

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of West Linn-Wilsonville
School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-005

I. BACKGROUND

On April 12, 2021, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (the Parent) of a student (the Student) residing in the West Linn-Wilsonville School District (District). The Parent requested that the Department conduct a special education investigation under OAR 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.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On April 19, 2021, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 30, 2021.

The District submitted a *Response* on April 30, 2021 denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following items:

1. District Written Response to Complaint, 4/30/21
2. Student Profile - Mathematics, Winter 2019-20
3. Student Profile – Reading, Fall 2020-21
4. Student Test History, 2020-21
5. Habits for Learning (report card), 6/14/18, 12/2018, 6/11/19, 6/14/18
6. Student Report Card, 6/3/20
7. Child Study - Document of Parent Contact (Phone Calls), 9/10/20 and 9/22/20
8. Child Study – District Meeting Notes, 12/9/20
9. Student Input for Functional Behavior Assessment (FBA), 12/14/20 and 12/17/20
10. FBA & Behavior Support Plan (BSP), 12/17/20
11. 504 Eligibility Review, Accommodation/Related Services Plan, 12/18/20 (Date of Implementation)
12. Child Study – District Meeting Notes, 1/12/21
13. Email exchange from District to Circles of Support Team, including the Parent, 1/13/21
14. Special Education Process diagram, provided to the Parent on 1/13/21
15. Child Study – District Meeting Notes, 1/28/21
16. Prior Notice of Special Education Action (PWN), 2/19/21

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

17. Mindsights Psychological Assessment Report, 3/8/21
18. Email exchange from the District to the Circles of Support team, 3/22/21 – 3/31/21
19. Email exchange from the District to the Circles of Support Team, 4/8/21
20. Notice of Team Meeting, 4/8/21
21. Prior Notice about Evaluation/Consent for Evaluation (SPED), 4/13/21
22. Prior Notice about Evaluation/Consent for Evaluation (TAG), 4/13/21
23. District Meeting Notes, 4/13/21
24. PWN, 4/23/21
25. Appendix V: District Procedural Guidance for Child Study Process, revised 4/13/18
26. Catholic Community Services (CCS) OR MH Assessment – 1 v7, 9/15/20
27. CCS Psychiatric Progress Note, 12/7/20
28. CCS Psychiatric Evaluation, 10/1/20
29. Letter from the Student's Mental Health Therapist to the District, 8/25/20
30. Internal District email exchanges and email exchanges between the District and the Parent, 2/4/20 – 4/23/21
31. Written Request for evaluations, IEP, and FBA, 11/30/20
32. Child Study – District Meeting Notes, 12/9/20
33. Current Intervention List, 2/24/21
34. Draft Agenda for 4/13/21 Meeting, sent 4/8/21
35. Attendance Graph, 2020-21 school year (as of 4/8/21)

The District submitted the following additional documents on May 20, 2021, in response to the Investigator's request for additional information:

36. Percentage of "Must Do" Assignments completed, 2020-21 School Year
37. Grade Book, 2020-21 School Year
38. Period Attendance for December 2020 and January 2021,
39. Period Attendance 2020-21 School Year

The Parent submitted a *Reply* on May 6, 2021, providing an explanation and rebuttal. The Parent submitted documents in support of the Parent's position on May 11, 2021. In total, the Parent submitted the following items:

1. Parent's Reply to the District's Response to RFR, 5/6/21

The Complaint Investigator interviewed the Parent on May 11, 2021. On May 13, 2021, the Complaint Investigator interviewed District Personnel regarding this matter. Virtual meetings were held instead of on-site interviews due to the Coronavirus pandemic. The Complaint Investigator reviewed and considered all of 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 this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's 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 April 13, 2020, to the filing of this Complaint on April 12, 2021.

Allegations	Conclusions
<p>1. Child Find</p> <p>The Parent alleges that the District violated the IDEA by failing to find, identify, and evaluate the Student as a child in need of special education services.</p> <p>(OAR 581-015-2080; 34 CFR § 300.111)</p>	<p>Substantiated.</p> <p>The District failed to evaluate the Student pursuant to its Child Find obligations, despite evidence that the Student may be a child with a disability in need of special education services.</p>
<p>2. Evaluation and Reevaluation Requirements</p> <p>The Parent alleges that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. did not conduct an initial evaluation after the Parent initiated a request for an initial evaluation; and b. did not conduct an initial evaluation although the District suspected or had reason to suspect that the Student has a disability that has an adverse impact on the Student’s educational performance and the Student may need special education services as a result of the disability. <p>(OAR 581-015-2105; 34 CFR § 300.301)</p>	<p>Substantiated.</p> <p>The District failed to initiate an evaluation for the Student.</p> <ul style="list-style-type: none"> a. The District did not evaluate the Student, despite the Parent’s multiple requests for an initial evaluation and evidence provided of the impact of the Student’s mental illness. b. The District knew, or should have known, that the Student may be a child with a disability in need of special education services, but failed to initiate an evaluation.
<p>3. General Evaluation and Reevaluation Procedures</p> <p>The Parent alleges that the District violated the IDEA when it refused an evaluation requested by the Parent and it did not provide the Parent with prior written notice (PWN).</p> <p>(OAR 581-015-2110; 34 CFR § 300.301)</p>	<p>Substantiated</p> <p>Although the Parent requested an initial evaluation on at least seven occasions, the District only provided the Parent with one PWN.</p>
<p>4. Evaluation Planning</p> <p>The Parent alleges that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. did not review existing evaluation data on the Student, including evaluations and information provided by the Parent; and 	<p>Substantiated</p> <p>The District violated evaluation planning requirements.</p> <ul style="list-style-type: none"> a. The District did not evaluate the Student despite evaluations and information provided by the Parent that raised suspicion of a

<p>b. did not identify what additional data were needed to determine whether the Student is a child with a disability and whether the Student needs special education and related services.</p> <p>(OAR 581-015-2115; 34 CFR § 300.301; 34 CFR § 300.305(a) and (d))</p>	<p>disability. The District failed to timely convene an evaluation planning meeting.</p> <p>b. The District did not timely conduct evaluation planning and did not identify what additional data were needed to determine whether the Student is a child with a disability and needs special education services, despite evidence that the Student may have a disability and need special education services.</p>
<p>5. Parent Participation</p> <p>The Parent alleges that District violated the IDEA when it:</p> <p>a. did not evaluate the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement;</p> <p>b. did not consider existing evaluations and other information provided by the Parent; and</p> <p>c. provided false and misleading information to the Parent regarding the evaluation process.</p> <p>(OAR 581-015-2190(1) and (2); 34 CFR § 300.322(a))</p>	<p>Substantiated.</p> <p>The District did not provide the Parent with an opportunity to meaningfully participate.</p> <p>a. The District predetermined the Student’s need for special education services and failed to involve the Parent in decisions made about the Student, preventing the Parent from meaningfully participating in the Student’s educational program.</p> <p>b. Although the information provided by the Parent raised suspicion of a disability, the District did not evaluate the Student.</p> <p>c. The District provided the Parent with incorrect or misleading information, hindering the Parent’s ability to participate in meetings and make informed decisions regarding the Student’s educational program.</p>

