

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Redmond School District 2J)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-010

I. BACKGROUND

On March 16, 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 Redmond School District 2J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On March 22, 2023, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 5, 2023. Due to spring break, the District requested and was granted a five-business day extension on the submission of the District *Response*.

The District submitted a *Response* on April 12, 2023, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. Cumulative file
2. Oregon Certificate of Immunization Status, Oregon Health Authority Immunization Program, 4/27/17
3. Certificate of Live Birth, 6/11/12
4. COPA Pediatric Associates Immunization Record, 2/1/NA
5. Authorization to Use and/or Disclose Educational and Protected Health Information, 10/8/18
6. Vision Screening Summary, 10/26/17
7. School District fifth grade report card, 2022-2023
8. School District fourth grade report card, 6/6/22
9. School District third grade report card, 6/17/21
10. School District second grade report card, 6/12/20
11. School District second grade report card, 2019-2020
12. School District first grade report card, 6/14/19
13. School District kindergarten report card, 6/14/18

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. Language Use Survey (English and Spanish), 4/27/17
15. Student Registration Form, 4/27/17
16. Photo, Parent driver license, no date
17. Fax transmission cover sheet, 4/6/ [sic]
18. Outside agency assessment follow up: teacher informant, 4/6/21
19. School letter to Parents, re: one day suspension, 10/12/22
20. School District Seclusion Incident Reporting Form, 2/7/20
21. Timeline of behavior resulting in referral, 12/7/20
22. Debriefing Notes Physical Restraint/Seclusion Incident, 2/7/20
23. PEP SST form: Tier II & Tier III, 9/28/18
24. Personal Education Plan, 4/27/17
25. Meeting Summary: ECSE transition-eligibility and transition to kindergarten, 4/27/17
26. SST Meeting, 9/25/18
27. I-Ready Diagnostic Results: Math, 9/18/19
28. Authorization to Use and/or Disclose Educational and Protected Health Information, 2/20/18
29. Student Support Team Meeting, re: RTI II team follow up, 10/3/17 & 2/20/18
30. SST Referral Form, 9/18 [sic]
31. Notes from meeting, re: Student, 9/14/18
32. SWIS data sheet, re: referrals per year, 2018-19 through 2022-23
33. Elementary Referral Form, 6/13/19
34. Student work sample, re: Reflection, 6/13/19
35. Elementary Referral Form, 2/22/19
36. Elementary Referral Form, 10/10/18
37. Elementary Referral Form, 2/7/20
38. Document, 12/7/20 behavior resulting in referral, 12/7/20
39. Elementary Referral Form, 1/24/20
40. Elementary Referral Form, 1/22/20
41. Elementary Referral Form, 1/13/20
42. Elementary Referral Form, 1/10/20
43. Elementary Referral Form, 9/5/ [sic]
44. Elementary Referral Form, 3/16/23
45. School Elementary Referral Form, 3/14/23
46. School Elementary Referral Form, 3/14/23
47. School Elementary Referral Form, 2/16/23
48. School Elementary Referral Form, 2/13/23
49. School Elementary Referral Form, 1/31/23
50. Elementary Referral Form, 1/25/23
51. School Elementary Referral Form, 1/5/23
52. Elementary Referral Form, 12/9/22
53. Elementary Referral Form, 12/1/22
54. Elementary Referral Form, 11/1/22
55. Elementary Referral Form, 10/11/22
56. Student Behavior Data Sheet, 10/11/22
57. School letter to Parent, re: one day suspension, 10/12/22
58. Elementary Referral Form, 10/5/22
59. Elementary Referral Form, 5/16/22
60. Elementary Referral Form, 5/13/22
61. Elementary Referral Form, 4/25/22
62. Elementary Referral Form, 4/21/22
63. Elementary Referral Form, 5/5/22
64. Elementary Referral Form, 4/8/22
65. Elementary Referral Form, 4/1/22

66. Elementary Referral Form, 3/31/22
67. Elementary Referral Form, 3/15/22
68. Elementary Referral Form, 3/14/22
69. Elementary Referral Form, 3/9/22
70. Think Time Sheet 4th Grade, 3/14/22
71. Elementary Referral Form, 3/7/22
72. Think Time Sheet 4th Grade, 3/8/22
73. Elementary Referral Form, 2/22/22
74. Elementary Referral Form, 2/18/22
75. Elementary Referral Form, 11/17/21
76. 18-19 School- SSEATs- Individual Tracking Notes, 12/10/18 through 5/8/19
77. Observation: Student, 4/16/19
78. 19-20 SSEATs- Individual Tracking Notes, 9/11/19
79. 20-21 SSEATs- Individual Tracking Notes, 9/11/19
80. 21-22 SSEATs- Individual Tracking Notes, 9/11/19
81. Behavior Support Requests, 4/18/22
82. 22-23 SSEATs- Individual Tracking Notes, 9/11/19
83. SST Meeting Notes, 9/25/18
84. Prior Notice and Consent for Initial Provision of Special Education Services, 1/7/19
85. Authorization to Use and/or Disclose Educational and Protected Health Information, 10/19/22
86. School District Seclusion Incident Reporting Form, 2/7/20
87. 12/7/20 behavior resulting in referral, 12/7/20
88. Debriefing Notes Physical Restraint/Seclusion Incident, 2/7/20
89. Contact Log, 10/8/18 through 3/28/22
90. Disability Statement Autism Spectrum Disorder (82) Criteria, 11/15/21
91. Prior Written Notice: Eligibility, 11/15/21
92. Eligibility Summary Statement, 11/15/21
93. Disability Statement: Emotional Disturbance, 11/15/21
94. Outside Agency Autism Evaluation, 1/13/22
95. Outside Agency Student Behavior Protocol, no date
96. Behavior Support Request: On-Site Observation, 4/18/22
97. School Functional Behavior Assessment, 5/6/22
98. School District Behavior Support Plan, 9/23/22
99. Student PE Schedule, no date
100. School District Psycho-Educational Assessment, 11/10/21
101. Addendum: Special Education History, no date
102. 3-Year Evaluation File Review Report, no date
103. OT Support Report, 11/9/21
104. Adapted Physical Education Tri-Annual Assessment Report, 9/20/21
105. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82), 1/7/19
106. Confidential Statement of Eligibility for Special Education (Emotional Disturbance 60), 1/7/19
107. School District Psycho-Educational Assessment, 12/14/18
108. Occupational Therapy Evaluation, 12/17/18
109. Adapted Physical Education Evaluation Report, 12/13/18
110. School District Case History Form, 10/8/18
111. Medical Statement or Health Assessment Statement, 12/20/18
112. Outside Agency Psychology Final Report, 12/19/16
113. Outside Agency Speech & Language Progress Report, 8/10/18
114. Notice of Team Meeting, 12/1/22
115. IEP Meeting Attendance and Agenda, 12/5/22
116. Individualized Education Program Amendment, 11/7/22

