

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Springfield School District 19

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-038

I. BACKGROUND

On November 8, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Springfield School District (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On November 14, 2022, the Department's Complaint Investigator sent a *Request for Response* (RFR) to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 28, 2022.

The District submitted a *Response* on November 28, 2022, admitting the allegations regarding parent participation, IEP implementation, review and revision of IEPs, general evaluation and reevaluation procedures, and denial of FAPE. The District denied the remaining allegations, provided background and context for the issues, and submitted documents in support of the District's position. On December 20, 2022, the District provided additional documents as part of its *Response*. The District submitted the following relevant items:

- 1) District Response
- 2) Prior Written Notice (Covid-19 Recovery), 04/27/2022
- 3) Student Annual IEP Amendment Checklist, 04/26/2022
- 4) Prior Written Notice (BSP removal), 04/26/2022
- 5) Student IEP Amendment, BSP Removal 04/26/2022 (11/16/2021)
- 6) Student Annual Review Checklist, 11/16/2021
- 7) Notice of Team Meeting, 10/14/2021
- 8) Prior Written Notice, 11/16/2021
- 9) Special Education Placement Determination, 11/16/2021
- 10) Prior Written Notice, 11/16/2021
- 11) Student IEP, 11/16/2021
- 12) Annual IEP Amendment Checklist, 10/06/2021
- 13) Prior Written Notice, 10/06/2021

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

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

- 14) Special Education Placement Determination, 04/09/2021
- 15) Student IEP Amendment, (04/09/2021, 10/06/2021) 12/01/2020
- 16) Student Eligibility Evaluation Checklist, 09/18/2019
- 17) Notice of Referral, 09/18/2019
- 18) Notice of Team Meeting, 10/31/2019
- 19) Notice of Team Meeting, 12/02/2019
- 20) Referral, 09/18/2019
- 21) Prior Written Notice, 09/18/2019
- 22) Parent/Guardian Consent for Individual Evaluation, 09/18/2019
- 23) Disability Statement, Emotional Disturbance (60), 11/06/2019
- 24) Eligibility Summary Statement, 11/06/2019
- 25) Prior Notice and Consent for Initial Provision of Special Education Services, 11/06/2019
- 26) Student Psycho-Educational Report, 2019
- 27) Behavior Intervention and Support Plan, (10/12/2018) 09/13/2019
- 28) Developmental History, 10/09/2019
- 29) Authorization to Use and/or Disclose Educational and Protected Health Information, 09/19/2019
- 30) Prior Written Notice, 11/06/2019
- 31) Special Education Placement Determination, 12/02/2019
- 32) Student IEP, 12/02/2019
- 33) Student Disciplinary Records
- 34) Student Behavior & Suspension Records, 09/29/2022
- 35) Classroom Observation of Student, 09/27/2022
- 36) Student referral data 2022
- 37) Incident report summary
- 38) Incident meeting notes, 09/29/2022
- 39) IEP team meeting minutes, 09/29/2022
- 40) IEP team meeting minutes, 10/05/2022
- 41) IEP team meeting minutes, 10/11/2022
- 42) Email: Fw: Meeting Notice, 11/18/2022
- 43) Email: Re: Meeting Notice, 10/22/2022
- 44) Email: Fw: Clarification on District's Position, 11/18/2022
- 45) Email: Fw: Temporary Educational Placement, 11/18/2022
- 46) Email: Fw: Attendance & 9/27 Incident Documents, 11/18/2022
- 47) Prior Written Notice, 10/11/2022
- 48) Student IEP Progress Report, 06/14/2022
- 49) Email: 9.13.21 – Parent Contact, 00/13/2021
- 50) Email: copy of your schedule?, 09/13/2021
- 51) Email: Friday Incident, 09/20/2021
- 52) Email: Few: [Student], 01/26/2021
- 53) Email: Fw: [Student], 02/05/2021
- 54) Email: IEP meeting reschedule [Student], 09/28/2021
- 55) Email: [Student], 09/17/2022
- 56) Email: [Student], 09/13/2021
- 57) Email: [Student], 09/21/2021
- 58) Email: [Student], 02/22/2021
- 59) Email: [Student], 01/08/2021
- 60) Email: [Student], 09/21/2021
- 61) Email: [Staff] safety patrol duty, 09/24/2021
- 62) Email: New Message from [Parent] in ELEM Grade 3 – [School], 06/07/2021
- 63) Email: Parent Supporting [School], 09/20/2021
- 64) Email: Phone message, 09/20/2021
- 65) Email: Re: behavior support plans/information, 09/01/2021

- 66) Email: Cancelled: [Staff] Zoom Meeting, 09/21/2021
- 67) Email: Re: IEP Meeting, 09/30/2021
- 68) Email: Re: [Student], 09/17/2021
- 69) Email: [Parent] – Family meeting, 09/21/2021
- 70) Email: student w/Abbreviated Day, 01/24/2021
- 71) Email: Re: Canceled: [Staff's] Zoom Meeting, 09/22/2021
- 72) Email: [Student], 02/22/2021
- 73) Email: [Student], 01/26/2021
- 74) Email: [Student], 01/05/2021
- 75) Email: Re: [Student], 01/08/2021
- 76) Email: Re: Let me know if I can help you, 10/06/2021
- 77) Email: Re: Parent Support [School], 09/21/2021
- 78) Email: Re: room ... students return, 01/25/2021
- 79) Email: Re: [School] & PE, 04/01/2022
- 80) Email: [School] parent request and support 6/13, 06/13/2022
- 81) Email: Re: strafing [Student] at recess, 09/22/2021
- 82) Email: [Student], 05/05/2022
- 83) Email: Re: Small Groups, 10/26/2022
- 84) Email: Re: [Student], 06/13/2022
- 85) Email: [Student], 09/05/2022
- 86) Email: [Student], 09/09/2022
- 87) Email: [Student], 09/22/2022
- 88) Email: [Student], 11/03/2022
- 89) Email: [Student], 09/15/2022
- 90) Email: Inquire questions from 10/26/2022, 10/27/2022
- 91) Email: Fw: Serious Safety and Learning Concerns [School], 09/23/2022
- 92) Email: Fw: Student, 10/06/2022
- 93) Email: New Student – [Student], 10/25/2022
- 94) Email: Re: Small Groups, 10/27/2022
- 95) Email: Notice of meeting and agenda, 10/05/2022
- 96) Email: Parent Meeting and BSP plan review – [School] Fall 2022, 06/21/2022
- 97) Email: Parent Meeting update: [Student] 9.22.21, 09/22/2021
- 98) Email: [Student] – new student, 10/25/2022
- 99) Email: Fwd: [Student] records, 10/07/2022
- 100) Email: Records Request: Email addresses, 10/06/2022
- 101) Email: Re: [Student], 10/07/2022
- 102) District list of relevant staff
- 103) Email: FW: Support With Document, 12/20/2022
- 104) Student Discipline Referral, September 2022
- 105) Student Discipline Referral, 09/12/2022
- 106) Email: note from April Mtg, 12/13/2022

The Complaint Investigator interviewed the Parent on December 5, 2022. On December 12, 2022, 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 Parents' allegations and the Department's conclusions are set out in the

chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 9, 2021, to the filing of this Complaint on November 8, 2022.

