

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of West Linn Wilsonville
School District 3J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-005

I. BACKGROUND

On January 11, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the West Linn Wilsonville School District 3J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On January 17, 2024, the Department’s 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 January 31, 2024.

The District submitted a *Response* on February 2, 2024 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, dated 2/2/24
2. Outside Agency, Neuropsychological Evaluation Report, 5/11/23, 5/18/23, 6/1/23
3. Parent/Guardian Consent for Individual Evaluation, 12/15/23
4. Student Consent for Evaluation, 1/4/24
5. Notice of Team Meeting, Evaluation Planning, 12/15/23
6. Meeting Attendance/Summary, Evaluation Planning, 12/15/23
7. Meeting Notes, Evaluation Planning, 12/15/23
8. Prior Written Notice, Evaluation Decision, 12/15/23
9. Student Observations, Summary, 11/14/23
10. Vanderbilt Assessment Scale, ADHD Toolkit Teacher-Informant Form, 6/2/23
11. Vanderbilt Assessment Scale, ADHD Toolkit Teacher-Informant Form, 5/30/23
12. Enrollment History, 2022-2023 school year, no date
13. Request for Student Transfer to Other Program, 1/23/24
14. Behavior Incident Referral, 5/25/23
15. Behavior Incident Referral, 5/16/23
16. Middle School Office Referral, 2/1/22
17. District Letter to Parents, 2/1/24

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

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

18. Untitled Document, Snapchat Screenshot, no date
19. Student Incident Notes, 12/7/no year
20. Student Discipline Profile, 2023-2024 school year, 1/22/24
21. Expulsion Hearing, Meeting Notes, 12/5/23
22. District Letter to Parents, 11/21/23
23. Statement from the Student and Family, 11/29/23
24. Untitled, Snapchat Screenshot, no date
25. Untitled, Security Camera Still Shot, no date
26. District Public Instagram Post, 10/18/23
27. Untitled, Social Media Screenshot, no date
28. District Letter to Parents, Expulsion Confirmation, 12/6/23
29. District Letter to Parents, Updated Letter, 11/30/23
30. Confidential, Expulsion Report, no date
31. Student Expulsion Hearing Presentation Personal Notes, no date
32. District Expulsion Procedures, 12/4/23
33. District Special Education Handbook, Discipline in Special Education, no date
34. District Special Education Handbook, Evaluation, no date
35. Student Test History, 2023-2024 school year, 1/22/24
36. Transcript, Middle School, 6/20/23
37. Permission to Obtain and Release Information, Photo, 5/29/23
38. Daily Attendance by Week, 8/22/23-6/28/24, 2/6/24
39. Period Student Attendance Profile, 2023-2024 school year, 2/6/24
40. Transcript, High School, 2/7/24
41. Emails from November 18, 2022 through January 10, 2024

The Parents submitted a *Reply* on February 9, 2024, providing an explanation and rebuttal and documents in support of the Parents' position. The Parents submitted the following relevant items:

1. Parents' Reply to the District's Response to RFR, 2/9/24
2. Permission to Obtain and Release Information, no date
3. [Medical] Clinic, Appeal Letter, 4/21/23
4. [Medical] Clinic, Problem List (active), 11/26/23
5. Visits to Monitor Weight, Blood Pressure, and Heart Rate, no date
6. [Outside Agency] Behavioral Health, Psychiatric Progress Note, 2/9/23
7. Emails from March 6, 2022 through January 5, 2024

The Complaint Investigator interviewed the Parents and District personnel on February 12, 2024. 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 12, 2023, to the filing of this Complaint on January 11, 2024.

Allegations	Conclusions
<p>Child Find</p> <p>The Parents alleged that the District violated the IDEA when it failed to find the Student eligible for special education services when the District became aware that the Student had a disability in February 2023. The Parents further alleged that the District also had knowledge that the Student had a disability due to the behavior needs of the Student at the School and when the Parents provided the District with an evaluation report.</p> <p>(OAR 581-015-2080; 34 CFR §300.111)</p>	<p>Not Substantiated</p> <p>The District did not suspect that the Student experienced a disability when the Student was expelled. When a 504 Plan or an IEP was requested after the expulsion, the District promptly initiated their child find procedures.</p>
<p>Manifestation Determination</p> <p>The Parents alleged that the District violated the IDEA when it failed to conduct a manifestation determination review before expelling the Student from the School.</p> <p>(OAR 581-015-2420; 34 CFR §300.530)</p>	<p>Not Substantiated</p> <p>The Student was not identified as a student with a disability or suspected of having a disability and conducting a manifestation determination review was not required.</p>

REQUESTED CORRECTIVE ACTION
<p>The Parents requested that the Department order the District to take the following corrective action: “We as parents ask the Oregon Department of Education to release [the Student] of expulsion and remove it from [their] record. Note that [the Student] has already served 6 days of suspension and over a month of expulsion. It took the [D]istrict 2 weeks and multiple parent inquiries to get [the Student] access to online education under its WOKA program, during which time [the Student] had zero education resources. Given [the Student’s] ADHD, depression, and other disabilities, it is crucial that [the Student] receives in-person education. This is supported by [the Student’s] decline in academic performance and [the Student’s] mental health during COVID distance learning. We also request that [the Student] be released from the [D]istrict so that [the Student] may transfer to another district high school.”</p>

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 January 12, 2023. 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 14 years old, in the ninth grade, and attended the Middle School, the High School, and an Online Academy hosted by a high school in the District during the Complaint period.