117. Prior Written Notice, 12/5/22
118. Meeting Summary, 12/5/22
119. Notice of Team Meeting, 10/17/22
120. IEP Meeting Attendance and Agenda, 11/7/22
121. Prior Written Notice for IEP, 11/7/22
122. Individualized Education Program, 11/7/22
123. Meeting Summary, 11/7/22
124. Special Education Placement Determination, 11/7/22
125. OT Support Report, 11/7/22
126. Adaptive PE Input, 11/7/22
127. Notice of Team Meeting, 5/4/22
128. IEP Meeting Attendance and Agenda, 5/6/22
129. Meeting Summary, 5/5/22
130. School District letter to Parent, re: abbreviated day, 5/6/22
131. Abbreviated Day Plan, 5/6/22
132. Notice of Team Meeting, 9/13/22
133. IEP Meeting Attendance and Agenda, 9/23/22
134. Prior Written Notice for IEP, 9/23/22
135. Behavior Support Plan, 9/23/22
136. Individualized Education Program Amendment, 11/15/21
137. Summary of Present Levels of Academic Achievement, 11/5/21
138. Special Factors for IEP Development, 11/15/21
139. Required Testing and Assessments, 11/15/21
140. Measurable Annual Goals, 11/15/21
141. Service Summary, 11/15/21
142. Statement of Nonparticipation Justification, 11/15/21
143. Parent Statements, 11/15/21
144. Parent Consent for Individual Evaluation, 3/17/22
145. Notice of Team Meeting, 2/3/22
146. Meeting Summary, re: Check-in, 2/8/22
147. Notice of Team Meeting, 10/26/21
148. Prior Written Notice for IEP, 11/15/21
149. Individualized Education Program, 11/15/21
150. Summary of Present Levels of Academic Achievement, 11/15/21
151. Meeting Summary, re: 3-year eligibility /annual IEP, 11/15/21
152. Special Education Placement Determination, 11/15/21
153. Notice of Team Meeting, 9/10/21
154. IEP Meeting Attendance and Agenda, 9/14/21
155. Prior Written Notice, 9/14/21
156. Parent/Guardian Consent for Individual Evaluation, 9/14//21
157. IEP Excusal Form, 10/18/21
158. Notice of Team Meeting, 10/26/20
159. Notice of Team Meeting (cont.), 10/26/20
160. Prior Written Notice for IEP, 11/30/20
161. Prior Written Notice for IEP (cont.), 11/30/20
162. Individualized Education Program, 11/30/20
163. Summary of Present Levels of Academic Achievement and Functional Performance, 11/30/20
164. Special Factors for IEP Development, 11/30/20
165. Required Testing and Assessments, 11/30/20
166. Measurable Annual Goals, 11/30/20
167. Service Summary, 11/30/20
168. Statement of Nonparticipation Justification, 11/30/20

169. Parent Statements, 11/30/20
170. Meeting Summary, re: annual IEP, 11/30/20
171. Special Education Placement Determination, 11/30/20
172. OT Support Report, 11/30/20
173. Student Services Procedural Checklist, no date
174. Notice of Team Meeting, 11/04/19
175. IEP Meeting Attendance and Agenda, 12/9/19
176. Meeting Summary (cont.), re: annual IEP, 12/9/19
177. Prior Notice of Special Education Action, 12/9/19
178. Oregon Standard Individualized Education Program, 12/9/19
179. Present Levels of Academic Achievement and Functional Performance, 12/9/19
180. Statewide Assessment (cont.), 12/9/19
181. Annual Measurable Goals, 12/9/19
182. Annual Measurable Goals (cont.), 12/9/19
183. Services, 12/9/19
184. Extended School Year, 12/9/19
185. Special Education Placement Determination, 12/9/19
186. Special Education Progress Notes for Student, 1/7/19
187. Special Education Progress Notes for Student (cont.), 1/7/19
188. OT Service Summary 12/9/19
189. Specialist Input Form, no date
190. Parent Questionnaire, 8/19
191. OT Support Report, 11/30/20
192. IEP Meeting Attendance and Agenda, 5/13/19
193. Meeting Summary, 5/13/19
194. Oregon Standard Individualized Education Program, 1/7/19
195. Special Factors, 5/13/19
196. Present Levels of Academic and Functional Performance, 5/13/19
197. Extended School Year, 5/13/2019
198. Written Agreements between Parent and the District, 3/18/19
199. Written Agreements between Parent and the District, 3/18/19
200. Oregon Standard Individualized Education Program, 1/7/19
201. Special Factors, 3/15/19
202. Present Levels of Academic Achievement and Functional Performance, 1/7/19
203. Services, 1/7/19
204. Prior Notice of Special Education Action, 3/15/19
205. Student Services Procedural Checklist, no date
206. Referral for Special Education (5-21), 10/8/18
207. Prior Notice about Evaluation/Consent for Evaluation, 10/8/18
208. Written Agreements between the Parent and the District, 12/8/18
209. IEP Meeting Attendance and Agenda, 10/8/18
210. Meeting summary, 8/10/18
211. Notice of Team Meeting, 10/3/18
212. OT/PT Referral Form, 10/23/18
213. Authorization to Use and/or Disclose Educational and Protected Health Information, 10/8/18
214. Authorization to Use and/or Disclose Educational and Protected Health Information (cont.), 10/8/18
215. Student Services Procedural Checklist, no date
216. Notice of Team Meeting, 11/26/18
217. Notice of Team Meeting, 12/19/18
218. IEP Meeting Attendance and Agenda, 12/17/18
219. IEP Meeting Attendance and Agenda, 1/7/19

