

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of )  
Forest Grove School District 15 )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 23-054-042

**I. BACKGROUND**

On October 30, 2023, 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 Forest Grove School District 15 (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.<sup>1</sup> This timeline may be extended if the Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On November 7, 2023, the Department’s Complaint Investigator (Complaint Investigator) sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 21, 2023.

The District submitted a *Response* on November 21, 2023, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District’s Written Response to Complaint, 11/21/23
2. Autism Spectrum Disorder File Review Summary, 3/23/22
3. Untitled notes, 10/16/23
4. Data Tracking Sheet, no date
5. Contact Attempt Report, 9/29/22-11/7/22
6. Reevaluation Notification/ Consent, no date
7. Evaluation Summary, 11/8/22, signed
8. Areas of Evaluation, 10/19/22-11/8/22
9. Prior Written Notice [Eligibility Category], 11/9/22
10. Notification for the Disclosure of Student Information to the Washington State Health Care Authority, no date
11. Medicaid Consent, 11/8/22, unsigned
12. Student Elig/IEP meeting notes, 11/8/22
13. Notice of Meeting [Eligibility Determination; IEP to follow], 11/7/22
14. Review Individualized Education Program (IEP) Invitation (Amendment), 12/8/22
15. Contact Attempt Report (Amendment), 12/8/22

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

16. Individualized Education Program (IEP) Cover Page (Review Amendment), 2/2/23, unsigned
17. Team Considerations (Amendment), 2/2/23
18. Present Levels of Educational Performance and Measurable Annual Goals (Amendment), 2/2/23
19. Secondary Transition (Amendment), 2/2/23
20. Post-Secondary Survey Contact Information (Amendment), 2/2/23
21. Program Accommodations/ Modifications and Support for School Personnel (Amendment), 2/2/23
22. State or Districtwide Assessment of Student Achievement, 2/2/23
23. Special Education and Related Services (Amendment), 2/2/23
24. Prior Written Notice [Continue IEP] (Amendment), 2/2/23
25. Notification for the Disclosure of Student Information to the Washington State Health Care Authority (Amendment), 2/2/23
26. Medicaid Consent (Amendment), 2/2/23, unsigned
27. Special Education Meeting Minutes, 3/23/23
28. Evaluation/Reevaluation Planning Meeting, 3/23/23
29. Prior Notice about Evaluation/Consent for Evaluation, 4/18/23, signed
30. Autism Spectrum Disorder (ASD) Assessment Summary, 6/12/23
31. Special Education Meeting Minutes, 6/12/23
32. Social Communication Assessment, 6/12/23
33. Individualized COVID-19 Recovery Services Review, 6/12/23, signed
34. Prior Notice and Consent for Initial Provision of Special Education Services, 6/13/23, signed
35. Feeding Protocol, 5/26/23
36. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82), 6/12/23, unsigned
37. Special Education Placement Determination, 10/6/23
38. Prior Notice of Special Education Action [Identification (includes IEP)], 3/23/23
39. Prior Notice of Special Education Action [FAPE (includes IEP)], 6/12/23
40. Prior Notice of Special Education Action [FAPE (includes IEP)], 10/6/23
41. Prior Notice of Special Education Action [Placement; FAPE (includes IEP)], 10/6/23
42. Oregon Standard Individualized Education Program, 10/6/23, unsigned
43. Procedural Safeguard Notification, 10/6/23
44. Special Factors, 10/6/23
45. Present Levels of Academic Achievement and Functional Performance, 10/6/23
46. Transition Planning, 10/6/23
47. Statewide Assessment, 10/6/23
48. Districtwide Assessment, 10/6/23
49. Goal Areas, 10/6/23
50. Services, 10/6/23
51. Extended School Year, 10/6/23
52. Oregon Standard Individualized Education Program, 6/12/23, unsigned
53. Procedural Safeguard Notification, 6/12/23
54. Special Factors, 6/12/23
55. Present Levels of Academic Achievement and Functional Performance, 6/12/23
56. Transition Planning, 6/12/23
57. Statewide Assessment, 6/12/23
58. Districtwide Assessment, 6/12/23
59. Goal Areas, 6/12/23
60. Services, 6/12/23
61. Extended School Year Services, 6/12/23

