

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the Education of  
the Parkrose School District 3

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 23-054-045

**I. BACKGROUND**

On November 21, 2023, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Parkrose School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Complaint alleged a violation of the IDEA regarding the Student and other similarly situated students in the District. The Department confirmed receipt of this Complaint and forwarded the request to the District by email on November 21, 2023.

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 to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 1, 2023, 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 December 15, 2023.

On December 15, 2023, the District submitted a response disputing the allegations and provided associated documentation in support of the District’s position.

The District submitted the following relevant items:

1. District Response
2. District Response
3. Notice of Team Meeting, 11/13/2022
4. Prior Written Notice, 11/14/2022
5. Conference Summary, 11/14/2022
6. Notice of Team Meeting, 11/23/2022
7. Notice of Team Meeting, 12/06/2022
8. Student IEP, 01/08/2023
9. Special Education Placement Determination, 01/18/2023

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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)

10. Prior Written Notice, 01/18/2023
11. Conference Summary, 01/18/2023
12. Notice of Team Meeting, 01/23/2023
13. Prior Written Notice, 01/30/2023
14. Prior Written Notice, 02/06/2023
15. Conference Summary, 02/06/2023
16. Parent/Guardian Consent for Individual Evaluation, 02/06/2023
17. Notice of Team Meeting, 03/17/2023
18. Conference Summary, 03/21/2023
19. Prior Written Notice, 03/21/2023
20. IEP Progress Report, 06/15/2023
21. Prior Written Notice, 11/16/2023
22. Letter from District to Parent, 11/16/2023

On January 2, 2024, the Parent provided additional information regarding the complaint.

On January 5, 2024, the Complaint Investigator interviewed District’s Director of Special Education regarding the concerns raised in this Complaint. 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 November 22, 2022, to the filing of this Complaint on November 21, 2023.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>Evaluation and Reevaluation Requirements</b></p> <p>The Parent alleged that the District violated the IDEA when it failed to conduct a reevaluation of the Student following the Parent’s request that the Student be evaluated for the impact of depression, anxiety, and autism spectrum disorder.</p> <p>(OAR 581-015-2105; 34 CFR §§ 300.301 &amp; 300.303)</p>	<p><b>Not Substantiated</b></p> <p>Following the Parent’s request for evaluation, in both January and March of 2023, the District did consider whether the Student required additional special education supports. In November 2023, the Parent reiterated their concerns regarding the Student; however, the Student was enrolled in an online charter school sponsored by another district at that time. The District invited the Parent to enroll the</p>

	Student in a District elementary school.
<p><b>Review and Revision of IEPs/Placement of the Child</b></p> <p>The Parent alleged that the District did not appropriately revise the Student’s IEP to address information about the Student provided by the Parent, and in response to the Student’s needs, specifically the potential impact of depression, anxiety, autism spectrum disorder, and geographic factors related to the school location.</p> <p>(OAR 581-015-2225; OAR 581-015-2250; 34 CFR §§ 300.324(a)(4), (a)(5), (a)(6), &amp; (b)(1))</p>	<p><b>Not Substantiated</b></p> <p>The Student’s IEP team met during the 2022-23 school year to consider the Student’s placement in light of concerns raised by the Parent. The IEP team did not determine that it was appropriate to revise the Student’s IEP.</p>

<p><b>REQUESTED CORRECTIVE ACTION</b></p>
<p>The Parent requested the following corrective action:</p> <ol style="list-style-type: none"> <li>1. “School District needs to find placement according to [Student] needs.</li> <li>2. School District need [sic] to find a hurtring [sic] person for replacement of [staff member] position not far [sic] parents to have to deal with loose canon [sic] during a time of parent advocating for there [sic] child.</li> <li>3. Investigate interaction in schools of Staff behavior responses with parents or offer a school mediator from the District to help with school issues.”</li> </ol>

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 November 21, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student or students’ disabilities and special education history.

1. The Student in this case is 9 years old, in fourth grade, and attended a District elementary school during the 2022-23 school year. During the 2023-24 school year the Student attended an online charter school sponsored by a different school district. The Student is eligible for special education under the category of Communication Disorder (50). The Student receives specially designed instruction in communication.
2. The Student is articulate, helpful, works hard, and approaches academic challenges with excitement. The Student approaches their work with determination and is willing to take risks and responds well to feedback. The Student enjoys hands-on work and enjoys playing games in speech groups and at recess.

While the Student is below grade level in oral reading fluency and phonics, they do not receive special designed instruction (SDI) in reading, writing, or math. While somewhat delayed, the Student was making progress toward grade level proficiency in these academic areas.

