

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Education of
Students with Disabilities
and the Corvallis School District 509J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-012

I. BACKGROUND

On May 2, 2023, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Corvallis School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Complaint alleged a violation of the IDEA regarding the Student, and other similarly situated students in the District. The Department confirmed receipt of this Complaint and forwarded the request to the District by email on May 2, 2023.

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 to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On May 8, 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 May 22, 2023.

On May 23, 2023, the District submitted a *Response* with suggested corrective action. Thereafter, the Department and the District discussed the issues in the case. The timeline was extended to facilitate these discussions. On August 24, 2023, the investigation resumed with a new timeline. The District was asked to submit its *Response* by September 8, 2023.

On August 28, 2023, the District submitted a *Response* to the allegations, and a summary of students allegedly impacted by the issues raised in the complaint. As part of the response, the District acknowledged that a lack of consistent OT staffing during the 2022-23 school year resulted in some students not receiving required OT service minutes outlined in those student’s IEPs. The District reported that it had provided the majority of the service minutes to the remaining students identified. The District denied the remainder of the allegations raised in the Complaint. On September 8, 2023, the District submitted documents requested in the May 8, 2023, *Request for Response*, including additional records selected by the Department’s Complaint Investigator drawn from the list of impacted Students provided by the District on August 28, 2023. The District submitted the following relevant items:

1. District *Response*

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

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

2. District Letter to Families, 02/21/2023
3. District Letter to Families, 03/21/2023
4. District Policy IGBAF-AR, 02/11/09; 04/12/23
5. Student 33: IEP, 06/09/2022
6. Student 33: Special Education Notice of Team Meeting, 06/06/2023
7. Student 33: Prior Notice of Special Education Action, 06/09/2022
8. Student 33, Meeting Notes, 06/09/2022
9. Student 33: IEP Snapshot
10. Student 33: Annual Academic and Functional Goals and Objectives Progress Report, 02/03/2023
11. Student 33: IEP, 05/22/2023
12. Student 33: Special Education Notice of Team Meeting, 05/15/2023
13. Student 33: Prior Notice of Special Education Action, 05/22/2023
14. Student 33: Meeting Notes, 05/22/2023
15. Student 33: IEP Snapshot, 05/23/2023
16. Student 33: Annual Academic and Functional Goals and Objectives Progress Report, 05/22/2023
17. District List of Students with OT as an IEP Service
18. Student 12: IEP, 10/25/2022
19. Student 12: Special Education Notice of Team Meeting, 10/11/2022
20. Student 12: Prior Notice of Special Education Action, 10/25/2022
21. Student 12: Meeting Notes, 10/25/2022
22. Student 12: IEP Snapshot, 10/25/2022
23. Student 12: Annual Academic and Functional Goals and Objectives Progress Report, 10/25/2023
24. Student 27: IEP, 03/03/2023
25. Student 27: Prior Notice of Special Education Action, 05/18/2023
26. Student 27: Meeting Notes, 04/17/2023
27. Student 27: IEP Snapshot, 03/03/2023
28. Student 27: Annual Academic and Functional Goals and Objectives Progress Report, 03/03/2023
29. Student 34: IEP, 05/03/2023
30. Student 34: Special Education Notice of Team Meeting, 04/13/2023
31. Student 34: Prior Notice of Special Education Action, 06/07/2023
32. Student 34: Meeting Notes, 06/07/2023
33. Student 34: IEP Snapshot, 05/03/2023
34. Student 34: Annual Academic and Functional Goals and Objectives Progress Report, 05/03/2023
35. Student 47: IEP, 12/15/2022
36. Student 47: Special Education Notice of Team Meeting, 12/05/2022
37. Student 47: Prior Written Notice of Special Education Action, 12/15/2022
38. Student 47: Meeting Notes, 12/15/2022
39. Student 47: IEP Snapshot, 12/15/2022
40. Student 47: Annual Academic and Functional Goals and Objectives Progress Report, 12/15/2022
41. Student 16: IEP, 05/16/2023
42. Student 16: Special Education Notice of Team Meeting, 06/09/2023
43. Student 16: Prior Notice of Special Education Action, 05/16/2023
44. Student 16: Meeting Notes, 05/16/2023
45. Student 16: IEP Snapshot, 05/16/2023
46. Student 16: Annual Academic and Functional Goals and Objectives Progress Report, 05/16/2023
47. Student 6: Student IEP, 04/24/2023

