

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Seaside School District 10

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 24-054-012

**I. BACKGROUND**

On March 4, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Seaside School District (District) and attending a charter school in the District (Charter School). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

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

On March 14, 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 March 28, 2024.

The District submitted a *Response* on March 28, 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, 3/28/24
2. Emails between the District and the Department, 1/30/24
3. Meeting Minutes from Evaluation Planning Meeting, 10/12/23
4. Meeting Minutes from Eligibility Meeting, 12/14/23
5. Contact Log, 5/17/23 through 1/17/24
6. Service Log, 9/13/23 through 12/13/23
7. Comprehensive Bilingual Speech and Language Re-evaluation Report (English and Spanish versions), 12/14/23
8. Email from Speech Language Pathologist (SLP) to Parent, 1/24/24
9. Narrative of Services, undated
10. Notice of Meeting, 11/30/23
11. Consent for Evaluation, 10/12/23
12. Special Education Placement Determination, 6/1/23
13. Prior Notice of Special Education Action, 12/15/23
14. IEP, 5/26/23

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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)

15. Statement of Eligibility for Special Education, 1/7/21

On April 4, 2024, at the request of the Complaint Investigator, the District provided the following additional documents:

1. Consent for Evaluation (with Parent signature), 10/12/13
2. Statement of Eligibility for Special Education, 12/14/23

On April 11, 2024, at the request of the Complaint Investigator, the District provided the following additional documents:

1. Special Education Process for Exiting From Services, undated
2. Email from Director to Parent, 2/16/24
3. Annual IEP Meeting Notes, 6/1/23

The Parent submitted the following relevant items with their Complaint:

1. Emails between the Charter School and the Department, 1/12/24
2. Service Log, undated

The Complaint Investigator interviewed the Parents on March 13, 2024. An interpreter, provided by the Department and fluent in the Parents' native language, participated in the entire interview. On April 8, 10, 11, and 17, 2024, the Complaint Investigator interviewed District and Charter School personnel. On April 8 and 19, 2024, the Complaint Investigator interviewed personnel from the Northwest Regional Education Service District (ESD). Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of 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 Parent's 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 March 5, 2023 to the filing of the Complaint on March 4, 2024.

Allegations	Conclusions
<p><b>When IEPs Must Be in Effect</b></p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services, specifically speech services, in accordance with the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Not Substantiated</b></p> <p>The District's failure to implement all of the Student's speech services was not material and, as such, was not a violation of the IDEA.</p>

<p><b>Parent Participation</b></p> <p>The Complaint alleged that the District violated the IDEA by interfering with the Parents’ ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. The District failed to allow meaningful parental participation in the decision to terminate the Student’s speech services.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</p>	<p><b>Not Substantiated</b></p> <p>There was no evidence that the District interfered with the Parents’ ability to participate in decisions regarding the Student’s special education. The Parents participated in each meeting regarding the Student’s identification, evaluation, and IEP and were given the opportunity to ask questions, provide input, and share concerns.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complaint alleged that the District failed to provide the Student with a FAPE by interfering with the Parents’ ability to participate in decisions regarding the special education of the Student and by not providing the Student with special education and related services in accordance with the Student’s IEP.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Not Substantiated</b></p> <p>While the District committed a procedural violation by failing to implement the speech services in the Student’s IEP, there was no evidence that this resulted in a denial of FAPE.</p>
<p><b>Determination of Eligibility<sup>3</sup></b></p> <p>The Complaint alleged that the District violated the IDEA when it failed to identify the Student as a student with a disability who requires specially designed instruction. Specifically, the Complaint alleged that the District improperly terminated the Student’s eligibility under the category of Speech or Language Impairment.</p> <p>(OAR 581-015-2120; 34 CFR §300.306)</p>	<p><b>Not Substantiated</b></p> <p>The IEP team relied upon a variety of measures in determining that the Student no longer required specially designed instruction and was therefore no longer eligible to receive special education services.</p>

**REQUESTED CORRECTIVE ACTION**

The Complainant requests that the Department order the District to take the following corrective action:

1. Continue providing the Student with Speech/Language services at least until the Parents

<sup>3</sup> It was not apparent at the start of the complaint investigation that the Student was no longer eligible for special education. After review of educational records provided by the District, however, it became clear that the Parent’s allegation regarding failure to provide speech services included the decision, at the December 2023 eligibility meeting, to exit the Student from special education. In its *Response*, the District assumed that the termination of eligibility was central to the Parent’s allegations and responded accordingly.

get a recommendation from the Student's doctor regarding the need for continued services.

2. Provide Speech/Language services to make up for the services that were not implemented in accordance with the Student's IEP.

### 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 March 5, 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 disability and special education history.

1. The Student is six years old and is in kindergarten. The Student currently attends school at the Charter School, which is located within the District.
2. The Student is bilingual, with Spanish as their home language and English as a second language.
3. Prior to the filing of the Complaint, the Student was eligible for special education under the category of Speech or Language Impairment (SLI) but was found to no longer qualify on December 14, 2023. At the time of the Complaint, the Student was not eligible for special education services under any eligibility category.
4. The Student was found eligible for Early Childhood Special Education Services under the category of Communication Disorder<sup>4</sup> on January 7, 2021. Prior to that, the Student received Early Intervention services in the areas of feeding, motor, and speech-language.
5. The Speech Language Pathologist (SLP) shared that they conducted a "post-year assessment" of the Student's articulation skills near the end of the 2022-23 school year, when the Student was still in preschool, to assist in developing an IEP for the Student for kindergarten. At the time of that assessment, the SLP stated that the Student was struggling with the sounds /v/, /th/, /r/, and sound blends br, dr, fr, kr, gr, sl, and tr.
6. An IEP meeting was convened for the Student on June 1, 2023 (June 2023 IEP) in preparation for the Student's entry into kindergarten for the 2023-24 school year.<sup>5</sup> A District-provided interpreter was used for the meeting. The June 2023 IEP included, among other things:
  - a. Special Factors: The Student was identified as having limited English Proficiency and communication needs. No other special factors were identified for further consideration by the IEP team.
  - b. Student's overall strengths, interests, and preferences: "[The Student] is very kind, a good friend, and follows routines well. [They] are responsible. [The Student] was shy and timid at the beginning of the year and now [they are] making lots of friends, [the Student] talks a lot and [they] can be silly."

<sup>4</sup> The special education category of "Speech or Language Impairment" was previously designated as "Communication Disorder".

