

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of) FINDINGS OF FACT,
Newberg SD No. 29J) CONCLUSIONS,
) AND FINAL ORDER
) CASE No. 23-054-006

I. BACKGROUND

On February 22, 2023, the Oregon Department of Education (Department) received a written special education complaint from an advocate (Complainant) on behalf of the parents (Parents) of a child (Student) who resides within the Newberg School District 29J (District). The Complainant requested that the Department conduct a special education complaint investigation, as provided by Oregon Administrative Rule (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 IDEA violations. The Department must complete the investigation and issue an order within sixty days of receipt of the complaint.¹ This rule also permits the Department to extend the timeline by mutual agreement of the parties to participate in mediation or local resolution or for exceptional circumstances related to the complaint.²

This Complaint is related to an earlier Complaint, #22-054-044. The Parents withdrew that Complaint because they wanted to add allegations. The present Complaint includes all of the allegations contained in the first Complaint, as well as additional allegations.

On February 27, 2023, the Department’s complaint investigator (Investigator) sent a *Request for Response (RFR)* to the District identifying two specific allegations in the Complaint to be investigated and erroneously establishing a Response due date of March 3, 2023, later corrected to March 10, 2023.

On March 7, 2023, the District submitted a timely *Response* to the Investigator and to the Complainant. The District denied most allegations in the complaint but agrees that it did not provide Prior Written Notice on one occasion. The District submitted the following written materials:

- 1. District’s *Response* to the Complaint
- 2. List of staff members knowledgeable about facts relevant to the Complaint
- 3. 5/27/21 Consent for Educational Screening, dated 5/27/21
- 4. 5/12/22 File Review & Evaluation/Re-Evaluation Planning form, dated 5/12/22.
- 5. 8/29/22 Notice of Referral
- 6. 8/29/22 Parent/Guardian Consent for Individual Evaluation (copy 1)

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

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

7. 8/29/22 Parent/Guardian Consent for Individual Evaluation (copy 2)
8. Referral timeline (undated)
9. 12/12/2022 Notice of Team Meeting, indicating meeting date 12/13/22
10. 12/14/2022 Notice of Team Meeting, indicating meeting date 1/6/23
11. 12/12/2022 Confidential Psychoeducational Evaluation Report
12. 1/6/23 Eligibility Meeting Notes
13. 1/6/23 Eligibility Summary Statement
14. 1/6/23 Statement of Eligibility for Special Education
15. Student's attendance record 10/28/22-11/30/22
16. 1/10/23-1/11/23 Emails between Parents and District re: IEE
17. i-Ready Historical Results (downloaded 1/5/23 but referencing 2021-2022 Personalized Instruction Activity on unspecified dates)

The Investigator virtually interviewed the District's Special Education Director (Director) on March 30, 2023, and followed up via phone on April 9, 2023. The Investigator interviewed two District special education staff members knowledgeable about facts and circumstances related to the allegations on April 5, 2023.

On March 15, 2023, the Advocate submitted, on behalf of the Parents, a narrative reply to the District *Response*. In addition, the Parents submitted to the investigator a copy of email communications between the Parents and the District dated 6/15/2022-12/16/2022.

The Investigator spoke with the Parents by phone on December 30, 2022, January 10, 2023, and January 16, 2023. The Investigator also communicated with the Parents via email on January 11, 2023 regarding the withdrawal of Complaint #22-054-044 and the filing a new complaint.

The Investigator reviewed all documents provided by the District and the Parent and determined that interviews with selected staff were necessary. The Investigator was unable to interview some former staff members who might have shed light on the issues and events related to this Complaint. The Investigator reviewed and considered all 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 authority 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 February 23, 2022 to February 22, 2023.

