

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Portland School  
District 1J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 23-054-030

**I. BACKGROUND**

On July 31, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Portland School District 1J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<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 August 7, 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 August 21, 2023.

The District submitted a *Response* on August 28, 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. Document, [District] Office of General Counsel Response to RFR in ODE Complaint No. 23-054-030 , 8/21/23
2. Eligibility Summary Statement, [Student], 4/24/23
3. Special Education Placement Determination, [Student], 4/24/23
4. Prior Written Notice, Notice of Triennial, 4/3/23
5. Disability Statement, Other Health Impairment (80) criteria, 4/24/2023
6. Parent/Guardian Consent for Initial Evaluation, 3/23/23
7. Prior Notice about Evaluation/Consent for Evaluation, [Student], 3/17/22
8. Statement of Eligibility for Special Education, Communication Disorder 50, 4/28/22
9. Speech-Language Pathology Short Form Report, [Student], 3/17/22
10. Parent/Guardian Consent for Individual Evaluation, 3/23/23
11. Eligibility Determination, 80-Other Health Impairment, 4/24/2023
12. IEP, [Student], 4/28/22
13. Worksheet for Function-based Behavior Support Planning, [Student], 3/17/22
14. IEP, [Student], 4/24/23
15. Worksheet for Function-based Behavior Support Planning, [Student], 4/4/23

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<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)

16. IEP Progress Report Measurable Annual Goals, [Student], 6/14/23
17. Prior Written Notice, [Student], 3/17/22
18. Prior Written Notice, individualized recovery services review, 4/28/22
19. Prior Written Notice, [Student], 5/2/23
20. Notice of Team Meeting, Individual Education Program meeting, 3/8/23
21. Notice of Team Meeting, Individual Education Program meeting, 3/10/23
22. Prior Written Notice, [Student], 4/28/23
23. Function Based Behavior Support Plan Worksheet, [Student], 5/1/23
24. Meeting Minutes, [Student], 4/28/22
25. Meeting Minutes, [Student], 3/23/23
26. Meeting Minutes, [Student], 4/24/23
27. Notice of Team Meeting, meeting request, 3/8/23
28. Notice of Team Meeting, meeting request, 3/10/23
29. Document, student discipline profile, 3/1/23
30. Document, ODE 23-054-030 exhibit D-4 cover page, no date
31. Document, [School] daily attendance by week 08/01/2022 - 06/17/2024, no date
32. Document, [District] high school transcript for [Student], 8/3/23
33. Document, ODE 23-054-030 exhibit D-6 cover page, no date
34. [District] Special Education Procedures Manual, Section 8 Discipline Procedures for Special Education Students, no date
35. [District] Special Education Procedures Manual, Section 3 Individualized Education Plan (IEP), no date
36. Behavior Support & Safety Plan for Manufacturing, [Student], 3/23/23
37. Behavior Support & Safety Plan for Manufacturing, [Student], 3/23/23, duplicate, unsigned
38. Behavior Support & Safety Plan for Manufacturing, [Student], 3/23/23, duplicate, unsigned
39. Uniform Safety Code, [School], no date
40. Document, [Student] strengths, what works, what doesn't work, no date
41. Document, ODE 23-054-030 list of staff knowledgeable about complaint, no date

The Parents submitted a *Reply* on August 25, 2023, providing an explanation and rebuttal.

The Complaint Investigator interviewed the Parents on September 5, 2023, and District personnel on September 8, 2023. 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 August 1, 2022, to the filing of this Complaint on July 31, 2023.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>When IEPs Must Be In Effect</b></p> <p>The Complaint alleged that the District violated the IDEA when it failed to provide:</p> <ol style="list-style-type: none"> <li>1) IEP support and services including consultation to teachers on the content of the IEP;</li> <li>2) The Manufacturing Teacher with access to the Student’s IEP;</li> <li>3) Accommodations during a manufacturing class;</li> <li>4) Support to the Student when they were participating in an IEP meeting on March 20, 2023, and</li> <li>5) IEP progress reports.</li> </ol> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Substantiated in part</b></p> <p>The District:</p> <ol style="list-style-type: none"> <li>1) Provided consultation to teachers,</li> <li>2) Provided the Manufacturing Teacher access to the IEP,</li> <li>3) Did not provide timely communication about the Student’s behavior,</li> <li>4) Did not fail to provide support to the Student at an IEP meeting, and</li> <li>5) Did not provide the Parents with progress reports.</li> </ol>
<p><b>Disciplinary Removals</b></p> <p>The Complaint alleged that the District violated the IDEA when the Student was disciplined and the School left the Student inside the School with nowhere to go, nothing to do, and unsupervised.</p> <p>(OAR 581-015-2405, OAR 581-015-2410, OAR 581-015-2415; 34 CFR §300.530)</p>	<p><b>Not Substantiated</b></p> <p>The Student was not suspended for more than 10 school days. The District offered alternative courses.</p>
<p><b>Manifestation Determination</b></p> <p>The Complaint alleged that the District violated the IDEA when the Student was disciplined for behaviors that were a manifestation of the Student’s disabilities.</p> <p>(OAR 581-015-2420; 34 CFR §300.530)</p>	<p><b>Not Substantiated</b></p> <p>The District was not required to conduct a manifestation determination review.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complaint alleged that the District violated the IDEA and denied the Student FAPE when the District failed to implement the Student’s IEP.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Not Substantiated</b></p> <p>The District’s failure to fully implement the Student’s IEP did not result in a denial of FAPE.</p>

