

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Medford School District 549C )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 15-054-008

**I. BACKGROUND**

On February 25, 2015, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Medford School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District on February 26, 2015, by email.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On March 7, 2015, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On March 20, 2015, the District timely submitted its *Response* to the *Request for Response*, both by email and by mailing a hard copy of the *Response*, with accompanying documentation. On March 26, 2015, the Parents timely provided a *Reply* by email in this case. This order is timely.

The Department’s contract complaint investigator (complaint investigator) determined that onsite interviews of District staff were necessary in this case, and on April 9, 2015, the complaint investigator interviewed the following District staff: a resource teacher, a school level coordinator, a Principal, a substitute regular education teacher, a regular education teacher, and the Special Education Director. The complaint investigator also interviewed an elementary Principal and an educational specialist from a Charter School previously attended by the Student. Finally, the complaint investigator also interviewed the Student’s Parents. The complaint investigator reviewed and considered all of the documents received in reaching the findings of fact and conclusions of law contained in this order.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The complainant’s allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from February 25, 2014 to the filing of this complaint on February 25, 2015.

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<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153

	<b>Allegations</b>	<b>Conclusions</b>
(1)	<p><b><u>Child Find</u></b></p> <p>The complaint alleges the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability beginning March 1, 2014 to the beginning of the 2014-2015 school year, despite the fact that the District was aware of the child's disabilities or that the child may have a disability and be in need of special education services.</p> <p>Relevant Law: OAR 581-015-2080, 34 CFR 300.111, 34 CFR 303.302 and OAR 581-015-2085, 34 CFR 300.131.</p>	<p><b><u>Substantiated</u></b></p> <p>The Parent's notification to the District and Charter School teacher of the Student having dyslexia, the District teacher's statement that he/she thought this was a request for Special Education services, the six week delay in evaluation due to Response to Intervention (RTI) initiatives created by the teacher, and the Student's failing reading grades and test scores for two years paired with extreme Student anxiety all should have led the District to initiate a referral and possible evaluation of the Student for Special Education services. RTI may not be used as a means to delay Child Find and evaluation obligations.</p> <p>See Corrective Action.</p>
(2)	<p><b><u>Responsibility for Evaluation and Eligibility Determination; Evaluation and Reevaluation Requirements</u></b></p> <p>The complaint alleges that the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability from the beginning of the 2014-2015 school year, despite the fact that the Parent notified the District "multiple times, including the first day of school," the child is disabled and requested an evaluation for special education eligibility. The complaint further alleges that the District refused evaluation and informed the Parent the District's policy is "to implement a RTI [Response to Interventions] program for a set period of time prior to evaluating a child for a disability."</p> <p>Relevant Law: OAR 581-015-2100; OAR 581-015-2105, 34 CFR 300.301 and 34 CFR 300.303.</p>	<p><b><u>Substantiated</u></b></p> <p>The Department has above concluded that the District failed to timely initiate a Special Education referral and possible evaluation of the Student and also that the District used RTI as a means to deny the Student's Special Education evaluation. The Department finds that the documents provided in this case do reveal multiple requests for a Special Education evaluation, which were not acknowledged by the District in accordance with IDEA's requirements. There was a verbal request for services made in September 2014 from Parent to District and an email from Parent to District requesting Special Education services dated November 4, 2014. However, there is no evidence of a Prior Written Notice sent at that time to deny the evaluation and services request nor any indication that the IDEA evaluation process commenced until a meeting held in late January of 2015. The Department does substantiate this allegation.</p> <p>See Corrective action.</p>