220. Meeting Summary, re: eligibility, 12/17/18
221. Meeting Summary, re: eligibility/IEP (meeting #2), 1/7/19
222. Statewide Assessment, 1/7/19, Duplicate
223. Standard Assessment, 1/7/19,
224. District-wide Assessment, 1/7/19,
225. Annual Measurable Goals, 1/7/19,
226. Extended School Year, 1/7/19
227. Special Education Placement Determination, 1/7/19
228. Statement of Eligibility for Special Education (Communication Disorder), 4/27/17
229. Prior Notice of Special Education Action, 4/27/17
230. Notice of Team Meeting, 2/14/17
231. IEP Meeting Attendance and Agenda, 4/27/17
232. Meeting Summary, re: ECSE transition - eligibility and transition to kindergarten, 4/27/17
233. Speech Language Pathology Assessment, 3/10/17
234. File Review, 4/21/2017
235. Personal Education Plan, 4/27/17
236. Child Progress Report, 4/27/17
237. Notice of IFSP Team Meeting, 1/19/17
238. IEP Meeting Attendance and Agenda, 2/2/17
239. Written Agreements between the Parent and the District, 2/2/17
240. Meeting Summary, re: consent for eval [sic], 2/2/17
241. Prior Notice about Evaluation/Consent for Evaluation, 1/31/17
242. Individualized Family Service Plan (IFSP), 5/9/16
243. Individualized Family Service Plan (IFSP) (cont.), 5/9/16
244. Outside Agency: Plan to Enhance Aubrey's Development, 5/9/16
245. Transition from Early Intervention, 5/9/16
246. Placement Decision, 5/9/16
247. Statement of Eligibility - Early Childhood Special Education (Developmental Delay 98), 5/3/15
248. Prior Notice about Evaluation / Consent for Evaluation, 6/3/15
249. Early Childhood Special Education Evaluation Report, 6/3/15
250. Prior Notice and Consent for Initial Provision of Special Education Services, 6/3/15
251. Early Intervention Evaluation Report, 2/19/15
252. Progress Reports, 1/27/23
253. Progress Reports, 6/14/22
254. Emails, 3/4/22-3/10/23

The Parent submitted a *Reply* on April 18, 2023, providing documents in support of the Parent's position. The Parent submitted the following relevant items:

1. Prior Written Notice for IEP, 11/7/22
2. Notice of Team Meeting, 10/17/22
3. Special Factors for IEP Development, 11/7/22
4. Required Testing and Assessments, 11/7/22
5. Measurable Annual Goals, 11/7/22
6. Service Summary, 11/7/22
7. Statement of Nonparticipation Justification, 11/7/22
8. Meeting Summary, 11/7/22
9. Email, re: meeting, 11/28/22
10. Student work sample, no date
11. Student IEP Review Notes, no date
12. 21-22 SSEATs-Individual Tracking Notes, 9/11/19-4/13/22
13. Behavior Support Request: On Site Observation, 4/18/22

14. 22-23 SSEATs - Individual Tracking Notes, 9/11/19-10/12/22
15. Behavior Support Request: On Site Observation, 4/18/22
16. Individual Education Plan, 11/7/22
17. Summary of Present Levels of Academic Achievement and Functional Performance, 11/7/22
18. Letter to Parent, 3/14/23
19. Letter to Parent, 10/12/22
20. SWIS report, 3/20/23
21. Emails, 9/22/22-4/27/23

The Complaint Investigator interviewed the Parent on April 24, 2023. On April 27, 2023, the Complaint Investigator interviewed two Special Education Teachers, the School Principal, and the Special Education Director. The Complaint Investigator reviewed and considered these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from March 17, 2022, to the filing of this Complaint on March 16, 2023.

Allegations	Conclusions
<p>When IEPs Must Be In Effect</p> <p>The Complaint alleges that the District violated the IDEA when an Individualized Education Program (IEP) for the Student was not developed.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>Not Substantiated</p> <p>The District developed an IEP on November 7, 2022 and December 5, 2022, and implemented the IEP during the complaint period.</p>
<p>Content of IEP</p> <p>The Complaint alleges that the District violated the IDEA when the Student’s IEP did not include appropriate supports for the Student, including a school appointed aide.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>Not Substantiated</p> <p>The District developed an IEP that addressed the Student’s needs, consulted with the Student’s private therapist, and incorporated Parent input into the IEP.</p>
<p>Review and Revision of IEPs</p> <p>The Complaint alleges that the District violated the IDEA when it failed to respond to the Parent’s request in February 2023 for an IEP meeting to review concerns for the Student behaviors and suspensions.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p>Substantiated</p> <p>The District did not convene an IEP meeting when the Parent made multiple requests for the Student’s IEP team to meet to address the increase in the Student’s behavior incidents.</p>

<p>Discipline Removals for Children with Disabilities</p> <p>The Complaint alleges that the District violated the IDEA when the Student was suspended many times due to behavior; and the Student was not given assignments when missing school due to suspensions or when being asked to leave school early.</p> <p>(OAR 581-015-2405, OAR 581-015-2410, OAR 581-015-2415; 34 CFR §§300.530, 300.536)</p>	<p>Substantiated</p> <p>The District failed to provide the Parent with proper notification that the Student was being suspended from school in 13 of the 14 times the Parent was contacted to pick the Student up due to behavior concerns. Further, the District failed to correctly code the Student's absences as suspensions.</p>
<p>Parent Participation</p> <p>The Complaint alleges that the District violated the IDEA when a copy of the Student's IEP was not provided to the Parent.</p> <p>(OAR 581-015-2195(5); 34 CFR §300.322(f))</p>	<p>Substantiated in Part</p> <p>The District provided the Parent with a copy of the Student's IEP on December 6, 2022. However, the District failed to provide a Notice of Team Meeting for the March 10, 2023 IEP meeting.</p>
<p>Free Appropriate Public Education</p> <p>The Complaint alleges that the Student was deprived a free appropriate public education (FAPE) and that the District violated the IDEA when the Student was bullied by classmates, missed class time due to being suspended, and that the Student had not received an appropriate education.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Substantiated</p> <p>There is no evidence that the Student was suspended for more than 10 school days or that the Student did not receive a free appropriate public education.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • “We would like to see our child thrive and develop lots of social skills and grow in [their] education. We know that this will be a challenge and that it will not be easy. We feel that [they] need[] more services in the school. [Student] needs an aid to work with [them], to know when [they're] getting frustrated and to help remove [them] from situations before it explodes. To have someone give [Student] the attention [they] need[] to focus on [their] school work. [Student] shouldn't be punished and put in a room isolated away from the rest of the class. [Student] is above average if not on par academically, but [Student] need[] someone that will help [them] understand social cues and work on [their] underdeveloped social skills. As a parent it is frustrating to ask the school and the district for help several times and ask if they used the resources I've provided or can we get extra help and am told no every time. We request [Student] either gets an aid [sic], or the district comes up with a policy to allow [them] to receive outside assistance if they are unable to provide a proper and safe education.”

