

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Klamath County School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-024

I. BACKGROUND

On April 22, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Klamath County School District (District). The Parent 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 Parent 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 April 23, 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 May 7, 2024.

The District submitted a *Response* on May 7, 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 Complaint *Response* Table of Contents, 5/7/24
2. District’s Summary and Chronological Review for Student, 4/22/23 – 4/21/24
3. List of Knowledgeable District Staff, 5/7/24
4. FAIR Behavior Support Plan, 9/18/23 – 11/5/23
5. District Data Collection Form, 10/18/23
6. Prior Notice and Consent for Evaluation, 11/27/23
7. Special Education Program Student Registry, 3/6/24
8. Prior Notice and Consent for Initial Provision of Special Education Services, 3/6/24
9. Individualized Education Program (IEP), 3/6/24
10. Special Education Placement Determination, 3/6/24
11. Notice of Team Meeting, 3/4/24
12. Meeting Minutes, 3/6/24
13. Prior Notice of Special Education Action (PWN), 3/6/24
14. Notice of Team Meeting, 3/1/24
15. Meeting Minutes, 3/4/24
16. Prior Notice of Special Education Action (PWN), 3/4/24
17. Notice of Team Meeting, 2/19/24

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. Prior Notice of Special Education Action (PWN), 3/1/24
19. Eligibility Statement (Speech or Language Impairment), 3/4/24
20. Eligibility Statement (Other Health Impairment), 3/1/24 and 3/28/24
21. Notice of Team Meeting, 3/14/24
22. Prior Notice of Special Education Action (PWN), 4/10/24
23. Meeting Minutes, 4/10/24
24. Education Service District (ESD) Functional Behavioral Assessment, 4/10/24
25. Prior Notice and Consent for Evaluation, 4/10/24
26. Prior Notice and Consent for Evaluation, 3/4/24
27. Notice of Team Meeting, 4/16/24
28. Prior Notice of Special Education Action (PWN), 4/17/24
29. Letter to Parent re Abbreviated School Day Program, 4/17/24
30. Abbreviated School Day Program Meeting Minutes, 4/17/22
31. Meeting Minutes, 4/17/24
32. Student's Schedule, 4/17/24
33. Message Exchange between District Staff and the Parent, 9/8/23 - 2/2/24
34. Email Exchange between District staff and the Parent, 11/16/23 - 2/1/24
35. Message Exchange between District Staff and the Parent, 9/13/23 - 2/2/24
36. Initial Speech Evaluation, 1/29/24
37. District Evaluation Report, 2/6/24
38. ESD Multidisciplinary Assessment Report, 2/5/24
39. Occupational Therapy (OT) Evaluation, 12/7/23

The District submitted additional documents on June 1, 2024.

1. Prior Notice of Special Education Action (PWN), 11/27/23
2. Evaluation Meeting Minutes, 11/27/23

The Parent submitted a *Reply* on May 16, 2024, providing an explanation and rebuttal. The Parent submitted additional documents on May 28, 2024.

1. *Reply*, 5/16/24
2. Private Speech Initial Evaluation, 3/29/23
3. Private Speech "Daily Note," 8/30/23
4. Private Speech "Daily Note," 2/28/24

The Complaint Investigator interviewed the Parent on May 22, 2024. From May 28 to June 4, 2024, the Complaint Investigator interviewed District personnel. 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 Complainant'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 April 23, 2023, to the filing of this Complaint on April 22, 2024.

Allegations	Conclusions
<p>Child Find</p> <p>The Parent alleges that the District violated the IDEA by failing to identify, locate, and evaluate the Student as a child in need of special education services.</p> <p>(OAR 581-015-2080; 34 CFR §300.111)</p>	<p>Substantiated</p> <p>The District suspected the Student had a disability and might need special education services within the first few weeks of the 2023-24 school year. However, the District required the Student to complete the District’s prereferral process before it would initiate an evaluation, which did not occur until November 27, 2023.</p>
<p>Evaluation and Reevaluation Requirements</p> <p>The Parent alleges that the District violated the IDEA when it failed to timely initiate an initial evaluation of the Student following the Parent’s request for an evaluation.</p> <p>(OAR 581-015-2105; 34 CFR §300.301)</p>	<p>Substantiated</p> <p>The Parent requested an evaluation on September 14, 2023. While the District agreed the Student may have a disability that impacted their education, the District delayed the initiation of an initial evaluation until November 27, 2023.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parent alleges that the District violated the IDEA by (1) failing to appropriately conduct the initial evaluation, including failing to conduct an evaluation sufficiently comprehensive to identify all of the Student’s special education and related services needs; and (2) failing to timely complete the initial evaluation and conduct an eligibility meeting.</p> <p>(OAR 581-015-2110; 34 CFR §300.301 and §300.304)</p>	<p>Not Substantiated</p> <p>(1) Both the Parent and District staff reported concerns about the Student stuttering. While it is unclear from the record how much discussion occurred about this during the evaluation planning process, the initial evaluation was sufficiently comprehensive to address these concerns.</p> <p>(2) The Parent signed consent for the initial evaluation on November 27, 2023. The District convened meetings to review the Student’s evaluations and determine eligibility on March 1 and 4, 2024, and completed the development of the Student’s initial IEP on March 6, 2024, all within the 60-school day evaluation timeline.</p>

REQUESTED CORRECTIVE ACTION
<p>The Complainant requested the following corrective action:</p> <ul style="list-style-type: none">• “All parties at the Student’s former school need to be reprimanded for their failure to properly handle this process. They need to be held responsible for the amount of trauma and frustration this has caused the Student and the Student’s family.”