<sup>5</sup> Although the meeting took place on June 1, 2023, the IEP document is dated May 26, 2023.

- c. Input from Parents: The Student “talks a lot at home,” “plays with all the other children,” and “can be a jokester.”
- d. Present Levels of Academic Achievement: “[The Student] participates in class most of the time. During group meeting times [the Student] prefers to observe, but will participate when encouraged to do so. [The Student] is quiet and does not always raise [their] hand to respond, but will sometimes answer when called on.”
- e. Present Levels of Functional Performance:
  - i. Articulation: The Student was noted to display errors with the following sounds: /v/, /th/, /r/, and blends: br, dr, fr, gr, kr, sl and tr.
  - ii. Justification: “A student’s level of reduced intelligibility due to articulation errors will call attention to the student’s speech, making it difficult for others to understand them, and have a negative impact on their academic work such as literacy, spelling, classroom communication, participation, and confidence in the classroom.”
- f. Goals: The June IEP contains a single goal in the area of articulation.
  - i. Annual Goal: Within one year, the Student will “improve speech intelligibility to 100% by mastering the following objectives”:
    - (1) “[The Student] will perform specific oral-motor movements/exercises to improve the articulation of target sounds.”
    - (2) “[The Student] will produce/imitate target sounds in isolation.”
    - (3) “[The Student] will be able to produce target sounds in the initial, medial, and final position of words when naming pictures.”
    - (4) “[The Student] will be able to produce target sounds in the initial, medial, and final position of words in sentences with no prompting.”
  - ii. The “target sounds” for the goal were listed as: /v/, /th/, /r/, and blends: br, dr, fr, gr, kr, sl and tr.
  - iii. Progress on the goal would be measured by, “SLP/SLPA data collection, assessments, and screenings,” “teacher observations” and “student performance in the classroom.” The criterion for meeting the goal was designated as “4/5 trials with 80% accuracy within five consecutive therapy sessions.”
- g. Specially Designed Instruction (SDI):
  - i. Articulation: 120 minutes/monthly, beginning September 11, 2023
- h. Related Services: none.
- i. Accommodations: none.
- j. Modifications: none.
- k. Supports for School Personnel: none.

- I. Non-Participation Justification: “[The Student] will be removed from the regular education setting for less than 1% of the week . . . to receive specially designed instruction in the least restrictive environment to address articulation skills.”
7. According to the Special Education Placement Determination completed on June 1, 2023, the Student’s IEP team determined that the Student’s placement would be “General Education with pull-out for speech and language services.”
8. The District Director of Special Programs (Director) explained that the District is responsible for conducting special education evaluations and providing special education services to eligible students enrolled at the Charter School. The District contracts with the ESD to provide speech services to students who have those services in their IEP.
9. The SLP started providing the speech language services in the Student’s IEP at the start of the 2023-24 school year. The Student was regularly scheduled to receive services for thirty-minute sessions each Wednesday. The SLP shared that a Speech Language Pathology Assistant (SLPA) provided a portion of the Student’s services under the direction and supervision of the SLP. When asked to describe the Student’s communication needs at the start of the school year, the SLP described them as “very minimal at the start.” The SLP shared that the Student, “was able to communicate with me” and could do “all the things we look at,” such as “start and end conversation.”
10. The SLP further explained that the sounds the Student struggled to produce, “we don’t work on with a student until they are older.” The SLP acknowledged that they would work on the /v/ sound at the Student’s age, “except that in Spanish, there is no true /v/ as there is in English.” In September 2023, the SLP administered the same assessment to the Student that they had given at the end of the 2022-23 school year, and the only articulation errors the Student made were with the sounds /th/, /r/, and the blends br and tr. The SLP concluded that, “In the summer, [the Student] picked up the other “r” blends” that they could not produce during the previous assessment.” The SLP added that they, “gave [the Student] credit for the /v/” due to the absence of that sound in Spanish.
11. When asked if the Student’s articulation errors impacted their ability to access the general education curriculum, the SLP shared that they only observed the Student informally in the classroom when picking them up to receive speech services. The SLP noted that the Student was in a classroom comprised of kindergarten, first, and second grade students. They observed that, when the teacher was presenting first and second grade curriculum, the Student’s “head was often on [their] desk and [they were] not engaged, similar to the other kindergarten students.” The SLP “never saw [the Student] struggle,” however, when the curriculum was at their level.
12. An Evaluation Planning Meeting was convened for the Student on October 12, 2023. A District-provided interpreter participated in this meeting. According to the Meeting Minutes from the Evaluation Planning Meeting (October Meeting Minutes), the purpose of this meeting was to develop a Consent to Evaluate for the Student’s three-year reevaluation and the evaluation planning team would be “looking at articulation.”
13. The October Meeting Minutes note that, based on a pre-assessment, the Student’s production of the sound /th/ “is acceptable for being bilingual.” Additionally, while the Student initially struggled with “a lot of sounds,” they were “down to just a few” and the Student “is making great progress.”