<p>(3)</p>	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The complaint alleges that the District's failure to evaluate and identify the Student as a child with a disability in accordance with the requirements of the IDEA and OARs has resulted in a denial of FAPE.</p> <p>Relevant Law: OAR 581-015-2040, 34 CFR 300.101.</p>	<p><b><u>Not Substantiated</u></b></p> <p>To be eligible for services under the IDEA a student must both be evaluated and eligible for services along with demonstrating a need to receive Special Education or Special Education services. In this case, the District did fail to timely initiate a Special Education referral and possible evaluation of the Student. However, the specific Special Education or Special Education services the Student may or may not have needed or received cannot be determined at this time. Additionally, the Student did make some progress in reading during the time in question. The Department does not sustain the allegation of denial of FAPE in this case.</p>
<p>(4)</p>	<p><b><u>Proposed Corrective Action:</u></b></p> <p>"A. Expedite the evaluation and determination process so [the Student] can receive [the Student's] determination as a child with a disability, have a 'to be completed by' date sooner than as required by Oregon state law.</p> <p>B. Expedite the development of [the Student's] IEP once [the Student's] determination is complete, have a 'to be completed by' date sooner than as required by Oregon state law.</p> <p>C. Compensatory education in a manner and an amount, to be determined by the parents and non-district personnel, who would provide educational opportunity, appropriate methodologies, accommodations, supports and specific instruction for the period [the Student] was not provided the aforementioned.</p> <p>D. Psychological/Psychiatric counseling for [the Student's] Generalized Anxiety Disorder by a qualified practitioner in the local area in a manner and amount as initially deemed necessary by [the Student's] PCP and/or the qualified practitioner to mitigate and rectify the inflaming and propagation of [the Student's] anxiety condition due to the districting failing to identify, evaluate and find [the Student] a child with a disability."</p>	<p>Although the Parent requested that the Department expedite the evaluation process and the completion of any IEP developed following the evaluation of the Student, the Department does not believe it appropriate at this time to shorten the applicable deadlines for completion of the evaluation or for completion of any IEP, in light of the fact that the District has initiated the evaluation of the Student and that the Parent has already signed a consent for evaluation. Additionally, it is not appropriate to order any compensatory education at this time, pending completion of the evaluation of the Student and a subsequent determination by the IEP team, if applicable, as to what services the Student needs. The Department also does not deem it appropriate to require the District to provide psychological counseling to the Student in this case to remedy the two substantial violations related to evaluation and Child Find requirements. The documentation in this case did not reveal aggravation of the Student's anxiety disorder due to the District's failure to timely initiate a Special Education evaluation. The Department finds that the appropriate <i>Corrective Action</i> in this case is the training of all appropriate District staff in conjunction with the Department on: Child Find obligations and referral for Special Education evaluations.</p> <p><i>See Corrective Action.</i></p>

### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently 10 years old and is in the fourth grade. The Student attended school at a Charter School located within the District's boundaries, which works with home-schooled children (the Charter School) during second grade (September 12, 2012 to June 10, 2013 and most of third grade (October 10, 2013 to May 30, 2014). During about the first month of the 2013-2014 school year, the Student enrolled in an online public school, until October 10, 2013 when the Student returned to the same District Charter School. The Student enrolled in an elementary school with the District at the beginning of the current school year (2014-2015), on September 2, 2014. During the one-year period preceding the filing of the complaint in the case (February 25, 2014) to the present, the Student continuously resided within the boundaries of the District.

#### Child Find

2. The Charter School provides services to home-schooled students and sends a teacher (referred to as an "Educational Specialist"), to the home of enrolled students for one hour per week. The parents of the Charter School's students are considered "learning coaches" and the teacher and the parent meet one hour each week to develop instructional plans for these students.
3. The Charter School's Parent Handbook includes a statement of the Child Find policy and states that parents "looking for additional resources to support their child with special needs will find help at Medford schools." Additionally, this handbook states, "The Medford School District has the responsibility to identify, locate, and evaluate to determine a student's needs for special education and related services and to provide those special education services at the Charter School. The Medford School District holds this responsibility for all students enrolled in a District-sponsored charter school, regardless of where the student resides." The Charter School's Parent Handbook then provides contact information for the Medford School District. Charter School's elementary Principal reported during the on-site interview that the Charter School provides the handbook electronically to every parent upon enrollment of their child. The District's Parent Handbook also provides information concerning the availability of services for students with special needs and the District's Child Find obligation.
4. Concerning the Student in this case, a particular teacher employed by the Charter School delivered and coordinated instruction in Reading, Spelling, Writing, Math, Social Studies, Science, Arts, Physical Education, Technology and Health to the Student while Student was enrolled in the Charter School.
5. The Student's report cards issued by the Charter School during the Student's third grade year (2013-2014 school year) reveal that the Student did not meet grading expectations in Reading during the Student's attendance in the Charter School, from October 10, 2013 to May 30, 2014. The Student met grading expectations in all other academic areas identified on the Student's report cards from this time, including Grammar, Writing, Mathematics, Science, Social Studies, Arts, Physical Education, Technology and Health. The report card for the third quarter of the 2013-2014 school year, dated April 7, 2014, includes comments that the teacher and the Student, "have been focusing on reading skills as [the Student] has a great deal of growth needed to reach grade level." The report card for the fourth quarter of the 2013-2014 school year, dated May 30, 2014, includes the following comments, "There has been noticeable improvement in [the Student's] reading fluency this school year. Please continue to work on these skills over the summer. [The Student] has a



great deal of growth needed to reach grade level. [The Student] will need as many reading experiences as possible.”