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 April 23, 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 seven years old and in the first grade.
2. The Student is currently eligible for special education services under the category of Other Health Impairment (OHI) and Speech Language Impairment (SLI).
3. During the 2022-23 school year, the Student was homeschooled for kindergarten.
4. The Student started receiving private speech therapy services in April 2023 “to address a moderate-severe stutter that was noted by ... [the Student’s] pediatrician who placed the referral.”
5. A March 29, 2023 “Speech Initial Evaluation” completed by the Student’s Private Speech Language Pathologist (the Private SLP) included the following:
 - a. History: “[The Student] started stuttering about a year ago, and it has gotten more consistent over that time.”
 - b. Primary Goal: “[T]o be more fluent in [their] speech and to be able to consistently communicate [their] needs without getting frustrated.”
 - c. Present Level: “[T]he SLP found that [the Student] had a total of 90 disfluencies over a total of 300 syllables tracked in conversational speech, which totaled a disfluency rate of 30%,” which “placed [the Student] in the severe degree of disfluency.”
6. A September 30, 2023 “Speech Note” from the Private SLP stated:
 - a. The Parent “reported [the Student] has difficulty with [their] fluency when [they get] too worked up or overwhelmed.” The Private SLP worked with the Student on bringing their “excitement level back down and us[ing their] strategies to produce more fluent speech.”
 - b. Progress: “[The Student] has demonstrated increased fluency in conversational speech, and... has demonstrated an ability to use strategies to increase fluency in about 60-70% of opportunities during therapy activities with consistent verbal and visual cueing from teh [sic] SLP.”

7. For the 2023-24 school year, the Student attended a District school as an approved transfer student living in a neighboring school district.
8. On September 5, 2023, the Student started school as a first grader at a District elementary school (the School).
9. The Student had a primary general education first grade teacher (the Teacher), as well as a separate general education teacher for math and reading (the Math Teacher).
10. The Parent reported notifying the Teacher before school started about the Student's struggles with stuttering and hyperactivity.
11. The Parent stated School staff started contacting the Parent within the first few days of school about the Student's behavior, including hyperactivity issues and aggression towards peers.
12. The Teacher reached out to the Parent to discuss concerns about the Student's behavior on September 11, 2023 through an online messaging application used for communication between teachers and parents.
13. In a September 13, 2023 message exchange with the Parent, the Math Teacher stated, "[the Student] can easily become distracted in a class setting... I've found that when I redirect [them], [the Student] doesn't always understand what [they were] doing... We try to switch tasks and our placement (carpet/seat) in the room often to keep attention... I have moved [the Student] a few times and I am going to try [them] with an independent table for a few days to see if [they] can get acclimated to our routine!"

The Parent responded, "While I understand that having less distractions may help, I also worry a lot about [the Student's] self esteem. [The Student] has had issues in the past with feeling left out and like there is something wrong with [them] and people don't want [them] around." The Parent said they would try to "come up with other ideas that could work in a class setting that won't completely single [the Student] out."

14. The School started pushing paraeducator support into the classroom on September 13, 2023 to support the Student, and increased the paraeducator support time on September 28, 2023.
15. The Math Teacher reported the following about the beginning of the school year, among other things:
 - a. The Student started having behavior issues in the classroom right away, including having a hard time respecting the personal space of others, keeping their hands to themselves, following directions, and complying with classroom expectations. The Student's behavior continuously interrupted their learning and the learning of others.
 - b. The Student had one-on-one paraeducator support for most of their time in the Math Teacher's classroom, approximately three hours per day, but this could be difficult as the Student did not like redirection and would sometimes shut down.
 - c. The Math Teacher reported they and the Teacher contacted the Principal in September 2023 to report concerns, both behavioral and academic. They discussed strategies to help the Student and started collecting data.
 - d. The Math Teacher reported the Parent would get upset when contacted about the Student's behavior. Therefore, they only contacted the Parent about major issues.

- e. When asked about speech issues, the Math Teacher stated the Student seemed to have a hard time processing what they were trying to say and would repeat words over and over. The Math Teacher was not aware that the Student had received private speech services.
 - f. The Math Teacher stated it was clear that the Student “needed services” and they thought the Student would qualify for special education.
16. Both the Math Teacher and the Principal stated it was unclear how much the Student’s lack of experience in a school setting contributed to their behavior issues and interfered with their ability to learn. The Principal believed the Student exhibited behaviors at the beginning of the school year that were atypical, even for a child who had not been in school before.
17. According to the Principal, the Parent stated they wanted more information from the school, but when staff communicated the Student’s behavior issues, the Parent would get upset. Occasionally, when school staff reported behavior issues, the Parent would either pick the Student up from school early or not send the Student to school the following day.
18. According to the District, on September 14, 2023, the Parent made a request to the Principal for the Student to be evaluated for special education services.
19. The Parent reported calling the School on September 14, 2023, to request a meeting with the Principal. The meeting was scheduled for September 18, 2023.
20. The Parent reported, “I initiated the first meeting because I had been getting negative reports, and was trying to start the process as soon as possible... I was told at that point that they would’ve eventually called a meeting to start everything, but they usually would’ve waited a bit longer before initiating the process.”
21. The Parent reported the following about the beginning of the school year:
- a. Communication from the Student’s teachers was minimal.
 - b. The Parent occasionally got calls from the School to report that the Student was distressed, and the Parent would pick the Student up from school.
 - c. The Student reported they were sitting by themselves at school, everyone at school hated them, and no one wanted them to be there.
 - d. The Student often came home upset and reported that they were being bullied at school. In one incident, the Student stated they were told by a sixth grader, “if you talk to me again I am going to kill you.” This incident, along with others, was reported to the School but nothing was done.
22. The Principal confirmed this incident with a sixth-grade student did occur, on the playground one morning before school. Following this incident, the paraeducator on duty was instructed to support the Student during this time.
23. On September 18, 2023, the Principal convened a meeting, which included the Parent, the Principal, and the Teacher, to discuss the Student’s behavior.