3. The Student articulates words with target sounds such as /sh/, /ch/, /l/, and /r/, with conscious effort. The Student may replace sounds such as /s/ for /sh/, /ts/ for /ch/ and /w/ for /l/ and /r/ in conversation. The Student does not have difficulty being understood by peers and teachers.
4. On November 13, 2022, the Student's IEP team met to discuss concerns raised by the Parent regarding the potential that the Student had "an underlying autism spectrum disorder. The District sent a Prior Written Notice (PWN) the following day stating that, based upon a review of available data, the IEP team decided not to conduct a new evaluation. The IEP team based this decision on the fact that the behaviors referenced by the Parent were not occurring in the school setting.
5. The Student's January 18, 2023, IEP includes a communication goal stating that by January 2024, the Student "will clearly, orally express their experience using the sound or sound patterns in all positions of a word (a) /sh/, /ch/ with level 5 support, and (b) liquids /r/ and /l/ to mitigate the process of gliding with level 3 support, as measured by the CHAT rubric," in addition to Speech Language Pathologist (SLP) data and reports from the Parent and the Student's teachers. The IEP also included accommodations in the general education environment, such as providing specific feedback when using accurate target speech sounds; visual, verbal, or gestural cues to reinforce place and manner of target speech sounds; and recasting grammatical errors. The Student's IEP also included SLP consultation for education staff, for 60 minutes per year.
6. On January 28, 2023, the District sent the Parent PWN documenting changes to the Student's IEP. The PWN contained the following language: "The IEP Team met on 1/18/23 and updated [the Student's]], including [their] IEP and placement. The team agreed on new goals and accommodations. The team agreed to continue 90 minutes/month of SLP service minutes and a Special Education Placement of at least 80% in the general education classroom with pull-out services for communication. The team also agreed to no longer provide specially designed instruction (SDI for language, but instead support these skills with an accommodation."
7. On January 30, 2023, the IEP team met with the Parent for an evaluation planning meeting. The Parent previously requested a special education evaluation to look at articulation concerns and reiterated their concerns regarding autism spectrum disorder (ASD). The team observed that the Student was then receiving services for articulation and that the data did not warrant additional supports for the Student or a full comprehensive evaluation.
8. On February 6, 2023, the IEP team met to discuss the Parent's request for a

special education evaluation due to concerns related to speech production/articulation and the Parent's report that a community counselor recommended the Student be evaluated for Autism Spectrum Disorder (ASD). Following the meeting, the District provided PWN to the Parent documenting the Parent's request for a behavioral screener for the Student. The District documented that it would send the consent form to the Parent, and would conduct the BASC-3 screener once consent from the Parent was obtained. The Parent provided consent and the behavior screener was conducted.

9. On March 21, 2023, the IEP team met to review the results of the behavior screener discussed at the February 6, 2023, meeting. During the meeting, the Parent discussed behavior concerns about the Student, acknowledging that many of those behaviors are occurring outside of the educational environment. The District reviewed the results of the BASC-3 screener, reporting that the data collected did not indicate concerns for the educational environment. As a result of the data review and subsequent discussion, the IEP team decided that further school assessments were not warranted at that time. The District documented that all members of the team agreed with this decision. Later that day, the District sent the Parent PWN documenting the Student's IEP team's decision to not conduct further assessments related to behavior or possible ASD.
10. On June 15, 2023, the District completed an IEP progress report for the Student. At that time the Student was making progress toward their IEP goal and was expected to meet the goal by the next IEP review.
11. For the 2023-24 school year, the Student was enrolled in Oregon Connections Academy, an online charter school sponsored by another school district. Due to this change, the student was no longer attending a District elementary school.
12. During the Complaint Investigator's interview with the Director of Special Education, they reported that, on or about October 4, the Parent called the District to inquire about transferring the Student to a different school building in the District. The Parent was reportedly dissatisfied with the administration of the Student's neighborhood school. The District discussed the option of an inter-district transfer or an intra-district transfer with the Parent. (Interview with SpEd Director)
13. During the Complaint Investigator's interview with the District's Director of Special Education, they reported that, on or about November 13, 2023, the Parent called the District regarding the Student's anxiety related to the provision of online schooling and being at home rather than in a classroom. During this call, the District offered the Parent the opportunity for the Student to attend the Student's neighborhood school. The Parent discussed their concerns about the Student's behavior observed at home and the appropriateness of schools in the region that provide specialized behavior programs. The Director of Special Education reported that they explained the requirements of Least Restrictive Environment (LRE) with the Parent. The District also reported that the Parent mentioned potentially troubling events in the home. The District noted that these issues were

appropriately reported.

