

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Newberg School District 29J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-042

I. BACKGROUND

On December 16, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Newberg School District (District). The Parents 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 Parents and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On December 23, 2022, the Department’s Complaint Investigator sent a *Request for Response* (RFR) to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 6, 2023.

The District submitted a *Response* on January 6, 2023, denying the allegations, providing an overview of the issues, and submitted documents and copies of communications in support of the District’s position. On January 26, 2023, the District provided additional documents as part of its *Response*. The District submitted the following relevant items:

- 1) District Response
- 2) Student Discipline Profile, 2022-23
- 3) District/Parent communication log
- 4) Draft Section 504 Accommodation Plan, 05/16/2022
- 5) Consent for Educational Screening, 03/15/2018
- 6) Feedback for Functional Behavioral Analysis or Educational Screening
- 7) Informal Behavior Checklist, 03/15—3/16/2018
- 8) Consent for Educational Screening, 01/22/2020
- 9) Student Observation Form Classroom, 02/20/2020
- 10) Meeting Notes, 05/16/2022
- 11) Summary of accommodations for Student, 04/16/2022
- 12) Email; [Student], 12/14/2021
- 13) District Notes, 04/21/2022
- 14) Email; Re: [Student], 09/13/2022
- 15) Email; Parent Request for IEP, 06/16/2022

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

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

- 16) Email; Re: [Student] update, 06/27/2022
- 17) Email; RE: 504 Meeting and Transition to middle school May 16, 3:00pm
- 18) Email; Parent request for IEP, 06/16/2022
- 19) Email; Evaluation findings and eligibility determination meeting, 12/09/2022
- 20) Email; [Student] 12/21/2022
- 21) Student community provider psychological evaluation, 11/17/2022
- 22) Email; Updated invitation: Eligibility Determination [Student] [School] @ Thu Jan 19, 2023 3pm – 4pm (PST)..., 01/04/2023
- 23) Notice of SpEd Referral, 10/10/2022
- 24) Referral, 10/10/2022
- 25) Parent/Guardian Consent for Individual Evaluation, 10/10/2022
- 26) Notice of Team Meeting, 09/28/2022
- 27) Consent for Educational Screening, 09/20/2022
- 28) File Review for SST/CARE Team Referral, 9/15/2022
- 29) Email: Evaluation, 09/22/2022
- 30) Email; Supporting [Student], 09/21/2022
- 31) Physician's letter, 09/25/2022
- 32) Email; Fwd: [Student] update, 09/21/2022
- 33) Parent/Guardian Consent for Individual Evaluation, 10/10/2022
- 34) Psychological Evaluation, 11/17/2022
- 35) Evaluation statement, 10/10/2022
- 36) Meeting Agenda, 10/10/2022
- 37) List of Relevant Staff
- 38) Email; Accepted; [Student] Evaluation Request Meeting, 09/27/2022
- 39) Email; Authorization to use and/or Disclose Educational and Protected Health Information forms, 11/18/2022
- 40) Email; Evaluation findings and eligibility determination meeting, 10/09/2022
- 41) Email; Invitation: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm
- 42) Email; Lutheran Community Services, 11/17/2022
- 43) Email; Meeting Reminder, 10/10/2022
- 44) Email; Re: [Student], 10/08/2022
- 45) Email; Re: Evaluation, 09/27/2022
- 46) Email; Re; Supporting [Student], 10/24/2022
- 47) Email; Tentatively Accepted: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm
- 48) Email; Eligibility Determination [Student] (School)
- 49) Email; Evaluation packet for appt w/Newberg SD, 01/24/2022
- 50) Email; Document shared with you: '504 [Student] 5-16-22', 05/27/2022
- 51) Email; Fwd: [Student], 05/04/2022
- 52) Email; Invitation: 3:00-3:45 New 504 plan [Student]@ Mon May 16, 2022 3pm - 3:45pm (PDT)
- 53) Email; [Student] update, 05/27/2022
- 54) Email; OT screening, 12/03/2021
- 55) Email; COVID result, 0925/2021
- 56) Email; Fwd; [Student], 09/25/2021
- 57) Email; Fwd: Meeting Invite- STOP IGNORING, 12/16/2022
- 58) Email; [Student] assignment, 10/10/2022
- 59) Email; [Student], 09/21/2022
- 60) Email; [Student], 09/07/2022
- 61) Email; [Student], 12/16/2022
- 62) Email; [Student], 09/22/2022
- 63) Email; [Student], 09/27/2022

- 64) Email; [Student], 09/26/2022
- 65) Email; Conferences ~ Math with [Teacher], 10/12/2022
- 66) Email; EMAIL RESULTS (Total: 193): Math 6 with [Teacher]
- 67) Email; Re: 306A-A24 - MATH 6 A [Student] - Math 6 with [Teacher], 12/06/2022
- 68) Email; Re: 306A-A24 - MATH 6 A [Student] - Math 6 with [Teacher], 09/29/2022
- 69) Email; Re: 306A-A24 - MATH 6 A [Student] - Math 6 with [Teacher], 12/05/2022
- 70) Email; Re: [Student] (oops!), 09/22/2022
- 71) Email; Re: [Student] assignment, 10/11/2022
- 72) Email; Re: [Student], 12/08/2022
- 73) Email; Re: [Student], 10/27/2022
- 74) Email; Re: [Student], 12/07/2022
- 75) Email; Re: [Student], 10/27/2022
- 76) Email; Re: [Student], 09/08/2022
- 77) Email; Re: [Student's] missing assignment, 10/20/2022
- 78) Email; Re: [Student], 09/28/2022
- 79) Email; Re: [Student], 12/17/2022
- 80) Email; Re: [Student], 10/25/2022
- 81) Email; Re: [Student's] missing assignment, 10/20/2022
- 82) Email; Updated invitation: Eligibility Determination [Student] (School) @ Thu Jan 19, 2023 3pm - 4pm (PST), 01/19/2023
- 83) Email; Eligibility Determination [Student] [School], 01/19/2023
- 84) Email; Another parent being ignored, 12/16/2022
- 85) Email; Fwd: Newberg School District Official Complaint, 12/15/2022
- 86) Email; Fwd; Re; Supporting [Student], 12/13/2022
- 87) Email; Request for Response in [Student] & Newberg SD--Case 22-054-042 Attachment(s): "22-054-042 Newberg RFR.pdf", 01/04/2022
- 88) Email; Fwd: Supporting [Student], 12/13/2022
- 89) Email; Invitation: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT), 10/10/2022
- 90) Email; mom's email, 01/04/2023
- 91) Email; Re: Request for Response in [Student] & Newberg SD--Case 22-054-042 Attachment(s): "22-054-042 Newberg RFR.pdf","ATT00002.bin", 12/23/2022
- 92) Email; Re: Supporting [Student], 12/14/2022
- 93) Email; Re: Request for Response in [Student] & Newberg SD--Case 22-054-042 Attachment(s): "22-054-042 Newberg RFR.pdf",12/23/2022
- 94) Email; Updated invitation: Eligibility Determination [Student] (School) @ Thu Jan 19, 2023 3pm - 4pm (PST)
- 95) Email; Fwd: Legal Action to be taken: [Student] IEP is out of compliance by the Newberg School District!, 12/09/2022
- 96) Email; Fwd; [Student], 10/17/2022
- 97) Email; Fwd: Legal Action to be taken: [Student] IEP is out of compliance by the Newberg School District!, 12/11/2022
- 98) Email; [Student] Speech Services, 10/03/2022
- 99) Email; Subject: Sign up sheet for conferences, 10/09/2022
- 100) Email; Updated invitation: Eligibility Determination [Student] (School) @ Thu Jan 19, 2023 6pm - 7pm (EST), 01/19/2023
- 101) Email; Eligibility Determination [Student] (School), 01/19/2023
- 102) Email; App, 10/29/2022
- 103) Email; [Student] 03/14/2022
- 104) Email; [Student] 10/25/2022
- 105) Email; [Student] 11/06/2022
- 106) Email; [Student] 09/11/2022
- 107) Email; Departure Plans, 09/01/2021

