# BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of Eugene SD 4J

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND STIPULATED CORRECTIVE ACTION CASE NO. 21-054-036

### I. BACKGROUND

On November 1, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Eugene School District 4J (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<sup>1</sup>. 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<sup>2</sup>.

On November 3, 2021, the Department's Complaint Investigator sent a *Request for Response* to the District identifying a specific allegation in the Complaint to be investigated and establishing a *Response* due date of November 19, 2021.

The Complaint alleged that the District had reason to suspect that the Student had a disability and needed special education but violated IDEA requirements for an initial evaluation.

The Parent alleged that the District had reason to suspect disability because, in Fall 2020, the Parent repeatedly expressed to District staff concerns about the Student's reading and writing skills. The Parent asked for dyslexia testing. The Parent, a certified teacher, described to the district the intensive tutoring the Student received at home. In addition, the Parent provided to the District a report from a private evaluation that included diagnoses of Specific Learning Disabilities (dyslexia and dysgraphia), ADHD, and Anxiety Disorder NOS. In response, the District convened a Referral Review Team meeting and concluded that a special education evaluation was unnecessary, as existing data about the Student's academic performance was sufficient to rule out a disability and need for special education. Instead, the District developed a §504 Plan for the Student.

<sup>&</sup>lt;sup>1</sup> OAR 581-015-2030(5)

<sup>&</sup>lt;sup>2</sup> OAR 581-015-2030(12)(b)

On May 2, 2021, the Parent again expressed concern about the Student's writing skills and asked for consideration of IEP eligibility and services. The District did not respond to this request. In June 2021, the Parent informed staff at the Student's school that a private evaluator had determined that the Student had mild Autism Spectrum Disorder. The Parent sent to the District a neuropsychological report documenting the diagnosis.

On November 1, 2021, the District agreed to conduct an initial evaluation for special education.

On November 16, 2021, in lieu of submitting Response to this complaint, the District submitted to the Department a Proposed Stipulated Corrective Action. The District did not dispute the allegation in the complaint but proposed corrective action.

The Complaint Investigator discussed with both parties the nature and content of a Stipulated Corrective Action, and the parties agreed to that resolution of the Complaint.

This order is timely.

# **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-300.153 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 oneyear period from May 12, 2020, to the filing of this Complaint on May 11, 2021.

| Allegation  | Conclusion                                    |
|---|---|
| Initial Evaluations   |   |
| The Complaint alleged that the District<br>violated IDEA requirements for an initial<br>evaluation. Complaint alleges that the<br>District has reason to suspect that the<br>Student has a disability and may need<br>special education because the Parent<br>had repeatedly expressed concern about<br>the Student's academic performance and<br>had requested a special education<br>evaluation.<br>(OAR 581-015-2105(3); 34 CFR<br>§300.301) | The District did not contest this allegation. |

### **III. FINDINGS OF FACT**

- 1. The Student is 9 years old and a 3<sup>rd</sup> grade student at a district school.
- 2. The District has not contested the allegations made in the Complaint in this matter and the parties have consented to Stipulated Corrective Action, as set forth in the Corrective Action table, below.

#### IV. DISCUSSION

The Complaint alleges an IDEA violation which the District does not contest.

The Department does not make a substantive determination on the allegations of the Complaint.

Based on the District not contesting the allegations of this Complaint, the Department orders and the District stipulates to the following Corrective Action:

# **V. STIPULATED CORRECTIVE ACTION**

| Action Required  | Submissions   | Due Date          |
|--|---|-------------------|
| The District will conduct an<br>evaluation to determine if the<br>Student qualifies for an IEP as<br>a student with a disability as<br>defined by the IDEA. The<br>District has already secured the<br>Parent's consent for an initial<br>evaluation and will complete the<br>evaluation within the 60 school<br>day timeline required by OAR<br>581-015-2110(5)(a). | The District will submit to the<br>Department all documents and<br>materials related to the<br>Student's initial evaluation and<br>eligibility determination. | February 28, 2022 |

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| If the Student is found eligible<br>for special education, the<br>Student's IEP team will meet to<br>develop an IEP and to consider<br>whether compensatory<br>education is warranted and, if<br>so, what form and amount of<br>compensatory education the<br>Student will receive. | 0,  | March 31, 2022 |
|---|---|----------------|
| Regardless of the outcome of<br>the Student's evaluation and<br>subsequent eligibility<br>determination, the District will<br>conduct staff training of<br>licensed and administrative<br>staff at the Student's school in<br>the area of IDEA Child Find<br>obligations.           | The District will submit to the<br>Department all materials used<br>in the Child Find training.<br>The District will also submit a<br>list of staff who attended the<br>training. | June 20, 2022  |

Dated: this 21st day of December, 2021

Denneadwetherell

Tenneal Wetherell Assistant Superintendent Office of Enhancing Student Opportunities

Emailing date: December 21, 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).)