Allegations	Conclusions
<p>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</p> <p>The Parent alleged that the District violated the IDEA when it suspended the Student from school. Specifically, it is alleged that:</p> <ul style="list-style-type: none"> a. the District did not conduct a manifestation determination to determine whether the behavior that led to the suspension was a manifestation of the Student’s disability; and b. the District did not review the Student’s behavior plan and modify it as necessary to address the behavior. <p>(OAR 581-015-2415; 34 CFR 300.504(a)(3), 300.530, 300.531, 300.532 & 300.533)</p>	<p>Not Substantiated</p> <p>Districts are required to conduct a manifestation determination when a student’s suspension is for more than 10 consecutive or cumulative days. The Student’s suspension in this matter was for three days.</p>
<p>Removal to an Interim Alternative Educational Setting by School District</p> <p>It is alleged that the District violated the IDEA when it proposed to remove the Student to an interim alternative educational setting without following appropriate procedures. Specifically, it is alleged that the District:</p> <ul style="list-style-type: none"> a. removed the Student from the Student’s educational placement to an interim alternative educational setting without appropriately notifying the Parent of the decision and providing the Parent with notice of procedural safeguards; b. failed to provide services to the Student in an interim alternative educational setting, determined by the IEP team; c. failed to determine whether the Student’s behavior was a manifestation of the Student’s disability, and d. failed to provide a functional behavioral assessment, and behavior intervention services and modifications to address the behavior violation so that it does not recur. <p>(OAR 581-015-2425; 34 CFR 300.504(a)(3), 300.530; 300.533 & 300.536)</p>	<p>Not Substantiated</p> <p>After the Student’s suspension, the Parent was offered the option of enrolling the Student in another school within the District. The District enrolled the Student in another school. When the Parent rejected this location, the Parent and District met to discuss enrollment options. The Parent ultimately settled on the District’s online school. The change in school building was not an interim alternative educational setting that would require the District to conduct a functional behavioral assessment.</p>
<p>Placement of the Child</p>	<p>Not Substantiated</p>

<p>It is alleged that the District violated the IDEA when:</p> <ul style="list-style-type: none"> a. it changed the Student’s educational placement as part of the Student’s suspension, without the input of the Parent; b. following the Student’s suspension the District selected an alternative location for the Student to attend school that was not as close as possible to the Student’s home; c. did not consider the least restrictive environment or the potential harm to the Student in changing the Student’s educational placement as part of the Student’s suspension; and, d. prior to the Student’s suspension, generally did not consider whether specific classroom and District staff working with the Student were appropriate for the Student’s disability. <p>(OAR 581-015-2220; 34 CFR 300.116 & 300.327)</p>	<p>The District did not change the Student’s educational placement as the result of the suspension. Rather the District proposed a change in the location where the Student would receive their education as a result of the impact of the events that led to the suspension.</p>
<p>Parent Participation</p> <p>It is alleged that the District violated the IDEA when it scheduled an IEP team meeting on or about September 29, 2022, without providing the Parent with written notice of the meeting, written notice of the purpose of the meeting, or notice of who would be in attendance.</p> <p>(OAR 581-015-2190; 34 CFR 300.500, 300.327 & 300.501(b))</p>	<p>Substantiated</p> <p>The Parent was provided notice of the time and date of the meeting, but the District did not provide notice of the change in the purpose of the meeting or the change in attendees.</p>
<p>IEP Team Consideration and Special Factors</p> <p>It is alleged that the District violated the IDEA when it determined the Student’s educational placement without considering the Parent’s concerns and input. Specifically, the Parent alleges that they were informed of the change in educational placement following the District suspending the Student. The Parent alleges that this decision was made without an IEP team meeting.</p> <p>(OAR 581-015-2205; 34 CFR 300.320, 300.324(a)(1) & (2) & (b)(2))</p>	<p>Not Substantiated</p> <p>The District did not change the Student’s educational placement. Rather the District proposed a change in the physical location where educational services would be delivered.</p>
<p>When IEPs Must Be In Effect</p> <p>It is alleged that the District violated the IDEA when it failed to provide special education and related services to the Student in conformity with the Student’s IEP. Specifically, it is alleged that</p>	<p>Substantiated in Part</p> <p>The District removed the Student’s BSP during the 2021-22 school year, though a passing reference to it remained in the Student’s IEP. The record contains IEP progress reports for</p>

<ul style="list-style-type: none"> a. the District did not appropriately implement the Student’s behavior support plan (BSP); b. the District did not implement other accommodations in the Student’s IEP, such as assistance with transitions; and c. the District did not provide the Parent with IEP goal progress reports as outlined in the Student’s IEP. <p>(OAR 581-015-2040; 34 CFR 300.101)</p>	<p>the Student. The record indicates that errors in the IEP did not cause confusion regarding the services provided to the Student.</p>
<p>Review and Revision of IEPs/Functional Behavioral Assessments</p> <p>It is alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. failed to revise the Student’s IEP to address behavior displayed by the Student that resulted in numerous behavior referrals. Specifically, it is alleged that the Student had a BIP in place, but that no meeting was held to revise the Student’s BIP to address behavior concerns; b. failed to revise the Student’s IEP to address changed circumstances in the Student’s life that likely impacted the Student’s behavior; c. failed to consider whether assigning the Student to specific classrooms was appropriate for the Student given their specific needs; and d. failed to conduct a functional behavioral assessment following the Student’s suspension. <p>(OAR 581-015-2225; 34 CFR 300.324(a)(4), (a)(5), (a)(6) & (b)(1), and OAR 581- 015-2181)</p>	<p>Substantiated in Part</p> <p>The District had begun the process of reviewing the Student’s IEP prior to the events that led to the Student’s suspension, however the District had not convened an IEP team meeting to assess the Student’s behavior. The Student’s behavior support plan was removed during the 2021-22 school year and was not in place at the start of the 2022-23 school year. A change in family circumstances occurred in 2020, and there is evidence in the record that the District considered the impact on the Student at that time. The District had discussed with the Parent the potential of changing the Student’s classroom before the Student’s suspension. The District failed to conduct a functional behavioral assessment following the behavior that precipitated the Student’ suspension.</p>
<p>Prior Written Notice</p> <p>It is alleged that the District violated the IDEA when it failed to provide prior written notice,</p> <ul style="list-style-type: none"> a. of the Student’s change in placement following the Student’s suspension; or b. of the District’s refusal to reevaluate the Student at the Parent’s request. <p>(OAR 581-015-2310; 34 CFR 300.503)</p>	<p>Substantiated in Part</p> <p>The Student’s educational placement was not changed, therefore the District was not required to send a prior written notice. During the time covered by this Complaint, and the subsequent investigation, the District had not begun the</p>

	<p>process to reevaluate the Student by the Student's IEP triennial reevaluation date, nor had the District sent the Parent prior written notice of its intent to begin evaluating the Student ahead of the reevaluation date for their IEP.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>It is alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. Failed to reevaluate the Student to address an increase in behaviors resulting in behavioral referrals; and b. failed to provide the Parent with notice of its intent to reevaluate the Student ahead of the Student's three-year reevaluation date. <p>(581-015-2110; 34 CFR 300.304 & 300.305)</p>	<p>Substantiated in Part</p> <p>The District had begun to evaluate the Student's behavior needs, but had not provided appropriate notice of or sought consent for the Student's evaluations.</p>
<p>Access to Student Education Records</p> <p>It is alleged that the District violated the IDEA when it failed to provide the Parent with requested educational records for the Student, specifically those records regarding the reason for the Student's suspension.</p> <p>(OAR 581-015-2300; 34 CFR 300.501 & 34 CFR 303.405(a))</p>	<p>Substantiated</p> <p>Based on the records and interviews it appears that while there was no physical copy of the Student's suspension form, the suspension was entered into the District's student information system and could have been provided to the Parent.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>It is alleged that the District violated the IDEA when it failed to:</p> <ul style="list-style-type: none"> a. conduct a manifestation determination or review and revise the Student's behavior intervention plan to address behaviors exhibited by the Student; b. appropriately notify the Parent of the District's decision to remove the Student to an interim alternative educational setting, provide services to the Student in that alternative setting, determine whether the behavior was a manifestation of the Student's disability, or conduct a functional behavioral assessment; c. changed the Student's educational placement without the Parent's input, chose a location without 	<p>Substantiated in Part</p> <ul style="list-style-type: none"> (a) The District was not required to conduct a manifestation determination in this matter; (b) The Student's suspension, did not constitute a transfer to an interim alternative educational setting; (c) The District's proposal to change the school where the Student attended was not a change in educational placement; (d) The relevant meeting was known to the Parent in

