

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of ) FINDINGS OF FACT,  
Portland Public Schools ) CONCLUSIONS,  
) AND FINAL ORDER  
) Case No. 23-054-017

**I. BACKGROUND**

On May 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 Portland Public School District (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.<sup>1</sup> This timeline may be extended if the Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On May 23, 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 June 7, 2023.

On June 7, 2023, the District submitted documents requested in the May 23, 2023, *Request for Response*. The District submitted the following relevant items:

- 1) District Response
- 2) Disability Statement, Emotional Behavior Disability (60) Criteria, 03/21/2023
- 3) Eligibility Summary Statement, 03/21/2023
- 4) Special Education Placement Determination, 04/07/2023
- 5) Prior Written Notice, 02/03/2023
- 6) Prior Written Notice, 03/21/2023
- 7) Disability Statement, Other Health Impairment (80) Criteria, 03/21/2023
- 8) Parent/Guardian Consent for Individual Evaluation, 02/13/2023
- 9) Prior Notice and Consent for Initial Provision of Special Education Services, 04/05/2023
- 10) Parent/Guardian Consent for Individual Evaluation, 02/13/2023
- 11) Psycho-Educational Report, 03/21/2023

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- 12) Eligibility Summary Statement, 03/21/2023
- 13) Prior Notice and Consent for Initial Provision of Special Education Services, 04/05/2023
- 14) Eligibility Summary Statement, 03/21/2023
- 15) Medical Statement or Health Assessment Statement, 03/02/2023
- 16) Student IEP, 04/07/2023
- 17) Individual Student Safety Plan, 05/19/2023
- 18) Notice of Team Meeting, 05/18/2023
- 19) Prior Written Notice, 05/01/2023
- 20) Prior Written Notice, 05/19/2023
- 21) Meeting Minutes, 03/21/2023
- 22) Meeting Minutes, 06/19/2023
- 23) Meeting Minutes, 04/24/2023
- 24) Meeting Minutes, 04/07/2023
- 25) Manifestation Determination, 02/13/2023
- 26) Manifestation Determination, 05/19/2023
- 27) Notice of Team Meeting, 02/03/2023
- 28) Notice of Team Meeting, 03/14/2023
- 29) Email: Confirmation - Summer Acceleration Academy 2022, 05/24/2023
- 30) Email: Re: [Student] Reinstatement meeting, 06/05/2022
- 31) Email: Re: Meeting, 06/05/2022
- 32) Email: Re: Planning meeting, 06/16/2022
- 33) Email: Family info questions for SIT, 09/12/2022
- 34) Email: Homework Form and Counselor Observations, 09/16/2022
- 35) Email: Letter of in school suspension, 09/19/2022
- 36) Email: Re: Emails.; 09/19/2022
- 37) Email: Student Rights and Responsibilities handbook, and [Student's] climate handbook., 09/19/2022
- 38) Email: Re: Letter of in school suspension, 09/20/2022
- 39) Email: [Student's] Day!, 09/21/2022
- 40) Email: Re: Connecting to talk about Title IX, 09/21/2022
- 41) Email: Re: [Student's] Day, 09/22/2022
- 42) Email: TIX Update- Met [Student] today, 09/26/2022
- 43) Email: Re: 7300CP-7B - Math: Compacted Yr 1 ([Student]) – recess, 09/26/2022
- 44) Email: Today, 09/26/2022
- 45) Email: Letter of Suspension - 9/27/22, 09/27/2022
- 46) Email: Letter of Suspension Pending Expulsion - 9/29/22, 09/29/2022
- 47) Email: No Contact Orders and interview followup, 09/30/2022
- 48) Email: Re: Time sensitive and Immediate, 10/04/2022
- 49) Email: Monday's TIX Disciplinary Hearing, 10/07/2022
- 50) Email: URGENT. IMMEDIATE, 09/09/2022
- 51) Email: [Student] referral details.; 10/09/2022
- 52) Email: Complaint process, 10/10/2022
- 53) Email: [Student's] File,. 10/10/2022
- 54) Email: Letter from Hearing, 10/11/2022
- 55) Email: Missing work report, 10/12/2022
- 56) Email: Re: Missing work, 10/12/2022
- 57) Email: Re: Meeting, 10/12/2022