48. Student 6: Special Education Notice of Team Meeting, 04/13/2023
49. Student 6: Prior Notice of Special Education Action, 04/24/2023
50. Student 6: Meeting Notes, 04/23/2023
51. Student 6: IEP Snapshot, 04/24/2023
52. Student 6: Annual Academic and Functional Goals and Objectives Progress Report, 04/24/2023
53. Student 24: IEP, 05/09/2023
54. Student 24: Special Education Notice of Team Meeting, 05/03/2023
55. Student 24: Prior Notice of Special Education Action, 05/09/2023
56. Student 24: Meeting Notes, 05/09/2023
57. Student 24: IEP Snapshot, 05/09/2023
58. Student 24: Annual Academic and Functional Goals and Objectives Progress Report, 05/09/2023
59. List of Occupational Therapists utilized by the District

On August 15, 2023, and August 26, 2023, the Complaint Investigator interviewed the Parents regarding these issues. On September 29, 2023, the Complaint Investigator interviewed an Occupational Therapist who provided services to students in the District, the District's Special Education Coordinator, and the District's Student Services Coordinator, regarding the concerns raised in this Complaint. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from May 3, 2022 to the filing of this Complaint on May 2, 2023.

Allegations	Conclusions
<p>When IEPs Must Be In Effect (Related Services)</p> <p>The Parents alleged that the District systemically violated the IDEA by not providing the related service of occupational therapy to children with disabilities in accordance with their IEPs from September 2022 until the filing of this Complaint. The Parents allege that this situation impacted their Student and similarly situated students in the District.</p> <p>(OAR 581-015-2220; 34 CFR §§ 300.323 & 300.324)</p>	<p>Substantiated in Part</p> <p>The District identified 59 students with occupational therapy (OT) service minutes on their IEPs potentially impacted during the relevant complaint period.</p> <p>(a) The District acknowledged that it did not meet the OT consultation minutes of four students in the District and does not contest this allegation with regard to those students. The Department substantiates this portion of the allegation.</p>

	<p>(b) By the time this Complaint was filed, the District had met the OT service minutes of the remaining 55 students. The Department does not substantiate this allegation regarding the other students identified.</p>
<p>IEP Team</p> <p>The Parents alleged that the District systemically violated the IDEA by not having an occupational therapist in attendance at IEP team meetings for Students in the District who required occupational therapy services, from approximately September 2022, through to the date of filing of this complaint. The Parent’s allege that this situation impacted their Student and similarly situated students in the District.</p> <p>(OAR 581-015-2210; 34 CFR §§ 300.344, 300.321, 300.324(a)(3) & (b)(3))</p>	<p>Not Substantiated</p> <p>Related services providers, such as occupational therapists, attend IEP team meetings at the discretion of the IEP team. An occupational therapist was present for the IEP team meetings for the Student and for most of the students whose record were reviewed as part of this Complaint.</p>
<p>Prior Written Notice</p> <p>The Parents alleged that the District systemically violated the IDEA when the District did not provide prior written notice of the District’s intent to change the provision of a free appropriate public education, specifically in not providing OT services to children in the District whose IEPs included OT as a related service. The Parent’s allege that this situation impacted their Student and similarly situated students in the District.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Not Substantiated</p> <p>While ultimately unable to meet all of the OT service minutes for all students, the District never proposed a change to students’ OT service times, but rather announced its intent to honor and fulfill all OT service minutes.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Parent alleged that the District systemically violated the IDEA when, from September 2022 until to the filing of this Complaint, the District did not provide OT services to children in the District whose IEPs included OT as a related service, thereby denying the Student and similarly situated students a FAPE.</p> <p>(OAR 581-015-2190; 34 CFR §§ 300.500, 300.327, & 300.501(b))</p>	<p>Not Substantiated</p> <p>The District acknowledges the complexity of determining the impact of a lack of OT consultation services for District staff for a portion of the 2022-23 school year. Student records for the four students with substantiated findings reviewed as part of the investigation showed that students continued to make progress toward their IEP goals.</p>

REQUESTED CORRECTIVE ACTION

Individual Level:

