

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Medford School District 549C)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-036

I. BACKGROUND

On October 2, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) who attends high school in the Medford School District 549C (District). The Parents' complaint contained allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Department confirmed receipt of the Complaint and forwarded the request to the District on October 2, 2019.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint investigation is October 3, 2018 through October 2, 2019.

On October 8, 2019, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of October 22, 2019.

On October 17, 2019, the District submitted a packet of materials for the Investigator. The materials included in the submission are listed below:

1. District Response
2. School Level Team Documents
3. Disciplinary, Suspension, Attendance and Academic Records
4. Parents' Requests for a Special Education Evaluation
5. Parents' Consent for a Special Education Evaluation
6. Evaluation Planning Documents
7. Parent and District Communications
8. District Policies and Procedures
9. Timeline for Parent Request for Evaluation
10. Emails regarding submission of referral
11. List of Staff

The Investigator determined that on-site interviews were necessary. On November 4, 2019, the Investigator interviewed the District Special Education Director, two IEP Specialists and a middle school Assistant Principal. On November 5, 2019, the Investigator interviewed two middle school Deans of Students and the Parent.

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

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

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

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.³ The Parents' allegation and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from October 3, 2018 through October 2, 2019.

<u>Evaluation Requirements, Procedures and Planning</u>	<u>Substantiated</u>
<p>The Parents allege the District violated the IDEA when it did not timely or properly respond to their request for an initial evaluation for special education eligibility in December 2018.</p> <p>(34 CFR §§ 300.301, 300.303-305; OAR 581-015-2105-2115)</p>	<p>The Parent requested a special education evaluation on December 11, 2018. The District sent the Parent a consent to evaluate form on April 18, 2019. The District violated the IDEA when it did not respond to the Parent's request for evaluation in a reasonable time.</p>

Issue Outside the Scope of This IDEA Investigation

The Parents also contend that the District did not provide the child with the accommodations in the child's 504 plan. This issue is not within the Department's jurisdiction under OAR 581-015-2030 and was not included as part of its investigation here. The Parents may address this issue by contacting Winston Cornwall, Civil Rights Education Specialist, 255 Capitol Street NE, Salem OR 97310; phone: 503-947-5675 or fax: 503-378-5156.

Requested Corrective Action

The Parents request the following action be implemented as a resolution to the Complaint:

"I am not sure what can be done to reverse the impact this situation has had on my child and my family, but I want to be sure this does not happen to any more children or families in the district. I feel strongly that [the District] should be held accountable for their 4 month delay in evaluating [the Student's] eligibility, their lacking communication during that time period and for their inability to implement [the Student's] 504 accommodations and the TAG differentiation. After the interview, the Parent emailed the Investigator with additional requested Corrective Action:

"Here are my two desired outcomes per our conversation yesterday:

1. An apology to [Student] specifically focused on the district's failure to support [the Student's] social, emotional and academic needs and a formal acknowledgment of the negative impact this situation has had on [the Student].

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

2. Written changes to district procedure/policy regarding response time between parental/guardian request for special education eligibility evaluation and when the consent to evaluate forms are provided to the family.”⁴

III. FINDINGS OF FACT

1. The Student is fourteen years old and is in the ninth grade. At the time the Parents filed the Complaint, the Student had not yet been found eligible for special education. The Student is described as a good speaker, able to advocate for themselves, and has a purposeful focus when engaged.
2. The Student attended a District charter school between third and seventh grade, then moved to a District middle school during the beginning of the 2018-2019 school year. While at the charter school, the Student had a Section 504 Plan in place. On September 26, 2018, the Parent and the Student met with a middle school Section 504 team to discuss the plan. The Student was struggling with unstructured activities, was both distracting and distracted in class, and exhibited impulsive behaviors that created safety concerns.
3. Upon reviewing the Student's records, the team noted the Student's 504 Plan and the Student's 504 eligibility were not up to date. The team decided to track the Student's behaviors to determine if more supports are needed, and to obtain a medical statement⁵ to update the Student's eligibility.
4. From October 8, 2018 through December 11, 2018, the Student's Science, Social Studies, Math and Reading teachers collected data on the Student's behavior, focusing on three identified areas: (1) Be Respectful; (2) Be Responsible; and (3) Be Safe. The Student's teachers recorded data on 25 out of 39 days, though not every teacher recorded data for every class period each day. The Student achieved an average of 1.53⁶ on respectfulness; 1.23 on responsibility; and 1.63 on safety. During these 25 days, teachers noted multiple times where the Student did not bring required materials to class, annoyed other students, used a classroom computer for non-academic activities, made noises in class, and did not complete multiple assignments. During this same time period, the Student was sent to In School Detention six times for profanity, disruptions, and cheating—and was once sent to In School Suspension for profanity.
5. On November 27, 2018, the District received a medical statement from the Student's physician diagnosing the Student with Attention Deficit Hyperactivity Disorder (ADHD) and a Mood Disorder. On December 11, 2018, the District Section 504 Coordinator sent a meeting notice and a notice of action to the Parents stating the Student was eligible for a Section 504 Plan based on the medical statement. The Team noted specific areas of concern in study skills and social behavior.
6. On December 11, 2018, the middle school Dean of Students emailed the Parents informing them that the Student was having a difficult day, and had been sent to the Student