- 58) Email: Re: Missing Work, 10/12/2022
- 59) Email: Your transfer request, 10/12/2022
- 60) Email: Re: Today – 10/11/22, 10/12/2022
- 61) Email: Re: Meeting, 10/13/2022
- 62) Email: Re: Today - 10/11/22, 10/13/2022
- 63) Email: TAG nomination form, 10/17/2022
- 64) Email: Appeal Follow up, 10/17/2022
- 65) Email: [Student's] Day, 10/18/2022
- 66) Email: Plan, 10/18/2022
- 67) Email: Re: [Student's] day, 10/19/2022
- 68) Email: Appeal Finding, 10/20/2022
- 69) Email: Alternative Plan Draft, 10/21/2022
- 70) Email: Re: [Student's] day, 10/21/2022
- 71) Email: Letter of Suspension - 10/24/22, 10/24/2022
- 72) Email: Incident Report from Wednesday 10-26, 10/28/2022
- 73) Email: Question for you!, 10/28/2022
- 74) Email: Suspension Letter Nov 3 2022, 11/03/2022
- 75) Email: [Student's] afternoon, 11/29/2022
- 76) Email: Re: SSC Visit, 11/29/2022
- 77) Email: Re: Re-engagement meeting for [Student], 12/11/2022
- 78) Email: [Student's] Progress Report, 12/16/2022
- 79) Email: Re: Leave Alone Forms, 01/03/2023
- 80) Email: Re: 7100-4N - Language Arts 7 ([Student]) – [Student] in class today, 01/12/2022
- 81) Email: BMS: Update regarding [Student], 01/12/2023
- 82) Email: Student Handbook, 01/12/2023
- 83) Email: Follow-up, 01/12/2023
- 84) Email: Hearing Schedule, 01/18/2023
- 85) Email: Re: Hello, 01/18/2023
- 86) Email: Re; IEP, 01/24/2023
- 87) Email: hearing, 01/30/2023
- 88) Email: Re: REQUEST AN ASSESSMENT FOR SPECIAL EDUCATION SERVICES FOR MY [STUDENT], [Student], 01/31/2023
- 89) Email: Re: Update, 01/31/2023
- 90) Email: Re: REQUEST AN ASSESSMENT FOR SPECIAL EDUCATION SERVICES FOR MY [STUDENT], [Student], 02/02/2023
- 91) Email: [Student] 769728 , evaluation planning, Manifestation Determination, 02/12/2023
- 92) Email: Re-entry meeting, 02/16/2023
- 93) Email: Re: Meeting, 02/28/2023
- 94) Email: Fwd: Invitation to Complete Questionnaire, 03/02/2023
- 95) Email: Safety Plan Update, 03/02/2023
- 96) Email: checking in, 03/05/2023
- 97) Email: Re: Safety Plan, 03/08/2023
- 98) Email: [Student] Dev Hx, 03/13/2023
- 99) Email: Re: Transportation Document, 03/13/2023
- 100) Email: [Student] Dev Hx, 03/13/2023
- 101) Email: Re: Transportation Document, 03/13/2023

- 102) Email: Re: Bus, 03/16/2023
- 103) Email: Re: Follow-up, 03/16/2023
- 104) Email: Re: [Student] Initial Evaluation Meeting, 03/21/2023
- 105) Email: Re: Meeting Minutes, 03/21/2023
- 106) Email: Re: checking in, 03/23/2023
- 107) Email: Re: Art class, 03/23/2023
- 108) Email: Re: today, 03/24/2023
- 109) Email: Re: [Student] @ [School], 04/03/2023
- 110) Email: [School]: Reinstatement Wednesday 4/5, 04/04/2023
- 111) Email: Re: [Student] @ [School], 04/05/2023
- 112) Email: Initial IEP and Placement Discussion, 04/07/2023
- 113) Email: Re: Initial IEP and Placement Discussion, 04/07/2023
- 114) Email: Re: parent would like a phone call , 04/05/2023
- 115) Email: Meeting, 04/10/2023
- 116) Email: Re: Grades, 04/12/2023
- 117) Email: Re: 59012-6BN - Art B ([Student]) – [Student’s] art class, 04/13/2023
- 118) Email: Phone call., 04/17/2023
- 119) Email: Re: 5200MW2-2N - Social Sciences B ([Student]) - Social science update - date update, 04/18/2023
- 120) Email: [School] Notification: Student Behavior – [Student], 04/19/2023
- 121) Email: Re: [Student] 769728 IEP, 04/24/2023
- 122) Email: incident, 04/25/2023
- 123) Email: video games on laptop, 04/26/2023
- 124) Email: Re: Sealed or removed files, 04/27/2023
- 125) Email: cookie, 04/27/2023
- 126) Email: Meeting, 04/27/2023
- 127) Email: Following-up, 04/28/2023
- 128) Email: Re: Suspension on Monday, 04/30/2023
- 129) Email: Re: Consent for initial special education services, 05/04/2023
- 130) Email: [Student] @ [School], 05/08/2023
- 131) Email: Scheduling for [Student], 05/10/2023
- 132) Email: [Student] Hearing Notice, 05/12/2023
- 133) Email: Re: Student back in School, 05/12/2023
- 134) Email: complaint to pps, 05/15/2023