- 108) Email; [Student] 11/11/2021
- 109) Email; [Student] 09/29/2021
- 110) Email; Document shared with you: "504 [Student] 5-16-22", 05/27/2022
- 111) Email; Email Results
- 112) Email; Invitation: 3:00-3:45 New 504 plan [Student] @ Mon May 16, 2022 3pm - 3:45pm (PDT)
- 113) Email; 3:00-3:45 New 504 plan [Student], 05/16/2022
- 114) Email; Just in case, 10/30/2021
- 115) Email; Re: 73035-03 - Grade 5 [Student] – Homework, 02/10/2022
- 116) Email; Re: App, 10/29/2021
- 117) Email; Re: [Student] and login, 09/27/2021
- 118) Email; Re: [Student] and update, 05/27/2022
- 119) Email; Re: [Student], 09/29/2021
- 120) Email; Re: [Student], 09/25/2022
- 121) Email; Re: Supplies, 01/17/2022
- 122) Email; Re: Vacation, 10/18/2021
- 123) Email; Re: Valentine's Day, 02/01/2022
- 124) Email; Supplies, 01/15/2022
- 125) Email; Re: Vacation, 10/28/2021
- 126) Email; [Student] 504, 06/20/2022
- 127) Email, Attached Image, 06/28/2022
- 128) Email; Re: [Student], 04/22/2022
- 129) Email; Re; speech services, 01/21/2022
- 130) Email; [Student] speech services, 03/10/2022
- 131) Email; Fwd: Re: Supporting [Student], 10/13/2022
- 132) Email Re: 6th grade success, 12/12/2022
- 133) Email; Re: Supporting [Student], 12/13/2022
- 134) Email; Re: Updated Filter, 10/11/2022
- 135) Email; Fwd: [Student], 11/24/2021
- 136) Email; Accepted: [Student] IEP Review @ Fri Apr 29, 2022 7:15am - 8am (PDT), 04/21/2022
- 137) Email; Re: Re-eval, 05/19/2022
- 138) Email; Re; [Student] IEP, 05/25/2022
- 139) Email; [Student], 05/20/2022
- 140) Email; Re: Speech, 04/20/2022
- 141) Email: Re-eval, 05/16/2022
- 142) Email: [Student] IEP, 05/23/2022
- 143) Email: [Student], 05/19/2022
- 144) Email: Speech, 04/13/2022
- 145) Email: Could you print these please?, 11/09/2021
- 146) Email: Your Newberg Mat Club League Registration (2021 2022 Season) Export is Ready, 02/03/2022
- 147) Email: Your Newberg Mat Club League Registration (2022 2023 Season) Export is Ready, 11/29/2022
- 148) Email: Fwd: [Student], 10/27/2022
- 149) Email: Re: [Student], 10/27/2022
- 150) Email: Re: [School] Postponed Back to School Nights; 08/31/2022
- 151) Email: [Person] iReady, 05/09/2022
- 152) Email: [Student], 09/12/2022
- 153) Email: Fwd: [Student] update, 09/19/2022
- 154) Email: Re: Supporting [Student], 09/20/2022
- 155) Email: ESY Questions, 05/31/2022
- 156) Email: Fwd: [Student] IEP, 05/31/2022

- 157) Email: ESY Questions, 06/09/2022
- 158) Email: Recovery Services, 09/09/2022
- 159) Email: Medical form, 03/14/2022
- 160) Email: Fwd: Supporting [Student], 09/22/2022
- 161) Email: [Student], 10/27/2022
- 162) Email: EMAIL RESULTS (Total: 234): [Person] Leave of Absence
- 163) Email: Re: [Student] - 960 6TH GRADE SUCCESS - 960-A41B, 10/25/2022
- 164) Email: Re: [Student], Gradebook for Course 6TH GRADE SUCCESS, period 4, 12/08/2022
- 165) Email: RE: [Student] - 960 6TH GRADE SUCCESS - 960-A41B, 10/25/2022
- 166) Email: EMAIL RESULTS (Total: 386): Grading
- 167) Email: **IMPORTANT - Field Trip Information, 04/20/2022
- 168) Email: 1/25 Updates, 01/25/2022
- 169) Email: 10 days in!, 09/21/2022
- 170) Email; April 12 Updates, 04/12/2022
- 171) Email: Art, 09/17/2021
- 172) Email: Book Fair, 05/19/2022
- 173) Email: Book Publishing, 05/02/2022
- 174) Email: Class Book Order – Due Date, 05/04/2022
- 175) Email: Conference Link, 03/01/2022
- 176) Email: Conference Links and more, 10/07/2021
- 177) Email: Conferences, 03/10/2022
- 178) Email: Connect with your Child's Counselor, 04/04/2022
- 179) Email: Contact Info, 06/16/2022
- 180) Email: Feb 15 updates, 02/15/2022
- 181) Email: Field Trip Forms, 04/02/2022
- 182) Email: Field Trip Info, 06/03/2022
- 183) Email: Field Trip Monday June 6th, 06/03/2022
- 184) Email: Field Trip Monday, June 6th, 06/03/2022
- 185) Email: Field Trip Permission / Fire Station, Library, Memorial Park, 05/30/2022
- 186) Email: Field Trip Reminders, 05/05/2022
- 187) Email: Field Trip Tomorrow!!, 04/12/2022
- 188) Email: Final Update, 06/10/2022
- 189) Email: First Day, 09/08/2022
- 190) Email: Folders, 01/01/2021
- 191) Email: 12/03/2021
- 192) Email: Friday May 13th, 05/13/2022
- 193) Email: Fun Run, 10/14/2021
- 194) Email: Jan Lunch Menu, 01/07/2022
- 195) Email: June 3rd Email, 06/03/2022
- 196) Email: Kinder Update Oct 28th, 10/28/2022
- 197) Email: Kinder Updates 11/8, 11/08/2021
- 198) Email: Kinder Updates September 27th, 09/27/2021
- 199) Email: Kindergarten Updates 10/18, 10/19/2021
- 200) Email: Kinder Updates, 11/19, 11/19/2021
- 201) Email: Lunch / Snacks, 01/26/2022
- 202) Email: March 6th Updates, 03/06/2022
- 203) Email: May 20th, 05/20/2022
- 204) Email: Playground Incident, 11/24/2021
- 205) Email: Print Seesaw Family Invites for King's Kinders, 11/19/2021
- 206) Email: Re: Lunch / Snacks, 01/27/2022
- 207) Email: Re: Re: Pencil Grips, 03/14/2022
- 208) Email: Re: [Student's] OT Screening Results, 02/13/2022