<p>6. Prior Written Notice (PWN)</p> <p>The Parent alleges that the District violated the IDEA by failing to provide prior written notice of its refusal to evaluate the Student.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Substantiated.</p> <p>The District did not provide PWNs to the Parent except on one occasion. The response of the District, or lack thereof, to the Parent’s multiple requests for the District to evaluate the Student amounted to a refusal to evaluate.</p>
<p>7. Procedural Safeguards</p> <p>The Parent alleges that the District violated the IDEA when it did not give the Parent a copy of the Notice of Procedural Safeguards upon the Parent’s request for evaluation of the Student.</p> <p>(OAR 581-015-2315; 34 CFR § 300.504)</p>	<p>Substantiated.</p> <p>The District failed to provide the Parent with a copy of the Notice of Procedural Safeguards upon the Parent’s multiple requests for an evaluation.</p>
<p>8. Free Appropriate Public Education (FAPE)</p> <p>The Parent alleges that the District violated the IDEA by not providing services to the Student, as a child with a disability in need of special education services. The Complaint alleges that the District’s refusal to evaluate and provide special education services to address the Student’s needs has resulted in a denial of FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p>Substantiated</p> <p>The District’s failure to properly identify and evaluate the Student resulted in a loss of educational opportunity and a denial of FAPE.</p>

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before Department receipt of a special education complaint. This Complaint investigation did not consider any IDEA violations alleged to have occurred before April 13, 2020. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

1. The Student is 12 years old and in the seventh grade. The Student lives within the District boundaries.
2. The Student has a history of trauma, anxiety, and self-harm, for which the Student has received treatment since age eight. The Parent asserts that the Student has exhibited concerning behaviors since age three.
3. As of the filing of this complaint, the Student has never been evaluated for special education services.

4. In its *Respo*
5. *nse* to the Complaint, the District asserts that the Student attended school regularly and was academically successful in the fourth, fifth, and sixth grades.
6. During the 2019-20 school year, the Student was involved in some ongoing peer conflict and accused of bullying. Teachers noticed issues in and outside of the classroom, and that the Student could be aggressive at times.
7. The Parent was not aware of these social and behavioral issues at school until February 2020, when another parent informed her that the Student, and other involved students, had been pulled out of class several times by the District Counselor.
8. On February 21, 2020, the Parent met with the District Counselor to discuss the Student's behavior at school and the Parent shared concerns about the Student's behavior and mental health.
9. In a March 4, 2020 email to District staff, the District Counselor shared information provided by the Parent regarding the Student's depression and anxiety. The Counselor shared that the Parent requested increased communication with the school and suggested that staff explore different ways to help the Student manage some of the Student's frustration.
10. On March 10, 2020, Parent completed a release of information (ROI) for the District Counselor to communicate with the Student's private Therapist.
11. The District Counselor sometimes experienced resistance from the Student, who would get upset when the Counselor tried to teach the Student social skills and strategies. The Counselor was developing ways to provide additional support to the Student when District schools shut down for the COVID-19 pandemic.
12. In an April 7, 2020 email to the District, the Parent expressed frustration that when the District announced that online learning was considered "elective," the Student lost all motivation to do any work.
13. On August 25, 2020, the Student's mental health Therapist sent a letter to the District, which included the following information:
 - a. Current diagnoses: Disruptive Mood Disorder, Unspecified Trauma and Stressor-Related Disorder, and Attention Deficit/Hyperactivity Disorder;
 - b. The Student requires therapy and medication management to treat the Student's disorders, which require appointments during the day, and the Student should "be on a learning plan that best allows for this"; and
 - c. The Student should "have an IEP so that [the Student's] educational experience and [the Student's] mental health treatment can co-occur without causing difficulty and disruption to either."
14. On August 30, 2020, the Parent completed additional ROI requests, giving the District permission to communicate with the Student's Therapist and Psychiatrist.
15. In a September 1, 2020 internal District email, a District administrative assistant reported that

the Parent contacted the District to disclose that the Student has new diagnoses and the Parent “would like to get the ball rolling on an IEP.”

16. On September 10, 2020, the Parent emailed the District Counselor asking about an IEP for the Student. The Parent communicated that she did not really know what an IEP is, but wanted to discuss it with the Counselor. The Parent also told the District Counselor that the Student is experiencing heightened behaviors due to anxiety and depression, and is taking new mental health medications.

During this conversation, the Parent requested that the Student be allowed to participate in the online program to avoid missing live Comprehensive Distance Learning (CDL) classes due to schedule conflicts with the Student’s mental health treatment and therapy appointments. As the deadline for making the choice between the online program and CDL had passed, the District Counselor asked the District to make an exception for the Student but the request was denied.

17. On September 14, 2020, an incident occurred in which the Student was admitted to the hospital on a psychiatric hold after self-injury.
18. The Parent notified the District of the incident on September 15, 2020. The Parent shared that she was trying to set up intensive outpatient services for the Student, and asked about setting up an IEP for the Student.
19. In a September 15, 2020 email, the District Counselor notified other District staff of the incident.
20. In a September 15, 2020 email to the Parent, the District Counselor said that the District “will create a safety plan and a 504 so that [the Student] is not marked down for [the Student’s] appointments and absences.”
21. On September 15, 2020, Catholic Community Services (CCS) issued a Mental Health Assessment report for the Student, which included the following information:³
 - a. The Student has been exhibiting escalating behaviors since April 2020;
 - b. Present concerns include eating disorder, behavior, panic attacks, self-harm, property destruction, verbal aggression, and running away;
 - c. The Student made previous statements about not wanting to live or hating life, sometimes when asked to do a non-preferred activity;
 - d. The Student escalates due to small triggers or perception of rejection or disagreement; and
 - e. The Student is very intelligent and has high test scores, but does not like school and avoids work.
22. In a September 22, 2020 email, the Parent notified the District that she was looking into additional support for the Student, as the Student was attempting to run away when given rules or restrictions.

³ A copy was provided to the District on December 8, 2020.

23. When the Student returned to school, the District started offering the Student accommodations. The District told the Student to participate when the Student was able and the Student could start doing schoolwork when the Student was ready.
24. In a September 24, 2020 email exchange with the District Counselor, the Parent requested the development of a better plan for the Student to get caught up with school, as the Student was frustrated and overwhelmed, and the Student's medication was making the Student excessively tired.
25. Throughout the fall, the Student had multiple changes in mental health medications because of side effects, as well as continued concerns about the Student's behavior and lack of progress.
26. In a September 25, 2020 meeting with the District Counselor, the Parent asked about an evaluation but was told the Student may not qualify for an IEP because the Student is too smart. The District Counselor told the Parent to not worry about school right now and that the Student should focus on the Student's mental health. (P015, 038)
27. On October 1, 2020, CCS issued a Psychiatric Evaluation, which included the following information:⁴
 - a. The Parent reported: the Student has to get the Student's way or the Student will threaten self-harm; the Student can be triggered at any time; the Student seems up and down throughout the day; the Student seems sad but hides sadness with anger or hurting others; and the Student has racing thoughts and worries about irrational things.
 - b. The Student reported: the Student has been feeling sad or down for about 1.5 years; the Student feels worthless and guilty sometimes; the Student has suicidal ideation a couple of times a week and has engaged in self-harm on multiple occasions; the Student has thoughts about wanting to harm others; the Student feels anxious frequently; the Student has trouble concentrating and getting work done; and the Student doesn't like teachers.
28. In an October 12, 2020 internal District email, the District Counselor notified other District staff that the Student does not have an official 504 plan yet, but the District will be supporting the Student through 504 accommodations. The Student may miss classes due to outside therapy and appointments, and teachers should shorten or chunk the Student's assignments so the Student does not get overwhelmed.
29. After talking with the Parent during a parent-teacher conference on October 23, 2020, a District teacher became concerned that the Student's mental health was at a level that the teacher did not feel equipped or qualified to help with.
30. On October 26, 2020, an incident occurred in which the Student was triggered when the Student did not want to log in to class and therefore ran away. The Parent shared this information with the District, and stated that the Student would be switching to a more intensive therapy program.
31. In a November 30, 2020 email to the District, the Parent expressed frustration, including:

⁴ A copy was provided to the District on December 8, 2020.