<p>considering proximity to the Student's home, consider LRE requirements, and prior to the suspension had not considered the appropriateness of certain classrooms for the Student;</p> <ul style="list-style-type: none"> d. provide the Parent with written notice of an IEP team meeting or the purpose of the meeting; e. include the Parent in the IEP team's decision to change the Student's educational placement; f. implement the Student's BIP, specific accommodations in the Student's IEP, or provide the Parent with IEP progress reports; g. conduct a functional behavioral assessment either in response to the Student's suspension, or to ensure the Student's behavior support plan addressed the Student's needs; h. provide prior written notice either of the Student's change in placement or of the District's refusal to evaluate the Student; i. reevaluate the Student either as a result of escalating behaviors or as part of the Student's triennial reevaluation; and j. provide the Parent with requested educational records; <p>Thereby denying the Student a FAPE.</p> <p>(OAR 581-015-2040; 34 CFR 300.101)</p>	<p>advance, but the District did not send appropriate notice of the change in the purpose of the meeting and its attendees;</p> <ul style="list-style-type: none"> (e) There was no change in the Student's educational placement, and therefore no meeting of the Student's IEP team where the Parent was not invited; (f) The record indicates that the Student's BSP was removed the previous school year. IEP progress reports were sent to the Parent. The District acknowledged that references to the Student's prior BSP remained in the Student's IEP following its removal. However, this did not result in a denial of FAPE; (g) The District did not conduct a functional behavioral assessment following the behaviors exhibited by the Student that led to the Student's suspension; (h) The Student's educational placement was not changed, therefore no prior written notice needed to be sent; however the District was required to provide prior written notice of the Student's upcoming IEP triennial reevaluation; (i) The District had begun to assess the Student's behavior needs, but had not provided notice of the reevaluation or begun to obtain consent from the Parent for the evaluations; (j) The records sought by the Parent did not exist, and therefore the District complied with the Parent's request to review the Student's educational records.
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REQUESTED CORRECTIVE ACTION

- Schedule an IEP team meeting to consider whether the Student's behavior is a manifestation of the Student's disability;
- Return the Student to their original school building;
- Involve the Parent and Student in the process of the Student's return to school;
- Schedule an IEP team meeting to conduct a functional behavioral analysis and develop a behavior intervention plan, with consideration for the Student's behavior and emotional needs, review and update the Student's present levels of performance, goals, and objectives, and consider supplementary aids, services, PBIS, strategies to support the Student's behavior and emotional needs, including such services as social work, counseling, and psychological services as appropriate;
- Provide Parent with copies of educational records for the Student including disciplinary issues related to the Student's suspension;
- Training for District staff regarding positive and supportive teaching techniques, strategies for working with children with behavioral and emotional disabilities, Parents rights under IDEA, education records requests; and
- Compensatory education to address the period of time the Student did not attend school.

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 November 8, 2021. 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 in this matter is in the fifth grade and attends school in the District. **(D2)**
- 2) The Student is eligible for special education under the category of emotional behavior disability (60). The Student enjoys sports, is athletically inclined, and cares about their work and wants things done well. The Student responds best to positive feedback. **(D9, D7)**
- 3) The Student historically exhibited behaviors that required the District to make changes in the manner and location of the Student's education. On February 11, 2019, the Student was placed on homebound instruction for 90 minutes per day due to the severity of their behaviors. **(D32)**
- 4) In December 2019, the District documented the Student's struggles with behavior. The Student demonstrated numerous behavior incidents including physical aggression, primarily toward staff. The Student would become angry when things did not go the way they thought they should, or when the Student did not get their way. The Student's physical aggression manifested in such behaviors as kicking the wall, door, glass, and throwing objects around the classroom. The Student was previously observed knocking over chairs, throwing chairs, and lifting chairs as if to threaten the classroom teacher. The Student demonstrated difficulty with transitions such as stopping play during PE, lining up appropriately, or following directions. The Student would at times display behavior such as becoming silly and disrupting other students. Then the Student could not calm themselves down. In order to address these behaviors, the Student had to be removed from the classroom setting. **(D31—D32)**
- 5) On January 27, 2020, the Student was returned to school on an abbreviated school day

program. The District provided the Student with an adult to accompany the Student in all academic settings. The District placed the Student on a step-up plan to gradually increase the Student's school day. **(D32)**

- 6) Due to the COVID-19 pandemic, during the remainder of the 2020-21 school year the Student participated in Comprehensive Distance Learning (CDL).
- 7) The "Parent Concerns" portion of the Student's December 1, 2020 IEP documents that the Parent reported a change in the Student's family that would likely impact the Student. The Parent also noted that the Student was demonstrating increased anger. The District had a Behavior Support Plan (BSP) in place for the Student at this time. **(D48, D54)**
- 8) From March 2021 through April 2021, the Student's behavior improved, resulting in an increase in the Student's school day from 11:10—2:50 to 8:30—2:50. **(D31)**
- 9) On October 6, 2021, the Student's IEP team amended the Student's IEP to reflect that the removal of the accommodation for the Student to leave the classroom to address behavior issues and the removal of special education transportation. **(D31)**
- 10) The Student's November 16, 2021, IEP included a behavior support plan (BSP). As early as October 6, 2021, the Student had such interventions as an accommodation to access a separate room in the school for support to address behavior. In the spring of 2021, the Student was on an abbreviated school day program to address behavior. **(D31—D32)**

The Student's behavior intervention and support plan included a list of the Student's exhibited behaviors and strategies to address those behaviors. In addition, the plan listed specific scenarios related to the Student, antecedent behavior, and de-escalation strategies. **(D86—D94)**

- 11) The Student's November 16, 2021, IEP present levels section provides an overview of the Student's prior behavior issues and progress to that point. By November 2021, the Student showed progress toward meeting their behavior goals. The Student's Classroom Teacher (Teacher) noted an improved ability to problem solve and meet behavior goals of being safe, respectful, and responsible. The District noted that the Student's behavior support plan should be updated when the Student returned to school to reflect their current needs following the end of CDL. Despite the improvement, the District noted that the Student generally struggled behaviorally with inattention, emotional dysregulation, and social skills deficits. This creates obstacles for the Student to build appropriate relationships with peers and adults and with following adult directions. These struggles impacted the Student's ability to function in the general education setting without significant support. **(D31—D32)**
- 12) The Student's November 16, 2021, IEP included a social/emotional/behavioral goal. The goal had several parts tracked by a daily point card. The first goal included safe, gentle hands, feet, and body. The second goal included being respectful, getting attention appropriately, and using respectful words. The third goal included being responsible and following directions. The fourth goal focused on the Student transitioning to a new activity following preferred tasks on 4/5 observed opportunities. The Student's goal was to achieve these expectations 80% of the time daily by December 2022. **(D36)**
- 13) On April 26, 2022, the Student's IEP team met to review the IEP. As part of that meeting the team removed the Student's BSP "due to [Student] not accessing reinforcements due to lack of interest and progress in [their] behavior at school. [Student] is motivated by Tier 1 class prize box and is accessing reinforcement for positive behavior in the home setting." The

Student's BSP was removed as part of this meeting given the improvement shown by the Student. **(D9—D10)**

