

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Estacada School District 108)

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-005

I. BACKGROUND

On February 19, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Estacada School District (District), and attending the Summit Learning Center, a charter school in the District. The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the 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 February 24, 2023, 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 March 10, 2023.

The District submitted a *Response* on March 10, 2023, denying the allegations, providing an overview of the issues, and including documents and copies of communications in support of the District’s position. The District submitted the following relevant items:

- 1) District Written Response
- 2) Student IEP, 11/30/2021
- 3) Notice of IEP Team Meeting, 1/01/2021
- 4) Prior Notice of Special Education Action (COVID Recovery Services), 11/30/2021
- 5) IEP Meeting Notes, 11/30/2021
- 6) IEP Snapshot, 11/30/2021
- 7) Student IEP, 01/05/2023
- 8) Prior Notice of Special Education Action, 01/05/2023
- 9) IEP Snapshot, 01/05/2023

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

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

- 10) District response cover letter, 3/10/2023
- 11) District Written Response (copy)
- 12) Student IEP, 11/30/2021
- 13) Notice of IEP Team Meeting, 03/29/2022
- 14) Prior Notice of Special Education Action, 11/30/2021
- 15) IEP Meeting Notes, 04/27/2022
- 16) IEP Snapshot, 11/30/2021
- 17) Student IEP, 11/30/2021
- 18) Notice of IEP Team Meeting, 03/29/2022
- 19) Prior Written Notice, 11/30/2021
- 20) IEP Meeting Minutes, 10/26/2022
- 21) IEP Snapshot, 11/30/2021
- 22) Student SLP service logs
- 23) Letter from COVID recovery tutor to Parent
- 24) Communication log, SLP to Parent
- 25) SDI log, 02/01/2022—09/27/2022
- 26) Service log
- 27) Email: Follow-up, 10/14/2022
- 28) Email: [Student's] Class, 10/25/2022
- 29) Email: [Parent] w/ [Student], 04/25/2022
- 30) Email: Learning Success, 02/01/2023
- 31) Email: [Student's] Class, 11/15/2022
- 32) Email: Tuesdays Class at 1, 11/07/2022
- 33) Email: [Student] and [Parent] solution 2022, 10/11/2022
- 34) Email: Re [Student's] Class, 10/25/2022
- 35) Email: Re: Classes with Specialist/Teachers, 02/21/2023
- 36) Email: Classes with [Case Manager], 09/06/2022
- 37) Email: [Student's] Class, 11/15/2022
- 38) 21/22 – High School Report Card
- 39) Computer Check-Out Form, 08/04/2022
- 40) Subscriber Detail Report(s), 07/21/2022—02/20/2023
- 41) Annual Academic and Functional Goals and Objectives Progress Report: Communication, 12/06/2021, 03/16/2022, 06/16/2022
- 42) Annual Academic and Functional Goals and Objectives Progress Report: Math, 03/28/2022
- 43) Annual Academic and Functional Goals and Objectives Progress Report: Reading, 03/28/2022
- 44) Annual Academic and Functional Goals and Objectives Progress Report: Self Management, 03/28/2022
- 45) Annual Academic and Functional Goals and Objectives Progress Report: Communication, 06/16/2022
- 46) Annual Academic and Functional Goals and Objectives Progress Report: Writing, 03/28/2022
- 47) Annual Academic and Functional Goals and Objectives Progress Report: Transition, 03/28/2022
- 48) Annual Academic and Functional Goals and Objectives Progress Report: Communication
- 49) Annual Academic and Functional Goals and Objectives Progress Report:

- Math, 06/30/2022
- 50) Annual Academic and Functional Goals and Objectives Progress Report: Reading, 06/30/2022
 - 51) Annual Academic and Functional Goals and Objectives Progress Report: Self Management, 06/30/2022
 - 52) Annual Academic and Functional Goals and Objectives Progress Report: Communication, 06/30/2022
 - 53) Annual Academic and Functional Goals and Objectives Progress Report: Writing, 06/30/2022
 - 54) Annual Academic and Functional Goals and Objectives Progress Report: Transition, 06/30/2022
 - 55) Student Unofficial Transcript Summary, Grade 10
 - 56) IEP Team Meeting Minutes, 10/26/2022
 - 57) Prior Written Notice, 11/02/2022
 - 58) Student Laptop Agreement
 - 59) Email: Fwd.: Follow Up, 10/19/2022
 - 60) Email: Re: IEP vs. IEP eval., 11/15/2022
 - 61) Email: Fwd.: Follow Up, 10/19/2022
 - 62) Email: [Student's] IEP meeting, 10/25/2022
 - 63) Email: IEP Amendment Meeting, 04/25/2022
 - 64) Email: [Student's] iEP meeting please correctly revise the issues..., 10/24/2022
 - 65) Email: Follow Up, 10/19/2022
 - 66) Email: [Student] iep qualifications, 12/08/2022
 - 67) Email: 1pm today, 10/08/2022
 - 68) Email: [Student] extended time, 03/15/2022
 - 69) Email: Follow up, 10/14/2022
 - 70) Email: [Case Manager's] Class, 10/25/2022
 - 71) Email: [Student] w/[Case Manager], 04/25/2022
 - 72) Email: Learning Success, 02/01/2023
 - 73) Email: [Case Manager's] Class, 11/15/2022
 - 74) Email: Tuesdays Class at 1, 11/07/2022
 - 75) Email: [Student] and [student] solution 2022, 10/11/2022
 - 76) Email: [Case Manager's] Class, 10/25/2022
 - 77) Email: Re: Classes with Specialist/Teachers, 02/21/2023
 - 78) Email: Classes with [Case Manager], 09/06/2022
 - 79) Email: [Case Manager's] Class, 11/15/2022
 - 80) Postal mailing receipt and tracking, 11/30/2022
 - 81) Postal mailing receipt and tracking, 01/03/2023
 - 82) Postal mailing receipt and tracking, 01/11/2023
 - 83) Postal mailing receipt and tracking, 01/18/2023
 - 84) Postal mailing receipt, 02/21/2023
 - 85) Prior Notice of Special Education Action, 12/08/2022
 - 86) District Response to Parent IEE Request, 01/18/2023
 - 87) Email: Re: Updates invitation with note: [Student's] Evaluation Planning Meeting @ Fri Feb 17, 2023
 - 88) Email: Re: Updates invitation with note: [Student's] Evaluation Planning Meeting @ Thu Feb 16, 2023

