

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the David Douglas
School District 40

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 19-054-019

I. BACKGROUND

On May 9, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the David Douglas School District 40 (District). The Parents requested that the Department conduct a special education investigation under Oregon Administrative Rule 581-015-2030. The Department confirmed receipt of this Complaint and forwarded it 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 Parents and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.² On May 13, 2019, the Department's Complaint Investigator (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 May 28, 2019. The parties agreed to participate in mediation. After attempting mediation but without resolving the matter, a new *Response* date of June 26, 2019 was set.

On June 19, 2019, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Parents' Complaint. The District submitted the following items:

1. District Response in 19-054-019
2. Department Request for Response in 19-054-019
3. Timeline of Events
4. Student contact log
5. Student Special Education contact log
6. IEP Progress Report—Measurable annual goals
7. Prior Notice and Consent for Initial, 04/25/2019
8. Prior Written Notice, 04/25/2019
9. Disability Statement of Eligibility for Special Education (Specific Learning Disability 90) 04/25/2019
10. Conference Summary, 04/25/2019
11. Speech and Language Assistant Notification, 04/25/2019
12. Written Consent to access public insurance, 04/25/2019
13. Eligibility Summary Statement, 04/25/2019

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

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

14. Evaluation Report, 04/25/2019
15. Individualized Education Program, 04/25/2019
16. Special Education Placement Determination, 04/25/2019
17. Notice of Team Meeting, 04/18/2019
18. Notice of Team Meeting, 04/17/2019
19. Notice of Team Meeting, 02/21/2019
20. Referral, 02/21/2019
21. Referral Summary, 02/21/2019
22. Prior Written Notice, 02/21/2019
23. District Meeting Summary, 02/21/2019
24. Conference Summary, 02/21/2019
25. Neuropsychology Report, 01/15/2019
26. Medical Statement or Health Assessment Statement, 11/28/2018
27. Progress to College & Career Report, 07/15/2018-07/14/2019
28. Letter from Parents to District, 02/19/2019
29. Written Consent to access public insurance, 01/26/2019
30. Prior Written Notice of Parent Decision to Revoke Consent, 04/26/2017
31. Prior Written Notice, 01/20/2017
32. Individualized Education Program, 01/20/2017
33. IEP Progress Report-Annual Goal, 01/27/2017
34. Special Education Placement Determination, 01/20/2017
35. Notice of Team Meeting, 01/06/2017
36. Notice of Team Meeting, 11/17/2015
37. Referral, 12/08/2015
38. Evaluation Report, 12/17/2015
39. Notice of Team Meeting, 01/07/2016
40. Disability Statement, Communication Disorder (50)
41. Prior Notice and Consent for Initial, 01/26/2016
42. Special Education Placement Determination, 01/26/2016
43. Eligibility Statement, 01/26/2016
44. IEP Progress Report—Annual Goal, 06/30/2016
45. Individualized Education Program, 01/26/2016
46. Referral Summary, 12/01/2015
47. Parent/Guardian Consent for Individual Evaluation, 12/08/2015
48. Email: (Student) today, 07/12/2019
49. Email: (Student) Monday, 07/09/2019
50. Email: Fwd: Mediation Update re DDSD & (Student), 07/05/2019
51. Email: mediation prep, 07/04/2019
52. Email: (Student) and his superhero writing, 07/03/2019
53. Email: (Student) this week, 05/31/2019
54. Email: Fwd: 05/22/2019
55. Email: (Student-seizure protocol?, 05/21/2019
56. Email: student with history of febrile seizures, 05/17/2019
57. Email: (Student) is absent today, Thursday, May 9th, 05/09/2019
58. Meeting Note: 05/07/2019
59. Email: Team Meeting, 05/07/2019
60. Email: IEP meeting/(Student), 05/07/2019