On June 20, 2023, the Department’s Complaint Investigator contacted the District’s legal counsel for additional information in this case. The Parent did not respond to requests for additional information in this Complaint. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has 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 17, 2022, to the filing of this Complaint on May 16, 2023.

Allegations	Conclusions
<p><b>Consent</b></p> <p>It is alleged that the District violated the IDEA when it failed to obtain the Parent’s consent prior to the initial provision of special education services to the Student.</p> <p>(OAR 581-015-2090; 34 CFR §§ 300.9; 300.154, 300.300 &amp; 300.622)</p>	<p><b>Not Substantiated</b></p> <p>The record in this case demonstrates that the District provided services to the Student through a safety plan, not that the Student’s IEP was implemented prior to Parent consent.</p>
<p><b>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</b></p> <p>It is alleged that the District violated the IDEA when it did not conduct a manifestation determination before initiating a disciplinary removal of the Student, regarding behavior displayed by the Student that constituted a violation of the student code of conduct.</p> <p>(OAR 581-015-2415; 34 CFR §§ 300.504(a)(3), 300.500, 300.531, 300.532 &amp; 300.533)</p>	<p><b>Not Substantiated</b></p> <p>The District suspended the Student for less than 10 school days prior to holding a manifestation determination. The District determined that the Student’s behavior was a manifestation of their disability.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<p>The Complainant requests:</p> <ol style="list-style-type: none"> <li>1. That a manifestation determination be conducted;</li> <li>2. That the District return the Student to the educational placement they were in prior to the alleged violation of the student code of conduct; and</li> <li>3. That the District obtain the input and consent of the Parent before implementing an IEP or special education services.</li> </ol>

### **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 May 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 in this matter is in the seventh grade and attends school in the District. The Student is eligible for special education under the eligibility category of Other Health Impairment (80).

- 2) The Student is compassionate, funny, and frequently has positive interactions with peers. The Student is a problem-solver, a voracious reader, and excels in social studies.
- 3) On September 19, 2022, the Student received an in-school suspension, related to peer bullying.
- 4) On September 20, 2022, the District sent the Parent a structured break plan and updated individual safety plan for the Student in response to behaviors leading to the Student's September 19, 2022, in-school suspension.
- 5) On September 21, 2022, the Student's Teacher sent the Parent an email documenting the Student's off-task behavior, computer usage, and discussing the District's tracking of factors affecting the Student's behavior. The District sent periodic reports of the Student's behavior in class to the Parent, documenting behaviors conducive to learning as well as those that obstructed the Student's education.
- 6) On September 26, 2022, the District sent an email to the Parent informing them of verbalizations on the part of the Student that caused peer conflict.
- 7) On September 27, 2022, the District sent an email to the Parent informing them of the Student's out-of-school suspension.
- 8) On September 29, 2022, the District sent an email to the Parent informing them of the Student's suspension and pending expulsion. The underlying conduct was similar to that which the Student engaged in that resulted in the September 19, 2022, suspension. The District suggested counseling resources for the Student, requested the Parent provide consent for the District to conduct a functional behavioral assessment (FBA) and develop a behavioral support plan (BSP), and recommended holding a special education evaluation planning meeting.
- 9) During this period, the District continued investigating matters related to the Student's discipline and conduct.
- 10) On October 4, 2022, the Parent sent an email to the District expressing concerns about the scheduled expulsion hearing. District representatives agreed to meet with the Parent to hear their concerns.
- 11) On October 7, 2022, the District sent the Parent an email outlining the format of the upcoming October 10, 2022 expulsion hearing, including interview notes from the District's investigation, a list of attendees, and their roles.
- 12) On October 11, 2022, the District sent the Parent an email with the expulsion hearing determination and a plan for the Student's return to school.
- 13) On October 11, 2022, the District sent the Parent an email documenting the Student's off-task behavior and quarrel with staff.