1. Provision of technical assistance by the Department to the District to include thorough documentation of the District's efforts to repair harms due to loss of occupational therapy services for each and every individual student affected by the District's alleged noncompliance. Including the following package delivered to each impacted student's family and ODE;
 - a. Service plan as outlined in IEP, actual service log hours, and progress monitoring from the beginning of the school year through the execution of the repair process;
 - b. An evidence-based analysis of impact on each student that includes but is not exclusive to progress on goals, ability to access general education curriculum, capacity to participate in the school day and nonacademic activities alongside their peers, and the impact of staff turnover on the efficacy of consultative hours (e.g., time spent by three providers getting an orientation to student files in the same year);
 - c. A decision regarding how many hours of compensatory services the Student is owed, an explanation of the decision, and a concrete plan of how and when those hours will be provided;
 - d. A concrete plan describing how the District will monitor its future compliance with federal and state law and future provision of FAPE to the individual student and across the district;
 - e. A clear description of the Parents' procedural rights, including their right to access student records without undue delay, to request a meeting to discuss the violation and plan, and to request mediation or a due process hearing if they disagree; and
 - f. A letter containing items 1-5, personally addressed to the student and family and signed with wet-ink signatures from the district's Special Education Coordinator, Assistant Superintendent, Superintendent, and President of the School Board.

Systemic Level:

Oversight by the Department to ensure systemic improvements on the part of the District, specifically:

1. Conduct an investigation to analyze the causes for the noncompliance and failures of FAPE, including evidence review and interviews to determine how and when district leadership instructed case managers to communicate the loss of services to families and an analysis of conditions surrounding two subsequent occupational therapists' resignations;
2. Determine the appropriate interventions to address the causes of the noncompliance and systemic failure of FAPE to be implemented within one year of complaint decision;
3. Require the district to document the projected and actual timeline for all corrective actions, including the individual corrective actions described above;
4. Conduct a follow up audit of the district in spring 2024 to establish evidence of compliance with the law and implementation of corrective actions; and,
5. Require a public documentation and presentation to the school board describing the violations, ODE's findings from the investigation, the corrective action plan, and commitment to prevent future systemic failures of FAPE and procedural compliance.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 May 2, 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 or students' disabilities and special education history.

1. The Student in this case is 12 years of age and attends the sixth grade in a District middle school. The Student is eligible for special education under the categories of Autism Spectrum Disorder and Intellectual Disability.
2. During the period covered by the Complaint, the Student attended middle school in the District. The Student's IEP team noted that the Student is a joy to work with, is affectionate, observant, and enjoys physical pursuits. During the 2022-23 school year, the Student attended school in an intermediate life skills class with push-in supports for the general education environment, where the Student joins peers without disabilities for music, recess, and special events.
3. The Student's June 9, 2022, IEP included Specially Designed Instruction (SDI) in the areas of speech/language, fine motor skills (buttoning, zippering), adaptive physical education (frisbee use, engaging in PE activities), reading, math (rote count, identify numbers), classroom skills, behavior, and self-help skills (toileting, lunch routine, tooth brushing, and dressing).
4. The Student's June 9, 2022, IEP included related services such as speech-language pathology therapy, transportation, and augmentative communication services. The Student's IEP also included such supplementary aids, services, and accommodations as: visual supports/material, visual schedules for instruction and transitions, established routines, additional processing time for instructions and learning, alternative ways to show knowledge, 2:1 adult assistance, headphones when in noisy situations, access to augmentative communication devices, and a token board.
5. The Student's June 9, 2022, IEP also included supplementary aids and services for modifications to the education environment, including modifications to instructional materials such as individual curriculum and modified curriculum.
6. The Student's June 9, 2022 IEP also included program modifications and support for school personnel serving the Student including: augmentative communication, occupational therapy, speech-language pathology, and autism consultation. The Student's IEP provided 450 minutes per semester of occupational therapy consultation for staff assisting the Student. The Occupational Therapist attended the Student's June 9, 2022, IEP team meeting.
7. As part of its *Response*, the District acknowledged that on September 16, 2022, one of the District's occupational therapists left their position. The District was unable to find a replacement until January 11, 2023. The District also provided IEP progress reports for the Student (Student 33). As of February 3, 2023, the Student was making progress toward most of their IEP goals.
8. On February 21, 2023, the District sent a letter to families in the District explaining that the Occupational Therapist employed with the District at the start of the 2022-23 school year had left their position and that the District had then retained a new occupational therapist and would be utilizing services from the regional education service district (ESD) for additional OT consultation services. The letter noted in part that the District would "...be

able to meet the required OT consultation minutes for most of [the] students for the 22-23 school year. However, [the District recognized] that in some cases even with the hiring of [the replacement occupational therapist that the District would] be unable to meet the required OT minutes.”