6. The Charter School’s records include the results of a “DIBELS” assessment. DIBELS is an acronym for the “Dynamic Indicators of Basic Early Literacy Skills” assessment that assesses the acquisition of early literacy skills from kindergarten through sixth grade. Both the Charter School and District staff referred to this as a “reading fluency measurement.” The Student’s “Winter 2014” DIBELS third-grade score is 26, and the “Grade Level Benchmark Score” is 115. The Student’s “Spring 2014” third-grade score is 28, and the “Grade Level Benchmark Score” is 123. The DIBELS result for this Student considered the Student to be “Intensive” in this area, which the DIBELS assessment defines as “Well Below Benchmark”.
7. During the Student’s attendance at the Charter School the Parent did not report to Charter School’s Principal any medical diagnoses of the Student as having an anxiety disorder or a visual perception disorder.
8. The Charter School determined in January of 2014 that the Student should work with a teacher who is a reading specialist, and who then worked with the Student until the end of the 2013-2014 school year.
9. This Charter School teacher reported during the on-site interviews that the Parent had advised her that the Student is dyslexic but that she was not aware of any “formal diagnosis” of dyslexia for the Student, and further reported that the Parent had “self-diagnosed” the Student with dyslexia based on the Parent’s belief that the Parent also has dyslexia. This teacher also reported that the Parent did not mention any anxiety disorder or visual perception disorder to her. The teacher reported that in light of the parentally reported parental diagnosis of dyslexia, that she introduced interventions in reading for the Student including “dolche” (sight) words and a text-based “phonics-type” program called “Explode The Code.” The teacher also reported that the most “significant” intervention used for Student at this time as “[Student] taking all of the time needed” to complete reading tasks. The teacher, who reported this, stated that she is a friend of the Parent during the interviews. She stated that she did not believe that the parentally diagnosed and reported dyslexia required more interventions or a referral for a Special Education evaluation. The teacher also reported that the Student made progress, though “very minimally,” and that she and the Parent agreed that the Student was doing well. The teacher reported that the Student is below grade level in reading fluency only, but is not generally below grade level academically. She also reported that she is a “reading specialist” and met with the Principal once a month concerning her students. The teacher participated in a School Level Team (SLT) but did not request assistance with developing interventions for the Student, and did not request a Special Education evaluation because the teacher did not believe that the Student required additional interventions or a Special Education referral and evaluation, based upon the Student’s overall academic performance, and based upon the fact that the Student continued to make progress in reading fluency, albeit the teacher and Parent both stated it was slow progress.
10. The Student enrolled in a District elementary school fourth-grade class at the beginning of the current (2014-2015) school year. The school year began on September 2, 2014 and the Student’s attendance began that day.
11. The District and Parent report the Parent met with the Student’s teacher before school began, so prior to September 2, 2014. The teacher reported that during this meeting the Parent expressed concern about the Student’s anxiety concerning transition from home-school to public school, and that the Parent mentioned to the teacher that she believed the Student has dyslexia. During the on-

site interview, the teacher stated that following this conversation with the Parent the teacher understood the Parent wanted to see the Student receive Special Education services.