24. The District provided a copy of a "FAIR (Function, Accommodations/Teaching Strategies, Interaction Strategies, Response Strategies) Behavior Support Plan" (BSP) developed for the Student, dated September 18, 2023.
25. The Principal reported the following about the September 18, 2023 meeting:
 - a. The Student's BSP was discussed and they shared various strategies staff had been trying to support the Student.
 - b. The special education referral process was explained to the Parent. The District would gather data, including for reading, math, behavior, and attendance, among other things. Once this was completed, it would be sent to the District office to be reviewed by a team of special education coordinators.
26. The Parent reported the following about the September 18, 2023 meeting:
 - a. They were told that the District generally gives students about a month to adjust to school before starting the evaluation process. The Parent had concerns about waiting this long as there had already been so many behavior issues since the start of the school year.
 - b. The Principal agreed to initiate the evaluation process but the process was not explained to the Parent.
 - c. The Parent could not recall that a "FAIR" BSP was discussed at this or any other meeting.
27. The September 18, 2023 BSP included the following information, among other things:
 - a. Targeted Behaviors: "[The Student] continuously blurts out. During three 30 min [sic] reading lessons [the Student] interrupted, blurted, got out of [their] seat 20, 17, 23 times. [The Student] has issues understanding personal space and is often touching other students, sometimes hurting them. [The Student] argues when asked to do something as simple as 'get in line.'"
 - b. Accommodations/Teaching Strategies: visual cues; safe place to take break; functional communication with "time to talk/time to listen"; daily behavior sheets for earning rewards sent home to the Parent; emails sent home on Tuesdays and Thursdays; and "weekly one-on-one w/ counselor to learn social skills."
 - c. "[The Student] has a one-on-one para [sic] 2 ½ hours a day to help redirect, do work, stay on task and not interrupt."
28. The District reported that the School started implementing the Student's BSP on September 25, 2023.
29. The District reported, "Common [District] practice is to develop and Implement a FAIR plan to gather data and test interventions prior to special education eligibility considerations and prior to an FBA being conducted."
30. On September 25, 2023, the District convened an additional meeting to discuss the Student's behavior and the Parent's concerns, which included the Parent, a family member, and the Principal. The Principal reported they went over the Student's BSP and current interventions being implemented.

31. The Parent reported the Student stopped going to private speech services in October 2023 because scheduling became difficult, and the District told Parent that Student could get speech services at school.
32. The District reported, “[The district Data Collection Form (DCF)] compiles known information about a student, including prior academic history, assessment results as well as results from any attempted intervention. The team uses the data gathered on this form to determine if they are to proceed with formal evaluation.”
33. On October 18, 2023 the School submitted a DCF to the District containing information gathered about the Student, including academic history, assessment scores, and attempted interventions.
34. The Student’s October 18, 2023 DCF form included the following, among other things:
 - a. Reason for Referral: “Parent Request, although the school team does observe behaviors that are atypical compared to [their] 1st grade peers, and would have filled out the DCF sooner rather than later ourselves. We have had to push in para [sic] support for a large portion of the day to support [the Student].”
 - b. Attendance: “8 days missed. 33%... It is generally considered that an absence rate over 10 percent can begin to impact a student’s learning.”
 - c. “Although we have not written referrals. [sic] There are 8 trackers written for [the Student] hurting other students, being too physical, continuously disrupting instruction.”
 - d. Parent Concerns: “[the Student] does not understand personal boundaries and personal space... [the Parent] is curious if [the Student] has anxiety as [they] can become fixated on the idea the no one loves [them] and no one wants to be around [them]. This feeling of anxiety or feeling of worry has been occurring for about a year... [the Student] can be hyper-active [sic] at times.”
 - e. Academic Interventions: the Student started receiving phonics lessons on September 15, 2023, four days a week for 30 minutes per session.
 - f. Accommodations: Paraeducator support (“Has helped with some of [their] more aggressive impulses. Gives [them] immediate assistance when struggling with work even though it is modified.”); sticker chart (has helped with communication between school and home); adult bathroom buddy (“to help [them] remember to go quickly, no playing and to know how to come back”); give the Student a job to keep them focused; use hand signals to remind them of expectations; talk and give directions at a preschool level of delivery and complexity; give breaks when overwhelmed; and meet weekly with counselor to work on social skills.
 - g. Processing/Cognitive Ability: “Existing Information: Forgets what was learned, Difficulty with new information, Difficulty with Multi-step directions, Difficulty generating ideas, Difficulty getting ideas on paper. Additional Data Needed: No evaluations recommended.”
 - h. Communication Skills: “Articulation, Stuttering, Difficulty Understanding Directions.”

“Articulation issues. [The Student] also has difficulty forming sentences and words. Takes multiple attempts to form words and or sentences in a row. [The Student] has difficulty using a voice level that is acceptable in the classroom and does not understand the

concept of interruption and how to properly ask a question in the classroom. [The Student] does attend [private speech clinic] for speech/language.”