14. The October Meeting Minutes also detail the input provided by the Student's classroom teacher (Teacher) who noted that the Student had more than twenty-five "incidents of unclear speech," that "it is hard to understand [them]," and that the Student "doesn't initiate conversations."
15. Based on interviews of multiple attendees at the Evaluation Planning Meeting, the Parents were given the opportunity to provide input and appeared to understand what was being proposed for the evaluation of the Student.
16. As reflected in the October Meeting Minutes, the District requested to evaluate the Student using the "Goldman Fristoe in both English and Spanish," a language sample and observation. The Meeting Minutes go on to describe how, on October 13, 2023, the SLP called the Parent to explain changes to the proposed evaluation and the Meeting Minutes then list a different series of proposed assessment tools.
17. When interviewed for this investigation, the SLP explained they had not planned to evaluate the Student in the areas of expressive or receptive language because they did not see concerns in those areas, but that additional assessment tools were proposed to evaluate those areas in response to the concerns raised by the Teacher at the October meeting. After the October meeting, the SLP decided to include a bilingual SLP (BSLP) from the ESD in the evaluation process because "the ESD is really working on providing good evaluations for our Spanish speakers so we don't over-qualify them [for special education]." The SLP was also unsure if their Spanish was proficient enough to conduct an Ethnographic Interview of the Parents. Based on consultation with the BSLP, the SLP revised the assessment tools listed on the Consent to Evaluate and then called the Parents to explain the changes.
18. The District provided the Parents with a Prior Notice about Evaluation/Consent for Evaluation dated October 12, 2023 (Consent for Evaluation). The Consent for Evaluation indicates that an evaluation of the Student was being proposed because the Student was due for their three-year reevaluation and that, "We are looking at articulation concerns." The Consent for Evaluation identified the following assessment tools to be administered as part of the evaluation: Sub-tests of the Clinical Evaluation of Language Fundamentals – 5<sup>th</sup> Edition English (CELF-5), Sub-tests of the Clinical Evaluation of Language Fundamentals – 4<sup>th</sup> Edition Spanish (CELF-4), Language Sample, School-age Language Assessment Measures (SLAM) Spanish, Developmental History Intake, Ethnographic Interview, and Bilingual Articulation Phonological Assessment (BAPA-Pro) in English/Spanish. The Parents signed the Consent for Evaluation on October 19, 2023 and returned it to the District.
19. A progress report on the goal from the Student's June 2023 IEP was written by the SLP on December 1, 2023. That progress report stated, "[The Student] has mastered [their] goal and all of [their] objectives. The recommendation at the meeting scheduled for 12/14/23 will be that [the Student] be exited from special education."
20. When asked if the December 1, 2023 progress report meant that the Student had mastered all of the "target sounds" listed in the IEP goal, the SLP replied that the Student was still making errors with /v/, /th/ and /r/. The SLP explained that they "chose the /th/ sound" to work on during therapy sessions with the Student because "the /th/ sound is a visual sound." The SLP stated that they, "can't show students where the /r/ sound is, so it's much harder to work on the /r/ sound." Further, "a lot of students may pick up the /r/ sound on their own." The SLP went on to share that they may still exit a kindergarten student from special education if they had not mastered the /r/ sound, as they "would start worrying about the /r/ sound at second or third grade."

21. When questioned further about how the SLP could report that the Student had “mastered [their] goal” if they could not produce all of the “target sounds” listed, the SLP explained that the goal was for the Student to “improve speech intelligibility to 100%” and that they found the Student to be 100% intelligible even with some articulation errors. The SLP also pointed out that, per the criteria of the goal, the Student was only required to perform the skill with 80% accuracy.
22. The SLP acknowledged that the progress report, recommending that the Student be exited from special education, was written before completion of the Student’s reevaluation and prior to the meeting to determine eligibility. The SLP stated that they would sometimes recommend that a student be exited from special education before an evaluation had been completed if the student had met their IEP goals, and there were “no more goals to write.”
23. The Director shared that it is not the District’s practice to exit students from special education based on a progress report. If a student has met their IEP goals, then the IEP team may consider exiting the Student, but that an evaluation would be completed first. The Director did not find it unusual that the progress report contained a recommendation that the Student be exited from special education, given that an evaluation planning meeting had already been held. The Director explained that, in that situation, the Parents would be aware that the IEP team would be looking at the Student’s performance for the purpose of determining eligibility.
24. The District completed its evaluation of the Student, pursuant to the Consent for Evaluation, and generated an Evaluation Report dated December 14, 2023 (December 2023 Evaluation). Both the evaluation and the report were completed jointly by the SLP and BSLP. When interviewed, the SLP shared that they completed the English portions of the evaluation, which included the Goldman Fristoe Test of Articulation-3 (GFTA-3), the CELF-5, and a language sample in English. The BSLP completed the Spanish portions of the evaluation, which included the Developmental History Intake and Ethnographic Interview, BAPA-Pro, SLAM, and a language sample in Spanish.
25. The December 2023 Evaluation included the results of assessments in the areas of speech and language, a review of the Student’s developmental history and linguistic background, and clinical observations. The results of the evaluation included, but were not limited to, the following:
  - a. According to a Developmental History Intake and Ethnographic Interview completed with the Parent, the Student was born prematurely and soon thereafter began receiving Early Intervention services in the areas of feeding, motor, and speech-language.
  - b. Based on the BSLP’s interview with one of the Parents, the Student’s last wellness visit was completed in September 2023 where the Student was evaluated by specialists at the Providence Child Development Clinic who concluded that the Student’s “speech & language skills are adequate for [their] age and development.” The Parent shared that the Student “was found 70% intelligible at conversation level and the clinicians stated that [the Student] will probably show big growth during [their] Kindergarten year due to the rich school environment and daily interpersonal interactions.” The Student was scheduled for a follow up appointment at the Child Development Clinic in the summer of 2024.
  - c. At the time of the evaluation, the Parent reported no concerns with the Student’s communication abilities or behavior. The Parent shared with the BSLP that the Student “is very talkative and friendly” and “is always asking questions.” The Parent reported



- being “very surprised when in the last parent-teacher conference, held on 10/2023, [the Student’s] teacher informed [the Parent] that [the Student] did not talk nor participate in the classroom activities.” The Parent explained that they thought the Student was “adapting to the new environment in the new school with new peers & teachers.”
- d. During the Ethnographic Interview, the Parent reported to the BSLP that they felt the Student was able to speak in both English and Spanish and that they did not have a preference between the two languages. The Parent shared that the Student “is sociable with other adults and peers” and “is always talking to others and engaging in conversations.” The Parent further informed the BSLP that the Student “speaks in complete sentences and is intelligible.”
  - e. The Student’s Spanish speech skills were evaluated using the BAPA. According to the report, the BAPA is used “for evaluating articulation and phonology skills in student [sic] who speak English and/or Spanish.” On the BAPA, the Student received a standard score of 96, which is in the 21<sup>st</sup> percentile. The Student “correctly produced all the sounds of the Spanish language,” but was noted to demonstrate “a mild distortion of the /r/ phoneme that can be perceived as English influenced.” The Student was “judged to be 90% intelligible in Spanish at the conversational level.” The Student also “did not evidence the presence of phonological processes.” The report describes “phonological processes” as “patterns of sound errors that typically developing children use to simplify speech as they are learning to talk,” and explains that “a phonological disorder occurs when phonological processes persist beyond the age when most typically developing children stop using them.”
  - f. The Student’s English articulation skills were evaluated using the GFTA-3. The Student’s results were as follows:
    - i. Sounds in words: Standard score of 95, which is in the 37<sup>th</sup> percentile.
    - ii. Sounds in sentences: Standard score of 90, which is in the 25<sup>th</sup> percentile.
    - iii. The Student demonstrated errors with the following sounds and blends: /v/, voiced and unvoiced /th/, /r/ in the initial position, br, kr, and pr. It was noted that the Student’s errors were not consistent and that the Student “is stimulable for all sounds.” The report went on to point out that “the phonetic sound /v/ is not present in Spanish-Mexico.” Further, “voiceless ‘th’ . . . may not be present in all dialects of Spanish and mispronunciation of . . . TH sounds . . . can all be categorized as common phonemic contrast between Spanish influenced English and mainstream American English.”
  - g. The Student’s language skills in English were evaluated using the CELF-5. The results of the CELF-5 demonstrated that, “[The Student’s] expressive and receptive language skills were well within the average range for a student [their] age.” The Student’s scores were as follows:
    - i. Core Language Index: Standard Score of 105, which is in the 63<sup>rd</sup> percentile and within the average range.
    - ii. Receptive Language Index: Standard Score of 104, which is in the 61<sup>st</sup> percentile and within the average range.

