documentation in response to a November 14, 2018 request. School districts must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>3</sup>

The Parent was an active and engaged participant at meetings relating to the Student's special education program. The Parent received adequate notice in advance of meetings, which included the following: (1) September 17, 2018 Multidisciplinary Evaluation Team meeting; (2) October 3, 2018 IEP team meeting; (3) December 10, 2018 Assessment Process conference; and (4) December 19, 2018 Eligibility meeting. The record shows that at each meeting, knowledgeable District staff shared and explained data, evaluation findings, and observations regarding the Student. The Parent frequently asked questions, shared concerns and was provided with a platform to describe observations the Parent made outside of the educational environment that prompted the Parent's concerns. The

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<sup>3</sup> OAR 581-015-2190(1).

District was receptive to these concerns and in timely fashion initiated evaluation protocols to evaluate the Student. The Parent was an integral part of the IEP team's decision-making process.

On November 14, 2018, the Parent sent an email to District staff requesting "any and all test results, file notes, and the like for all of the grades in which they are kept on [the Student]." Two days later, the Student's school principal responded to the Parent's request by email, sending the Parent testing information regarding the Student as well as the Student's "Elementary Progress Report" from kindergarten, first, and second grade. The Parent was equipped with sufficient information regarding the Student to knowledgeably and meaningfully participate in all meetings related to the Student.

The Parent was provided with, and took advantage of the opportunity to play a meaningful role in the identification, evaluation, IEP development, and educational placement of the Student. The Department does not substantiate this allegation.

## **B. Child Find**

The Parent alleges that the District violated the IDEA when it failed to fulfill its child find obligations by not evaluating the Student in response to memory and reading issues that were not being addressed in the Student's IEP. A school district meets its responsibility to a student with a potential educational disability when it identifies, locates, and evaluates all children with disabilities for whom they are responsible, regardless of the severity of the disability.<sup>4</sup>

At a September 17, 2018 Multidisciplinary Evaluation Team meeting, the Parent expressed concern about "speech errors, potential Dyslexia and academic difficulties." The Parent also expressed concern about the Student's memory. The Student's classroom teacher stated that the Student's test scores revealed that the Student was "slightly behind" and did not have concerns regarding the Student's memory beyond what the classroom teacher observed as common among other third grade students. Similarly, the Student's SLP did not observe any memory issues or reading issues, noting that she could fade prompting during multi-step activities and even change steps and the Student could follow along.

Nevertheless, based chiefly on the Parent's expressed concerns, the District agreed to evaluate the Student. Between October and December 2018, the Student was evaluated for additional special education eligibility. The Student was polite and cooperative during the evaluation process. In response to the Parent's concerns about the Student's memory, the District conducted assessments to explore the Student's abilities in the areas of story recall, visual-auditory learning, long-term storage and retrieval, working memory, and auditory processing.<sup>5</sup> The Student will occasionally forget which day the Student's reading group convenes and also forget to deliver classroom papers to the Student's parents. At the same time, the Student has demonstrated proficient oral recall,

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<sup>4</sup> OAR 581-015-2080.

<sup>5</sup> The Parent alleges that the school did not use a "consistent testing methodology." However, the evidence in the record shows that the District fulfilled the evaluation requirements set forth in OAR 581-015-2170.

remembering 15 out of 16 spelling words as tested by the classroom teacher. Overall, the Student fell within the average range on memory assessments and the Student's cognitive processes fell within average range. On December 19, 2018, the Student's eligibility team concluded that the Student did not meet the eligibility criteria for specific learning disability. The team discussed and agreed on classroom supports to assist the Student with visual and auditory information.

The District fulfilled its child find obligations with respect to the Student. The Department does not substantiate this allegation.

**V. CORRECTIVE ACTION<sup>6</sup>**  
*In the Matter of Salem-Keizer School District 24J*  
Case No. 19-054-012

The Department does not order corrective action in this matter.

Dated: this 17th day of May 2019

*Candace Pelt, Ed.D.*

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

Mailing Date: May 17, 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>6</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)).