12. The teacher also reported that at this time that she told the Parent that the Special Education eligibility process would be an 18-week long process, consisting of up to three, six-week intervention periods, and that the teacher needed to see if what the teacher was doing by way of interventions led to growth or not, prior to making a Special Education evaluation referral with a potential Special Education eligibility.
13. The teacher reported that during the first three weeks of school, the teacher determined that the Student would be in her "bottom tier group" for Reading. The teacher then developed several small groups for Reading, one of which consisted of five students, including the Student.
14. The 4th grade teacher also reported that she developed interventions for the Student in reading. An "Intervention Plan Summary – Academic – Intervention 1" developed for the Student began September 22, 2014 and ended October 31, 2014. This intervention plan provides for interventions in Reading for the Student, and consists of a "small group" to address the Student's "skill deficit" of Reading comprehension. This intervention plan included the teacher working with the Student once a week for 20 minutes plus "regular check-ins" with the Student during class. The intervention plan further states that progress is to be measured using Curriculum-Based Measures (CBM). The teacher reported a baseline score of 59% and anticipated weekly progress of 2.8%. However, the Student's "Ending Score" at the end of the first intervention plan on October 31, 2014 revealed a reduced score of 53%. The Student's scores were then 59% on September 26, 2014 and again on October 3, 2014; 65% on October 10, 2014 and 53% on October 31, 2014. The teacher stated on a progress note for Student that "even with small group review of weekly comprehension skills – not making progress." The Student's "STAR Reading" assessment score from this time frame was reported to be at the fourth percentile.
15. The teacher then developed a second intervention plan for Student which began November 4, 2014 and ended on December 19, 2014. The intervention plan continued the small group for Reading, but doubled the time that the teacher worked with the Student to twice a week to 30-40 minutes. The Curriculum-Based Measurements (CBM) scores for the Student during this time showed an increase of the Student's baseline score from 53% at the beginning of the second intervention (on October 31st) to 76% (on December 12th). The Student's other CBM scores from this period were: 76% on November 23, 2014; 88% on December 5, 2014; and 76% on December 12, 2014.
16. On November 4, 2014, the Parent sent an email to the Student's teacher stating that the Parent had the Student's "medical diagnosis" paperwork in hand and that Student had "Generalized anxiety disorder" and "Visual perception disorder" and stated "Let's get [the Student's] services rolling!"
17. Meeting notes dated November 14, 2014 from a meeting of the teacher and a school level coordinator indicate "Parent note re anxiety disorder & visual perception."
18. The evidence in the record also shows that medical notes from a medical clinic for Student printed on November 4, 2014, and provided to the District by the Parent on November 6, 2014, include medical diagnoses for the Student of "Anxiety State Unspecified" (an August 29, 2013 note) and "Visual perception disorder" (an October 15, 2014 note).
19. The teacher reported during the on-site interviews that she met with the Parent on November 17, 2014 regarding the intervention plans for the Student. Notes of this meeting state, "Met with [the Parent] from 2:45 to 3:15 regarding the plan for [the Student] this next intervention period. Discussed our use of a listening station for the story of the week, in addition to listening to the story

as a whole class. Showed [the Parent] the reader strip that I gave to [the Student] to help guide [the Student's] reading. I am giving [the Student] computer access during writing time to ease [the Student's] anxiety about writing on paper. We are setting up the Google account through the school for [the Student] to use at home and here on site. We are reducing [the Student's] spelling words to the first 10, and the sentences to just the first sentence. Spelling homework is for as needed basis. Math is reduced to IXL and practice book. [The Parent] is pleased with our discussion." The teacher further reported during the on-site that she believed that the Parent agreed with the teacher's intervention plan and that she believed that if she implemented enough intervention strategies the Student would progress.

20. After completion of the teacher's second intervention on December 19, 2014, the District winter break occurred. The Student's teacher took leave beginning January 5, 2015 and returned to the classroom on February 9, 2015. Prior to taking leave time, the teacher sent an email to the Parent on December 5, 2014 reporting positive results on the Student's spelling test, vocabulary and comprehension.
21. The District provided a long-term substitute teacher for the Student's classroom during the absence of the Student's usual teacher.
22. The District developed a third intervention plan for Student, which consisted of an after school program focusing on phonics and decoding, beginning on January 12, 2015. However, the Parent decided to withdraw the Student from the after school program on January 30, 2015.
23. Also, shortly after the resumption of classes on January 6, 2015, the District's school level coordinator observed a significant discrepancy between the student's results of the standardized assessments (STAR and DIBELS) and other student assessments of reading fluency and comprehension. Specifically, the school level coordinator observed an "historical problem" of continued low scores on the two standardized reading assessments (STAR and DIBELS), with the Student at a 4th percentile score in both September, 2014 and January of 2015 on the STAR assessment, and scores on the DIBELS assessment of 19 in September of 2014, 39 in December of 2014 and 41 in January of 2015. The Student's scores were also below the 10th percentile for fourth-grade fluency (the 10th percentile in winter of fourth grade should be 60).
24. On January 15, 2015, very near the time that the District concluded that the Student had a need for a Special Education referral, the Parent sent an email to the District requesting to pursue "an Individual Education Plan" for Student under "other medical impairment" (sic). This message goes on to detail all of the Parent's specific concerns and medical diagnoses of Student.