35. The Coordinator stated the District goes through the process of completing the DCF “with every initial and three-year re-evaluation,” and they have never seen a case where a team had enough existing information to complete the DCF without gathering additional information. “The schools gather the data and send it to our Special Services Secretary, [they record] it in a spreadsheet to track the process, and then it goes to the Coordinator assigned to that school.”
36. In October 26, 2023 messages to the Parent, the Teacher stated, “[The Student] told me today that a [peer] has been picking on [them] a lot, and today [the Student] was pushed down on the playground and skinned [their] elbow up. [The Student] said this student has ‘spanked’ [the Student] a couple of times in PE as well. I don’t know if you were made aware of this. [The Student] said [they] told [the Math Teacher]... I will communicate with the office about this as well.”
37. The Principal stated the Parent contacted them several times to report the Student was being bullied at school. The Principal noted that each time the School would check security cameras to see what happened. Most of the time the camera showed that the Student had instigated the conflict (e.g., the Student was pushing a peer rather than the other way around). The Principal would then report their findings to the Parent, who would be upset with what the Principal shared.
38. On November 1, 2023, the Coordinator reviewed the Student’s DCF.
39. The Coordinator reported the District had weekly “coordinator meetings” amongst the District special education coordinators and school psychologists, in which they would review the data collection forms submitted. At the November 8, 2023 coordinator meeting, the group discussed the Student’s DCF and decided to move forward with scheduling an evaluation planning meeting.
40. The Parent reported not receiving any update about their special education evaluation request until November 2023, when the Parent received a call from the District to schedule an evaluation planning meeting. When asked, the Parent stated they did not know about the DCF process.
41. In a November 15, 2023 message to the Parent, the Math Teacher reported the Student was having issues keeping their hands to themselves, shoving peers, and yelling in their faces when transitioning between recess and the classroom. The Math Teacher stated the Student had a hard time “understanding that [they] did anything wrong.”
42. The District reported the SLP met with the Student’s teachers, who expressed concerns about articulation and stuttering. “When the SLP asked for examples of stuttering, they stated that when the student talks fast, letter sounds are sometimes dropped. The SLP shared with the teachers that dropping sounds in this way is more indicative of articulation issues. The SLP reports that at the time [the SLP] evaluated the student, there were no indications of stuttering.”
43. The Parent adamantly disagreed with the District SLP’s claim that the Student did not have a stutter at this time.

44. The Coordinator stated the SLP did an initial screening with the Student to determine which assessments they wanted to include in the evaluation. The SLP determined the only area of concern was articulation. The SLP emailed their recommendations to the Coordinator, who copied them into the Student's DCF.
45. When asked about the Student's speech, the Coordinator stated they only noticed that the Student talked too fast and needed to slow down, be more articulate, and learn more vocabulary.
46. When asked, the Principal reported the following about speech issues:
 - a. They did not think the Student stuttered. Rather, it seemed more like the Student's thoughts were moving faster than their speech and the Student would sometimes pause and not say anything.
 - b. The SLP shared that teachers thought the Student stuttered but the teachers did not necessarily understand the clinical meaning of "stutter." The SLP reported that when the Student was excited they would drop some consonants, but not stutter.
 - c. At first the SLP was unsure whether the Student would qualify for speech services, but eventually identified some sounds that could qualify the Student for articulation.
47. The Parent reported being contacted by the SLP a day or so before the scheduled evaluation planning meeting to inform the Parent that they could not attend the meeting, but would leave a form for the Parent to sign. The Parent stated the SLP did not communicate anything about their determination that the Student only needed to be evaluated for articulation, and not stuttering. The Parent stated that if the SLP had shared this information, the Parent would have objected.
48. On November 27, 2023, the District convened an evaluation planning meeting. The following information was reported about this meeting:
 - a. The SLP did not attend the meeting.
 - b. Educational impact of the Student's disability: "Does not work well w/ [sic] others, non verbal [sic] cues, outbursts, disrupts, aggressive, ODD, impulse, organization, blurts, self management [sic]."
 - c. The Parent reported assessments were discussed but that it was never communicated that the Student would not be evaluated for stuttering issues. The Parent recalled that they did not understand what was being said for the most part.
 - d. The Principal reported that the Coordinator read the SLP's recommendations aloud from the Student's DCF.
 - e. The Parent stated the team discussed and agreed that the Student needed a functional behavioral assessment (FBA). The Coordinator stated the FAIR BSP was discussed, but not an FBA.
 - f. The Parent shared that the Student was recently diagnosed with attention deficit hyperactivity disorder (ADHD) and their doctor recommended medication. The Parent was worried about the side effects of medicating the Student. School staff agreed to notify the Parent if they saw any signs of side effects or other changes at school.

- g. According to the District, the team “agreed to move forward with formal evaluation,” and the Parent “was fine, agreed to everything, and signed consent.”
49. The District reported, “The Data Collection Form does note parent concern for student’s stuttering... The SLP reports that [they] conducted an initial screening that included stuttering as part of the data collection process. Based on the initial screening results, the SLP brought forth a recommendation for articulation evaluation. Consent for articulation was provided by parent at the 11/27/23 meeting. Consent for stuttering evaluation was not requested or provided at the 11/27/23 meeting. The SLP was not able to attend that meeting but was excused. Initial indications are that there was a miscommunication before or after the 11/27/23 meeting about the stuttering question.”
50. The Parent reported, “I absolutely cannot understand how anyone who has spoken to [the Student] for more than a few minutes could claim that [the Student] did not stutter and that it was merely an articulation issue. I was never given any indication that both articulation and stuttering were not going to be evaluated... While I did sign what was presented to me, I was not fully made aware of the limitations of what was being signed.”
51. There is no evidence of the team discussing or making a determination related to the Parent’s request for an assessment of the Student’s stuttering. Nothing in the record indicates that [the District explained to the Parent that the SLP decided not to assess the Student for stuttering. When asked, District witnesses could not recall the stuttering issue being mentioned at the November 27, 2023 meeting.
52. The District issued a “Prior Notice about Evaluation/Consent for Evaluation” dated November 27, 2023, which included the following information:
- a. The District was proposing to evaluate the Student because “[the Student] is struggling behaviorally and academically in the school setting. More intensive interventions may be needed for [the Student] to be successful in school.”
 - b. “Any other factors considered by the team: ROI [Release of Information] from ... [the Student’s private speech clinic].”
 - c. The Student would be assessed in the following areas: academic achievement, social/adaptive behavior, classroom observations, visual motor abilities, sensory profile, articulation and phonology, oral motor exam, speech sample, and developmental health history.
53. The Coordinator stated they were not aware that the Student ever received private speech services. If they had been aware, they would have requested a release of information for the District to obtain records related to the private speech services.
- It is unclear how the Coordinator could be unaware of the Student’s private speech services as they were mentioned in the Student’s DCF and the November 27, 2023 Prior Notice about Evaluation.
- There is no evidence to suggest that the District obtained a release of information or requested additional information about the Student’s private speech services.
54. The District issued a Prior Written Notice (PWN) dated November 27, 2023, which stated the District proposed evaluating the Student because of “parent request and concerns from staff.”