61. Email: (Student) parent requested meeting—doodle, 05/07/2019
62. Email (Student) is absent today, Friday, May 3rd, 05/03/2019
63. Email: No groups today, 5.2.19, for (Student) . . . went home early today, 05/02/2019
64. Email: (Student) testing accommodations, 05/02/2019
65. Email: Speech Language Assistant Notification, 05/01/2019
66. Email: Re: speech Times., 04/29/2019
67. Email: scheduling (Student), 04/26/2019
68. Email: Re: (Student) Meeting Agenda-Invitation to Ed
69. Email: (Student) eligibility today, 04/25/2019
70. Email: (Student), 04/24/2019
71. Email: Observation notes, 04/24/2019
72. Email: Re: Invitation: (Student) Initial eligibility and IEP meeting @ Thu Apr 25, 2019
3:45p – 4:15pm (PDT), 04/23/2019
73. Email: (Student)—for IEP, 04/23/2019
74. Email: headphones needed for Tuesday, April 23rd, 04/22/2019
75. Email: meeting this Thursday, 04/18/2019
76. Email: request to have copies of assessments, 04/18/2019
77. Email: Fwd: Re: Consent Form, 04/18/2019
78. Email: (Student) Eligibility, 04/17/2019
79. Email: Parent request, 04/17/2019
80. Email: Assessing (Student) today, 04/16/2019
81. Email: Eligibility, 04/16/2019
82. Email: (Student), 04/11/2019
83. Email: testing (Student) 04/10/2019
84. Email: Re: (Student), 04/10/2019
85. Email: Fwd: (Student) OT Report
86. Email: (Student) OT screener, 03/16/2019
87. Email: (Student), 03/15/2019
88. Email: wobbly seat, 02/25/2019
89. Email: Re: testing meeting (Student), 02/20/2019
90. Email: Fwd: testing, 02/19/2019
91. Email: (Student), 02/13/2019
92. Developmental History
93. RTI Individual Problem Solving Form, 04/25/2018
94. School IPS Team Meeting Notes, 11/30/2017
95. OT Screening, 11/29/2017
96. Pre-referral Referral Tool for ASD
97. Email: Consent Form, 05/01/2019
98. Email: (Student) 04/16/2019
99. Letter from Parent to District, 02/19/2019
100. Email: Fwd: Dev. History Information, 01/10/2019
101. Email: Fwd: Conferences, 01/10/2019
102. Email: Fwd: developmental paperwork, 01/10/2019
103. Email: Fwd: (Student) doing great!, 01/10/2019
104. Email: Fwd (Student) belongings, 01/10/2019
105. Email: Fwd: (Student), 01/10/2019
106. Email: Parent Concerns, 01/08/2019

107. Email: Fwd: Behavior interventions, 01/09/2019
108. Email: Fwd: Parent Request, 01/09/2019
109. Email: (Student), 02/15/2019
110. Email: ...helping today, 02/28/2018
111. Email: Parent request, 04/06/2018
112. Developmental History Form,
113. Email: Fwd: Email Results (Total: 1): Speech question for (Student)
114. Email: Fwd: Email Results (Total 1): Speech questions for (Student)
115. Email: (Student) 11/18/2018
116. Email: Forwarded e-mails, 01/09/2019
117. Email: (Student), 01/28/2019
118. Email: Re: Testing meeting (Student), 02/20/2019
119. Email: Eligibility, 04/16/2019
120. Email: (Student) Eligibility, 04/17/2019
121. Email: Meeting this afternoon, 04/25/2019
122. Email: (Student) eligibility today, 04/25/2019
123. Agenda for Eligibility Meeting for (Student)
124. Email: Speech Times., 04/26/2019
125. Email: Speech Language Assistant Notification, 05/01/2019
126. Email: (Student) is absent today, Friday May 3rd, 05/03/2019
127. Email: Team Meeting, 05/07/2019
128. Email: IEP meeting/(Student), 05/07/2019
129. Email: (Student) parent requested meeting – doodle, 05/07/2019
130. Email: Mediation meeting, 05/17/2019
131. Email: (Student) today, 06/15/2019
132. Email: Fwd: (Student), 04/21/217
133. Prior Written Notice of Parent Decision to Revoke Consent, 04/26/2017
134. Letter from Parent to District withdrawing Student from speech therapy, 04/21/2017
135. Special Programs Meeting Summary, 04/26/2017
136. Medical visit summary, 01/16/2019
137. Email: (Student), 04/24/2019
138. Student Cumulative File
139. Student School Information and Report Cards
140. Menlo Park IPS Team Meeting Notes & RTI 11/30/2017
141. Letter from Parent to District revoking services, 04/21/2017
142. Reading Intervention Information, 2015-2016
143. Student IEPs, 2019-2015

The Investigator interviewed the Parents on July 9, 2019. The Parents provided additional documentation at that time. The Investigator determined that onsite interviews were necessary. On July 17, 2019, the Investigator interviewed the District's Director of Student Services and building Principal. The Investigator reviewed and considered the previously described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.³ The Parents' 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 May 10, 2018, to the filing of this Complaint on May 9, 2019.

