

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the Education of  
Beaverton School District 48J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 24-054-002

**I. BACKGROUND**

On January 3, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the attorney (Attorney) of a parent (Parent) with a student (Student) attending the Beaverton School District (District). The Attorney 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. The Department confirmed receipt of this Complaint and forwarded the request to the District by email on January 3, 2024.

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 January 10, 2024, the Department’s Complaint Investigator sent a *Request for Response* (RFR) to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 26, 2024. On January 25, 2024, the District requested an extension of time due to delays caused by winter storms.

On January 26, 2024, 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. Consent Form, 03/07/2023
3. Notice of Team Meeting, 03/24/2023
4. Authorization to Use and/or Disclose Educational and Protected Health Information, 03/07/2023
5. Authorization to Use and/or Disclose Educational and Protected Health Information, 03/07/2023
6. Authorization to Use and/or Disclose Educational and Protected Health Information, 03/15/2023

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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)

7. Notice of Team Meeting, Evaluation Determination, 04/19/2023
8. Prior Notice about Evaluation/Consent for Evaluation, 05/17/2023
9. Notice of Team Meeting, Evaluation Determination, 04/19/2023
10. Meeting Minutes, 05/17/2023
11. Email: Re: Final Docs from Meeting, 06/06/2023
12. Prior Notice of Special Education Action, 05/23/2023
13. Prior Notice about Evaluation/Consent for Evaluation, 05/17/2023
14. Medical Statement or Health Assessment Statement, 05/30/2023
15. Prior Notice about Evaluation/Consent for Evaluation, 05/17/23
16. Prior Notice of Special Education Action, 06/20/2023
17. Notice of Team Meeting, 09/14/2023
18. Functional Behavioral Assessment (FBA), 09/25/2023
19. Meeting Minutes, 10/17/2023
20. 2022-2023 Elementary Progress Report Grade 5, 1<sup>st</sup> Semester
21. 2022-2023 Elementary Progress Report, Grade 5, 2<sup>nd</sup> Semester
22. Student Psychoeducational Evaluation, 10/17/2023
23. Prior Notice of Special Education Action, 10/20/2023
24. Notice of Team Meeting, 10/23/2023
25. Meeting Minutes, 10/26/2023
26. Confidential Statement of Eligibility for Special Education, 10/26/2023
27. Statement of Eligibility for Special Education (Other Health Impairment 80), 10/26/2023

On January 31, 2024, and February 21, 2024, the Parent provided additional information regarding the Complaint.

On February 15, 2024, the Complaint Investigator interviewed the Parent regarding the concerns raised in this Complaint. The Parent's Attorney was present. On February 27, 2024 the Complaint Investigator interviewed the District's Special Education Director and the School Psychologist. The District's Attorneys were present. 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 January 4 2023, to the filing of this Complaint on January 3, 2024.

| <b>Allegations</b>  | <b>Conclusions</b>   |
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| <p><b>Child Find</b></p> <p>The Parent alleged that the District violated the IDEA when it failed to identify and evaluate the Student as a child with a disability in need of special education services. It is specifically alleged that the District failed to recognize the Student's needs stemming from the Student's ADHD, PTSD, anxiety, and oppositional defiance disorder. It is further alleged that the Student's needs were evident in such areas as the Student's attendance, social skills, and self-advocacy.</p> <p>(OAR 581-015-2080; 34 CFR §§ 300.111 &amp; 303.302, &amp; 301)</p> | <p><b>Not Substantiated</b></p> <p>The District did evaluate the Student following the Parent's request to do so. The Parent reported numerous possible indicators of the Student's need for special education pre-dating the statutory timeline.</p>  |
| <p><b>General Evaluation and Reevaluation Procedures</b></p> <p>The Parent alleged that District violated the IDEA when it failed to assess the Student in all areas related to their suspected disabilities. Specifically, it is alleged that the Parent requested that the District evaluate the Student for social, emotional, coping skills, and Autism Spectrum Disorder (ASD), and that the District did not fully evaluate the Student.</p> <p>(OAR 581-015-2110; 34 CFR §§ 300.304(a)(4), 300.305)</p>  | <p><b>Not Substantiated</b></p> <p>The Parent requested that the District evaluate the Student for eligibility in specific areas. The assessments chosen by the District were selected with knowledge of the Parent's concerns around ASD. During its review of information as part of the evaluation planning process, the District did not observe concerns in the educational environment for ASD, and therefore did not evaluate the Student in that category.</p> |
| <p><b>Determination of Eligibility</b></p> <p>The Parent alleged that the District violated the IDEA when it failed to identify the Student as a student with a disability who required specially designed instruction. Specifically, it is alleged that the District did not appropriately consider the Student's emotional/behavioral disorder and failed to consider eligibility under Autism Spectrum Disorder (ASD).</p> <p>(OAR 581-015-2120; 34 CFR §§ 300.306, 300.308, 300.111)</p>  | <p><b>Not Substantiated</b></p> <p>The District made eligibility determinations for the eligibility categories considered in the evaluation.</p>   |