62. Special Education Placement Determination, 6/12/23, unsigned
63. Message from: Synergy job- all class progress–summary at School, 2023-2024
64. IEP Meeting Minutes, 10/16/23
65. Google Initial Elig/IEP Meeting Invite, 9/12/23
66. Section 27, Students Enrolled by their Parents in Private Schools, no date
67. District Education Records, records of students with disabilities, 2/22/16
68. Disclosure Statement, no date
69. District Education Records, records of students with disabilities management, 11/14/22
70. Disclosure Statement, no date
71. List of Staff Members, no date
72. Oregon Standard Individualized Education Program, 10/6/23, unsigned
73. Procedural Safeguards Notification, 10/6/23
74. Special Factors, 10/6/23
75. Present Levels of Academic Achievement and Functional Performance, 10/6/23
76. Transition Planning, 10/6/23
77. Statewide Assessment, 10/6/23
78. Districtwide Assessment, 10/6/23
79. Goal Area, 10/6/23
80. Services, 10/6/23
81. Extended School Year Services, 10/6/23
82. Special Education meeting minutes [IEP; Placement], 10/6/23
83. Prior Notice of Special Education Action [FAPE, 10/6/23]
84. Section II: Reporting Progress, Data-Driven Decision Making, no date
85. Emails from 3/24/23-11/13/23

The Parents submitted a *Reply* on November 30, 2023, providing an explanation and rebuttal in support of the Parents' position. The Parents submitted the following relevant items:

1. Parent reply, 11/30/23
2. IEP, Student, 10/6/24 [*sic*]
3. Special Education Meeting Minutes, Student, 10/6/23
4. Prior Notice of Special Education Action, Student, 10/6/23
5. Emails from 10/6/23-10/18/23

The Complaint Investigator interviewed the Parent on November 30, 2023. On December 1, 2023, the Complaint Investigator interviewed District personnel. 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 October 31, 2022, to the filing of this Complaint on October 30, 2023.

Allegations	Conclusions
<p data-bbox="201 247 643 281"><b>Access to Educational Records</b></p> <p data-bbox="201 315 974 449">The Complaint alleged that the District violated the IDEA by not providing the raw data collected by staff while working on IEP goals to be sent home once a month when requested by the Parents.</p> <p data-bbox="201 478 727 512">(OAR 581-015-2300; 34 CFR §300.613)</p>	<p data-bbox="1000 247 1253 281"><b>Not Substantiated</b></p> <p data-bbox="1000 315 1422 378">The District did not maintain raw data as an educational record.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<ol style="list-style-type: none"> <li data-bbox="240 642 1429 810">1. Properly written PWNs in regard to the two requests made at each meeting, requesting raw data. As it was, the district refused our data requests yet did not mark 'refusal' in the box of either PWN and tacked our request into the "Any other factors considered by the team" section, thereby bypassing their legal obligation to justify and explain their refusal. Which is not how a PWN is supposed to work.</li> <li data-bbox="240 819 1429 911">2. Develop a written record request policy in regard to raw data, requests and retention, that adheres to IDEA/FERPA and is posted on their website with the rest of their policies and practices.</li> <li data-bbox="240 919 1429 1012">3. Districtwide FERPA and IDEA training in regard to records requests, with an emphasis on proper management and retention of raw data, for anyone that collects, collates, or manages that type of data.</li> <li data-bbox="240 1020 1429 1230">4. Districtwide letter to parents/guardians detailing the district's prior lack of compliance with raw data requests from parents, what parents can do for restitution, how they will rectify the situation, and how they will manage raw data moving forward. This needs to include specific information about what is, and is not, raw data, specific information about what is, and is not, sole possession and explicit instructions that tell parents in plain language, what raw data is and that they have a right to raw data,</li> <li data-bbox="240 1239 1429 1302">5. Contacting all parents who have made previous requests for their raw data, providing them with that raw data as restitution and treating those requests as outstanding.</li> <li data-bbox="240 1310 1429 1402">6. ODE oversight for one year, of the education records requests received by Forest Grove School District, with statistics taken as to how many requests were made and fulfilled compliance officer/specialist.</li> <li data-bbox="240 1411 555 1444">7. Proof of compliance.</li> </ol>

### 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 October 31, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student's disability and special education history.