- 89) Email: Evaluation Planning Meeting, 02/13/2023
- 90) Email: Evaluation Planning Meeting, 02/10/2023
- 91) Email: Re: Evaluation Planning Meeting, 02/09/2023
- 92) Email: Fwd.: Evaluation Planning Meeting, 02/09/2023
- 93) Email: Evaluation Planning Meeting, 02/08/2023
- 94) IEE Communications Timeline
- 95) District Response to Parent IEE Request, 01/11/2023
- 96) Prior Notice of Special Education Action, 02/07/2023
- 97) Meeting Minutes, 02/17/2021
- 98) Special Education Notice of Team Meeting, 10/18/2022
- 99) Email: Communication plan, 12/07/2022
- 100) Chart dividing Parent's IEP related concerns and other concerns
- 101) Letter from District legal counsel to Parent regarding communication, 02/09/2023
- 102) [Student] Team Meeting Agenda
- 103) Team Meeting Notes (Annual IEP Review), 01/05/2023
- 104) Email: Communication plan: for the future of [Student's] enrollment with [School], 10/11/2022
- 105) Draft IEP from [Case Manager], 12/07/2022
- 106) Email: Re: IEP Date/Time, 10/21/2022
- 107) Email: Draft IEP, 01/04/2023
- 108) Email: Status Update: Reevaluation meeting cancelation, 11/16/2022
- 109) IEP Services, 01/05/2023
- 110) Prior Notice of Special Education Action, 11/02/2022
- 111) Email: [Student] FYI, 08/28/2022
- 112) Email: Fwd.: Information for [Student's] prep meeting today, 01/12/2023
- 113) Email: Health Protocol/Accommodations, 03/03/2023
- 114) Email: On Campus Medical Plan, 01/27/2023
- 115) Email: Re: Auto submit history, 01/03/2023
- 116) Email: Re: Plan for Diabetes, 01/30/2023
- 117) Email: [Student], 01/03/2023
- 118) Email: Re: evaluation planning, 09/15/2022
- 119) Meeting Notes, 09/15/2022
- 120) IEE Communications Timeline
- 121) Prior Notice about Evaluation/Consent for Evaluation, 09/15/2022
- 122) Team Meeting Notes (Annual IEP Review), 01/05/2023
- 123) Unofficial Academic Transcript, Grade 10
- 124) Email: Re: Draft IEP from [Case Manager]. Amendment requested for qualification document, 12/27/2022
- 125) Email: Re: Evaluation planning, 09/15/2022
- 126) Meeting Notes, 09/15/2022
- 127) IEE Communication Timetable
- 128) Prior Notice about Evaluation/Consent for Evaluation, 09/15/2022

The Complaint Investigator interviewed the Parent on March 31, 2023. The Parent provided additional information prior to and following the interview. On April 3, 2023, the Complaint Investigator interviewed District personnel. On April 4, 2023, the Department Complaint Investigator interviewed the Student's Case Manager. Virtual interviews were

conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has authority 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 February 20, 2022, to the filing of this Complaint on February 19, 2023.

Allegations	Conclusions
<p>When IEPs Must Be In Effect</p> <p>It is alleged that the District violated the IDEA when it failed to fully implement the Student’s IEP.</p> <p>(a) Specifically, it is alleged that the District failed to provide all the services in the Student’s IEP including but not limited to tutoring, and communication services; and</p> <p>(b) It is alleged that the Student’s related service needs, such as an appropriate computer and means of accessing the internet, were not provided to the Student.</p> <p>(OAR 581-015-2220; 34 CFR § 300.232, § 303.324)</p>	<p>Not Substantiated</p> <p>The evidence in the record suggests that services were offered to the Student, but that for several reasons, including scheduling conflicts, and the unavailability of the Student, the Student was unable to take advantage of services at times. A computer and means of accessing the internet were provided to the Student.</p>
<p>Review and Revision of IEPs</p> <p>It is alleged that the District violated the IDEA when it failed to review and revise the Student’s IEP as appropriate to determine whether the annual goals for the Student were being achieved or to address any lack of expected progress toward those annual goals. Specifically, it is alleged that the Student exhibited struggles with schoolwork and required a tutor, and that when the Student showed improvement, or lack of achievement, the Student’s IEP was not revised appropriately.</p> <p>(OAR 581-015-2225; 34 CFR § 300.324(a)(4), (a)(5), (a)(6) & (b)(1))</p>	<p>Not Substantiated</p> <p>The District had reviewed the Student’s individualized education program (IEP) relative to the data available to it regarding the Student’s progress. The District observed the limitations of testing and obtaining accurate data regarding the Student when the Student was not made available for synchronous and in-person meetings with District staff.</p>
<p>Access to Student Education Records</p>	<p>Not Substantiated</p>

<p>It is alleged that the District violated the IDEA when it failed to provide the Parent with access to the Student's records after the Parent made requests for copies or requested to review the Student's records.</p> <p>(OAR 581-015-2300; 34 CFR § 300.501 & § 303.405(a))</p>	<p>The Parent made a request for the Student's education records on 11/02/2022. The District mailed copies of the Student's records on 11/30/2022, and copies of the student cumulative file on 12/01/2022. Some of the records sought by the Parent were not education records. The District sent additional records thereafter. There is no evidence in the record that the Parent complained of a lack of education records following receipt of all records sent by the District.</p>
<p>Independent Educational Evaluation</p> <p>It is alleged that the District violated the IDEA when it failed to provide the Parent with information regarding where and how to obtain an independent educational evaluation at public expense when the Parent requested such information.</p> <p>(OAR 581-015-2305; 34 CFR § 300.502)</p>	<p>Not Substantiated</p> <p>The Parent made a request for an independent educational evaluation (IEE). The District responded that the Parent was not in disagreement with an evaluation performed by the District, but rather the Parent appeared to request that the Student be evaluated for additional special education eligibility categories. The District thereafter initiated the evaluation process.</p>
<p>Parent Participation—General</p> <p>It is alleged that the District violated the IDEA when it failed to ensure that the Parent understood the proceedings at the Student's IEP team meeting. It is further alleged that the District limited the Parent's communication with the Student's IEP team members,</p>	<p>Not Substantiated</p> <p>The record includes evidence that the District invited and obtained the Parent's participation and presence at IEP team meetings. During interviews with the Parent, they acknowledged dissatisfaction that the</p>

<p>teachers, and participation in parent/teacher conferences.</p> <p>(OAR 581-015-2190; 34 CFR § 300.500, § 300.327, & § 300.501(b))</p>	<p>Student's IEP team was not in agreement with them on all issues. The District did implement a communication plan with the Parent, establishing a single point of contact for emails. The Parent was part of IEP team meetings and evaluation planning meetings.</p>
<p>Content of the IEP</p> <p>It is alleged that the District violated the IDEA when it failed to develop an IEP that met all the Student's needs resulting from the Student's disability.</p> <ul style="list-style-type: none"> (a) Specifically, it is alleged that the Student required additional tutoring time, but that this was not included in the Student's IEP. It is also alleged that such considerations as the Student's potential eligibility under the category of emotional disturbance, and the Student's diabetes were not included in the present levels statement despite these conditions impacting the Student's academic performance. (b) It is alleged that the IEP developed by the District does not contain a statement of the specific special education and related services that the Student will receive. (c) It is also alleged that the IEP developed by the District does not meet all the Student's needs, such as appropriate accommodations around time allotted to testing or completion of assignments. (d) Finally, it is alleged that the Student's IEP does not include the required related services of a computer and internet access that would allow the Student to access their education. <p>(OAR 581-015-2200; 34 CFR § 300.320)</p>	<p>Not Substantiated</p> <p>(a) The Student's IEP contains the components that the Parent alleged were absent, including access to teachers for additional support, documentation of the Student's potential eligibility categories and relevant medical issues. (b) The Student's IEP does contain descriptions of specially designed instruction (SDI) and related services, accommodations around (c) extended time to complete assignments and testing. (d) While a computer was not an IEP service, the District did provide evidence that a computer and means of accessing the internet were provided to the Student.</p>
<p>Determination of Eligibility</p> <p>It is alleged that the District violated the IDEA when it failed to evaluate the Student in all areas related to the</p>	<p>Not Substantiated</p> <p>During the period covered by the Complaint, the District</p>