2. The Student was treated in a “partial hospitalization treatment facility” from November 2022 through January 2023 for a medical condition.
3. The Parents described the Student as bringing “interesting thoughts and insights to conversations. [The Student] has a unique perspective and [is] a good problem-solver. [They love] animals. [They try] to hold [themselves] accountable. [The Student] maintains good grades.”
4. The Student’s academic test history, described in a Student Test History report, indicated that between 2016 and 2022, the Student scored between the 43rd percentile and the 96th percentile on all academic testing documented. The Student Test History also indicated scores on the Developmental Reading Assessment (DRA) that were at or above grade level when the Student was assessed.
5. The Student’s Enrollment History indicated the following enrollment dates:
 - a. Enter Date: August 30, 2022, Leave Date: November 18, 2022, with a Leave Code of 3A, which indicated the Student withdrew from the School for personal or academic reasons;
 - b. Enter Date: November 28, 2022, Leave Date: January 27, 2023, with a Leave Code of 1A, which indicated enrollment in the same school or program; and
 - c. Enter Date: January 31, 2023, with an Enter Code of R4, which indicated reentry after withdrawal; no Leave Date was indicated.
6. According to the Student’s Middle School Transcript, the Student missed 6.5 days in 6th grade, 5.0 days in 7th grade, and 15 days in 8th grade. The Student’s Middle School Transcript listed the following letter grades:
 - a. 6th grade
 - i. A’s: 10;
 - ii. B’s: 9; and
 - iii. C’s: 5.
 - b. 7th grade
 - i. A’s: 23; and
 - ii. B’s: 1.
 - c. 8th grade
 - i. A’s: 11;
 - ii. B’s: 6;
 - iii. C’s: 2;
 - iv. Pass (P): 1; and
 - v. No Grade (NG): 4.
7. In an interview with the Complaint Investigator, the Parents described the Student’s academics and behavior in each of the grades:
 - a. 6th grade:
 - i. The Student’s grades were C’s;
 - ii. The Student did not do well online; and
 - iii. The Student was not engaged in learning. The Student was depressed.
 - b. 7th grade:
 - i. The Student performed well academically, but there was an obsession that went hand-in-hand with restrictive eating. The Student was waitlisted for an

outside evaluation. The Student and an unknown student had challenging interactions.

c. 8th grade:

- i. The Parents noticed a change in the Student in the fall of 2022;
- ii. The Student was pacing in the home and restricting their eating at the School;
- iii. They notified the School that the Student would be receiving medical treatment for a medical condition;
- iv. The Parents described self-harm behavior that was happening at home;
- v. The Student was in a treatment program from November to February; and
- vi. The Student was doing well academically.

8. The Parents indicated in an interview with the Complaint Investigator that the Student self-harmed by scratching themselves on two occasions at the School:
 - a. Once, while the Student was in the office serving an in-school suspension; and
 - b. Once, on a field trip.

The Parents did not notify the School that the Student was self-harming.

9. When asked by the Complaint Investigator about the communication the Parents received from the School during the Student's time at the Middle School, the Parents described several calls on the following topics: writing on a locker, in-school suspension (ISS) for reasons that the Parents did not recall, graffiti, and a noticeable walk/gait change.
10. On October 12, 2022, the Parents emailed the 8th Grade Science Teacher: "I wanted to reach out and let you know about [the Student's] current situation. [The Student] is being treated for anorexia and is seeing [their] pediatrician and therapist weekly; as such [the Student] has/will be absent for various class periods so I wanted to make you aware. We are in a holding pattern currently and on several wait lists for further evaluations to assess the level of care that [the Student] needs. [The Student] is pretty sensitive about school staff and friends knowing about this, but [the Student] agreed to reaching out to you as [their] advisor . However, if there is anyone else that should be notified, please let me know (school counselor or psychologist, etc.)." The Student's Advisor responded: "What an incredibly difficult thing for [the Student] to be battling with ... I'm glad that [the Student's] getting the medical and emotional help that [the Student] needs and we'll continue to accommodate for this unique situation as teachers and school staff."
11. On October 23, 2022, the Parent emailed the Middle School Counselor: "I'm wondering if we could set up a call regarding a medical issue that [the Student] is dealing with. I know that [the Student] is assigned to [the Other Counselor] as the Student's counselor, but I believe you would be a more suitable advocate for [the Student]. Please let me know if there is a time that we could have a quick call to assess [the Student's] academic and social needs, or if there is another staff member that I should reach out to. So far I have only notified [the Student's] advisory teacher ...".
12. During an interview with the Complaint Investigator, the Middle School Counselor shared that the Student was not originally on their caseload, but the Parents requested that the Student be added to the Middle School Counselor's caseload. The Middle School Counselor recalled that the Parents wanted recommendations for treatment centers for eating disorders. The Middle School Counselor described that they knew the Student experienced an eating

disorder and that the Parents wanted the Teachers to be told that the Student experienced a “medical condition.” The Middle School Counselor shared that no medical diagnosis was shared and that the Parents did not respond to their inquiry about the support that would be needed at school. The Middle School Counselor did not suspect that the Student experienced a disability.