9. On March 21, 2023, the District sent a second letter to families in the District indicating that the Occupational Therapist hired in January had also resigned. As a result, the District continued the search for a replacement OT, and would be adding services from the local ESD, as well as virtual OT support. The letter read in relevant part, “The district, in partnership with [the contracted OT service provider], is committed to tracking the identified minutes on the IEP, and working to make sure that students receive all their service time as indicated on the IEP. It should also be known that the other elements (services, accommodations, and modifications) of the IEP will continue to be implemented.”
10. On May 2, 2023, the Parents filed this Complaint. The Complaint alleged that the District had failed to provide OT services to the Student, and other students in the District, in accordance with their IEPs, from approximately September 2022 through to the filing of the Complaint.
11. On May 4, 2023, the District hired a replacement occupational therapist.
12. On May 22, 2023, the Student’s (Student 33) IEP team met to review the Student’s IEP. Present for this meeting was the Occupational Therapist for the District. During the IEP team meeting, the Occupational Therapist provided an update regarding the Student’s specific OT needs, recommendations, and services. As a result of the meeting, the Student’s OT consultation services remained 450 minutes per semester.
13. As part of the meeting the Parents discussed the impact of the lack of OT support for staff. The Student’s IEP team discussed the possibility that, due to the lack of OT support, that staff may not have had sufficient strategies for data tracking regarding specific self-help skills and independence goals. As a result of this discussion, the team determined that: “for accuracy and fidelity we should modify the data tracking.”
14. On July 25, 2023, the Complaint Investigator interviewed the Parents. The Parents expressed concern with the timeline for notifying families impacted by the lack of OT services in the District. The Parents expressed the hope that the District would be more transparent regarding this situation. They further reported that the lack of OT services came to their attention through the lack of an IEP goal update rather than through direct notification.
15. On August 28, 2023, the District submitted a *Response*. The District acknowledged that due to the staffing shortages that staff members working with some students with OT consultation minutes as part of their IEPs did not receive all of the minutes outlined in their IEPs, and that the District was taking steps to address the shortfall. The District reported that by the end of the 2022-23 school year, four students had not had their OT consultation minutes provided largely due to the lack of OT staffing. The District also reported that student attendance issues resulted in some consultation services not being delivered, but it is unclear how a lack of student attendance precludes consultation from one professional to another.
16. Accompanying the District’s *Response* was a list of students in the District during the 2022-23 school year with OT service minutes outlined in their IEPs. The District found 59

students with OT service minutes as part of their IEPs attending school in the District during the complaint period.