<p>Student's suspected disabilities. Specifically, it is alleged that the District did not consider the Student's eligibility under the category of emotional behavior disability, and others.</p> <p>(OAR 581-015-2120; 34 CFR § 300.306, § 300.308, & § 300.311)</p>	<p>held two evaluation planning meetings. The 09/15/2022 meeting determined that the Student continued to be eligible for special education under the eligibility categories previously identified. When the Parent raised the potential that the Student was eligible under an additional category, the District convened an evaluation planning meeting and sought the Parent's consent to evaluate the Student for that additional eligibility.</p>
<p>Extended School Year Services</p> <p>It is alleged that the District violated the IDEA when it failed to consider the Student's need for extended school year (ESY) services. Specifically, it is alleged that when the Parent inquired about the Student's need and eligibility for ESY that the inquiry was ignored and that the team did not discuss the issue.</p> <p>(OAR 581-015-2065; 34 CFR § 300.106)</p>	<p>Not Substantiated</p> <p>The record indicates that the District did consider the Student's need for ESY services.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>It is alleged that the District's proposed evaluation of the Student was not sufficiently comprehensive to identify all the Student's special education and related service needs.</p> <p>(OAR 581-015-2120; 34 CFR § 300.304 & § 300.305)</p>	<p>Not Substantiated</p> <p>The District responded to the Parent's concern that the Student had additional special education eligibilities by beginning the evaluation process. As of the date of the Department's investigation, the District was awaiting the Parent's consent to conduct those evaluations.</p>

REQUESTED CORRECTIVE ACTION

- The Complainant suggested that the District apologize to the Parent and the Student for concerns raised in the Complaint and begin providing the appropriate services and support to the Student;
- The Complainant requests that the District provide the appropriate services for all special education needs and conditions.
- The Complainant requests that the District provide all services to the Student that were removed from the Student's IEP, or not provided to the Student.
- The Complainant also suggests outside tutoring and services until the District rebuilds trust with the Student.

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 February 20, 2022. 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 tenth grade and attends a virtual charter school in the District. The Student attends class online as part of their enrollment. The charter school also offers in-person learning opportunities to support students.
- 2) The Student is eligible for special education under the eligibility categories of Specific Learning Disability (90), Speech and Language Impairment (50), and Other Health Impairment (80).
- 3) The Student enjoys playing musical instruments and is an accomplished musician. They enjoy participating in physical education, especially basketball. The Student prefers to have classes in the afternoon due to often suffering from migraines and sleep apnea which can impede academic progress. In school, the Student prefers small group or 1:1 instruction.
- 4) The Student's November 30, 2021, IEP indicated that the Student receives specially designed instruction in Communication, Math, Reading, Self-Management, and Written Language. The Student received additional related services including encouragement, checks for comprehension, immediate feedback, and visual and verbal cueing, among others.
- 5) The record contains copies of the Student's IEPs from November 30, 2021, and January 5, 2023. The Student's November 30, 2021 IEP indicated that the Student displayed willingness to read aloud and engage with reading activities. The Student struggles with decoding and fluency. Test results at the time indicated the need for urgent intervention, and the Student was then reading at a fourth-grade level. The Student's IEP team intended to work on key ideas, details, and vocabulary acquisition and use. The IEP was then focused on reading comprehension at the sixth-grade level.

The Student's November 30, 2021, IEP included a reading goal indicating that, "[g]iven reading materials at a sixth-grade level, [Student] will increase [their] reading skills, specifically finding key ideas and details within a reading passage to assist with comprehension and answering comprehension questions from the 5th to 6th grade equivalency by the end of the IEP date."

The Student's January 5, 2023, IEP indicated that the Student showed reduced willingness to volunteer to give input or read aloud. The Student's current course is presented at the tenth-grade level, they were completing the course with a 73.5% grade, and were on track to complete all their assignments. However, the Student's test scores continued to show urgent intervention was needed. The Student scored below average in reading comprehension and near average in vocabulary.

The Student's January 5, 2023, IEP included a reading goal indicating that given "explicit reading instruction, support and practice in the areas of summarizing, sequencing, inferencing, comparing/contrasting and problems solving, [Student] will increase [their] overall reading comprehension composite from 13% national percentile rank to the targeted skill of 30% national percentile rank as measured by district assessments and curriculum based measures."

- 6) On April 27, 2022, the Student's IEP team met to consider concerns raised by the Parent. At this meeting, the team observed that the Student was 50% behind in their course work. The IEP team discussed a modified diploma for the Student. The Parent rejected this suggestion and insisted that the Student receive a standard diploma. The District offered the Student additional time to complete classes. In addition, the District offered the Student three hours per week, during summer school, of access to a tutor. The Team determined that, given the supports in place, the Student did not require Individualized COVID-19 Recovery Services. The Team also determined that the Student did not qualify for extended school year services. As part of this meeting, the Team also discussed and approved the Student to continue working to complete schoolwork through the summer.
- 7) On September 15, 2022, the District held an evaluation planning meeting to determine the Student's special education eligibility as part of the triennial reevaluation process. Following the meeting, the District sent the Parent a Prior Notice for Evaluation/Consent for Evaluation. The District noted that the Student continued to be eligible for special education services under Other Health Impairment, Specific Learning Disability, and Speech/Language Impairment. The District documented that the Student's IEP team did not suspect other disabilities at that time. The meeting was held virtually. The Parent was invited to this meeting but could not be reached during the scheduled meeting time. The District contacted the Parent and obtained the Parent's verbal agreement with the meeting outcome. That agreement was documented by email between the District's School Psychologist and the Parent.
- 8) On October 4, 2022, the Parent sent an email to the District reporting that the Student was unable to "receive services/mail since the shut down." The Parent further reported that this had resulted in the Student's inability to communicate with staff, to engage

with tutors, and to access school email. The “shut down” mentioned was a District IT intervention related to a potential breach of District internet policies. The Parent also raised the concern that the Student was not afforded a grievance process to address the accusation that they violated the computer usage policy.

- 9) On October 6, 2022, Administrator 1 sent an email to the Parent alerting them that the Student’s computer was shut down by the District’s IT department as a security measure due to a technology violation. Administrator 1 explained that this was not disciplinary, but rather a safety measure to secure the District’s computers. Administrator 1 offered to provide the Student with a new laptop to ensure the previous District-provided laptop was not a security risk. Administrator 1 offered the Parent the opportunity to review the material collected from the Student’s computer that was the basis of the decision.
- 10) On October 6, 2022, the Parent responded to Administrator 1, denying that the Student engaged in conduct that would amount to a technology violation and objecting to the way the District removed technology access. The Parent further suggested that this episode had caused an erosion of trust between the Student and District staff.
- 11) On October 11, 2022, the Student’s Case Manager sent an email to the Parent and Learning Specialist 1, writing in part that “class continues to remain open to [Student] and will remain that way every week.” The Case Manager went on to observe areas where the Student was not making progress, areas where they had stopped working, and ways to support the Student.
- 12) On October 11, 2022, the Parent wrote in response to the Case Manager that the Student did “not feel comfortable meeting with either” the Case Manager or Learning Specialist 1. The Parent went on to write that the Student had anxiety regarding the District limiting the Student’s internet access for violations of District policy regarding downloaded content. The Parent further expressed that the Student would like the ability to download music through the District-supplied computer as an aid to study. The Parent wrote that the Student wanted to transfer to a different school. Due to the Student’s emotional response when interacting with District staff, the Parent requested that the District provide a third-party tutor.
- 13) On October 12, 2022, the Case Manager sent an email to the Parent in response to the Parent’s concerns about internet access. The Case Manager informed the Parent that the Student still had access to the applications necessary for class and offered further assistance if the Parent observed other issues.
- 14) On October 13, 2022, the Parent sent an email to the Case Manager, reporting that the Student was unable to access resources online that the Student needed for their studies due to changes in internet security settings on the District-supplied computer used by the Student. The Parent also mentioned that the situation was damaging to the Student’s mental health.
- 15) On October 14, 2022, the Case Manager, responding to the Parent’s concerns regarding the Student’s mental health impacting their education, offered to schedule

an IEP team meeting to address the Parent's concerns.