- a. The Student has struggled since the start of the year to attend class because of the amount of therapy appointments the Student requires, as well as the Student's inability to "engage with the online format based on [the Student's] exacerbated mental illness and behavioral issues." Given the Student's challenges, the Student is doing fairly well in the start of the second term;
 - b. "We have reached out to [the District] to start building a successful plan for the Student. We have not received guidance on how to go about doing so and are concerned that [the Student] is going to slip through the cracks . . . [The Student] has commented frequently on wanting to quit school;" and
 - c. "[The Student's] mental illness has been exacerbated to the point of making school unmanageable at home without support."
32. Attached to the November 30, 2020 email, the Parent sent the District a formal request for the District to "[c]onduct all necessary evaluations/assessments to determine if [the Student] qualifies for Special Education Services" and conduct a Functional Behavior Assessment (FBA) "to inform the development of a Positive Behavior Support/Intervention Plan."
33. In a November 30, 2020 internal District email, District staff discussed whether the District should communicate with the Parent about how the District's pre-referral process (Child Study - Circles of Support (COS)) works and suggested that the Student be discussed at the next COS meeting, which "will give us time to talk to [the District Instructional Coordinator] about what is needed to jump from a 504 to IEP, and how an FBA fits into it."
34. In a November 30, 2020 internal District email exchange:
- a. A District teacher shared that the Student has been completing some schoolwork and was doing much better than the first quarter. The District teacher also stated, "I think [the Parent's] concern about [the Student] falling through the cracks is reasonable because so much of what we do can seem invisible... I can speak for myself in saying that [the Student] is a high priority student for me and I'm aware of [the Student's] attendance, work completion, and utilization of accommodations"; and
 - b. The District Counselor stated, "we have been adjusting [the Student's] attendance, providing asynchronous learning and teachers have provided accommodations and assisted [the Student] when [the Student] decides to participate, but [the Student] won't always communicate with them, or [the Student] only shows up for a portion of the time."
35. On November 30, 2020, the District emailed the Parent, stating that it is aware of the Parent's concerns and request for the Student to be evaluated for special education services, adding that the District has "a process that we must engage in when we are looking to evaluate a student for possible special education services. With your request for an evaluation we will engage in the next steps required as part of the process... we have begun to gather evidence of [the Student's] current progress and the accommodations [the Student's] teacher are currently implementing. We are very concerned about [the Student] – both emotionally and academically." The District stated it would contact the Parent after the Circles of Support meeting the following week.
36. According to the District's guidelines, the Child Study-Circles of Support process includes the following:

- a. The District adds layers of support, intensifying the interventions and increasing the regularity of data collection with each layer, and adds more formal systems of documentation and communication;
 - b. Child Study is a five step process: (1) Formal parent contact, (2) identification of one or two areas of concern, (3) observation of the student engaging in the area of inquiry, (4) implementation of interventions for a period of time and gather data, and (5) convene a Child Study Summary meeting to review and make a team decision about what to do next, with a special education evaluation as one possible outcome; and
 - c. If a parent requests a special education evaluation, the Child Study Team meets with the parent, with one of three outcomes: (a) the parent reviews data and withdraws the request for an evaluation; (b) the team decides to gather more information through the Child Study process; or (c) the team reviews the parent's data and school data and decides to move to special education evaluation process.
37. A copy of the District's Procedural Guidance for the Child Study Process was not provided to the Parent, but is used to instruct District staff on required steps and how to track relevant information. It appears that the District did not inform the Parent that it is possible for the District to initiate an evaluation without first going through the pre-referral process.
38. On December 3, 2020, the Parent copied the District on an email sent to the Student's private Therapist with concerns about the Student's self-injurious behavior.
39. In response to the Parent's email, the District stated it would schedule a meeting to explain the Circles of Support process, which is how the District "identifies and supports students who are in need or extra supports or services, which can include evaluation for special education services. Both IEPs (individualized education plans [sic]) and 504s (accommodations provided due to medical diagnoses) fall under this umbrella... At this meeting, we will discuss how [the Student's] current accommodations are working, adjustments that need to be made and whether we need to consider more extensive services."
40. The District convened a meeting with the Parent on December 9, 2020 and discussed the following:
- a. The District convened the meeting because the "Parent asked for an evaluation for special education and the team is going to discuss the process of interventions and hear about [the Parents'] concerns."
 - b. The Parent shared:
 - i. The Student struggles with rigid thinking, is violent with family and friends, and has difficulty with authority;
 - ii. The Student ran away after the Parent instituted consequences for the Student;
 - iii. The Student has difficulty attending classes because the Student attends counseling four times a week and appointments have to be scheduled based on the most effective window for the Student's behaviors;
 - iv. When the Student is logged in to classes, the Student is often doing other things, not participating in the class, and the Student feels the Student can ignore school; and

- v. The Parent's main concern is figuring out different ways to ensure that the Student is receiving an education.
 - c. The District shared that the goal is to figure out how to get the Student to participate in school, but the District is "hesitant to push [the Student] too hard because relationships are fragile with [the Student]."
41. At the December 9, 2020 meeting, the Parent asked to sign consent for an IEP evaluation. In response, the District stated that it would: (a) adjust and put extra accommodations in place; (b) develop an FBA and 504 plan, implement them for four weeks, then come back together to review current data; and (c) send a request for an evaluation.⁵
42. At the December 9, 2020 meeting, the Parent asserts that the District School Psychologist stated that (1) the Student could not be evaluated for special education until after the District tried interventions first, and (2) the Student had to start with a 504 plan before being evaluated for special education. These statements were corroborated by information provided by the Student's private Therapist and Family Advocate, who both attended the meeting with the Parent.
43. In interviews with the Investigator: (1) The District School Psychologist stated that students never go straight to a special education evaluation and every student is required to go through the District's pre-referral process and try interventions first; (2) The District Counselor stated that the Counselor has never been allowed to directly refer a student for an evaluation. Rather, the District has denied every such request made by the Counselor and required each of these students to go through the pre-referral process to gather more information before considering an evaluation; (3) The District Special Education Director stated that if there is overwhelming information, a student can go straight to an evaluation; and (4) The District Instructional Coordinator stated that it is possible to go straight to an evaluation but, in most cases, the District encourages families to participate in the pre-referral process. The District School Psychologist and the District Counselor both attended the December 9, 2020 meeting. The District Special Education Director and the District Instructional Coordinator did not attend the meeting and were not involved with this Student until later.
44. The District interviewed the Student on December 14 and 17, 2020, as part of an FBA. The Student reported that the Student feels school isn't normal and the Student misses friends; the Student experiences anxiety but is learning how to cope with the help of the Student's Therapist; the Student shuts down and does not want to participate in some classes; school is too stressful and the Student does not like rules.
45. On December 16, 2020, a District teacher reported that the Student actively participated in a check-in meeting and shared what was not working for the Student. The teacher was impressed by the Student's self-reflection and honesty.
46. In a December 16, 2020 email to the District, the Parent expressed confusion about the District's proposal for a 504 plan, stating, "Is [the 504 plan] a summary of the interventions being provided to [the Student]? How is that different than an IEP? Does that include [the Student's] functional behavior assessment?... When will the interventions begin?"