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 March 17, 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 was 10 years old, in the fifth grade, and attending a District elementary school at the time the Complaint was filed.
2. The Student is eligible for special education and related services under both the Autism Spectrum Disorder and Emotional Behavior Disability eligibility categories.
3. On January 25, 2022, the Student's IEP team was notified by an internal District program that the Student did not qualify for the short-term behavior program. The reason for the denial included: "...the student does not fit the criteria for the program at this time. [Student] is currently on an IEP and involved in ILS services. [They] will continue to be best supported by the trained, one-on-one consistent instructional assistance that is currently offered to [Student] through these services as opposed to the brief transitional [Program] that does not offer such resources. With [Student] autism dx [sic] and high needs for designated individual support, the life structured setting is the continued recommended support at this time..."
4. On April 1, 2022, the Special Education Teacher emailed the Adaptive P.E. Consultant: "...[Student's] behavior has been an issue since the beginning of school. It's just gotten to a point where it is so severe it's unsafe. [Student] has very high intelligence and academic skills but functionally operates at about 5-6 years old. [Student] really does need a lot more assistance in all areas of [their] day and we as a team are trying all kinds of things so it's definitely not just PE where [Student] is struggling with [their] behavior and self-regulation...I really feel it has come to a crisis intervention time (started in January) and it's now April. I'm not sure how long we can go with these huge outbursts and unsafe behaviors. Is it possible to start looking at StepUp for half of the day?"
5. On April 18, 2022, the District's Behavior Specialist reported their observations of the Student across multiple school settings and made the following recommendations:
 - a. Increase visual supports;
 - b. Model expected behavior when providing redirection;
 - c. Explicitly define and teach expected and unexpected behaviors, and impacts;
 - d. Facilitate temp check at transitions;
 - e. Use clear, firm boundaries and limits;
 - f. Provide clear, explicit rules prior to group games; and
 - g. Consider staff switch for de-escalation.
6. On May 3, 2022, District staff had an internal communication that indicated the Student had not received a referral for behavior since April 8, 2022.
7. On May 3, 2022, District staff had an internal communication that indicated the Parent had requested: "an abbreviated day because [Parent] is enrolling [Student] into a [Private Program] in the AM..."

8. On May 4, 2022, the District issued a Notice of Team meeting for the IEP team to meet on May 6, 2022 to consider an abbreviated day plan requested by the Parent. A district representative was not invited to the IEP meeting. The Speech-Language Pathologist signed the meeting notes as the District Representative.
9. On May 6, 2022, the Parent provided written acknowledgement that they were unilaterally choosing an abbreviated school day schedule for the Student, they understood that the IEP team was recommending a full day program, and that the Parent had the right, at any time, to request an IEP team meeting to determine the appropriate placement for the Student.
10. On May 26, 2022, the School Psychologist conducted a Functional Behavior Assessment (FBA). The Student's challenging behaviors were described as occurring 1-3 times per week, lasting 3-15 minutes, and were considered to be moderate to severe in intensity.
11. During interviews, the Student's fourth grade Special Education Teacher reported that the Parent had been called a couple of times between April-May 2022 and these absences had not been coded as out-of-school suspensions.
12. On June 14, 2022, the District issued IEP progress reports that noted the following:
 - a. Social/Emotional: "Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. For this grading, the student has improved [their] ability to tolerate frustration and choose coping strategies to help [themselves]. [Student] is able to do this on average 50% of the time. This is the most difficult goal for [Student] is [sic] trying and likes to have [their] space, time and quiet activity or have in order to be successful with [their] coping strategies."
 - b. Social/Emotional: "Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. [Student] has started to understand the relationship of [their] behaviors and how they impact others. [Student] wants to do well and make friends. [Student] has started to develop more relationships with [their] peers and enjoys engaging and being an active participant with [their] peers."
 - c. Behavior: "Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. [Student] continues to make good progress in this goal. [Student] enjoys learning, is curious, wants to do their best, and initiates tasks on average 80% of observational opportunities. Keep up the great work!"
 - d. Behavior: "Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. [Student] recently has demonstrated more ability to follow teacher and staff directions when it is explained to [them] why and when. [Student] is able to follow teacher interactions when regulated 90% of the time. When dysregulated, [Student] has difficulty following teacher directions until [Student] is able to calm themselves down and given access to a quiet area or quiet activity like reading. Great job [Student]!"
 - e. Behavior: "Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. [Student] is attending [their] school and classroom only in the afternoon and a full day on Fridays. [Student's] ability to demonstrate stamina at school, to complete tasks in the afternoon for math has been at 80% or above. [Student] stamina to submit progress. Complete writing assignments is more difficult."
 - f. Organizational/Study Skills: "Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed. [Student] has difficulty staying organized even with a system taught. [Student] continues to work on this goal."
 - g. Writing: "Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed. [Student] continues to work on [their] writing goal if [Student] is interested in the topic or prompt, [Student] is able to compose a story with a beginning, middle, and end with supporting details and transitional words and phrases."