- iii. Expressive Language Index: Standard Score of 100, which is in the 50<sup>th</sup> percentile and within the average range.
  - iv. Language Content: Standard Score of 90, which is in the 25<sup>th</sup> percentile and within the average range.
  - v. Language Structure: Standard Score of 106, which is in the 66<sup>th</sup> percentile and within the average range.
- h. The Student's language skills in Spanish were evaluated using the SLAM-Spanish Edition. According to the report, this particular assessment "was completed with a translanguaging approach giving the student the opportunity to respond and communicate in [their] language of choice." It is noted that, "At this time, although [the Student] is able to effectively communicate in Spanish, [their] language preference was English." The Student demonstrated the following skills during administration of the SLAM: 1) pragmatic skills, such as turn taking, topic maintenance, identifying feelings based on pictures, and appropriate nonverbal communication; 2) comprehension of "Wh" questions and the ability to orally respond by providing specific information based on a short story; 3) use of functional vocabulary in simple and compound sentences, and 4) use of nouns, pronouns, articles, adjectives, prepositions, conjunctions, and verbs when formulating sentences. It is noted that the Student "benefited from verbal & visual cues when having to make inferences and predictions based on the story illustrations," and that they demonstrated some "common morphological errors as an ESL learner."
  - i. The Teacher's input was elicited using a written form and was included in the report in its entirety. According to the Teacher's input, the Student "is a very active and engaged learner and works hard on all assignments and activities." The Student, however, "does have difficulty with [their] articulation, and usually needs to repeat [themselves] at least once or twice in order to be understood. When doing independent work, [the Student] often works slower than [their] peers and needs prompting to stay on task. [The Student] also has trouble understanding directions the first time given and often needs directions repeated with further clarification." The Teacher went on to share that, "While [the Student] is making progress toward grade-level academics, [their] difficulty with communication is still a barrier to [their] further success."
  - j. As reflected in the summary of the December 2023 Evaluation, the Student "is demonstrating growth and development in [their] speech and language abilities in both English and Spanish." Based on the results of the evaluation, the SLP and BSLP concluded that, "[The Student] presented adequate speech skills (articulation, voice, fluency). Given the observed strengths in speech (articulation) and most current speech and language progress notes, [the Student] no longer qualifies as a student with a speech and language disorder in the area of articulation. [The Student] will be dismissed from services." The report goes on to state, "The final determination of eligibility will be made by the IEP team."
26. The BSLP shared that they completed the developmental history and ethnographic interview with the Parents, the BAPA, the SLAM, a language sample, and collected input from the Teacher via a Google Form. The BSLP evaluated the Student over three sessions, all of which were conducted virtually. According to the BSLP, the SLP was present with the Student during the virtual evaluations and the Student was able to engage in the virtual setting. The BSLP indicated that they administered all the assessments in accordance with test publishers' instructions and believed that the results were valid.

27. The BSLP stated that, when they interviewed the Parent as part of the evaluation, the Parent had no concerns about the Student's communication abilities and expressed that they were "very surprised" when the Teacher told them at a parent-teacher conference that the Student didn't participate much in class because the Parent "sees [the Student] as very talkative." When evaluating the Student, the BSLP also did not observe any specific concerns regarding the Student's communication skills.
28. According to the BSLP, the input from the Teacher that is included in the evaluation report was copied verbatim from the form that the BSLP provided to them. The BSLP utilized the input from the Teacher as "supporting data" in their evaluation of the Student. They acknowledged that there are some sounds the Student struggles with, but that it is normal for bilingual speakers to substitute sounds in English that are not utilized in Spanish. Even with these errors, however, the results of the evaluation showed "a student who is intelligible and can communicate."
29. When asked about the statement in the report, "[The Student] will be dismissed from services", both the SLP and the BSLP explained that it was their joint recommendation, based on the results of the evaluation, that the Student be exited from special education. The SLP shared that they typically include their recommendation regarding eligibility in the evaluation report, but that it was ultimately up to the eligibility team to decide.
30. The Director shared that it is typical for an evaluation report to include the evaluator's recommendation regarding eligibility. While this recommendation would be considered when making an eligibility determination, "it is still a team discussion and a team decision." The Director indicated that they had not seen a copy of the evaluation report or discussed the recommendations in the report with anyone prior to the meeting to determine eligibility.
31. The District convened a meeting on December 14, 2023 to determine if the Student continued to be eligible for special education services (Eligibility Meeting). A District-provided interpreter participated in the meeting. According to the Meeting Minutes from the Eligibility Meeting, the District had intended to only evaluate the Student in the area of articulation but, in response to concerns raised by the Charter School, had also evaluated the Student's expressive and receptive language skills.
32. At the Eligibility Meeting, the SLP and BSLP reviewed the results of the December 2023 Evaluation. As reported by multiple attendees at the meeting, the Parents were not given a copy of the December 2023 Evaluation report translated into Spanish at the time of the meeting. Instead, the contents of the report were shared with the Parents verbally in Spanish by the BSLP and the interpreter.
33. When asked why the Parents had not been provided a copy of the evaluation report in Spanish either prior to or at the meeting, the Director explained that "we typically don't provide a copy before the meeting because it feels overwhelming for parents to get that before the meeting, so we wait and go over it at the meeting." Further, "we don't assume that parents are readers, so . . . we go through it verbally and send a translated report after the meeting." The Director recalled that, at the meeting, the SLP and BSLP "kept ensuring that the Parents understood" when reviewing the report, and that the Parents indicated that the results of the evaluation were consistent with what they saw at home.
34. Multiple attendees at the Eligibility Meeting shared that the meeting lasted more than two hours and that the evaluation report was reviewed and explained thoroughly. All participants, including the Parents and Charter School staff, provided input and asked questions and the Parents appeared to understand the results of the evaluation.