- 209) Email: Re: [Student], 05/26/2022
- 210) Email: Re: Speech, 03/10/2022
- 211) Email: [Student] OT Screening Results, 02/13/2022
- 212) Email: [Student], 05/26/2022
- 213) Email: Show & Tell, 06/09/2022
- 214) Email: Spring Conference, 02/18/2022
- 215) Email: Tuesday, December 14th Update, 12/14/2021
- 216) Email: Update 2/1/22, 02/01/2022
- 217) Email: Updates 2/7, 02/07/2022
- 218) Email: Updates, 03/20/2022
- 219) Email: Welcome Back, 01/03/2022
- 220) Email: 6th grade success, 12/02/2022
- 221) Email: [Student], 11/30/2022
- 222) Email: LCSNW Referral Form, 10/18/2022
- 223) Email: Notification: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT), 10/10/2022
- 224) Email: Out for the office Re: [Student], 12/21/2022
- 225) Email: Re: 6th grade success, 12/12/2022
- 226) Email: Re: [Student], 10/07/2022
- 227) Email: Re: Lutheran Community Services, 11/18/2022
- 228) Email: [Student] Evaluation Request Meeting (on Google Meet), 10/10/2022
- 229) Email: Evaluation, 09/23/2022
- 230) Email: Fwd: [Student], 09/13/2022
- 231) Email: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022
- 232) Email: Re: Supporting [Student], 09/26/2022
- 233) Email: Updated invitation: Eligibility Determination [Student] [School] @ Thu Jan 19, 2023 3pm - 4pm (PST)
- 234) Email: Eligibility Determination [Student] [School]
- 235) Email: EMAIL RESULTS (Total: 377): Newberg Girls Travel/Recreational Basketball Information for Female Athletes!
- 236) Email: EMAIL RESULTS (Total: 437): 2022-23 6th Grade/Intramural PE
- 237) Email: Fwd: [Name] Advocate, 10/13/2022
- 238) Email: Fwd: Request for Response in [Student] & Newberg SD--Case 22-054-042, 12/23/2022
- 239) Email: Fwd: [Name] Advocate, 10/13/2022
- 240) Email: Fwd: [Student], 09/25/2022
- 241) Email: Accepted: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 242) Email: [Student] Update, 09/19/2022
- 243) Email: Accepted: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 244) Email: Re: [Student], 09/12/2022
- 245) Email: Re: Supporting [Student], 10/31/2022
- 246) Email: Updated invitation: Eligibility Determination [Student] [School] @ Thu Jan 19, 2023 3pm - 4pm (PST)
- 247) Email: [Student] and login, 09/27/2021
- 248) Email: [Student], 04/21/2022
- 249) Email: Document shared with you: "504 [Student] 5-16-22", 05/27/2022
- 250) Email: Fwd: Student, 03/15/2022
- 251) Email: Fwd: [Student], 09/25/2021
- 252) Email: Invitation: 3:00-3:45 New 504 plan [Student] @ Mon May 16, 2022 3pm - 3:45pm (PDT)
- 253) Email: Re: [Student], 04/22/2022

- 254) Email: Re: COVID Result, 09/25/2021
- 255) Email: Re: [Student] [other students], 02/02/2022
- 256) Email: Re: Speech services, 01/21/2022
- 257) Email: Re: [Student] [other students], 01/31/2022
- 258) Email: Speech Services, 01/202/2022
- 259) Email: Fwd: Sign up sheet for conferences, 10/11/2022
- 260) Email: 504 Meeting and Transition to middle school May 16, 3:00pm, 05/04/2022
- 261) Email: Fwd: [Student], 12/04/2021
- 262) Email: Parent request for IEP, 06/16/2022
- 263) Email: RE: 504 Meeting and Transition to middle school May 16, 3:00pm, 05/05/2022
- 264) Email: Re: [Student], 12/15/2022
- 265) Email: Accepted: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 266) Email: [Student], 12/21/2022
- 267) Email: Fwd: [Student] update, 09/21/2022
- 268) Email: Fwd: Evaluation, 09/26/2022
- 269) Email: Invitation: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 270) Email: Re: Evaluation, 09/28/2022
- 271) Email: Re: Supporting [Student], 09/22/2022
- 272) Email: Newberg School District Official Complaint, 12/15/2022
- 273) Email: Re: Supporting [Student], 12/13/2022
- 274) Email: [Student], 12/14/2022
- 275) Email: [Student], 03/14/2022
- 276) Email: [Student], 05/04/2022
- 277) Email: Re: [Student], 02/18/2022
- 278) Email: EMAIL RESULTS (Total: 5): Instrument for Class
- 279) Email: EMAIL RESULTS (Total: 99): Concert Reminder
- 280) Email: EMAIL RESULTS (Total: 99): Concert Time UPDATE
- 281) Email: EMAIL RESULTS (Total: 99): Concert Tomorrow!
- 282) Email: EMAIL RESULTS (Total: 99): Parent Teacher Conferences
- 283) Email: Re: 613A-A11 - Orchestra, Beginning [Student] - Instrument for Class, 09/18/2022
- 284) Email: Re: [Student] - 613A Orchestra, Beginning - 613A-A11, 12/11/2022
- 285) Email: EMAIL RESULTS (Total: 38): Agenda for tomorrow
- 286) Email: EMAIL RESULTS (Total: 38): Reminders
- 287) Email: EMAIL RESULTS (Total: 39): A few updates
- 288) Email: EMAIL RESULTS (Total: 39): A few updates. reminders
- 289) Email: EMAIL RESULTS (Total: 39): Blue folders
- 290) Email: EMAIL RESULTS (Total: 39): Conference Sign Up
- 291) Email: EMAIL RESULTS (Total: 39): Halloween Party
- 292) Email: EMAIL RESULTS (Total: 39): Homework
- 293) Email: EMAIL RESULTS (Total: 39): Picture day Message sent from Newberg School District
- 294) Email: EMAIL RESULTS (Total: 39): Pictures and Fun Run prizes
- 295) Email: EMAIL RESULTS (Total: 39): PSI party
- 296) Email: EMAIL RESULTS (Total: 39): Recess today
- 297) Email: EMAIL RESULTS (Total: 39): Wear green tomorrow
- 298) Email: EMAIL RESULTS (Total: 41): Back to school night tomorrow from 6- 7 P.M.
- 299) Email: EMAIL RESULTS (Total: 41): First day of school
- 300) Email: EMAIL RESULTS (Total: 41): Fun Run
- 301) Email: EMAIL RESULTS (Total: 41): Stuffie day tomorrow
- 302) Email: EMAIL RESULTS (Total: 41): Weekly Newsletter
- 303) Email: EMAIL RESULTS (Total: 41): Weekly update

- 304) Email: EMAIL RESULTS (Total: 41): Welcome to first grade
- 305) Email: [Teacher], will you support me in my school's 2022 Fun Run Fundraiser?, 09/28/2022
- 306) Email: Re: 73031-04 - Grade 1 [Student] - A few updates, 10/27/2022
- 307) Email: Re: [classmate's] birthday, 09/13/2022
- 308)
- 309) Email: Thank you for your donation, [Teacher], 09/28/2022
- 310) Email: Volunteer Schedule, 09/27/2022
- 311) Email: Legal Action to be taken: [student] IEP is out of compliance by the Newberg School District!, 12/09/2022
- 312) Email: [student] Advocate, 10/13/2022
- 313) Email: Accepted: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 314) Email: Fwd: [Student] update, 09/27/2022
- 315) Email: Fwd: [Student], 09/13/2022
- 316) Email: Fwd: [Student], 12/21/2022
- 317) Email: Fwd: [Student], 12/16/2022 (09/11/2022)
- 318) Email: Fwd: Legal Action to be taken: [student] IEP is out of compliance by the Newberg School District!, 12/09/2022
- 319) Email: Fwd: Meeting Invite- STOP IGNORING, 12/16/2022
- 320) Email: Fwd: [student] advocate, 10/17/2022
- 321) Email: Fwd: Request for Response in [Student] & Newberg SD--Case 22-054-042 Attachment(s): "22-054-042 Newberg RFR.pdf", 01/04/2022
- 322) Email: Supporting [Student], 09/20/2022
- 323) Email: Invitation: [Student] Evaluation Request Meeting (on Google Meet) @ Mon Oct 10, 2022 3:30pm - 4:30pm (PDT)
- 324) Email: Re: [Student], 09/13/2022
- 325) Email: Re: Student, 12/22/2022
- 326) Email: [student] advocate, 10/17/2022
- 327) Email: Re: Supporting [Student], 09/22/2022
- 328) Email: Updated invitation: Eligibility Determination [Student] [School] @ Thu Jan 19, 2023 3pm - 4pm (PST)
- 329) Email: Book fair, 05/19/2022
- 330) Email: [Student], 09/07/2022
- 331) Email: EMAIL RESULTS (Total: 220): Week #7 Humanities Update
- 332) Email: EMAIL RESULTS (Total: 225): 6th Grade Humanities Week 2
- 333) Email: EMAIL RESULTS (Total: 225): Start of Week #5 Humanities Update
- 334) Email: EMAIL RESULTS (Total: 225): Student Gradebook Access
- 335) Email: EMAIL RESULTS (Total: 225): Week #4 Humanities Update
- 336) Email: EMAIL RESULTS (Total: 234): Welcome!
- 337) Email: EMAIL RESULTS (Total: 89): Student Profile Envelopes
- 338) Email: Google Meet Link for Wednesday, 10/11/2022
- 339) Email: Re: [Student] - 106A Language Arts 6 A - 106A-A63, 09/21/2022
- 340) Email: Re: [Student], 09/15/2022
- 341) Email: Re: [Student] - 106A Language Arts 6 A - 106A-A63, 09/20/2022
- 342) Email: Re: [Student], 09/14/2022
- 343) Email: Updated invitation: Eligibility Determination [Student] [School] @ Thu Jan 19, 2023 3pm - 4pm (PST)
- 344) Email: Eligibility Determination [Student], 01/19/2023
- 345) Email: Subject: Accepted: Speech-[student] @ Tue Jul 26, 2022 10:30am - 11am (PDT), 07/26/2022
- 346) Email: Re: [Student], 09/07/2022
- 347) Email: [Student's] work, 10/28/2022