13. On September 13, 2022, the District issued a Notice of Team meeting for the IEP team to meet on September 23, 2022 to amend the IEP by adding a Behavior Intervention Plan (BIP). A district representative was not invited to the IEP meeting.
14. On September 22, 2022, the Parent emailed the Special Education Director with a request for the Student's private autism therapist to work with the Student in the school and asked about the District's policy around this. The Special Education Director responded: "I just wanted to share that your specific request to have an ABA therapist come in and work with your child during school hours aligns with conversations we've been having around creating policies for our district. Since those are not yet in place, we must default to our other building policies around having outside visitors." The Special Education Director also stated that the current policies around having visitors in District buildings could be found in the student handbook.
15. On September 23, 2022, the Student's IEP team "held a meeting to implement a BIP for [Student's] IEP.
16. On October 6, 2022, the District mailed the amended IEP and "updated BIP that was developed on 9/23/2022."
17. On October 11, 2022, the Parent contacted the Special Education Director to: "inquire why [Parent] would need to attend a field trip in order to support [Student...[Parent] also asked again about the outside support coming into the building."
18. On October 11, 2022, the Parent emailed the Special Education Director: "I wanted to reach out and see if you heard anything back on this? We have another issue arising and I'm trying to meet with the principal on this issue. They are wanting my [spouse] or I to attend a school field trip due to concerns of [Student] attending. I asked if there can be an [sic] school aid [sic] to help [Student] if [they] need[] assistance and I was told no it would have to be me or my [spouse] I am confused as to why, considering they don't want the professional help that I can have provided for [Student] in the school but is denied to attend a field trip due to [their] disability unless only a parent can attend with [Student]."
19. On October 11, 2022, the Special Education Teacher contacted the Parent and the Student's Private Autism Therapist about the Student's behavior at school. The Private Autism Therapist provided feedback and recommendations. The Parent requested that the Student be able to use a school issued Chromebook while the Student was suspended, and the School agreed.
20. On October 12, 2022, the Parent and the Student's school team met to discuss concerns about the Student. Meeting notes indicated: "[Parent] has been requesting outside services to come in and support [Student] in school...[District] has denied the outside 1:1 support due to confidentiality."
21. On October 12, 2022, school personnel notified the Parent that the Student would receive a one day out of school suspension due to the Student's behavior.
22. On October 13, 2022, the Special Education Director spoke with the Parent. The Parent requested that a private ABA therapist provide support to the Student at school. The Special Education Director shared that the District did not have a policy, and the Director would need to get back with the Parent. Secondly, the District agreed that support for the field trip should be provided by the District and the Special Education Teacher would attend the trip. The District's contact log indicated:

- a. "Field trip support will be provided not part of [Student] IEP. Team will collect some data and [there] will be additional support during field trip on Tuesday."
 - b. "Discussion around suspension...[Parent]...doesn't think this would have happened had someone been with [Student] all day."
 - c. 'Inquired again about outside counselor coming into the school to support. [Special Education Director] shared that there is no district policy that allows this to happen...noted concerns around confidentiality of other students in the class...dependence on adult-whether intended or not...they are willing to pay for it...[Special Education Director] will follow up with superintendent and look into request for ABA support in the building."
23. On October 18, 2022, the Parent contacted the Special Education Director and requested an update [regarding the request for a 1:1 aide]. The Special Education Director replied: "we need to have our autism specialist and the team collaborate with [Private Agency] to work on ways to support [Student] while [they are] at school. I've asked [autism consultant] to ensure [they are] connecting and spending more time there to support the team and students [they] consult[] for until specific plans and systems are in place."
24. On October 19, 2022, the Parent provided written permission for the District to release information about the Student when consulting with the private autism therapist.
25. On October 27, 2022, the District issued a Notice of Team Meeting for an IEP meeting scheduled for November 7, 2022. The notice did not indicate that a district representative would be attending the IEP meeting.
26. On November 2, 2022, the District's Autism Consultant and the Private Autism Therapist consulted regarding the Student's needs at school.
27. On November 7, 2022, the Student's IEP team developed an annual IEP. The following relevant IEP components were included:
- a. Special factors included the Student's behavior, communication, and assistive technology needs.
 - b. The Student was described as: "[Student] is a voracious reader and has been doing well academically in class this year. [Student] has been making good progress in staying organized and following the schedule in class. [Student] is engaged in class and willingly shares [their] ideas and participate in class discussions. [Student] likes dogs, reading, Hocus Pocus and all things Halloween related, [Student] likes to play computer games which has been a reinforcement tool for [them] during the school day."
 - c. The Present Levels of Academic Achievement indicated the Student met the statewide standards for reading and mathematics, and the Student was working toward grade-level standards in all academic areas.
 - d. The Present Level of Developmental and Functional Performance indicated that the Student needed support for communication, and behavior and social-emotional skills.
 - e. Two social-emotional goals intended to build the Student's skill for tolerating frustration and understanding the impact of their behavior, and a behavior goal related to following directions.
 - f. 150 minutes every month for specially designed instruction in the area of behavior, and 150 minutes every month for specially designed instruction in the area of social-emotional skills. (SDI).
 - g. The following accommodations were described as supplementary aids and services:
 - i. Break directions down into single steps when giving directions with multiple steps;
 - ii. Preferential seating during individual work time and group work time;
 - iii. Access to small group support for writing as needed;

- iv. Check for understanding to ensure [Student] comprehends what to [sic] [they're] hearing;
 - v. Access to noise cancelling headphones;
 - vi. Checks for organization to ensure [Student's] materials are organized and work is turned in;
 - vii. Additional adult support for off campus field trips;
 - viii. Reinforcement plan with clear criteria as to how reinforcement will be earned;
 - ix. Access to breaks and a separate setting when assessments are administered;
 - x. Breaks scheduled throughout the day for regulation;
 - xi. Communicate clear guidelines for consequences (aggressive behavior / cause and effect);
 - xii. Behavior Support Plan;
 - xiii. Eliminate timing for assessments/assignments when possible to help reduce anxiety;
 - xiv. Gain attention prior to giving instructions/directions prior to providing verbal instructions;
 - xv. Writing Tools (typing or speech to text/Dictation, pre-writing, discussion, graphic organizer, writing tasks and writing assessments);
 - xvi. Visual supports (routines, social stories, schedules, expectations);
 - xvii. Incentive plan when teaching [Student] new expectations, and
 - xviii. Positive behavior supports in all school/academic environments and settings.
- h. The statement of nonparticipation justification statement described the extent of the Student's removal: "[Student] may be removed from the general education classroom for up to 300 minutes monthly for specially designed instruction in social-emotional skills and behavior as additional time for breaks as outlined in accommodations. Student requires specially designed instruction in a low distraction environment to address goals outline [sic] in [their] IEP. [Student] may need to be removed from the general education classroom for services and supports."
- i. The educational placement determined for the Student was placed in: "the general education classroom for 80% or more [of the school day] with support from special education outside of the general ed[ucation] classroom."

28. The Prior Written Notice (PWN), dated November 7, 2022, indicated the following revisions:

- a. Discontinued SDI in the areas of writing and organizational/study skills;
- b. Accommodations for a reinforcement plan;
- c. Communication services and adaptive P.E. were designated as related services; and
- d. Autism consultation services were increased.