35. Based on the results of the December 2023 Evaluation, the SLP and BSLP explained to the team that the Student no longer met eligibility requirements for special education under the category of SLI. According to the Meeting Minutes from the Eligibility Meeting, staff from the Charter School disagreed that the Student should be exited from special education. The Student's teacher questioned "if it is common practice not to look at academics or conduct observations," and the charter school staff indicated that "they are not seeing [the Student] generalize the skills across all school settings." The Meeting Minutes indicate the Charter School staff observed the Student to have "garbled English."
36. When asked about the discussion at the Eligibility Meeting, the Teacher recalled expressing concern that an observation of the Student in the classroom had not been completed as part of the evaluation but that neither the SLP nor the BSLP responded to those concerns.
37. When asked why they did not complete an observation as part of the Student's reevaluation, the SLP shared that they typically only include observations in the general education setting when evaluating a student for stuttering or Autism, and not when evaluating a student's articulation.
38. The BSLP recalled that, at the beginning of the Eligibility Meeting, the Parents did not express any concerns regarding the Student's communication but "towards the end, after the teacher stated and restated that they did not agree, the parents started to get concerned." The BSLP believed that when the Teacher disagreed with the eligibility determination, "that created insecurity in the Parents." The Director also recalled that, at the beginning of the meeting, "the Parents were excited" about the Student's progress but "once the teacher started sharing, then [the] Parents visibly started getting concerned."
39. A Statement of Eligibility for Special Education under the category of SLI (Statement of Eligibility) was completed as part of the Eligibility Meeting. The Statement of Eligibility details the assessment tools completed by the District for the December 2023 Evaluation and indicates whether the Student met the criteria required for eligibility for special education under the category of SLI. Based on these criteria, it was concluded that the Student did not meet eligibility requirements and did not qualify for special education services. Signatures on the Statement of Eligibility reflect that the SLP, BSLP, Director, and the interpreter agreed with the eligibility determination while the Parents and Charter School staff disagreed.
40. According to the SLP, the Parents shared at the meeting that they agreed with the results of the evaluation, that the Student was intelligible at home, and that the only sound in Spanish that the Student could not produce was "the trilled /r/". The Parents expressed that they would not sign the Statement of Eligibility, however, until they discussed it with the Student's doctor.
41. The District sent a Prior Notice of Special Education Action (PWN), dated December 15, 2023, to the Parents regarding the outcome of the Eligibility Meeting. The content of the PWN was written in both English and Spanish. The PWN explains that the IEP team determined that the Student no longer qualifies for special education and "will be exited from speech services."
42. As reflected in a contact log maintained by the SLP, copies of the December 2023 Evaluation report were sent to the Parents in English on January 10, 2024 and in Spanish on January 17, 2024.
43. The Parents shared with the Complaint Investigator that the SLP asked them to "sign a paper saying that [the Student] doesn't need treatment anymore," and that they "don't agree with that." The Parents did not provide a copy of the document to which they were referring. The Parents shared that they had an appointment scheduled with the Student's doctor in June

2024 and did not believe they had sufficient information to stop the Student's speech services until after that appointment.

44. When asked why they believed the Student continued to require speech services, the Parents shared that the Student had received speech services since birth. At the time of the Complaint, Parents observed that the Student "has problems with pronunciation in both languages" and "some words and phrases, [the Student] can't say appropriately." The Student's sibling shared with the Parents that they "can't understand [the Student]". The Parents acknowledged that they had told the BSLP during the evaluation that they could understand what the Student says, but "that doesn't mean the impediment is gone."
45. The Parents described a telephone conversation that occurred on February 8, 2024 with the SLP, the Director, and an interpreter. During that conversation, the Parents stated that they wanted to get their pediatrician's opinion before stopping the Student's speech services. According to the Parents, the Director told them, "if we don't comply with what [the Director] says, they will have to go the legal way with us, contact a lawyer. [The Director] just wanted to make us sign." The Parents shared that they, "didn't think it was appropriate, the way [the Director] approached us. [The Director] tried to threaten us with the legal process if we don't sign the document."
46. According to the SLP, the purpose of the February 8, 2024 telephone call with the Parents was to make sure they understood that, based on the results of the Eligibility Meeting, the Student would no longer receive speech services. The SLP did not recall any discussion about an attorney being involved.
47. When asked about the February 8, 2024 telephone call, the Director explained that they had participated in the Eligibility Meeting virtually and had not realized that the Parents had marked that they disagreed with the Statement of Eligibility until that evening or the next day. This was the first time that the Director had a parent disagree with an eligibility determination and called the Parents to make sure that they understood that the Student would no longer receive speech services. The Director recalled that, during the conversation, the Parents were clear that they did not disagree with the results of the evaluation but would not agree to exit the Student from speech services until they spoke to the Student's doctor. The Director denied asking the Parents to change their decision on the Statement of Eligibility, but did state that, if the Parents agreed with the with the result, then they should mark that they agreed on the form. The Parents then asked, "What happens next?" and the Director replied that they were new to Oregon and had not dealt with this situation before. The Director indicated that they would contact the District's attorney to find out how to proceed and would get back to the Parents with that information.
48. On February 16, 2024, the Director sent an email to the Parent to follow-up on the phone call from February 8, 2024. The Director informed the Parent, "I have been working with the Seaside School District's attorney to see if we can wait until after your follow-up with your medical provider to seek your signature. We understand that you realize [the Student] will not receive services, and you are okay with that. If this is the case, we will not need to schedule additional meetings."
49. The Parents also explained to the Complaint Investigator that they did not believe the SLP provided the Student with all the speech services required by their IEP. The School Administrator spoke with them about the amount of speech services the Student had received and provided them with a document detailing when services had been provided to the Student, and when they had not.