- 16) On October 25, 2022, the Case Manager sent an email to the Parent encouraging the Parent and the Student to attend class online. The Parent, responding to the Case Manager's email, wrote that they were advised by the Student's community counselor not to force the Student to meet with District staff and, as a result, had requested an outside counseling service for the Student, instead of attending classes. The Parent alleged that the District's discovery of the Student's violation of the District's technology policy earlier in the school year had caused a significant level of anxiety for the Student, making it difficult for them to work with District staff.
- 17) On October 26, 2022, the Student's IEP team met to discuss the Student's access to general education classes, supports, and services. During this meeting, the Parent raised the concern that the Student's medical diagnosis of diabetes may be an impediment to the Student's learning.
- 18) On November 2, 2022, the Parent sent an email to the District requesting a copy of the Student's complete education file.
- 19) On November 15, 2022, the Case Manager sent the Parent and the Student an email, writing, "I look forward to having you in class today! Sorry you were not able to attend last week." On the same day, the Parent, responding to the Case Manager's email, wrote about the reasons for the Student's lack of trust with the District and provided their perspective on the District having limited the Student's internet access. The Parent added details regarding the emotional impact this had on the Student. The Parent reported that the Student's inability to attend was due to a lack of trust in District staff related to the District changing the Student's internet security settings. The Parent suggested that the Student needed the District staff to apologize and show more honesty to rebuild trust with the Student as a means of facilitating the Student's participation with classes and SDI. Nothing in the record indicates that the District had been dishonest with the Student related to the technology violation.
- 20) The Student's November 30, 2021 IEP included SDI in the following areas: communication, math, reading, self-management, and written language. The IEP also included such supplementary aids and services as encouraging and supporting self-advocacy, checks for comprehension, immediate feedback, visual and verbal cueing, and other supports.
- 21) On November 30, 2022, the District sent the education records requested by the Parent by mail. As part of the District's response, the District provided certified mail receipts. The mailed package was retrieved from the post office by the Parent on December 12, 2022. The District mailed additional materials to the Parent on December 8, 2022, which were retrieved from the Parent on December 29, 2022. Additional records were sent to the Parent on January 11, 2023, which were retrieved by the Parent on January 17, 2023.
- 22) On December 1, 2022, the District sent an email to the Parent informing them that the Student's cumulative file would be mailed by certified mail to them that day.

- 23) On December 5, 2022, the District held the Student's three-year eligibility meeting and continued to find the Student eligible for special education under Specific Learning Disability, Other Health Impairment, and Speech/Language Impairment.
- 24) On December 7, 2022, the Parent sent an email to the IEP meeting facilitator. In that email, the Parent alleged that the District had not provided the full education records, but rather only a portion. Specifically, the Parent alleged that legal documents sent to the District were not included in the records response. The Parent also alleged that the Student's test results were not included.
- 25) On December 8, 2022, the District sent the Parent a Prior Written Notice (PWN) documenting that the Parent had requested copies of the Student's education records, that the District had mailed the records, and that the records had been available at the post office since December 1, 2022. The District postponed the Student's annual IEP meeting to give the Parent further time to retrieve and review the relevant records ahead of the meeting.
- 26) On December 14, 2022, the Parent sent an email to Administrator 1 and others in the District observing that schools in Oregon offer 1:1 tutoring as a service on IEPs when needed by students.
- 27) On December 14, 2022, Administrator 1 responded to the Parent's comments regarding 1:1 tutoring, writing that, in general, 1:1 support may be offered to a student, and that teachers may coordinate that individually. Administrator 1 went on to write, "You have made it clear that [Student] would be best service [sic] by 1:1 tutoring support. Regrettably, this is not something that [the school] will be offering." Administrator 1 went on to indicate that teachers have general office hours and that students can access individual support time as a general education option.
- 28) On December 24, 2022, the Parent sent the Case Manager an email requesting an IEE for the Student. The Parent suggested that the IEE should address "PTSD, ADHD, Anxiety, Dyslexia, and other issues which need to be addressed and incorporated into" the Student's IEP.
- 29) On December 27, 2022, the Parent sent an email to the District expressing the concern that the coursework given to the Student was too easy, and that the District did this to ensure the Student passed from grade to grade.
- 30) During the Student's January 5, 2023, IEP team meeting, the Parent expressed concern that the Student was not receiving the services that they should, that this contributed to the Student not meeting their goals, and that it caused regression. The Parent also expressed concern that the Student may be eligible under the further special education eligibility category of emotional behavior disability, but that the District has not documented this information in the Student's IEP. The Parent further expressed that the District was giving the Student "easy work" as a means for the District to pass the Student on to the next grade but was not preparing the Student for college.

- 31) At the January 5, 2023, IEP team meeting, the Parent expressed additional concerns such as new medical diagnoses that may impact the Student's academic performance, anxiety concerns, a concern that dyslexia is not present in the Student's IEP, and a belief that ADHD should be included in the IEP.
- 32) On January 5, 2023, the Student's IEP team formulated a new IEP for the Student. The Student's IEP noted that the Student prefers to have classes in the afternoon, and that the Student has medical conditions that make morning instruction difficult for them. The Student continued to be eligible for special education under the categories of Specific Learning Disability, Speech-Language Impairment, and Other Health Impairment. The Student continued to receive SDI in Math, Writing, Reading, Self-Management, Communication, and Transition Skills.
- 33) The "Parent Concerns" section of the January 5, 2023, IEP included that the Parent felt that Emotional Behavior Disability should be part of the Student's IEP, concerns related to a new diagnosis of diabetes that impacts the Student's education, concerns around anxiety and dyslexia not being named within the IEP, and the Parent's concerns that ADHD should be included in the IEP. The IEP also included a diabetes protocol that anticipated the participation of the school nurse on occasions when the Student accessed campus activities. The IEP included a service whereby visual timers were removed from online courses. The Student was also afforded extra time to complete assignments.
- 34) The January 5, 2023, IEP observed that the Student underwent a psycho-educational evaluation in 2019. That data provided grade level equivalents for the Student's performance in various academic areas. The Student tested at a third-grade level in math concepts and applications, letter and word recognition, written expression, and fifth-grade level in reading comprehension. Eligibility for special education under the Specific Learning Disability category requires that a child not achieve adequately for the child's age or to meet Oregon grade-level standards. The Student's documented health impairment adversely impacts educational performance due to possible limited strength, vitality, and alertness.

The IEP documented that the Student had completed the Star Reading Assessment in under eight minutes and had scored extremely low. The Student was also given the Aimsweb Reading Benchmark, showing a reading level of approximately grade four.

The IEP's statement of present levels of academic achievement and functional performance (PLAAFP) indicates that the Student's learning is further complicated by their inattention as well as medical conditions that cause the Student to be tired, distracted, and not engaged with online coursework. The Parent specifically cited the Student's diabetes as a potential impediment to learning. The concerns regarding the Student's new diabetes diagnosis were included in the Student's IEP. The District indicated that, were the Student to access the campus for services, a medical plan would be created.

During 2021, the Student received speech/language services virtually. The Student

made progress and met the goal at 70-85%. During 2022 the SLP was not able to meet with the Student due to scheduling conflicts and the unavailability of the Student.

As part of the IEP Team meeting, ESY services were discussed. The District noted that the Student had not historically qualified for ESY services. The January 5, 2023, IEP team noted that the Student did not experience regression, nor a prolonged recoupment period to relearn previously learned skills.