- 14) Following the removal of the Student's BSP, the District documented ten "major" behavior incidents prior to the end of the 2021-22 school year. These included peer conflict during play, displays of aggression including damage or destruction of property, verbal altercations with classmates, and classroom disruptions. **(D117—D124)**
- 15) At the start of the 2022-23 school year, the District and the Parent attempted to meet or schedule meetings to address the Student's behavior needs. For various reasons, the meetings were not completed or a mutually agreed upon time was not settled on. The District says that meetings were attempted ahead of the start of the school year as well as September 2022. However, there is no record that a meeting actually occurred.**(Interview with Classroom Teacher, Interview with Parent)**
- 16) During the first month of school, the District documented 39 behavior incidents involving the Student. Of these, 30 were classified as major and nine as minor. Fifteen were documented by the Classroom Teacher. These behavior incidents largely fall within a two-week period. **(D117—D120, D274, D275)**
- 17) Due to these behaviors, the Parent and the District began discussions about moving the Student to a different classroom in the same grade. **(Interview with Classroom Teacher, Parent, District BCBA)**
- 18) On September 26, 2022, the District held a meeting with the Parent and several District administrators in attendance to discuss the Student's behavior needs. As part of this meeting the Parent and District discussed moving the Student to a different classroom. The District discussed their concerns related to the Student's escalating behavior, including physical and dangerous behavior toward themselves, classmates, and staff. The District also raised concerns regarding the Student's disruptive behavior and the means by which the Parent could assist in reinforcing positive behavior on the part of the Student. **(D279)**
- 19) Early in the 2022-23 school year, a behavior incident occurred at school with the Student. This incident was sufficiently disruptive to the Student's classroom that it became known throughout the school building. The behavior exhibited by the Student on this occasion led the District to suspend the Student for three days. The Department's Complaint Investigator interviewed staff regarding the facts of this incident, and reviewed District reports relevant to the underlying issues. The Student's behavior on this occasion triggered a report to law enforcement. **(9/27/2022 incident with classroom teacher allergy)**
- 20) The District had a previously scheduled IEP meeting with the Parent on September 29, 2022, to discuss changing the classroom to which the Student was assigned. At that meeting, the Parent was informed of the Student's suspension. **(Interview with Parent/Interview with District)**
- 21) During the September 29, 2022 meeting, the District discussed the reason for the Student's suspension as well as the Student's behavior referrals for the 2022-23 school year. The reasons for the Student's behavior referrals during the first month of the 2022-23 school year were approximately the same number of referrals as for the entire 2021-22 school year. The parties discussed alternative locations for the Student's education, including several other school buildings and online education. At the conclusion of the meeting, the parties could not come to an agreement on the school the Student would attend. The Student's IEP team discussed that the incident leading to the Student's suspension would require rebuilding trust

and relationships with classmates and building staff. **(D151—D152)**

The District reports that the Student was suspended for three days. This information was reported to the Parent at the September 29, 2022 meeting orally. During the meeting, District staff also discussed other schools in the District where the Student might attend. The IEP meeting minutes from this meeting indicate several schooling options were offered to the Parent and the District's rationale for these options. **(Interview with District, Interview with Parent, D151)**

- 22) The Parent reports that at the September 29, 2022, meeting they were informed that the Student was suspended and that the Student would be assigned to a new school building. The Parent was also offered other schooling options for the Student. The Parents reported feeling caught off guard regarding the content of the meeting as the meeting was originally scheduled to discuss other matters. **(Interview with Parent)**
- 23) The District created a record of the events related to the Student's suspension. The Parent was called to take the Student home on the date in question. The District's internal reports indicate that the Parent was informed of the reason why the Student was sent home, and documents that the suspension period was three days. This information was reported to the Parent verbally by District administrators. **(D128—D130, D130)**
- 24) The Parent expressed a preference that the Student remain at the same school they attended prior to the events triggering the suspension. The District was unwilling for the Student to continue attending that school at least until relationship repair with others could occur, but offered several other options consistent with the placement required by the Student's IEP. Thereafter, the Student did not attend school due to the Parent and the District not coming to an agreement on the location of the Student's schooling. **(Interview with Parent/District)**
- 25) On September 30, 2022, the Parent met with the Director of Special Education to discuss the Student's suspension, assignment to a different school building, and criteria required for the Student to return to their original school building. **(District Response, Interview with District)**
- 26) On October 5, 2022, the IEP team met again to discuss the Student's educational needs in light of the events giving rise to the Student's suspension. As part of the meeting, the District reviewed the Student's behavior incidents. The District explained that the Student's actions resulted in students and staff in the building not feeling safe around the Student. The District noted that the school's climate may be counterproductive for the Student's education. The IEP team outlined the specifics of these concerns with the Parent. The Parent expressed the preference in the Student returning to their home school. The District explained that this was not possible without time to repair relationships between the Student, staff, and classmates. The parties agreed to reconvene later to further discuss the Student's schooling. At the conclusion of this meeting, the Parent had not agreed either to another school building or online school for the Student. The District observed this meant the Parent was refusing schooling for the Student. **(D153—D155)**
- 27) On October 11, 2022, the Student's IEP team met to discuss the Student's educational needs and schooling. Both the Parent and the Parent's Advocate were present for the meeting. During the meeting, the Student's IEP team discussed the options within the District for the Student to attend school, whether in a physical building or online. The parties discussed whether the Student's suspension triggered the requirement for the District to conduct a manifestation determination. The parties also discussed where the Student would attend

school. The Parent requested that the Student be permitted to return to their home school. The District discussed preliminary plans to formulate the steps needed for the Student to return to their home school. The District reiterated that it would need to formulate a plan by which trust was rebuilt between the Student, classmates, and staff, to avoid disruption both to the learning environment and the Student's education. **(D156—D159/Audio of meeting)**

- 28) On October 11, 2022, the District sent the Parent an email indicating that the District was offering "a new school location for [the Student]...We are prepared to offer a substantially similar special education placement [at another school in the District]. We believe that this location will provide the best opportunity for [Student] to have positive interaction with staff members, continue to meaningfully participate in the general education setting, and receive necessary supports. If [the other school in the District] is not an acceptable location, you are still welcome to enroll in our online program." The District provided a tentative timeline for the proposed restorative process in the email. **(D163—D164)**
- 29) On October 11, 2022, the District provided the Parent with a Prior Written Notice. The content of the Prior Written Notice included that the district offered FAPE in the same least restrictive environment (LRE) at another school in the District effective October 11, 2022. All services in the Student's existing IEP would continue to be provided at the new school location. The Prior Written Notice gave a brief rationale and summary of the events that led to the Student's suspension as the reason for the change of school location. **(D180—D181)**
- 30) On or about October 22, 2022, the Parent agreed to enroll the Student in the District's online school. As part of the Parent's acceptance of the online schooling option, the Parent expressed displeasure with the option and a preference for in-person schooling at the Student's home school. **(D162)**
- 31) On October 24, 2022, the District sent an email to the Parent's Advocate and the Parent indicating that the Parent's choice to enroll the Student in the District's online program "does not constitute an interim placement. This is a temporary setting that the family is utilizing, in lieu of the physical setting that was offered." **(D161)**
- 32) The District offered schooling options that would have allowed for the provision of special education and related services consistent with the Student's current IEP in the September 29, 2022 IEP meeting; the October 5, 2022 IEP meeting, and the October 11, 2022 IEP meeting. However, at the parent's discretion, the Student did not attend school from September 27, 2022 through October 25, 2022. **(Interview with the Student's Case Manager)**
- 33) On October 26, 2022, the Student began attending online school in the District. **(Interview with the Student's Case Manager)**
- 34) On November 8, 2022, the Parent filed this Complaint.
- 35) On November 28, 2022, the District submitted its *Response*. As part of the *Response* the District admitted several of the allegations, denied or partially denied others, and provided context and explanations for the issues raised in the Complaint. **(District Response, 11/28/22)**
- 36) The Student's annual reevaluation was due November 15, 2022. This was not conducted. **(Interview with Case Manager, P053)**
- 37) On December 5, 2022, the Department's Complaint Investigator interviewed the Parent and the Parent's Advocate. **(Interview with Parent/Advocate)**

