

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of McMinnville School District )  
)  
)  
)

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-032

**I. BACKGROUND**

On August 8, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the legal counsel for a Parent (Parent) and student (Student) who reside in the McMinnville School District (District). The complainant requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on August 9, 2019.

On August 13, 2019, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 27, 2019. Subsequently, after receiving additional information from the Parent’s legal counsel, the Complaint Investigator (Investigator) amended the RFR to more accurately reflect the Parent’s allegations. The Amended RFR was sent to the parties on August 22, 2019. On August 23, 2019 the District submitted its *Response* via email and in hard copy via first class mail. The *Response* included a narrative and the following documents:

1. District policies regarding Educational Records of Students with Disabilities, final revisions dated November 5, 2012;
2. Emails email between the Special Education Director and staff dated June 7, 2019 through June 14, 2019
3. Certified mail receipt dated August 24, 2019
4. Certified Mail Return Receipt undated but signed by Parent counsel’s staff
5. District Disclosure Statement (undated)

The Parent’s Counsel submitted a written response on September 3, 2019 but did not submit any documents in reply to the District’s *Response*.

On September 5, 2019, the Investigator contacted both parties separately and requested a full and complete copy of the materials the District submitted to Parent’s Counsel on June 24, 2019. The Investigator also requested a full and complete copy of the materials received by Parent’s Counsel on June 25, 2019. These requests were sent separately to each party.

On September 9, 2019, the Investigator received the following documents from the District in response to the Investigator’s September 5, 2019 request:

1. IEP dated March 26, 2014
2. Chicago Public Schools IEP Report Card dated April 7, 2014
3. Progress Report from Summit Learning Charter dated September 23, 2015
4. Prior Written Notice dated December 10, 2015
5. US Postal Return Receipt dated December 15, 2015
6. Prior Written Notice dated January 20, 2016
7. US Postal Return Receipt dated January 28, 2016
8. Doernbecher Hospital Speech Language Evaluation dated February 5, 2016
9. Prior Written Notice about Evaluation/Consent to Evaluation dated September 16, 2016

10. Student Assessment dated September 16, 2016
11. Student Assessment List dated September 16, 2016
12. Consent for Evaluation dated October 10, 2016
13. Developmental Questionnaire dated October 10, 2016
14. Estacada School District Speech-Language Evaluation dated October 10, 2016
15. Statement of Eligibility for Special Education (Communication Disorder 50) dated October 18, 2016
16. Confidential Psycho Educational Evaluation dated November 6, 2016
17. Notice of IEP Team Meeting dated November 9, 2016
18. Eligibility Statement for Special Education (Intellectual Disability 10) dated December 2, 2016
19. Statement of eligibility for Special Education (Specific Learning Disability 90) dated December 2, 2016
20. Confidential Psycho-Educational Evaluation dated December 2, 2016
21. IEP dated December 2, 2016
22. Prior Written Notice Dated December 2, 2016
23. IEP Team Meeting Notes dated December 2, 2016
24. Authorization for Use and Disclosure of Information dated January 12, 2017
25. Records release from Yamhill Developmental Disabilities dated January 13, 2017
26. Parent withholding of consent to seclusion or restraint dated August 17, 2017
27. District Request for Student Records dated August 17, 2017
28. District welcome sheet dated August 17, 2017
29. IEP dated September 5, 2017
30. District Student Registration Form dated September 5, 2017
31. Handwritten intake meeting notes dated September 6, 2017
32. Parent Emergency Authorization and Home Language Survey dated August 17, 2017
33. Elementary School Progress Record 2011-2014
34. District Request for Student Records dated October 26, 2017
35. Elementary School Transcript (undated)
36. Notice of IEP Team Meeting dated October 30, 2017
37. Review of Student Records dated November 15, 2017
38. IEP dated November 29, 2017
39. IEP Team Meeting Notes dated November 29, 2017
40. Prior Written Notice dated November 30, 2017
41. Notice of IEP Team Meeting dated January 10, 2018
42. IEP dated January 12, 2018 with notation of Service Summary of January 11, 2018
43. Prior Written Notice dated January 22, 2018
44. Parent letter to SPED Director dated April 3, 2018
45. Notice of IEP Team meeting dated April 20, 2018
46. Student's Present Levels of Academic and Functional performance dated April 30, 2018
47. San Diego Quick Assessment – Record Form dated April 23, 2018
48. Student's Personal Profile dated April 23, 2018
49. Handwritten data charts and handwritten notes for Student's progress toward annual measurable goals, dated April 26, 2018 to May 2018 (some records in this set were not dated)
50. Math Skill Checker dated April 26, 2018
51. Handwritten notes regarding teaching strategies for Student dated April 30
52. IEP meeting agenda dated April 30, 2018
53. Prior Written Notice dated April 30 2018
54. Draft IEP dated April 30, 2018
55. IEP dated April 30, 2018
56. Present Levels of Academic and functional Performance dated April 30, 2018