- 35) On January 5, 2023, the District sent the Parent a Prior Written Notice (PWN) documenting the Parent's request that the District provide the Student with a 1:1 aide, Parent concerns that the Student's Emotional Behavior Disability was not addressed, the desire that dyslexia and ADHD be added to the Student's IEP, and that extended time be added to the Student's IEP. The District documented that the Student's needs are being met under the current IEP eligibility categories of SLD, OHI, and Speech-Language Impairment. The PWN further indicated that Emotional Behavior Disability was not a disability category the Student was eligible for, that dyslexia falls under the category of SLD, that ADHD is addressed under the category of OHI, and that the Student already received extended time. The PWN further noted that a 1:1 aide was not an educational option at the school due to it being an online charter school, and that the Student was making commensurate progress in the current course work.
- 36) On January 11, 2023, Administrator 3 sent the Parent a letter with the District's response to the Parent's December 24, 2022 (and reiterated on January 5, 2023) request for an IEE. The District also mailed this response by certified mail. The Parent retrieved these documents from their post office box on January 17, 2023.
- 37) On January 18, 2023, the District sent the Parent a letter explaining the difference between an IEE, evaluations, and assessments. This letter was in response to the conditions the Parent listed in their January 11, 2023, email. In this letter, the District communicated that the Student was currently eligible for special education under the category of Specific Learning Disability, which included the Parent's concerns regarding dyslexia. The Student was also found eligible under the category of Other Health Impairment. The January 18 letter explained that the Parent's concerns of anxiety, ADHD, and PTSD were also addressed under the Other Health Impairment eligibility category. The Student was also eligible under Speech-Language Impairment, which addressed the Parent's concerns regarding social communication. The letter understood the Parent's additional concerns as a request that the District evaluate the Student for Emotional Behavior Disorder. The District also noted that the Student's most recent cognitive assessments would not qualify the Student for Intellectual Disability.
- 38) On January 26, 2023, the Case Manager sent an email reminder to the Parent that the Student was scheduled to have class the following day.
- 39) On January 27, 2023, the Parent responded to the Case Manager, writing that the Student's counselor had advised that the Student should not be forced to attend class.
- 40) On February 3, 2023, the Parent sent an email to the District requesting an IEE. The

Parent reported that the Student's medical provider would soon provide a diagnosis of emotional disturbance. The Parent requested the IEE for "dyslexia and associated" disabilities "commonly coupled up in students with special needs." The Parent went on to request the IEE for "learning disabilities such as, but not limited to dysgraphia, dyscalculia, additional speech language disorders [*sic*] executive functioning disorder [*sic*] etc."

- 41) On February 9, 2023, the District sent an email to the Parent scheduling an evaluation planning meeting partially in response to issues raised by the Parent regarding the Student's potential additional special education eligibility. The District suggested a date and time for an evaluation planning meeting to address any potential additional eligibility categories or evaluations of the Student. As part of this communication, the District explained the difference between the Student's IEP's eligibility determination and a physician's diagnosis.
- 42) On February 9, 2023, the District sent a letter to the Parent informing them that a communication plan would be implemented whereby emails from the Parent would be routed to Administrator 1. The District explained in this letter that the communication plan was in response to the tone, timing, and choice of words in email communication from the Parent to District staff. Under this plan, Administrator 1 would receive emails, and then follow-up with District staff on any issues the Parent needed addressed.
- 43) On February 16, 2023, the District scheduled an evaluation planning meeting to consider the additional special education eligibilities suggested by the Parent.
- 44) On February 17, 2023, the District held an evaluation planning meeting with the School Psychologist, the Case Manager, and the Parent in attendance. The Parent was in attendance at the meeting, but opted not to participate, stating they were represented by legal counsel and that they would communicate instead by email. The Parent provided the Department's Complaint Investigator with a video clip of this meeting. The meeting ended with the District working to obtain consent from the Parent to evaluate the Student for Emotional Behavior Disability.
- 45) On February 19, 2023, the Parent filed this Complaint.
- 46) On February 21, 2023, the Case Manager sent an email to the Parent regarding the Student's attendance. The Case Manager observed that the communication plan in place with the Parent impacted email communication from the Parent to District staff only and did not limit the Student's communication with teachers or the Student's class attendance.
- 47) On March 10, 2022, the District submitted its *Response*. The *Response* included email correspondence between the Parent and the District. The District included a copy of the Student's transcript. The Student's transcript showed that the Student was passing most of their classes and, at that point, had a 3.33 grade point average. The record also included copies of communications between the District and the Parent regarding offers to change or exchange the laptop issued by the District to the Student to address the Parent's concerns regarding internet connectivity and general computer

function. With the record was the Student Laptop Agreement, recording the model of laptop assigned. The District included information about the internet access device and its phone number that allowed the Student to access their online education. The District provided a copy of the form, signed by the Parent attesting to the provision of a laptop to the Student. As part of the District's response, the District also provided internet access logs showing the Student did use the computer assigned to them. Within the *Response*, the District denied the allegations.

- 48) On March 1, 2023, the Parent sent Administrator 1 a copy of a letter from the Student's physician indicating new medical conditions and diagnoses. The Student's physician asked that the District provide appropriate accommodations for the Student as a result.
- 49) The Parent provided additional copies of email communications between themselves and the District to supplement the Complaint. Included with the Complaint were emails from the Parent alerting the District that the Student may have difficulty connecting to the internet. The Parent also provided screenshots of error messages. The records provided by the Parent also contain screenshots and emails from the Parent showing occasions when the Student allegedly attempted to login to District services and was unable to do so.

On several occasions the Parent mentioned that the Student had anxiety and trust issues with District staff. On numerous occasions the Parent, in response to District staff sending reminders for the Student to attend class, responded that the Student was uncomfortable working with District staff, and that Parent was instructed by the Student's doctor not to force the Student to attend or interact with District staff. The Parent provided examples of such communications for the following dates: October 6, 2022; October 10, 2022; October 11, 2022; October 23, 2022; January 16, 2023; March 1, 2023; and March 21, 2023.

- 50) On March 31, 2023, the Department's Complaint Investigator interviewed the Parent.

The Parent provided additional information relevant to the concerns raised in the Complaint. The Parent reported having ongoing concerns regarding the Student's need for tutoring. The Parent explained that the Student experienced certain in-vitro conditions that accounted for the Student's special education eligibility and medical conditions. The Parent expressed concern regarding the Student's education, and seeming lack of short-term memory that impacted their ability to retain concepts learned.

The Parent voiced concerns that the Student's needs could not be entirely met through online course delivery, and that in-person instruction or tutoring was needed to supplement the Student's education. The Parent reports that in-person opportunities for tutoring were not individualized. Rather, they were offered in group settings, which further exacerbated the Student's anxiety, effectively obstructing the benefit of such sessions.

The Parent reiterated concerns noted above regarding internet and computer access.

The Parent also acknowledged that speech services were disrupted either due to the SLP's cancellations or the Student's illness. The Parent also noted that, while the District's records may show internet usage, the Student was often not attentive during those times for several reasons. The Parent reported that the Student's various medical diagnoses impacted the Student's ability to access their education in the mornings.

The Parent alleged that the District's *Response* did not include emails exchanged with the Parent regarding the Student's education. The Parent reports that they provided documents to the District and to the school district that the Student formerly attended, and that this documentation was not provided as part of the records request response. Finally, the Parent reports that copies of the Student's IEP's from the Student's former school district, dating from approximately 2014 and before, were not provided.

The Parent provided clarification regarding their concerns around potential additional special education eligibilities for the Student. The Parent also reported dissatisfaction with the Student's IEP Team not agreeing with the Parent's suggestions for the Student's education. The Parent stated that experts that they had hoped to have attend the most recent IEP meeting were unable to do so due to the District's meeting scheduling. The Parent also reported that the IEP Team's decision was contrary to their hoped-for outcome.