The Parent reports having not received reports of the Student's behavior prior to the events triggering the District suspending the Student. The Parent reports that the Student was sent home, and that they learned of the suspension at the meeting previously scheduled for September 29, 2022. The Parent reports having not received any written information regarding the Student's suspension or the reason for the suspension. The Parent reported that this information was presented when the Parent was informed of the new school the Student was assigned to. The Parent reported that the District only presented options for different school buildings or online schooling, with no option of immediately returning to the Student's home school offered. **(Interview with Parent/Advocate)**

The Parent observed that while the Student's behavior support plan (BSP) was removed from the Student's IEP on April 26, 2022, all references to the BSP were not removed from the Student's IEP. The Parent noted that the BSP was therefore still listed as an accommodation in the Student's IEP. The Parent related information specific to the family that likely contributed to the Student's behavior and wondered whether the Student's IEP should have included accommodations for the Student in that area of need. **(Interview with Parent/Advocate)**

The Parent related that the District held four meetings where the Student's suspension and school assignments were discussed. Some of these were formal IEP meetings, while others were informal discussions with District staff to address the Parent's concerns regarding the Student's suspension. **(Interview with Parent/Advocate)**

The Parent reports that at the September 29, 2022, meeting, they were informed that the Student was suspended for three days, but they were not sure when the suspension formally began and ended because this information was not provided in writing. The Parent questioned whether the time between meetings with no formal decision on where the Student would attend school indicated that the Student's suspension was longer than stated. The Parent indicated that they received notice from the District of the Student's enrollment in a different school building. **(Interview with Parent/Advocate)**

The Parent also reported a change in the Student's family structure that may have contributed to the Student's behavior struggles. The Parent raised the concern that the District had not considered this change, nor appropriately considered its impact to the Student. **(Interview with Parent/Advocate)**

- 38) On December 19, 2022, the Department's Complaint Investigator interviewed the Director of Special Education, one of the District's Board Certified Behavior Analysts (BCBA), the Classroom Teacher, and the Case Manager. **(Interview with District Staff)**
- 39) The Case Manager provided background regarding the Student's IEP. The Student had shown improvement following the ending of CDL, and over the course of the 2021-22 school year. The Case Manager speculated that the Student responded well to a specific teacher during the prior school year, but that the improvements shown were not reproducible generally. The Student's behavior referrals were reviewed with the Case Manager who agreed that the Student's IEP needed to be revised to add behavior supports for the Student. **(Interview with the Student's Case Manager)**
- 40) The BCBA reported that they were tasked to observe the Student as part of the Student's IEP team considering additional behavior supports for the Student. The BCBA began their observations at 9:00 a.m. on the day of the events that led to the Student's suspension. The Student reportedly had displayed disruptive behaviors throughout the day, in all settings. Examples of these disruptive behaviors included not following directions, making noises in

class, repeating back directions given to them, and disruptive peer interactions. Prior to the issue that led to the Student's suspension, the Student caused a disruption that led to the Parent being called to the school to intervene with the Student. Just after the Parent left, the Student engaged in behaviors that ultimately led to the Student being suspended, and the Parent being called back to the school to take the Student home. During these various displays of disruptive behavior, the District's BCBA observed that adults were not physically intervening with the Student to redirect them. The District's BCBA understood that the Parent had voiced a preference that certain interventions used in the District not be used with the Student. **(Interview with BCBA)**

41) The Department's Complaint Investigator interviewed the Student's Classroom Teacher and obtained an account of the issues that led to the Student's suspension. The Student's Teacher also provided information on how they access and review Student IEPs, and their awareness of the specific behavior supports the Student had in place. The Student's Teacher also related having met with the Parent and the Student's IEP team and working to schedule additional meetings to address the Student's behavior needs before and during the first month of the 2022-23 school year. **(Interview with Teacher)**

42) The Director of Special Education reported that the issues leading to the Student's suspension were sufficiently significant that they required the Student, staff, and classmates undertake a restorative process before the Student returned to their home school. The District envisioned using an outside facilitator for this process. Given the variables in selecting an outside facilitator and the number of individuals involved in the potential process, the District was unable to give the Parent a firm date or schedule for the Student's return to their home school. As part of the conversations around alternative schooling locations, the District discussed with the Parent the other buildings in the District where the Student might attend. The Parent had expressed a preference for a building that was not then accepting students due to staffing issues. Other buildings and schooling options were discussed with the Parent before they chose online schooling for the Student.

The Director of Special Education reports that the Principal reported the Student's three-day suspension to the Parent on the day of the events leading to the suspension. This information was reported to the Parent verbally in person. The District generated a discipline referral documenting the three-day suspension, which was entered into the student information system. **(Interview with Director of Special Education, D274)**

IV. DISCUSSION

Disciplinary Removals for More than 10 School Days (Pattern or Consecutive)

The Parent alleged that the District violated the IDEA when it suspended the Student from school. Specifically, it is alleged that the District did not conduct a manifestation determination to determine whether the behavior that led to the suspension was a manifestation of the Student's disability. It is also alleged that the District did not review the Student's behavior plan and modify it as necessary to address the behavior.

A disciplinary removal is considered a change in educational placement, requiring a district to follow special procedures if the removal will be for more than 10 consecutive school days. If the student is removed for more than 10 cumulative school days from their current educational placement in a school year those removals could constitute a pattern which also require following special procedures. If a student is removed for more than 10 days cumulatively or as part of a pattern of behavior, a district must determine whether the behavior that led to the

suspension was a manifestation of the student's disability. If a district determines that the student's behavior was a manifestation of the student's disability, the district must return the child to the placement from which the child was removed. The district does not need to return the student to the placement if the student and the parent agree to a change of placement, or the district removes the student to an interim alternative educational setting for situations involving weapons, drugs, or serious bodily injury.³

The District suspended the Student for a period of three days following behaviors exhibited in the school. The District informed the Parent of the suspension verbally rather than in writing. With the suspension, the District reassigned the Student to a different school in the District but did not change the Student's educational placement. During interviews with the Department's Complaint Investigator, the District and the Parent agreed that, within the three days suspension period, and subsequently, the District had communicated offers to enroll the Student in other schools within the District. The Parent opposed this change in enrollment and refused to send the Student to the new school. The District and the Parent had subsequent meetings to discuss the Student's suspension, the Parent's preference that the Student return to their home school, and the District's reasons for advising against the Student returning to their home school in the near term. Outside of the three day suspension, the District made a schooling option consistent with the Student's LRE available to the Student. However, as a result of these disagreements, the Parent did not send the Student to school until October 26, 2022, whereupon the Parent enrolled the Student in the District's online school.

The Department does not substantiate this allegation.

Removal to an Interim Alternative Educational Setting by School District

The Parent alleged that the District violated the IDEA when it proposed to remove the Student to an interim alternative educational setting without following appropriate procedures. It is alleged that the District removed the Student from the Student's educational placement to an interim alternative educational setting without appropriately notifying the Parent of the decision and providing the Parent with notice of procedural safeguards. It is alleged that the District failed to provide services to the Student in an interim alternative educational setting, as determined necessary by the Student's IEP team. It is further alleged that the District failed to determine whether the Student's behavior was a manifestation of the Student's disability. Finally, it is alleged that the District failed to provide a functional behavioral assessment, behavior intervention services, and modifications to address the behavior violation so that it did not recur.