⁵ The request for a special education evaluation was sent by the Counselor to the District Special Education Administration.

47. In response to the Parent's email, the District School Psychologist wrote, "You are right! It is very confusing! I guess we can explain again in [January] about the difference between 504 plan and IEP."
48. In a December 16, 2020 email to the District School Psychologist and the Student's private Therapist, the District Counselor stated that she was working on the Student's 504 plan and "the request to test for special education services."
49. The December 17, 2020 504 Plan included the following information:
- a. The Student has a mental impairment, namely Disruptive Mood Dysregulation Disorder, Unspecified Trauma and Stressor-Related Disorder, Attention Deficit Disorder, and Depression Disorder;
 - b. The Student's impairment substantially limits major life activities, specifically caring for oneself, concentrating, and thinking;
 - c. The Student's limitations are:
 - i. Difficulty with mood and behavior;
 - ii. Difficulty maintaining focus in the school setting - work avoidant and can escalate when being corrected;
 - iii. Difficulty with sleep, eating, and hygiene; and
 - iv. Panic attacks, faulty thinking, and denial and defiance can result.
 - d. The Student needs accommodations, services, or supports to access the benefits of public education at a level similar to the average student.
50. The December 17, 2020 504 plan included accommodations for frequent check-ins, work with preferred learning partners, breaks to regulate, weekly check-ins with Case Managers, frequent communication between school team and the Parent, shortened assignments, options for asynchronous learning, and alternative assignments and assessments.
51. The December 17, 2020 FBA/BSP included the following:
- a. Triggers: anxiety, not feeling normal due to the pandemic, and stress;
 - b. Problem Behavior: not attending and engaging in CDL, feeling depressed, and lack of motivation;
 - c. Outcome: the Student shuts down, and is not getting social and emotional learning (SEL) needs; and
 - d. Function of Behavior: Does not like rules, expectations, unpredictably, or not having control.
52. One of the behavior interventions included in the December 17, 2020 FBA was for the Student to have "weekly connection with [the Student's] Therapist," and the FBA stated that the Student's private Therapist was responsible for implementing this intervention.

53. In a December 18, 2020 email to the Parent, the District Counselor wrote that she had already sent in the request to test for an IEP and was “assuming that they will send it back saying we need to do a more tailored plan, which we have already begun.”
54. The District provided conflicting information about what occurred with the Student during the first half of the 2020-21 school year. Some District staff reported that the Student did fine in the first quarter, or they attributed any educational impact exhibited to COVID-19 and CDL. In contrast, the following was also reported for the same time period:
- a. The Student missed a substantial amount school because of the Student’s mental health and treatment, the Student generally did not make up missed class time, and the Student did very little work;
 - b. The Student missed schoolwork, was completely overwhelmed, and did not know how to catch up;
 - c. The District told the family to focus on the Student’s mental health and not worry about school obligations, as the District did not have any academic concerns based on the Student’s history;
 - d. Although accommodations were offered to the Student, the Student was not in a place with the Student’s mental health to access them;
 - e. Support was available to the Student, but the Student was not receptive and often refused accommodations when offered;
 - f. The Student seemed angry when District staff tried to get the Student to participate online, however, the goal was to get the Student to do something regardless of what it was; and
 - g. The Student’s mental health unquestionably impacted the Student at school.
55. In January 2021, District staff discussed the request submitted to the District Special Education Administration to evaluate the Student and the Circles of Support process. During discussions, both internal and at meetings with the Parent, District staff disagreed about whether the Student’s mental illness was causing a negative educational impact. The District Counselor strongly believed that the Student’s mental health was negatively impacting the Student’s education and the Student should be evaluated. The District Counselor reported that the District Special Education Director felt that it was not clear what an IEP for the Student would look like because IEPs usually provide academic interventions and the Student did not need academic interventions. The District concluded that the Student should not be evaluated at that time.
56. On January 5, 2021, the Parent started paying the Student as an incentive to attend class, as the Parent had been unable to get the Student to attend. The Parent shared this information with the District.
57. On January 12, 2021, the District convened a “Child Study and Action Planning” meeting, at which the following was discussed:
- a. The Student was missing a lot of work in some classes, had not submitted any work in others, and it would be hard for the Student to earn a passing grade;

- b. The Student was successful in the Student's art class and developed a good relationship with the teacher;
 - c. The District decided to continue with the Student's 504 plan, to see if interventions would work;
 - d. The Parent requested an evaluation and stated she did not understand why the District was denying the request. It was the Parent's understanding that the District had already agreed to evaluate; and
 - e. When asked when it would make a decision about a special education evaluation, the District said it would decide at the next meeting (January 28, 2021).
58. On January 12, 2021, the Student's private Family Advocate emailed the District, requesting a copy of an IEP eligibility form. In response, the District School Psychologist wrote, "...I appreciate your support. I am willing to share more about the eligibility process after our [next meeting]."
59. On January 13, 2021, a District Special Education Administrator emailed the Parent with information on the special education process and links to other special education information.
60. On January 19, 2021, the District sent an email meeting invitation to the Parent, which stated "Invitation: [the Student's] Eligibility Meeting."
61. On January 28, 2021, there was a lot of confusion about the type of meeting that was convened. Some members of the team, including the Parent, thought it was an eligibility meeting based on the email invitation. Some thought it was an evaluation planning meeting, while others thought it was a Child Study Summary meeting.
62. At the January 28, 2021 meeting, the following items were discussed:
- a. The District stated that this was an evaluation planning meeting, not an eligibility meeting;
 - b. The Parent shared that the family is seeking an outside evaluation and hopes to find out the reasoning behind the Student's behaviors;
 - c. The District told the Parent that middle school is for building skills. While the Student needs to know that the Student has to do work, the Parent should know that missing assignments will not impact the Student's future education;
 - d. The District reported that the Student responds well to check-ins and the Student's attendance is better compared to December (increased from 7% to 69% in January), but the Student is missing most of the Student's assignments and last week the Student did not attend or engage at all;
 - e. The team continued to have concerns about engagement and decided to add limited in-person instruction (LIPI) and other interventions for 6 weeks before discussing next steps, adding that LIPI is a good place to start while "waiting for outside evaluation and doctor recommendations";
 - f. The Parent expressed concerns including:

- i. Although the Student's attendance looks better, the Student logs in to class then falls asleep or watches a movie, and is not actually attending or doing any schoolwork;⁶
 - ii. The Parent agreed that the Student's behaviors have gotten better since December, because the Student's mental health medications are helping, adding that the medications are making the Student drowsy which has caused the Student to miss class;
 - iii. The Student currently has 31 missing assignments and 41 absences. The Student is behind, overwhelmed, and feels anxious all the time;
 - iv. How the District can claim that the Student had good participation in the first two weeks of January when the Student did not turn in any assignments; and
 - v. The Student is dealing with depression, sometimes refuses to eat and drink, and the family is worried about the Student's mental health.
- g. When the Parent asked the District about a special education evaluation, the District argued that it could not determine if there was an educational impact, stating that it is "seeing the challenges but the factors are associated with mental health factors" and it may be the pandemic affecting the Student;
 - h. When the District could not identify what the Student's specially designed instruction (SDI) would look like, the Student's private Therapist suggested that an evaluation may help answer that question;
 - i. The District asserted that there are ways to support the Student that do not involve an IEP and "we do not want to over ident[ify] students";
 - j. The District rejected the Parent's request to evaluate the Student.