Allegation	Conclusion
Evaluation	Substantiated in part

Allegation	Conclusion
<p>The Complaint alleges that the District violated IDEA evaluation procedural requirements. Specifically, the Complaint alleges that the District unduly delayed initiation and completion of a special education evaluation after a decision was made at the May 12, 2022 meeting to evaluate the Student for special education eligibility and then rushed through an incomplete evaluation that:</p> <ul style="list-style-type: none"> a. Did not use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent; b. Did not assess the Student in all areas related to the suspected disability; c. Was not sufficiently comprehensive to identify all the Student's special education and related service needs; and d. Did not include assessment tools and strategies that provide relevant information that directly assists persons in determining the child's educational needs. <p>(OAR 581-015-2090(3)(a)(B), OAR 581-015-2110(3)(a), (d), & (f); 34 CFR §300.304(b)(1), (4), & (7))</p>	<p>The District did not make reasonable efforts to obtain parent consent.</p> <p>The District caused unnecessary delay by requiring Parents to sign a second consent form.</p> <p>The District exceeded the 60-day timeline for completion of the evaluation after consent was obtained.</p> <p>The Department does not substantiate the allegations related to the comprehensiveness and technical compliance of the assessment measures used in the evaluation. The District used a standard battery of assessments for identifying an SLD, and there is no evidence that the individuals who administered the assessments were unqualified. The evaluation report and the January 6, 2023 meeting notes document compliance with general and SLD-specific evaluation requirements.</p>
<p>Independent Educational Evaluation (IEE)</p> <p>The Complaint alleges that the District violated the IDEA by not appropriately responding to the Parents' request for an independent educational evaluation.</p>	<p>Substantiated</p> <p>When notified that a parent wants an independent educational evaluation, a school district must choose one of two options:</p>

Allegation	Conclusion
(OAR 581-015-2305; 34 CFR §300.502)	<p>a. facilitate the parents access to an independent educational evaluation, or</p> <p>b. initiate a due process hearing to demonstrate that the district's evaluation was appropriate.</p> <p>In this case, the District did neither.</p>
<p>Prior Written Notice</p> <p>The Complaint alleges that the District violated the IDEA by not providing prior written notice as required whenever a school district proposes or refuses to initiate or change anything about a student's special education identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE).</p> <p>(OAR 581-015-2310; 34 CFR §300.503)</p>	<p>Not Contested</p> <p>The District sent only one Prior Written Notice (PWN) during the complaint period. This notice was the Notice of Referral, which was prepared 3 ½ month after the decision to evaluate.</p>

III. REQUESTED CORRECTIVE ACTION
<p>The Complainant requests the following corrective action:</p> <ul style="list-style-type: none"> • To provide an IEE immediately. • To hold the District accountable for ignoring parents' requests & emails.

IV. 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 February 23, 2022.

NOTE: Some facts listed below are not specific to IDEA provisions but instead describe a situation in the District that may have disrupted some procedures required by the IDEA. Some staff members knowledgeable about the facts related to the allegations in this Complaint were no longer with the District and were not available to the Investigator.

1. The Student is 8 years old and is enrolled in 3rd grade in a District elementary school.

2. The Student experiences difficulties in the areas of reading, writing, and spelling.
3. In March 2022, a second-grade teacher was concerned about the Student's progress and alerted the school's student support team (SST). The SST initiated pre-referral interventions, but staff remained concerned about the Student's educational performance.
4. On May 12, 2022, the District convened an evaluation planning meeting. Attending in person were the Parents, a general education teacher, a learning specialist, and the School Psychologist. The team identified two areas of weakness: Reading - "Struggles to read grade level text" and Writing - "Struggles with spelling and complete sentences." The team reviewed existing information, including interventions implemented in the 2021-22 school year. All four team members agreed that "further assessment is needed . . . to determine eligibility or inform the team of the child's educational progress and/or needs for the purpose of developing an IEP". The evaluation planning form indicated the need for "academic/achievement" assessment but did not identify any specific tests.
5. The District did not give a Prior Written Notice (PWN) to the Parents regarding the decision to conduct a special education evaluation.
6. Between the May 12 evaluation planning meeting and the end of the school year, the Parents did not receive a Consent to Evaluate form. The Learning Specialist reported to the Investigator that they attempted without success to contact the School Psychologist to get a list of the assessments to be administered for the Student's special education evaluation. They said that, without the list from the School Psychologist, they were unable to prepare a Consent to Evaluate form.
7. On June 15, 2022, the Parents wrote in an email to the Learning Specialist who participated in the May 12 evaluation planning meeting:

"I still have not seen the paperwork on [the Student]. You said in the meeting that testing would be started, not finished this year but to my knowledge no testing is done until I sign the paper work [sic] I will be there today for field day, and happy to come sign it in the office."
8. On June 17, 2022, the Parents sent a follow-up email that said:

"I did not get a response from you on what the plan is. Can you please tell me when I can expect to sign the paperwork for [the Student]? . . . I want to make sure the time frame begins asap and not the start of the new year. Since we had our meeting this spring I thought we would have signed by now."