- 14) On October 12, 2022, the District sent the Parent an email documenting the Student's new school schedule, cohort, and overview of new expectations regarding behavior. The District further noted that the Student appeared not to be in agreement with the plan around the requirements of their return to school.
- 15) On October 12, 2022, the Parent sent an email to the District seeking to appeal the outcome of the Student's expulsion hearing.
- 16) On October 17, 2022, the District sent an email to the Parent suggesting a meeting time to discuss their requested appeal.
- 17) On October 18, 2022, the District sent an email to the Parent regarding the Student's progress with their new schedule, behavior, and the Student's expressed resistance to the break schedule to address the Student's behaviors.
- 18) On October 19, 2022, the District sent an email to the Parent documenting concerning comments made by the Student to a peer. On the same date, the Parent responded, offering context for the comments.
- 19) On October 20, 2022, the District sent an email to the Parent documenting the success of the break plan implemented for the Student.
- 20) On October 20, 2022, the District sent the Parent a letter documenting the outcome of their appeal of the expulsion hearing.
- 21) On October 21, 2022, the District sent the Parent a draft of revisions made to the plan enacted following the Student's expulsion hearing.
- 22) On October 21, 2022, the District sent an email to the Parent documenting the Student's success with the plan of breaks and encouraging the Student's communication regarding needs throughout the day.
- 23) On October 24, 2022, the District sent an email to the Parent with a letter documenting an out-of-school suspension for the Student.
- 24) On October 24, 2022, the Parent sent an email to the District requesting a reinstatement meeting to ensure the Student's prompt return to school following the suspension.
- 25) On October 28, 2022, the District sent an email to the Parent documenting an incident of verbal aggression from the Student towards a peer. The District further informed the Parent that the matter would be addressed through the Student's alternative plan to address behavior and verbalizations. The District also informed the Parent of changes to the Student's schedule and interventions implemented to assist the Student's social skills and collaborative working relationships.
- 26) On November 3, 2022, the Student received an out-of-school suspension.

- 27) On November 29, 2022, the District sent an email to the Parent documenting the Student's positive behavior in the face of peer antagonism.
- 28) On January 12, 2023, The District sent an email to the Parent documenting that the Student plays computer games during the school day when they should not. The Parent sent an email to the District acknowledging the struggle, and expressing an interest in working collaboratively with the District to find solutions.
- 29) On January 18, 2023, the District sent the Parent notice of an out-of-school suspension for the Student and a pending expulsion hearing.
- 30) On January 18, 2023, the Parent sent an email to the District informing them that the Student's Physician was evaluating the Student for a suspected disability. The District responded on the same date requesting additional information.
- 31) On January 23, 2023, the Student's Physician and the Parent completed a release of protected health information to support the development of the Student's IEP.
- 32) On January 24, 2023, the Parent sent an email to the District requesting information on the IEP process. The District responded the same day that it was forwarding that information to the District's School Psychologist.
- 33) On January 31, 2023, the Parent sent an email to the District requesting that the District schedule an IEP/evaluation planning meeting. The Parent asked that the District evaluate the Student for special education eligibility and any relevant evaluations.
- 34) On February 3, 2023, the District sent the Parent a Prior Written Notice (PWN) of its intent to begin the evaluation process for the Student. The PWN that the District reviewed information suggesting that the Student may have an educational disability and that additional information was needed to determine if the Student was eligible for and required special education services.
- 35) On February 13, 2023, the District sent the Parent a consent form to allow the District to begin evaluating the Student for special education services. The Parent signed the form on the same day.
- 36) On February 13, 2023, the District conducted a manifestation determination regarding conduct the Student engaged in that violated the District's student code of conduct. The manifestation determination noted that the Student was then "under evaluation for suspected ADHD and EBD."
- 37) On March 22, 2023, the Student's Physician provided a medical statement attesting to the Student's diagnosis of attention deficit hyperactivity disorder (ADHD).
- 38) On March 21, 2023, the District completed a psychoeducational report for the Student. The report noted that the Student was referred by their Parent for evaluation due to



concerns around impulse control, hyperactivity, oppositional behavior, and other symptoms of the Student's ADHD diagnosis. The report noted that the Student received an unusually high number of disciplinary referrals for peer conflict and defiance from adults overseeing the Student's program. Given positive behavioral supports, staff working with the Student observed that the Student was capable of regulating their behavior. The report indicated that social and cultural factors likely impacted the manner in which the Student was perceived when experiencing the impacts of their disability. The report also indicated that the Student experienced a degree of residual stress and anxiety related to either past discipline that preceded their special education identification) or their ADHD diagnosis.