#### **Responsibility for Evaluation and Eligibility Determination; Evaluation and Reevaluation Requirements**

25. As noted in the facts above, the Student's teacher believed the Parent wanted Special Education services for the Student based upon a conversation that took place just prior to the beginning of the 2014-2015 school year. The documents provided to the Department in this case do not reveal additional specific written requests for a Special Education evaluation by the Parent. The Parent did send District an email dated January 15, 2015 requesting a special education evaluation materials and special education services. The record also notes that the Parent signed an initial consent to evaluate for Special Education form on February 11, 2015. This consent to evaluate is in the specific areas of Academic (SLD) and Social/ Behavior (ED/OHI).
26. On January 30, 2015, the District and the Parent met to discuss the Parent's concerns and the evaluation process. During this meeting, the Parent provided the District with a letter from a medical

doctor dated January 27, 2015, advising that the Student has struggled with anxiety from a very early age and which stated that the Student has been diagnosed with a "Visual Perception Disorder" that is causing the Student difficulties in mastering Language Arts and Mathematics. The medical doctor also stated that the "trouble with schoolwork has compounded [the Student's] anxiety disorder[.]" At this time, the Parent also provided a letter from an Occupational Therapist dated January 26, 2015, which provided recommendations to help the Student in the classroom.

27. During the January 30, 2015 meeting, the District and Parent agreed to a referral for a Special Education evaluation.
28. The Parent signed a consent for a Special Education evaluation form on February 17, 2015.
29. The District is currently in the process of evaluating the Student, and has 60 school days to the date of a meeting to consider eligibility following the signed parental consent.<sup>2</sup>
30. The District did not provide for the record a District policy for using Response to Intervention (RTI) before a Special Education referral may be made generally. Although, as noted above, interventions were developed and provided by the teacher early in the 2014-2015 school year for this Student, the documents in this case reveal no specific objection to the use of these interventions.

#### **Free Appropriate Public Education (FAPE)**

31. The findings made above, concerning the alleged failure to identify and evaluate the Student as a child with a disability, are what is available to review on the issue of whether the District failed to provide FAPE to the Student in this case.
32. For completeness of the record, the Department also finds that the Student's absences dramatically increased beginning February of 2015. The District is presently providing home-bound instruction to the Student, following receipt of a letter from the Student's medical doctor dated March 30, 2015 which states that the Student is physically unable to attend school until better able to self-regulate the Student's anxiety and that a home tutor is needed until the Student is able to return to school.

### **IV. DISCUSSION**

#### **1. Child Find**

The complaint alleges that the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability beginning March 1, 2014 to the beginning of the 2014-2015 school year, despite the fact that the District was aware of the child's disabilities, or that that child may have a disability and be in need of Special Education services.

The District's *Response* argues that the Parent did not request an evaluation or provide documentation that the Student was a student with a suspected disability from March 1, 2014 to the end of the 2013-2014 school year at the Charter School; and from the beginning of the current school year (2014-2015).

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<sup>2</sup> OAR 581-015-2110(5).



OAR 581-015-2080 provides that school districts must identify, locate and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of Special Education or Special Education services, including children enrolled in public charter schools and children who are home schooled. The District in which a charter school is located is responsible for Child Find activities for students enrolled in the charter school. In this case the regulations obligated the District to identify, locate, and evaluate the Student if the Student has a disability and may need Special Education services. In 2004, Congress amended the IDEA to permit use of a Response to Intervention (RTI) model in determining eligibility for Specific Learning Disabilities (SLD).<sup>3</sup> These regulations prohibit states from requiring districts to use a severe discrepancy model when evaluating students for SLD and compel states to allow districts to use the RTI model.<sup>4</sup> Additionally, the US Department of Education has said that local education agencies have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of a RTI strategy.<sup>5</sup> The Oregon Department of Education has also upheld this principle and prohibited districts from using RTI as a means to delay IDEA's Child Find, initial evaluation or the subsequent eligibility process requirements.<sup>6</sup> The applicable limitations period for the state complaint timeframe, limits this case to the District's Child Find obligation beginning February 24, 2014, when the Student attended the Charter School, and continuing during the Student's enrollment in a District elementary school at the beginning of the 2014-2015 school year.

