

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Portland SD 1J
Case No. 21-054-015

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FINDINGS OF FACT,
CONCLUSIONS, AND FINAL ORDER
Case No. 21-054-015

I. BACKGROUND

On July 26, 2021, the Oregon Department of Education (Department) received a written Complaint (Complaint) from a parent (Parent) of a child (Student) who resides within the Portland School District 1J (District). The Parent requested that the Department conduct a special education investigation as provided under Oregon Administrative Rule (OAR) 581-015-2030. A contractor with the Department (Investigator) investigated this Complaint.

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 complainant 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 August 2, 2021, the Department sent a Request for Response (RFR) to the District identifying the specific allegations in the Complaint that the Department would investigate. The District sent a timely narrative Response and the related documents that the Investigator had requested on August 16, 2021. The Complainant submitted a narrative Reply to the District Response and related records on August 30, 2021.

The Investigator received the following documents from the District:

1. Narrative Response to the Complaint
2. Student's DIBELS (reading assessment) scores 1/15/2018-1/15/2020
3. Letter from a literacy & math specialist (SD2 specialist) who worked with Student in 2019-20
4. Email communications between District and Parent
5. List of District staff knowledgeable about the Student

The Investigator received the following documents from the Parent:

1. Narrative Request for Complaint Investigation
2. Narrative Reply to the District Response
3. Student's Grade 2, Quarter 4 Report Card
4. A table labeled "[Student]'s DIBELS Next Progress Monitoring Assessment Data 2019-2020"
5. A Statement of Eligibility for Special Education dated 6/3/2021 from SD2³
6. An Eligibility Summary Statement dated 6/3/2021 from SD2.
7. Email correspondence 4/8/2017-9/16/2021 between Parent and an enrollment coordinator at SD2.
8. A 2021-22 Non-Resident Tuition Statement from SD2.

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

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

³ The Student attends school in a neighboring school district that is not implicated in this special education complaint investigation. In this Order, that school district will be referred to as SD2.

9. An email dated 9/7/2021 from SD2 to Parent.

The Investigator sought and received emails from the District on September 17, 2021 and from the Parent on September 18, 2021 to clarify some ambiguous facts.

On August 30, 2021, the Investigator interviewed via video conference three District staff members knowledgeable about the Student. The Investigator exchanged several emails with the Parent and interviewed the parent by phone on September 10, 2021. The Investigator also interviewed by video conference the reading, math, and testing specialist at a school in SD2, where the Student has been enrolled since November 2020. The Investigator reviewed and considered all information obtained through interviews, the District's and the Complainant's narratives, documents, and from follow-up phone calls and emails.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The relevant allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from July 27, 2021, to the filing of this Complaint on July 26, 2021.

Allegations	Conclusions
<p><u>Child Find</u></p> <p>The Complaint alleges that the District was aware that the Student experienced significant difficulty with reading and had reason to suspect that the Student had a disability and might need special education, but the District did not refer the Student for special education evaluation.</p> <p>(OAR 581-015-2080(2); 34 CFR §§300.111(a))</p>	<p><u>Not Substantiated</u></p> <p>District staff members acknowledge that the Student's reading proficiency lagged below benchmarks in September and October 2020, but they did not suspect that reflected a disability. Given the limitations inherent in distance education, it is not clear that the District should have suspected the Student had a disability and needed special education.</p>
<p><u>FAPE</u></p> <p>The Complaint alleges that the Student was deprived of the Free Appropriate Public Education to which eligible children with disabilities are entitled under the IDEA because the District did not refer the Student for special education evaluation.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><u>Not Substantiated</u></p> <p>The FAPE requirement applies to students who need special education. Because the Student was evaluated for special education and determined not to have a specific learning disability and not to be eligible for special education, the District had no obligation to provide FAPE to the Student.</p>

<p>REQUESTED CORRECTIVE ACTION</p> <p>Reimbursement of tuition paid and inter-district release from PPS.</p>