The Parent reported that the Student was eligible for ESY services. The Parent alleged that tutoring was not available because the District allegedly did not have staff available during the summer to grade the Student's work. The Parent reported that the Student required tutoring and ESY services, due to the Student's disability, which impacts the Student's short-term memory.

Finally, the Parent acknowledged that the District had offered them the opportunity to review the material collected from the Student's computer that was the source of the technology violation. The Parent reported that, at the time the family received the email, they were out of state visiting relatives and were therefore unable to come to the District office to review the material. The Parent expressed dissatisfaction that the District had remotely shut down the Student's computer, over the resulting restrictive settings applied, and asserted that the resultant restrictive settings inhibited the Student's access to their online education. In response to the District having provided logs of successful internet access during the complaint period, the Parent reported that, while the Student may at time be connected, due to their medical condition, they are often asleep, drowsy, or checked out while connected and therefore not effectively learning.

- 51) On April 3, 2023, the Department's Complaint Investigator interviewed Administrator 1 and Administrator 3 about the concerns raised in this Complaint. During this interview, District staff discussed the Student's transfer to the District and how online schooling was able to meet the needs of the Student at the time. Administrator 1 observed that the Parent had raised concerns whether the Student's current educational placement was appropriately serving the Student.

Administrator 1 and Administrator 3 provided background on the online school platform. The school provides synchronous, asynchronous, and hybrid online education. Administrator 1 and Administrator 3 explained that the Student's special education requirements meant that the Student could only benefit from asynchronous education. The Student's various special education eligibilities and health needs necessitated the Student accessing their education when it was best for the Student. The Student's online educational experience was further modified in several ways such as removing or altering time limits for completing assignments or accessing modules.

Administrator 1 and Administrator 3 explained that the Student's program included real time video conferences with their Case Manager where they would obtain SDI. These sessions were also designed to offer additional academic assistance to the Student. The school offers in-person assistance to students. The school has scheduled times when Students can meet with instructors for both in-person and video conference assistance. Administrator 1 and Administrator 3 observed that the Parent had not made the Student available for these opportunities.

Administrator 1 and Administrator 3 focused on the Student's needs as they were understood by the District. Administrator 3 reviewed the relevant meetings where the District responded to the Parent's suggestion that the Student may have additional special education eligibilities. The District observed that it had responded to that concern by scheduling evaluation planning meetings and working to obtain the Parent's consent to evaluate the Student for Emotional Behavior Disturbance. Administrator 3 reported that District staff had returned from the District's spring break to find the consent forms sent to the Parent were returned from the post office unclaimed.

Administrator 1 and Administrator 3 explained that tutoring was not part of the Student's IEP. Rather, the District previously found the Student eligible for Individualized COVID-19 Recovery Services. These services were offered through a professional private tutor. Administrator 1 reported that the tutoring service was unable to contact the Parent during the summer to provide the service to the Student.

- 52) On April 4, 2023, the Department's Complaint Investigator interviewed the Case Manager. The Case Manager reported that the Parent had not made the Student available for their sessions where SDI would be provided since October, 2022. The Case Manager continued to monitor the Student's progress and the Student continued to access their online education over that period.

The Case Manager observed that the Parent has rejected the option of a modified diploma for the Student. As such the Student was working toward a standard diploma, which required that the Student work toward grade level course work. Therefore, the Student was working on 10th grade curriculum. However, the Student tested at a much lower level. The Case Manager observed that there were complications with test data for the Student. Specifically, the Case Manager explained that the Star Reading Assessment was taken by the Student at home and was not proctored. The Student completed the exam in less than eight minutes, where the test normally takes 30 to

60 minutes to complete. The Case Manager noted that they administered the Aimsweb reading assessment and compared the data from the two assessments, observing that the Student likely had a fifth- to seventh-grade reading level. The Case Manager noted that because the Parent had not produced the Student for 1:1 sessions, gauging the Student's progress was difficult.

The Case Manager further noted that the Student would benefit from a modified diploma and a curriculum that was suited to their reading level. However, the Parent's decision to enroll the Student in an online charter school as well as the Parent's decision that the Student would pursue a standard diploma has limited their ability to meet the Student's needs.

IV. DISCUSSION

When IEPs Must Be In Effect

The Parent alleged that the District violated the IDEA by failing to fully implement the Student's IEP. Specifically, the Parent alleges that the District failed to provide all the services in the Student's IEP including, but not limited to, tutoring and communication services. It is also alleged that the Student's related services needs, such as an appropriate computer and means of accessing the internet, were not provided to the Student.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.³

The Parent alleged that the Student had not received services that were part of the Student's IEP. These included speech/language therapy and tutoring. The Student's IEPs in effect during the complaint period do not include tutoring as an IEP service or accommodation. During the interview with the Department's Complaint Investigator, the Parent explained that tutoring services were previously offered to the Student but that the family was unable to take advantage of the services during the time allotted. The Student's IEPs in effect during the complaint period do include speech services. The Parent reported that the services were offered but that, due to scheduling conflicts and the unavailability of the Student due to illness, the Student had not received the services. The record contains email communication between the Speech-Language Pathologist and the Parent where attempts to schedule therapy were made.

The Student did access their education online. The District provided the Student with a laptop and means of accessing the internet. The record contains numerous communications regarding the accessibility of the internet through the means provided by the District. During the interview with the Parent, the Parent acknowledged that the

³ OAR 581-2220(1)

District's internet access logs showing the Student had access were accurate but that, at times, there were technical problems with connectivity.

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Parent alleged that the District violated the IDEA when it failed to review and revise the Student's IEP as appropriate to determine whether the annual goals for the Student were being achieved or to address any lack of expected progress toward those annual goals. Specifically, it is alleged that the Student exhibited struggles with schoolwork and required a tutor, and that when the Student showed improvement, or lack of achievement, the Student's IEP was not revised appropriately.

A district must ensure that the IEP Team reviews the child's IEP periodically, at least every 365 days. The IEP is reviewed to ensure that the annual goals for the child are 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 team should revise the IEP to address the results of evaluations, information from the parents, the child's anticipated needs, or other matters.⁴

The Parent alleged that the Student displayed difficulty with reading. Specifically, the Parent alleged that the Student's reading proficiency was far below grade level. The Parent further alleged that District staff had not observed the Student's reading, and that the Student was not receiving sufficient support for their reading struggles. The Student's IEP documents that the Student reads at a fourth-grade level, and that the Student receives SDI in reading.

The record contains copies of the Student's past two IEPs. The goals and SDI have changed between those two IEPs relative to the Student's progress. The Student has shown some progress in reading over that period.

The Case Manager observed that the Parent had not made the Student available for their SDI since October, 2022. As an online charter school, examinations are administered either online or through synchronous video conferencing. The Case Manager determined that the Student's testing data was unreliable given the brief time the Student spent on the exam. The Case Manager administered additional examinations to determine the Student's reading level. The Student was working towards accessing grade level curriculum, with SDI to assist them. The Case Manager noted that the Student has not accessed their SDI since October 2022, further complicating both the delivery of SDI and an understanding of the Student's reading level. Based on the Student's completed coursework, the Student appeared able to navigate their coursework.

⁴ OAR 581-015-2225(1)(a)—(b)

The Department does not substantiate this allegation.

Access to Student Education Records

The Parent alleged that the District violated the IDEA when it failed to provide the Parent with access to the Student's records after the Parent made requests for copies or requested to review the Student's records.