13. The Middle School Assistant Principal shared in an interview with the Complaint Investigator that they knew the Student was receiving treatment for an eating disorder, but that communication was limited with the family and that the family did not request support.
14. On November 18, 2022, the Parents informed the Middle School Counselor through email: “[The Student] will be at [the Hospital] with their intensive outpatient program starting at 5 days/week. It’s individualized so we don’t know how many weeks [the Student] will be there but will keep you informed. I believe [the] average is around 8-10 weeks.” The Middle School Counselor informed the Student’s teachers that the Student would be “out of school due to a medical condition. [The Student] will still be able to access [their] Google Classrooms and can complete work/assignments but if there are certain assignments that [the Student] can be excused from, please let [them] know.” The Parents indicated, “Please note that this is a confidential medical condition so please do not ask [the Student] about it.”
15. On January 27, 2023, the Parents emailed the Student’s teachers to alert them that the Student would be returning to school after having been in treatment for a medical condition: “I’m sorry we haven’t communicated regarding [the Student’s] school work. We were hopeful that [the Student] would be able to do online assignments but [the Student’s] treatment was more consuming than expected. I apologize if special accommodations were made that [the Student] didn’t utilize.” the Parents shared that “...The first two weeks [the Student] will have some partial days (early pick up), but then full time thereafter with the exception of occasional appointments.”
16. On January 30, 2023, the Middle School Counselor emailed the Parents: “Did [the Student’s] program provide you with any parameters or accommodations on what is expected at school? A couple [of] things I was thinking about based on what I have experienced with past students ... [the Student] is scheduled to have Wellness this semester. Sometimes this can be triggering for students as nutrition is talked about in Health as well as Body Mass Index. Sometimes dressing down can also be a trigger. We can put [the Student] back in Spanish if [they] would like or we could possible [*sic*] get [the Student] a different option too. What about food intake? One accomodation [*sic*] was a student who didn’t feel comfortable eating in front of others so we created a space in the office. It was also asked of lunch staff to somewhat monitor the student eating. If you could please provide us with any of that information we might need to know, that would be greatly appreciated [*sic*]!”
17. On January 30, 2023, the Middle School Counselor emailed the Student’s teachers with the Student’s schedule and alerted them that “[The Student] feels comfortable addressing [their] peers if they ask where [the Student] has been. However, please let me know if anything comes up and if it seems like [the Student] may need support.”
18. During an interview with the Complaint Investigator, the 7th and 8th Grade Language Arts Teacher remarked on the Student’s smooth reintegration into school life after an extended absence, highlighting their sociable nature. The 7th and 8th Grade Language Arts Teacher did

not recall that any accommodations were necessary or requested by the Parents upon the Student's return.

19. On February 1, 2023, the Middle School Counselor received an email from an unknown person alerting them to additional online bullying toward an unknown student. The Student was referenced as someone who was "looped in" to Snapchat conversations involving the unknown student.
20. On February 9, 2023, the Parents emailed the Middle School Counselor and requested the Student attend virtual sessions with the Student's Private Dietician during school hours in the School Office. "Transitions can be tough for [the Student], and [they are] struggling a bit with friend groups after being gone for so many weeks (e.g., friends have moved on, no longer included, etc.). So far [the Student] reaction seems to be pretty typical teenage behavior, but please let us know if there is anything we should be aware of [*sic*]." The Middle School Counselor responded that they would "look into a space where we can offer [the Student] at school to meet with [their] dietician" On February 21, 2023, the Middle School Counselor confirmed with the Parents that the Student would be able to use the School Office for virtual appointments on occasion but not weekly.
21. On March 7, 2023, an unknown person emailed the Middle School Counselor to share that "[The unknown student] came home pretty upset again - [the Student] is harassing [the unknown student] on the bus, meowing like a cat, trying to get [the unknown student] to react. Thought you would want to know – and if [the Middle School Principal] could please handle it."
22. In an interview with the Complaint Investigator, the Middle School Assistant Principal recalled that the Student was a "solid student" and that there were no concerns about the Student's academics or behavior. The Middle School Assistant Principal indicated that they noticed a change in the Student when a police investigation commenced in late spring of 2023. The Middle School Assistant Principal did not suspect that the Student experienced a disability.
23. The Parent provided a letter to the Complaint Investigator from the Student's Physician dated April 21, 2023 that listed the Student's diagnoses and described the recommended treatment. In the interview with the Complaint Investigator, the Parents stated that this letter was not provided to the School. Medical office visit notes were also provided to the Complaint Investigator. The Parent acknowledged that they did not provide this information or documentation to the School. The Parents indicated that they (the Parents) had not received the information until December of 2022.
24. On May 2, 2023, the Choir Teacher emailed the Parents: "I just wanted to reach out and let you know that [the Student] has a tendency to wander and be missing from my class. I thought it might be extra important, given whatever was going on with [the Student] earlier in the year when [the Student] was gone. [The Student] would take [*sic*] an excuse to go out, using the bathroom or some other task, and then be reported as wandering somewhere else or missing. I now don't let [the Student] use the bathroom for that reason, but [the Student] came in 25 minutes late to my class today and the office didn't know where [the Student] had been. Please let me know if there is something that I should be aware of, and I wanted to let you know as well."

25. On May 8, 2023, the 8th Grade Language Arts/Social Studies Teacher emailed the School's front office staff to inquire, "Was [the Student] down there for a while? [The Student] just came back to class and told me [the Student] was in the health room/office." An Administrative Assistant replied that the Student was neither in the front office nor with the nurse.
26. On May 16, 2023, a Behavior Incident Referral was submitted by a Physical Education (PE) Teacher for "non-compliance/disrespect, skipping, [and] tardies." Interventions attempted by the Teacher included redirecting the behavior, reteaching expectations, and reinforcing expectations. Previous interventions included collaborating with the staff, redirection, and reteaching. The incident was described as follows: "[The Student] arrived to class 5 min [sic] late walking into the locker room on [their] phone. We have had several conversations about [their] tardies and phone use. I directed [the Student] to turn [their] phone into [a staff member] ... and come back to class. [The Student] had not returned after 15 min [sic] and [the Student] was found ... walking the halls."
27. On May 19, 2023, the 7th and 8th Grade Language Arts Teacher sent an internal email to office staff, administration, and the Middle School Counselor to describe their concerns about the Student: "I'm writing to communicate my concerns for [the Student] over the last several weeks. This morning, I had marked [the Student's] absence. [The Student] just slipped into the classroom 5 minutes late. This is a pattern: late or needing to leave class, and gone for extended periods of time. [The Student] is not self-starting in [their] work, which [the Student] generally has been over the course of the last two years. [The Student] is a gifted writer and a prolific reader. [The Student] isn't carrying a book, as [they] usually would, and [the Student] is not engaging in activities without many, many encouragements and redirections. [The Student] often looks unwell, lacking color in [their] face or a sweat on [their] face. [The Student's] walking changed a few weeks ago. [The Student] now walks with a bent knee in [their] gait. I'm concerned about [the Student] and I wish I knew what is going on."
28. On May 24, 2023, the Middle School Counselor responded to the 7th and 8th Grade Language Arts Teacher's email confirming that the Middle School Counselor had communicated with the Parents about the Student's "gait, appearance, and tardies/being out of class." On May 25, 2023, the Middle School Assistant Principal confirmed that they spoke with the Parents about the concerns the 7th and 8th Grade Language Arts Teacher described in their May 19, 2023 email. The 7th and 8th Grade Language Arts Teacher reiterated in an interview with the Complaint Investigator that the Student looked unwell, but the 7th and 8th Grade Language Arts Teacher did not know why.
29. In an Interview with the Complaint Investigator, the 7th and 8th Grade Language Arts Teacher expressed that the Student was academically skilled in writing and critical thinking. The 7th and 8th Grade Language Arts Teacher shared that the Student was often tardy to class. The 7th and 8th Grade Language Arts Teacher indicated that they emailed the Principal and Assistant Principal with their concerns but, at no point, did the 7th or 8th Grade Language Arts Teacher suspect that the Student experienced a disability.
30. On May 22, 2023, the Parents emailed the 7th and 8th Grade Language Arts Teacher: "[The Student] is doing a neuropsychological evaluation with [the Doctor]. As part of this [the Doctor] is requesting some input from your observations as [the Student's] teacher [sic]."