- 39) On March 21, 2023, the District sent the Parent a PWN, stating the evaluation planning team found the Student had an educational disability and required special education services to access their education. The evaluation planning team found the Student eligible under the category of Other Health Impairment (80).
- 40) On April 5, 2023, the District sent the Parent a Prior Notice and Consent for the Initial Provision of Special Education Services form to the Student. The forms noted that the Student required specially designed instruction (SDI) to benefit from their education.
- 41) On April 7, 2023, the Student's IEP team determined the Student's educational placement. The team determined that the Student should attend a social-emotional skills classroom with a higher teacher-to-student ratio as compared to the general education environment. The program selected for the Student uses a multidisciplinary team including qualified mental health professionals, paraeducators, and special education teachers.

The Student's IEP included services in social and emotional skills, mathematics, classroom/school skills, and social skills. The Student's social and emotional skill goal indicated that "when verbally prompted to practice handling a hypothetical high-pressure situation using a strategy from a list, [Student] will practice (1) self-selected coping strategy (e.g., deep breathing, visualization, squeeze stress ball) by demonstrating (1) observable element...for 1 minute and then discuss with adult how this could help in a high pressure situation with the use of a contingency map, for (4 out of 5) practice sessions, over 3 consecutive days, as measured by an observation tool."

The Student's classroom/school skill goal included, that "during a non-preferred classroom task, while the teacher tracks time with a timer, [Student] will display (3) pre-taught on-task behaviors and use a self-monitoring checklist to stay on-task until task completion, for (4 out of 5) classroom tasks over 3 consecutive days as measured by progress monitoring data."

The Student's social skills goals included that, "immediately after watching a video model of strategies for maintaining personal space (e.g. measuring arm's length or keeping hands behind back), when role-playing one-to-one with the teacher on how to maintain personal space from others, [Student] will maintain personal space from those around [them] by using at least (1) self-regulation strategy (e.g. using a physical

space reminder to keep hands busy using a kusch [sic] ball from the sensory toolbox) to refrain from entering another person's personal space for a duration of (10) minutes, during (2 out of 3) small-group work opportunities, over 3 consecutive days as measured by progress monitoring data."

The social skill goal also included that "after watching a video model on how to behave during a verbal disagreement with a peer, when role-playing a verbal disagreement with a preferred peer on a non-academic topic (e.g. sports, personal lives, hobbies/interests), [Student] will stay calm by waiting for the other student to finish speaking and then take a break to calm down in a calming space using an item from a sensory toolbox (e.g. squeeze a kusch [sic] ball), without demonstrating negative language or actions towards his peer (e.g. using negative personal statements or profane language, pushing a peer), in (2 of 3) peer-disagreement role-playing opportunities, over 3 consecutive days, as measured by progress monitoring data."

The Student's IEP included numerous accommodations to address the Student's disability, including a safety plan, behavior support plan, access to calming strategies, and other supports relevant to behavior modification and awareness.

42) On April 24, 2023, the Student's IEP team met. As part of the meeting the team observed that a school support person was assigned to implement components of the Student's safety plan, and that the District did not yet have signed consent to allow the District to begin implementing the Student's IEP. The team observed that, once consent was obtained, support would shift to align with the Student's IEP goals, which would include gathering baseline data and supporting the development of the student's behavior support plan.

The Parent attended this meeting and voiced concern as to whether the Student required extra adult support, especially if that support meant close adult supervision. The Parent shared that the added adult support was not well explained, and that lack of clarity regarding this support had impact the Student and their family. The District provided clarification that the adult support was part of the Student's safety plan.

43) On May 1, 2023, the District sent the Parent an email referencing a voicemail left for the Parent, requesting the Parent's consent for the initial provision of special education services by the District for the Student.