School districts may remove a student with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline. Such removals may not exceed more than 45 days. These disciplinary removals may be for such concerns as drugs, weapons, or for inflicting serious bodily injury. When a student is removed under these circumstances, on the day the decision is made, a district must notify the parent of that decision and provide the parent with notice of procedural safeguards. The district must also provide services to the student in an interim alternative educational setting, as determined necessary by that student's IEP team. The district must also, within 10 days of the decision to remove such a student, determine whether the behavior is a manifestation of the student's disability. The district must also provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modification that are designated to address the behavior violation so that it does not recur.⁴

³ OAR 581-015-2415(1)—(3)

⁴ OAR 581-15-2425(1)—(5)

“Current educational placement” means the type of educational placement for the student as described in the student’s “annual determination of placement” document, in place at the time of a disciplinary removal. Current educational placement does not mean the specific location or physical address of a school, but rather the type of placement within the District’s continuum of alternative placements. These can include a regular classroom with support, a regular classroom with resource room support, a special class, a special school, home instruction, or similar options. “Disciplinary removal” means suspension, expulsion, or other removal from school for disciplinary reasons.⁵

In this matter, the Student displayed behavior that caused a disruption that damaged the Student’s relationships with classmates and District staff. As a result, the Student was suspended for three days. Thereafter, the District transferred the Student to a different school building in the District. The special education services proposed were substantially the same as that which the Student previously received at their home school. Changing the physical location for the delivery of services within the District is not an alternative educational placement that triggers the same procedures required for removal to an interim alternative educational setting.

The Department does not substantiate this allegation.

Placement of the Child

The Parent alleged that the District violated the IDEA when it changed the Student’s educational placement as part of the Student’s suspension, without the input of the Parent. The Parent also alleged that following the Student’s suspension, the District selected an alternative location for the Student to attend school that was not as close as possible to the Student’s home. The Parent alleged that the District did not consider the least restrictive environment or the potential harm to the Student in changing the Student’s educational placement as part of the Student’s suspension. Finally, the Parent alleged that prior to the Student’s suspension, the District generally did not consider whether specific classrooms and District staff working with the Student were appropriate for the Student’s disability.

School districts must ensure that the educational placement of a student with a disability is determined by a group of persons, including the parents, other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. A student’s educational placement must be made in conformity with Least Restrictive Environment (LRE) provisions. A student’s educational placement is determined at least once every 365 days, based on the student’s IEP, and should be as close as possible to the student’s home. Unless the student’s IEP requires some other arrangement, the student is educated in the school that they would attend if not disabled, and in consideration of the least restrictive environment.⁶

As observed above, a student’s current educational placement means the educational placement of the student as described in the student’s “annual determination of placement” and not the physical location or school the student attends.⁷ As part of conversations regarding the Student’s suspension and assignment to a different school building, the District considered all relevant school buildings. The Parent’s preferred alternative was not available due to lack of staffing at that building. The record contains evidence of the District and the Student’s IEP team considering the impact of the Student staying at their home school following the events that led

⁵ OAR 581-015-2400(2)—(3)

⁶ OAR 581-015-2250(1)—(4)

⁷ OAR 581-015-2400(2)

to the Student's suspension. On the day the Student was suspended, the Student's IEP team had begun the process of evaluating the Student's behavior as it impacted their educational placement.

The Student's educational placement was not changed as the result of their suspension. The District proposed a change in the location where the Student would receive their education because of the impact of the events that led to the suspension. As part of this change in location, the District and the Student's IEP team considered the impact on the Student including the distance of the school from the Student's home.

The Department does not substantiate this allegation.

Parent Participation

The Parent alleged that the District violated the IDEA when it scheduled an IEP team meeting on or about September 29, 2022, without providing the Parent with written notice of the meeting. The Parent also alleged that the District did not provide written notice of the purpose of the meeting, or notice of who would be in attendance at the meeting.

A school district must provide the parent with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, educational placement, and the provision of a free appropriate public education to the student. A school district must provide the parent with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend. That notice must state the purpose, time, and place of the meeting. The notice should also indicate who will be in attendance. The notice should inform the parent that they may invite other individuals to the meeting whom they believe have knowledge or special expertise regarding the child. These requirements do not apply to informal or unscheduled conversations involving school district personnel and conversation on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the student's IEP. These requirements also do not apply to preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.⁸

The District partially disputed this claim in its written response. The Parent had previously agreed to meet to discuss the classroom the Student was being assigned to. Following the Student's suspension, that meeting was adjusted to September 29, 2022, to accommodate the schedule of the Parent's Advocate. The District used the meeting to discuss the Student's suspension and assignment to a different school building. The Parent was not given formal notice of the changed purpose of the meeting and the attendees.

While the Parent was provided notice of the time and date of the meeting, they were not provided notice of the purpose of the meeting or the change in attendees.

The Department substantiates this allegation.

IEP Team Considerations and Special Factors

The Parent alleged that the District violated the IDEA when it determined the Student's educational placement without considering the Parent's concerns and input. Specifically, the

⁸ OAR 581-015-2190(1)—(4)

Parent alleged that they were informed of the change in educational placement following the District suspending the Student. The Parent further alleges that this decision was made without an IEP team meeting.

In developing, reviewing, and revisiting the child's IEP, the IEP team must consider several considerations. These include the child's strengths, the parent's concerns for enhancing their education, the results of evaluations, and the student's academic, developmental, and functional needs. In developing a student's IEP, the IEP team may consider additional factors. For students whose behavior impedes their learning or that of others, the IEP team should consider the use of positive behavioral interventions and supports or other strategies to address that behavior. If, in considering these special factors, the IEP team determines that a child needs a particular device or service for the student to receive a free appropriate public education, a statement to that effect must be included in the student's IEP.⁹

The District did not change the Student's educational placement. Rather, the District proposed a change in the physical location where the Student's educational placement could be implemented.

The Department does not substantiate this allegation.

When IEPs Must Be In Effect

The Parent alleged that the District violated the IDEA when it failed to provide special education and related services to the Student in conformity with the Student's IEP. The Parent alleged that the District did not appropriately implement the Student's behavior support plan (BSP). The Parent alleged that the District did not implement other accommodations in the Student's IEP, such as assistance with transitions. Finally, the Parent alleged that the District did not provide the Parent with IEP goal progress reports as outlined in the Student's IEP.

At the beginning of each school year, a school district must have an IEP in effect for each for child with a disability within the district's jurisdiction. The district must provide special education and related services to the child with a disability in accordance with their IEP. As soon as possible following the development of the IEP, special education and related services must be made available to the student in accordance with their IEP. A district should inform each teacher and provider of their responsibilities for implementing the student's IEP and other specific accommodations, modifications, and support that must be provided for or on behalf of the student in accordance with the IEP.¹⁰

The District partially acknowledged and partially denied this allegation in its response. The record does contain IEP progress reports for the Student for March 17, 2022, and June 14, 2022. The Student's November 16, 2021, IEP, amended on April 26, 2022, indicated that progress would be reported four times per year. The Student was suspended, then ceased attending school in the District, before a progress report was generated for the 2022-23 school year.

The Student's IEP team removed the Student's BSP from the IEP on April 26, 2022. The IEP's present levels section include that the BSP was removed, and the IEP team's reasoning for doing so. While the BSP was removed, references to it remained in the IEP service summary. During interviews with District staff, they understood that the behavior support plan (BSP) was

⁹ OAR 581-015-2205(1)—(4)

¹⁰ OAR 581-015-2220(1)—(3)

removed, and that interventions used previously, such as allowing the Student to leave the classroom to utilize a different room in the building as a calming strategy, were no longer in effect. Due to escalating behaviors exhibited by the Student in the initial weeks of the school year, the District was conducting observations of the Student to recommend additional behavior supports. The Student's IEP team was set to meet to discuss moving the Student to a different classroom to address the Student's behavior.