	Allegations	Conclusions
1.	<p><u>Child Find</u></p> <p>The Parents allege that the District violated the IDEA when it failed to appropriately identify, locate, and evaluate the Student as a student with a disability. Specifically, the Parents allege that they had requested the Student be identified as a Student with a disability who needed special education services, but that the District had not done so.</p> <p>(34 CFR § 300.111; OAR 581-015-2080)</p>	<p><u>Not Substantiated</u></p> <p>Immediately after the Parents requested that the District evaluate the Student for special education, the District scheduled and convened a meeting to gather relevant data and team member input. The District then evaluated the Student and a team developed an IEP to address the Student's individual needs.</p>
2.	<p><u>Evaluation and Reevaluation Requirements</u></p> <p>The Parents allege that the District violated the IDEA by not evaluating the Student to determine whether the Student was a child with a disability. The Parents further allege that the District violated the IDEA by not responding to the Parents' request for an initial evaluation to determine if the child was a child with a disability.</p> <p>(34 CFR §§ 300.301, 300.303; OAR 581-015-2105)</p>	<p><u>Not Substantiated</u></p> <p>The Parents had previously revoked consent for special education services. After that, the District worked to provide appropriate interventions to the Student in the general education environment. Once the Parents requested that the District evaluate the Student for special education eligibility, the District did so in timely fashion.</p>

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

III. FINDINGS OF FACT

1. The Student in this case is nine years old and attends school in the District.
2. During the 2015-2016 school year—when the Student was in kindergarten—the District suspected that the Student may have special education needs. The District convened a meeting to review existing information and determine whether to evaluate the Student, having recognized the Student’s struggles with fine motor skills, reading, writing, and speech.
3. After reviewing records and conducting an evaluation, the Student was found eligible for special education under the category of Communication Disorder. The Student’s team developed an Individualized Education Program (IEP).
4. The Student continued to be eligible for special education during the 2016-2017 school year. The Student received specially designed instruction in communication and articulation for difficulties articulating certain sounds. The Student was placed in the general education environment with removal for speech services.
5. On April 21, 2017, the Parents⁴ sent a letter to the District stating that they were withdrawing the Student from speech therapy due to the Speech Therapist’s teaching style. The Parents reiterated this information by email and phone message to the District on the same date. The District understood the Parents’ message as a revocation of consent for the provision of special education services.
6. On April 26, 2017, the District convened a meeting to address the Parents’ revocation of services. District staff attempted to contact the Parents about the meeting, and on April 26, 2017 the Parents responded by email stating they could not meet and preferred that the District send information by mail. District staff documented that the Parents left a voicemail with the District revoking consent. The District left voice messages and emails for the Parent on April 26, 2017 to clarify the Parents’ intent.
7. On April 26, 2017, the District sent the Parents a prior written notice (PWN) regarding the Parents’ decision to revoke consent for special education services. In this letter, the District noted that the “revocation of consent will have the effect of returning [the Student] to general education as a nondisabled student; no special education support will be provided.” The PWN went on to explain that with the revocation the “District will no longer be obligated to provide the [S]tudent with FAPE, conduct a 3-year re-evaluation, or hold annual IEP meetings.” The PWN also noted that the “District will continue to fulfill its ‘child find’ obligations . . . with regard to [the Student].”
8. As part of the Complaint investigation, the Parents report that they had not intended their April 21, 2017 communications to result in the revocation of consent for special education services. Rather, their intent was only to object to the teaching style of a certain District Speech Language Pathologist. The Parents pointed to an April 2017 speech assignment

⁴ In this Order, the term “Parents” is used to refer to the Student’s parents collectively, and each parent individually.

where a column with a happy face at the top contained correct pronunciations, while a column with a sad face contained the Student's incorrect pronunciations of such words as "ball" and "look." The Parents indicated that using a sad face/happy face symbol to denote the appropriate pronunciation "hurt [the Student] so much we took [the Student] out of speech"