In this case, there are several discrete times that must be analyzed concerning whether the circumstances triggered an obligation on the part of the District under Child Find to evaluate the Student based upon the Student's disability or disabilities and need for Special Education or Special Education services. First, the Department must analyze the District's Child Find obligation one year preceding the filing of the complaint in this case, beginning February 25, 2014 and ending on May 30, 2014, when the Student attended the Charter School. At that time, neither the Charter School nor the District had received from the Parent any documentation concerning any disability or disabilities of the Student. Although the Parent had informed a Charter School teacher that the Student is dyslexic and that the Parent was dyslexic, the Parent provided no documentation of a diagnosis of dyslexia at this time and, indeed, told the Charter School teacher that the Parent had diagnosed the child herself, based upon the Parent's belief that the Parent is also dyslexic. The Parent also had not mentioned or provided documentation concerning any diagnosis of an anxiety disorder at this time to any Charter School staff. The Student's report cards dated April 7, 2014 and May 30, 2014 revealed that the Student did not meet expectations in Reading, and the DIBELS assessment from this time frame revealed reading fluency well below the benchmark. However, the Charter School had assigned a reading specialist as the Student's teacher and the Student's May 30, 2014 report card indicated "noticeable improvement" in the Student's reading fluency during the school year. Additionally, the Charter School teacher reported that the Student is only below grade level in reading fluency and not in other academic areas, and reported that the Student continued to make some progress in Reading, though the teacher stated it was slow progress. A district's Child Find obligation is triggered when a district suspects or has reason to suspect a student has a disability that has an adverse impact on the student's educational performance and may need Special Education services as a result of the disability.<sup>7</sup> The Department concludes that the foregoing circumstances when reviewed together should have indicated to the District that the Student may have a reading related learning disability, however, there is no evidence that the District or Charter School had reason to suspect the Student needed Special Education or Special

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<sup>3</sup> See *Michael P. v. Dep't of Educ.*, 656 F.3d 1057, 1061 (9<sup>th</sup> Cir. 2011).

<sup>4</sup> 34 CFR 300.307(a)(1)

<sup>5</sup> OSEP Letter 11-07, January 2011

<sup>6</sup> ODE Final Order 14-054-019

<sup>7</sup> OAR 581-015-2105.

Education services, in light of the fact that Student was making academic progress by working with the reading specialist.

Next, the Department must analyze whether the circumstances at the beginning of the 2014-2015 school year triggered the District's Child Find obligation. After the Student's transfer back into a regular District school from the Charter School, the District's teacher reported that the Parent communicated to the teacher prior to the first day of the 2014-2015 school year, that the Student was experiencing anxiety about the transition from home schooling to public school, and that the Student is dyslexic. The teacher further reported that from this conversation the teacher understood the Parent wanted the Student to receive Special Education services. Rather than making a referral for an evaluation of the Student under IDEA in order to determine the Student's eligibility for Special Education services or working with the District's Special Education team or referral process, the teacher began to provide reading interventions to the Student under the belief that the District must first utilize a "response to intervention" (RTI) model for two or three six-week periods."

At the beginning of the 2014-2015 school year, the Student's teacher had clearly been informed by the Parent that the Student has dyslexia, which is considered under the IDEA eligibility category of SLD in Oregon, and also that the Student was anxious about the transition from home schooling to public school.<sup>8</sup> The teacher further admitted in interviews that the teacher understood this statement from Parent to mean the Parent wanted the child to receive Special Education services and the teacher used extensive interventions with the student. Therefore, the Department concludes that the foregoing circumstances did trigger the District's Child Find obligation in that the District did have ample reason to suspect the Student had a disability or that the Student needed Special Education or Special Education services. The District erroneously delayed IDEA's Child Find and evaluation obligations by placing the child in an RTI process for a six week period of time before commencing Child Find or evaluation planning activities.