9. On June 27, 2022, the Parents sent an email to the then-Special Education Director in which they expressed disappointment at the District's non-responsiveness to their requests for information and for a consent form to sign.
10. The Parents received no reply to their requests to get a Consent to Evaluate form until midsummer.
11. The Learning Specialist informed the Investigator that they could have downloaded a Consent to Evaluate form from a District database and sent it to the Parents, but they chose not to because they thought doing so while on vacation in a family home would risk violating their obligation to protect the confidentiality of educational records.
12. Beginning on June 17, 2022 and continuing through the summer, the school building was inaccessible to staff because of construction.
13. On July 7, 2022, the Learning Specialist replied, "Things were so crazy at the end of the school year and I am very unprofessional for not getting back to you." The Learning Specialist explained that, because of construction at the school, they were unable to get into the school, and they added, "I wasn't allowed to get your signature since I wasn't allowed to enter the building. I have the form done and as soon as I can be in the building again, I will get it to you." The Learning Specialist further assured the Parents that "Our school psychologist already has [the Student] on [their] list to start testing in September."
14. The Learning Specialist reported to the Investigator that they prepared a Consent for Evaluation form as soon as they were allowed back into the school at the end of the summer.
15. A District Notice of Referral dated August 29, 2022 stated that "the evaluation team has received a referral for a possible comprehensive evaluation of [the Student]" and states that:
 - a. "The Student Support Team suspects that [the Student] may have an educational disability".
 - b. The basis for the decision was records of the Student's educational performance and intervention outcomes.
 - c. "Not referring [the Student] was rejected because adequate progress has not been demonstrated despite provision of structured interventions over time."
 - d. [The Student]'s "academic and/or behavioral performance in the general curriculum has warranted a referral for special education services".
16. A Parent/Guardian Consent for Individual Evaluation (Consent) dated 08/29/2022 described the assessment areas and procedures that would be included in the evaluation: review of educational records, achievement, intelligence, processing, observation, and developmental history. The Consent form also identified the following specific assessments:
 - a. Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V)

- b. Wechsler Individual Achieve Test, 3rd Edition (WIAT-III)
- c. Process Assessment of the Learner (PAL-2)
- d. Phonological Awareness Test (PAT-2)

17. Neither the Notice of Referral nor the Consent indicated the scope of the evaluation. The Notice of Referral notes that “the evaluation team has received a referral for a possible comprehensive evaluation” and “the Student Support Team suspects that [the Student] may have an educational disability”.
18. The District’s Special Education Director (Director) informed the Investigator that the assessment areas and procedures listed on the Consent comprise the standard battery of assessments for identifying a Specific Learning Disability (SLD).
19. The Learning Specialist informed the Investigator they called the Parents several times to tell them that the consent form was ready to sign.
20. On September 7, the Learning Specialist, in an email, told the Parents that they had placed the consent form in the Student’s backpack. They added that they had highlighted the places to sign and give consent.
21. The Parents signed the consent form on September 7, 2022 but checked both the box indicating consent and the box refusing consent. The Learning Specialist told the Investigator that they had highlighted the place on the form where the checkboxes were and that they believed the Parents checked both boxes because they misunderstood the highlighting. The Learning Specialist told the Investigator that they had no doubt that the Parents’ intent was to consent to evaluation. The Parents signed another consent form on September 13, 2022.
22. In October, 2022, the Special Education Director and all of the District’s school psychologists abruptly left the district. Consequently, many IDEA processes and procedures were unintentionally delayed while the District sought to employ replacement staff.
23. In October, 2022, the current Special Education Director replaced the previous Special Education Director.
24. On October 16, 2022, the Advocate wrote a lengthy email to the principal (Principal) of the Student’s school, complaining that the Student’s evaluation had not yet begun and stating that the Student’s third-grade teacher had not even been informed that the Student was to be evaluated for special education eligibility.
25. On October 17, 2022, the Parents sent an email to the Principal stating that they had been asking for an evaluation since the previous spring and that they had been told the evaluation would begin in September.

26. On December 9, 2022, the Parents sent an email to the Superintendent, the Principal, the Learning Specialist, the Advocate, and two other people. The Parents wrote that they had received a call the previous day to schedule the eligibility meeting, but “what seems to not be communicated through your department is [the Student] has not, in fact, been tested.” The Parents reiterated their dissatisfaction about receiving no response to their many efforts to obtain a consent form, beginning the previous spring. The Parents further complained that the District had given them only two business days’ notice rather than notifying them early enough that they would have an opportunity to attend.
27. All special education evaluation procedures took place December 9-12, 2022. Three of the formal assessments (WIAT-III, WISC-V, and PAT-2) were administered on December 9, 2022 and one (PAL-2) on December 12, 2022. The Developmental History was based on an interview of the Student’s father on December 9, 2022. The classroom observation took place on December 12, 2022 in a music class.
28. The Director, who is also a school psychologist, and a District Special Education Facilitator prepared a confidential psychoeducational evaluation report dated 12/12/2022. The report included discussion and results of all assessment processes and tests listed in the consent form.
29. According to the 12/12/2022 psychoeducational report:
 - a. The Student’s scores on the WISC-V yielded a full-scale IQ in the average range.
 - b. The classroom observation took place in a music lesson, and the observation notes described the Student as quiet and compliant.
 - c. The Student’s composite scores on the WIAT-III subtests were as follows:

Subtest/Composite	Standard Score (SS)	Percentile Rank (PR)	Qualitative Description
Basic Reading	89	23	Average
Reading	81	10	Below Average
Mathematics	97	42	Average
Written Expression	93	32	Average

- i. Most of the Student’s WIAT-III subtest scores on the Standard Reading Composite fell into the average range, but three subtests indicated areas in which the Student experiences moderate to severe struggles: Word Reading, SS 87, PR 19; Oral Reading Fluency, SS 76, PR 5; and Reading Comprehension, SS 70, PR 2.
- ii. The Student’s WIAT-III subtest scores in math were in the average range.
- iii. The Student’s WIAT-III subtest scores in written expression were also in the average range, except for spelling, for which the Student’s score was below average (SS 83, PR 12).

30. On December 12, 2022 at 5:25 p.m., the Principal sent the following message to the Parents:

“Included is the meeting invite for the eligibility meeting on Wednesday, December 13, at 2:40. If December 13th does not work for you, please let me know, and we will schedule a day and time that fits your schedule. The eligibility report and information will be included in this meeting.”

31. The Notice of Team Meeting, dated 12/12/2022, stated that the purpose of the meeting was to "Review existing information about your child and decide whether your child is eligible for or continues to be eligible for special education."

32. December 12, 2022 at 8:54 p.m., the Parents replied to the Principal:

"I am just trying to figure out in what world is 24 hour notice or less is [sic] appropriate to schedule a meeting of this caliber. . . . So let's find a new date that works. Will everyone be off for the next 2 weeks? Since the school is already out of compliance in the time frame it seems that we will need to look to the first of the year. January 6th in the morning will be best, or Friday the 13th."

33. On December 13, 2022, the Principal sent the following message to the Parents:

"Today we met and reviewed the assessments completed for [the Student]. This evaluation provided the team with valuable information regarding [the Student's] strengths as a learner and areas of need. We are ready to meet with you following the winter break to review the report and make the consideration for special education eligibility."

34. The Investigator was unable to obtain a copy of meeting notes or minutes from the December 13 meeting, which the District held without the Parents. In response to the Investigator's request for meeting notes. The Director replied in an email:

"Did you want the notes from our meeting in December that the parent did not attend? . . . The December meeting was less than an hour as we discussed the testing results and identified that it was not likely that [the Student] would qualify given the results."

35. On January 6, 2023, the District convened an evaluation review and eligibility meeting. In attendance were the Parents, the Advocate, a District special education facilitator, the Director, a general education teacher, the Principal, a school psychologist, and the Learning Specialist.

At this meeting, the team reviewed the assessment data in detail. The Director explained the Pattern of Strengths and Weakness (PSW) model of SLD eligibility determination. The Director stated that the Student was not eligible for special

education according to the PSW model but would have been eligible using the discrepancy model, which is not used in Oregon.

The Advocate disputed the conclusion that the Student was not eligible. The Director replied, "Whether [the Student] qualifies or not, we are still obligated to, and will, provide interventions." In response to further argument from the Advocate, the Director stated that they could not find the Student eligible under PSW. After the Advocate's arguments continued, the Director stated, "School districts typically get extra federal dollars for students in [special education]. We are saying that we are willing to provide the supports and interventions for free for [the Student] despite [their] not qualifying for [special education]."

The Parents and the Advocate disagreed with the determination of the other team members that the Student was not eligible for special education.
PP.

36. On January 10, 2023, the Parents sent an email to the Director saying that they were requesting an IEE at district expense and stating that they did not agree with the District evaluation. In this email, the Parents also disagreed with the way the District applied the PSW model and asserted that it was contrary to ODE guidelines.
37. On January 10, 2023, the Director responded to the Parents request for an IEE with an email that stated, "Thank you! I will add this to the eligibility paperwork and ask that we meet again to get long-term memory evaluated."
38. On January 11, 2023, the Parents sent an email to the Director reiterating their request for an IEE, and citing OAR 581-015-2305, which describes the options available to a school district when a parent requests an IEE.
39. The District *Response* to this Complaint states that:

"The district is under the impression that just because a parent requests an IEE, the district does not have to comply unless specific areas were missed as part of the evaluation process. . . . [The] Parents do not mention anything within the evaluation with which they disagree. That being said, if [the] parents would like to request an IEE to examine the long-term memory and retrieval of their daughter, the district would agree to this IEE request with such limited scope."
40. In its *Response*, the District acknowledged that it had not sent PWN in response to the Parents' IEE request and offered corrective action as follows:

"In terms of the corrective action that the district is willing to take, it is agreed that Newberg Public Schools will fund at public expense an IEE in the areas of long-term retrieval and memory as this was discussed in the January 10th meeting and plans had been outlined as to which tests were being proposed. The district would then no longer need to evaluate [the Student] in this area independently but would consider

the results and whether this outside report could make a difference in terms of qualifying for special education services under a Specific Learning Disability (SLD).

V. DISCUSSION

Evaluation

The Complaint alleges that, during the 2021-22 school year, the District violated the IDEA evaluation requirements by: (a) unduly delaying initiation and completion of a special education evaluation after a decision was made at the May 12, 2022 meeting to evaluate the Student for special education eligibility; (b) not completing the evaluation during the required timeline; (b) not using variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent; (c) not assessing the Student in all areas related to the suspected disability; (d) conducting an evaluation insufficiently comprehensive to identify the student's special education needs; and (e) not including assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

Delay in obtaining parent consent

Public school districts must identify, locate, and evaluate all resident children with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services.³ A school district must conduct an initial evaluation to determine if a child is eligible for special education services when it suspects or has reason to suspect that: (a) the child has a disability that has an adverse impact on the child's educational performance; and (b) The child may need special education services as a result of the disability.⁴

Before beginning an initial special education evaluation, the school district must conduct evaluation planning.⁵ The district must convene a team that includes the child's parent or guardian and other qualified professional to plan the evaluation.⁶ Evaluation planning includes a review of existing records, including: (a) evaluations and other information provided by the parents; (b) current classroom based, local, or state assessments and classroom-based observations; and (c) observations by teachers and related services providers.⁷ On the basis of this review, the team determines what additional data, if any, is needed to determine whether the child has an IDEA-defined disability; the present levels of performance, and whether the child needs special education and related services.⁸

³ OAR 581-015-2080 and 34 CFR §300.111

⁴ OAR 581-015-2105(3)(a) and 34 CFR §300.301(a)

⁵ OAR 581-015-2110(1)

⁶ OAR 581-015-2115 and 34 CFR §300.305(a)

⁷ OAR 581-015-2115(1)(a) and 34 CFR §300.305(a)(1)

⁸ OAR 581-015-2115(1)(b) and 34 CFR §300.305(a)(2)

Before beginning an initial evaluation, a school district must provide notice to parents that describes any evaluation procedures the district proposes to conduct as a result of the evaluation planning process.⁹ The district may conduct an initial evaluation only after receiving informed written consent from the child's parent or guardian.¹⁰ The district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.¹¹

In this case, the District had reason to suspect the Student might have a disability that has an adverse impact on educational performance and may need special education, and it responded appropriately by convening a student support team, by providing pre-referral interventions, and by scheduling an evaluation planning meeting when pre-referral interventions did not yield anticipated performance gains. The District held an evaluation planning meeting and determined that it was necessary to evaluate the Student for a SLD.

After the evaluation meeting, the District did not give the Parents PWN and a consent to evaluate form for almost four months, despite repeated requests and expressions of concern about getting the evaluation started. About a month elapsed between the evaluation planning meeting and the end of the school year. Throughout the summer and into the beginning of the 2022-23 school year, the Parents continued to request a consent form. The Parents finally received a consent form on September 7, 2022.

The Department substantiates this portion of the allegation.

Evaluation timeline

An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.¹² A district may exceed that timeline only if: (a) the parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control; (b) the student is a transfer student in the process of evaluation and the district and the parents agree in writing to a different length of time; or (c) the district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for SLD.¹³

In this case, the Parents did not fail or refuse to make the Student available for the evaluation. The Student was not a transfer student. The District could have asked the Parents to agree to extend the timeline for an evaluation to determine whether the Student was a student with an SLD, but the District did not seek such an agreement. District was dilatory in providing a consent form to the Parents. The Parents clearly sought a special education evaluation as soon as possible. However, that analysis is not necessary to determine whether the District completed a timely evaluation. The District did finally give

⁹ OAR 581-015-2110(2)(a) and 34 CFR §300.304(a)

¹⁰ OAR 581-015-2090(3)(a); 581-015-2110(2)(b); and 34 CFR §300.300(a)

¹¹ OAR 581-015-2090(4)(b) and 34 CFR §300.300(a)(iii)

¹² OAR 581-015-2110(5)(a) and 34 CFR §300.301(c)(1)

¹³ OAR 581-015-2110(5)(c) 34 CFR §300.301(d)

the Parents a consent form on September 7, and the Parents signed it on that same day, albeit with check-marked boxes for both “I give consent” and “I refuse consent”.