| <b>Allegations</b>   | <b>Conclusions</b>   |
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| <p><b>Parent Participation</b></p> <p>The Parent alleged that the District violated the IDEA when it denied the Parent an opportunity to fully participate in the eligibility determination meeting held for the Student. Specifically, it is alleged that the District did not provide the Parent with information relevant to the Student’s eligibility for special education. The Parent alleged that the District did not provide information such as: information regarding the Student’s missing assignments; current grades; work samples; and anecdotal reports from the Student’s current teachers. The Parent also alleged that relevant information was provided during the meeting in verbal form, rather than in written form in advance of the meeting; and not included in evaluation reports produced regarding the Student.</p> <p>(OAR 581-015-2195; 34 CFR §§ 300.322, 300.500, 300.327, 300.328, &amp; 300.501(c))</p> | <p><b>Not Substantiated</b></p> <p>The Parent was present for the eligibility meetings. Two meetings were held. After the first, and before the second, the Parent requested education records relevant to the evaluation.</p>   |
| <p><b>Access to Student Education Records</b></p> <p>The Parent alleged that the District violated the IDEA when it failed to provide copies of the Student’s records, or allow the Parent access to Student records, which the Parent requested on or about November 6, 2023.</p> <p>(OAR 581-015-2300; 34 CFR §§ 300.501, &amp; 34 CFR 303.405(a))</p>   | <p><b>Substantiated</b></p> <p>The District understood the Parent’s record request to be exclusively for copyrighted materials, therefore, the District did not provide the Parent with the requested records or provide the Parent with an opportunity to review the Student’s educational records.</p> |
| <p><b>Prior Written Notice</b></p> <p>The Parent alleged that the District violated the IDEA when, it failed to provide the Parent with Prior Written Notice (PWN) of whether the reevaluations requested by the Parent in October 2023, were refused by the District.</p> <p>(OAR 581-015-2310; 34 CFR §300.503)</p>  | <p><b>Not Substantiated</b></p> <p>The Parent made certain requests to the District regarding the evaluation prepared for the Student. On October 18, 2023 and on October 20, 2023 the District provided the Parent with PWN declining the Parent’s requests.</p>  |

### 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 January 4, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disabilities and special education history.

1. The Student in this case is in the 6<sup>th</sup> grade, and currently attends a middle school in the District.
2. The Student was previously found eligible for special education in 2018, under the category of Other Health Impairment (OHI). At that time, the Student was not found eligible in the categories of Emotional Disturbance (which has since been updated to Emotional Behavior Disability (EBD)), Autism Spectrum Disorder (ASD), and Specific Learning Disability (SLD). The Student was exited from special education on January 10, 2020. The District subsequently supported the Student through a 504 Plan starting on February 4, 2020. The Student was evaluated for special education eligibility again in September 2021 in the category of SLD and was found ineligible. In its *Response* in this matter, the District reported maintaining awareness of the Student's needs and that those needs could later lead to future evaluations if circumstances warranted.
3. During the 2022-23 school year the Student was in the 5<sup>th</sup> grade. The Student scored proficient or nearly proficient in all academic areas during the first semester of the 2022-23 school year. During the second semester of the 2022-23 school year the Student displayed academic performance consistent with the first semester, showing a decline only in their command of conventions of capitalization, punctuation, and spelling.
4. During the 2022-23 school year the Student was absent 15.5 days during the first semester, and seven days during the second semester.
5. On February 3, 2023, the Parent sent an email to the District reporting a conversation they had with the Student's Psychologist, who was interested in doing more psychometric testing in support of reevaluating the Student for special education eligibility. In the same email, the Parent reported that if the Student was not found eligible for special education services, the Psychologist would suggest additional interventions and accommodations. The Parent also reported considering a change of schools to address the Student's "significant needs".
6. The Student's March 7, 2023, 504 Plan included the following accommodations: check-ins for understanding, clear expectations for assignment completion, option to break assignments into parts, teacher directed partnering, use of 'first...then' language when providing expectations, providing pencil/pen and paper as alternative to computer based assignments, access to graphic organizers, access to sensory items, and, access to physical text both at school and at home. In addition, the

Student's 504 Plan offered the Student the option to sit in proximity to instruction; the option to take assignment in an alternative setting with minimal distractions; and double time allotted to assignments.

The Student's 504 Accommodation Plan was created to address the Student's ADHD and generalized anxiety. The Student's disabilities impacted the Student's communication, concentration, interactions with others, and learning.

7. On March 9, 2023, the Parent, through their Attorney, sent an email to the District requesting that the District evaluate the Student for special education eligibility in the areas of "emotional behavioral disability, other health impairment, and specific learning disabilities in reading, writing, and math." The Parent's Attorney noted that this request was made in relation to the Student's "anxiety, PTSD, social skills (interacting with other), classroom success skills (e.g., executive functioning), attention to task, and delays in [the Student's] ability to begin/focus on the task among other possible deficits."
8. On March 15, 2023, the Parent sent an email to the District reporting an incident with the Student on the school bus. The Parents reported peers using inappropriate language and that such language was at times used to engage the Student. The Parent reported that the Student became frustrated by this language and reflected that same inappropriate language back at peers if they did not cease the behavior. The Parent also reported that peers were making inappropriate sounds in the school environment that were triggering for the Student due to the underlying cause of the Student's PTSD. The Parent reported that the Student sometimes mimicked these sounds at home and that it was problematic. The Parent further reported having related these incidents to the Student's Psychologist and Psychiatrist. The Parent reported that these incidents were examples of the Student's struggles "interacting with others" and that the Student had an accommodation as part of their 504 Plan in this area.
9. On March 16, 2023, the Parent signed an Authorization to Use and/or Disclose Educational and Protected Health Information form, to assist the District in determining the Student's current educational needs, developing a Section 504 Plan, and work done on peer relationships.
10. On April 19, 2023, the District sent the Parent a Notice of Team Meeting for a May 17, 2023, meeting, to determine whether the Student should be evaluated for special education eligibility.
11. On May 16, 2023, the Student's Neuropsychologist prepared a Neuropsychological Report regarding the Student. The report was the result of the Student's community mental health counselor referring the Student for assessment in "emotional/social skills, learning/achievement and ADHD to assist in identifying appropriate support and accommodations for school services." The report noted that, "[t]asks that involved writing and completing simple math problems were general areas of weakness on achievement testing." The Student's testing showed that, "[m]emory and executive function were generally within normal limits in the average to high average range. On