1. The Student was sixteen years old and in the tenth grade, attending a District High School at the time the Complaint was filed.

2. On March 23, 2022, a file review summary noted data collection for Autism Spectrum Disorder.
3. The Autism Spectrum Disorder (ASD) Consultant described completing an Oregon evaluation for the student. They collected data from observations and evaluation protocols. The data from those tools was included in the report and then shredded. Currently, they do not have data, but they stated they had a file review sheet three weeks ago. The ASD Consultant disclosed that their license does require them to maintain the required documents.
4. On March 16, 2023, the Life Skills and Learning Support Teacher sent an email to the Parent which stated: "I have [Student's] current IEP attached and the amendment we completed recently, the evaluation report, progress notes for goals, [Student's] personal learning profile (which is kind of like our 'need to know' doc [sic] we use with our team), and [Student's] daily task sheet we use in my classroom."
5. On March 21, 2023, the Student Services Department Secretary sent an email to the Coordinator which stated:
  - a. "Review IEP from [Previous State] and determine if you can serve it as written. If you cannot, you need to revise that [Previous State] IEP by making a copy and making the revisions in writing on that copy. Then you will need to do a PWN to document that we received the [Previous State] IEP in order to serve [Student] until Oregon eligibility can be determined, and an Oregon IEP can be developed. You cannot develop an Oregon IEP until you determine Oregon eligibility;
  - b. Schedule eval [sic] planning as soon as possible. Determine whether you can use existing information or if you need to do new testing;
  - c. Once eval [sic] planning is done (and testing done if that was determined was [sic] necessary), schedule the eligibility and IEP meeting;
  - d. Do a Prior Notice and Consent for Initial Provision to be signed by parent."
6. On March 23, 2023, an Evaluation/Reevaluation Planning Meeting indicated that the team reviewed a list of specific assessments and data sources, concluding additional information was needed regarding educational performance and special education/related service needs.
7. On March 23, 2023, a Prior Written Notice (PWN) of Special Education Action proposed to initiate identification and a provision of a free appropriate public education (FAPE), including the IEP.
8. On March 24, 2023, the Parent sent an email to the Case Manager which stated: "I feel you totally misrepresented what the school offers and it's disturbing to me that you couldn't answer any of my reasonable and well-articulated questions about how you make appropriate academics available to your disabled students. These answers should have come easily to you, as you've been in the district over 9 years going by the due process the advocate and I read from September of 2013 with you listed."
9. On April 3, 2023, a PWN about Evaluation/Consent for Evaluation indicated the team proposed to reevaluate the Student.
10. On April 11, 2023, the High School Registrar stated they had not received the physical file from the previous school, but they would check to see what evaluations had been completed with respect to the Student.
11. On April 18, 2023, the Parent signed consent for the reevaluation.

12. On April 22, 2023, the Student was given the Childhood Autism Rating Scale-2<sup>nd</sup> Edition Standard Version. Test results indicated the Student's total raw score was 44.5, revealing results for the Student in the Severe symptoms range of Autism Spectrum Disorder.
13. On May 8, 2023, the Social Communication and Social Interaction Summary indicated "the Student is often awkward in turn-taking interactions with peers. [Student] doesn't seem to understand the give and take of conversations. [Student] has trouble keeping up with the flow of a normal conversation. In the school setting [Student] often has difficulty relating to [their] peers." "According to the file review, observations, parent and teacher input, the Social Responsiveness Scale Second Edition, and Childhood Autism Rating Scale Second Edition, [Student] demonstrates unusual behaviors that are typical of a student with autism spectrum disorder."
14. On June 12, 2023, a Zoom invitation to an Initial Eligibility/IEP meeting invite was sent to the Parent.
15. On June 12, 2023, Special Education Meeting Minutes indicated the Parent participated in the eligibility and IEP meeting. The purpose of the meeting was to determine in-state eligibility for special education services and IEP development since the Student came from out-of-state. The Parent asked if the Student seemed to be happy at school. The Parent did not have any questions about the information shared at the meeting. The Parent stated they were aware of the Student's profound autism.