The decision was based on “Data Collection Form, academic progress, behavior records, staff & parent input.”

55. When asked about the length of time that passed before the District convened the November 27, 2023 evaluation planning meeting, the Math Teacher thought it occurred very quickly given the District’s “required” DCF process. The Principal also thought the process went quicker than normal for the Student.

56. In a December 4, 2023 email to the Teacher, the Parent wrote the following:

“I wanted to let you know that [the Student] started a med on Saturday. Today is [their] first school day with it, so please let me know how things go.

I noticed that there are times [their] emotions are very heightened ... If things get too crazy or anything, please don’t hesitate to call me. My [spouse] and I are more than happy to try to talk [the Student] through things, or, if that doesn’t work, bring [the Student] home... I know this has been a difficult year with [the Student], and I appreciate all the efforts being put in to help.”

The Teacher responded, “I have noticed changes with [them]. [The Student] is able to following [*sic*] instructions and stay on task better today. I asked how [they were] feeling and [they] said [*sic*] ‘I am great!’”

57. In a December 6, 2023 message to the Parent, the Math Teacher stated the Student “has been having a much easier time focusing and attending to our learning. The only thing I’m seeing that you may want to be aware of is that [the Student] does space off a little but from time to time and then comes back to attention when I call [their] name.” “I also wouldn’t say [the Student’s] zoning off affects [their] learning nearly as much as the hyperactivity! I just know, as a [parent], that you would want any side affects [*sic*] we see.”

The Parent responded, “I definitely appreciate knowing all side effects... Any and all input is helpful as it’ll give me things to tell the doctor. Just curious, has [the Student] seemed more emotional or easily crying?”

58. In a December 7, 2023 email to the Parent, the Teacher wrote, “showing improvements on [their] behavior in the classroom... does still struggle with social context interactions with other students in which [the Student] has been pushing and shoving in line... is able to complete almost all of [their] assignments and stay more on task... However, in [the Math Teacher’s] classroom [the Student] still has a hard time adapting to correction... [The Student] was pulled today to start the process of [their] testing and evaluations.”

59. In a December 12, 2023 message to the Teacher, the Parent wrote, “[P]lease let me know if [the Student] seems different today. We’ve noticed [the Student] being more lethargic the last couple of days at home, so I wasn’t sure if that was happening at school as well. We have an appointment with [their] doctor tomorrow to discuss the meds, so any and all info/input is appreciated.”

60. In a December 12, 2023 email to the Parent, the Teacher stated, “[The Student] has had a better week and we are still seeing changes with [them]. However, today at breakfast [the Student] did spit chewed food at two other students in their hair and their face in which [the Student] missed morning recess for. [The Student] did not understand why [they were] missing recess after being explained why.”

61. The Parent reported contacting the Coordinator about the status of the Student's evaluations and was told the District was working on them. The Parent stated the District did not explain the 60-day evaluation timeline.
62. In a January 23, 2024 email to the Parent, the Teacher shared that the Student reported someone took their backpack. The School checked cameras and confirmed a peer took the backpack.
63. On January 29, 2024, the SLP completed a one-page Speech Evaluation Report, which stated, "[The Student] was referred for a speech evaluation by [their] teacher. Concerns were expressed regarding [the Student's] articulation skills." In the Report, one "Speech-Language Assessment Instrument" was listed (Arizona Articulation and Phonology Scale, Fourth Revision), which indicated the Student had "difficulties with articulation."

Stuttering was not mentioned in the report.

64. In a January 30, 2024 email to the Parent, the Teacher reported the Student was improving overall but there had been more interruptions during class in the last few days. "We still struggle at times invading people's personal space but [the Student] is starting to recognize it [themselves] without being told."
65. In a February 2, 2024 message to the Parent, the Math Teacher wrote, "I was curious if [the Student] had [their] adhd meds the last few days? [The Student has] been super emotional and had a really hard time focusing."

The Parent responded, "Yes...I've made sure [the Student] had them every morning before we left the house. [The Student] told us last night that [they are] having a really hard time at school because of the amount of kids bullying them, and I'm afraid it's bothering [the Student] more than it used to."

66. The Math Teacher stated they sent the February 2, 2024 message to the Parent because they were under the impression that the Parent wanted to know about any changes observed at school.
67. The District reported the Parent submitted a request on February 2, 2024 for the Student to be transferred to a different District elementary school (the New School).
68. The District reported it scheduled an "Evaluation Results Meeting" for February 5, 2024 but the meeting "was cancelled because parent withdrew student from school" on February 5, 2024. However, all District staff questioned, as well as the Parent, stated there was not a meeting scheduled for this date.
69. A February 6, 2024 District Evaluation Report included the following information:
 - a. Reason for Referral: "[R]eferred to Special Services by school staff for an initial evaluation due to lack of focus and inattention to school work."
 - b. Classroom Observations: "[The Student] does appear to like to raise [their] hand but when [they get] called upon, [the Student] stutters and appears a bit embarrassed."
 - c. "Off-task behaviors included running around the room, talking while the teacher is talking, walking over to talk to students during the time the teacher is talking, moving around the

room, shaking [their] legs under the table, eyes wandering around the room, not following directions, blurting answers, and getting into other students [sic] personal space.”