social emotional measures, [the Student] had a relative weakness in theory of mind tasks involving the ability to understand others thoughts and feelings and social context in emotion and the questionnaire completed by [the Parent] showed significant difficulties across domains of social emotional function. [The Student] has some traits of autism spectrum noted but this diagnosis was rule [sic] out several years ago in an assessment by the Child development and rehabilitation center (CDRC). On self-report measures, [the Student] endorsed significant levels of depression, anxiety, and anger.” The DSM-V/ICD-10 Diagnostic Impressions indicated Oppositional Defiant Disorder (moderate), Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder, and Post-traumatic Stress Disorder. The Student’s Neuropsychologist provided recommendations for the development of the Student’s 504 Plan. These included additional time for assignments, tests, and quizzes, outlining multistep instructions, testing in quiet areas, and other supportive recommendations.

As part of the assessments completed by the Student’s Neuropsychologist, the Parent completed the Gilliam Asperger’s Disorder Scale (GADS). As a result of the GADS completed by the Parent, the Student scored in the “high/probably likelihood of Aspergers/Autism spectrum.”

12. On May 17, 2023, the District held an evaluation planning meeting regarding assessments for the Student. The Parent reported that the District likely could not offer any new testing beyond what OHSU completed. The Parent voiced concern that 504 Plan was insufficient to address the Student’s social emotional needs, and that the Student needed an IEP to support those needs. The Parent stated that they did not have academic concerns for the Student, rather the concerns were social/emotional. The District noted that it had received the Parent’s private evaluation just minutes before the meeting, and hoped to gain more insight into their concerns for the Student. From the conversation, and based on the Student’s diagnoses, the District noted that they would most likely consider eligibility under OHI and EBD. The Parent voiced a strong preference that the Student be evaluated for OHI, rather than EBD. The District informed the Parent that they could choose to provide consent or not for the proposed evaluations, but that the District would prefer a broader evaluation of the Student. As a result of this meeting the District proposed an evaluation for potential eligibility under the IDEA in areas such as Emotional Behavior Disability and Other Health Impairment.
13. On May 17, 2023, the District sent the Parent a Prior Notice and Consent documenting the District’s intent to evaluate the Student for eligibility for services in the areas of EBD and OHI.
14. On May 18, 2023, the Parent sent an email to the District asking whether the Student’s Psychologist could complete the Medical Statement provided by the District, or if a physician had to complete the form. The Parent questioned why the District’s Psychologist intended to perform psychometric testing to differentiate ADHD when the Student had a confirmed diagnosis. The Parent further indicated that they were seeking services in the “social-emotional domain and not academic or related to [the Student’s] executive functioning...”. The Parent requested that the District Psychologist provide additional information about the need to further explore neuropsychological impairment. The Parent requested that a specific staff member

complete the GADS for the Student due to that staff member's familiarity with the Student's socialization during less-structured activities. The Parent inquired about whether completing additional assessments, or alternative means of assessing the Student, was necessary.

15. On May 22, 2023, the District responded to the Parent's May 18, 2023 email and answered the questions posed by the Parent regarding whether the Student's Psychologist or physician could complete the Medical Statement. The District indicated that physicians were best placed to complete such information. The District also indicated that the proposed assessments sought greater information regarding the impact of the Student's diagnosis/disability on their education. The District observed that the outside assessment was helpful, but that no school personnel were involved in its creation, which necessitated school-based evaluations. The District noted the possibility that completing a file review, observations, medical statement and a Behavior Assessment System for Children (BASC-3) could provide sufficient information to consider eligibility. The District also explained why the Behavior Rating Inventory of Executive Function (BRIEF-2) and Conners-4, an ADHD assessment, were proposed, and explained that the GADS and Strength and Difficulties Questionnaire (SDQ) are not used by the District.

16. On May 22, 2023, the Parent requested that the District conduct additional assessments. Specifically, the Parent requested that the District consider "expression of behaviors that are highly indicative of autism spectrum." The District responded by observing that the proposed assessments were "sufficient to gain the necessary information to determine the eligibility(ies) and any skill deficits."

In a separate email on the same date, the Parent sought clarification regarding the proposed evaluations for the Student. The Parent wrote in relevant part, "My concern is whether or not this additional evaluation in the area of ADHD will provide any new information that we do not already know. If you are using these instruments to gain more insight into ASD behaviors and ODD, then I understand your application. If you are wanting to use these instruments to disconfirm the ADHD diagnosis, then I do not believe the application is appropriate or in [the Student's] best interest."

17. On May 22, 2023, the District, responding to the Parent's questions regarding the purpose of the proposed evaluations, wrote, "The assessment measures proposed at our evaluation planning meeting are sufficient to gain the necessary information to determine eligibility(ies) and any skill deficits. The functional behavior assessment interviews (student/parents/teachers) and observations, along with the BASC-3 (part of outside evaluation) and the Conners-4 (parent/teacher/self) will give insight and information about many of the areas listed in your email as well as data on frequency and intensity of anxious thoughts, depressed mood, and emotional dysregulation."

18. On May 23, 2023, the District sent the Parent an email further clarifying that the District's proposed assessments were not "to disprove the ADHD diagnosis, but rather evaluate more specifically how it impacts in the school setting." The District offered the Parent the option to hold an additional evaluation planning meeting to "further discuss the proposed consent and the evaluations" requested.