29. The November 7, 2022 IEP meeting notes indicated that the Student had been: "suspended once this year and this was the first time [Student] has had the consequence of suspension..." The Parent also requested that an outside agency provide support to the Student in the school. "[Parent] shared that [they are] very frustrated [sic] the fact [their] request for having an outside agency come into support has not been directly answered. Family is willing to pay for the service. [The Autism Consultant] shared that the suggestions from [outside] agency seem to be things that can be implemented here at [School] without difficulty. [Autism Consultant] is proposing to double consultation minutes this year..."[Special Education Teacher] will reach out to [Parent] for a follow up to discuss the remaining IEP components that were not addressed during the meeting time. IEP paperwork will be finalized and shared with parent via mail."

30. On November 28, 2022, the Parent emailed the Special Education Director: "I would like to schedule a meeting with you and the superintendent. How do I go about doing this? We never finished [Student's] IEP meeting and during the meeting not much got resolved and it was said I need to talk with the school district cause [sic] the school is unable to do anything about

it. So, I would like a meeting please with you both. Please let me know when we can set that up.” The Special Education Director responded that they would contact the Parent to set up a time to meet.

31. On November 30, 2022, the Special Education Director spoke with the Parent. The District’s contact log indicated: “[Special Education Director] would like to call an additional IEP meeting...[Parent] felt like all [Student’s] needs were not addressed...[Parent] does see improvement...is concerned about transitioning to middle school and wants to ensure [Student] has the supports [Student] needs in place. [Parent] is open to another meeting. Goal is to set it for Monday Dec [sic] 5...”
32. On December 1, 2022, the Parent emailed the IEP team with concerns that the Student had been self-harming at school and another student had been bothering the Student.
33. On December 1, 2022, the District issued a Notice of Team Meeting for an IEP meeting with the purpose described as: “Reconvene IEP, parent request for outside ABA therapist support in classroom, social skills.”
34. On December 5, 2022, the Student’s IEP team met and amended the Student’s IEP by adding an annual goal and 60 minutes per month in specially designed instruction for social skills. IEP meeting notes indicated “parent request/concern” was also discussed.
35. The December 5, 2022 PWN issued by the District explained that the District was refusing the Parent request for a private ABA therapist to provide support to the Student in the general education setting because: “The IEP team determined that outside/private ABA therapist support for [Student] is not required in order for [Student] to access [their] education. The school/school district is able to provide [Student] with a Free Appropriate Education.”

Other options considered by the team included additional adult support. The PWN indicated the District rejected this option: “because data does not indicate that [Student] requires this level of support. Team also shared that [Student] resists additional adult support when provided and refuses the support. The team discussed how this support would be more restrictive for [Student] and would be taking a step backward because [Student] has the ability to be independent.”

During interviews, the Parent shared that they were not in agreement with this decision and did not believe their concerns had been addressed adequately.

36. On December 6, 2022, the District mailed home a copy of the IEP amendment paperwork.
37. On December 9, 2022, school personnel called the Parent to pick up the Student from school due to the Student’s behavior. The request for the Parent to pick up the Student took place at the end of the day.
38. On January 10, 2023, the Parent emailed the Special Education Teacher: “attached is what [Private Therapist] and I came up with for the iep [sic]. There are some questions. Please review and let [Private Therapist] or I know if you have any questions.” Attached were a list of questions, a request for a friendship goal, and requests for additional accommodations.
39. On January 27, 2023, the District issued IEP progress reports that noted the following:
 - a. Social/Emotional: “Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. Data sheets display progress on this goal and asking for

- help in 70% of observed accuracy as measured by teacher data collection.”
- b. Behavior Goal: “Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. Progress has been shown on this goal in class as observed in classroom observations. Can still struggle at times with [their] writing assignments. This is the content area where [Student] is not meeting the goal at this time. All other subject areas are showing good progress.”
 - c. Behavior Goal: “Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. CICO [Check-in/Check-out] sheets have shown 70% accuracy on this goal.”
 - d. Social Skills: “Progress has been made towards the goal. It appears that the goal will be met by the next IEP review. Has made progress on this goal in small groups.”
40. On January 31, 2023, school personnel called the Parent to pick up the Student from school due to the Student’s behavior. The Student was also assigned one hour of in-school suspension on the next day, February 1, 2023.
41. On February 17, 2023, the Parent emailed the Student’s IEP team with the subject line “Meeting for Student urgent”. The email contained the following message: “After recent events it is apparent we need to have a meeting again. Things have increasingly gotten worse in the school setting and we need to address how to move forward. I am requesting a meeting with everyone in this email as soon as possible. [Special Education Director], I would like you to attend or someone from the school district needs to attend this meeting. It’s apparent things have declined since the last meeting. Has [Student] made some progress sure, [sic] but with another suspension and consent [sic] referrals and frustration and aggression with staff it’s apparent somethings [sic] wrong and we need to meet and figure [sic] how to best proceed.”
42. On March 1, 2023, the Special Education Teacher contacted the Parent and requested that the IEP team meet to discuss the ongoing concerns for the Student.
43. On March 10, 2023, the Special Education Teacher and the Parent communicated about a meeting they were scheduled to have that day at 1:30 p.m. The District record contains an electronic calendar invitation for March 10, 2023. During interviews, the Special Education Director stated that this meeting was intended to be an IEP meeting and all the legally required IEP team members were present. The Director was not able to confirm if the Student’s IEP was reviewed, and no amendments to the IEP were made. There is no indication in the District’s record that a Notice of Team Meeting was issued for this meeting. The Parent indicated they did not receive an official Notice of Team Meeting for this meeting.
44. On March 14, 2023, the Parent was notified by the Teacher that the Student would have an out-of-school suspension for one day for disruption of the school environment, disorderly conduct, and open defiance of a teacher’s authority. The Parent was requested to pick the Student up from school.
45. On March 15, 2023, the Student did not attend school because the Classroom Teacher told the Parent the Student needed to take a break. There is no indication in the District’s record that a notification letter was issued to the Parent with information about the suspension.
46. During the second semester of the 2021-22 school year, the Student was absent three days and was tardy 14 times.
47. During the first semester of the 2022-23 school year, the Student was absent 4.5 days and was tardy 15 times.