The parents had been exceedingly clear about their desire for an initial evaluation. Any misunderstanding arising from the Parents’ error on the check boxes could easily have been rectified with the Parents. September 7 is the date the 60-day timeline began to run. Using the referral timeline calendar that the District provided to the Investigator, the 60-day timeline ended on December 7, 2022, two days before the evaluation began.

The Department substantiates this portion of the allegation.

IDEA general evaluation procedures

The Complaint alleged several violations of the IDEA provisions outlined below.

In addition to notice, consent, and timeline requirements for special education evaluation, the IDEA includes a number of additional evaluation and reevaluation requirements:

- a. The district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents;¹⁴
- b. The district must assess the child in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;¹⁵
- c. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified;¹⁶ and
- d. The evaluation must include assessment tools and strategies that provide relevant information that directly assists persons in determining the child's educational needs.¹⁷

Though the Complaint alleged violation of these provisions, the Complainant provided no documents illustrating or supporting the allegations.

The Department does not substantiate this portion of the allegation.

SLD evaluation requirements

Because the evaluation in this case focused on a suspicion that the Student might have an SLD, the District was required to comply with the general evaluation requirements plus

¹⁴ OAR 581-015-2110(3)(a) and 34 CFR §300.304(1)

¹⁵ OAR 581-015-2110(4)(d) and 34 CFR §300.304(4)

¹⁶ OAR 581-015-2110(4)(e) and 34 CFR §300.304(6)

¹⁷ OAR 581-015-2110(4)(f) and 34 CFR §300.304(7)

an additional set of procedures specific to that disability. An SLD evaluation must include in relevant part:¹⁸

- a. Academic assessment related to grade level standards;
- b. Review of cumulative records;
- c. Observation in the learning environment to document the child's academic performance and behavior in the areas of difficulty;
- d. Progress monitoring data;
- e. When using the PSW model, an assessment of the student's strengths and weaknesses in classroom performance and academic achievement, relative to age, Oregon grade-level standards, or intellectual development;
- f. If needed, a developmental history;
- g. If needed, an assessment of cognition, fine motor, perceptual motor, communication, social or emotional, and perception or memory if the child exhibits one or more of these areas; and
- h. Any other assessments required to determine the impact of the suspected disability; and
- i. If needed, a medical statement or health assessment

Of these SLD-specific requirements, the Complaint alleges only that the required observation took place in a music class rather than an academic class. It is possible that an observation of the student in a different learning environment, such as a core academic class, could reveal useful information; however, the requirement is to conduct an observation in the child's learning environment (including the regular classroom setting). There is no requirement for the observation to occur within a specific subject.

The Department does not substantiate this portion of the allegation.

SLD minimum eligibility criteria¹⁹

- a. To be eligible as a child with an SLD, the child must not achieve adequately for age or Oregon grade-level standards in: basic reading skills, reading fluency skills; reading comprehension, math calculation, math problem-solving, written express, oral expression, or listening comprehension.
- b. To be found eligible using a PSW model, the child must exhibit a pattern of strengths and weaknesses in classroom performance, academic achievement, or both relative to age, Oregon grade-level standards, or intellectual development, that the team determines is relevant to the identification of a specific learning disability.

SLD exclusionary factors²⁰

¹⁸ OAR 581-015-2170(1) and 34 CFR §300.309

¹⁹ OAR 581-015-2107(3) and 34 CFR §300.311(5)

²⁰ OAR 581-015-2107(3)(d) and 34 CFR §300.320(a)(3)

- a. The child's rate of progress or pattern of strengths and weaknesses are not the product of sensory or motor impairment; intellectual disability; emotional disturbance; cultural factors; or limited English proficiency.

SLD evaluation report²¹

The eligibility team must document the evaluation procedures and the findings in a written report that summarizes the evaluation, the conclusions, and a determination of whether the student needs special education. Every member of the team must sign the report, indicating whether they agree with the eligibility determination.

Although the Parents and their Advocate disagreed with the eligibility determination, they provided no documentation of District noncompliance with the technical requirements for SLD evaluation and eligibility determination.