19. On May 23, 2023, the District provided the Parent with Prior Written Notice (PWN) of its intent to deny the Parent's request to utilize the GADS and SDQ for the Student. The reason given by the District for this decision was that "[t]he GADS has not been updated for many years and no longer addresses DSM-5 or school-based criteria for eligibility. The SDQ is not a standardized measure and would not be usable for eligibility purposes. Based on the proposed evaluations and previous information gathered through school and private evaluations, there is adequate information to determine eligibility and supports. The assessment measures proposed at the evaluation planning meeting are sufficient to gain the necessary information to determine eligibility and skill deficits. The functional behavior assessment interviews (student/parents/teachers) and observations, along with the BASC-3 (part of outside evaluation) and the Conners-4 (parent/teacher/self) will give insight and information about the described areas of concern, [sic] well as data on frequency and intensity of anxious thoughts, depressed mood, and emotional dysregulation."
20. On May 30, 2023, the Student's Physician signed a completed Medical Statement or Health Assessment Statement for the Student. On that form, the Physician indicated that the Student was diagnosed with the following conditions, "ADHD, PTSD, Anxiety, oppositional defiant disorder."
21. On June 1, 2023, the Parent signed the Consent for Evaluation that included the District's intent to evaluate the Student for EBD and OHI.
22. On June 6, 2023, the Parent sent an email to the District, in response to documents they received from the District. In the email the Parent took exception to the wording of the Meeting Minutes regarding content, length, and subjective observations. The Parent made several suggestions about amending the documentation. The Parent suggested that the Student's evaluation from OHSU was comprehensive, and that the Student required an IEP to support the Student's social-emotional needs, rather than only a 504 Plan. The Parent further suggested that the Student needed social-emotional support at school aside from support provided by a community counselor. The Parent indicated that the family was considering requesting evaluations in other areas such as autism spectrum disorder and depression, but that this was being monitored given the Student's adjustment to treatment for ADHD, PTSD, ODD, and anxiety. The Parent further noted that the Student likely qualified for special education services in the categories of OHI and EBD. The Parent also expressed hope that the Student would have a new IEP in place at the start of middle school.
23. On June 8, 2023, the District, in response to the Parent's June 6, 2023, email, offered that the Parent's insights and observations be added as an addendum to the Student's IEP packet and Meeting Minutes.
24. On June 9, 2023, the Parent, by email, requested further edits to the District's Meeting Minutes. In response, the District offered to add the email correspondence to the record as an addendum.
25. On June 16, 2023, the Parent sent an email to the District reporting concerns about

the Student's peers' behavior during summer school. The Parent reported that peers engaged in sexualized behavior at school. The Parent referenced their March 15, 2024 email reporting similar behaviors. The Parent reported that overt sexualized statements had been directed toward or uttered in the Student's proximity and urged the District to take the situation seriously. The Parent reported this was concerning because of the Student's past trauma, and that some peers in the summer school program were likely present during the past trauma that was the cause of the Student's PTSD. The District agreed to investigate. The Summer School also said that they discussed inconspicuous ways for the Student to report concerns to trusted adults during the school day.

26. On September 14, 2023, the District sent the Parent a Notice of Team Meeting for an IEP Team meeting scheduled for October 17, 2023. The purpose of this meeting was to determine the Student's eligibility for special education.
27. On September 21, 2023, the Student's Psychologist provided a letter at the Parent's request, regarding their impressions of an appropriate class size for the Student, "in consideration of [the Student's] emotional and behavioral health needs." The Student's Psychologist recommended small class sizes to reduce distractions and to allow the Student's Teacher to provide "adequate support and adequately deliver recommended accommodations per the recent assessment conducted...". The Student's Psychologist reiterated the suggested accommodations from the assessment.
28. On September 25, 2023, the District completed a Psychoeducational Evaluation of the Student. The Psychoeducational Evaluation noted that the Parent referred the Student for evaluation due to concerns related to the Student's emotional health and academic functioning. The evaluation noted that the Student was then placed on a 504 Plan due to diagnoses of Attention Deficit Hyperactivity Disorder and Anxiety. The evaluation was prepared to consider whether the Student is eligible for special education under the OHI and/or EBD.

As part of the evaluation the District administered the following assessments: File review, medical statement, observations, Behavior Assessment System for Children (BASC-3), Behavior Rating Inventory of Executive Function (BRIEF-2), Conners 4<sup>th</sup>, and a Functional Behavioral Assessment. The District reviewed historical data and past evaluations during the evaluation process. In 2018 the Parent and some of the Student's teachers completed a number of Autism Spectrum Rating Scales (ASRS), and the District completed the Autism Diagnostic Observation Schedule, 2<sup>nd</sup> Edition (ADOS-2). On the ASRS, both the Parent and the teachers indicated, elevated scores in social/communication, unusual behaviors, DSM-5 scales, adult socialization, and stereotypy. However, the ADOS-2 indicated that the Student's behaviors in the areas of communication, reciprocal social interactions, restricted and repetitive behaviors, "were consistent with a classification of non-spectrum."

At the time of the District's 2023 evaluation the Student received support through a 504 Plan. "According to the results of the evaluation, [the Student] has many academic and cognitive strengths as well as social, emotional and behavioral strengths. [The

Student] has medical diagnoses of Attention Deficit Hyperactivity Disorder, Anxiety, Oppositional Defiant Disorder and Post Traumatic Stress Disorder. [The Student's] parents are concerned with [their] social and emotional well-being as well as the impact these diagnoses may have on [the Student's] school performance and social life. Recent standardized cognitive and academic assessments show strong skills overall with relative strengths in Processing Speed and overall Reading skills. Recent private behavioral assessments indicate that [the Student] struggles with social behaviors and emotional problems in the home setting. Rating scales included in this evaluation indicate that [the Student's] overall view of [their] behavioral skills and well-being is typical for [their] age, while [their Parent] reports more challenging and unexpected behavior patterns as well as lagging skills in executive functioning that may create difficulties in [the Student's] day to day life. However, teacher rating scales and reports overall indicate typical behavioral skills, as well as typical levels of distress, or negative feelings based on [the Student's] age."