31. On May 25, 2023, the Parents emailed the Math Teacher to express concerns about the Student's struggles in math. The Parents followed up with an email on May 31, 2023, and the Math Teacher responded that same day: "[The Student] has been struggling to engage in [m]ath. [The Student] often comes 5-10 minutes late and then doesn't bring [their] materials so [the Student] has to go to [their] locker again to get them. Every time that we have an online assignment, I find [the Student] searching up things (usually online shopping) instead of engaging in the assignments ... [The Student] is very capable of the algebraic concepts." The Math Teacher continued with, "I will check in again with [the Student] today to see what the barrier is, but I believe the biggest barriers are socializing and surfing the internet in class. We use GoGuardians to help students stay on task, but [the Student] has been bringing a computer from home instead of using a school device."
32. On May 25, 2023, a Behavior Incident Referral was submitted by the Assistant Principal for the Student for "bullying/harassment/targeting." The Student was described as being involved in putting applesauce in another student's water bottle. Earlier in the day, the Student wrote a sexually explicit message to another student. Administrative action included "one day of in-school suspension" and "communication with [the] family."
33. On May 26, 2023, the Middle School Registrar emailed the Student's teachers to notify them that the Student "will be serving In-School-Suspension [ISS] for today." The reason for the ISS was not disclosed in the email.
34. The Middle School administration received GoGuardian technology alerts that identified the Student as accessing inappropriate website content on the following dates:
 - a. March 23, 2023, amazon.com, "Explicit";
 - b. April 6, 2023, wattpad.com, "Explicit";
 - c. April 12, 2023, wattpad.com, "Explicit";
 - d. April 16, 2023, wattpad.com, "Explicit";
 - e. April 16, 2023, [additional alert], wattpad.com. "Explicit";
 - f. April 16, 2023, goodreads.com, "Explicit";
 - g. June 6, 2023, cafemom.com, "Explicit";
 - h. June 6, 2023, google.com, "Explicit"; and
 - i. June 8, 2023, pinterest.com, "Explicit."
35. On May 29, 2023, the Parents signed a Permission to Release Information document for "psychological evaluations or social work reports" to be released from the Middle School to the Doctor for the purpose of a neurophysiological [sic] eval."
36. In an Interview with the Complaint Investigator, the Spanish Teacher described the Student as a good, smart student. The Spanish Teacher did not have concerns about the Student's behavior, nor did they suspect that the Student experienced a disability.
37. On May 30, 2023, the Spanish Teacher completed an Attention Deficit Hyperactivity Disorder (ADHD) Assessment Tool for the Student. The following information denoted the Spanish Teacher's responses in each category.
 - a. For statements 1-9, Behavior:
 - i. Zero behaviors were marked as "never" observed;
 - ii. Five behaviors were marked as "occasionally" observed;
 - iii. Four behaviors were marked as "often" observed; and

- iv. One behavior was marked as “very often” observed.
- b. For statements 10-18, Behavior:
 - i. One behavior was marked as “never” observed;
 - ii. Seven behaviors were marked as “occasionally” observed;
 - iii. One behavior was marked as “often” observed; and
 - iv. Zero behaviors were marked as “very often” observed.
- c. For statements 19-28, Behavior:
 - i. Six behaviors were marked as “never” observed;
 - ii. Two behaviors were marked as “occasionally” observed;
 - iii. Two behaviors were marked as “often” observed; and
 - iv. Zero behaviors were marked as “very often” observed.
- d. For statements 29-35, Behavior:
 - i. Zero behaviors were marked as “never” observed;
 - ii. Four behaviors were marked as “occasionally” observed;
 - iii. Three behaviors were marked as “often” observed; and
 - iv. Zero behaviors were marked as “very” often observed.
- e. For statements 36-43, Academic and Social Performance:
 - i. Zero subject areas were marked as “excellent”;
 - ii. Two subject areas were marked as “above average”;
 - iii. One subject area was not marked;
 - iv. One behavior was marked as “average”;
 - v. Three behaviors were marked as “somewhat of a problem”; and
 - vi. One behavior was marked as “problematic.”

38. On June 2, 2023, the 7th and 8th Grade Language Arts Teacher completed an ADHD Assessment Tool for the Student. The 7th and 8th Grade Language Arts Teacher indicated in an interview with the Complaint Investigator that the Student had extended absences from School, and they were asked to complete the form several months after the Student’s reentry to School. The 7th and 8th Grade Language Arts Teacher shared that they were not informed of the reasons they were asked to complete the questionnaire. The following information denoted the 7th and 8th Grade Language Arts Teacher’s responses in each category.