**REQUESTED CORRECTIVE ACTION**

The Complainant requests that the Department order the District to take the following corrective action:

1. [Student's] family requested [their] major be reinstated back to [them] without signing any discriminatory documents, formal investigation of what actually happened with final results and conclusions.
2. As well as compensatory services for everything missed in manufacturing class.

### 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 August 1, 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 17 years old, in the 11th grade, and attended a District high school when the Complaint was filed.
2. The April 28, 2022, IEP included:
  - a. The Student was described as bilingual, curious, and engaged. Strengths of the Student included organization, independently completing work, and asking for help when needed.
  - b. "[Student's] disability has significantly impacted [their] ability to access the general education setting. [Their] challenges with peers frequently result in conflict, which require adult problem-solving. [Student] often struggles to follow the expected social behaviors, and school norms."
  - c. Special factors that needed to be considered were the Student's behavior and limited English proficiency. It was noted that a Functional Behavior Assessment (FBA), Behavior Support Plan (BSP), and behavior goals were in place.
  - d. Quarterly written progress reports were anticipated to be provided on June 10, 2022; November 4, 2022; January 27, 2023; and April 7, 2023.
  - e. Annual goals for writing and math were included.
  - f. The two social-emotional goals were:
    - i. By the end of the IEP cycle, [Student] will demonstrate skills in sustaining peer relationships by communicating information about Tourette symptoms such as throat-clearing and clapping in 4 out of 5 opportunities."
    - ii. "By the end of the IEP cycle, [Student] will seek out a specified trusted adult when [the Student] needs to practice appropriate ways to discuss specified topics that have shown to cause conflict between [Student] and peers in 4 out of 5 opportunities, examples of topics include: race, school

violence, or religion.”

- g. The behavior goal was: “By the end of the IEP cycle, given instruction about personal space, [Student] will refrain from interfering with other student’s [sic] personal space throughout the school day.”
  - h. Time and frequency for Specially Designed Instruction (SDI) and Related Services were listed as follows:
    - i. Social/Emotional Skills, 30 minutes per week;
    - ii. Behavior, 15 minutes per week;
    - iii. Writing Skills, 30 minutes per week;
    - iv. Mathematics, 60 minutes per week; and
    - v. Communication, 180 minutes per quarter
  - i. The following accommodations were expected to be provided by the Special Education Teacher and the General Education Teachers in all settings throughout the school day:
    - i. “Access to paper assignments when computer use is restricted;
    - ii. Extended time for assignments, when discussed between [Student] and [their] teacher;
    - iii. Up to 50% extended time on tests;
    - iv. Access to teacher or peer notes;
    - v. Visuals to prompt appropriate behavior (raising hand, eyes on teacher, moving on in an assignment, etc [sic];
    - vi. Timely communication with family if there are behavioral or social concerns;
    - vii. Homework & classwork shortened, when demonstration of mastery is not impacted;
    - viii. Behavior plan in place;
    - ix. Option to test in a separate setting, such as the Academic Support classroom;
    - x. Use of calculator for all math work; and
    - xi. Visual prompts to support instruction and subject dependent vocabulary.”
  - j. As a support for school personnel, the Special Education Teacher was required to consult with the general education teachers for 60 minutes per quarter.
  - k. It was determined that the Student would be removed from the General Education Setting for 12.5% of the time, or 1 out of 8 classes, and will receive SDI in behavior, math, writing, and social emotional skills.
3. The Parent shared that the Student struggles to maintain friendships, adhere to social boundaries, and respect personal space. The Parent recommended that, in addition to a behavior support plan, the Student needed a sensory assessment and support.
4. On March 3, 2023, the Student was suspended out of school for 1.5 days for misusing property, causing harm to peers, and insubordination. Specifically, in the manufacturing class, the Student changed the settings and turned off the gas in another student’s station. This referral indicated this was not the first incident of this nature by the Student.