57. Handwritten notation regarding rote counting (undated)
58. Math and Spelling worksheets completed by Student (undated)
59. Personal care checklist (undated)
60. Testing sheets (incomplete and undated)
61. Basic Sight Vocabulary test, completed and undated
62. Psycho Educational Evaluation dated May 30, 2018
63. Meeting sign in sheets dated May 31, 2018
64. Prior Written Notice dated May 31, 2018
65. ESY Progress Report – Summer 2018
66. Test 8 Scoring Sheet dated September 26, 2018
67. Interim IEP Addendum dated September 26, 2018 (notes only, unsigned)
68. Written Agreements between the Parent and the District dated October 4, 2018
69. Prior Written Notice dated October 4, 2018
70. Special Education Notice of Team Meeting dated October 6, 2018
71. Student Behavior Referral dated October 6, 2018
72. Prior Written Notice dated October 10, 2018
73. Parent Concerns dated October 10, 2018
74. IEP dated October 10, 2018
75. Student Behavioral Referral dated October 17, 2018
76. Spreadsheet of non-compliant behaviors dated between October 18 and February 19 (not signed, no year included)
77. Log of Discipline Incidents for School Year 2018-2019
78. Student Overview (10th grade, not dated)
79. Informal Reading Inventory dated November 2, 2018
80. Student Behavioral Referral dated November 7, 2018
81. Suspension Report dated November 13, 2018
82. Student Behavioral Referral dated November 13, 2018
83. Student Behavioral Referral dated November 15, 2018
84. Student Skills Progress (10th grade, begun Nov 26, 2018, completed March 7, 2019)
85. Student Behavioral Referral dated November 27, 2018
86. Multiple Timed math test results dated between November 27, 2018 and June 7, 2019
87. Behavior Support Plan dated November 28, 2018
88. Written Agreements between the Parent and the District dated December 5, 2018
89. Behavioral Support Plan with team member initials dated December 5 & 6, 2018
90. Amended Transition Plan dated December 6, 2018
91. Written Agreement between District and Parent dated December 6, 2018
92. Prior Written Notice dated December 6, 2018
93. IEP Amendment dated December 6, 2018
94. Prior Written Notice dated February 1, 2019
95. IEP Amendment dated February 1, 2019, remitted to Parent February 8, 2019
96. Prior Written Notice dated February 1, 2019
97. IEP Team Meeting Notes dated February 1, 2019
98. Data Sheet, classroom participation dated between February 12 and June 5, 2019
99. Notice of Transfer of Rights dated February 22, 2019
100. Tutoring Schedule dated between March 18, 2019 and June 11, 2019
101. Intermediate FYI & Think Sheet dated March 21, 2019 (elopement)
102. Intermediate FYI & Think Sheet dated March 21, 2019 (defiance)
103. Student/Patron Accident/Injury Report dated March 21, 2019
104. IEP Amendment dated March 22, 2019, remitted to Parent April 15, 2019
105. Intermediate FYI & Think Sheet dated March 22, 2019
106. Student Services summary page amendment dated March 22, 2019
107. Written Agreement between Parent and District dated March 22, 2019