- a. For statements 1-9, Behavior:
 - i. Zero behaviors were marked as “never” observed;
 - ii. Five behaviors were marked as “occasionally” observed;
 - iii. Zero behaviors were marked as “often” observed;
 - iv. Three behaviors were marked as “very often” observed; and
 - v. One behavior was not marked.
- b. For statements 10-18, Behavior:
 - i. Six behaviors were marked as “never” observed;
 - ii. Two behaviors were marked as “occasionally” observed;
 - iii. Zero behaviors were marked as “often” observed; and
 - iv. One behavior was marked as “very often” observed.
- c. For statements 19-28, Behavior:
 - i. Eight behaviors were marked as “never” observed;
 - ii. Two behaviors were marked as “occasionally” observed; and
 - iii. The Teacher noted: “I’m aware that [the Student] has been the perpetrator in several bully cases over the last two years.”
- d. For statements 29-35, Behavior:
 - i. Two behaviors were marked as “never” observed;

- ii. Zero behaviors were marked as “occasionally” observed;
 - iii. Three behaviors were marked as “often” observed;
 - iv. One behavior was marked as “very” often observed; and
 - v. One behavior was not marked.
- e. For statements 36-43, Academic and Social Performance:
- i. Two subject areas were marked as “excellent”;
 - ii. One subject area was unknown;
 - iii. Two behaviors were marked as “average”;
 - iv. Zero behaviors were marked as “somewhat of a problem”;
 - v. Three behaviors were marked as “problematic”; and
 - vi. The Teacher noted: “[The Student] is an above average reader + writer. As [their] 7th and 8th grade teacher, there has been a noticeable and sharp decline in academic engagement since [their] prolonged absence. We were not informed about why [the Student] was gone, but since returning [the Student] seems unwell. [The Student] is late and leaves class often feeling unwell. [The Student] does not complete tasks, activities or work. This is a 180 [degree] change from [their] high performance last year.”

39. On June 9, 2023, the Doctor emailed the 7th and 8th Grade Language Arts Teacher to follow up on the completion of the questionnaire the Doctor had emailed to them the previous week. The 7th and 8th Grade Language Arts Teacher confirmed that they returned the questionnaire to the Middle School Counselor.
40. In an interview with the Complaint Investigator, the High School Counselor indicated that they attended a middle school to high school transition meeting. Notes from that meeting indicated that the Student might have emotional needs related to an eating disorder. No other concerns were shared at the meeting, and the High School Counselor stated that they were waiting to meet with the Student [when/if they were assigned to their caseload at the High School]. The High School Counselor did not suspect that the Student experienced a disability.
41. The Parents described in an interview with the Complaint Investigator that in the summer of 2023, the Student attended a residential treatment program for self-harm and suicidal behavior. The Parents hoped that there would be a reset for the Student as they transitioned into high school. The Parents hoped that the Student’s previous behaviors would not be repeated.
42. The Student’s Period Student Attendance Profile from August 29, 2023 through December 8, 2023 indicated that the Student was absent for 0.5 days for a doctor’s appointment, 9 days for suspension, and 1.5 days for unexcused absences.
43. On October 18, 2023, an entry in the Student Discipline Profile indicated the Student was the “Offender” of a “threat/intimidation” and “nonsexual harassment.” The incident was described as follows: “The yearbook Instagram account was sent screenshots from an unknown [sic] to [the High School] user of direct messages sent from account [the Student] to the sender of the screenshots. The direct messages coming from [the Student] used racist descriptors, sexualized name-calling, and disturbing imagery. When the other account said that they were going to report the messages to the school [the Student] account responded with ... an acronym for ... kill yourself.” The consequence was described as a phone call home.

44. In an interview with the Complaint Investigator, the High School Assistant Principal described their first meeting the Student when there was a complaint about an Instagram post that came from the Student's account. The High School Assistant Principal also encountered the Student when they sat in on an interview with the Student during an investigation, observed the Student in a class, and attended the expulsion hearing, which resulted in the Student's expulsion from the High School. The High School Assistant Principal shared that they did not suspect that the Student experienced a disability.
45. On October 27, 2023, the Health Teacher emailed the Parents with the following information: "[The Student] consistently seems distracted and has a hard time getting started with and maintaining focus on in-class work. There is another student in the class who [the Student] regularly makes eye contact with throughout the class, and tries to silently communicate with during instructional time. This becomes a distraction to [the Student, the other student with whom the Student is attempting to communicate], other students around [them], as well as myself as it causes a pause in instruction to address the behavior ... I will be moving some seating spots around so that hopefully this in-class communication will stop. There have been multiple times now where [the Student] has not placed [their] phone in the pockets on the wall, when asked to do so at the start of class time. I have caught [the Student] with [their] phone out during instructional time a couple [of] times now and asked [the Student] to put [their] phone where it is supposed to be."
46. On November 2, 2023, the High School Language Arts Teacher emailed the Student's Parents through the Student Information System to describe an incident in which the Student kicked an unknown object, "causing the teacher next door to stop [their] lesson and check in on the disturbance[.] I spoke to [the Student] and [they] admitted that [the Student] and [their] friends were just messing around"
47. On November 6, 2023, an unknown student reported a bullying incident to the High School administration that allegedly involved the Student.
48. On November 6, 2023, the Assistant Superintendent alerted the Parents via email that the District was initiating an investigation into the Student's behavior at the Middle School and the High School, the Student's behavior may have violated the harassment and cyberbullying policies.
49. On November 6, 2023, an entry in the Student Discipline Profile indicated the Student was the "Offender" of sexual and nonsexual harassment: "[The] Student posted graphic pictures on social media about ... students [from the High School and the Middle School] and spread to other students." The following consequences were listed:
 - a. Out-of-School Suspension from November 27, 2023 through December 5, 2023; and
 - b. Expulsion from School from December 6, 2023 through June 30, 2024.
50. On November 9, 2023, the Health Teacher informed the High School Counselor via email through the Student Information System that the Student was "using [their] phone during direct instruction class time, even after multiple reminders to put [their] phone in the pockets ... This is the second time that we have been interrupted by [the Student] using [their] phone during class instruction time."