- 348) Email: Re: [Student] - 406A SCIENCE 6 A - 406A-A54, 10/25/2022
- 349) Email: Re: [Student], Gradebook for Course SCIENCE 6 A, period 5, 12/07/2022
- 350) Email: Re: [Student], 10/07/2022
- 351) Email: Re: [Student's] work, 10/31/2022
- 352) Email: Re: [Student] - 406A SCIENCE 6 A - 406A-A54, 10/25/2022
- 353) Email: Virtual Conference Link, 10/11/2022
- 354) Email: Updated Conference Sign up, 10/11/2022
- 355) Email: Fwd: [Student], 09/12/2022
- 356) SST Team Notes
- 357) Email: [Student] meeting agenda, 04/26/2022
- 358) Email: 504 Meeting and Transition to middle school May 16, 3:00pm
- 359) Summary of Accommodations and notes for [Student], 04/16/2022
- 360) Email: [Student], 05/31/2022
- 361) Email: Draft 504 for [Student], 06/27/2022

The Complaint Investigator interviewed the Parent on January 20, 2023. The Parent provided additional information during and following the interview. On January 26, 2023, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all 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 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 December 17, 2021, to the filing of this Complaint on December 16, 2022.

Allegations	Conclusions
<p>Child Find</p> <p>It is alleged that the District violated the IDEA when it failed to identify and evaluate the Student's need for special education services.</p> <p>(OAR 581-015-2080; 34 CFR §§ 300.111, 303.302, & 301)</p>	<p>Substantiated</p> <p>The Parents sent many communications to the District expressing concern about the Student's educational needs and requesting that they evaluate the Student's eligibility for special education under several suspected eligibility categories. Despite these requests, the District did not initiate the evaluation process until nearly 10 months after the first request, nor was a Prior Written Notice (PWN) ever provided.</p>
<p>Evaluation and Reevaluation Requirements</p>	<p>Substantiated</p>

<p>It is alleged that the District violated the IDEA when it failed to evaluate the Student to determine whether the Student was a child with a disability when the Parents initiated a request for an initial evaluation.</p> <p>(OAR 581-015-2105; 34 CFR §§ 300.301 & 300.303)</p>	<p>The District held a meeting where it determined the Student would be better served by a 504 Plan than an IEP. This determination was made without evaluating the Student and without the presence or input of the Parents and required District staff.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>It is alleged that the District's proposed evaluation of the Student was not sufficiently comprehensive to identify all of the Student's special education and related service needs.</p> <p>(OAR 581-015-2120; 34 CFR §§ 300.304 & 300.305)</p>	<p>Partially Substantiated</p> <p>The District's evaluation of the Student began after filing this Complaint, so the comprehensiveness of the evaluation was not investigated. However, the District did not complete the evaluation of the Student within 60 school days of obtaining consent from the Parents.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • Assign qualified staff to the special education identification and evaluation process in the District; • Evaluate students for special education without prioritizing based on a number of factors not only academic performance; • Accept financial responsibility for educational and psychological impacts of delaying the Student's special education eligibility determination.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before December 16, 2021. 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 in this matter is in the sixth grade and attends school in the District.
- 2) On November 11, 2021, the Parent sent an email to Teacher and some of the Student's other classroom teacher teachers, writing, "We had our meeting with [Student's] pediatrician and she would love if you could collect data for us about his behavior and academics. If you notice days where [the Student] is more off track or distracted than others and can note it we would really appreciate it. If you notice a time when [the Student] is trying to get out of schoolwork

more than others, or is really easy with getting work done. Anything and everything would be a huge help.”

- 3) On December 14, 2021, the Parent sent an email to the District writing in relevant part, “Good morning [Teacher 1]. My name is [Parent]...As I mentioned previously, right before Covid hit I was working on advocating for [the Student] to be evaluated for an IEP. The school for whatever reason told me [the Student] was not eligible to be screened for services, even though we consistently had behavior problems with [Student], [the Student] missing tons of work, [the Student] getting more than one referral on average to the Principal and [the Student] playing the teachers. Luckily, so far [Student] academically has made huge improvements when it comes to [the Student’s] reading level. [The Student’s] writing is still horrible, getting [the Student] to write anything is like pulling teeth. I actually think I (*sic*) rather get a tooth pulled than work with [the Student] and a writing assignment. Here are the meet (*sic*) and potatoes of why I want [Student] screened for Special Ed. [The Student] can actually meet 2 criteria, OHI and ED. [The Student] has a confirmed diagnosis of ADHD with strong suspicion for depression. [The Student’s] ...[Parents provide background of social, family, and medical history relevant to the Student] From this meeting [the Student’s] doctor said that [the Student] is showing signs of depression and is actively asking for help in the way [the Student] is doing things...During conferences I asked [the Student’s] teacher [Teacher 2] who (*sic*) [the Student] was doing emotionally and she told me [the Student] has been showing signs of concerns. She had them write down personal goals and [the Student’s] response was "to not be a bad kid"...From all of these red flags I contacted the school immediately and asked for [the Student’s] teacher and school to be communicating with [the Student’s] doctor and psychologist. We came up with a plan that the teacher would fill out daily behavior reports (one that is typically for adhd kids) and send it to [the Student’s] doctor so we can see if there a pattern in behavior. I started this process in the beginning of November, everything was signed immediately for the school to communicate with [the Student’s] doctor. I saw [the Student’s] doctor on Friday and she said she still has not received any reports. I understand that my kiddo is at grade level, but [the Student] is emotionally struggling. [Parent provides additional family medical information] As you know it is not uncommon for kiddos with adhd to have depression. [The Student] needs helps socially and emotionally...[Parent provides additional mental health concerns, and concerns regarding technology addiction]...[The Student] going into middle school scares the hell out of [the Student]. [The Student] having all of these different classes, remember a lock combination, being semi organized. I can't keep up with where all of [the Student’s] assignments are now and I'm only dealing with 1 teacher. It is a full time job to just try and follow along with all of the different things to check to see if [the Student] is caught up...[Parents provide additional family specific conditions and circumstances]...I need [the Student] to have success, I need [the Student] to have someone who is helping [the Student] figure out how to work with [the Student’s] ADHD and give [the Student] consistency. I need the school to be held accountable because they are amazing at telling me they will be doing something and they don't follow through with it. I don't want a 504, I want [the Student] screened for Special Ed. and having an IEP. The school tried to tell me [the Student] does not have ADHD after they contacted [the Student’s] Primary and Psychologist and the day they contacted them told me they never responded. [The Student] needs help learning how to write. [The Student] cannot get [their] thoughts down on paper. I encourage anyone who tries to tell me [the Student] doesn't need help to sit down with [the Student] on a Monday, Tuesday or Wednesday and ask [the Student] to write a paragraph on anything. Talk to any of his previous teachers, they will all tell you [the Student] has highs and lows...frequently.”
- 4) On December 17, 2021, Teacher 1 responded by email, writing, “Thanks for reaching out. We are booked for a while but I have [the Student] scheduled on March 3rd. We are looking at doing some meetings earlier and if we can fit [the Student], I will let you know. Since [the