17. The Complaint Investigator requested additional records related to Students with OT service minutes impacted by the lack of OT staffing. The Complaint Investigator reviewed the records for Student 33, Student 12, Student 27, Student 34, Student 47, Student 16, Student 6, and Student 24. These students represented a variety of OT consultation minutes required, special education eligibility categories, and ages. Based on a review of these records, the Complaint Investigator conducted interviews with District staff to obtain further clarification.
18. The IEP team meetings for Student 12, Student 27, and Student 24 did not include an occupational therapist.
 - a. Student 12, a 12th grade student during the 2022-23 school year, was eligible for special education under the eligibility category of Autism Spectrum Disorder and had an IEP in effect dated October 25, 2022. Student 12's October 25, 2022, IEP included 120 minutes per year of OT consultation for school personnel between October 26, 2022, and October 24, 2023. As of the date of the District's *Response*, the District reported that the Student had 60 minutes remaining during Student 12's current IEP cycle.
 - b. Student 27, a third-grade student during the 2022-23 school year, was eligible for special education under the eligibility category of Orthopedic Impairment and had an IEP in effect dated March 1, 2023. Student 27's IEP included 360 minutes per year of occupational therapy consultation for school personnel between March 3, 2023, and February 29, 2024. As of the date of the District's *Response*, the District reported that 200 minutes of OT consultation remain during Student 27's current IEP cycle.
 - c. Student 24, a second-grade student during the 2022-23 school year, was eligible for special education under the eligibility category of Autism Spectrum Disorder and had an IEP in effect dated May 9, 2023. Student 24's IEP included 360 minutes per year of occupational therapy consultation for school personnel between May 9, 2023, and May 7, 2024. As of the date of the District's *Response*, the District reported that 165 consultation minutes remain during Student 24's current IEP cycle.
19. The District's OT was present for the IEP team meetings for Student 34, Student 47, Student 16, and Student 6.
 - a. Student 34, a 10th grade student during the 2022-23 school year, was eligible for special education under the eligibility category of Autism Spectrum Disorder and had an IEP in effect dated May 3, 2023. The Student's IEP was amended on June 7, 2023. The Occupational Therapist was present for the June 7, 2023, meeting and made recommendations for OT services that led to the addition of OT consultation minutes for staff members working with the Student. Student 34's May 3, 2023, IEP included 450 minutes per year of OT consultation for school personnel between May 3, 2023, and May 1, 2024. In addition, the Student's IEP included 120 minutes of occupational therapy consultation for school personnel for summer session recovery services for June 19, 2023, through August 24, 2023. As of the date of the District's *Response*, the District had fulfilled the Student's OT consultation minutes.
 - b. Student 47, a fifth-grade student during the 2022-23 school year, was eligible for special education under the eligibility categories of Autism Spectrum Disorder and Visual Impairment and had an IEP in effect dated December 15, 2022. Student 47's December 15, 2022, IEP included 120 minutes per year

of OT consultation for school personnel between December 16, 2022, and December 14, 2023. As of the date of the District's *Response*, the District had fulfilled the Student's OT consultation minutes.

- c. Student 16, a first-grade student during the 2022-23 school year, was eligible for special education under the eligibility categories of Visual Impairment and Other Health Impairment, and had an IEP in effect dated May 16, 2023. Student 16's May 16, 2023 IEP included 240 minutes per year of occupational therapy consultation for school personnel between May 17, 2023, and May 14, 2023. As of the date of the District's *Response*, the District reported that the Student had 85 consultation minutes remaining during Student 16's current IEP cycle.
 - d. Student 6, a kindergarten student during the 2022-23 school year, was eligible for special education under the eligibility category of Developmental Delay and had an IEP in effect dated April 24, 2023. Student 6's April 24, 2023 IEP included 180 minutes per year of OT consultation for school personnel between April 25, 2023, and April 22, 2024. As of the date of the District's *Response*, the District reported that the Student had 30 consultation minutes remaining during Student 16's current the IEP cycle.
20. Student 2, 10, 29, and 33, were reported as impacted by the District's lack of OT staff such that their OT consultation minutes were not provided according to their IEPs in effect during the 2022-23 school year.
 21. On September 29, 2023, the Complaint Investigator interviewed an Occupational Therapist who works with the District, the Special Education Coordinator, and the Student Services Coordinator.
 22. The Occupational Therapist interviewed is employed by the regional ESD and provided services to the District and students relevant to this matter. The Occupational Therapist explained that their services are often misunderstood as primarily involving direct therapy to students like the services provided by physical therapists and speech-language pathologists. However, most of the services provided are consultation services with District staff whereby the Occupational Therapist provides ongoing assistance to staff in the modification and delivery of specially designed instruction, accommodations, and behavior supports. The Occupational Therapist provided an overview of their work in the case when a district required their services either mid-year, or with students with whom they are not familiar. The Occupational Therapist reported that most of their work is coordinated with a student's case manager. When beginning their work with a student, they would review the student's IEP goals, and the student's progress toward those goals. In consultation with the case manager and special education staff, the Occupational Therapist would make recommendations for modifications to the curriculum or education environment to support the student's goals. Examples provided by the Occupational Therapist included creating fidgets, quiet settings for eating, or creating breaks during the school day to support the student's needs. Much of the Occupational Therapist's support focused on activities of daily living, feeding, and fine motor skills.
 23. The Occupational Therapist noted that service times are generally allotted as a set number of minutes per year, or per semester, to allow the Occupational Therapist and the student's case manager and IEP team to determine when a particular student or staff might need assistance. The Occupational Therapist stressed the importance of this flexibility to respond to individual student's needs over the course of a year or semester. The Occupational Therapist noted that students typically require additional support at the start of the semester or year, or when services and supports are altered.