50. The School Administrator shared that they looked into the amount of services the Student received after the SLPA disclosed, a week prior to the Eligibility Meeting, that the Student would be exited from speech services. This “came as a shock” to the School Administrator because they did not believe the Student had been receiving all the speech services required by their IEP. They described how the Charter School requires visitors, including service providers such as the SLP, to “sign in” when meeting with a student on campus. The School Administrator used this information to create a document detailing when the SLP provided speech services to the Student (Visitors Log) and provided a copy to the Parents. Based on this information, the School Administrator concluded that the Student was “owed” 150 minutes of speech services. The Visitors Log indicates that speech services were provided to the Student as follows:
- a. Services were provided to the Student on: 9/13/23, 10/4/23, 10/18/23, 11/8/23, and 11/29/23.
  - b. Services were not provided to the Student on: 9/20/23, 9/27/23, 10/11/23, 12/7/23, or 12/13/23.
  - c. The Student was absent on 10/25/23, there was a staff in-service on 11/1/23, and there was no school on 11/22/23.
51. When asked why it was “a shock” that the Student might be exited from speech services, the School Administrator explained that staff at the Charter School “did not see that [the Student] was making such huge growth that [they] would be ready to be exited.” The School Administrator, who supervises students during recess, shared that they often must ask the Student to repeat themselves to understand what the Student is saying. The Student’s intelligibility, however, “improved tremendously since the beginning of the year,” and they had seen “continued improvement since December,” despite the conclusion of speech services. Additionally, the School Administrator shared their observation that the Student’s peers sometimes struggle to understand them, but that the Student interacted with peers appropriately and appeared to have friends.
52. The Teacher shared with the Complaint Investigator that the Student has strong academic skills, particularly in math, is a hard worker, and displays good behavior in class. The only concern expressed by the Teacher is that it can be difficult to understand the Student when they speak. The Teacher believes that, when the Student is asked to repeat themselves, it makes them less likely to participate in class. As the school year has progressed, however, the Teacher has noted “gradual improvement” with the Student’s articulation. When asked if the Student’s articulation impacts them socially, the Teacher shared that “articulation impacts [the Student] a little with their peers” in that the Student “is pretty quiet” and “doesn’t initiate a lot,” but “overall, it doesn’t affect [them] making friends” and “[the Student] does really well socially.”
53. With its *Response*, the District provided two separate service logs detailing the provision of SDI to the Student. The first is an Excel spreadsheet detailing service dates, minutes provided, and service notes (Service Log). The second is a document with an abbreviated list detailing the provision of SDI to the Student. According to the SLP, the Service Log is based on notes that they entered into ORSPED, the District’s IEP management system, and is an accurate reflection of the services that they provided to the Student. The SLP shared that they created the abbreviated document “in a panic” as an informal record of the Student’s services when they learned of the Charter School’s allegation that the SLP had not provided all the services in the Student’s IEP, but that the information in the document is not accurate.

54. According to the Service Log, the Student was seen by the SLP, BSLP, and/or SLPA a total of 267 minutes between September 13, 2023 and December 13, 2023, as follows:
- a. 9/13/23 – 15 minutes
  - b. 9/20/23 – 32 minutes
  - c. 9/27/23 – 28 minutes
  - d. 10/4/23 – 30 minutes
  - e. 10/11/23 – 30 minutes
  - f. 10/18/23 – 28 minutes
  - g. 11/08/23 – 32 minutes
  - h. 11/15/23 – 32 minutes
  - i. 11/29/23 – 30 minutes
  - j. 12/13/23 – 10 minutes
55. As detailed in the Service Log, the SLP or SLPA worked with the Student on their IEP goals during the therapy sessions that took place between September 13, 2023 and October 18, 2023. The Service Log reflects that the therapy sessions that occurred after October 18, 2023 were spent evaluating the Student.
56. The Service Log indicates that no services were provided on October 25, 2023 because the Student was absent or on November 1, 2023 due to an in-service day at the Charter School. According to the 2023-24 school calendar on the Charter School's website, there was no school on November 22, 2023 for Thanksgiving Break. On December 7, 2023, the Service Log notes that the SLP and BSLP worked on the 2023 Evaluation report and provided no direct services to the Student.
57. The Service Log provided by the District is determined to be an accurate record of the speech services that were provided to the Student and reflects the following:
- a. September 2023: The Student should have received 90 minutes of speech services as the school was in session for three of the four weeks in September, but was only provided with 75 minutes of speech services. The District failed to provide 15 minutes of required speech services in September 2023.
  - b. October 2023: The school was in session for all four weeks in October, during which the Student should have received 90 minutes of speech services. However, the Student was provided with 88 minutes of speech services, resulting in a shortfall of 2 minutes.
  - c. November 2023: In November, the school was in session for three weeks and the Student should have received 90 minutes of speech services. The Student was evaluated for 94 minutes, 4 minutes more than the required amount.
  - d. December 2023: The Student should have had two speech sessions, totaling 60 minutes of speech services, in December before being exited from special education. The Student was evaluated for 42 minutes. The District failed to provide 18 minutes of required speech services.
  - e. In total, calculations based on the Service Log indicate that the District failed to provide at least 31 minutes of required SDI in speech.
58. The SLP shared that it was their typical practice to evaluate students during their regularly scheduled service time. The SLP believed that time spent reevaluating a student counted towards the minutes of SDI included in the student's IEP, because they would be evaluating

areas related to a student's goals and objectives. The SLP recalled that at least some of the time on each day that the Student was assessed was spent evaluating the Student's articulation. The SLP added that, during testing sessions, "We also worked on strategies to support [the Student] in the areas where we saw need," and that at some point during each testing session, "we were either testing, scaffolding, supporting, or looking at [the Student's] articulation." When asked what percentage of each testing session was spent evaluating the Student's articulation skills, the SLP recalled that 100% of the session spent administering the GFTA and over 50% of the other assessment sessions were spent on articulation.

59. On January 12, 2024, the School Administrator sent an email to the District Support Specialist (DSS) from the Department who is assigned to provide support to the Charter School. The email requests clarification regarding whether time spent evaluating a student for their three-year reevaluation could be counted towards the provision of SDI in the student's IEP.

60. The DSS responded to the School Administrator via email on the same date stating, "In the context of an Individualized Education Program (IEP), 'Service Summary Minutes' refer to the total amount of time that a student receives special education and related services." In answer to the question, "Is Re-Evaluation included in service minutes?" the DSS wrote, "No, the 3-year re-evaluation itself would not be included in the Service Summary Minutes of an Individualized Education Program (IEP). The Service Summary Minutes typically refer to the amount of time a student receives specific special education and related services on a regular basis." The DSS goes on to explain that "The 3-year re-evaluation is a separate process" and "the re-evaluation is not included in the Service Summary Minutes."