51. In an interview with the Complaint Investigator, the Parents were asked how the Student's behaviors that resulted in the Student's expulsion from the School were directly and substantially related to the Student's disability. The Parents described the Student's impulsivity. The Parents described the Student as:
 - a. Obsessive about needing to keep friends;
 - b. Easily taken advantage of;
 - c. Knowing something is wrong but doing it anyway and then beats themselves up about it;
 - d. Having poor executive functioning skills; and
 - e. Having compulsive thoughts.
52. On November 14, 2023, during a classroom observation of the Language Arts Teacher, the High School Assistant Principal observed and noted the behavior of the Student in the class. The notes indicated that the High School Assistant Principal witnessed the Student sitting quietly in their small group, listening, sharing their insights and observations, and following the discussion protocol. The High School Assistant Principal noted that, in the Student's group, the Student "appeared to be accepted in the group and also enjoyed [their] group members."
53. On November 21, 2023, the Assistant Superintendent wrote a formal letter to the Parents notifying them that the allegations of bullying, harassment, and cyberbullying were substantiated and that the District was recommending the expulsion of the Student.
54. On November 30, 2023, the Student emailed the Science Teacher to let the Science Teacher know that the Student would be missing some school the upcoming week. The Student asked: "Could you help guide me through which assignments I need completed? Thank you!"
55. The notes from the December 5, 2023 Expulsion Hearing for the Student noted the following: "[the Parents]: [The Student] has many diagnoses, this information has not been shared with the school."
56. On December 5, 2023, the High School Counselor emailed the Student's teachers to alert them that the Student would not be returning to the School. The High School Counselor asked teachers if the Student would be able to earn credit for the work the Student had already completed. The High School Counselor followed up with a teacher on December 14, 2023 to determine the Student's final grade in the course.
57. On December 6, 2023, the Assistant Superintendent wrote a formal letter to the Parents confirming "the decision to expel [the Student] from [the High School] due to [their] behavior in violation of district policy ...".
58. On December 8, 2023, the Counseling Administrative Assistant emailed the Student's teachers to let them know that the Student had been withdrawn from the High School as of December 8, 2023.
59. On December 8, 2023, the Parents emailed the High School Assistant Principal to inquire about the Student's enrollment in the Online Academy. Additionally, the Parents shared, "We would like to get [the Student] on an IEP or 504 plan." The Assistant Superintendent alerted the School Counselor and the School Psychologist that the Student's Parents "have requested

looking into the possibility of [the Student] qualifying for a 504 [sic] or an IEP. Could you please move forward with setting up a meeting with the family to hear their concerns and explain the potential processes?”

60. On December 8, 2023, the High School Counselor emailed the Parents to schedule a time to discuss both the IEP and 504 process and the Student’s semester 2 schedule. The Parents responded on the same day and listed the following information the Parents were gathering in preparation for the meeting:
- a. “Full neuropsychological evaluation (Spring 2023) from [the Doctor] that states [the Student] should be on an IEP program [sic] to help with [the Student’s] impulsivity, depression, ADHD, obsessive[-]compulsive disorder, obstinate defiant disorder [sic], etc.”;
 - b. “Discharge paperwork from [the Treatment Center] (Summer 2023). This is [a] full residential mental health facility that specializes in getting team intense [sic] behavior health treatment, medical eval, coping mechanisms, etc.”;
 - c. “Discharge paperwork from [the Clinic]. [The Student] is in recovery from [their] battle with anorexia. This was a partial hospitalization treatment facility that [the Student] did for 12-14 weeks. At the conclusion of [the Student’s] treatment it was recommended [the Student] be placed on an IEP program [sic] after weekly meetings with a Dr. of Psychiatry and multiple sessions per week with a therapist”;
 - d. “We have verbal confirmation from [the Student’s] therapist who is in support of an IEP program [sic] for [the Student]. Please let us know if you believe formal documentation will be needed” and
 - e. “We are also going to look back over some of [the Student’s] medical and school records to see if there is further support.”

In a continuation of the email exchange between the High School Counselor and the Parents from December 11, 2023 through December 13, 2023, the High School Counselor requested that the Parents bring copies of the documentation they were gathering for the meeting to discuss the possibility of a 504 Plan and an IEP and described the evaluation process. The Parents requested privacy regarding some of the personal history information and sensitive information that would be provided in some of the reports. The Parents attached a redacted neuropsychological evaluation to an email.

61. The Neuropsychological Evaluation Report provided to the District on December 13, 2023 by the Parents indicated that the Doctor evaluated the Student on May 11, 2023, May 18, 2023, and June 1, 2023. The Doctor’s Diagnostic Impressions included:
- a. “Attention-Deficit/Hyperactivity Disorder, inattentive presentation (with elevated impulsivity)”;
 - b. “Anorexia Nervosa (by history, not specifically assessed by this evaluation)”;
 - c. “Obsessive-Compulsive Disorder”; and
 - d. “Other Specified Disruptive, Impulse-Control, and Conduct Disorder (with oppositional/defiant and conduct problems).”

The Doctor’s recommendations included medication management and mental health therapy. For school, “[The Student] may need some accommodations in the school setting to function more effectively. In the past, [the Student] was able to achieve good grades, and therefore, there is reason to believe that [the Student] can again be successful in school. The demands that [the Student] will face in high school, however, will be different than middle or elementary

school, and as a result, [the Student] may need specific accommodations to gain adequate success. This should also include some behavioral measures to address interpersonal, conduct, and defiant behaviors. I recommend that [the Student] meet with school staff at the beginning of the next school year to consider either a 504 plan or IEP.”