The District's evaluation included the Student's private evaluation data which recorded that the GARS-2 completed by the Parent indicated "Asperger's Disorder Quotient: 37<sup>th</sup> percentile (high/probably likelihood of Asperger's/Autism spectrum)."

29. On September 25, 2023, the District completed a Functional Behavioral Assessment (FBA) of the Student. The FBA concluded that that the Student engages in unexpected behavior as a means of escaping non-preferred tasks and difficult thoughts or feelings and to access specific sensory experiences.
30. On October 17, 2023, the Team met to determine the Student's eligibility for special education. During the meeting, the Parent observed that the Student was scoring poorly in some classes. The District noted that teachers were still getting to know the Student and that, as of the date of the meeting, the District had not yet had a grading period. The Parent voiced concern about the Student's standardized test scores. In response, the District noted that the Student demonstrated average skills. The Parent reported that, by the time the Student gets home, their medications have worn off, and when asked to do more work at home, the Student lacks the stamina and focus. In response, the District reported that it is common that students who "hold it together during school, often let go at home." The Parent questioned the underlying data for the District's assessments. The Parent also suggested that the team would be better informed with that raw data, rather than only the evaluation report that summarized the data and provided scaled test scores.

During the meeting, the Parent acknowledged that their observations regarding the Student's behavior and engagement with school work and social situations came after the end of the school day. The Parent further acknowledged that these observations came after the Student had a full dose of ADHD medication during the school day, which could not be administered again for the afternoon/evening.

The Parent expressed concerns that the Student had numerous outstanding assignments and whether the Student's 504 Plan potentially excusing missed work assignments obscured the Student's work avoidance and social withdrawal in class. During the eligibility discussion, some of the Student's teachers reported that the

Student was not engaged in class, that they had not had any interactions with the Student, that the Student preferred to draw in class rather than engage, and that the Student did not interact with peers during class when group work was required. The Parent expressed concern that the District's evaluation included observations from teachers who had not yet had enough time to get to know the Student because of the recent transition from elementary school to middle school.

During the meeting, the District observed that some teacher observations were drawn from elementary school teachers, as the evaluations occurred early in the school year and the District had not yet had a grading period in the middle school setting. During the meeting, teachers did report that the Student exhibited some social withdrawal, work avoidance, and lack of engagement with teachers and peers.

The team did not complete the eligibility meeting on this date and agreed to reconvene at a later date.

31. On October 18, 2023, the Parent's Attorney sent an email to the District asking that the Psychoeducational Evaluation completed by the District be supplemented. The Attorney requested the following supplementation be included: (1) the Student's current teachers' assessments via BASC-3 and Connors-4 rating scale; (2) details from current teachers in the "recent Academic Progress" section; and (3) details in the "Current Assessment Results" to include results of the Oregon Statewide Assessment from grades 3, 4, and 5. The Attorney asked that the District provide PWN in response to these requests.
32. On October 20, 2023, the District provided the Parent with PWN of its refusal to take the actions suggested by the Parent's Attorney in their October 18, 2023 email.
33. On October 22, 2023, the Parent's Attorney sent an email to the District reiterating their request made in their October 18, 2023 email. The Parent's Attorney also noted that the District's deadline to complete the evaluation was November 7, rather than October 26, as the Parent signed consent on June 1, 2023. The Attorney also requested that the District provide the Parent with copies of all educational records related to the Student.
34. On October 23, 2023, the District sent the Parent a Notice of Team Meeting for a meeting to determine whether the Student was eligible for special education. That meeting was scheduled for October 26, 2023.
35. On October 26, 2023, the Student's IEP team met to continue the eligibility discussion. The Student's IEP team determined that the Student did not qualify for special education services in the areas of OHI and EBD. The Parent was not in agreement with this decision.
36. On October 26, 2023, the District completed the Confidential Statement of Eligibility for Special Education for the eligibility category of EBD. The team indicated that the Student displays inappropriate types of behavior or feelings under normal circumstances, and that the Student meets the requirements to be considered a child

with an EBD, but that the Student does not need special education services as a result of the disability.

37. On October 26, 2023, the District completed the Confidential Statement of Eligibility for Special Education for the eligibility category of OHI. The team indicated that, while the Student has a permanent or acute health condition, that condition does not have an adverse impact on the Student's educational performance, and therefore the Student does not need special education services.
38. On November 6, 2023, the Parent's Attorney sent a letter to the District expressing concern that requests made at the October 17, 2023, and October 26, 2023 eligibility meetings for records, specifically copies of the evaluation report and eligibility determination for the Student, had not yet been provided by the date of the letter. The Attorney included in the letter a request for all records, including student answer sheets, assessor scoring sheets for evaluations conducted by the District, teacher reported assessment scores, and reports referred to during the October meetings.
39. On January 3, 2024, the Parent's Attorney filed this Complaint on the Parent's behalf.
40. On January 26, 2024, the District provided its *Response*.