63. At the January 28, 2021 meeting, the Parent asserts the District Special Education Administrator told the Parent, "[The Student] is just depressed... Lack of engagement is not a matter of special education."

64. A District staff member later stated that the Student's increase in attendance from December to January correlates with the Parent's reported reward system at home.

65. On February 2, February 8, and February 24, 2021, the Parent emailed the District to request (1) a PWN for the District's refusal to evaluate the Student, and (2) other information, including meeting notes, a list of interventions implemented, and data used to monitor the success of the interventions.

66. In a February 3, 2021 internal District email, the District Counselor asked the Student's teachers to "clean up [the Student's] google classroom" so that the Student only sees must-do assignments, or what the Student needs to pass the class. The teachers were asked to reduce the Student's 31 missing assignments down to something that is not so overwhelming.

⁶ For attendance purposes, the District could only see if the Student logged in to classes, but not whether the Student was engaged.

67. In a February 3, 2021 email exchange with the Parent, the District Counselor reported that the Student's teachers were reducing and prioritizing assignments, "in an effort to not to have [the Student] shut down completely."
68. On February 8, 2021, the Student started LIPI at school, for two hours, twice a week.
69. On February 24, 2021, the District emailed the Parent a copy of a PWN, along with some of the other documents requested. The District did not provide data collected to monitor the progress of the various interventions. The email stated that the District would work on school engagement with the Student, with a plan to collect baseline data then monitor progress for six weeks. The District expected to schedule a follow-up meeting at the end of April, after the Student started the hybrid schedule.
70. In the February 24, 2021 email to the Parent, the District apologized for the confusion about the type of meeting held on January 28, 2021. "While some members of our team intended for our agenda to be in alignment with out [sic] Child Study Summary Team meeting, we understand that our meeting was also discussed at points as an eligibility meeting."
71. The PWN, dated February 19, 2021, included the following information:
- a. The Parent requested a special education evaluation and the District refused;
 - b. Because of the Student's attendance improvement from December to January, the team decided not to evaluate the Student;
 - c. Because the Student had strong grades last year and high scores on assessments this year, "this data and information does not lead the team to suspect an educational impact of a disability at this time."⁷
72. On March 22, 2021, the Parent emailed the District a copy of the Student's recent Psychological Evaluation report. The Parent claimed that the District continued to violate the Student's right to a FAPE because of its refusal to evaluate. The Parent shared her intent to file a formal due process complaint with the Oregon Department of Education.
73. In the District's response, the District repeated the assertion that it saw progress with the Student's attendance and shifted the focus to engagement. The District stated it would "make it a priority to schedule a meeting likely the week of April 12 – 16 to review progress and determine how the team can best support [the Student] at school."
74. The March 22, 2021 Mindsights Psychological Assessment Report included the following:
- a. The Student's anger and aggression have gotten worse in the last year, likely due to hormones/adolescence and COVID-19 school closures;
 - b. The Student reports feeling ongoing anxiety, particularly surrounding school. The Student doesn't want to fail in school but finds it boring and thinks the things the Student learns in school are useless;
 - c. The Student has stronger intellectual abilities than the Student's peers, which causes the

⁷ The Student had A's, B's, and one C.

Student to be bored and highly unmotivated, but the Student also worries about academic performance;

- d. The Student feels a sense of social rejection from adults and peers and feels anxious about the Student's ability to meet expectations;
- e. The Student struggles with self-monitoring, which can impact the Student's ability to demonstrate the Student's cognitive strengths, and the Student may struggle to recognize when the Student's emotions are escalating and not have the abilities to regulate them before lashing out through the Student's behaviors;
- f. The Student's negative behaviors are the most noticeable, but it is also important to note the Student experiences internal distress or depressive and anxiety symptoms; and
- g. The Student should be evaluated for formal educational supports, to address the Student's emotional and behavioral needs, as the Student's "depressive and anxiety symptoms can also impact [the Student's] ability to engage in [the Student's] learning."

75. On April 8, 2021, the District sent the Parent a notice of team meeting scheduled for April 13, 2021, which stated that the purpose of the meeting was to decide whether the Student should be evaluated for special education. At the same time, the District sent the Parent a copy of the agenda for the April 13, 2021 meeting, which stated that the District would be requesting consent to evaluate the Student.

76. The Parent filed this Complaint on April 12, 2021.

77. On April 13, 2021, the District agreed to evaluate the Student for special education services, in the area of emotional behavior disability

78. At the April 13, 2021 meeting:

- a. The District acknowledged that the Parent had concerns about the Student before the COVID-19 pandemic and introduction of CDL;
- b. When the District reported that LIPI was "successful," the Student's private Therapist shared that part of the Student's disability is that interventions only work for 2-3 weeks; and
- c. Since the move to hybrid learning, the Student has not been attending very much.

IV. DISCUSSION

1. Child Find

The Parent alleges that the District violated the IDEA by failing to find, identify, and evaluate the Student as a child in need of special education services.

School districts must identify, locate, and evaluate all children with disabilities who are in need of special education, regardless of the severity of the disability.⁸ This includes children who are

⁸ OAR 581-015-2080(2); 34 CFR § 300.111(a)

suspected of having a disability even though they are advancing from grade to grade.⁹ School districts may not categorically refuse to evaluate students with high cognition.¹⁰ A school district cannot ignore plain evidence of disability because of a student's prior good grades and attendance.¹¹ Regardless of cognitive abilities, students are protected by the IDEA if they are suspected of having a disability and need special education services.¹² The threshold for suspecting that a child has a disability is relatively low, as "the inquiry is not whether or not [a student] actually *qualifie[s]* for services, but rather, [whether the student] should be *referred* for an evaluation."¹³ The IDEA clearly establishes that the inquiry as to whether a student needs special education services is not limited to academic performance.¹⁴ School districts must also consider a child's "social and emotional needs that affect academic progress, school behavior, and socialization."¹⁵

"It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification."¹⁶ School districts "have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy."¹⁷ If a district has reason to suspect that a student has a disability and a need for special education, pre-referral or RTI strategies cannot be used to delay or deny an evaluation. "School districts cannot circumvent [the responsibility to assess a child] by way of informal observations, nor can the subjective opinion of a staff member dispel such reported suspicion."¹⁸ In addition, implementing Section 504 accommodations cannot delay, or alleviate, a district's obligation to initiate an evaluation for special education.¹⁹

During the 2019-20 school year, the District had limited information as the Student's behaviors at school were just starting to emerge. As the District Counselor began to recognize possible warning signs and make a plan to introduce support for the Student, schools shut down because of the COVID-19 pandemic.