24. The Occupational Therapist explained that ideally, they would attend student IEP team meetings where they can give input regarding services and supports. The Occupational Therapist also observed that in other scenarios they have ongoing dialogue with the student's case manager such that the case manager can speak to the required OT consultation time, and that their consultation time is ultimately an IEP team decision. The OT noted that the most important time for their attendance at IEP meetings is the initial IEP or when significant revisions are made. The Occupational Therapist further observed that the consultation role is largely misunderstood, such that parents generally advocate for more OT service time with the thought that they provide direct service to students.
25. The Occupational Therapist also reported that fine motor skills generally associated with the educational environment, such as grip strength issues related to writing are part of the education and skills for general education and special education teachers. An occupational therapist is generally consulted when fine motor skills impact a variety of activities or learning objectives for a student. The occupational therapist can then assess the various areas of needs and make recommendations to staff to address the students' needs. The Occupational Therapist provided numerous examples of such accommodations for handwriting and hand strength.
26. The Special Services Coordinator and the Student Services Coordinator explained that the Occupational Therapist that worked for the District at the start of the 2022-23 school year left the District abruptly, leaving little time to find a replacement. The District reported that, in prior years, the District utilized services from the regional ESD but had moved to employ an occupational therapist directly. When the Occupational Therapist left, the District initially sought to replace that person, but faced challenging market forces and a competitive labor market. The District made efforts to find a replacement and had several occupational therapists commit to employment only to cancel acceptance of employment. This situation led the District to seek contracted OT services and support from the regional ESD.
27. On September 29, 2023, the Complaint Investigator interviewed the Special Education Coordinator and the Student Services Coordinator. The Student Services Coordinator explained the District's difficulty finding an occupational therapist to replace the staff member who left the District. They noted that the market for occupational therapists is competitive with tremendous turnover in employment. In years past, the District moved to employ an OT full time, rather than rely on the regional ESD. Having discontinued the use of the ESD services, the District was at a disadvantage when starting the search for a replacement, because the ESD did not immediately have capacity to support them. The Special Education Coordinator observed that the ESD was not fully staffed and was unable, in the fall of 2022, to provide OT services. Through the fall of 2022, the District made several employment offers, all of which fell through. The District later hired an occupational therapist who served for two months before leaving the position. The District then moved to a mix of virtual services and occupational therapists provided through the regional ESD.
28. The Special Education Coordinator, and the Student Services Coordinator, explained that everything an occupational therapist needs to know about a student's OT needs would be in the Student's IEP. The number of hours and the frequency of services would help the occupational therapist and the case manager build a schedule to check in with staff and follow-up on supports. The needs of the student and staff change throughout the year, necessitating flexibility in hours over the course of the semester or year. In the case of an occupational therapist who departed employment, any new occupational therapist would

reference the notes left by the departed occupational therapist and consult with the case manager to learn about students' needs.

29. The Special Education Coordinator and the Student Services Coordinator explained that, generally when an occupational therapist is not present at a student's IEP team meeting, they would have reported required information to the student's case manager for them to relay to the IEP team. The Special Education Coordinator reported that occupational therapists are related services providers and assist with existing academic goals. Occupational therapists consider what barriers or hurdles there may be for those academic needs.
30. The Complaint Investigator asked about the impact to students of the lack of OT services when the District was without OT services between September 16, 2022, and January 22, 2023. The District was asked to address how students were impacted by a lack of: (a) OT service time during much of the fall of 2022, and (b) uniform availability of service time throughout the school year due to a lack of OT staff. The Special Education Coordinator acknowledged that there was likely some impact to students, and further observed the difficulty in measuring that impact. The District noted that flexibility regarding the delivery time is designed into the OT service minutes by prescribing time in yearly allotments, rather than by semester, or monthly. The Special Education Coordinator suggested that the impact would likely be seen in each student's progress toward their IEP goals, given that OT as a related service, was designed to support student's existing goals.
31. With regard to the Student 33, the Student of the Parents who filed this Complaint, District staff observed that Student 33 had needs and OT service time significantly different from other students. The District has since addressed the lack of staffing for Student 33 by offering compensatory education and service times.