The Parent share they "would like to get more communication from school about how things are going...feels the program is more rigorous than what [Student] was receiving at [their] past school...is used to getting regular communication about what is going on at school." Parent shared that they "appreciated communication that [they] received from Case Manager." Next steps included setting up communication between home/school and sending an email about the final week's schedule.

16. On June 12, 2023, a PWN and Consent for Initial Provision of Special Education Services proposed updating the IEP goals as the Student moves closer to transition to reflect Student progress and needs. The Parent signed the PWN and Consent for Initial Provision of Special Education on June 13, 2023.
17. On June 12, 2023, a Statement of Eligibility for Special Education indicated the Student qualified for ASD. An IEP meeting was held on June 12, 2023, which indicated the Student exhibited behavior that impeded their learning or the learning of others. Student strengths were in math and [Student] is a capable reader.
  - a. The Student's math goal was: "Given direct instruction, practice, visuals and manipulatives, [Student] will be able to solve multiplication equations, solve addition, and subtractions with and without regrouping, and identify functions with 80% accuracy." Progress was measured by data tracking, work samples, and observation. Progress will be reported by written progress notes sent home to parents at school reporting periods.
  - b. Student's reading goal was: "When given an informational or literature independent reading text, read aloud or read independently, [Student] will identify the main idea virtually or in writing improving reading comprehension from accurately identifying the main idea with 80% accuracy in 3/4 opportunities." Progress will be measured by data

- tracking, work, and observations. Progress will be reported by progress reports.
- c. The Student's writing goal was: "When given a writing prompt with a related short text and graphic organizer [Student] will write a paragraph with 5 complete on topic sentences including a main idea sentence, improving written language from 0% accuracy to 80% accuracy as measured by student work samples scored using writing rubric." Progress will be measured by data tracking, work samples, and observation. Progress will be reported by written progress notes sent home to Parents at school reporting periods and at annual IEP meetings.
  - d. The annual goal for social-emotional skills was: "[Student] will request a break or assistance when [they are] feeling anxious/frustrated in 3 out of 4 opportunities." Progress will be measured by data collection and observation. Progress will be reported by written progress reports sent home to Parents at school reporting periods and at annual IEP meetings.
18. On September 20, 2023, the Director of Student Services sent an email to the Case Managers which stated: "I spoke with [Parent] this morning and it would be best if we could address [their] questions/concerns in an IEP review meeting. Can we go ahead and set that up? I have copied [Parent] as well as an ASD consultant on this email."
19. On October 6, 2023 an IEP was developed that indicated the Student's strengths were:
- a. Is a fast learner;
  - b. When shown how to do something, the Student picks it up quickly;
  - c. Relative strengths in math;
  - d. Is a capable reader;
  - e. Visual learner;
  - f. Likes things written out to be able to process;
  - g. Expresses when they need help;
  - h. Enjoys staying active and exploring new community places; and
  - i. Has a great level of curiosity about things and people around them.
20. The IEP included specially designed instruction related to their academic, behavioral, communication and adaptive needs whether in special or general education classrooms.
- a. The measurable annual goal for mathematics stated: "Given direct instruction, practice, visuals and manipulations [Student] will be able to solve a variety of mathematical equations with 80% accuracy." Objectives included:
    - i. Given direct instruction [Student] will solve multiplication equations 1,2 digits by 1 without regrouping with 80% accuracy; and
    - ii. Given direct instruction [Student] will solve 2 step story with 80% accuracy.
    - iii. Progress will be measured by: "data tracking, work samples, and observation." Progress will be reported by written progress notes sent home to Parents at school reporting period."
  - b. The measurable annual goal for reading stated: "When given informational or literature independent reading level text, read aloud or read independently, [Student] will identify the main idea verbally or in writing improving reading comprehension from accurately identifying the main idea with 80% accuracy in 3/4 opportunities." Progress will be measured through: "data tracking, work samples, and observation."
  - c. The measurable annual goal for writing stated: "When given a writing prompt with a related short text and a graphic organizer [Student] will write a paragraph with 5 complete on-topic sentences including a main idea sentence, improving written language form 0% accuracy to 80% accuracy as measured by student work samples scored using writing rubric." Objectives included:

- i. "Given a writing opportunity [Student] will write a paragraph with an on-topic main idea and relevant details with 80% independence in 4/5 opportunities; and
- ii. Given a writing opportunity [Student] will write a paragraph with 5 complete sentences with 80% independence in 4/5 opportunities." Progress will be measured by: "data tracking, work samples, and observation."
- iii. The annual goal for social emotional stated progress will be measured by: "data collection, and observation."
- iv. Given a writing opportunity [Student] will write a paragraph with 5 complete sentences with 80% independence in 4/5 opportunities."

21. The Meeting Minutes from October 6, 2023, indicated Parent concerns were:

- a. Concerns about teachers getting information from general education teachers regarding coursework. Parent wasn't aware that everything was online;
- b. Parent feels Student is not placed in English class appropriately;
- c. Parent requested that, if these challenges come up again, Parent would like to be communicated with;
- d. Parent wanted to know about placement assessments for decisions made about class placement. Parent wants to know what level Student is at; and
- e. [Parent] feels that the language arts class is not appropriate and that putting [the Student] into another class, even it [*sic*] is below [their] needs.

22. On October 6, 2023, the Parent sent an email to the District regarding clarification on the District's position on the classification of raw data and why it is not provided to parents. The District sent the Parent the following information: "(Authority 20 U.S.C. 1232g(b)(3). (b)(5)) Education Records, term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. In a school setting, the raw data is that information used to compile the summary information that is reported via progress notes and other summary reports."

23. On October 6, 2023, data sheets showed 6 illegible entries on PE and transition goals. Five additional entries indicated the Student received A's on Transition/Community-Based Instructional goals. The entries were dated after the October 6, 2023 IEP meeting.

24. The progress made by the Student since the last IEP meeting was reviewed at the October 6, 2023 IEP meeting indicated the Student did not show the same skills at school that the Parent has seen working with the Student at home. The Parent feels: "the language arts class is not appropriate and that [the District should be] putting [Student] into another class, even if it is below [Student's] needs." The Parent expressed that: "while [Parent] does not feel comfortable with critiquing goals, [their] advocate will have questions, and we will want to be sure the goals are measurable and that we can be sure we are able to monitor."

25. A PWN dated October 6, 2023, indicated the team met to update the Student's goals and services with agreed-upon changes. Other factors considered by the team were: "In response to your request for raw data on [Student's] performance, the district provides this information to you in the form of progress reports and annual IEP data. Educational professionals use this level of data to make decisions about instruction and interventions, and it is not shared with



parents in a raw format. Raw data taken by educational professionals allows them to summarize and report student performance in a more comprehensive way and as part of a collection of information. However, work samples are a form of data that can be shared with you in an effort to help the team further understand any difficulties [Student] may be having with certain concepts. Your work with [them] as [their] former home school teacher can be helpful to the team in understanding what skills [they] may or may not have been taught, and work samples can be a better way of understanding [their] needs versus raw data.” An email from the Coordinator to the Parent contained an attachment copy of the PWN dated October 6, 2023.