The district must comply with a parent's request to inspect and review records without unnecessary delay⁵ and before any meeting regarding an IEP and in no case more than 45 days after the request has been made. Education records are those documents and records regarding the identification, evaluation, and educational placement of the child.⁶ The term education records means those records that are related to the student, and are maintained by an educational agency.⁷ Parents have a right to inspect and review the records, but not necessarily the right to copies of records, especially evaluation data.⁸

The Family Educational Rights and Privacy Act (FERPA) defines education records as those records that contain information directly related to a student, and which are maintained by an educational agency or institution.⁹ 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."¹⁰ 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.¹¹

The Parent asserted that some legal documents sent to the District were not in turn provided to the Parent as part of the Student's education records. The Parent also alleged that the District had not provided copies of IEPs from the Student's previous school district. Finally, the Parent reported that the District had not provided copies of the Student's test scores. The Parent requested the Student's educational records on November 2, 2022. The District mailed the requested records to the Parent on November 30, 2022. Additional records referred to as the Student's "cumulative file" were sent on December 1, 2022. The District sent these records via certified mail.

On December 7, 2022, the Parent sent an email to the IEP meeting facilitator alleging that the education records sent by the District lacked requested information. The certified mail receipt shows that the education records were received by the Parent on December 12, 2022. The District sent additional records on December 8, 2022. Those records were signed for and retrieved by the Parent on December 29, 2022. Additional records were sent to the Parent on January 11, 2022, and received on January 17, 2022. The District documented that a scheduled IEP team meeting was postponed to give the Parent time to review records. The record does not contain any additional

⁵ OAR 581-015-2300

⁶ OAR 581-015-2300(3)(b)

⁷ 20 U.S.C. 1232g(b)(3), (b)(5)

⁸ 71 Fed. Reg. 46645 (Aug. 14, 2006)

⁹ 20 U.S.C. § 1232g(a)(4)(A)

¹⁰ *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, 534 U.S. 426, 432-33 (2002)

¹¹ *Burnett v. San Mateo-Foster City School District*, 739 F. App'x 870 (2018)

requests by the Parent to review records, or assertions that the records provided to the Parent were incomplete.

Some of the records the Parent cited as potentially missing from the Student's education record were legal documents, rather than education records. Finally, the IDEA provides parents with an opportunity to inspect and review records, not necessarily a right to copies of records.

The Department does not substantiate this allegation.

Independent Educational Evaluation (IEE)

The Parent alleged that the District violated the IDEA when it failed to provide the Parent with information regarding where and how to obtain an IEE at public expense when the Parent requested such information.

A parent of a child with a disability has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school district.¹² An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district.¹³ The district must provide information to the parent about where an IEE may be obtained, if the parent requests one.¹⁴ If the parent obtains an IEE at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation must be considered by the district in any decision made with respect to the provision of a free appropriate public education (FAPE).¹⁵

The records contain emails from the Parent to the district dated December 24, 2022, and February 3, 2023, where the Parent requests an IEE for the Student. The Parent indicated in these emails that they had concerns regarding dyslexia and associated disabilities, such as dysgraphia and dyscalculia. Additionally, the Parent expressed concerns regarding the Student's possible additional special education eligibilities in such areas as learning disabilities, additional speech language disorders, executive functioning disorder, and emotional behavior disability. As a result of the Parent's request, on January 18, 2023, the District sent a letter to the Parent explaining that an IEE was appropriate where the District had completed an evaluation with which the Parent disagreed. The District further explained that the concerns raised by the Parent were understood as for potential new eligibilities for which the Student should be evaluated. The District then, on February 17, 2023, held an evaluation planning meeting, where the District and the Parent discussed information required to begin assessing the concerns the Parent raised.

An IEE is available to address an evaluation conducted by the District that the Parent disagrees with. The concerns raised by the Parent in their communications to the District were appropriately understood as a parental request for an evaluation.¹⁶ The

¹² OAR 581-015-2305(1)

¹³ OAR 581-015-2305(1)(a)

¹⁴ OAR 581-015-2305(2)

¹⁵ OAR 581-015-2305(7)

¹⁶ OAR 581-015-2105(2)

District provided an explanation distinguishing an IEE from a request for an evaluation and initiated the evaluation planning process.

The Department does not substantiate this allegation.

Parent Participation—General

The Parent alleged that the District violated the IDEA when it failed to ensure that the Parent understood the proceedings at the Student's IEP team meeting. It is further alleged that the District limited the Parent's communication with the Student's IEP team members, and teachers, and their participation in parent/teacher conferences.

Districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of FAPE to the child.¹⁷ Districts must provide written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.¹⁸ Such notice must include the purpose of the meeting, and the proposed date, time, location, and list of attendees.¹⁹ Special education eligibility is determined by a team, including the parent.²⁰ A student's IEP team must consider the concerns of the Parent for enhancing the education of their child.²¹

During the period covered by this Complaint, the District held IEP team meetings to which the Parent was invited and did attend. During interviews with the Department's Complaint Investigator, the Parent acknowledged the District's invitations to the Student's IEP team meetings and their attendance at those meetings. The Parent voiced dissatisfaction that the other members of the Student's IEP team did not agree with their positions during IEP team meetings. This lack of desired agreement was the basis for this aspect of the Complaint.

A Student's IEP and educational placement are determined by the required team. In this case, the Parent was part of these IEP team decisions and the team considered the Parent's input; however, the team's decision did not accord in all ways with the Parent's preferences.

The Department does not substantiate this allegation.

Content of the IEP

The Parent alleged that the District violated the IDEA when it failed to develop an IEP that met all the Student's needs resulting from the Student's disability. Specifically, it was alleged that the Student required additional tutoring time, but that this was not included in the Student's IEP. It was also alleged that such considerations as the

¹⁷ OAR 581-015-2190(1)

¹⁸ OAR 581-015-2190(2)(a)

¹⁹ OAR 584-015-2190(2)(b)

²⁰ OAR 581-015-2120(1)(a)

²¹ OAR 581-015-2205(1)(a)

Student's potential eligibility under the category of emotional behavior disability, and the Student's diabetes were not included in the PLAAFP despite these conditions impacting the Student's academic performance. It was also alleged that the IEP developed by the District does not contain a statement of the specific special education and related services that the Student will receive. It was also alleged that the IEP developed by the District does not meet all the Student's needs, such as appropriate accommodations around time allotted to testing or completion of assignments. Finally, it was alleged that the Student's IEP does not include the required related services of providing a computer and internet access that would allow the Student to access their education.

A student's IEP must include a statement of the child's PLAAFP. This statement should include how the child's disability affects the child's involvement and progress in the general education curriculum.²² The IEP should also contain a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability. These should be goals designed to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs resulting from their disability.²³ The IEP should also include a statement of the specific special education and related services and supplementary aids and services, to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided for the child.²⁴ These educational and related services should support the child in advancing appropriately toward attaining the annual goals, being involved in the general education curriculum, and participating with other children, with and without disabilities.²⁵

Tutoring is not included in the Student's IEP. The record contains numerous occasions when the Parent suggested that the Student required tutoring, or that the District had not offered tutoring. The District indicated that tutoring was available to the Student through their Case Manager, or alternately through their instructors, in-person, during set times. Administrator 1 and Administrator 3 reported that the Parent has not made the Student available for these opportunities. OAR 581-015-2075 requires school districts to serve students attending charter schools in the same manner in which it serves students in other district schools. While the District noted in a PWN that it could not provide a 1:1 aide in a virtual setting, it is impossible to determine whether such support was required since the Student did not access the services that were made available.