However, during the 2020-21 school year, the District had extensive evidence that the Student may be a child eligible for special education. The District was notified of the Student's specific medical diagnoses and severe mental health issues, including the need for intensive outpatient treatment. The Student missed a substantial amount of school and failed to engage in classes. When the Parent expressed concern and requested an evaluation, she was told that the Student was required to go through the District's pre-referral process before the Student could be considered for an evaluation. The District said it was concerned about the Student, academically and emotionally, yet the District did not convene a meeting to discuss concerns about the Student or the evaluation requests until December. The District told the Parent that the District could not determine whether the Student qualified for a special education evaluation until interventions were tried first. The District did not inform the Parent that there was any other option or path to an evaluation.

An evaluation planning meeting to discuss whether the District would initiate an evaluation was not convened until January 2021, five months after the Parent's first request. The District refused

⁹ OAR 581-015-2080(2)(d); 34 CFR § 300.111(c)(1)

¹⁰ Letter to Delisle, 12/20/13, (OSEP 12/20/13)

¹¹ *A.P. v. Pasadena Unified Sch. Dist. of California*, 78 IDELR 139 (C.D. Cal. 2021)

¹² Letter to Anonymous, 55 IDELR 172 (OSEP 1/13/2010)

¹³ *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001)

¹⁴ Letter to Clarke, 48 IDELR 77 (3/8/2007)

¹⁵ *Cty. Of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996)

¹⁶ *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 1/21/2011)

¹⁷ *Id.*

¹⁸ *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2017)

¹⁹ *A.P. v. Pasadena*, 78 IDELR 139

to evaluate based on conflicting evidence of improved attendance, despite the Student's lack of engagement and failure to complete assignments. The District told the Parent that it had to wait on the implementation of new interventions, and that the Student's response to these interventions would be reviewed at the end of April.

The Department substantiates this allegation.

2. Evaluation and Reevaluation Requirements

The Parent alleges that the District violated the IDEA when it: (a) did not conduct an initial evaluation after the Parent initiated a request for an initial evaluation; and (b) did not conduct an initial evaluation although the District suspected or had reason to suspect that the Student has a disability that has an adverse impact on the Student's educational performance and the Student may need special education services as a result of the disability.

A parent or public agency may initiate a request for an initial evaluation to determine if a child is eligible for special education services.²⁰ An initial evaluation must be conducted to determine if a child is eligible for special education when a school district 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.²¹

In determining whether a child has a disability, the IDEA requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student.²² A district may not use any single measure or assessment as the sole criterion for determining whether a student has a disability.²³ If a school district refuses an evaluation or reevaluation requested by a parent, the school district must provide the parent with prior written notice.²⁴ As mentioned above, a pre-referral process cannot be used to delay an evaluation if the district suspects a disability and possible need for special education.

a. Not conducting an initial evaluation after the Parent initiated a request for an initial evaluation:

As previously noted, the District had reason to suspect that the Student had a disability and might need special education services. Starting on September 1, 2020, the Parent requested an evaluation multiple times. In response, the District delayed an initial evaluation and failed to formally respond to the Parent's requests to evaluate. The District informed the Parent that the Student first needed to go through the pre-referral process, yet it did not discuss the Student at the District's pre-referral meetings until December 2020. The District did not convene a meeting with the Parent, to discuss (a) concerns about the Student's inability to attend class or complete assignments, (b) the Parent's requests for a special education evaluation, (c) the District's pre-referral process, or (d) the possibility of developing a Section 504 plan, until December 9, 2020. Despite the Parent's continued request for the District to evaluate, the District refused.

The Department substantiates this portion of the allegation.

b. Not conducting an initial evaluation although the District suspected or had reason to suspect that the Student has a disability that has an adverse impact on the

²⁰ OAR 581-015-2105(2); 34 CFR § 300.301(b)

²¹ OAR 581-015-2105(3); 34 CFR § 300.301(a)

²² OAR 581-015-2110(3)(a); 34 CFR § 300.304(b)(1)

²³ OAR 581-015-2110(3)(b)(2); 34 CFR § 300.304(b)

²⁴ OAR 581-015-2110(2)(c); 34 CFR 300.503(a)

Student's educational performance and the Student may need special education services as a result of the disability:

With the District's pre-referral process, the team identifies one or two areas of concern, regardless of the individual student's suspected areas of need. In this case, the team decided to address attendance and engagement, ignoring other potential areas of concern in the process. According to the information provided to the Parent (the "Circles of Support" guidelines), the team could not give permission to evaluate the Student until stage five of the process, which in this case took until the end of January 2021, when the District provided a formal refusal to evaluate for the first time.

The District stressed that its pre-referral process is data driven, gathering quantitative data on different levels of support and the various interventions and accommodations implemented. The District said it would implement interventions, 504 plan accommodations, and an FBA/BSP, then convene a follow-up meeting to make a decision based on the data collected. When this Investigator requested a copy of the data the District collected on the progress and efficacy of the various interventions and accommodations, the District provided the Student's grades, attendance, and the number of "must do" assignments that the Student completed. The District delayed the initiation of an evaluation on the premise that it needed to first try interventions and collect data; however, it is unclear what relevant data collection occurred or how it formed the basis of the decision to not evaluate the Student.

The evidence available to the District was (1) the Student's attendance plunged, from 100% in the 2019-20 school year, to somewhere between 0 - 7% during the first half of the 2020-21 school year, and (2) District staff working directly with the Student reported that the Student's mental health was severely impacting the Student's ability to access an education. The District ignored this evidence and categorically determined that the pre-referral process was a prerequisite for a special education evaluation, without appropriately considering the Student's individual needs.

The Department substantiates this portion of the allegation.

3. General Evaluation and Reevaluation Procedures

The Parent alleges that the District violated the IDEA when it refused an evaluation requested by the Parent and it did not provide the Parent with prior written notice (PWN).

If a school district refuses an evaluation requested by a parent, it must provide the parent with prior written notice.²⁵ The Parent made requests for the District to initiate an evaluation of the Student on at least seven separate occasions (9/1/20, 9/10/20, 9/15/20, 11/30/20, 12/9/20, 1/12/21, and 1/28/21). The District provided the Parent with one PWN related to its refusal to evaluate on February 24, 2021 (for the January 28, 2021 evaluation request and refusal).

The Department substantiates this allegation.

4. Evaluation Planning

The Parent alleges that the District violated the IDEA when it: (a) did not review existing evaluation data on the Student, including evaluations and information provided by the Parent; and (b) did not identify what additional data were needed to determine whether the Student is a

²⁵ OAR 581-015-2110(2)(c); 34 CFR § 300.503(a)

child with a disability and whether the Student needs special education and related services.