5. On March 7, 2023, the Parent emailed the Parent Education Family Engagement Specialist requesting a meeting or a conversation about the Student.
6. On March 8, 2023, the Student's sibling emailed the Dean to discuss the behavior of the manufacturing teacher that was alleged to have begun in 2022.
7. On March 8, 2023, a Notice of Team Meeting described a meeting scheduled for Thursday, March 23, 2023, to review existing information regarding the Student for the Student's re-evaluation.
8. On March 10, 2023, the Vice Principal acknowledged the concerns raised by the Student's Parent regarding the need to pre-teach rules, safety protocols, and behavior expectations to Student. The Vice Principal also expressed concern about due process in relation to the referral written by the manufacturing teacher. The Vice Principal noted that, had a referral been made after the first incident, rather than after multiple incidents, the team could have collaborated to put interventions, supports, and a safety plan in place for the Student.
9. On March 15, 2023, the Vice Principal emailed the Parent confirming that the Vice Principal had provided the requested documents, except for the Staff Handbook which is intended for staff use. The Vice Principal clarified the details of the scheduled Monday meeting involving Student, the Counselor, and the Vice Principal. The purpose of this meeting was to review and sign the safety plan created for Student to return to the manufacturing class. The Vice Principal offered to meet with the Parents after the meeting with the Student to discuss the concerns they sent to the Dean.
10. On March 20, 2023, the School held a meeting to develop a safety plan for the Student in the manufacturing class. According to the Parent Reply, only one parent attended this meeting. The Reply also stated that the Student was unable to advocate for themselves due to interruptions by District personnel. The Parents also indicated that the Student did not want the designated spot in the classroom provision removed from the plan.

During interviews, District staff who attended the March 20, 2023 safety plan meeting reported that the Student did share their preference about the safety plan, and staff were to follow up with a response and revisions to the safety plan after reviewing the class setup. After reviewing the class space, it was determined that the Student's preferences were not feasible.

The Parent Reply indicated that each paragraph of the safety plan was discussed until agreed upon and the next steps were supposed to be incorporated and edited by the IEP team. The Parent indicated that the edits were not incorporated into the IEP which prevented the family from signing the document.

12. On March 23, 2023, the Parent emailed a request for a meeting to discuss some concerns about the safety plan.
13. On April 4, 2023, a meeting was held and a BSP worksheet was created, incorporating reinforcements for the Student's recommended alternative behaviors. In the Parent Reply, the Parents indicated that the school staff: "did not intend to provide any replacement options for [Student] to do or somewhere to go during [their] 4th and 8th periods."

During interviews, the Vice Principal and Case Manager reported that the Student had been offered replacement electives that included a computer class, a resource class, or to be an

aide in the library. The Student and Parents declined these options and elected to pick the Student up from school at 2:00 p.m. each day.

14. On April 24, 2023, the Student was found eligible for special education services due to an Other Health Impairment. Student's eligibility was noted to be related to medical diagnoses of ADHD and Tourette Syndrome.
15. On April 24, 2023, the Student's special education placement was selected as 80% or more of the day in the regular class.
16. The April 24, 2023 IEP included:
  - a. The Student, described as motivated and curious, demonstrated self-awareness by sharing their strengths and struggles during the IEP meeting.
  - b. The Parent expressed concerns about the Student's social interactions, potentially linked to tics and sensory-seeking behaviors, as well as the Student's lack of self-advocacy.
  - c. For the first semester and third quarter of the Student's 11th grade year, their attendance was excellent, they accumulated a 3.5 GPA, and they earned A's or B's in all but one class. The grades for manufacturing were listed as "Manufacturing 'A' and Manufacturing 'NG'."
  - d. Behavioral and interpersonal challenges as well as appropriate personal hygiene norms are listed as struggles in their statement of present levels of academic achievement and functional performance.
  - e. The Student's disability "...impacts [their] ability to access the general education setting as [their] challenges with peers frequently result in conflict, which require adult problem-solving, and [the Student] often struggles to follow the expected social behaviors and school norms."
  - f. Special factors that needed to be considered were the Student's behavior and limited English proficiency. It was noted that a safety plan, BSP, and behavior goals were in place.
  - g. Quarterly written progress reports were anticipated to be provided on June 16, 2023; November 3, 2023; January 26, 2024; and April 5, 2024.
  - h. An annual goal for writing was included.
  - i. The three social and emotional skills goals were:
    - i. "By the end of the IEP cycle, given access to trusted adults outside of the classroom, [Student] will increase [their] ability to discuss difficult topics (ex: race, school violence, religion, sex) in ways that do not increase conflict by using one of the following strategies, with adult prompting, in at least 4 out of 5 opportunities;
      1. [L]eave the conversation to seek out a trusted adult with whom [they] can express [their] ideas or ask questions;
      2. [R]emain in the conversation and ask others if [they] can ask a question or share an idea; and