The District observed that the team members did not consider ASD after reviewing the private evaluation provided by the Parent. Furthermore, the District observed that the Student's Physician, when completing the May 30, 2023, medical statement or health assessment statement, indicated diagnoses of ADHD, PTSD, Anxiety, and Oppositional Defiant Disorder, and not ASD. The District specifically highlighted that "the combination of an OHI and EBD evaluation would encompass much, if not all, of what would be captured under an ASD evaluation, including social-emotional evaluations, medical examinations, behavior rating scales, observations, and even potential developmental or social histories."

With regard to the Parent's allegation that the District had not responded to records requests, the District observed while the relevant statute was amended, that implementing OAR had yet to be amended, and therefore the existing administrative rules governed this matter. The Parent reports that neither they nor their Attorney have received any of the requested records.

41. On February 15, 2024, the Complaint Investigator interviewed the Parent, with the Parent's Attorney present. The Parent expressed concern that issues related to the Student's potential eligibility for special education were not properly considered by the District. The Parent explained that the Student had exhibited social withdrawal since the Student was initially found eligible for special education in 2018. The Parent explained that the Student suffered from anxiety and PTSD, and that certain underlying causes of the PTSD were not known at the time Student was initially found eligible for special education. The Parent acknowledged that the Student performed well academically, due in part to attentive teachers and counseling and tutoring provided outside of school. The Parent noted that the Student's social anxiety inhibited the Student's ability to access their education and that this was a potential need for

SDI. The Parent highlighted certain behaviors that were not addressed in the Student's September 25, 2023, psychoeducational evaluation, such as suicidal ideation, threats of violence, difficulty understanding cultural sensitivities, and the Student's struggles with social situations that have led to physical encounters with peers.

The Parent also observed that, during the eligibility meeting held on October 17, 2023, the District reported that the Student's middle school teachers were still getting to know the Student. The Parent raised concern whether the District appropriately considered reports from teachers who highlighted the Student's social withdrawal, failure to interact with peers, and work avoidance. The Parent reported one teacher's comments during the eligibility meeting who stated that the Student had never spoken to them. The Parent also highlighted that the Student had numerous missing assignments. The Parent noted that they were unsure whether the Student's 504 Plan allowed teachers to calculate grades even with missing assignments, or if the District disregarded missing assignments when determining course grades. The Parent provided additional concerns relevant to the potential connection between social withdrawal and missing assignments.

The Parent reported numerous behavioral concerns dating back several years that the Parent felt were relevant to the District's child find obligations. The Parent stressed that many behaviors involving withdrawal, socialization, inappropriate behaviors, concerning verbalizations, and altercations with peers, were relevant to the Student's special education eligibility.

The Parent's Attorney observed that Senate Bill 758, modifying ORS 343.173(1), passed in 2023, prior to the start of the 2023-24 school year. Neither the Parent nor the Parent's Attorney had received any of the requested records at the time of this interview.

42. On February 21, 2024, the Parent provided additional documentation relevant to their concerns.
43. On February 27, 2024, the Complaint Investigator interviewed the District's Director of Special Education and the School Psychologist who evaluated the Student. The District reported that, following the review of the private evaluation provided to the District by the Parent on March 9, 2023, the District did not have concerns regarding ASD for the Student. The School Psychologist recognized that the evaluation included the Parent scoring the Student in the "high/probably likelihood of Aspergers/Autism spectrum," but reported that the Student did not exhibit attendance concerns, challenges with interpersonal skills, or difficulty with transitions. As part of the evaluation process the School Psychologist spoke with teachers and staff and the behavioral health and wellness team at the Student's elementary school, none of whom reported concerns that would suggest ASD. During the May 17, 2023 evaluation planning meeting, the evaluation team decided to evaluate the Student for potential eligibility for special education in the categories of EBD and OHI. The District was aware of the Parent's concerns regarding ASD expressed in a May 22, 2023 email. However, given the lack of evidence associated with an impact from ASD in the school

setting, the District determined that an ASD evaluation was not warranted.

The School Psychologist noted that as part of the evaluations conducted, had the Student shown behaviors indicative of ASD, the District would have sought consent from the Parent to include additional evaluations as needed.

44. The District acknowledged receiving the Parent's records requests. The District understood the requests as requests for the underlying score sheets and protocols utilized in the Student's evaluations. The District reported having told the Parent that such materials were covered by copyright and could not be shared.

## IV. DISCUSSION

### **Child Find**

The Parent alleged that the District violated the IDEA when it failed to identify and evaluate the Student as a child with a disability in need of special education services. It is specifically alleged that the District failed to recognize the Student's needs stemming from the Student's ADHD, PTSD, anxiety, and oppositional defiance disorder. It is further alleged that the Student's needs were evident in such areas as the Student's attendance, social skills, and self-advocacy.

School districts must identify, locate, and evaluate all children with disabilities for whom they are responsible. Districts must ensure this responsibility is carried out no matter the severity of the disability, and for all children who need early intervention, early childhood special education, or special education services. This requirement includes children who are suspected of having a disability even though they are advancing from grade to grade.<sup>3</sup>

The Complaint includes observations regarding the Student dating back to 2017-18 school year. The District previously found the Student eligible for special education under the category of Other Health Impairment. The Student was exited from special education on January 10, 2020. The District subsequently supported the Student through a 504 Plan starting on February 4, 2020. As such the District recognized the Student as a student with a disability. On March 9, 2023, the Parent, through their Attorney, requested that the District evaluate the Student for eligibility for special education in the areas of Emotional Behavior Disability, Other Health Impairment, and Specific Learning Disabilities related to reading, writing, and math. The Parent observed that the request was in response to the Student's social skills (interacting with others), classroom success skills (executive functioning), attention to task, and delays in the Student's ability to begin/focus on tasks. In response to the Parent's request, the District did evaluate the Student for special education eligibility.