61. On January 30, 2024, the Director sent an email to the DSS, who is also assigned to provide support to the District. The email references a previous conversation that occurred between the Director and the DSS regarding IEP service minutes and the evaluation process stating, "Thanks for talking with me last week about service minutes and the evaluation process. My understanding from our conversation is that if the evaluation includes assessment around the goal areas, that does sound *[sic]* toward service minutes. Is this correct?" When asked why they sent the email, the Director explained that the DSS had called them after hearing from the School Administrator to let them know that the Charter School had questions about service minutes. The Director sent this email to confirm the information shared in that conversation.

62. The DSS responded to the Director via email on the same date stating, "Yes, your understanding from our conversation is correct." The DSS goes on to explain, "Time spent assessing a student's skills is generally considered part of the overall process of designing and implementing [SDI]," and "while the time spent assessing a student's skills is not explicitly listed as a separate component in the IEP, it is implicitly integrated into the broader framework of developing and delivering [SDI]." The DSS then clarifies that time spent evaluating a student can only be counted as SDI if the evaluation is related to one of the student's IEP goals.

63. On March 4, 2024 the Parents filed this Complaint.

## IV. DISCUSSION

### **When IEPs Must Be In Effect**

The Parent alleged that the District violated the IDEA by not providing special education and related services, specifically speech services, in accordance with the Student's IEP.



School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.<sup>6</sup> The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.<sup>7</sup> "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."<sup>8</sup>

A district violates the IDEA when it materially fails to implement an IEP.<sup>9</sup> "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."<sup>10</sup> As further explained by the court in *Van Duyn*:

"The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For instance, if the child is not provided the reading instruction called for and there is a shortfall in the child's reading achievement, that would certainly tend to that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material."<sup>11</sup>

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability.<sup>12</sup> In Oregon, special education may include speech-language services.<sup>13</sup> "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction: 1) to address the child's unique needs resulting from the disability; and 2) ensure the child's access to the general education curriculum.<sup>14</sup>

- The Student's June 2023 IEP contains one goal in the area of articulation and requires that the Student receive 120 minutes per month of SDI, in the form of speech (articulation) services, beginning September 11, 2023. The Student was scheduled to receive services for thirty minutes each week on Wednesday.

The speech services provided to the Student in September and October 2023, while slightly less than required by the June 2023 IEP, were generally provided in conformity with the Student's IEP. The Student was seen by the SLP each Wednesday when school was in session and when the Student was in attendance. The Service Log documents that the SLP worked on the Student's articulation goal and the Student made progress on the goal. While the Student was provided fifteen minutes less services than required in September and two minutes less services than required in October, in light of the consistent provision of speech services and the Student's progress, the failure to implement the full amount of speech services during those two months was not material.

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<sup>6</sup> OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

<sup>7</sup> OAR 581-015-2220; 34 CFR §300.323

<sup>8</sup> Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (EDU 2017)

<sup>9</sup> *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9<sup>th</sup> Cir. 2007) ("*Van Duyn*")

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> OAR 581-015-2000(36); 34 CFR §300.39(a)(1)

<sup>13</sup> OAR 581-015-2000(36)(b); 34 CFR §300.39(a)(2)

<sup>14</sup> OAR 581-015-2000(37); 34 CFR §300.39(b)(3)

The question of materiality is more nuanced when considering the implementation of the Student's IEP in November and December 2023. During these months, the Student continued to be seen as scheduled each week by the SLP, but the time was spent evaluating the Student rather than specifically instructing the Student on their articulation goal. As explained by the DSS in their January 30, 2024 email, evaluating a student in an area addressed by one of the student's IEP goals can sometimes be considered the provision of SDI, such as when using assessment to evaluate the student's progress on their IEP goal. That does not mean, however, that all of the time spent evaluating a student can be counted towards the minutes of SDI required by their IEP. While Oregon's definition of instruction explicitly includes assessment, in order to be considered SDI, by definition, the content, methodology, or delivery of the instruction must be adapted to address the student's disability-related needs. Articulation was the only disability-related need described in the Student's present levels of academic achievement and functional performance and measurable annual goals. Some of the time spent evaluating the Student was in direct relation to the Student's articulation, as at some point during each of the evaluation sessions, the SLP was "either testing, scaffolding, supporting, or looking at [the Student's] articulation." Therefore, a portion of the time spent evaluating the Student in the area of articulation could reasonably be considered the provision of SDI.

In addition to articulation, however, the SLP and BSLP also evaluated the Student in both expressive and receptive language. The Student's IEP does not have a goal in the area of expressive or receptive language. Time spent conducting assessments that are not related to the Student's articulation goal cannot be considered the provision of SDI. The SLP estimated that 100% of one of the evaluation sessions and over 50% of the other evaluation sessions were spent assessing articulation. Some, but not all, of that time involved the provision of instruction. Based on the evidence, it is difficult to calculate the exact number of minutes during the evaluation process that can be characterized as SDI, but it is clear the District failed to implement the full amount of SDI required by the Student's IEP.

The quantity of services provided, however, is not necessarily determinative when examining whether a failure to implement a student's IEP is material. A student's progress is another factor that can be considered. In this case, despite the District's failure to provide all of the services required by their IEP, the Student continued to make progress in articulation, their only identified area of need, and met their IEP goal. Further, as evidenced by the results of the December 2023 Evaluation and eligibility determination, the Student achieved average speech and language skills such that they were ultimately found not to qualify for special education. In light of the Student's progress, the District's failure to provide all of the Student's speech services was not a material failure to implement the IEP.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleged that the District violated the IDEA by interfering with the Parents' ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a FAPE to the Student. Specifically, the Parent alleged that the District failed to allow meaningful parental participation in the decision to terminate the Student's speech services.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>15</sup> School districts must consider the concerns of the parents for enhancing the education of their child,

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<sup>15</sup> OAR 581-015-2190(1); 34 CFR §300.501(b)

among other indicators of the student's academic, developmental, and functional needs.<sup>16</sup> "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."<sup>17</sup> School districts must also ensure that parents understand the proceedings of an IEP meeting, including providing an interpreter for parents whose native language is other than English.<sup>18</sup> A meeting, in which parents must be given the opportunity to participate, does not include "preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting."<sup>19</sup>