IV. DISCUSSION

When IEPs Must Be In Effect (Related Services)

The Parents alleged that the District systemically violated the IDEA by not providing the related service of occupational therapy to children with disabilities in accordance with their IEPs from September 2022 until the filing of this Complaint. The Parents allege that this situation impacted their Student and similarly situated students in the District.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability. School districts must provide special education and related services to a child with a disability in accordance with an IEP. Districts must also ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation.³ The IEP must include the projected dates for the initiation of services and the anticipated frequency, amount, location, and duration of the services described.⁴

The District reports that the Occupational Therapist employed by the District departed employment on September 16, 2022. Thereafter, the District searched for a replacement but, despite making offers of employment to several individuals, was unable to secure a replacement until January 11, 2023. The replacement Occupational Therapist later left the position,

³ OAR 581-015-2220(1)—(3)

⁴ OAR 581-015-2200(1)(e)

whereupon the District secured services through the regional ESD and through virtual service providers. On May 4, 2023, the District hired a replacement occupational therapist. The District reported working to assess the needs of students and assist them through other specialists in the District. The District further reported that, by the time of the filing of this Complaint, it had provided the required OT services, except for four students. The Parent's Student, Student 33, was one of the four students impacted.

The District further reported that it was able to meet the service minutes of most students due to student IEPs being written with flexibility in mind. IEPs reviewed by the Department's Complaint Investigator generally listed OT service minutes in terms of minutes per year, rather than a more specific schedule. District staff and the OT providing services to the District explained that this allowed staff working with students to access OT support when the students' needs required them. The IEPs reviewed provided OT consultation time to District staff rather than direct OT services to students.

Regarding the four students for whom the District did not meet the prescribed service minutes, the District did not contest this allegation. With regard to the remaining 55 students, the District provided the required OT services.

The Department substantiates this allegation in part.

IEP Team

The Parents alleged that the District systemically violated the IDEA by not having an occupational therapist in attendance at IEP team meetings for students in the District who required occupational therapy services, from approximately September 2022, through to the date of filing this complaint. The Parent's allege that this situation impacted their Student, and similarly situation students in the District.

School districts must ensure that the IEP team for each child with a disability includes specific participants including one or both of the student's parents, at least one regular education teacher of the child, one special education teacher or special education provider of the child, a representative of the school district, and an individual who can interpret the instructional implications of evaluation results. Other individuals, including related services personnel as appropriate, may be invited by the parent or the school district. A member of the IEP team may not be required to attend an IEP meeting in whole or in part if the member is not necessary because that member's area of the curriculum or related service is not being modified or discussed at the meeting. Similarly, if the member submits in writing to the parent and the IEP team, their input regarding the development of the IEP before the meeting, their attendance may not be necessary.⁵ The attendance of related services providers is discretionary.⁶

The Occupational Therapist attended the Student's (Student 33), June 9, 2022 IEP team meeting. A different occupational therapist also attended the Student's May 22, 2023, IEP team meeting. In addition, there was an occupational therapist present for most IEP team meetings for the students' whose records were reviewed. The Occupational Therapist interviewed as part of this matter reported that, while ideal, an OT is not always required to attend an IEP meeting, as they are generally in such close communication with a student's case manager that the case manager can speak to the consultation time required for a student. District staff, including the

⁵ OAR 581-015-2210
⁶ 34 CFR § 300.321(6)

occupational therapist from the regional ESD, reported that numerous staff who work with a student can articulate the need for OT consultation, given that staff receive consultation minutes in most cases, rather than an occupational therapist providing direct services to a student.

The Department does not substantiate this allegation.

Prior Written Notice

The Parents alleged that the District systemically violated the IDEA when the District did not provide prior written notice of the District's intended change in the provision of a free appropriate public education, specifically intent to not provide occupational therapy services, to children in the District whose IEPs included occupational therapy as a related service. The Parents allege that this situation impacted their Student, and similarly situated students in the District.