The Department does not substantiate this allegation.

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<sup>3</sup> OAR 581-015-2080(2)

## **General Evaluation and Reevaluation Procedures**

The Parent alleged that the District violated the IDEA when it failed to assess the Student in all areas related to their suspected disabilities. Specifically, it is alleged that the Parent requested that the District evaluate the Student for social, emotional, coping skills, and Autism Spectrum Disorder (ASD), and that the District did not fully evaluate the Student.

In conducting evaluations, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. This assessment data should include information provided by the parent. The school district should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate education program for the child. Assessment tools should be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Districts must ensure that assessments and other evaluation materials used are appropriately selected and administered, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of the assessments. Assessment and evaluation materials should include those tailored to assess specific areas of educational need. Children should be assessed 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. Districts must ensure that the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs.<sup>4</sup>

For students suspected of having autism spectrum disorder, a comprehensive evaluation must be conducted. The comprehensive evaluation must include a developmental history, information from parents, observations, a social communication assessment, a Standardized Autism Identification Tool, and a medical examination, among other sources of reference. Additional assessments may also be administered to determine a student's needs. A medical diagnosis of autism spectrum disorder is not required to determine eligibility.<sup>5</sup>

On March 9, 2023, the Parent, through their Attorney, sent an email to the District requesting that the District evaluate the Student for special education eligibility in the areas of "emotional behavioral disability, other health impairment, and specific learning disabilities in reading, writing, and math." On May 17, 2023, the District held an evaluation planning meeting to consider the Parent's request. At this meeting, the Parent provided the District with the results of a private evaluation conducted by the Student's Neuropsychologist. This evaluation included information relevant to the Student's potential ASD eligibility. Following the meeting, the District sent the Parent a PWN of its intent to evaluate the Student in Emotional Behavior Disability and Other Health Impairment.

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<sup>4</sup> OAR 581-015-2110(3)—(4)

<sup>5</sup> OAR 581-015-2130(2)—(3)

On May 18, 2023, the Parent requested whether a specific staff member could complete the GADS (Gilliam Asperger's Disorder Scale) for the Student due to this staff member's familiarity with the Student's socialization during less-structured activities. On May 22, 2023, the Parent sent an email to the District in reference to the proposed evaluations, writing in relevant part, "My concern is whether or not this additional evaluation in the area of ADHD will provide any new information that we do not already know. If you are using these instruments to gain more insight into ASD behaviors and ODD, then I understand your application". The Parent signed the consent for evaluation in the areas of Emotional Behavior Disability and Other Health Impairment on June 1, 2023. On June 6, 2023, the Parent raised further concerns about Autism Spectrum Disorder in an email to the District.

As part of the evaluation planning process, the District considered numerous indicators regarding ASD. The Student did not exhibit attendance concerns, interpersonal skills, or difficulty with transitions. As part of the evaluation process, the School Psychologist spoke with teachers and staff and the behavioral health and wellness team at the Student's elementary school, none of whom reported concerns that would suggest ASD. The private evaluation provided by the Parent included concern for ASD as the result of the Parent's observations rather than in the educational environment. The District did not have data to suggest the Student exhibited concerns in the educational environment that would warrant an evaluation for ASD. The District acknowledged that Student exhibited some social behaviors of concerns, but reported that these were consistent with the Student's anxiety diagnosis, and conducted evaluations related to the Student's behavioral needs.

On October 17, 2023, and October 26, 2023, the District and Parent met to consider the Student's eligibility for special education. As part of the meeting the Parent raised concerns regarding whether the District appropriately considered the Student's social interactions and teacher reports regarding the Student's social interactions in class and with peers. As part of the District's *Response*, it observed that "the combination of OHI and EBD evaluations would encompass much, if not all, for what would be captured under the ASD evaluation...".

The District agreed that an evaluation for special education was warranted for the Student. Based on a review of relevant information, it reasonably concluded that evaluations for special education eligibility would be conducted in the categories of OHI and EBD, and that these evaluations were sufficiently comprehensive to determine whether the Student had a disability, and, if so, required specially designed instruction.

The Department does not substantiate this allegation.

### **Determination of Eligibility**

The Parent alleged that the District violated the IDEA when it failed to identify the Student as a student with a disability who required specially designed instruction. Specifically, it is alleged that the District did not appropriately consider the Student's

emotional/behavioral disorder, and failed to consider eligibility under Autism Spectrum Disorder (ASD).

After completing the administration of assessments and other evaluations, a team must determine whether the child is a child with a disability and the educational needs of the child. That team must include the parent, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. The team must prepare an evaluation report and written statement of eligibility. The evaluation report must describe and explain the results of the evaluation conducted. The written statement of eligibility must include a list of the evaluation data considered in determining the child's eligibility. That written eligibility statement must also include a determination of whether the child meets the minimum evaluation criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180 or 581-015-2797.<sup>6</sup>

The Parent initially requested that the District evaluate the Student in Emotional Behavior Disability, Other Health Impairment, and Specific Learning Disability, which the District agreed to. The District's evaluation did not include ASD, nor did the evaluation include a Standardized Autism Identification Tool. The team did not find the Student eligible for special education under the eligibility categories considered.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleged that the District violated the IDEA when it denied the Parent an opportunity to fully participate in the eligibility determination meeting held for the Student. Specifically, it is alleged that the District did not provide the Parent with information relevant to the Student's eligibility for special education. The Parent alleged that the District did not provide information such as: information regarding the Student's missing assignments; current grades; work samples; and, anecdotal reports from the Student's current teachers. The Parent also alleged that relevant information was provided during the meeting in verbal form, rather than in written form in advance of the meeting; and not included in evaluation reports produced regarding the Student.