The District documented its compliance with the SLD evaluation requirements in its evaluation report and its systematic review of the assessment data in the eligibility meeting.

The Department does not substantiate these portions (i.e., e-g) of the allegation.

Prior Written Notice (PWN)

The Complaint alleges that the District failed to provide prior written notice (PWN) of its decisions.

The IDEA requires school districts to give parents PWN a reasonable time before the public agency proposes *or* refuses to initiate *or* change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.²² PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

²¹ OAR 581-015-2107(5) and 34 CFR §300.311

²² OAR 581-015-2310 and 34 CFR §300.503(a).

The purpose of such detailed PWN requirements is two-fold. First, it helps school personnel consider options carefully and make decisions based on articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enough information to understand exactly what considerations led to those decisions.

In this case, the District gave the parents PWN only once during the complaint period, and issued that PWN three months after the evaluation planning meeting. PWN is a critical procedural requirement in the IDEA that enables meaningful parent participation in the educational decision-making process. The District was obligated to provide PWN to the parents a reasonable time before they proposed to initiate the initial evaluation and failed to do so.

The Department substantiates this allegation.

Independent Educational Evaluation (IEE)

This Complaint involves the legal entitlement of parents to obtain an IEE at public expense. The Parent argues that the District has insisted that the Parent explain the disagreement with the District evaluation and has failed to provide the Parent information about where to obtain an independent evaluation. The District has contended it need not facilitate the Parents' access to an IEE until the Parents explain why an IEE was being requested and that the District need not comply with a request for an IEE unless specific areas were missed in the District evaluation.

Few parent rights in special education are as clear-cut as the right to an IEE. The IDEA provides that parents may obtain an IEE of their children who have disabilities if they disagree with a district's evaluation.²³ "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the student's education.²⁴

Parents who disagree with a district's special education evaluation of their child have a right to an IEE at public expense.²⁵ "Public expense" means that the school district either pays the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.²⁶

The IDEA authorizes districts to establish criteria for publicly funded IEEs, including the location of the IEE and the qualifications of the examiner, that are the same as the criteria for a district-initiated evaluation.²⁷ School districts must provide parents an opportunity to

²³ 20 USC §1415(b)(1); 34 CFR §300.502(a).

²⁴ OAR 581-015-2305(1)(a) and 34 CFR §300.502(a)(3)(i).

²⁵ OAR 581-015-2305(1) and 34 CFR §300.502(b)(1).

²⁶ OAR 581-015-2305(1)(b) and 34 CFR §300.502(a)(3)(ii).

²⁷ OAR 581-015-2305(3) and 34 CFR §300.502(e)(1).

demonstrate that unique circumstances justify an IEE that does not meet the district's criteria.²⁸

Aside from the district criteria that the regulations expressly permit, school districts may not impose conditions or timelines related to parents' access to a truly independent educational evaluation.²⁹

When a parent seeks an IEE, the school district must provide information about where they may obtain an IEE and the school district criteria applicable to IEEs.³⁰ If a parent seeks an IEE at public expense, the district must "without unnecessary delay" either: (a) initiate a due process hearing to show that its evaluation was appropriate, or (b) ensure that an IEE is provided at public expense unless the district can prove at a due process hearing that the parents' IEE did not meet district criteria³¹.

The school district may ask why a parent disagrees with the school district's evaluation, but the parent is not obligated to explain. Regardless of whether the parent chooses to explain why they disagree, the school district may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend its own evaluation³². Although federal and state regulations use the term "request an independent educational evaluation", parents who disagree with a school district special education evaluation have a right to an IEE at public expense. However, parents who chose to obtain an IEE without notifying their school district are taking a risk because the district could initiate a due process hearing and get a favorable ruling that the district evaluation was appropriate.

The Office of Special Education Programs (OSEP) at the US Department of Education, the federal agency responsible for administering the IDEA, has issued numerous advisory letters regarding IEEs. This guidance has consistently affirmed the plain language of the regulations and reiterated that school districts may not impose conditions, timelines, or other limitations on parents' access to an IEE³³.

In the situation that gave rise to this Complaint, the District neither initiated a due process hearing to demonstrate that its evaluation was appropriate, nor ensured that an IEE was provided at public expense. Further, the District noted in the course of this investigation that it was unaware of its obligations related to IEEs, noting in its *Response* that "the district does not have to comply [with a parent's request for an IEE] unless specific areas were missed as part of the evaluation process". As of this writing, it is three months since the Parents notified the district that they wanted an IEE.

²⁸ OAR 581-015-2305(3)(b).

²⁹ OAR 581-015-2305(3)(a) and 34 CFR §300.502(e)(2).