The record contains IEP progress reports for the Student. The record indicates that errors in the IEP did not cause confusion regarding the services provided to the Student. However, references to the BSP remained in the Student's IEP although the Student no longer had a BSP.

The Department substantiates this allegation in part.

Review and Revision of IEPs/Functional Behavioral Assessments

The Parent alleged that the District violated the IDEA when it failed to review the Student's IEP to address behavior displayed by the Student that resulted in numerous behavior referrals. The Parent alleges that the Student had a BSP in place, but that the Student's IEP team failed to meet to revise the Student's BSP to address the behavior concerns. It is alleged that the District failed to revise the Student's IEP to address changed circumstances in the Student's life that impacted the Student's behavior. It is also alleged that the District failed to consider whether assigning the Student to a specific classroom was appropriate for the Student given the Student's needs. Finally, it is alleged that the District failed to conduct a behavioral assessment following the Student's suspension.

A student's IEP must be reviewed by the Student's IEP team periodically, but at least once every 365 days. The IEP review should determine whether the annual goals for the student are being achieved. The IEP should be revised as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum. The IEP should be revised as the result of any reevaluation, information about the student provided by the parents, the student's anticipated needs, and other matters.¹¹

A behavior intervention plan is an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach alternative appropriate behavior. A school district must conduct a functional behavioral assessment and develop, review, or revise a behavior intervention plan within 45 school days of receiving parental consent to conduct the assessment when a student with an IEP has placed themselves, other students, or staff at imminent risk of serious bodily injury because of the student's behavior.¹² Serious bodily injury is defined in Oregon law as "any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else."¹³

The District reported informal meetings and conversations with the Parent before the start of the 2022-23 school year about the Student's behavior needs. The Parent reported that the Student's behavior led to discussions with the District regarding a change in the classroom to which the Student was assigned. On September 26, 2022, District administrators and the Parent met to discuss the Student's behavior. This meeting was not an IEP team meeting because it

¹¹ OAR 581-015-2225(1)(a)—(1)(b)

¹² OAR 581-015-2181(1)—(2)

¹³ ORS 339.285(4)

did not include the Student's IEP team members. The District's BCBA was subsequently tasked to observe the Student to assess the Student's behavior needs. During the observation, the Student's behavior escalated leading to the Student's suspension.

Prior to the events giving rise to the Student's suspension, the Student's IEP team had scheduled an IEP team meeting for September 29, 2022, to discuss a change in classroom as the result of the Student's behavior. The Student's suspension and subsequent nonattendance interrupted the trajectory of the IEP team's consideration of behavior supports for the Student.

As part of the Department's Complaint Investigator's interviews with the Parent and the Parent's Advocate, concerns were raised whether the changes in the Student's family had contributed to the Student's behavior struggles. This change in the Student's family was noted in the Parent Concerns section of the Student's December 1, 2020, IEP. The Student had a BSP in place at that time. The Student's behaviors during this period resulted in an abbreviated school day program for the Student. During the Department Complaint Investigator's interview with the District, the Student's Case Manager reported their awareness of this situation and their past work with the Student regarding the issue. The Student's Case Manager also noted the need for additional behavioral provisions to be included in the IEP, indicating that the District was aware of a need for the IEP team to consider revisions to the Student's IEP.

At the time of the Student's suspension, the District was in the process of considering a change in teacher and classroom to determine whether that would assist the Student with maintaining appropriate behaviors. The District's BCBA was conducting an observation of the Student when the events giving rise to the suspension occurred.

The District was not required to conduct a manifestation determination because the Student's suspension was for less than 10 days. However, the pattern of behaviors exhibited by the Student leading up to their suspension and the circumstances of the suspension required the District to conduct a functional behavioral assessment to develop or revise a behavior intervention plan for the Student. As observed above, when a student engages in behavior that results in "serious bodily injury" as that term is defined in ORS 339.285(4), the District is required to conduct a functional behavioral assessment and develop a behavioral intervention plan within 45 days of obtaining parental consent. As of the date of the Complaint and the course of the subsequent investigation, the District had not yet conducted a functional behavior assessment or worked toward the development of a new behavior intervention plan for the Student.

The District had begun the process of reviewing the Student's IEP as evidenced by the presence of the District's BCBA in the classroom. However, the District had not convened an IEP team meeting to assess the Student's behavior. The Student's behavior support plan was removed in April 2022 and was not in place at the start of the 2022-23 school year. The IEP team failed to reconvene to consider the provision of additional behavior supports when the Student's behavior began to escalate during the 2022-23 school year, despite the recognition of need for this meeting by the Student's Case Manager. The change in family circumstance occurred in 2020, and there is evidence in the record that the District considered the impact on the Student at that time. The District had held meetings with the Parent to discuss a change in classroom assignment prior to the Student's suspension. The District did not conduct a functional behavioral assessment following the behavior that precipitated the Student's suspension.

The Department substantiates this allegation in part.

Prior Written Notice

The Parent alleged that the District violated the IDEA when it failed to provide prior written notice of the Student's change in placement following the Student's suspension. It is further alleged that the District did not provide prior written notice when it refused to reevaluate the Student at the Parent's request.

Prior written notice must be given to a student's parent when the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student. The prior written notice must include a description of the action proposed or refused by the district and the basis for the proposed or refused action.¹⁴

As observed above, the Student's educational placement was not changed; therefore, prior written notice was not required. During the time covered by this Complaint, and subsequent investigation, the District had not begun the process to reevaluate the Student by the November 15, 2022 reevaluation date. During interviews with the District, staff acknowledged that the District had not sent the Parent prior written notice of its intent to reevaluate the Student ahead of the Student's triennial IEP reevaluation date.

The Department substantiates this allegation in part.

General Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA when it failed to reevaluate the Student to address an increase in behaviors resulting in behavior referrals. The Parent also alleged that the District failed to provide the Parent with notice of its intent to reevaluate the Student ahead of the Student's three-year reevaluation date.

Before conducting any evaluation or reevaluation of a student, a school district must conduct evaluation planning. Before conducting any evaluation or reevaluation, a school district must provide notice to the parent that describes any evaluation procedures the agency proposes to conduct because of the evaluation planning process. Before conducting any evaluation or reevaluation, the district must obtain written informed consent for the evaluation. The evaluation must employ a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The student should be assessed in all areas related to the suspected disability, including but not limited to social emotional status, and be sufficiently comprehensive to identify all the student's special education and related service needs. Evaluations and reevaluations must be completed within 60 school days from receiving written consent.¹⁵

The District and the Parent had begun discussing the Student's escalating behaviors prior to the events that led to the Student's suspension. During the start of the 2022-23 school year, the District held informal meetings with the Parent and the Parent then met with administrators from the District on September 26, 2022. At this meeting, the parties discussed the Student's escalating behaviors during the first month of the 2022-23 school year. The District documented the first behavior incident on September 8, 2022. The Student continued to exhibit concerning behaviors over the next two weeks. The District held a meeting with District administrators and the Parent on September 26, 2022, to discuss the Student's behavior. As part of the District's response to the Student's behavior the District BCBA conducted an observation of the Student

¹⁴ OAR 581-015-2310(1)—(3)

¹⁵ OAR 581-015-2110(1)—(5)

to inform IEP team decision making related to needed assessments. The District did not convene a meeting of the Student's IEP team during this time. The District also did not provide notice to the Parent of the proposed evaluation methods, nor did the District seek their consent for the evaluations. As observed above, the Student's IEP team had also not begun the process to reevaluate the Student ahead of the IEP reevaluation date.

The Department substantiates this allegation.

Access to Student Education Records

The Parent alleges that the District violated the IDEA when it failed to provide the Parent with requested educational records for the Student. The Parent alleges that records regarding the reason for the Student's suspension were requested, but not provided.