⁴ The Investigator shared this email with the District.

⁵ The Student's Section 504 eligibility was based on a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). While in elementary school, the Student took medication but was no longer doing so at the time of the 504 plan review.

⁶ There were two points possible for each behavior.

Management Office, where the disruptive behavior continued. The Parent responded the same day, the stating, "I have been trying to get [the Student] on an IEP for years, and I would like the team to consider this request." On December 12, 2018, the Dean replied, "I did reach out to the SLT team about your request for an IEP, and the district evaluation specialist is already taking a look at [the Student's] file. More info on that to come."

7. A School Level Team (SLT) Referral form dated December 12, 2018 states "Parent request for SPED eval." One of the SLT forms dated December 12, 2018 notes, "[s]eeking SPED eval. after 504 plan insufficient."
8. In a December 13, 2018 email exchange among District staff, an inquiry is made whether to "put [the Student] in referral" for evaluation and the response from another District staff is "Yes – referral to evaluate" and that "[w]e will either continue on 504 during the referral process or I can send prior notice that evaluation has been recommended."
9. On December 19, 2018, the Section 504 team met and wrote a plan for the Student. Included in the 504 Plan were accommodations such as proximity, nonverbal reminders to redirect attention, preferential seating, and computer access to planner information for core classes. On the written agenda for the meeting, the Section 504 Coordinator wrote: "12/12/18 submitted SLT to consider Sped Eval".
10. Each school in the District has an SLT that serves a triage function to refer students for additional services beyond general education. After an SLT agrees a student should be referred for a special education evaluation, a District staff member serving as a case manager completes one of two referral forms: Referral for Special Education Evaluation (RISEE); or Confidential File Review (CFR), and submits it electronically to the District's special education database. The case manager assigned to the Student's school had only been in the District for a few months. Instead of submitting the form electronically, the case manager sent the referral paperwork to the District Office. The District was transitioning from a paper referral system to an electronic system, and this Student's referral paperwork was not entered into the electronic system.
11. On February 6, 2019, the Student's school's Dean emailed the Parent, sharing that the Student was struggling behaviorally. The Dean felt that after some behavioral improvement, the Student was regressing to where the Student was at the beginning of the school year. The Parent replied to this email the same day, stating "This is one of the reasons I requested an IEP (any word on that?)."
12. While reviewing data in the District's special education database on March 11, 2019, a District employee noticed that, although the Student had been put "into referral" on December 13, 2018, no further action had been taken. This individual notified a middle school case manager in an email and asked that a referral form be submitted or that the Student be removed from the referral section of the database.
13. On March 20, 2019, the same District employee emailed the case manager again, repeating the March 11, 2019 statement that "this student was put into referral on 12/13/18, but nothing has happened . . . yet."
14. In an internal District email from April 4, 2019, the District 504 Coordinator states that "[the Student has] been sitting for months."