9. As part of the Complaint investigation, the District reports it was unaware of the Parents' specific concerns with the Speech Language Pathologist named in the Parents' April 21, 2017 letter, but that it had conversations with the Parents regarding how assignments were marked and how the Student's performance was critiqued throughout second and third grade.
10. On September 21, 2017—at the beginning of the Student's second grade year—the District contacted the Parents by email, noted the Student's difficulties with speech, and asked for the Parents' consent to contact the District Speech Language Pathologist. The Parents did not respond to this email.
11. During this time, the Student transferred to a different school in the District. The Parents report hoping the transfer would address some of their concerns and that this hope influenced their decision not to respond to the District's attempts to connect the Student with a District speech language pathologist.
12. On November 30, 2017, the District convened an Individual Problem Solving (IPS) team meeting. Members of the team included the Student's school Principal, school Counselor, and school Psychologist. The purpose of the meeting was to identify and provide supports and accommodations for the Student in the general education environment and also to have data available for development of an IEP, if necessary.
13. The District convened additional IPS team meetings regarding the Student in April 2018 and October 2018.
14. On January 7, 2019, the Student's classroom teacher asked the Parents whether they agreed to the District's Speech Therapist meeting with the Student to determine the Student's need for services. The Parent responded, "[t]hat's fine."
15. On January 8, 2019, a District Counselor sent an email to a District Speech Pathologist and other staff indicating that following conversations with the Student's physician, the Parents had requested that the District test the Student "asap." The school Counselor asked District staff on the email about evaluations for which consent should be sought.
16. The District had additional communications with the Parents to inquire about testing and identification of the Student's disability and eligibility for special education.
17. Around this time, the Student was evaluated by a Pediatric Neuropsychologist outside of the school environment. The report is dated January 15, 2019. The Pediatric Neuropsychologist recommended the Student receive support for Attention-Deficit/Hyperactivity Disorder (ADHD) and other medical conditions. The Pediatric

Neuropsychologist recommended evaluations under the categories of specific learning disability and other health impairment (diagnosed ADHD), observing that the Student demonstrated weaknesses in attention, processing speed, inhibition, and graphomotor coordination. The Pediatric Neuropsychologist made numerous other observations and recommendations for both the home and educational environments.

18. On February 19, 2019, the Parents sent a letter to the District requesting that the Student “be evaluated for special education services.” The Parents expressed concerns about the Student’s handwriting, spelling, and reading. The Parents noted that the Student had recently undergone medical evaluations that raised concerns about developmental coordination and ADHD. The Parents expressed a willingness to provide consent for the evaluations.
19. Later that same day, the Student’s Principal emailed the Parents to schedule a meeting to “get things started.”
20. On February 21, 2019, after the school team and the Parents reviewed existing data, the Parents gave written consent for the Student to be evaluated to determine special education eligibility.
21. The Student tested in the low average range for visual spatial and processing speed, and showed strength in mathematics. The Student displayed some difficulty in reading and struggled in phonological decoding. The Student appears to avoid writing in class and demonstrates weaknesses in sentence construction.
22. On April 25, 2019, the Student’s IEP team convened to review the evaluation report, determine the Student’s eligibility for special education, and develop an IEP. The team found the Student eligible under the category of specific learning disability. The Student’s specific learning disability in the areas of reading and writing impact the Student’s ability to access and express understanding of grade level curriculum. The Parents consented to the initial provision of special education.
23. The Student’s IEP team noted that based on testing, the Student would likely benefit from occupational therapy sessions to help develop strategies to improve and compensate for fine motor struggles with fine motor and handwriting as well as self-regulation.
24. The IEP team decided that the Student would receive specially designed instruction in the areas of Reading/Language Arts, Communication, Written Language and Social/Emotional/Behavioral, but would spend 80% or more of the day in the general education environment.
25. On May 9, 2019, the Department received this complaint.

IV. DISCUSSION

A. Child Find

The Parents allege that the District violated the IDEA when it failed to appropriately identify, locate, and evaluate the Student as one with a disability. The Parents point to the Student's academic struggles in the areas of speech, writing, and behavior. The Parents note that despite these challenges, the District had not provided services to the Student. The Parents allege that when they requested the District identify the Student as a student with a disability in need of special education services, the District did not do so.

A school district is responsible for identifying, locating, and evaluating all children with disabilities.⁵ This requirement extends to all children who are residents of a school district, including those who are suspected of having a disability even though they are advancing from grade to grade.⁶ A school district must obtain consent from parents before evaluating a student to determine whether the student qualifies for special education services.⁷ An initial evaluation must be conducted within sixty school days from written parent consent to the date of the meeting to consider eligibility.⁸ School districts must conduct a meeting to develop an initial IEP within thirty calendar days of determining that a child needs special education.⁹ If, at any time after the initial provision of special education and related services, the parents revoke consent in writing, a school district may not continue to provide special education and related services to the student.¹⁰

The Student previously received special education services from the District, but those services ended abruptly when the Student was in first grade. On April 21, 2017, the Parents communicated by written letter, email, and phone, their desire that the Student no longer receive speech therapy. At the time, speech services were the only specially designed instruction the Student received. The District attempted to obtain more information regarding the Parents' decision, but received nothing further. On April 26, 2017, the District sent a Prior Written Notice to the Parents, which clearly detailed the implications of the Parents' revocation of consent for special education services. Receiving no response from the Parents, the District stopped providing the Student with special education services.