70. On February 14, 2024, the Student started attending the New School after District approved the Student’s transfer request.
71. The Parent stated they transferred the Student to the New School “due to the lack of concern from [the School] staff and inappropriate communication regarding [the Student] being on medication.”
72. The District reported, “Following student’s enrollment at [the New School], teachers did notice what they believed to be stuttering that was evident when student was experiencing an elevated emotional state.”
73. A February 28, 2024 Speech Progress Note from the Private SLP included the following:
 - a. “[The Student] had been previously receiving speech-language therapy services to work on stuttering, but was doing well and the family wanted to take a break to focus on transitioning to in person schooling. The family reported that [the Student] started school and had a very hard time, often being picked on and having trouble socializing with peers. The family reported that after awhile [sic], [the Student’s] stutter became much more severe, to the point that [the Student] could not get [their] words at [sic]... [the Student] has changed schools and that [their] stuttering has improved, but that [the Student] is still having more difficulty with it than when [the Student] was doing speech therapy. At this time, the SLP recommends that [the Student] received [sic] consistent speech-language therapy services.”
 - b. “The SLP took a speech-language sample during today’s therapy session and analyzed it for instances of disfluencies. The SLP noted ... a 25% disfluency rate.”
74. The District convened a meeting on March 1, 2024 to review evaluations and determine eligibility. The team found the Student eligible for special education under the category of Other Health Impairment (OHI).
75. The District issued a March 1, 2024 PWN, which stated, “A meeting took place to discuss the data collected during the evaluation for special education. OHI established. The Speech Report was not ready for this meeting. A new meeting will take place to review results for speech & language eligibility.”
76. The District convened a meeting on March 4, 2024 to discuss the Speech Evaluation Report. At the meeting, the Student was found eligible for special education services under the category of Speech Language Impairment.
77. The March 4, 2024 Meeting Minutes stated, “Review Eligibility for Speech... was assessed for articulation at [the School]. [The New SLP] reviewed assessment – severe range for articulation. Marked ‘no’ for fluency. [The Parent] brought concerns of stuttering. Classroom teacher agreed. Team discussed starting services for articulation and reconvening in about 3 weeks for [the New SLP] to report what [they see] after working with [the Student].”
78. The New SLP reported the following:
 - a. They received an email from the SLP on February 14, 2024, stating the SLP had completed articulation testing and an evaluation report, and had started the eligibility

paperwork. They received the SLP's Speech Evaluation Report on or about February 22, 2024.

- b. The New SLP was not aware that the Student had ever received any private speech services.
- c. By mistake, the New SLP was not invited to the March 1, 2024 meeting. The New SLP was contacted on March 3, 2024 and asked to attend the March 4, 2024 meeting.
- d. The New SLP attended the March 4, 2024 meeting but had not yet met the Student. However, staff at the New School had already made reports to the New SLP that the Student had issues with stuttering.
- e. At the March 4, 2024 meeting, the Parent asked about the stuttering issue. The team agreed that the New SLP would meet with the Student and notify the team if they believed that an evaluation for disfluency was warranted.

79. The Parent reported the Student had a lot of anxiety about stuttering and made them reluctant to speak. The Parent believed the Student's speech skills regressed a lot during the 2023-24 school year.

80. The District issued a March 4, 2024 PWN, which stated the following, in relevant part:

- a. "The speech and language was [sic] not addressed due to lack of a report. The team met today to review the SLP report and establish eligibility for speech and language."
- b. "The team believes and [sic] FBA is essential to/for properly supporting [the Student] in the academic setting... Consent for FBA was received."

81. On March 6, 2024, the District convened a meeting to develop the Student's initial IEP.

82. The March 6, 2024 IEP (March 2024 IEP) included the following, in relevant part:

a. Present Levels:

- i. "[The Student's] extreme behavior impedes [their] learning and the learning of others. [The Student] needs frequent adult support to help [them] regulate [their] emotions and encourage response delay."
 - ii. "[The Student's] disability impacts [their] performance in the general education classroom due to [their] challenges with characteristics associated with ADHD including, hyperactivity, elevated emotional dysregulation, and challenges with executive functioning... [the Student's] overall developmental and adaptive skills are average compared to other children of a similar age."
- b. Annual Goals: three goals total; one behavior goal (verbally identify strategies to improve emotional regulation); one social skills goal (use strategies to appropriately respond to social situations); and one speech-language goal (correctly produce /v/, /sh/, /l/, and /l/ blends).
 - c. SDI: Behavior (380 minutes per week); Social Skills (380 minutes per week); and Speech/Language Therapy (140 minutes per grading period).