15. On April 12, 2019, the Parent emailed the Dean and asked, “[h]ave you heard any more news about [the Student’s] IEP eligibility? I haven’t heard anything and I really believe things will not improve at school unless [the Student] receives additional supports.” The Dean replied the same day, stating the “file has been sent to the special education department and you should be getting contacted for a consent to evaluate.”
16. An Assessment and Evaluation Team Evaluation/Meeting Scheduling Form dated April 15, 2019 appears to be the first District meeting to review existing information about the Student and determine whether the Student should be evaluated for special education eligibility.
17. On April 18, 2019, the District sent the Parent a special education evaluation consent form dated April 15, 2019. The Parent signed it and returned it to the District on April 22, 2019.
18. During the 2018-2019 school year, the Student earned a 2.20 GPA for the year, and was absent 19.5 days. From January 25, 2019 through the end of the 2018-2019 school year, the Student was assigned to In School Detention seven times, received three days of Out of School Suspension, and received two days of In School Suspension. The Out of School Suspensions were given for use of profanity or obscene expressions and for the use of tobacco. The other disciplinary consequences were given for class disruption, harassment, physical aggression, disrespect to staff and improper use of a computer. On September 16, 2019, as a ninth grader, the Student received a four-day Out of School Suspension for using profanity or an obscene expression.
19. An evaluation was completed in part during May, June, and September 2019. The Student became eligible for special education services under an Other Health Impairment eligibility on October 4, 2019. An IEP was developed for the Student on the same day.
20. The District’s Special Education Procedures Manual states that an SLT meeting should convene “as soon as possible after receiving notification of concern, but not to exceed 15 school days” and that “an unsuccessful intervention should not exceed 6 weeks. The team should consider altering current intervention, a new intervention, or a referral for an evaluation.”
21. The Parent filed this Complaint on October 2, 2019.
22. After the Complaint was filed, District staff stated in an email that “[t]here was some confusion last year about whether online or hard copy was expected” as part of the evaluation referral process, and due the transition from paper to electronic referrals, “I don’t think that anyone in the building knew that these were just sitting on (sic) nothing was being done.” District staff go on to note that “since we had 2 new to the district case managers in our building that they didn’t know the process well and could have had some lag time or inability to know how/who/where to follow-up on the process not moving.”

IV. DISCUSSION

Evaluation Requirements, Procedures, and Planning

The Parents allege the District violated the IDEA when it did not timely or properly respond to the Parents’ request for an initial evaluation for special education eligibility in December 2018. Each school district has an affirmative responsibility to conduct an ongoing child find process, where it

must locate, identify, and evaluate all children with disabilities for whom they are responsible.⁷ When a parent requests that their student be evaluated for special education eligibility, a school district must respond to the parent within a reasonable time before it proposes to initiate or refuse the evaluation.⁸ The IDEA's regulatory framework does not assign an amount of time for what constitutes a "reasonable period of time," but at least one state agency has found that in certain circumstances, failure to issue a prior written notice explaining the school district's decision-making for three weeks can violate the IDEA.⁹

On December 11, 2018, the Parent had requested that the District evaluate the Student for special education eligibility. By December 12, 2018, the District was on notice of the Parent's request. However, it was not until April 15, 2019 that the District sent the Parent a consent to evaluate form. In the intervening four months, the District did not send the Parent prior written notice informing the Parent about whether it would or would not evaluate the Student. The delay was not due to any ongoing evaluation planning processes surrounding the Student (e.g., evaluation planning meetings, data gathering, observations, etc.) The first evaluation planning document in the record appears on April 15, 2019. Moreover, there is no indication that any District staff objected to the Student being evaluated for special education eligibility. Rather, the four month delay was attributable to staff turnover and changes in District procedures. As District staff remarked in March 2019, the Student's evaluation referral had been "sitting for months" and "nothing has happened." The Parent's periodic inquiries about the District's efforts to determine eligibility eventually prompted the evaluation to get underway in April 2019. The District violated the IDEA when it did not respond to the Parent's request for evaluation in a reasonable time. The Department substantiates this allegation and orders corrective action.¹⁰

CORRECTIVE ACTION¹¹
In the Matter of Medford School District 549C
 Case No. 19-054-036

No.	Action Required	Submissions ^[1]	Due Date
1.	With Oregon Department of Education Office of Enhancing Student Opportunities (OESO) staff, schedule a meeting to review the District's efforts to address the issues	Calendar a date for meeting, identifying a date, time, and meeting location.	December 3, 2019

⁷ 34 CFR § 300.111; OAR 581-015-2080.

⁸ 34 CFR § 300.503; OAR 581-015-2310.

⁹ *El Paso County School District 2*, 113 LRP 44602 (August 15, 2013); 71 Fed. Reg. 46,691 (2006).

¹⁰ The District acknowledges that "best practice was not utilized due to a transition in practices from paper submission to electronic submission of paperwork" and that a new case manager did not realize an electronic request regarding the Student's evaluation had been submitted." The District further recognized the issues brought to light in this Order, and indicated that "[a]fter reviewing the events that took place internally, the District plans to provide staff training on the referral process and associated parent communication." The Department recognizes the District for making these concessions, and will tailor corrective action to coincide with the District's own efforts.

¹¹ 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)).

[1] 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.

	described in the Order, and any additional changes.		
2.	Conduct the review meeting described in #1	Following the meeting, submit to OESO a document describing outcomes of the review. Make any necessary changes to the District's referral system, including procedures for parent communication.	January 9, 2020
3.	Contingent – If changes in District practice are made, reconvene with OESO to update the document previously submitted.	Updated document reflecting any changes.	January 30, 2020

Dated: this 25th day of November 2019

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Enhancing Student Opportunities

Mailing Date: November 25, 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).)