Student] has an outside diagnosis of ADHD, would you be able to get a copy of that to me? That may help the process along.”

- 5) On February 9, 2022, Teacher 2 sent an email to the Parents about the Student having not completed homework assignments.
- 6) On February 18, 2022, the Parents, responding to Teacher 1’s December 17, 2021, email wrote, “...I have attached the diagnosis for [Student] from his pediatrician in case you haven't received it yet. Is [the Student] still scheduled for March 3rd? Have you also been receiving [the Student’s] weekly behavior report? I chose to not receive it for now to try and let you all do your thing without me breathing down your back. Getting that data I would go crazy special ed mom and I'm trying to holster that for now...”
- 7) The Parents’ February 18, 2022 email regarding the weekly behavior report related to the District tracking the Student’s behavior, mood, and emotional state in class. The Parents and the District had agreed to do this following receipt of the Student’s ADHD diagnosis as well as concerns raised by the Parents and at least one classroom teacher.
- 8) On February 24, 2022, the Parents sent Teacher 1 an email following up on their earlier email and to confirm that the meeting was still scheduled for March 3, 2022.
- 9) On February 25, 2022, Teacher 1 sent the Parents an email, writing, “...Yes we have all the documents you have forwarded to us. Next week, our SST (Student Support Team) will meet and I will share all of the information with them. As a team, we will recommend next steps. The recommendations could be to move to an evaluation for a possible IEP, it could be to collect more data, it could be to move to a 504, etc. I will connect with you afterward with the next steps.”
- 10) On March 3, 2022, the SST met to discuss the Parents’ request that the District evaluate the Student for special education eligibility. Notes from that meeting indicate that the SST members determined that a Section 504 Plan would be the most appropriate route for the Student. The SST further documented that they would put together documentation to have “a thoughtful and concrete plan in writing showing how a 504 would be appropriate vs an IEP.” The Parents were not invited to this meeting.
- 11) At the March 3, 2022 SST meeting, Teacher 2 reported that the Student struggles to get their thoughts down on paper. Teacher 2 also reported awareness of the way the Student’s ADHD was treated and the impact that could have on school performance. Teacher 2 also observed that the Student had displayed emotional struggles during that school year.
- 12) At the same meeting, the SST referred the question whether and how to respond to the Parents’ request that the District evaluate the Student for special education eligibility to Administrator 3. The SST never received a response from Administrator 3.
- 13) On March 14, 2022, the Parents sent an email to Teacher 1 inquiring about the team’s decision, writing, “I was wondering what decision the team came to about [the Student]? I saw that [the Student’s] primary doctor also advocated for an IEP instead of a 504.”
- 14) On March 15, 2022, Teacher 1 sent an email to Administrator 2, Counselor 1, and Teacher 4, asking, “Did we complete any of these next steps? How would you like me to respond to this parent?” Attached to the email was a document that included observations regarding the Student from the SST meeting for Administrator 2’s reference.

- 15) On April 21, 2022, the Parents sent an email to Teacher 1 and Administrator 2, writing, "I am writing to you to see where we are in getting [Student] evaluated for Special Education Services. I emailed you back on December 14, 2021, requesting that [Student] be evaluated. Per IDEA the school has 60 days after receiving consent from a parent that an evaluation must be conducted. You informed me that you had [Student] scheduled for March 3rd for an evaluation and we have not heard anything back about it. Not only have we not received any information but I know that technically we are supposed to sign the parental consent form to evaluate [the Student], even though we were the ones who requested it. I understand that [Student] is not necessarily struggling academically, but [the Student] is struggling and does have a medical diagnosis. [The Student's] own doctor is advocating for an IEP. I am officially looking for an update as to what the school has decided. If the school has not decided to officially evaluate [Student] I am requiring a written response in detail explaining how [the Student] does not meet the requirements. I have dozens of emails from every single teacher [Student] has ever had that show evidence of emotional AND behavioral disturbance in education. I would need the school's evidence to show that [Student's] emotional and behavioral health is not impeded by his medically documented disability."
- 16) On April 21, 2022, the SST met again to discuss the Parents' request that the District evaluate the Student for special education eligibility. The notes from that meeting indicate the team was seeking internal guidance for the required steps to take when parents request that their children be evaluated. During the meeting, the team discussed what was working for the Student, observing that the Student has not had behavioral referrals that year, and that the team should reach out to the Parents to explain the District's approach to the evaluation request.
- 17) On April 22, 2022, Teacher 1 forwarded the April 21, 2022 email from the Parents to Administrator 3, writing, "The [school] team could use your support and participation in this matter. Please let us know your availability in the next two weeks so we can work to schedule a meeting with this student's parents. . ."
- 18) On April 22, 2022, Teacher 1 sent an email to the Parents, writing, "...Thank you for your continued advocacy for [Student]. We have scheduled a meeting for next week with a gathered team to hear concerns and make plans for the next steps. We are able to hold this at 3:00 pm next Tuesday (4/26). We hope you can join us either virtually or in person. Please let me know if you would like virtual and I will create a link for you to join."
- 19) On April 25, 2022, the Parents responded by email that they would not be able to join in person but would join the meeting virtually.
- 20) On April 26, 2022, the SST held a meeting with the Parents to discuss the SST's March 3, 2022, and April 21, 2022 meetings and its determination that a 504 Plan was the appropriate response to the Parents' concerns.
- 21) On May 4, 2022, Counselor 1 sent an email to the Parents and others in the District, including Administrator 2 and Teacher 1, writing in part, "Thank you for everyone's great input and ideas about how to best support [Student's] needs emotionally, academically, socially and behaviorally. Regarding planning going forward, [Counselor 2] (one of the counselors at [Middle School]) said she's available to meet to develop a Section 504 plan to support [Student] as [Student] transitions to [middle school]...I've attached notes to edit along with the list we brainstormed of possible accommodations for us to review and work from. If there are other things any of you think of let's be sure to discuss as well. There were a few spots to fill in. I'm looking for a time slot in my weekly schedule where [Student] and a small group can meet weekly the rest of this year to review/relearn some of the Superpowers of ADHD brains"

along with coping strategies and emotion regulation tools we've learned in class this year. [The Student's] really grown so much and I know all of you at home (and [Teacher 1] here at school) have supported and guided [the Student] in incredible ways.”