14. Following this call with the Parent, the District sent the Parent PWN on November 11, 2023, documenting the District's observation that the concerns voiced by the Parent regarding the Student's behavior in the home environment had not been observed in the school environment. The PWN also indicated that the District stood ready to serve the Student if the Parent chose to enroll the Student in their neighborhood school. The District also stated that, while the Parent has asserted that the Student may have anxiety, or might meet criteria for additional special education eligibilities, the Parent had not provided documentation or other evidence in support of that assertion.
15. On November 16, 2023, the District sent the Parent PWN in response to the Parent's request for a change of the Student's school. The District proposed to serve the Student at the Student's neighborhood elementary school if the Student re-enrolled in the District and would also consider transferring the Student to another elementary school either within the District or agree to an inter-district transfer out of the District. The District also sent the Parent a letter communicating to the Parent the District's intent to stand ready to serve the Student's educational needs. The letter observed that the Student had not taken advantage of the free appropriate public education offered by the District.
16. On January 2, 2024, the Parent responded by email explaining that they had not yet decided whether to enroll the Student in the District.

## **IV. DISCUSSION**

### **Evaluation and Reevaluation Requirements**

The Parent alleged that the District violated the IDEA when it failed to conduct a reevaluation of the Student following the Parent's request that the Student be evaluated for the impact of depression, anxiety, and ASD.

School districts must conduct an evaluation or reevaluation before determining that a child is a child with a disability, that a child continues to have a disability, or when changing the child's eligibility. An evaluation must be conducted to determine whether a child is eligible for special education services when a district suspects or has reason to suspect that the child has a disability which has an adverse impact on the child's educational performance, and that 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. The team may make this decision without a meeting.<sup>3</sup>

On January 30, 2023, the Student's IEP team met to consider information received from the Parent concerning the possibility that the Student was eligible for special education

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<sup>3</sup> OAR 581-015-2105

under the category of ASD. At this meeting the Student's IEP team determined that the Student did not meet the criteria for adding the additional eligibility criteria of ASD. The District sent the PWN documenting this decision on February 6, 2023.

On February 6, 2023, in response to information provided by the Parent, the District sent a behavior screener to the Student's teachers to gather additional information regarding whether the Student might satisfy criteria for ASD. On March 21, 2023, the Student's IEP team met to consider the results of the behavior screener. The Student's IEP team determined that there was insufficient data to suggest an ASD eligibility. In response, the District sent the Parent PWN documenting that decision on the same date.

The Student attended Oregon Connections Academy, an online charter school sponsored by another school district, during the 2023-24 school year. The Parent contacted the District on at least two occasions regarding concerns related to the Student and the provision of online education. At this time the Student was not enrolled in or a resident student of the District. The District offered to enroll the Student in their neighborhood elementary school or to provide the Parent the opportunity to transfer within the District or to a school outside of the District. The District documented this with PWN dated November 16, 2023.

The District considered whether data supported additional special education eligibilities for the Student in January and March of 2023. The Student's IEP team did not find sufficient evidence to support that the Student was eligible for special education under additional eligibility categories. The Parent reiterated concerns to the District by phone in November of 2023. At that time the Student was not enrolled in or a resident student of the District. On each occasion the District documented its decisions in a PWN.

The Department does not substantiate this allegation.

### **Review and Revision of IEPs/Placement of the Child**

The Parent alleged that the District did not appropriately revise the Student's IEP to address information about the Student provided by the Parent, and the Student's needs. The Parent alleged specifically that the District did not consider the potential impact of depression, anxiety, ASD, and geographical factors related to the school location.

A school district must ensure that a student's IEP team reviews the student's IEP at least every 365 days, to determine whether the annual goals for the student are being achieved. A student's IEP team should also review the IEP to address information about the student provided by the parents, or other matters.<sup>4</sup>

A school district must ensure that the educational placement of a child with a disability is determined by a group of people including the parent. A district must consider LRE provisions when making placement determinations. A district should also ensure that a

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<sup>4</sup> OAR 581-015-2225(1)—(2)

student's educational placement is as close to their home as possible. Finally, districts should ensure that a student with a disability is not removed from education in an age-appropriate regular classroom solely due to needed modifications in the general curriculum.<sup>5</sup>

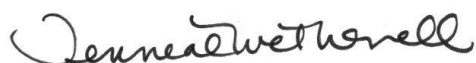
On several occasions, the Parent reported concerns regarding the Student's education. The IEP team met with the Parent about their concerns regarding an evaluation for ASD as well as the placement of the Student. In each instance, the IEP team determined that there was not a need for an additional evaluation and determined that the Student's placement was appropriate. During the 2023-24 school year, the Parent reported that the Student was suffering from anxiety as the result of receiving schooling at home, or due to conditions in the home. At the time of this report, the Student was not enrolled in or a resident of the District. The District invited the Parent to re-enroll the Student in a District school. During this investigation, the Parent communicated that they had not yet decided whether to enroll the Student in the District.

The Department does not substantiate this allegation.

**VII. CORRECTIVE ACTION**  
*In the Parkrose School District*  
*Case No. 23-054-045*

The Department does not order corrective action in this matter.

Dated: this 16th Day of January 2024



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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: January 16, 2024

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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)

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<sup>5</sup> OAR 581-015-2250