108. Prior Written Notice dated March 22, 2019
109. Special Transportation Request dated April 1, 2019
110. Intermediate FYI & Think Sheet dated April 1, 2019
111. Intermediate FYI & Think Sheet dated April 3, 2019
112. Intermediate FYI & Think Sheet dated April 15, 2019
113. Suspension Report dated April 18, 2019
114. Student Behavioral Report dated April 18, 2019
115. Intermediate FYI & Think Sheet dated April 18, 2019
116. Intermediate FYI & Think Sheet dated April 26, 2019
117. Intermediate FYI & Think Sheet dated April 29, 2019
118. Suspension Report dated May 1, 2019
119. Student Behavioral Report dated May 1, 2019
120. Supervisor's First Notice of Injury/Accident dated May 1, 2019
121. Intermediate FYI & Think Sheet dated May 6, 2019
122. Intermediate FYI & Think Sheet dated May 7, 2019
123. Intermediate FYI & Think Sheet dated May 8, 2019 (aggression)
124. Intermediate FYI & Think Sheet dated May 8, 2019 (eloping)
125. Intermediate FYI & Think Sheet dated May 9, 2019
126. C Test 11, Oral Scoring Sheets dated May 15, 2019
127. D Test 11, Silent Scoring Sheets dated May 15, 2019
128. Intermediate FYI & Think Sheet dated May 17, 2019
129. Special Education Notice of Team Meeting dated May 17, 2019
130. Intermediate FYI & Think Sheet dated May 20, 2019
131. Notice of IEP Team Meeting dated May 21, 2018
132. Intermediate FYI & Think Sheet dated May 21, 2019
133. A Test 11 Oral Scoring Sheets dated May 22, 2019
134. Intermediate FYI & Think Sheet dated May 23, 2019
135. Intermediate FYI & Think Sheet dated May 24, 2019
136. Intermediate FYI & Think Sheet dated May 24, 2019 (aggression to staff)
137. Authorization for Release of All Educational Records executed by Parent dated May 24, 2019
138. Blank form Notice of Team Meeting
139. Records request from Parent attorney dated May 28, 2019
140. Intermediate FYI & Think Sheet dated May 28, 2019
141. B Test 11, Silent, Scoring Sheets dated May 30, 2019
142. Intermediate FYI & Think Sheet dated May 31, 2019
143. Student's grade report dated June 14, 2019
144. Multiple examples of the Student's work for school years 2018-2019.

The Parent was unable to distinguish between documents that had been received from the District on June 25, 2019 from documents that had been received at a later date. Parent's legal counsel stated that the District failed to produce the Student's entire educational record. On September 9, 2019, the Parent provided documents to the Investigator, explaining the following records were received in September 2019:

1. Annual IEP meeting minutes dated January 12, 2018
2. Psycho-Educational Evaluation Report dated May 30, 2018
3. Confidential Assistive Technology Assessment dated June 18, 2018
4. Meeting notes dated February 1, 2019, interlineated
5. Annual Measurable Goal Progress Report dated June 12, 2019
6. Computer Generated Annual Measurable Goals Progress report dated between November 14, 2018 and June 10, 2019

Thereafter, attorneys for the Parent and District submitted written correspondence regarding the allegations of either party. No other evidentiary documentation was included with either correspondence.

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from August 9, 2018 through August 8, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Parent's 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.

Allegation	Conclusion
<p><b>Educational Records</b></p> <p>The Parent alleges that the District violated the IDEA by failing to provide the Student's educational records for inspection and review within the timeline required by the IDEA.</p> <p>(34 CFR § 300.613; OAR 581-015-2300)</p>	<p><b>Not substantiated</b></p> <p>The District provided the Parent with the Student's educational records within 45 days and without unnecessary delay. This allegation is not substantiated.</p>

REQUESTED CORRECTIVE ACTION
<ol style="list-style-type: none"> <li>1. A finding that the District is in violation of the IDEA for failure to provide the requested educational records within 45 days after the request has been made; and</li> <li>2. The District should be compelled to provide the Parent with the Student's educational records.</li> </ol>

## III. FINDINGS OF FACT

1. The Student is seventeen years old and is eligible for special education services under the categories of Intellectual Disability and Communication Disorder.
2. The Student transferred into the District during the 2016-2017 school year.
3. The Student has been suspended three times while attending school in the District and demonstrated an increase in non-compliant behaviors during May 2019.
4. On or about May 24, 2019, the Parent executed a release so that the Student's educational records could be shared with the Parent's legal counsel. The Parent's legal counsel sent out

---

<sup>1</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

a request for the Student's educational records initially via facsimile on May 24, 2019 to the District's legal counsel. Thereafter, the Parent's legal counsel sent a request for educational records to the District via email and by first class mail on May 28, 2019. The Parent's legal counsel received notice that the facsimile to the District had not transmitted and thereafter requested clarification on the facsimile and email communication from the District's legal counsel.