- 22) On May 16, 2022, the District sent the Parents an invitation to a virtual meeting scheduled for May 16, 2022. The invitation contained the subject line, “Invitation: 3:00-3:45 new 504 plan [Student] @ Mon May 16, 2022 3pm—3:45pm...”
- 23) As part of the meeting, a draft 504 Plan was created for the Student. That draft plan indicated that “the parents want IEP [Administrator 3] working with parents.”
- 24) The Parents report that the District’s suggested supports and accommodations for the Student did not match what the Parents wanted and that they were not provided with answers regarding whether the District had evaluated or would evaluate the Student for special education eligibility as requested.
- 25) On May 27, 2022, Counselor 1 sent an email to the Parents regarding implementing assignment trackers to assist the Student’s teachers with tracking the Student’s incomplete assignments.
- 26) On May 31, 2022, the Parents sent an email to Counselor 1, writing in part, “After reviewing the 504 and talking to [Parents] we have decided that we would like to know why [Student] is being declined an IEP and being forced on a 504 plan instead. We keep being told that a 504 plan can help [the Student] and give [the Student] everything the IEP will, but that isn’t true. IEP you must have S.M.A.R.T. goals, a 504 plan you do not. 504 plans you do not need to have measurable goals and are no required to collect data. We as [the Student’s] parents want measurable goals and data. We want to be able to teach [Student] how to be successful. Part of that teaching is holding [the Student] and everyone accountable with measurable and attainable goals. We have been trying to get [Student] on an IEP for 3 years now.” The Parents went on to provide summaries of the eligibility categories of other health impairment and emotional disturbance and provide reasons why the Student may be eligible under those categories based on the Student’ exhibited behaviors and academic difficulties. The Parents then wrote, “I have fully updated myself on Oregon Law when it comes to Special Education services, and would like the proof that says [the Student] does not qualify for an IEP under those two rules. [The Student’s Parents] would not like to hold an IEP meeting and not have [the Student] on a 504. We feel that a 504 will not help [Student] be successful as much as an IEP. Also, we would like this done by the end of the school year. December 2021 is when I formally contacted the school to get [the Student] evaluated for an IEP. Tomorrow marks June. We do not want to wait to restart this battle next year. We have been more than patient for the past 3 years.”
- 27) On June 5, 2022, the Parents sent an email to the District, writing in relevant part, “...the school continues to push for a 504 plan and tells us that does not meet criteria for an IEP because [the Student’s] academics are not impacted. We have proved each time that [the Student’s] academics are impacted due to the amount of referrals received, emails from teachers about [Student] missing assignments, being disruptive in class and making poor decisions. We have never gone as school year without a teacher contacting us about [Student] falling behind in work. That affects his academic and emotional well-being.”
- 28) In the same email, the Parents also requested an Independent Educational Evaluation (IEE). The Parents made this request in response to the District’s March 3, 2022 meeting where the team asserted that it had reviewed data on the Student and concluded that a 504 Plan would be offered and that the Student did not require an IEP.

- 29) On June 6, 2022, Teacher 1, responding to the Parents' May 31, 2022, email, wrote, "I was given the directive to have my Director of Special Education services respond. Thank you for putting her on your emails so she understands the situation and your request."
- 30) The Parents report that on June 16, 2022, they visited the District's office to obtain further information regarding their requests.
- 31) On June 16, 2022, Staff Person 1, working with the Special Programs staff, sent an email to Counselor 3 and Teacher 5 writing, "Today I spoke with [the Parents] of a 5th grader that will be attending [School] as a 6th grader in the fall... [The Parents] mentioned [they have] been requesting for [their Student] to be on an IEP since December, 2021. [The Student] currently has a 504 plan and has a medical diagnosis of ADHD w/depression tendency, not the official diagnosis. [The Parents are] looking to have [their Student] eligible for an IEP under the categories of OHI & ED. There are some observation notes regarding [the Student's] behavior in class during this past school year. [The Student's] current elementary teacher has the behavior logs to show [the Student's] behavior tendencies."
- 32) On September 11, 2022, the Parents sent an email to the District, including Teacher 3 and others, writing in relevant part, "I was not sure who exactly to email at this point so I figured the three Special Education teachers, the Principal and [Administrator 3] would cover my bases. Back in June I formally requested for an outside evaluation for [the Student's] Special Education eligibility. Per IDEA, my personal opinion and my professional opinion, I believe [Student] is eligible for an IEP under OHI for his ADHD and Emotional Disturbance. I did meet with [Administrator 3] in June and was supposed to talk/meet again before school started. I left at least 2 messages, if not 3 trying to speak to [them] in regards to [Student]. I know that we have a 504 in place but it is not something that we...believe that 504 is not sufficient enough. There has also been new information that came to light in regards to [Student's] well-being and we are trying to figure out, with [the Student's] doctors, [the Student's] best path." The Parents went on to describe behaviors that concerned them, including the Student's aversion to completing schoolwork.
- 33) On September 12, 2022, Teacher 3 responded, saying that other staff would investigate the issues raised to "review the educational record and determine whether the district made a formal decision regarding testing, and whether the parent's request for an outside evaluation was addressed."
- 34) On September 12, 2022, Teacher 3 also wrote to the Parents, saying, "Thank you for reaching out. I will have one of our special education team speak with the counselor who is the case manager for [Student's] 504 and they will schedule a meeting with you to discuss your request for a special education evaluation."
- 35) On September 13, 2022, the Parents responded by email, stating, "I'm not sure why we need to sit down for a meeting unless it is to start the IEP. We have had many meetings with Newberg School District in regards to [Student] being on an IEP. We are always told [the Student's] not eligible and a 504 is [the Student's] best bet. We do not agree with the schools (*sic*) findings and we officially want an independent educational evaluation of our [student] at the public's expense. We have been requesting that [Student] be evaluated for Special Education services since [the Student] was in 3rd grade. We have signed all paperwork for [Student] to be evaluated and [the Student] has never been officially evaluated, to our knowledge." The Parents went on to cite relevant IDEA law, a "Dear Colleague" letter from the U.S. Department of Education, and other sources in support of their request.

- 36) On September 13, 2022, Teacher 3 sent an email to Counselor 2, summarizing their understanding of the issues as, "I believe the issue is that the student was moved through the Care process in grade 5, and the school decided to not proceed with a special education evaluation. I believe the [Parents are] in disagreement with this decision, and that [they] asked [Administrator 3] for the district to pay for an outside evaluation. The parent indicated in an email to [School] that [their] request to [Administrator 3] was not answered...My suggestion would be to have [School] staff review the care team notes from grade 5. Then the request may need to be pushed up to the DO..."
- 37) On September 14, 2022, Counselor 2, responding to Teacher 3, emailed, "I can look through [the Student's] file but it's pretty slim. [Teacher 5] might be better off reaching out to the school psych for [school] about [the Student's] testing."
- 38) On September 18, 2022, one of the Parents sent an email to Teacher 3, writing: "I am wondering where we are on getting that outside evaluation. I requested one a week ago and have not heard anything in regards to this. I also requested one back in June and never heard a response. The law states that we are supposed to receive one without delay. It is imperative for [the Student] to get evaluated for he is already struggling. I have been informed that [the Student] is sitting in the back of at least one class on his laptop when [the Student] isn't supposed to be on it. [The Student] must be sitting in the front of the room or close by any teacher. We told the team at [the Student's] 504 meeting that this was imperative and to not give [the Student] a choice at the moment."
- 39) On September 19, 2022, Teacher 3 and others engaged in an email exchange around what the Parents were requesting and whether the conversation with the Parents should be limited to the "...stand ready' 504 plan", a reference to the 504 Plan suggested the previous school year.
- 40) On September 19, 2022, the Parents sent an email to the District stating that they would prefer to list their concerns in email rather than have an in-person meeting to ensure the concerns were properly documented. The Parents went on to write about their observations of the Student's potential need for special education, cited relevant laws, and reiterated past requests for evaluations.
- 41) On September 23, 2022, Teacher 6 sent an email to the Parents about the District evaluating the Student for special education eligibility. On the same date, the Parents responded by email asking why the District could not initiate the requested evaluation without another meeting.
- 42) On September 27, 2022, Teacher 6, responding to the Parents' September 23, 2022, email asking for more information regarding the evaluation process, explained that an in-person meeting was required for the District to obtain consent from the Parents for the evaluation process.
- 43) On September 28, 2022, Teacher 5 sent the Parents a "Google Meet" invitation for an October 10, 2022, meeting to begin evaluation planning to determine the Student's special education eligibility.
- 44) On October 10, 2022, the District held a virtual meeting with the Parents in attendance to discuss the special education eligibility process.
- 45) On October 14, 2022, Administrator 4 obtained the Parents' consent for the District to evaluate the Student.