³⁰ OAR 581-015-2305(2) and 34 CFR §300.502(a)(2).

³¹ OAR 581-015-2305(4) and 34 CFR §300.502(b)(2).

³² OAR 581-015-2305(6) and 34 CFR §300.502(b)(4).

³³ See, e.g., Letter to Kirby, 213 IDELR 233 (OSERS 1989); Letter to Thorne, 16 IDELR 606 (OSEP 1990); Letter to Gramm, 17 IDELR 216 (OSERS 1990); Letter to Thorne, 16 IDELR 606 (OSEP 1990); Letter to Anonymous, 55 IDELR 106 (OSEP 2010); Letter to Baus, 65 IDELR 81 (OSEP 2015); Letter to Carroll, 68 IDELR 279 (OSEP 2016); Letter to Zirkel, 74 IDELR 142 (OSEP 2019).

The Department substantiates this allegation.

Additional Finding

On December 13, 2022, the District convened a meeting to review the evaluation data. The Parents were invited to this meeting in the early evening on December 12, 2022. The Parents and Complainant alleged that the District did not give them enough advance notice to ensure that they could attend this meeting.

The IDEA provides that school districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.³⁴ School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.³⁵

School districts are not required to invite parents to informal or unscheduled conversations involving school staff regarding such issues as teaching methodology, lesson plans, or coordination of service provision unless those issues are addressed in the child's IEP. A district also does not need to invite parents to a meeting involving preparatory activities or development of a proposal or a response to a parent proposal that will be discussed with parents at a later meeting.³⁶

The December 12, 2022 meeting did not fit into one of the exceptions to the requirement to invite parents. It was a meeting held for the express purpose of reviewing evaluation information and discussing whether the Student was eligible for special education. The District purported to invite the Parents, but the notice arrived less than 24 hours before the meeting. When the Parents told the staff that they could not attend on such short notice, the District held the meeting without the Parents.

VI. CORRECTIVE ACTION³⁷

*In the Matter of Newberg School District No.29J
Case No. 23-054-006*

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

³⁴ OAR 581-015-2190(1) and 34 CFR §300.501(b)(1)

³⁵ OAR 581-015-2190(2)(a) and 34 CFR §300.501(b)(1)

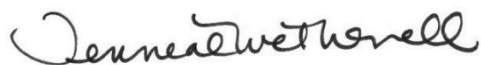
³⁶ OAR 581-015-2190(4) and 34 CFR §300.501(b)(3)

³⁷ 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))

Action Required	Submissions	Due date
<p>1. Staff Training</p> <p>The District will provide staff training for relevant staff members on compliant implementation of IDEA requirements for:</p> <ul style="list-style-type: none"> • Prior written notice • Independent educational evaluations • Timely obtaining parent consent for evaluation • Parent participation requirements, including involvement in evaluation and eligibility meetings 	<p>The District will submit a plan for this staff training to the ODE Legal Specialist for approval.</p> <p>The District will submit training materials and a sign-in sheet for training participants to the ODE Legal Specialist.</p>	<p>June 15, 2023</p> <p>September 15, 2023</p>
<p>2. Independent Educational Evaluation</p> <p>The District will, without delay, give parents information about where they may obtain an IEE at district expense. The District will not attempt to limit the scope of the IEE or to be involved in selection of an IEE provider.</p>	<p>The District will provide a copy of information provided to the Parent to the ODE Legal Specialist.</p>	<p>April 30, 2023</p>
<p>3. Post-IEE Eligibility Meeting</p> <p>After the Parents have completed their IEE, the District will convene a new eligibility meeting, at which time the team will consider the data and recommendations in the IEE report, and determine whether the Student is eligible for special education. The Parties may ask ODE to assign a meeting facilitator.</p>	<p>The District will submit a copy of the eligibility determination(s) to the Legal Specialist.</p>	<p>September 1, 2023</p>

<p>4. Compensatory Education</p> <p>If the student is found eligible at the Post-IEE Eligibility Meeting, the District will provide compensatory education to the Student. The Student’s IEP team, including the Parents, will determine the nature and amount of compensatory education. If the IEP team cannot agree on a plan for compensatory education, either the Parents or the District can ask ODE to determine required compensatory education.</p>	<p>If the Student is found eligible for special education services, this plan will be provided to the Legal Specialist.</p> <p>If compensatory education is required, the District will provide evidence that this has been delivered.</p>	<p>September 15, 2023</p> <p>April 15, 2024</p>
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Dated: this 20th Day of April 2023



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: April 20, 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).)