62. The Complaint Investigator asked the Parents if they met with the school staff at the beginning of the 2023-24 school year to consider a 504 Plan or IEP plan for the Student as was recommended by the Doctor. The Parents responded: “No.” The Parents elaborated that their experience from elementary school led them to believe that their concerns would not be taken seriously by the School.
63. On December 14, 2023, the Parents emailed the Assistant Superintendent to share their frustration with getting the Student set up in the Online Academy. The Parents closed with: “Finally, please note that [the Student] is also a ‘protected class’ as has now been shared with the school. [The Student] is diagnosed with ADHD, [Obsessive Compulsive Disorder] (OCD), among other behavioral disabilities.” On December 14, 2023, the Assistant Superintendent responded to the Parents in an email to clarify the Student’s grades for the first semester of the 2023-24 school year. The Assistant Superintendent described the selection of courses for semester 2. The Assistant Superintendent closed the email with: “I understand that you are also meeting with the school counselor and school psychologist to look at the potential evaluation process to see if [the Student] will qualify for a 504 plan or an IEP under any of the categories that you shared in your message. We appreciate you sharing that information and I know the team will be thorough in going through that process with you.”
64. A Notice of Team Meeting was generated on December 15, 2023, for an initial evaluation planning meeting scheduled for December 15, 2023, in which the Parents, the Student, the Case Manager, the Instructional Coordinator, and the High School Counselor were invited.
65. On December 15, 2023, a Meeting Attendance/Summary form indicated that an evaluation planning meeting was held. According to the Parents, the Student had been evaluated in the first grade “but was performing well in school, and it wasn’t pursued.” The Case Manager described the difference between a 504 Plan and an IEP. The Parents shared the Student’s strengths and challenges. The Parents described behaviors that impacted the Student at school, including Oppositional Defiant Disorder (ODD), following directions, organization, impulse control with technology, following rules, respecting authority, and accepting responsibility. The Team discussed peer relationships, stressors, academics, and rating scales from 8th grade. The notes indicated that “All District level testing was in the average to above average range.” The Parents shared that the Student’s “daily functionality [sic] is very impacted” and that the Student had received Dialectical Behavior Therapy (DBT). The Team agreed that there were no academic concerns. The Team agreed to move forward to evaluate the Student for a possible disability in two areas: Other Health Impairment (OHI) and Emotional Behavior Disability (EBD).
66. A Prior Written Notice (PWN) was generated on December 15, 2023 for an evaluation decision made at the evaluation planning meeting on the same day. The District proposed to take action based on “Information reviewed by [D]istrict and [P]arent(s) suggests that [the Student] may have an educational disability and additional information is needed to determine whether or not [the Student] is eligible for and requires Special Education Services.” Descriptions of the evaluation procedures were listed. A description of other

options that were considered were listed. The factors relevant to the decision to evaluate for an educational disability were “[The Student’s] academic and/or behavioral progress within the general [education] curriculum warrants consideration for special education services.” It was documented by the Case Manager’s initials that the Procedural Safeguards were provided to the Parents.

67. On December 15, 2023, a Parent/Guardian Consent for Individual Evaluation was generated, which described the Parents’ request for an evaluation due to concerns with Attention Deficit Hyperactivity Disorder (ADHD), anxiety, and depression. The Consent described that the evaluation would include a social/emotional assessment. The evaluation procedures and assessments that would be administered were listed. The Parents consented and signed the document electronically on January 4, 2024. The timeline for completing this evaluation has not yet elapsed.
68. On December 15, 2023, the School Psychologist emailed the Parents and attached the “documentation of our meeting with parent rights and other forms. I just sent the consent for evaluation to [the Parents] from a different account.”
69. The Evaluation section of the District’s Special Education Handbook described “The specific additional goal of a special education evaluation is to consider eligibility for special education under one of the 12 specific categories, and to determine if the child requires specially designed instruction because of that disability. In [the District], we understand the obligations of Child Find (locating, evaluating, and identifying students with disabilities).” For initial evaluations, the following procedure was described:
 - a. “[The] Teacher notices concern regarding academics, independence, communication, social growth, or behavior”;
 - b. “[The] Teacher communicates with the student and parents and receives their students”;
 - c. “[The] Teacher works to help the student be more successful through additional strategies of high-quality classroom instruction”;
 - d. “If concern continues, [the] teacher collaborates with other teachers (building specific process) to hone instructional strategies or consider other ways of helping the student be more successful”;
 - e. “[The] Teacher continues communication with the student and parents”;
 - f. “If [a] concern continues, [the] teacher makes [a] referral to the school’s Circles Team”

In rare cases, according to the District’s Special Education Handbook: “The concerns noticed may be of such an extreme or physical nature that the Circles Team may decide to move directly to [Special Education] Evaluation without the full Circles of Support process.” The example provided in the document was if “the student is blind or has just been released from a residential mental health facility” or “when parents (or a community partner) present a request for special education.” The Evaluation Guidelines section of the District’s Special Education Handbook noted that “no single measure or assessment can be the sole factor to determine whether a child qualifies for special education services.”

70. In an interview with the Complaint Investigator, the Director of Special Education acknowledged that the Student was not referred to the “Circles Team,” a tier-two/pre-referral step in the Response to Intervention or Multi-tiered Systems of Support model, during their enrollment at the Middle School or the High School.
71. The District Special Education Handbook described the discipline procedures for students with disabilities. In the section entitled “Disciplinary Change of Placement,” the document

spelled out: “Disciplinary removal of a student with a disability constitutes a change in the student’s educational placement” when:

- a. “The removal is for more than 10 consecutive school day [*sic*]”; or
- b. “The removal is for more than 10 cumulative school days and constitutes a pattern of removals.”

The following section, entitled “Manifestation Determination,” described that “Within 10 days of any decision to initiate a disciplinary change in [the] placement of a student with a disability, the district convenes a manifestation determination meeting.”