Before conducting any evaluation or reevaluation of a child, a district must conduct evaluation planning.²⁶ As part of an initial evaluation, the child's team or other qualified professionals, as appropriate, must review existing evaluation data on the child.²⁷ This includes reviewing (1) evaluations and information provided by the parents of the child; (2) current classroom-based, local, or state assessments, and classroom-based observations; and (3) observations by teachers and related services providers.²⁸ On the basis of that review, and input from the child's parents, the school district must identify what additional data, if any, are needed to determine (1) whether the child is a child with a disability; (2) the present levels of academic achievement and related developmental needs of the child; and (3) whether the child needs special education and related services.²⁹

a. Not reviewing existing evaluation data on the Student, including evaluations and information provided by the Parent:

As described earlier, the District did not evaluate the Student although the District suspected, or had reason to suspect, that the Student may be a child with a disability in need of special education services. Although the Parent informed the District of the Student's mental health challenges and requested an evaluation on September 1, 2020, the District did not convene a meeting until December 2020. The Parent provided information to the District, including the medical diagnoses, evaluations, and updates on the Student's behavior during class time. The District was aware that the Student was not attending classes and not participating in school. Notwithstanding this information from the Parent, the District did not hold an evaluation planning meeting until January 28, 2021.

The Department substantiates this portion of the allegation.

b. Not identifying what additional data were needed to determine whether the Student is a child with a disability and whether the Student needs special education and related services:

At the January 28, 2021 evaluation planning meeting, the District refused to evaluate the Student despite ongoing concerns about the Student's mental health, behavior, poor attendance, and non-engagement at school. The District failed to properly consider the information provided by the Parent, outside medical providers, and District staff about the Student. The District did not identify what additional data were needed to determine whether the Student is a child with a disability and whether the Student needs special education and related services.

The Department substantiates this portion of the allegation.

5. Parent Participation

The Parent alleges that the District violated the IDEA when it: (a) did not evaluate the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement; (b) did not consider existing evaluations and other information provided by the Parent; and (c) provided false and misleading information to the Parent regarding the evaluation process.

²⁶ OAR 581-015-2110(1);

²⁷ OAR 581-015-2115(1)(a); 34 CFR § 300.305(a)(1)

²⁸ OAR 581-015-2115(1)(a); 34 CFR § 300.305(a)(1)

²⁹ OAR 581-015-2115(1)(b); 34 CFR § 300.305(a)(2)

A school district must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, as well as the provision of a free appropriate public education (FAPE) to the student.³⁰ This includes notifying parents of meetings early enough to ensure they will have an opportunity to attend and scheduling the meetings at a mutually agreeable time.³¹ A school District must provide written notice of the purpose, time and place of a meeting; state who will attend; and inform the parent that they may bring others knowledgeable about the child.³² Educational placement of a child with disabilities is determined by a group of persons, including the parents, and others knowledgeable about the child and relevant evaluation data.³³ A school district must consider the concerns of the parent among other indicators of the student's academic, developmental, and functional needs.³⁴

"In order to fulfill the goal of parental participation in the IEP process," a school district is required to conduct meaningful meetings.³⁵ Predetermination occurs when a District makes a determination about the type or form of services it is willing to provide prior to a meeting, regardless of the individual needs of the student, and is unwilling to consider alternatives.³⁶

The identification of children suspected of having disabilities "should be a cooperative and consultative process" between parents and school districts.³⁷ When parents suspect a disability, "the parents should receive notification of, and have the opportunity to contest, conclusions regarding their children."³⁸ While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."³⁹

a. Not evaluating the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement:

The District did not allow the Parent to meaningfully participate in meetings with respect to the identification and evaluation of the Student. The District refused to consider evaluating the Student until after the implementation of the District's pre-referral process, predetermining the Student's need for special education. With this unilateral decision, the District infringed on the Parent's opportunity to meaningfully participate in the Student's educational program. Moreover, the District did not hold an evaluation planning meeting until five months after the Parent's first request to evaluate, denying the Parent the opportunity to participate in evaluation decisions concerning the Student for an unreasonable amount of time.

The District did not appropriately respond to the Parent's evaluation requests, as it did not provide the Parent with prior written notice of the District's refusal to evaluate. The District also did not provide the Parent with a copy of the Procedural Safeguards upon the Parent's requests for an initial evaluation. The District failed to provide the Parent with notice of the purpose of meetings scheduled by the District.

The Department substantiates this portion of the allegation.

³⁰ OAR 581-015-2190(1); 34 CFR § 300.322(a)

³¹ OAR 581-015-2195(1); 34 CFR § 300.322(a)

³² OAR 581-015-2190(2)(b)(A) and (B); 34 CFR § 300.322(b)

³³ OAR 581-015-2250(1)(a); 34 CFR § 300.116(a)(1)

³⁴ OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1)

³⁵ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992).

³⁶ *Id.*

³⁷ *Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996)

³⁸ *Id.*

³⁹ *Id.* at 804

b. Not considering existing evaluations and other information provided by the Parent:

The District did not properly consider information provided by the Parent regarding the Student's mental and physical distress. This included substantial evidence that the Student struggled to attend school, engage with teachers, complete assignments, and access accommodations. The District need not, and should not, decide whether the Student has a disability and qualifies for special education services before an evaluation occurs. It need only have a belief that the Student may potentially have a disability and may need special education services. The information provided by the Parent should have triggered an evaluation.

The Department substantiates this portion of the allegation.

c. Providing false and misleading information to the Parent regarding the evaluation process:

While the record contains some conflicting information about false or misleading statements, other evidence corroborated many of the Parent's assertions. Other individuals who attended meetings (including the Student's private Therapist, Family Advocate, and District Counselor) reported that the Parent consistently requested an evaluation at the meetings and the District would not respond definitively. Whenever the Parent expressed disagreement, the District stated it was not denying an evaluation. The school team told the Parent that they were required to try "other things first" and that the school team did not have the authority to approve an evaluation. The school team said it was required to take the evaluation request to the District, then later stated that the District did not approve the evaluation because interventions needed to be implemented first.

The District stated that there were processes that it was required to follow before they could evaluate the Student. When the impact of the Student's mental health came up at meetings, the District would intervene and talk about how smart the Student is and the Student's good grades. The Student's family Therapist and Family Advocate noted a lack of team discussion about what data would be tracked, that no baselines were identified, and that data collection comparisons from meeting to meeting were inconsistent. They also reported District statements to be vague, confusing, contradictory, and sometimes incorrect. It was apparent during interviews conducted by the Investigator that District staff members had inconsistent understandings about the evaluation process, which very likely created confusion for the Parent.

The Department substantiates this portion of the allegation.

6. Prior Written Notice (PWN)

The Parent alleges that the District violated the IDEA by failing to provide prior written notice of its refusal to evaluate the Student. Specifically, the Complaint alleges that the District did not provide prior written notice when it refused to evaluate the Student.