Near the beginning of 2017-2018 school year, the District contacted the Parents regarding the Student's difficulties with speech and asked for consent to contact the District Speech Language Pathologist. The Parents did not respond to this email. The District reports having had similar conversations with the Parents throughout the Student's 2017-2018 and 2018-2019 school years, where the Parents did not express interest or willingness to consent to initiating special education evaluation procedures. The District understood from these conversations that the Parents had concerns about how the Student's suspected disabilities might be labeled and as a result were not inclined to consent to a special education evaluation. Acknowledging that the Parents had revoked consent for special education services, the District developed an

⁵ 34 CFR § 300.111; OAR 581-015-2080(2).

⁶ 34 CFR § 300.111; OAR 581-015-2080(3).

⁷ 34 CFR § 300.111; OAR 581-015-2090(3)(a).

⁸ OAR 581-015-2110(5).

⁹ OAR 581-015-2220(2)(a)

¹⁰ OAR 581-015-2090(4)(e)

Individual Problem Solving (IPS) plan to support the Student's needs in the general education environment. In November of 2018, the District asked for the Parents' permission to gather data for Response to Intervention (RTI) to better address the Student's learning and behavioral needs. The Parents provided consent for data gathering for RTI and were under the mistaken impression that this constituted consent for evaluations and development of an IEP for the Student. The Parents later had the Student evaluated by a Pediatric Neuropsychologist outside the school environment.

On February 19, 2019, the Parents sent a letter to the District requesting the Student, "be evaluated for special education services." The Parents expressed concern that the Student was not performing well academically and displaying difficulty with handwriting, spelling, and reading. The Parents further wrote that they understood that they "have to give written permission in order for [the Student] to be evaluated." The District responded the same day suggesting dates to meet. Two days later, a team convened for an evaluation planning meeting. At that meeting, the District obtained the Parents' signed consent to evaluate the Student. On April 25, 2019, the team reconvened to review the evaluation report, determine the Student's eligibility for special education, and develop an IEP.

Prior to and during the Complaint period, the District located and identified the Student as someone the District suspected of having a disability. The Student received special education services during the 2016-2017 until they were revoked by the Parents. The District made overtures to the Parents about the Student undergoing an evaluation for special education eligibility. However, it was not until February 19, 2019 that the Parents indicated they would consent to the Student undergoing a special education evaluation. The District promptly obtained the Parents' consent and evaluated the Student. The District fulfilled its child find obligations with respect to the Student during the Complaint period.

B. Evaluation and Reevaluation Requirements

The Parents allege that the District violated the IDEA when it failed to evaluate the Student to determine whether the Student was a child with a disability. The Parents also allege that the District violated the IDEA by not responding to the Parents' request for an initial evaluation to determine if the child was a child with a disability. The Parents further allege that despite making several requests and completing paperwork provided by the District, it failed to complete necessary evaluations.

A school district must conduct an evaluation before determining whether a child has a disability.¹¹ Either a school district or a parent may initiate such an evaluation.¹² A school district must complete such an evaluation within sixty school days from written parent consent.¹³

The Parents report having asked the District to evaluate the Student as early as the fall of 2018 and report frustration with length of time before evaluations were conducted and an IEP implemented. However, the first request for evaluation and expression of willingness to consent to a special education evaluation from the Parents during the Complaint period came on

¹¹ OAR 581-015-2105(1)(a).

¹² OAR 581-015-2105(2).

¹³ OAR 581-015-2110(5)(a).

February 19, 2019. Prior to that, the District and the Parents exchanged communications and reached agreements around general education interventions and obtaining consent to collect data and provide supports through the Response to Intervention (RTI) process. The Parents were under the mistaken impression that they were consenting to a special education evaluation, which would lead to the development of an IEP. From the Parents' perspective, the District's evaluation of the Student and convening of an IEP team meeting on April 25, 2019 appeared delayed and untimely. In fact, after the Parent's February 19, 2019 request and expression of willingness to consent, the District acted promptly in obtaining parental consent, evaluating, and identifying the Student as a child with a disability in need of special education services. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁴

*In the Matter of David Douglas School District #40
Case No. 19-054-019*

The Department does not order corrective action in this matter.

Dated this 29th Day of July 2019

Candace Pelt, Ed.D.

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

Mailing Date: July 29, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

¹⁴ 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)).