72. On January 11, 2024, the Parents filed this Complaint.

73. On February 1, 2024, after the Complaint was filed, the Assistant Superintendent alerted the Parents via a formal letter that the Student was continuing to engage in cyberbullying behavior, noting that, the “behavior [was] directed at a student in [the District] who was the target of bullying behavior in [the Student’s] expulsion.” The Student “is directed to cease and desist this behavior.” The Assistant Superintendent cited expectations that were outlined in the December 6, 2023 expulsion letter: “[The Student] will not engage in any of the behaviors that contributed to [the Student] being expelled (bullying or cyberbullying behavior of any kind, or post [*sic*] any inappropriate or racist comments on sites, media or other outlets that are in any way connected with [the High School] or [the District]).”

74. The Student’s High School Transcript for semester one of the 2023-24 School Year indicated that the Student earned 3.75 credits and received the following grades:

- a. A’s: 2;
- b. B’s: 2;
- c. C’s: 2; and
- d. P’s: 2.

IV. DISCUSSION

Child Find

The Parents alleged that the District failed to find the Student eligible for special education services when the District became aware that the Student had a disability in February 2023. The Parents further alleged that the District also had knowledge that the Student had a disability due to the behavior needs of the Student at the School and when the Parent provided the District with an evaluation report.

The requirements of this rule apply to all children unless they are no longer entitled to a Free Appropriate Public Education (FAPE). School districts must identify, locate, and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services, including highly mobile children with disabilities (such as migrant and homeless children), children who are wards of the state, and Indian preschool children who reside on reservations. Furthermore, a district’s child find obligation includes children who are suspected of having a disability and children for whom the district has a reason to suspect of having or potentially having a disability, even though they are advancing from grade to grade. Districts must also identify, locate, and evaluate children enrolled in public charter schools, children who are home-schooled, children attending private schools, and children below the age

of compulsory school attendance who are not enrolled in a public or private school program. Additionally, students above the age of compulsory school attendance who have not graduated with a regular high school diploma and children below the age of compulsory school attendance who are not enrolled in a public or private school program are included in Child Find requirements.³

The Student's academic trajectory demonstrated consistent achievement, with performance typically ranging from average to above average, and the Student consistently met or exceeded grade-level reading expectations. The Student's Middle School Transcript revealed varying attendance rates and grades of A's, B's, and C's. Parent interviews indicated that the Student experienced challenges, including emotional distress, engagement issues, restrictive eating, and self-harm, particularly in 8th grade. Despite these obstacles, the Student continued to perform well academically. Staff members characterized the Student as a "solid" student with no atypical concerns about the Student's academics or behavior.

From November 2022 through January 2023, the Student underwent treatment for anorexia. The Parents requested that the Staff be apprised that the Student was "out due to a medical condition." Before the Student returned to the school setting, the Parents communicated with the teachers to apologize for the lack of communication about the Student's school work, but no mention was made of a possible academic, emotional, or behavioral disability. In February, 2023, the Parents emailed the Middle School Counselor to share that the Student was struggling with friend groups and to request a private space for the Student to meet with a dietician.

In May of 2023, there was an increase in communication internally between teachers, administrators, and the School Counselor, and externally with the Parents, in response to growing concerns about the Student's lack of engagement and behavior in school. In late May of 2023, the Parents requested that several teachers complete an ADHD questionnaire for the Student for an upcoming neuropsychological evaluation. In the summer of 2023, the Student participated in a residential treatment program for self-harm and suicidal tendencies. In the Fall of 2023, the Student enrolled at the High School and continued performing well academically. In October 2023 and November 2023, the Student's behavior in class and on social media came under scrutiny, and eventually, a bullying/harassment investigation was launched by the School.

From February 2023 through November 2023, no diagnostic information or disability concerns about the Student were shared with the District. The Parents did not meet with school staff at the beginning of the 9th grade school year to discuss a 504 Plan or an IEP as recommended by the Doctor. The Parents did not share the results of the ADHD questionnaire, the results of the neuropsychological evaluation, or the diagnoses that stemmed from the Student's stay in a residential treatment facility in the summer of 2023 until after the Student's expulsion hearing in December of 2023. The Student's academic abilities and behaviors did not arouse suspicions of a disability in 8th or 9th grade. While incidents of behavioral concern and a subsequent bullying/harassment investigation highlighted some of the Student's behaviors, there were no indications that the Student experienced a disability. The Parent requested an IEP or 504 plan in December of 2023, after the Student's expulsion. Starting in the spring of 2023, District staff noted increasing behaviors of concern in the school setting but, given the significant concerns for maintaining the Student's privacy throughout their treatment for medical concerns, it is

unclear in the record whether sufficient information existed to give the District reason to suspect a disability prior to the Parents' request. However, the District promptly initiated its Child Find processes when the Parent provided the District with information that put the District on notice that the Student may have a disability. The Student's initial evaluation is currently being conducted and the District has not yet reached the deadline for determining their eligibility.'

The Department does not substantiate this allegation.

Manifestation Determination

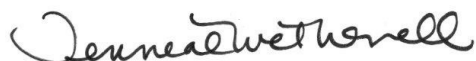
The Parents alleged that the District violated the IDEA when the District failed to conduct a manifestation determination review before expelling the Student from the School.

In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP. If the school district, the parent, and relevant members of the IEP team determine that the behavior is a manifestation of the child's disability or was a direct result of the school district's failure to implement the IEP and for the child, the conduct must be determined to be a manifestation of the child's disability. If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.⁴

If a Student who violates the school's code of conduct experiences a disability and the school is considering a change of placement for the student, a Manifestation Determination Review is required to determine whether or not the Student's disability is related to the conduct subject to discipline. In this case, at the time of expulsion proceedings, the Student was not identified as a Student with a disability and did not have an IEP. Nor did the District suspect that the Student was a student with a disability. Because the Student was not identified as a student with a disability, a manifestation determination review was not required before the Student's expulsion.

The Department does not substantiate this allegation.

Dated: this 11th Day of March 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: March 11th, 2024

⁴ OAR 581-015-2420

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).)