44) On May 4, 2023, in response to the District's May 1, 2023 email seeking consent for the initial provision of special education services, the Parent wrote that they were seeking outside advice and clarification on some aspects of the proposed special education plan. The Parent specifically referenced the potential that the District had assigned the Student a 1:1 aide, about which the Parent expressed reservations.

45) On May 5, 2023, the District responded to the Parent's email, explaining the wording of the PWN sent to the Parent meant that special education services would not be provided to the Student until the Parent provided consent. The District further explained that the provisions in a safety plan could be provided to general education students.

- 46) On May 8, 2023, the District sent the Parent an email reporting that behavior exhibited by the Student on May 4, 2023 violated the District's Student Conduct Policy. The District further explained that it was the advice of the District's Office of Student Conduct to move forward with the suspension, pending an expulsion hearing, based on the number of similar incidents of a similar nature.
- 47) On May 10, 2023, the District sent the Parent a letter documenting the Student's out-of-school suspension stemming from the Student's May 4, 2023 conduct.
- 48) On May 11, 2023, the Parent sent an email to the District providing the Student's explanation for the May 8, 2023, conduct. The Parent explained that the Student's disability was the likely cause of the Student's impulsive behavior. The Parent asserted that the District had not followed the appropriate procedures regarding behaviors exhibited by a child with a disability. The Parent noted that the Student was then suspended, and that the District should have conducted a manifestation determination.
- 49) On May 12, 2023, the District responded to the Parent's May 11, 2023, email explaining that the Student was still classified as a nondisabled general education student until the Parent completed the consent for the initial provision of special education services sent to the Parent by the District on May 1, 2023. The District went on to explain that in the absence of the Parent's consent to the provision of special education services that the District "is not required to hold a manifestation determination meeting before implementing suspensions or expulsions."
- 50) On May 12, 2023, the District sent an email to the Parent informing them that the expulsion hearing for the Student stemming from the May 8, 2023 incident would be held May 17, 2023.
- 51) On May 12, 2023, the Parent responded by email questioning the difference between the provision of services, the Student's status as a member of a protected class, and why other services and options were not offered or provided by the District to accommodate the Student's behavior.
- 52) On May 15, 2023, the Parent filed this Complaint.
- 53) On May 19, 2023, the District conducted a manifestation determination. The District determined that the conduct engaged in by the Student on May 4, 2023 was caused by, or had a direct and substantial relationship to, the Student's disability.
- 54) On May 19, 2023, the Parent provided their consent for the District to provide special education services to the Student.
- 55) On May 19, 2023, the Student's safety plan was implemented by the District. The safety plan was written due to past instances of threats of harm to classmates and acts of verbal aggression. Part of the Student's safety plan included a District staff member assigned to maintain line of sight over the Student in all academic settings,

utilizing physical proximity when the Student's behavior dictates intervention, or when the Student exhibits a warning sign or when a trigger is present.

56) On May 26, 2023, June 16, 2023, and June 20, 2023, the Department's Complaint Investigator sent emails and left voicemails for the Parent soliciting their participation in this matter. The Parent was unable to be reached.

## IV. DISCUSSION

### Consent

The Parent alleged that the District violated the IDEA when it failed to obtain the Parent's consent prior providing special education services to the Student. The Parent alleged that the District assigned a staff member to shadow the Student, that this service was part of the Student's IEP, and that the Parent was largely not in agreement with the service. The Parent alleged that the District began providing this service prior to the Parent granting consent for the initial provision of special education services.

Consent means that the parent or the adult student has been fully informed of all information relevant to the activity for which consent is sought and agrees in writing to the carrying out of the activity for which consent is sought. A school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. If a parent or adult student does not respond or refuses to consent for initial provision of special education and related services or revokes consent for the initial provision of special education and related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.<sup>3</sup>

The Parent alleged that aspects of the Student's IEP were implemented prior to the Parent providing written consent for the initial provision of special education services. The record contains evidence of the Parent raising this concern on at least two occasions. The Parent first raised this concern during the Student's April 24, 2023, IEP meeting, and again later in an email dated May 4, 2023. At both the April 23, 2023, IEP meeting, and in response to the Parent's May 4, 2023, email, the District explained that the Student's safety plan provided for close adult supervision to assist in preventing behavior that led to previous suspensions and expulsions. The District implemented a safety plan for the Student as early as March 8, 2023. On both occasions, the District requested that the Parent provide their written consent for the initial provision of special education services to the Student.