III. FINDINGS OF FACT

1. The Student is 11 years old and resides within the District attendance area.
2. The Student attended a District elementary school from the beginning of the 2017-18 school year (kindergarten) through the first two months of the 2020-21 school year (third grade).
3. Teachers at the Student's District elementary school and at SD2 describe the Student as a happy child with an impressive vocabulary and broad general knowledge.
4. The Student's DIBELS⁴ scores showed reading fluency below benchmarks from the time the Student was in kindergarten until the last DIBELS scores in the Student's record, January 15, 2020.
5. According to the Student's Teacher in the 2019-20 (second grade) school year:
 - a. The Student was "definitely low for second grade."
 - b. This Teacher added that "what I noticed about [Student] is that [Student] was making growth."
 - c. This Teacher said she had considered eligibility for the Student in Reading Results⁵ as "an extra layer of intervention". However, the teacher decided that it was not necessary as long as the Student "was moving in the right direction."
6. The Student's two second-grade DIBELS scores showed significant growth during the first half of third grade.
 - a. 10/15/2019 Total score was 57, indicating a need for "intensive support"
 - b. 1/15/2020 Total score was 148, indicating a need for "strategic support"
7. On March 13, 2020, Oregon's Governor Kate Brown announced that public schools would shut down on March 16 in an attempt to slow the spread of the Covid-19 virus.
8. District schools began distance learning on April 13, 2020 and continued through June 11, 2020.
9. The Student's 4th quarter Report Card for the 2019-20 school year indicates uneven academic achievement, with marks "not yet - does not demonstrate" (/) in two math skills and all reading skills. The Student's marks for all other academic areas were "often demonstrates." (V)
10. The facts above occurred prior to the relevant time frame for this Complaint.
11. The District elementary school began the 2020-21 school year with a two-week (September 2-11) "soft start," which focused on social emotional learning curriculum, making peer and teacher connections in Comprehensive Distance Learning (CDL), technological how-to, and other introductory matters. During this period, teachers met with the parents. At their meeting with the Student's third-grade teacher, the Parent expressed no concerns about the Student's academic achievement.

⁴ DIBELS is a set of brief (one minute) tests administered three times per year that measure reading fluency and other early literacy skills of K-8 students. <https://dibels.uoregon.edu/>

⁵ Reading Results is a literacy program that works in conjunction with schools in Multnomah County to serve students reading below grade level.

12. On September 4, 2020, the Parent and a District staff member exchanged emails about the Student's difficulty signing in to a school-issued Chromebook.
13. On September 14, 2020 instruction via CDL began at the Student's school, and the Student's attendance was good even during three weeks (September 8-30, 2020) when the Student's family visited out-of-state grandparents. The Parent reports that, "as far as I am aware, [the Student] tried to do the assignments that were required when [the Student] knew they were required. There was [*sic*] lots of optional things, and lots of things [they] could not understand."
14. On September 22, 2020, the Student's 3rd grade teacher sent an email to the Parent expressing concern because the Student had not completed their Lexia Core 5⁶ assignments. The Parent replied "I didn't understand that anything was assigned from Lexia Core 5. I thought that was an optional activity during asynchronous learning. What assignment is [the Student] supposed to have done? ... We'll get it sorted out."
15. The Student's 3rd grade teacher at the District elementary school reported that she had concerns about the Student's ability to manage the technological skills needed for distance learning.
16. The Student's 3rd grade teacher observed that Lexia Core 5 level 10 was not working for the Student, so she moved the Student down to a level where the Student was comfortable. The Teacher did not perceive the Student as a child who might have a disability and need special education.
17. The Parent reported to the Investigator that, "We didn't really focus on reading but were worried about [the Student]'s ability to use CDL in fall 2020." The Parent added that, "We watched two months of [the Student] struggling."
18. On October 29, 2020, the Parent sent an email to the District elementary school, stating that October 30, 2020 would be the Student's last day because she was transferring to SD2.
19. DIBELS testing did not occur during the time Student was enrolled in the District elementary school from September 2-October 30, 2020.
20. The Parent enrolled the Student in SD2 in November 2020.
21. Shortly after the Student began school in SD2, the Student's third-grade teacher expressed concerns to the Parent about the Student's reading ability and recommended a special education evaluation.
22. The SD2 reading, math, and testing specialist administered a reading assessment, EasyCBM⁷, and found the Student's reading skills below grade level but "not alarmingly low." She designed and implemented a program of intensive reading and math pre-referral interventions.