48. The Student's grades for the second semester of the 2021-22 school year indicated that they were exceeding, meeting, or nearly meeting in all areas. The Student's ratings for characteristics of a successful learner indicated they sometimes demonstrated the expected behaviors and had three consistent ratings.
49. The Student's first semester grades for the 2022-23 school year indicated that they were meeting or nearly meeting in all areas. The Student's ratings for characteristics of a successful learner indicated they sometimes demonstrated the expected behaviors and had one consistent rating.
50. The discipline data for the Student indicated the following:
 - a. During the 2021-22 school year, the Student received nine minor and 11 major referrals;
 - b. During the 2022-23 school year, the Student received five minor and nine major referrals; and
 - c. During the 2022-23 school year, the Student received one in-school suspension and one out-of-school suspension.
51. During interviews, the Principal stated that they, "...sometimes send kids home and don't make it a suspension. When the Student was dysregulated, I'd call the Parent to come get the Student. Sometimes, I'd call the Parent and say the Student is having a rough day and the Parent would pick up the student."
52. District attendance records indicated nine dates and times as incidents when the Parent or designee "picked up" or "check out" [*sic*] the Student that appear to be informal removals. The reason for the Student being picked up did not indicate it was for an appointment or other excused reason. The school day ended at 3:20 p.m.
 - a. 9/7/2022, depart time 1:37 p.m.;
 - b. 9/21/2022, depart time 2:17 p.m.;
 - c. 12/16/2022, depart time 2:00 p.m.;
 - d. 1/4/2023, depart time 2:08 p.m.;
 - e. 1/17/2023, depart time 1:30 p.m.;
 - f. 1/25/2023, depart time 1:48 p.m.;
 - g. 1/31/2023, depart time 11:23 a.m.;
 - h. 2/16/2023, depart time 3:00 p.m.; and
53. On March 16, 2023 the Parents filed this Complaint.

IV. DISCUSSION

When IEPs Must Be In Effect

The Complaint alleges that the District violated the IDEA when an Individualized Education Program (IEP) for the Student was not developed.

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. A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the

child needs special education. As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.³

The District convened a legally compliant IEP team on November 7, 2022 and December 5, 2022 to develop an IEP for the Student. The outcome of these two IEP meetings was a legally compliant IEP.

The Department does not substantiate this allegation.

Content of IEP

The Complaint alleges that the District violated the IDEA when the Student's IEP did not include appropriate supports for the Student, including a school appointed aide.

The individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. Also required is a statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives or benchmarks) designed to meet the child's needs that result from the child's disability 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 that result from the child's disability. A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. Additionally required, is a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and children without disabilities.⁴

The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications are required. Also required is an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment is required. A child may not be exempt from participation in State or district-wide assessment, including extended assessments, because of a disability, unless the parent has requested an exemption under

³ OAR 581-015-2220

⁴ OAR 581-015-2200 (a-d)

OAR 581-022-0612. If the IEP team determines that the child must take an alternate assessment instead of the regular Statewide or a district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment is appropriate for the child must be included in the child's IEP.⁵

The District developed an IEP that addressed the Student's needs, incorporated input from the Parent, and consulted with the Student's private therapist about the Student's needs and IEP development. The District included an IEP goal and increased the amount of specially designed instruction to address the concerns the Parent had for the Student's social skills. The PWN issued by the District on December 5, 2022 indicated that the data collected did not show a need for a private ABA therapist because the Student "resists additional adult support when provided and refuses the support...". The PWN also noted that the Student "has the ability to be independent." The District considered the Parent's concerns and input from outside providers and adjusted the Student's IEP to reflect the concerns of the Parent and the needs of the Student at the time.

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Complaint alleges that the District violated the IDEA when it failed to respond to the Parent's request in February 2023 for an IEP meeting to review concerns related to the Student's behaviors and suspensions.

Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved, and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate, the results of any reevaluation, information about the child provided to, or by, the parents, the child's anticipated needs or other matters.⁶

The Parent requested revisions to the IEP on January 10, 2023. There is no indication in the District record that the Special Education Teacher responded to the Parent's request for revisions to the IEP. The Parent requested an IEP meeting on February 17, 2023, and again on March 1, 2023 to address the increased concerns for the Student's behavior. School staff met with the Parent on March 10, 2023. The District contends the meeting was intended to be an IEP meeting. However, a Notice of Team Meeting was not issued; it's not clear whether the Student's IEP was reviewed at the meeting, and no amendments were made to the IEP. During this same period, the student was subjected to a number of informal removals from school that the District was obligated to record as a disciplinary consequence.⁷ Had that data been collected as required, the District could have known that the IEP team needed to review and revise the Student's IEP. Regardless, the Parent made three requests for the Student's IEP to be reviewed and revised as the Student was being sent home more frequently due to the Student's behavior at school. The District failed to respond to these requests, as the District did not hold a legally compliant IEP meeting, nor did the District refuse the Parent's request by issuing a PWN.

The Department substantiates this allegation.

⁵ OAR 581-015-2200 (e-g) (A-B)

⁶ OAR 581-015-2225(1)

⁷ ODE. (2022). *Abbreviated School Day Programs: Considerations for IEP Teams*. p. 28.

Discipline Removals for Children with Disabilities

The Complaint alleges that the District violated the IDEA when the Student was suspended many times due to behavior; and the Student was not given assignments when missing school due to suspensions or when being asked to leave school early.

School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement. During disciplinary removals that do not constitute a change in placement, school districts are not required to provide access to special education and the general education curriculum unless students without disabilities are provided such access during corresponding removals, and school districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability. Any days of suspension from former Oregon school districts carry over to new school districts when a child moves, unless the school district does not have actual knowledge of the previous suspensions.⁸

A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if the removal will be for more than 10 consecutive school days (e.g., expulsion), or the child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2). School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal under subsection (1) for a child with a disability who violates a code of conduct. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420. If the determination is that the child's behavior is a manifestation of the child's disability, the school district must return the child to the placement from which the child was removed, unless the parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan, the school district removes the child to an interim alternative educational setting under OAR 581-015-2425 for a weapons or drug violation or for infliction of serious bodily injury, or the school district obtains an order from an administrative law judge under OAR 581-015-2430 allowing a change in placement to an interim alternative educational setting for injurious behavior.⁹

The school district is also required to either conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan, or if the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.¹⁰ If the determination is that the child's behavior is not a manifestation of the child's disability the school district may proceed with disciplinary action applicable to children without disabilities, in the same manner and for the same duration in which the procedures would be applied to children without disabilities. If the school district takes such action applicable to all children, the school district must, on the date on which the decision is made to remove the student, notify the parents of that decision and provide the parents with notice of

⁸ OAR 581-015-2405

⁹ OAR 581-015-2410 (4a)