The supports provided to the Student were part of the safety plan implemented by the District. The record contains evidence of the District explaining the difference between the services provided in the safety plan and the Student's IEP.

The Department does not substantiate this allegation.

---

<sup>3</sup> OAR 581-015-2090(1)—(4)

## **Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

The Parent alleged that the District violated the IDEA when it did not conduct a manifestation determination before initiating a disciplinary removal of the Student. The Parent alleged that the District was aware of the Student's disability, but had not followed proper procedure regarding behavior exhibited by the Student.

Within ten 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 result of that 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. The district must also 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 an intervention plan. If the student already has a behavior plan, the district must review the behavioral plan and modify it, as necessary, to address the behavior. If the determination is that the child's behavior is not a manifestation of the child's disability, the district may proceed with disciplinary action applicable to children without disabilities.<sup>4</sup> School districts may remove a child with a disability who violated 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. These removals are not considered a change in placement.<sup>5</sup>

A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. If a parent refuses to grant consent for initial provision of special education and related services, does not respond to a request to provide such consent, or revokes consent for the initial provision of special education and related services, the school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent. The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.<sup>6</sup>

On February 3, 2023, the District sent the Parent a PWN of its intent to evaluate whether the Student was a child with a disability. On February 13, 2023, in response to behavior exhibited by the Student and on the basis that the District was then evaluating whether the Student was a child with a disability, the District conducted a manifestation determination. On March 22, 2023, the Student's Physician provided the District with a letter attesting to the Student's diagnosis of attention deficit hyperactivity disorder (ADHD).

---

<sup>4</sup> OAR 581-015-2415(1)—(5)

<sup>5</sup> OAR 581-015-2410(1)

<sup>6</sup> OAR 581-015-2090(4)

On March 21, 2023, the evaluation planning team determined that the Student was a child with a disability that required special education services, under the eligibility category of Other Health Impairment (OHI). On April 5, 2023, following the District's spring break, the District sent the Parent prior notice and consent for the initial provision of special education services to the Student. The Parent did not sign the consent for the initial provision of special education services until May 19, 2023. Between April 5 and May 19, the Parent and the District engaged in discussions about the content of the Student's safety plan and the difference between the IEP accommodations related to the Student's exhibited behaviors and the content of the Student's safety plan. In the meetings and communications following the Student's identification as a child with a disability, the Parent expressed reservations with the content of the safety plan and a lack of understanding regarding how the delivery of services in the Student's IEP were dependent upon the Parent's consent.

On May 4, 2023, prior to the Parent providing consent for the initial provision of special education services, the Student engaged in conduct that violated the District's code of student conduct. As a result of the May 4, 2023 conduct, the District proceeded to schedule an expulsion hearing for the Student. The Parent was informed of this decision by email on May 8, 2023, and received a formal letter of suspension on May 10, 2023. Following the Parent's provision of consent for the initial provision of special education services on May 19, 2023, the District cancelled the expulsion hearing and conducted a manifestation determination the same day. The District determined that the May 4, 2023 behavior was a manifestation of the Student's disability.

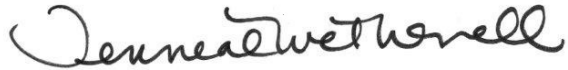
As the result of the May 4, 2023 behavior, the Student was suspended. The District, in its *Response*, asserted that it did not schedule a manifestation determination regarding the May 4, 2023 behavior due to the Parent having not provided consent for the initial provision of special education services. However, the District had, on February 13, 2023, conducted a manifestation determination for the Student based on the suspicion that the Student was a child with a disability. Furthermore, on March 21, 2023, the District determined that the Student was a child with a disability. On April 5, 2023, the District requested the Parent's consent for the initial provision of special education services. The Parent did not immediately sign the consent for the initial provision of special education services, presumably because of questions regarding the provision of services and accommodations. While the District incorrectly reasoned that the manifestation determination was dependent upon the Parent providing consent for the provision of special education services, the District did conduct a manifestation determination regarding the May 4, 2023 behavior. The Student was ultimately suspended for less than 10 school days before the District determined that the May 4, 2023 behavior was a manifestation of the Student's disability.

The Department does not substantiate this allegation.

**VII. CORRECTIVE ACTION**  
*In the Portland Public School District*  
*Case No. 23-054-017*

The Department does not order corrective action in this matter.

Dated: this 12 Day of July 2023



---

Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: July \_\_\_\_\_, 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).)