A school district must take steps to ensure that one or both parents of a child with a disability are present at each IEP or placement meeting or are afforded an opportunity to participate. Such efforts include notifying parents of the meeting early enough to ensure that they will have an opportunity to attend. District should schedule meetings at a mutually agreeable time and place. District should make efforts to ensure parents can attend, offer alternative means of attending, such as phone or video conference. Districts should document attempts to contact parents regarding meetings.<sup>7</sup>

The District held two meetings to determine the Student's eligibility for special education on October 17, 2023, and continued on October 26, 2023. During the October 17, 2023,

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<sup>6</sup> OAR 581-015-2120(1)—(4)

<sup>7</sup> OAR 581-015-2195(1)—(6)

meeting, the Parent discussed the potential that they and the team required additional data, specifically assessments completed by teachers and data underlying summaries and conclusions in the District's evaluation. District staff disputed the necessity of this data during the meeting. On October 22, 2023, and November 7, 2023, the Parent through their Attorney, requested records from the District relevant to data, assessments, and observations used to create the Student's evaluation. The eligibility meetings were completed prior to the deadlines for the District to provide responsive documents or access to records.

The request for records relevant to the Student's evaluations came between the two eligibility meetings. Given the eligibility meeting schedules, and the dates the Parent requested access to the Student's education records relevant to the District's evaluation, the District still had time to respond to the request prior to the second meeting. Some district staff present for the meeting disputed the need to review the underlying data, relying instead on the evaluation report. There is insufficient information in the record to determine the necessity of the underlying records for the Parent's participation in the eligibility meeting.

The Department does not substantiate this allegation.

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

The Parent alleged that the District violated the IDEA when it failed to provide copies of the Student's records, or allow the Parent access to Student records, which the Parent requested on or about November 6, 2023.

A school district must comply with a parent's request to inspect and review records without unnecessary delay. Districts must comply with such requests ahead of an IEP meeting. Prior to July 2023, districts had up to 45 days after the request was made to comply with such records request.<sup>8</sup> In July 2023, the Oregon legislature passed Senate Bill 758, amending ORS 343.173(1), to read, "Records must be provided without undue delay, which may not exceed 10 business days, as defined in ORS 192.311, from the date of the request for the records."<sup>9</sup>

The Parent requested educational records on October 22, 2023 and November 7, 2023. The October 22, 2023, email from the Parent's Attorney asked for the "results of curriculum-based assessments," and "all educational records related to [the Student's] evaluation, including qualitative and quantitative records, student answer sheets, and evaluator notes...". On November 6, 2023, the Parent's Attorney sent a letter to the District requesting all educational records, including underlying assessment score sheets and data relevant to the Student's evaluation. During the Complaint Investigator's interview with the District, District staff reported understanding the Parent's request for records to relate to copyrighted assessment data and score sheets; however, this is an unreasonably narrow interpretation of the emails sent by the

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<sup>8</sup> OAR 581-015-2300(2)—(3)

<sup>9</sup> ORS 343.173(1) [2023]

Parent's Attorney. The District has not provided any of the requested information to the Parent, nor has the Parent been invited to review the Student's educational records.

The Department substantiates this allegation.

### **Prior Written Notice (PWN)**

It is alleged that the District violated the IDEA when it failed to provide the Parent with Prior Written Notice of whether the reevaluations requested by the Parent in October 2023, were refused by the District.

School districts must provide Prior Written Notice to the parent of a child, within a reasonable time, when the District proposes to initiate or change the identification, evaluation, or educational placement of the child. A District must also provide Prior Written Notice when it refuses to initiate or change the identification, evaluation, or educational placement of FAPE to the child. The Prior Written Notice must include a description of the proposed or refused action and be written in language understandable to the general public.<sup>10</sup>

On October 18, 2023, following the October 17, 2023, eligibility meeting, the Parent's Attorney sent an email to the District asking that the Psychoeducational Evaluation completed by the District be supplemented in specific ways. The Attorney asked that the District provide Prior Written Notice in response to each of the three requests. The Attorney requested the following supplementation be included: (1) the Student's current teachers' assessments via BASC-3 and Connors-4 rating scale; (2) details from current teachers in the "recent Academic Progress" section; (3) details in the "Current Assessment Results" to include results of the Oregon Statewide Assessment from grades 3, 4, and 5. On October 20, 2023, the District provided the Parent with Prior Written Notice of its intent to refuse the suggested modification to the psychoeducational evaluation prepared by the District.

The Department does not substantiate this allegation.

## **VII. CORRECTIVE ACTION<sup>11</sup>** *In the Beaverton School District* *Case No. 24-054-002*

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

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<sup>10</sup> OAR 581-015-2310(2)—(5)

<sup>11</sup> 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 As Soon As Possible But Not Later Than        |
|--|--|---|
| 1. The District will provide the Parent with copies of requested education records that are not subject to copyright restrictions.   | Evidence that requested education records that are not subject to copyright restrictions have been provided to the Parent.                   | <b>March 15, 2024</b>                             |
| 2. The District will conduct staff training of licensed and administrative staff at the middle school regarding the District's obligation to timely produce requested records, and the District's policies, practices, and procedures to ensure that occurs. | Training materials/agenda to be provided to District Support Specialist.<br><br>Sign-in Sheet to be provided to District Support Specialist. | <b>April 15, 2024</b><br><br><b>June 15, 2024</b> |

Dated: this 1st Day of March 2024




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Tenneal Wetherell  
 Chief of Staff  
 Oregon Department of Education

E-mailing Date: March 1st, 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).)