¹⁰ OAR 581-015-2410 (4b); OAR 581-015-2415 (1-4)

procedural safeguards under OAR 581-015-2315. Services are required to be provided to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435. Additionally the District must provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.¹¹

School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern. For these additional disciplinary removals, school personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another. During these additional disciplinary removals, school districts must provide services that are necessary to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's IEP. School personnel, in consultation with at least one of the child's teachers, determine the extent to which the services are needed, and the location for delivery of those services. School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.¹²

The District's school board policy *JGD-Suspension* requires that students and parents are given notice of possible discipline actions resulting from student misconduct that may result in suspension. Each suspension will include a statement of the reasons for suspension, the length of the suspension, a plan for readmission, and may include a plan for the student to make up school work. Every reasonable and prompt effort must be made to notify the parents of suspended students.¹³

The District's attendance records indicated that on October 12, 2022 the Parent was properly notified that the Student was being assigned a one day out-of-school suspension. The attendance records also indicated that the District coded the Student's absence on this date as a suspension. On December 9, 2022, the Parent was called approximately 10 minutes before the end of the school day to pick up the Student due to a behavior incident. On the morning of January 31, 2023, the Parent was called to pick the Student up from school due to the Student's behavior. The Student's attendance on this date was not coded as an out-of-school suspension, and there was no record that the Parent received the required notification from the School regarding the suspension. District records also indicated that the Student received a one-hour in-school suspension on the following day, February 1, 2023; the in-school suspension is not reflected in the Student's attendance record, nor was the Parent notified properly.

On March 14, 2023, the Parent was contacted to pick up the Student from school early due to a behavior incident. The Student also received a one day out-of-school suspension the following day, March 15, 2023. There are no records to indicate that the District provided the required notification to the Parent; the Student's attendance records do not indicate that these absences from school were due to out-of-school suspensions. The Student's attendance records indicated that the Parent picked the Student up from school earlier than the standard dismissal time, and for reasons other than the excused appointments, that took place on September 7, 2022;

¹¹ OAR 581-015-2415 (5)

¹² OAR 581-015-2410 (2-3)

¹³ Redmond School District (2017) *Suspension, JGD*.

September 21, 2022; December 16, 2022; January 4, 2023; January 17, 2023; January 25, 2023; January 31, 2023; and February 16, 2023. In total, the District record indicated the Student was removed from the school day due to behavior concerns for a total of seven days during the Complaint period. However, these records indicate that the Student was informally removed for disciplinary purposes, which the District was obligated to record as a disciplinary incident. Informal removals are not a behavioral intervention. They are a discipline incident. This information must be recorded because informal removals are subject to the same disciplinary procedures under the IDEA as any other disciplinary removal. Within 10 school days of the District's decision to change the placement of a child with a disability because of a violation of a code of student conduct, which includes incidences of informal removals, the school district must determine whether the behavior resulting in the removal is a manifestation of the student's disability.¹⁴

The Parent reported they were frequently called to pick up the Student due to behavior incidents occurring at school. The Principal reported that the Principal sends students home due to behavior concerns and does not always count such removals as a suspension, despite an obligation to do so. During interviews, the Principal indicated this was the same practice used with the Student. Due to the School's concerns about the Student's behavior, the District engaged in a pattern of removing the Student from school without providing the Parent with the required notification. Further, the Student's absences were improperly documented in the Student's official attendance record. As a result, the District also failed to convene an appropriate team, as they were required to do, to determine whether the Student's conduct was directly and substantially related to the Student's disability, or whether it was the direct result of the District's failure to implement the IEP.

The Department substantiates this allegation.

Parent Participation

The Complaint alleges that the District violated the IDEA when a copy of the Student's IEP was not provided to the Parent.

The school district must give the parent a copy of the IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent.¹⁵

The District provided the Parent with a copy of the final and amended IEP on December 6, 2022. However, the District failed to provide a Notice of Team Meeting for the March 10, 2023 meeting, which the District characterized as an IEP meeting.

The Department substantiates this allegation in part.

Free Appropriate Public Education

The Complaint alleges that the Student was deprived a free appropriate public education (FAPE) and the District violated the IDEA when the Student was bullied by classmates, missed class time due to being suspended, and was not provided an appropriate education.

¹⁴ OAR 581-015-2415

¹⁵ OAR 581-015-2195 (5)

Except as provided in OAR 581-015-2045, school districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible pursuant to ORS 338, ORS 339, OAR 581-021-0019, or open enrollment under section 9, chapter 718, Oregon Laws 2011. “School-age children” are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year. These requirements also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to 581-015-2440.¹⁶

On December 1, 2022, the Parent communicated their concerns about the Student self-harming and also expressed concern about another student bothering the Student. On December 5, 2022, the District convened an IEP meeting and amended the Student’s IEP to address the Parent concerns. The Student did miss instruction when they were sent home early. However, the Student’s grades and character ratings described in the report cards demonstrated the Student was making progress academically, and the Student’s character ratings did not dramatically decrease. The Student’s IEP progress reports indicated that they were making progress toward their IEP goals.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁷
In the Matter of Redmond School District 2J
Case No. 023-054-010

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

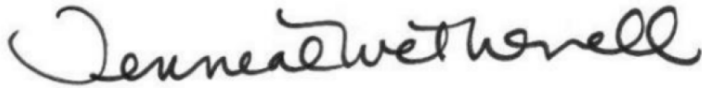
Action Required	Submissions	Due Date
<p>The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this Student receive training in each of the following areas:</p> <ul style="list-style-type: none"> • Parent Participation; • IEP Meeting Notices • IEP Review/Revision; and • Prior Written Notices. 	<p>Training agenda/materials to ODE Legal Specialist review/approval.</p> <p>Sign-in sheet for training.</p>	<p>June 15, 2023</p> <p>September 15, 2023</p>
<p>The District must ensure that all District administrators and their designees receive training in each of the following areas:</p> <ul style="list-style-type: none"> • Suspensions; 	<p>Training agenda/materials to ODE Legal Specialist for review/approval.</p>	<p>June 15, 2023</p>

¹⁶ OAR 581-015-2040(1)(3)

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

<ul style="list-style-type: none"> • Disciplinary Removals for Children with Disabilities, Including Informal Removals • Manifestation Determination Reviews 	Sign-in sheet for training.	September 15, 2023
--	-----------------------------	---------------------------

Dated: this 15th Day of May 2023



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: May 15, 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).)