Finally, the Department must also analyze whether the circumstances on November 6, 2014 triggered the District's Child Find obligation. On November 4, 2014, the Parent sent an email to the teacher stating the Parent had in hand the Student's "medical diagnosis" paperwork which included two diagnoses for "Generalized anxiety disorder" and "Visual perception disorder" and the Parent also stated, "...let's get [the Student's] services rolling." On November 6, 2014, the Parent provided medical notes confirming the diagnoses to District. Additionally, the first RTI interventions, which ended on October 31, 2014, were resulting in very limited progress. In fact the Student's reading comprehension score had actually decreased from September 22, 2014 to the end of the first intervention plan period, on October 31, 2014. Additionally, the Student's previous STAR assessment placed the Student at the fourth percentile. The District had documentation of two medical conditions which could have corresponded to IDEA eligibilities.

Irrespective of whether parents make a request for an evaluation, the Child Find obligation is triggered when a district has reason to suspect a disability and reason to suspect that Special Education and Special Education services may be needed to address that disability.<sup>9</sup> The Child Find obligation is therefore an affirmative obligation *for school districts* so the District's argument that Parent did not request an evaluation during these times is moot. A school district "shall be

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<sup>8</sup> In the parent's *Reply* in this case the parent states, referring to the conversation the parent had with the teacher before the first day of school of the 2014-2015 school year: "The verbal conversation included the fact that [the student] has a medical diagnosis of dyslexia and generalized anxiety disorder." However, to date there is no medical diagnosis of "dyslexia", although a medical doctor diagnosed a "Visual Perception Disorder", documentation of which was not provided to the District until well after this verbal conversation, on November 6, 2014.

<sup>9</sup> See OAR 581-015-2080; 34 CFR 300.111; Department of Education, *State of Hawaii v. Cari Rae S.*, 158 F.Supp. 2d 1190 (D. Haw. 2001).

deemed to have knowledge that child is a child with a disability if (among other things)\* \* \* the behavior or performance of the child demonstrates the need for such services.<sup>10</sup> The tension that exists between the concept that RTI involves first measuring progress after exposure to increasingly intensive and individualized instruction, on the one hand, and the triggers of a school district's Child Find obligations once a school district is aware of a particular disability of the student and that the student is not progressing in a given area academically, on the other hand, is highlighted in this case.

For the reasons noted above, the Department substantiates this allegation. The Department will discuss the appropriate Corrective Action at the end of this order.

## **2. Responsibility for Evaluation and Eligibility Determination; Evaluation and Reevaluation Requirements**

The complaint alleges that the District violated the IDEA by failing to identify and evaluate the Student for eligibility as a child with a disability from the beginning of the 2014-2015 school year, despite the fact that the Parent notified the District "multiple times, including the first day of school," that the child is disabled and requested an evaluation for Special Education eligibility. The complaint further alleges that the District refused evaluation and informed the Parent that the District's policy is "to implement a RTI program for a set period of time prior to evaluating a child for a disability.

Additionally, OAR 581-015-2100 provides that school districts are responsible for evaluating children and determining their eligibility for special education services. OAR 581-015-2105(3)(b) notes that a public agency must designate a team to determine whether an initial evaluation will be conducted. The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.<sup>11</sup> An initial evaluation must be conducted to determine if a child is eligible for Special Education services when a school district suspects or has reason to suspect that the child has a disability that has an adverse impact on the child's educational performance and the child may need Special Education services as a result of the disability. OAR 581-015-2105(3)(a)(A) and (B). The federal regulations also allow a parent to request an initial evaluation at any time, to determine if a child is a child with a disability.<sup>12</sup> If the District does not suspect the child has a disability, and denies the request for an initial evaluation, the District must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision.<sup>13</sup> Also, as noted above, the US Department of Education has stated that it is critical that the identification and evaluation of children with disabilities, regardless of the severity of the disability, must occur in a timely manner, and that no procedures or practices may occur that result in delaying or denying this identification.<sup>14</sup>

As the facts and analysis of this final order illustrates, there is ample evidence for the Department to conclude that the District failed to timely initiate a Special Education evaluation of the Student due to its use of the RTI initiatives for at least a six week period, in lieu of following its Special Education evaluation process and procedures. The Department further finds that the documents provided in this case do reveal multiple requests for a Special Education evaluation were made by the Parent, including a verbal request for Special Education services made to the Student's teacher just before

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<sup>10</sup> See 20 U.S.C. 1415(k)(8)(B)(ii).