The Parents were provided the opportunity to participate in each meeting regarding the Student's identification, evaluation, IEP, and educational placement during the complaint period. This included the June 2023 IEP Meeting, Evaluation Planning Meeting, and Eligibility Meeting. The District provided a qualified interpreter at each of these meetings and took steps to ensure that the Parents understood what was discussed. The Parents were able to, and did, ask questions and provide input at each these meetings. The District listened to the Parents' concerns, noted them in the Meeting Minutes, and added additional assessment tools to the Consent for Evaluation in response to concerns raised by the Charter School staff. The District followed the Evaluation Planning Meeting and Eligibility Meeting with telephone calls to the Parents to confirm that the Parents understood what had occurred at the meetings and what steps would be taken next. While Parents reported feeling threatened during one of these calls by the District's mention of involving an attorney, the District disputed that recollection. Regardless, that call occurred after the Eligibility Meeting. There was no evidence that this call impeded the Parents' ability to participate in decisions regarding the Student's education.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education**

The Parent alleged that the District failed to provide the Student with a FAPE by interfering with the Parent's ability to participate in decisions regarding the special education of the Student and by not providing the Student with special education and related services in accordance with the Student's IEP.

Each school district is responsible for providing a FAPE to school age children with disabilities for whom the school district is responsible.<sup>20</sup> The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.<sup>21</sup>

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>22</sup> Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if

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<sup>16</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

<sup>17</sup> Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)

<sup>18</sup> OAR 581-015-2190(3); 34 CFR §300.322(e)

<sup>19</sup> OAR 581-015-2190(4); 34 CFR §300.501(b)(3)

<sup>20</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

<sup>21</sup> OAR 581-015-2040; 34 CFR §300.17

<sup>22</sup> *Endrew F.*, 137 S.Ct. at 999

it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.<sup>23</sup>

In this case, as described above, the District's 'failure to implement the speech services in the Student's IEP was not material. The District also afforded the Parents the opportunity to participate in decisions regarding the Student's education.' Accordingly, there was no denial of FAPE.

The Department does not substantiate this allegation.

### **Determination of Eligibility**

School districts must conduct an evaluation or reevaluation of a student before determining that a student has a disability that meets eligibility requirements for special education, determining that a student continues to be eligible for special education, changing the student's eligibility category, or terminating a student's eligibility for special education.<sup>24</sup> Before conducting an evaluation or reevaluation of a student, school districts must conduct evaluation planning, provide notice to the student's parents that describes the evaluation procedures that the school district proposes to conduct as a result of the evaluation planning, and obtain informed written consent for the evaluation from the student's parents.<sup>25</sup>

After completing the administration of assessments and other evaluations, a team must determine whether the student is student with a disability. 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 statement of eligibility must include a list of the evaluation data considered in determining the student's eligibility, and a determination of whether the student meets the minimum criteria for eligibility under one of the defined disability categories.<sup>26</sup>

A "Speech or Language Impairment" means the "impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics."<sup>27</sup>

If a student is suspected of having a speech or language impairment, a comprehensive evaluation must be conducted that includes a speech and language assessment administered by a state-licensed speech language pathologist, a hearing evaluation or screening, and any additional assessments necessary to determine the impact of a suspected disability, or to identify the student's educational needs. When evaluating syntax, morphology, semantics or pragmatics, the evaluation must include a representative language sample and comprehensive standardized tests that assess expression and comprehension. Evaluations of other speech and language components, such as voice and fluency disorders, have additional requirements.<sup>28</sup>

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<sup>23</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

<sup>24</sup> OAR 581-015-2105(1)(a)-(d)

<sup>25</sup> OAR 581-015-2110(1) and (2)(a)-(b)

<sup>26</sup> OAR 581-015-2120(1) and (2)

<sup>27</sup> OAR 581-015-2135(1)

<sup>28</sup> OAR 581-015-2135(1) and (2)

To be eligible as a student with a speech or language impairment in the form of a phonological or articulation disorder, the following criteria must be met: a) The student's phonology or articulation is rated significantly discrepant as measured by a standardized test; and b) The disorder is substantiated by a language sample or other evaluation.<sup>29</sup>

To be eligible as a student with a speech or language impairment in the form of a syntax, morphology, pragmatic or semantic disorder, the following criteria must be met: a) The student's language in the area of syntax, morphology, semantics, or pragmatics is significantly discrepant as measured by standardized test(s) or other evaluation data; b) The disorder is substantiated by a language sample or other evaluation; and c) The disorder is not the result of another disability.<sup>30</sup>

In this case, the District conducted an evaluation of the Student in the areas of articulation and receptive/expressive language (which includes the domains of syntax, morphology, semantics, and pragmatics). The Student was not specifically assessed for a voice or fluency disorder, as those were not identified as suspected areas of disability as it relates to the category of SLI. The evaluation was comprehensive, completed by qualified professionals, and included all required components of an evaluation for eligibility under SLI due to a language or articulation disorder. While the Charter School staff may have preferred that the SLP and BSLP complete a classroom observation as part of the evaluation, that is not a required component when evaluating an articulation or language disorder, nor did the IEP team determine that an observation was otherwise necessary for the Student. Under the eligibility criteria for SLI, a student can only be identified with a language or articulation disorder if their skills in those respective areas are significantly discrepant, *as measured by standardized tests*, and those results are substantiated by a language sample or other evaluation. If the standardized tests do not indicate significantly discrepant scores, then the student cannot be found to have a language or articulation disorder, regardless of what might be observed in the classroom.

According to the standardized assessment measures administered by the SLP and BSLP (GFTA-3, BAPA, CELF-5), the Student demonstrated average abilities in receptive and expressive language, as well as articulation. These findings were corroborated by the results of non-standardized measures (SLAM), the collection of language samples, a parent interview, and clinical observations. The validity of the assessment results was not disputed during the complaint investigation. These results were included in a report that was reviewed by the Student's IEP team. A statement of eligibility was completed and, based on the eligibility criteria, the Student was found to no longer be eligible for special education as a student with a speech or language impairment. The District documented this decision in a Prior Written Notice, which was provided to the Parents, and the Student was properly exited from special education.

The Department does not substantiate this allegation.

**V. CORRECTIVE ACTION**  
*In the Matter of Seaside School District 10*  
*Case No. 024-054-012*


The Department does not order corrective action in this matter.

Dated: this 2nd Day of May 2024

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<sup>29</sup> OAR 581-015-2135(3)(c)

<sup>30</sup> OAR 581-015-2135(3)(d)



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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: May 2nd, 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 provisions of ORS §183.484. (OAR 581-015-2030 (14).)