The Parent asserted that the Student may be eligible for special education under the additional special education eligibility category of Emotional Behavior Disability. The District conducted evaluation planning regarding this potential eligibility. Following the evaluation planning meeting of February 3, 2023, the District sent the Parent consent forms for the District to evaluate the Student for this eligibility category. As of the date of the interviews with District staff regarding this Complaint, the Parent had not yet provided consent for the District to evaluate the Student.

²² OAR 581-015-2200(1)(a)

²³ OAR 581-015-2200(1)(b)(A)—(1)(b)(B)

²⁴ OAR 581-015-2200(1)(d)

²⁵ OAR 581-015-2200(1)(d)(A)—(C)

The Parent's concerns regarding the Student's diabetes was discussed at the Student's IEP team meetings on November 30, 2022, and January 5, 2023. The concern was included in the Student's January 5, 2023, IEP, with an indication that, if the Student were to access services on campus, further planning could be done to accommodate the Student. The Student's January 5, 2023, IEP included a protocol for diabetes that anticipates the participation of the school nurse when the Student accesses campus activities.

The IEPs provided by the District in response to this Complaint, dated November 30, 2021, and January 5, 2023, include descriptions of the special education the District will provide to the Student. Each IEP also included a list of related services and accommodations.

The Student's November 30, 2021 and January 5, 2023 IEPs both contain the accommodation to allow additional time to complete assignments, testing, and quizzes. The Student's January 5, 2023, IEP further adds the accommodation to remove timers from the screen of online classes and examinations.

The District does provide the Student with a laptop and means of accessing the internet. These are not special education services, so they are not included in the Student's IEP. The record in this matter includes numerous communications between the Parent and the District regarding offers of laptops, internet connectivity troubleshooting, and internet connectivity logs.

The Department does not substantiate this allegation.

Determination of Eligibility

The Parent alleged that the District violated the IDEA when it failed to evaluate the Student in all areas related to the Student's suspected disabilities. Specifically, it is alleged that the District did not consider the Student's eligibility under the category of emotional behavior disability, and others.

Upon completing the administration of assessments and other evaluation materials, a team must determine whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180, and the educational needs of the child.²⁶ The team must include the parent, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability.²⁷ If the child is suspected of having a specific learning disability, the team must meet additional evaluation requirements.²⁸ The IDEA requires that the group making the determination of whether the child suspected of having a specific learning disability, is a child with a disability, must include the child's parents and a team of qualified professionals including the child's regular teacher, or a teacher qualified to teach a child of their age, and at least one person qualified to conduct individual

²⁶ OAR 581-015-2120(1)

²⁷ OAR 581-015-2120(1)(a)

²⁸ OAR 581-015-2120(1)(b)

diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.²⁹

On September 15, 2022, the IEP team held an evaluation planning meeting as part of the Student's triennial review process. The IEP team observed that the Student continued to be eligible for special education services under Other Health Impairment (80), Specific Learning Disability (90), and Speech/Language Impairment (50). The District documented that the Student's IEP team did not suspect other disabilities at that time. The Parent agreed with this determination. The IEP Team formulated a new IEP for the Student on January 5, 2023, finding the Student eligible for special education under the same three eligibility categories.

On December 23, 2022, January 5, 2023, and February 3, 2023, the Parent reported to the District that they suspected that the Student may have additional special education eligibility categories. On February 17, 2023, the District held an evaluation planning meeting, in part to consider the additional eligibility categories the Parent highlighted. Following that meeting the District sent consent forms for the evaluations needed to assess the Student. As of the date of the Department Complaint Investigator's interview with District staff, the Parent had not signed the relevant consent forms for the District to initiate the evaluation process.

The Department does not substantiate this allegation.

Extended School Year Services

The Parent alleged that the District violated the IDEA when it failed to consider the Student's need for ESY services. Specifically, it is alleged that when the Parent inquired about the Student's need and eligibility for ESY services that the inquiry was ignored and that the team did not discuss the issue.

School districts must ensure that ESY services are available as necessary to provide a FAPE to children with disabilities. ESY services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. School districts must develop criteria for determining the need for ESY services. Criteria must include regression and recoupment time based on documented evidence or on predictions according to the professional judgment of the IEP team.³⁰

IEP team meeting notes showed that the Student's IEP team discussed the Student's need for ESY services at the April 27, 2022, meeting. The Student's IEP team discussed the matter again at its January 5, 2023, meeting, noting that the Student did not experience regression, nor a prolonged recoupment period to relearn previously learned skills. The District's *Response* noted that the Student historically had not qualified for ESY services. The District also noted that the Student was passing most of their courses and had a 3.33 grade point average. The record further indicated that the

²⁹ 34 CFR §300.308(a) & (b)

³⁰ OAR 581-015-2065(1), (2), (5)

Student's IEP team considered and offered general education opportunities for summer school for the Student.

The Department does not substantiate this allegation.

General Evaluation and Reevaluation Procedures

The Parent alleged that the District's proposed evaluation of the Student was not sufficiently comprehensive to identify all the Student's special education and related service needs.

After completing assessments and other evaluation materials a student's IEP team must determine whether a student is a child with a disability under OAR 581-015-2130 through OAR 581-015-2180.³¹ The team must prepare an evaluation report and written statement of eligibility.³² That written evaluation report must include a list of the evaluation data considered, and a determination of whether the child's disability meets one of the evaluation criteria for one of the disability categories in OAR 581-015-2130 through OAR 581-015-2180, or OAR 581-015-2795.³³

On September 15, 2022, the District held an evaluation planning meeting as part of the Student's triennial review process. The Student's IEP team observed that the Student continued to be eligible for special education services under Other Health Impairment, Specific Learning Disability, and Speech/Language Impairment. The District documented that the Student's IEP team did not suspect other disabilities at that time. The Parent agreed with the outcome of the assessment at that time.

On December 23, 2022, the Parent sent an email to the District suggesting that the District needed to consider PTSD, ADHD, anxiety, dyslexia, and other issues as part of the Student's IEP. This email preceded an IEP team meeting scheduled for January 5, 2023. The Parent reiterated these concerns during the January 5, 2023, IEP team meeting. The Student's IEP team included these concerns in the "Parent Concerns" section of the Student's IEP, specifically listing dyslexia. On January 18, 2023, the District sent the Parent a letter explaining that dyslexia is a condition covered by Specific Learning Disability, for which the District had already found the Student eligible. On February 3, 2023, the Parent emailed the District concerning the impact of a recent medical diagnosis of emotional disturbance. The Parent reiterated concerns regarding "dyslexia and associated" disabilities "commonly coupled up in students with special needs." The Parent included concerns regarding dysgraphia, dyscalculia, additional speech language disorders, and a possible executive functioning disorder.

As a result of these communications the District scheduled an evaluation planning meeting with the School Psychologist and Case Manager. The Parent attended this meeting. The District held this evaluation planning meeting on February 17, 2023. As of April 5, 2023 the District had been unable to obtain the Parent's consent to evaluate the

³¹ OAR 581-015-2120(1)

³² OAR 581-015-2120(2)(a)

³³ OAR 581-015-2120(2)(b)(B)

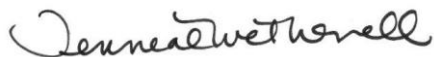
Student for Emotional Behavior Disability. The District considered the Parent's concerns regarding potential additional special education eligibility categories.

The Department does not substantiate this allegation.

VI. CORRECTIVE ACTION
In the Estacada School District 108
Case No. 23-054-005

The Department does not order corrective action in this matter.

Dated: this 18th Day of April 2023



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: April 18, 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).)