⁶ Lexia Core 5 is "an adaptive blended learning program that accelerates the development of literacy skills for students of all abilities, helping them make that critical shift from learning to read to reading to learn".
<https://www.lexialearning.com/core5>

⁷ EasyCBM is a set of curriculum-based reading and math assessments "designed to give teachers insight into which of their students may need additional instructional supports as well as to provide a means by which they can measure the effectiveness of their teaching". <https://easycbm.com/about.html>

23. The Student responded very quickly to the interventions, and within two months was “well within the normal range” for third grade.
24. The Student’s third grade teacher continued to desire a special education evaluation. In May 2021, SD2 conducted a special education evaluation.
25. On June 3, 2021, the Eligibility team determined that the Student did not qualify as a Student with a Specific Learning Disability and was not eligible for special education.
26. The Parent reports that the Student “seems to be doing fine now”.

IV. DISCUSSION

Child Find

The Individuals with Disabilities Education Act (IDEA) requires that school districts “identify, locate, and evaluate all resident children who may have a disability and need early intervention, early childhood special education, or special education services.”⁸ This requirement applies to students suspected of having a disability even if they are advancing from grade to grade.⁹ A district must conduct an initial evaluation if it suspects or has reason to suspect that:

- (a) The child may have a disability that has an adverse impact on the child's educational performance; and
- (b) The child may need special education services as a result of the disability.¹⁰

If a parent suspects a child may have a disability and need special education, the parent may request an initial special education evaluation.¹¹

If a parent or a school district initiates a request for a special education evaluation, the district must designate a team to determine whether a special education evaluation is appropriate.¹²

- (a) The team must include the parent(s) and at least two professionals, one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.
- (b) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.

The Parent alleged that the District violated its Child Find obligation by not evaluating the Student for special education. However, District staff did not suspect that the Student had a disability that may require special education. The Parent acknowledged not suspecting that the Student had a disability or asking for a special education evaluation.

During the investigation period for this Complaint, the Student attended a District school for less than two months. All instruction during that time was via distance learning, and the Student’s Teacher was concerned that the Student struggled with the remote learning technology. A

⁸ OAR 581-015-2080(1)

⁹ OAR 581-015-2080(2)(d)

¹⁰ OAR 581-015-2105(3)(a)

¹¹ OAR 581-015-2105(2)

¹² OAR 581-015-2105(3)(b)

recent publication of the Office of Special Education and Rehabilitation Services (OSERS) at the US Department of Education addressed the difficulty of identifying Students who might have disabilities as follows:

If a student received limited instruction due to educational disruptions as a result of the COVID-19 pandemic and also made little academic progress, that doesn't automatically mean the student be referred for an evaluation. Levels of student performance primarily attributable to limited instruction do not mean the student requires special education and related services under IDEA.¹³

District staff members acknowledge that the Student's reading proficiency lagged below benchmarks in September and October 2020, but they did not suspect that reflected a disability. It is not clear that the District should have suspected the Student had a disability and needed special education.

The Student's third-grade teacher at SD2 suspected that the Student might need special education, but the Reading Specialist disagreed after administering a different reading screener than the District uses. The Reading Specialist began an intensive regular education intervention, and the Student made good progress without special education services. In an abundance of caution, SD2 ultimately conducted a special education evaluation and determined that the Student did not have a disability and did not need special education, a decision with which the Parent agreed.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

School districts must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the district is responsible¹⁴. The IDEA defines FAPE¹⁵ as special education and related services:

- (a) provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the [state education agency];
- (c) Include an appropriate preschool, elementary school, or secondary school education; and,
- (d) Are provided in conformity with an individualized education program (IEP).

The FAPE requirement applies to students who need special education. Because the Student was evaluated for special education and determined not to have a specific learning disability and not to be eligible for special education, the District had no obligation to provide FAPE to the Student.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁶

¹³ Return to School Roadmap: Child Find under Part B of the Individuals with Disabilities Education Act (OSERS 2021)

¹⁴ OAR 581-015-2040

¹⁵ 34 CFR § 300.17

¹⁶ 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

*In the Matter of Portland Public Schools
Case No. 021-054-015*

Based on the facts provided, the Department does not order corrective action in this matter.

Dated: this 23rd Day of September 2021



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: September 24, 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).)

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)).