- d. Accommodations: limit distractions; strategic seating; positive peer modeling; processing time to allow for response delay; movement breaks; positive praise and encouragement; extra time for task completion; and repeat instructions, among others.
 - e. Modifications: “Frequent adult support” for academic tasks in all school settings; and “Shortened assignment/workload” for all academic tasks in the general education classroom.
 - f. Non-Participation Justification: “[The Student] needs small group instruction for behavior and social skills... will be pulled 380 minutes per week for behavior and social skills support.”
83. The March 6, 2024 Special Education Placement Determination selected “Regular education with pull-out special education services for behavioral/social skills/OT/SL as indicated in the IEP,” from the three placement options listed.
84. On March 6, 2024, the District issued a PWN proposing to initiate special education services. “The team agreed the intense schedule addressing supports for [the Student] is [necessary] at this time. The goal is to return [the Student] to the general education setting as much as possible once progress is made.”
85. The District reported that the 60-school day evaluation timeline, from the date the Parent provided written consent on November 27, 2023, ended on March 7, 2024.
86. The New SLP reported the following:
- a. They started providing speech services to the Student on March 7, 2024. They initially met with the Student for 25 minutes, two times per week, and continued with this schedule through April.
 - b. When they started working with the Student, the Student was stuttering. The Student’s stutter was “much more severe” when the Student was having a difficult day.
 - c. After spring break, the New SLP determined additional speech assessment was necessary.
 - d. They could not say whether the Student should have been evaluated earlier for stuttering issues, or whether the Student’s speech skills had regressed, as they did not know what the Student’s speech was like in the fall. The Student had a hard time adjusting to the New School and the New SLP could not say whether this may have influenced the Student’s stuttering at the time.
87. On April 10, 2024 the District convened a meeting to discuss the completed FBA.
88. On April 10, 2024, the Parent signed consent for the District to conduct an additional speech evaluation.
89. On April 10, 2024, the District issued a PWN proposing an evaluation to determine if the Student had a fluency disorder because “Staff has noticed that [the Student] is frequently dysfluent.”
90. The District convened a meeting on April 17, 2024 to “discuss placement options.” At the meeting, the District recommended an abbreviated school day for the Student.

91. On April 22, 2024, the Parent filed this Complaint.

IV. DISCUSSION

Child Find

The Parent alleges that the District violated the IDEA by failing to identify, locate, and evaluate the Student as a child in need of special education services.

School districts must identify, locate, and evaluate all children with disabilities for whom they are responsible who need special education, regardless of the severity of the disability.³ This includes children who are suspected of having a disability even though they are advancing from grade to grade, or are homeschooled.⁴ Children are eligible for special education when they have a disability as defined by the IDEA and state authorities and, by reason thereof, require special education.⁵ Evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the disability is suspected.⁶ Such an inquiry is not limited to academic performance.⁷ School districts must also consider a child's "social and emotional needs that affect academic progress, school behavior, and socialization."⁸ The threshold for suspecting that a child is or may be a child with a disability is relatively low, as "the inquiry is not whether or not [a student] actually *qualifie[s]* for services, but rather, [whether the student] should be *referred* for an evaluation."⁹

If a district has reason to suspect that a student has a disability and a need for special education, prereferral or response to intervention (RTI) strategies cannot be used to delay or deny an evaluation. "It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification."¹⁰ School districts "have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy."¹¹ "School districts cannot circumvent [the responsibility to assess a child] by way of informal observations, nor can the subjective opinion of a staff member dispel such reported suspicion."¹²

The District had reason to suspect that the Student was or might be a student with a disability and, by reason thereof, might need special education services starting in September 2023. Both the Parent and the Student's teachers expressed concerns about the Student's behavior interfering with their ability to access their education, and that of peers. When the Parent made a formal evaluation request on September 14, 2023, the District did not object. However, the District required the Student to first go through the data collection form (DCF) process, the District's prereferral process. This included gathering data, having the SLP conduct an initial screening assessment, and waiting until District testing had been completed, as the Student's test scores were required to complete the DCF, among other things.

Even once completed, despite ongoing knowledge that the Student may be a child with a

³ OAR 581-15-2080(2); 34 CFR § 300.111(a)

⁴ OAR 581-15-2080(2)(d); 34 CFR § 300.111(c)(1)

⁵ OAR 581-015-2120; 34 CFR § 300.306

⁶ OAR 581-015-2110; 34 CFR § 300.304

⁷ Letter to Clarke, 48 IDELR 77 (3/8/07)

⁸ *Cty. Of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996)

⁹ *Dep't of Educ., State of Hawaii v. Cari Rae S.*, no. 1195 (D. Haw. 2001)

¹⁰ *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 1/21/2011)

¹¹ *Id.*

¹² *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2017)

disability, the District delayed the evaluation planning meeting until Student's DCF was reviewed by a district team including the Coordinator. The District had an obligation to initiate an initial evaluation by September 2023, but did not convene an evaluation planning meeting or otherwise initiate the Student's initial evaluation until November 27, 2023.

The Department substantiates this allegation.

Evaluation and Reevaluation Requirements

The Parent alleges that the District violated the IDEA when it failed to timely initiate an initial evaluation of the Student following the Parent's request for an evaluation.

A parent or school district may initiate a request for an initial evaluation to determine if a child is eligible for special education services.¹³ An initial evaluation must be conducted to determine whether a child is eligible for special education when a school district suspects, or has reason to suspect, that the child has a disability with an adverse impact on the child's educational performance.¹⁴ The district must designate a team to determine whether an initial evaluation will be conducted, and the team must include the parent.¹⁵

As mentioned above, a prereferral process cannot be used to delay an evaluation if the district suspects a disability and possible need for special education. In this case, School staff suspected the Student had a disability that was adversely impacting the Student's education almost immediately after the start of the 2023-24 school year. The Parent requested an evaluation on September 14, 2023, less than two weeks after the Student started school. However, the District made the Student wait an additional two and half months to complete the DCF process and schedule an evaluation planning meeting, before initiating the Student's evaluation.

Although (1) the Parent made a request for an initial evaluation, and (2) the District suspected the Student had a disability and needed special education services, the District did not initiate an evaluation until November 27, 2023. This resulted in an unreasonable delay of the Student's initial evaluation.

The Department substantiates this allegation.

General Evaluation and Reevaluation Procedures

The Parent alleges that the District violated the IDEA by (1) failing to appropriately conduct the initial evaluation, including failing to conduct an evaluation sufficiently comprehensive to identify all of the Student's special education and related services needs; and (2) failing to timely complete the initial evaluation and conduct an eligibility meeting.