26. On October 6, 2023, the Special Education Coordinator sent a link to the FERPA information to the Parent with specific language the Special Education Coordinator was referring to in the IEP meeting. The Coordinator also sent and attached a PWN to the Parent regarding additional assessment information for their next meeting.
27. During interviews, the Parent reported that District staff told them the Parent was not a professional and was not allowed access to the data. The Parent claimed that the District did not commit to saying whether there was or wasn't data and shared that they did not receive the data that was included in the District's *Response*. The Parent's intent for making the request was that they would receive the data moving forward regarding the IEP goals, and they wanted to confirm that progress data was being taken. The Parent mentioned they received information, including evaluation information, before the IEP meeting as well as science classwork. The data in question was kept by the Case Manager.
28. The District shared that they do believe that raw data is part of the educational record if the data is shared with others, except in the case of sole possession.
29. The District did not interpret the request for raw data from the Parent in the October 6, 2023 IEP meeting as a formal or official request, but has acknowledged that they should have clarified this request with the Parent. District policy indicates that an official record request must be made in writing. The District did not recall the reason the Parent provided for wanting the raw data, nor were District personnel clear on whether the request was for previous data or for data moving forward. Data was not provided to the Parent. The District does not recall if they told the Parent that an official request for data must be in written form.
30. When asked in an interview which data were kept and which were not, the District shared that the following items are shredded after they are summarized in a report: test protocols, checklists, notes, behavior logs, and informal reading inventories. The District disclosed that some license types are required to maintain data for a certain period.
31. On October 18, 2023, the Student Services Secretary emailed the Parent to check if the Parent had received an email regarding scheduling a new date and time to meet with the advocate they had requested. The Parent responded that they did not receive the email but their “email account was acting strange.”
32. On October 19, 2023, the Director of Student Services sent an email to the Parent which stated the following: “To address your ongoing questions about the raw data and the PWN [Prior Written Notice]: The district has no legal obligation under the IDEA to provide parents with raw data. A district is under no legal obligation to retain raw data documents after their content is incorporated into reports, summaries, progress reports, etc. If raw data documents have not been retained, they do not have to be produced upon a parent's request for education

records. Additionally, the district holds the right to determine which documents we retain. If a parent makes a formal records request under the law, the district will provide any educational records that exist, including raw data if it has been retained.”

33. The Case Manager indicated that they collected weekly data on community living and that all the data collected for this school year was maintained. The Case Manager mentioned that the Parent did not disclose the reasons for requesting the raw data. The data is collected for progress reports, and then it is shredded. The Case Manager was not sure if their license required the maintenance of certain documents; the District did not ask if the Case Manager kept data when it was requested by the Parent.
34. In an interview, the Special Education Coordinator shared that they had attended all the meetings regarding the Student. They said that, in October, the Parent requested raw data, and they explained that the data was summarized in the progress report and subsequently shredded. The Special Education Coordinator mentioned that records are released upon request and that work samples were able to be provided.
35. On October 23, 2023, the Parent requested the District’s written policy concerning raw data and data retention. The Director of Student Services replied: “The district has a records policy but not a retention policy. We have many practices in the district that are not written into policy. We have worked with our legal counsel to determine the best way to retain our records in special education. Some of that is driven by law, and some is driven by best practices and our capacity to retain a certain quantity of documents.”
36. On October 23, 2023, the Director of Student Services sent an email to the Parent which stated: “All Board policies can be found on our district website. Here is the link to all the records policies.”
37. Section 11 of the District’s special education procedures manual described gathering and utilizing data for special education progress reports, including method, location, type, and schedule for data collection. Section 11.1 Requirements for IEP Progress Reports of the Special Education Handbook stated:
  - a. 11.1.1: “Included in the IEP is a description of how the child’s progress toward meeting the annual goals will be measured. With that, a description of when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. It is imperative that the progress is reported at least as frequently as the general education reporting schedule;”
  - b. 11.1.2: “After the IEP Team writes a goal, it is important to identify how the goal will be measured. A monitoring strategy guides how data will be collected to make decisions about the progress of the student on the goal and establishes the decision-making plan for examining data collected which should include:
    - i. Who will be responsible for data collection;
    - ii. The setting where the data will be collected;
    - iii. The method of data collection;
    - iv. The measurement conditions;
    - v. The monitoring schedule for data collections; and a decision-making strategy to determine under what conditions a student’s performance is sufficiently delayed to warrant an instructional change.
  - c. 11.5.1: “The district does not retain data collection documents (data sheets, notes, assessment protocols) once analyzed and summarized in a report or another IEP document.”