- 46) On November 17, 2022, Counselor 2 sent an email to the Parents stating the District's intention to begin the Student's evaluations in January 2023.
- 47) On November 30, 2022, the Parents sent an email to Counselor 2 asking for an update regarding scheduling of the Student's evaluations.
- 48) On December 8, 2022, Counselor 2, in an email to the Parents, explained that the District intended to distribute screening questions to the Student's teachers on January 5, 2023.
- 49) On December 8, 2022, the Parents responded to Counselor 2, asking for clarification on when the District would begin testing the Student. Counselor 2 responded that the District had an appointment with a counselor from Willamette ESD for the Student scheduled for December 13, 2022.
- 50) On December 13, 2022, the Parents sent an email to the District expressing frustration that a portion of the evaluations for the Student were conducted virtually. The Parents explained their frustration with the virtual evaluation was based on numerous prior communications with the District where they had expressed concerns over the Student's access to technology and the Student's possible unhealthy relationship with computer screen time.
- 51) On December 16, 2022, the Parent filed this Complaint.
- 52) On January 6, 2023, the District submitted its *Response*. The *Response* included email correspondence between the Parents and the District. As part of the *Response*, the District denied the allegations and provided a written explanation for the issues raised in the Complaint.
- 53) On January 19, 2023, the District found the Student eligible for special education under the eligibility category of Other Health Impairment (OHI).
- 54) On January 20, 2023, the Department's Complaint Investigator interviewed the Parents.

The Parents reported having requested that the District evaluate the Student for special education eligibility as early as third grade. The Parents alleged that the District had not responded to their requests at that time. The Parents alleged that the request was repeated over the years but that due to the COVID-19 pandemic and the closing of schools in 2020, when the Student was in fourth grade, the Parents did not reiterate the request at that time due to the Student accessing their education online through Comprehensive Distance Learning. The Parents expressed frustration that the District had previously rejected their request to evaluate the Student in previous school years, offering a 504 Plan instead.

The Parents observed that the District's *Response* in this matter included their December 14, 2021 email that requested that the District evaluate the Student for special education eligibility, and that this email listed two eligibility categories in which the Student should be evaluated.

The Parents provided a detailed account of the various contacts made with the District and additional emails sent to them not included in the District's *Response*. The Parents noted that the District had offered the 504 plan on numerous occasions, but that they were not provided with an explanation why the Student was not evaluated for special education eligibility as requested.

- 55) On January 24, 2023, the District held a second meeting to review additional assessments regarding the Student's potential eligibility under the category ED. The District determined that

the Student was not eligible for special education under the category of ED at this meeting.

- 56) On January 26, 2023, the Department's Complaint Investigator interviewed Administrator 4, Teacher 1, and Counselor 1.

Teacher 1 explained that in their response to the Parents' December 14, 2022 email requesting that the District evaluate the Student for special education, the District suggested a March 3 meeting date due to that being the first available date for school staff given the volume of evaluation requests. Teacher 1 explained that the District's practice was to convene the SST to compare teacher observations and data regarding students to determine next steps. During the SST meeting, teachers would discuss whether they felt there was educational impact or whether a given student appeared to be following the curriculum with the interventions available at the school. Teacher 1 relayed that the Student's teachers felt the Student was making progress in the curriculum and needed accommodations rather than specially designed instruction. District staff noted that the Student was offered a 504 Plan in previous school years and that the Parents had declined that offer.

Teacher 1 and Counselor 1 further explained that the specific elementary school the Student was then attending had significant supports built into the curriculum. These supports included calming spaces within the building and classrooms, wiggle seats, and various other sensory interventions. They typically observe students accessing those spaces and the interventions built into the building and standard curriculum. The school provides social and emotional learning through existing classes. This included education for students on how their brains work and how to adjust for their thinking, social interactions, and emotional needs.

Teacher 1 and Counselor 1 noted that the emotions described by the Parents were not observed in the Student's school environment. Both noted that the Parents had raised concerns about the Student not completing assignments and needing assistance with this task. Additional concerns regarding technology misuse and relevant family dynamics mentioned by the Parents to the Department's Complaint Investigator were also confirmed by Teacher 1 and Counselor 1.

Teacher 1 and Counselor 1 related that the SST concluded that accommodations were the appropriate response for the Student's needs. The District related that they were not seeing emotional outbursts, nor had school staff observed the Student seeking out the available supports within the school. Teacher 1 and Counselor 1 noted that parents are not normally part of the SST process. Following a meeting of the SST, a student's general education teacher would take the lead in contacting the student's family and relevant staff of next steps.

The SST met again on April 21, 2022 to further discuss the Student, again deciding on a 504 Plan. District staff noted that they were not sure how to respond to Parents' requests for an IEP and had sent emails to relevant administrators but had not received requested support.

The Student's move to a new school building for middle school and the Parents' continued requests to a new set of administrators triggered the District to begin the evaluation process in the fall of 2022.

- 57) On January 27, 2023, the District provided additional information relevant to these issues. This included meeting notes from the January 2023 eligibility determination meetings and notes for the March 3, 2022 SST meeting.

IV. DISCUSSION

Child Find

The Parents alleged that the District violated the IDEA when it failed to identify and evaluate the Student's need for special education services.

School districts are under a continuing obligation to identify, locate and evaluate all children with disabilities for whom they are responsible, who need special education services. This requirement extends to students who are suspected of having a disability event through they are advancing from grade to grade.³ Districts are required to provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible.⁴

Within the period covered by this Complaint, the Parents sent an email to the District asking that the District evaluate the Student for special education eligibility and suggested that the Student might be eligible under the categories of OHI or ED. In December 14, 2021, the Parents sent an email to Teacher 1 expressing concerns about the Student and past attempts to have the District evaluate the Student, writing in relevant part, "...I want [the Student] screened for Special Ed. [The Student] can actually meet 2 criteria, OHI and ED." The Parents went on to provide other observations regarding the Student's behavior, mood, medical diagnoses, and impact on the Student's education. The District met on March 3, 2022 to consider the Parents' request for an evaluation. At that meeting the District determined that a 504 Plan was the best course of action for the Student. The record contains evidence of the Parent reiterating their request that the District evaluate the Student on April 21, 2022, April 26, 2022, May 31, 2022, June 16, 2022, and September 11, 2022. On September 27, 2022, the District began the special education eligibility evaluation process.

The Parents highlight that during the Student's fifth grade year, the District was tracking behavior and the impact of the Student's ADHD on their behavior and emotional state in school. Some of the Student's teachers had noted that the Student was not completing assignments. In response to unique factors involved with the management of the Student's ADHD, the Student's pediatrician asked that the District maintain a log of the Student's behavior and emotions throughout the week. The Parents communicated this request to the District on September 12, 2021. The SST discussed these weekly tracking forms at the March 3, 2022, meeting. The Student's emotional struggles during the year were also discussed. The team also recognized the need for staff with special education knowledge to review the Parents' request and the SST's observations regarding the Student. During interviews with the District, staff reported that these requests to Administrator 3 went unanswered.