School districts must provide prior written notice to the parent of a child receiving special education services when a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The notice must include a description of the action proposed or refused by the district, and an explanation of why the district proposed or refused to take the action. The notice must also include a description of each evaluation, test, record, or report the district used as a basis for the proposed or refused action. The district should include in the notice a statement of the parent's procedural safeguards, and how a copy of the Notice of Procedural Safeguard may be obtained.⁷

The District sent families of students for whom staff received OT consultation two communications during the 2022-23 school year. On February 21, 2023, the District sent a letter to families notifying them that the District's Occupational Therapist left their position and that the District had hired a replacement occupational therapist. On March 21, 2023, the District sent a second communication reporting that the Occupational Therapist hired in February had since left the position. The District further reported its intent to seek virtual OT services as well as OT services from the regional ESD. The District provided additional communication stating the District's commitment "to tracking the identified minutes on the IEP and working to make sure that students receive all their service time as indicated on the IEP." District staff report that the search for a replacement occupational therapist was unexpectedly long and fraught with setbacks. The District reports having not expected the search for a replacement occupational therapist to take as long as it did. The District did not propose or refuse to initiate or change the provision of OT services for these students. There was no OT available to provide them and the District worked within their capacity to mitigate this impact.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parents alleged that the District systemically violated the IDEA when, from September 2022 until the filing of this Complaint, the District did not provide occupational therapy services to children in the District whose IEPs included occupational therapy as a related service. The

⁷ OAR 581-015-2310(1), (2), (3)

Parents allege that this conduct denied the Student and similarly situated students in the District a FAPE.

School districts must provide FAPE to all school-age children with disabilities for whom the district is responsible.⁸ Procedural violations may only lead to finding that a child did not receive a FAPE if they: “(I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child, or (III) caused a deprivation of educational benefits.”⁹ In determining whether a student was denied a FAPE, courts review a district’s compliance with both the procedural and substantive components of the Student’s education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirements to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.¹⁰

The District acknowledged that four students, including the Student whose Parents filed the Complaint (Student 33), did not have OT consultation services provided to staff members on their behalf during the 2022-23 school year. During interviews with District staff, the District acknowledged the difficulty in assessing the impact on students of the lack of OT consultation services. District staff and the Occupational Therapist for the District noted that OT service times were for District staff to consult with the OT to adapt SDI, accommodations, and curriculum modifications to the ongoing needs of students, rather than the provision of direct therapy to students. From the records available, the students appear to have made progress toward their IEP goals.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION
In the Corvallis School District
Case No. 23-054-012

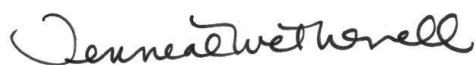
Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions	To Be Completed As Soon as Possible But No Later Than
1. The District will review the educational records and circumstances of each student who had occupational therapy identified as a related service on their IEP during the 2022-23 school year at the four schools where the provision of OT consultation services did not occur as required. The Department understands that the District has	Updated information to be provided to ODE.	November 1, 2023

⁸ OAR 581-015-2040
⁹ 20 USD § 1415(f)(3)(E)(ii)
¹⁰ *Andrew F.*, 137 S.Ct. at 999.

<p>already identified the students impacted. The District will provide an update to this information to show any remaining consultation time owed to staff members based on this review.</p> <p>2. The District will provide all services that were missed.</p> <p>3. The District will discuss whether compensatory OT services are required for each student for whom services were not provided, in consultation with the parents/guardians of each impacted student at each student's next IEP meeting. The District must ensure an occupational therapist is present for these discussions.</p> <p>4. The District will provide compensatory services if and as determined necessary by each IEP team.</p>	<p>Evidence showing provision of services.</p> <p>IEP meeting paperwork and any PWNs issued related to this discussion.</p> <p>Evidence of delivery of any required compensatory OT services.</p>	<p>June 1, 2024</p> <p>June 1, 2024</p> <p>September 10, 2024</p>
<p>5. The District will provide training to staff on:</p> <ul style="list-style-type: none"> • The District's obligation to fully implement IEPs, even in light of staffing shortages; • Review and Revision of IEPs; • IEP content requirements, especially related to the direct provision of related services to students when required; and • Communicating with families about staffing shortages and the District's ongoing obligation to enable FAPE. 	<p>Training materials and agenda provided to ODE</p>	<p>June 1, 2024</p>

Dated: this 19th Day of October 2023



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: October 19, 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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)