Prior written notice must be given to the parent of a child within a reasonable time period before a district refuses to initiate the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.⁴⁰ If a school district refuses an evaluation requested by a

⁴⁰ OAR 581-015-2310(2); 34 CFR § 300.503(a)

parent, the district must provide the prior written notice.⁴¹ This “formal requirement has an important purpose that is not merely technical, and therefore. . .it should be enforced rigorously.”⁴²

The District’s failure to respond to the Parent’s multiple evaluation requests does not alleviate IDEA notice requirements. A district cannot escape its obligation to provide prior written notice by failing to appropriately respond to a parent’s request. A school district’s decision to take no action qualifies as an affirmative refusal.⁴³

The Parent made requests for the District to initiate an evaluation of the Student on at least seven separate occasions (9/1/20, 9/10/20, 9/15/20, 11/30/20, 12/9/20, 1/12/21, and 1/28/21). The District provided the Parent with one prior written notice, on February 24, 2021. In the present case, the District’s response, or lack thereof, amounted to a refusal to evaluate the Student for special education.

The Department substantiates this allegation.

7. Procedural Safeguards

The Parent alleges that the District violated the IDEA when it did not give the Parent a copy of the Notice of Procedural Safeguards upon the Parent’s request for evaluation of the Student.

School districts must give parents a copy of the Notice of Procedural Safeguards only one time per year, except that a copy must be given to the parents in other specific situations, including upon initial referral or parent request for evaluation.⁴⁴ Despite the District’s failure to respond to the Parent, the District was required to provide the Parent with the Procedural Safeguards upon each request to evaluate.⁴⁵

Although the Parent made requests for the District to initiate an evaluation of the Student on multiple occasions (9/1/20, 9/10/20, 9/15/20, 11/30/20, 12/9/20, 1/12/21, and 1/28/21), the District first provided the Parent with an email link to the Notice of Procedural Safeguards on April 8, 2021. Moreover, the District reported that it is District practice to first provide Procedural Safeguards to parents at the time the District asks a parent for consent to evaluate.

The Department substantiates this allegation.

8. Free Appropriate Public Education (FAPE)

The Parent alleges that the District violated the IDEA by not identifying the Student as a child with a disability in need of special education services. The Complaint alleges that the District’s refusal to evaluate and provide special education services to address the Student’s needs has resulted in a denial of FAPE.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible, including children that are advancing from grade to grade.⁴⁶ In order to evaluate compliance with the IDEA, and thereby

⁴¹ OAR 581-015-2310(2); 34 CFR § 300.503(a)

⁴² *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994)

⁴³ *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1184 (9th Cir. 2010)

⁴⁴ OAR 581-015-2315(1); 34 CFR § 300.504(a)

⁴⁵ *Compton Unified Sch. Dist. v. Addison*, 598 F.3d at 1184

⁴⁶ OAR 581-015-2040(1); 34 CFR 300.101(a) and (c)

determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. If a school district cannot demonstrate that it has complied with the procedures in the IDEA and state education laws, the question of whether its proposed program meets the substantive benefit test need not be addressed.⁴⁷

Not every procedural error is sufficient to rise to a denial of FAPE.⁴⁸ The procedural test is an "either/or" test that consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;⁴⁹ (2) whether the Parent's right to participate in the IEP process was infringed; or (3) whether the procedural error caused a "deprivation of educational benefit."⁵⁰ Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."⁵¹ A "failure to properly consider an alternative educational plan can result in a lost educational opportunity even if the student cannot definitively demonstrate that his placement would have been different but for the procedural error."⁵²

The District's failure to identify and evaluate the Student, failure to properly consider information provided by the Parent, and failure to provide the Parent with prior written notice and Procedural Safeguards, are all violations the Student's procedural rights. Without evaluating the Student, the District could not appropriately identify the Student's individual educational needs. As a result, the Student continued to struggle throughout the school year without appropriate services and supports, while the Student's mental illness prevented the Student from attending and accessing school. The Student went from perfect attendance to an alarming rate of absences and non-engagement. The cumulative result of the District's procedural violations deprived the Student of educational opportunity. Because the District failed to properly identify and evaluate the Student as a child who may have a disability and need special education services, the District did not make FAPE available to the Student.

The Department substantiates this allegation.

⁴⁷ *Target Range*, 969 F.2d at 1485

⁴⁸ *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990))

⁴⁹ *Target Range*, 969 F.2d at 1484

⁵⁰ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

⁵¹ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. 2005)

⁵² *Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1047 (9th Cir. 2013)

V. CORRECTIVE ACTION⁵³

*In the Matter of West Linn-Wilsonville School District
Case No. 021-054-005*

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

Action Required	Submissions	Due Date
1. The District must complete the pending initial evaluation and determine whether the student is eligible for special education.	Prior Written Notice documenting the eligibility decision.	August 1, 2021 , or not later than 60 school days of written parent consent for the evaluation, whichever occurs earlier
2. The District must schedule and hold a Facilitated IEP meeting with the Parent at a mutually agreeable time to develop an initial IEP for the student, if determined eligible for special education, within 30 days of determining eligibility.	Copy of Student's IEP	September 1, 2021 , or not later than 30 days of eligibility determination, whichever occurs earlier
3. The District must provide Compensatory Education for lost educational opportunities from September 8, 2020 (first day of the school year) to April 12, 2021 (date the Complaint was filed), if the Student is determined eligible for special education, as determined appropriate by the IEP team during the Facilitated IEP meeting.	Copy of Student's IEP showing required Compensatory Education Evidence that Compensatory Education services were provided as required by the IEP.	September 1, 2021 September 1, 2022

⁵³ 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)).

<p>4. The District must review and, if necessary, revise pre-referral policies, procedures, and practices (e.g., Child Study - Circles of Support (COS)) to ensure it is explicitly noted that RTI, MTSS, or a need for interventions or additional supports, cannot be used to delay or deny an initial evaluation.</p>	<p>Evidence showing that district's pre-referral policies, procedures, and practices document that RTI, MTSS, or a need for interventions or additional supports cannot be used to delay or deny an evaluation.</p>	<p>September 1, 2021</p>
<p>5. The District must provide a series of training to the following staff related to compliance with the IDEA:</p> <ul style="list-style-type: none"> • Relevant school-based and district administrators, especially those who serve as District Representatives and District Special Education Administrators • All potential evaluators employed by the District • District Counselors • District School Psychologists • District Case Managers, Special Education Teachers, and Related Services Providers • District Staff Responsible for Oversight or Implementation of 504 Plans • Other District staff the District determines relevant <p>Training shall include, but not be limited to, IDEA requirements related to the areas listed below (each area can consist of one or more sessions as needed to adequately cover content):</p> <ul style="list-style-type: none"> • Child Find, to include <ul style="list-style-type: none"> ○ Pre-Referral Processes ○ Evaluation Planning ○ Evaluation Requirements and Procedures, including the requirement that the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation. . ."⁵⁴ • Eligibility, to include: <ul style="list-style-type: none"> ○ Section 504 ○ Special Education • Procedural Safeguards, to include 	<p>Planned Schedule for Training to County Contact for review/approval.</p> <p>Training agenda/materials to County Contact for review/approval prior to providing training.</p> <p>Sign-in sheet for training.</p>	<p>September 1, 2021</p> <p>At least 30 days prior to each scheduled training.</p> <p>Within 30 days of each scheduled training.</p> <p>All training must be completed and evidence submitted no later than June 11, 2022.</p>

⁵⁴ Memorandum to State Directors of Special Education, 56 IDELR 50 (OSEP 1/21/2011)

<ul style="list-style-type: none">○ Prior Written Notice○ Parent Participation		
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Dated: this 11th Day of June 2021



Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 11, 2021

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).)