A school district must comply with a parent's request to inspect and review their child's education records without unnecessary delay.¹⁶ For children over three, a district may take no more than 45 days after the request to review records and make them available to the parent. Education records are those documents and records regarding the identification, evaluation, and educational placement of the child. The Family Educational Rights and Privacy Act (FERPA) defined education records as those records that contain information directed related to a student, and which are maintained by an educational agency or institution.¹⁷ Education records are those that are maintained "in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled."¹⁸ Emails in the possession of a district may only be considered part of a student's educational record when they are printed and/or added to a student's file.¹⁹

During the Department Complaint Investigator's interviews, the Parent alleged that, as part of their records request to the District, they were not provided with documentation regarding the reason for the Student's suspension. The District reports as part of this investigation that the Parent was informed verbally by District administrators of the reason for the Student's suspension. The record also contains evidence of subsequent meetings between the District and the Parent. There is no evidence that written evidence of the suspension is in the Student's education records, although it was entered into the District's student information system.

The Department substantiates this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District violated the IDEA in numerous ways that denied the Student a FAPE.

Each school district must provide a free appropriate public education to school age children with disabilities for whom the school district is responsible.²⁰ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities."²¹

¹⁶ OAR 581-015-2300

¹⁷ 20 U.S.C. § 1232g(a)(4)(A)

¹⁸ *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, 534 U.S. 426, 432-33 (2002)

¹⁹ *Burnett v. San Mateo-Foster City School District*, 739 F. App'x 870 (2018)

²⁰ OAR 581-015-2040(1); 34 CFR §300.101(a)

²¹ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

(A) It is alleged that the district failed to conduct a manifestation determination or review and revise the Student's behavior intervention plan to address behaviors exhibited by the Student. The District was not required to conduct a manifestation determination in this matter because the Student's suspension was less than 10 days long.

The Department does not substantiate this portion of the allegation

(B) It is alleged that the District did not appropriately notify the Parent of the District's decision to remove the Student to an interim alternative educational setting, provide services to the Student in that alternative setting, determine whether the behavior was a manifestation of the Student's disability, or conduct a functional behavioral assessment. The Student's suspension, and subsequent reassignment to a different school building within the District, did not constitute a transfer to an interim alternative educational setting, and therefore did not require the District to conduct a manifestation determination or functional behavioral assessment.

The Department does not substantiate this portion of the allegation.

(C) It is alleged that the District changed the Student's educational placement without the Parent's input, choosing a location without considering proximity to the Student's home, LRE requirements, and prior to the suspension had not considered the appropriateness of certain classrooms for the Student. The District's proposal to change the school where the Student attended was not a change in educational placement. As the change in physical location of the delivery of educational services to the Student did not amount to a change in educational placement, no IEP team meeting was required, and therefore no meeting notice was required.

The Department does not substantiate this portion of the allegation.

(D) It is alleged that the District failed to provide the Parent with written notice of an IEP team meeting or the purpose of the meeting. The September 29, 2022, meeting with the Parent was known to the Parent in advance, however the District did not send appropriate notice of the change in the purpose of the meeting and the attendees to the meeting.

The Department substantiates this portion of the allegation.

(E) It is alleged that the District failed to include the Parent in the IEP team's decision to change the Student's educational placement. There was no change in the Student's educational placement, and therefore no meeting of the Student's IEP team where the Parent was not invited.

The Department does not substantiate this portion of the allegation.

(F) It is alleged that the District failed to implement the Student's BSP, failed to provide specific accommodations in the Student's IEP, and failed to provide the Parent with IEP progress reports. The record indicates, and District staff report knowing that, the Student's BSP was removed the previous school year. The record also indicated that IEP progress reports were sent to the Parent. The District acknowledged that references to the Student's prior BSP remained in the Student's IEP following its removal.

The District erred by not appropriately editing the Student's IEP to reflect changes made following the April 26, 2022, IEP team meeting where the Student's BSP was removed. District staff and the Parent report that the BSP was no longer in effect at the start of the 2022-23 school year. While this was a procedural error, it did not amount to a denial of FAPE.

The Department does not substantiate this portion of the allegation.

(G) It is alleged that the District failed to conduct a functional behavioral assessment either in response to the Student's suspension, or to ensure the Student's behavior support plan addressed the Student's needs. The District had not conducted a functional behavioral assessment following the behaviors exhibited by the Student that should trigger the District to conduct an FBA and which led to the Student's suspension. The District also did not revise the Student's IEP to include additional behavioral provisions, despite members of the IEP team believing it necessary to do so. Failure to develop an IEP that sufficiently addressed the Student's behavioral needs resulted in a denial of FAPE to the Student.

The Department substantiates this portion of the allegation.

(H) It is alleged that the District failed to provide prior written notice either of the Student's change in placement or of the District's refusal to evaluate the Student. As the Student's educational placement was not changed, the District was not required to send a prior written notice. The District was required to provide prior written notice of the Student's upcoming IEP triennial reevaluation and did not do so.

The Department does not substantiate this portion of the allegation.

(I) It is alleged that the District failed to reevaluate the Student either as a result of escalating behaviors or as part of the Student's triennial reevaluation. The District began assessing the Student's behavior needs, but had not provided notice of the reevaluation or begun to obtain consent from the Parent for the evaluations.

The Department substantiates this portion of the allegation.

(J) It is alleged that the District failed to provide the Parent with requested educational records. The evidence in the record indicates that, while there was no physical copy of the suspension records requested, these records existed electronically and could have been provided. However, the Parent was informed of the suspension verbally, and the Parent's ability to participate in the education of the Student was not impacted to the degree that a FAPE was not provided.

The Department does not substantiate this portion of the allegation.

The District substantiates the Parent's allegation that the Student was denied a FAPE with regard to allegations (D), (G), and (I) above.

V. CORRECTIVE ACTION
In the Springfield School District 19
Case No. 022-054-038

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

Action Required	Submissions	Due Date
1. The District shall convene an IEP meeting to consider the nature of the behaviors leading up to and including those that precipitated the Student's suspension,	The District shall submit the following: a. Meeting Notice	February 15, 2023

<p>discuss the need for reevaluation, including a Functional Behavioral Assessment, and make appropriate revisions to the IEP to ensure the Student is able to receive FAPE.</p>	<p>b. Completed IEP</p>	
<p>2. If additional services are added to the IEP during this IEP meeting, the District must provide compensatory education in an amount equitable to the amount that would have been provided between November 9, 2021 and November 8, 2022. The IEP team should develop a specific plan for the provision of this compensatory education. In the event that the IEP team cannot agree with the specific amount of compensatory education required to provide equitable relief, the Department will determine the appropriate number at the request of District or Parent.</p>	<p>The District shall submit the following:</p> <ul style="list-style-type: none"> a. Specific information about any compensatory education required, if the IEP team agrees on the compensatory education that provides equitable relief for any services missed. b. Logs showing compensatory education was provided as agreed upon (or determined appropriate by the Department at parent/district request). 	<p>February 15, 2023</p> <p>January 5, 2024</p>
<p>3. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for the student receive training in each of the following areas:</p> <ul style="list-style-type: none"> • IEP meeting notice and meeting participant requirements, and triennial review procedural requirements; • IEP drafting and content requirements; • Identifying behavior instances that may require the District to conduct a functional behavioral assessment; • Discipline provisions within the IDEA, including exclusionary discipline procedures, manifestation determination reviews, and use of interim alternative educational settings. 	<p>Training agenda/materials to County Contact for review/approval.</p> <p>Sign-in sheet for training</p>	<p>February 15, 2023</p> <p>April 15, 2023</p>

Dated: this 6th Day of January 2023

Tenneal Wetherell

Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: January 6, 2023

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).)