38. On October 24, 2023, the Special Education Coordinator sent an email to the Parent which included the October 16, 2023, IEP Meeting Minutes which the Parent had requested.
39. On October 27, 2023, the Parent emailed the Special Education Coordinator: "Results from the informal assessments will be helpful there, please share whenever is finished. There may be more PWNs needed, but for now the one regarding our request to observe is the only one needed."
40. In interviews, the District indicated that there was a procedure manual and annual procedure updates describing the process for records retention. They noted that this was not an area of focus as it had not surfaced before as an issue.
41. On October 30, 2023, the Parents filed this Complaint.

## IV. DISCUSSION

### **Access to Student Education Records**

The Complaint alleges that the District violated the IDEA by not providing the raw data collected by staff while working on IEP goals to be sent home once a month when requested by the Parents.

For the purpose of ensuring the safeguards required for education records of children with disabilities, including early intervention and early childhood special education records, the Department adopts by reference the provisions of the Family Educational Rights and Privacy Act (FERPA). FERPA defines educational records as those records that contain information directly related to a student, and which are maintained by an educational agency or institution.<sup>3</sup> This provision includes all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. The program, district, agency, or contractor must comply with a parent's request to inspect and review records without unnecessary delay and within the following timelines, for children over the age of three, before any meeting regarding an IEP/IFSP or any due process hearing, or resolution session related to a due process hearing, and in no case more than 45 days after the request has been made.<sup>4</sup>

On October 6, 2023, the Parent verbally requested raw data for the Student at an IEP meeting; the District was not clear on whether the Parent wanted data that was currently in the District's possession or data to be collected by the District moving forward. IEP meeting notes indicated the Student's progress toward IEP goals from the previous IEP was reviewed during the IEP meeting. In an October 6, 2023, PWN and in a follow-up email, the District explained that raw data was used by educational professionals for instructional decisions and interventions, and the data was not going to be provided to the Parent in its raw format. Instead, progress reports and annual IEP data are provided and the raw data that is used to create the reports is

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<sup>3</sup> 20 U.S.C. 1232g(a)(4)(b)

<sup>4</sup> OAR 581-015-2300(1b)(2ab)(3b)

shredded. The District further shared that work samples, as opposed to raw data, could be shared to help identify the difficulties the Student may be experiencing with certain concepts.

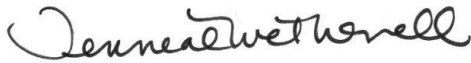
The District did not maintain raw data as part of the educational record for the Student. The Supreme Court has interpreted “maintained” as “to keep in existence or continuance; preserve; retain” and reasoned that “[t]he word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.”<sup>5</sup> Although the District suggested that raw data may be a part of the educational record if it is shared with others, the District did not “maintain” this data in the manner required to qualify as an educational record. The practice of shredding raw data once progress reports are created demonstrates that the District practice is not “to keep in existence or continuance; preserve; retain” this data. While the District might have a different understanding of FERPA requirements and might have policies that provide more parent protections than FERPA, this does not change any legal obligations related to FERPA or the IDEA. It is unclear whether the Parent made a written public records request under ORS 192.324 or not. Regardless, that matter is unrelated to the IDEA.

The Department does not substantiate this allegation.

#### V. CORRECTIVE ACTION

The Department does not order corrective action in this matter.

Dated: this 28<sup>th</sup> Day of December 2023



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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: December 28, 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).)

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<sup>5</sup> *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, 534 U.S. 426, 432033 (2002)