<sup>11</sup> OAR 581-015-2105(3)(b)(A)

<sup>12</sup> 34 CFR 300.301(b)

<sup>13</sup> 34 CFR 300.503(a) and (b)

<sup>14</sup> US Department of Education, *Office of Special Education and Rehabilitative Services*, OSEP Letter 11-07

the first day of the 2014-2015 school year, an email dated November 4, 2014 which said "let's get the ball rolling (for Special Education services)...", and the request from the Parent via email to the District on January 15, 2015. There is no evidence that District sent a Prior Written Notice to reject the Parent's request for Special Education services in fall of 2014 nor that the District started the evaluation planning process.

Thus, the Department does sustain this additional allegation. See Corrective Action.

### **3. Free Appropriate Public Education (FAPE)**

The complaint alleges that the District's failure to evaluate and identify the Student as a child with a disability in accordance with the requirements of the IDEA and OARs has resulted in a denial of FAPE.

School districts must provide a FAPE to school-age children with disabilities.<sup>15</sup> To be eligible for services under the IDEA a student must both be evaluated and eligible for services along with demonstrating a need to receive Special Education or Special Education services as a result of one of IDEA's enumerated disabilities. See OAR 581-015-2040. The IDEA's FAPE requirements apply to all school-age children with disabilities for whom a district is responsible, including children with disabilities who attend a Charter School located within the District.<sup>16</sup>

In this case, the District did fail to timely initiate a Special Education evaluation of the Student and it also failed to comply with IDEA's Child Find requirements. However, specific Special Education or Special Education services that the Student may need or may not have received cannot be determined at this time. Additionally, as District has yet to complete the evaluation and eligibility process, it is inconclusive if Student has a disability or needs Special Education services. The Department therefore does not sustain the allegation of denial of FAPE at this time.

### **4. Corrective Action**

The District is in the process of conducting a Special Education evaluation of the Student. Although the Parent requested the Department expedite the evaluation process and the completion of any IEP developed following the evaluation of the Student, the Department does not believe it appropriate at this time to shorten the applicable deadlines for completion of the Student's evaluation or for completion of any IEP. It would not be in the best interest of the Student to rush these processes. In light of the fact that the District has finally initiated an evaluation of the Student and that the Parent has already signed a consent for evaluation form, this evaluation process is underway and must be completed within 60 school days of signed parent consent per OAR 581-015-2110(5)(a). Additionally, it is not appropriate to order any compensatory education at this time, pending completion of the evaluation of the Student and any determination of the Student's Special Education needs. The Department also does not deem appropriate requiring the District to provide psychological counseling to the Student in this case. The evaluation process will determine whether the Student has a disability and requires Special Education services for educational benefit. The documentation in this case did not reveal aggravation of the Student's anxiety disorder due to the District's failure to timely initiate a Special Education evaluation.

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<sup>15</sup> OAR 581-015-2040.


<sup>16</sup> OAR 581-015-2040(1)

**CORRECTIVE ACTION<sup>17</sup>**  
*In the Matter of Medford School District*  
 Case No. 15-054-008

The Department orders the following Corrective Action resulting from this investigation:

No.	Action Required	Submissions <sup>18</sup>	Due Date
(1)	<p><b><u>Staff Training- Child Find</u></b></p> <p>Prior to the beginning of the 2015-2016 school year, provide training on Child Find, referral for Special Education evaluations, and evaluation requirements to educational staff and administrators, potentially involved in any aspect of pre-referral through eligibility determination processes.</p> <p>Training will emphasize the interplay between Child Find requirements and the District's use of a RTI model for addressing the needs of struggling students.</p>	<p>Submit district's proposed training materials for ODE review to Rae Ann Ray and Jan Burgoyne at the addresses listed below.</p> <p>Submit evidence of completed training, including the agenda, materials distributed, and a dated sign-in sheet that includes names, positions and assignments/roles of participants.</p> <p>Corrective action plans and related documentation should be submitted to the Department via US Mail or email to <a href="mailto:raeann.ray@state.or.us">raeann.ray@state.or.us</a> and <a href="mailto:jan.burgoyne@state.or.us">jan.burgoyne@state.or.us</a>.</p>	<p><b>June 8, 2015</b></p> <p><b>September 14, 2015</b></p>

Dated this 22nd Day of April, 2015

  
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 Sarah Drinkwater, Ph.D.  
 Assistant Superintendent  
 Office of Learning/Student Services

Mailing Date: April 22nd, 2015

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

<sup>18</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.