Before conducting any evaluation, a district must provide notice to the parent that describes any evaluation procedures the district proposes to conduct and obtain written consent for the evaluation.¹⁶ An evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility, continuing eligibility, or the student's

¹³ OAR 581-015-2105(2); 34 CFR § 300.301(b)

¹⁴ OAR 581-015-2105(3); 34 CFR § 300.301

¹⁵ OAR 581-015-2105(3); 34 CFR § 300.305

¹⁶ OAR 581-015-2110(2); 34 CFR § 300.300

educational needs.¹⁷ If a school district refuses an evaluation requested by a parent, it must provide the parent with prior written notice.¹⁸

In conducting an evaluation, a school district must use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student.¹⁹ This should include information from the parent.²⁰ The information is used to determine (1) whether the child has a disability, and (2) the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum.²¹ Districts must ensure that children are assessed in all areas related to the suspected disability.²² The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.²³

The Parent expressed concerns to the District about the Student, which included stuttering. The District included this concern in the Student's DCF, which also noted that the Student received private speech services. In addition, the District's November 27, 2023 Prior Notice about Evaluation mentioned obtaining a release of information for the Student's private speech records. While it is unclear to what extent the Parent shared any details about the private speech services the Student received, the District was aware of them. There is no evidence to suggest that the District obtained a release of information or requested additional information about speech services.

According to the District, the Student's teachers also expressed concerns about the Student stuttering. However, the SLP determined the teachers were mistaken and there was no evidence of stuttering. The SLP recommended assessing the Student for articulation only. District staff followed this recommendation at the November 27, 2023 evaluation planning meeting when selecting assessments for the Student's initial evaluation. The SLP did not attend the meeting because of a scheduling conflict.

The District argued (1) the Parent was told at the November 27, 2023 meeting that the Student would be assessed in the area of articulation, (2) the Parent did not request the Student be evaluated for stuttering at this meeting, and (3) the Parent signed consent for the evaluation without protest. There is no evidence that the SLP's decision to not include stuttering in the evaluation was explained to the Parent. The Parent asserted they would have objected to this decision had it been made clear.

The District, not the Parent, is responsible for ensuring that evaluations are sufficiently comprehensive to identify all of a student's special education and related services needs. As both the Parent and the Student's teachers mentioned stuttering as an area of concern, the team had sufficient evidence to assess in this area. The evaluations used by the District were sufficiently comprehensive to determine if the Student was eligible for speech services as a student with a fluency disorder. While the District initiated a new evaluation for stuttering on April 10, 2024, the New SLP was unable to determine that stuttering had previously been a concern.

The Department does not substantiate this part of the allegation.

¹⁷ OAR 581-015-2110(5)(a); 34 CFR § 300.301(c)

¹⁸ OAR 581-015-2110(2)(c); 34 CFR § 300.503(a)

¹⁹ OAR 581-015-2110(3); 34 CFR § 300.304(b)

²⁰ OAR 581-015-2110(3); 34 CFR § 300.304(b)

²¹ OAR 581-015-2110(3); 34 CFR § 300.304(b)

²² OAR 581-015-2110(4); 34 CFR § 300.304(c)

²³ OAR 581-015-2110(4); 34 CFR § 300.304(c)

The Parent signed consent for the District to conduct an initial evaluation on November 27, 2023. The District convened meetings to review evaluations and determine eligibility for the Student on March 1 and March 4, 2024. The Student's initial IEP was developed on March 6, 2024. The Student's evaluations were completed and eligibility was determined within the 60 school-day timeline. Further, the District could have waited up to 30 additional days to develop the initial IEP, but also completed that within the 60 school-day timeline required for the evaluation and eligibility determination.

The Department does not substantiate this part of the allegation.

Additional Findings

Prior Written Notice (PWN)

PWN must be given to the parent of a child within a reasonable period of time before a school district proposes or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. The IDEA requires that PWN must include a description of the action proposed or refused; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action; a statement that the parent of the child has protection under the procedural safeguards, as well as sources for parents to contact to obtain assistance in understanding their procedural safeguards; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agencies proposal or refusal.²⁴

In response to the Parent's September 14, 2023 evaluation request, the District determined it needed to complete its prereferral DCF process before initiating the evaluation. However, the District did not provide the Parent with PWN. The first PWN issued by the District was dated November 27, 2023, which proposed initiating an evaluation for the Student.

V. CORRECTIVE ACTION²⁵
In the Matter of Klamath County School District
Case No. 24-054-024

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

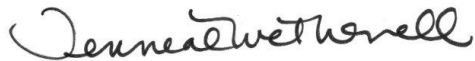
Action Required	Submissions	Due Date
1. The District must ensure that all District staff who were responsible for identifying and evaluating this Student receive training in each of the following areas: <ul style="list-style-type: none"> • Child Find; • Evaluation Requirements; 	Training agenda/materials to ODE for review/approval. Sign-in sheet for training.	October 1, 2024 January 15, 2025

²⁴ OAR 581-015-2310; 34 CFR §300.503

²⁵ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<ul style="list-style-type: none"> • Prior Written Notice. 		
<p>2. The District will convene an IEP meeting with the Parent to discuss whether compensatory education/services are required.</p>	<p>Evidence of IEP meeting and decision regarding compensatory education/services and delivery plan, if necessary.</p> <p>Evidence of completion of delivery of compensatory education/services, if necessary.</p>	<p>September 15, 2024</p> <p>June 15, 2025</p>

Dated: this 21st Day of June 2024



Tenneal Wetherell
 Chief of Staff
 Oregon Department of Education

E-mailing Date: June 21, 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).)