5. The District's Special Education Director directed District staff to retrieve the Student's records so that they could be submitted to the Parent. The Special Education Director's secretary was charged with compiling the Student's educational record.
6. On June 24, 2019, District sent the Student's educational record to the Parent's legal counsel's office. The records were sent by certified mail, return receipt requested.
7. On June 25, 2019 at 11:34 a.m., an employee in the Parent's legal counsel's office signed the postal receipt for the package containing the Student's educational records. The Investigator independently verified delivery through the USPS.com website's tracking feature.
8. The Student's educational records that were delivered to the Parent on June 25, 2019 included IEPs, classwork, notes, meeting notes, prior written notices, notices of suspension (discipline), behavioral referrals, memorandum of non-compliant behavior (FYI & Think Sheets), testing data, classroom data, grade reports, behavioral support plan, consents, evaluations, notice of IEP team meetings, eligibility statements, and placement determinations.
9. In September 2019, the Parent received the following four documents that were not part of the records delivered on June 25, 2019: (1) January 12, 2018 IEP meeting minutes; (2) the Confidential Assistive Technology Assessment dated June 18, 2018; (3) the annual Measurable Goals Progress Report dated June 12, 2019; and (4) the Computer Generated Annual Measurable Goals Progress report dated between November 14, 2018 and June 10, 2019.
10. The Parent's legal counsel was unable to confirm which documents were received within 45 days of the Parent's request.
11. On June 18, 2018, an assistive technology evaluation report regarding the Student was completed. The assistive technology evaluation discussed the Student's use of an iPad, more specifically the "Lamp Words for Life" program. The evaluator noted that the Student had a concern regarding being able to block out background noise by using headphones. The District has provided the Student with an iPad specifically to use "Lamp Words for Life".
12. The Parent has voiced concerns during IEP team meetings about the Student's communication skills and need for assistive technology.

#### **IV. DISCUSSION**

The Parent alleges that the District violated the IDEA by failing to provide the Student's educational records for inspection and review within the timeline required by the IDEA. Educational records refer to all records pertaining to the identification, evaluation, and placement of a child.<sup>2</sup> A school district must provide a parent with an opportunity to inspect and review their

---

<sup>2</sup> OAR 581-015-2300(2).

student's educational records without unnecessary delay and before any meeting regarding the student's IEP, and in no case more than 45 days after the request is made.<sup>3</sup>

Here, the Parent's legal counsel first requested the Student's educational records on May 24, 2019. Receipt of the request failed due to problems with the transmission by facsimile. Thereafter, the Parent's legal counsel contacted the District directly on May 28, 2019 and requested the Student's records. Assuming the earlier May 24, 2019 requested date started the timeline, the District was required to provide educational records no later than July 8, 2019.

The return receipt document and data retrieved from the U.S. Post Office indicate that the Parent, through their legal counsel, received responsive documents on June 25, 2019. The package of documents consisted of 144 of 148 documents in the Student's educational records. The District delivered these documents within 45 days and without any unnecessary delay. Four documents were delivered to the Parent later, in September 2019. Two documents (annual measurable goal documents) were created after the May 24, 2019 request. The two documents that were created prior to the records request that were not delivered to the Parent until September 2019 consisted of meeting minutes from a January 12, 2018 IEP team meeting and an assistive technology assessment from June 18, 2018. Any delay in providing these two records was minor, did not significantly impede the parent's ability to participate in the IEP process, and there is no indication that the delayed delivery of the assistive technology assessment reflected any failure on the part of the District to provide the assistive technology recommended in the 2018 assessment (e.g., use of the "Lamp Words for Life" application on an iPad).

The District timely provided records to the Parent for review and inspection within the 45 day time limit. This allegation is not substantiated.

## V. CORRECTIVE ACTION

*In the Matter of McMinnville School District*  
Case No.19-054-032

The Department does not order corrective action in this matter.

Dated this 7th Day of October, 2019

*Candace Pelt, Ed. D*

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

Mailing Date: October 7, 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).)

---

<sup>3</sup> OAR 581-015-2300(3).