Despite the numerous communications from the Parents expressing concern about the Student's educational needs, relevant medical diagnoses, observations by the Student's teachers about the Student's emotional concerns, and behavioral concerns, the District did not begin the special education evaluation process for the Student.

The Department substantiates this allegation.

Evaluation and Reevaluation Requirements

³ OAR 581-015-2080(2)

⁴ OAR 581-015-2040(1)

The Parents alleged that the District violated the IDEA when it failed evaluate the Student to determine whether the Student was a child with a disability, when the Parent's initiated a request for an initial evaluation.

A school district must conduct an evaluation of a child before determining that a child is a child with a disability. A parent may initiate a request for an initial evaluation to determine of a child is a child with a disability. An initial evaluation must be conducted to determine if a child is eligible for special education services when the district suspects or has reason to suspect that the child has a disability that has an adverse impact on the child's education performance, and the child may need special education services because of the disability. A district must designate a team to determine whether an initial evaluation will be conducted. Such a team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.⁵

The Parents requested that the District evaluate the Student for special education eligibility on December 14, 2021, April 21, 2022, April 26, 2022, May 31, 2022, June 16, 2022, and September 11, 2022. The District met on March 3, 2022, to consider the Parents' request for an evaluation. The Parents were not invited to this meeting. At this meeting, the District determined that a 504 Plan was the best course of action for the Student. The record contains evidence of the Parent reiterating their request that the District evaluate the Student on numerous occasions and questioning how the District made the determination that a 504 accommodation plan was more suitable for the student than an IEP. During interviews with District staff, the District noted that they were unsure how to respond to the Parents' request that the District evaluate the Student's eligibility for special education. Staff present for the meeting recognized that they needed to consult with special education staff to address the concerns raised by the Parents.

The District determined that a 504 Plan was more appropriate than an IEP without evaluating the Student. The Parents were not invited to the March 3, 2022, meeting where the District made this determination. The meeting also did not include the requisite staff knowledgeable in the evaluation process. Despite the Parents reiterating their request that the District evaluate the Student on numerous occasions, the District did not initiate the evaluation process until nearly ten months after the December 14, 2021 request.

The Department substantiates this allegation.

General Evaluation and Reevaluation Procedures

The Parent alleged that the District's proposed evaluation of the Student was not sufficiently comprehensive to identify all the Student's special education and related service needs.

Before conducting any evaluation or reevaluation of a student, a school district must conduct evaluation planning. Before conducting any evaluation or reevaluation, a school district must provide notice to the parent that describes any evaluation procedures the agency proposes to conduct because of the evaluation planning process. Before conducting any evaluation or reevaluation, the district must obtain written informed consent for the evaluation. The evaluation must employ a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The student should be assessed in all areas related to the suspected disability, including but not limited to social emotional status, and be sufficiently comprehensive to identify all the student's special education and related

⁵ OAR 581-015-2105(1)—(3)

service needs. Evaluations and reevaluations must be completed within 60 school days from written consent.⁶

During the investigation, the District was evaluating the Student for special education eligibility. The District obtained the Parents' consent for evaluation on October 14, 2022. The District delayed the start of the evaluations until December 2022. The District completed evaluating the Student for special education eligibility and found the Student eligible under the category of OHI on January 19, 2023. The District convened a second meeting to consider the outcome of additional testing for ED on January 24, 2023.

The District began the evaluation of the Student following the Parent's filing of this complaint. The District did not complete the evaluations of the Student within 60 school days of obtaining consent from the Parents. The Parents and the District report that the Parent's signatures were obtained on October 14, 2022. Sixty school days from the date the District obtained Parent's signatures on consent forms ended January 19, 2023. The District determined the Student's eligibility for OHI on January 19, 2023, and for ED on January 24, 2023.

The Department substantiates this allegation in part.

V. Additional Findings

Parent Participation

A school district must provide the parent with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, educational placement, and the provision of a free appropriate public education to the student. A school district must give the parent a written notice of the meeting sufficiently in advance to ensure that one or both parents can attend. That notice must state the purpose, time, and place of the meeting. The notice should also indicate who will be in attendance. The notice should inform the parent that they may invite other individuals to the meeting whom they believe have knowledge or special expertise regarding the child. These requirements do not apply to informal or unscheduled conversations involving school district personnel and conversation on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not address in the student's IEP. These requirements also do not apply to preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.⁷ Furthermore, if a child is suspected of needing special education because of a disability, a school district must conduct an initial evaluation to make this determination. The district must designate a team to determine whether the initial evaluation will be conducted. That team must include at least one parent.⁸

During the investigation is appeared that the Parents were not invited to the initial meetings where the District determined that the Student was not eligible for special education, but would be better served by a 504 plan. During interviews with the District, staff reported that the SSTs that decide whether to pursue special education eligibility or 504 accommodation plans do not normally include parents. On March 3, 2022, the District held such a meeting to consider the Parents' request the Student be evaluated for special education. The Parents were not invited to this meeting.

⁶ OAR 581-015-2110(1)—(5)

⁷ OAR 581-015-2190(1)—(4)

⁸ OAR 581-015-2105(3)

Prior Written Notice

Prior written notice must be given to a student's parent when the district proposes to initiate or change the identification, evaluation, or educational placement of the student. Prior written notice must also be provided when a district refuses to change the educational placement, or provision of FAPE to the student. The prior written notice must include a description of the action proposed or refused by the district and the basis for the proposed or refused action.⁹

During the investigation, the Department's Complaint Investigator did not find copies of prior written notices. The District acknowledged having not produced prior written notices either in response to the Parents' requests that the District evaluate the Student's eligibility for special education or the Parents' requests for independent education evaluations in response to the District's position that a 504 Plan would better serve the Student's needs.

Free Appropriate Public Education (FAPE)

Each school district must provide a free appropriate public education to school age children with disabilities for whom the school district is responsible.¹⁰ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities."¹¹ Specially designed instruction means adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction.¹² Such instruction may be designed to address the unique needs of the student that result from the student's disability, and ensure student's continued access to the general curriculum, so that the student can meet educational standards.¹³

The record contains evidence that the Parents requested that the District evaluate the Student's special education eligibility under various eligibility categories. More than a year after the initial request within the period of this investigation, the District did find the Student eligible under the category of OHI. During that timeframe, the Student was likely eligible for special education services but was not provided with specially designed instruction.

VI. CORRECTIVE ACTION

*In the Newberg School District 28J
Case No. 22-054-042*

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

Action Required	Submissions	Due Date
1. The District shall convene an IEP meeting to consider the Student's need for compensatory education due to the delay in evaluating the Student for special education eligibility.	The District shall submit the following to the District Support Specialist: <ul style="list-style-type: none">• Meeting Notice• Completed IEP• Compensatory	March 15, 2023

⁹ OAR 581-015-2310(1)—(3)

¹⁰ OAR 581-015-2040(1); 34 CFR §300.101(a)

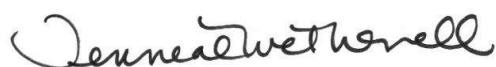
¹¹ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

¹² OAR 581-015-2000(35)

¹³ OAR 581-015-2000(35)(a) & (b)

	Education Log (if applicable)	February 8, 2024
<p>2. The District must ensure that all District staff responsible for reviewing requests for special education evaluations receive training in the following areas:</p> <p>a. how to recognize the potential need for specially designed instruction as opposed to 504 accommodations;</p> <p>b. Prior Written Notice requirements;</p> <p>c. appropriate evaluation procedures.</p>	<ul style="list-style-type: none"> • Training agenda/materials to District Support Specialist for review/approval. • Sign-in sheet for training 	<p>April 15, 2023</p> <p>May 15, 2023</p>

Dated: this 14th Day of February 2023



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: February 14, 2023

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).)