3. [A]sk peers if they are comfortable continuing the conversation. If yes, use conversation maintenance strategies (i.e., making comments, taking turns, asking questions, using I-statements, avoiding insults/name-calling, etc.) to continue the conversation with peers.”
- j. “By the end of the IEP cycle, given instruction about personal space, [Student] will refrain from interfering with other student’s [sic] personal space throughout the school day, as measured by teacher observation.”
- k. By the end of the IEP cycle, [Student] will respond to adult/peer requests for a change or end of conversation with no more than two prompts, in 4 out of 5 opportunities as measured by teacher observation.”
- l. The two self-advocacy goals were:
  - i. “By the end of the IEP cycle, [Student] will remind/bring up [their] accommodations, first with teachers and perhaps later with peers, by describing [their] disability, either by name (Tourettes [sic]/tic disorder) or by describing symptoms in at least 3 out of 5 opportunities;
  - ii. By the end of the IEP cycle, when the [student] observes a situation/interaction in school that makes [them] confused or uncomfortable or when peers encourage [them] to do or say things [the student] knows [they] should not do/say, [Student] will immediately notify [their] classroom teacher or another trusted adult in the building, in at least 4 out of 5 opportunities as measured by self-report and teacher observation.”
- m. Time and frequency for SDI and Related Services were listed as follows:
  - i. Social/Emotional Skills, 30 minutes per week;
  - ii. Writing, 30 minutes per week;
  - iii. Self-advocacy, 60 minutes per month; and
  - iv. Psychological Service, 200 minutes per year.
- n. The following accommodations were expected to be provided by the Special Education Teacher and the General Education Teachers in all settings throughout the school day:
  - i. “Timely communication with family if there are behavioral or social concerns;
  - ii. Up to 50% extended time on tests;
  - iii. Visual prompts to support instruction and subject dependent vocabulary;
  - iv. Access to paper assignments when computer use is restricted;
  - v. Extended time for assignments, when discussed between [Student] and [their] teacher;
  - vi. Option to test in a separate setting, such as the Academic Support classroom;
  - vii. Homework & classwork shortened, when demonstration of mastery is not impacted;
  - viii. Frequent teacher prompting/reminders about behavioral expectations;
  - ix. Visuals to prompt appropriate behavior (raising hand, eyes on teacher, moving on in an assignment, etc [sic];
  - x. Use of calculator for all math work;
  - xi. Behavior plan in place; and
  - xii. Access to teacher or peer notes.”
- o. As a support for school personnel, the Special Education Teacher was required to consult with the general education teachers for 60 minutes per quarter.



- p. It was determined that Student] will be removed from the General Education Setting for 12.5% of the time, or 1 out of 8 classes, and will receive SDI in writing, self-advocacy, and social emotional skills.
17. On April 26, 2023, the school team was alerted that the Parent indicated they would not sign the safety and support plan.
18. On May 1, 2023, a Function-Based Behavior Support Plan worksheet was created for the Student. The plan described the following:
- a. Triggers in the shop location:
    - i. Peers encouraging [Student] to break shop rules; and
    - ii. Unsafe use of tools and equipment.
  - b. Concerning behavior:
    - i. Breaking shop rules;
    - ii. Turning off equipment at inappropriate times;
    - iii. Taking other students' tools and materials; and
    - iv. Using disrespectful language toward peers and teacher.
  - c. Proposed actions:
    - i. A referral;
    - ii. Disciplinary action;
    - iii. Negative peer and teacher attention;
    - iv. Possible removal from the class; and
    - v. Development of a safety plan in order to remain in the class.
  - d. Setting supports:
    - i. The teacher will assign [Student] to a work station/zone until directed by the teacher.
    - ii. The teacher may send [Student] to talk with other school personnel if there a concern or safety risk. The expectation is that [Student] complies.
    - iii. If [Student] does not comply, there will be further instruction delivered to them.
  - e. Antecedent strategies:
    - i. [Student] will raise their hand or call out to the teacher if they need tools or other classroom materials and wait for direction from the teacher [*sic*];
    - ii. [Student] will refrain from removing tools from other workspaces or other students; and
    - iii. [Student] will power down equipment when they are finished with it.
  - f. Possible responses by teacher/school personnel:
    - i. A behavior referral;
    - ii. Discipline;
    - iii. Negative peer and teacher attention;
    - iv. Removal from class and the development of a safety plan to return; and
    - v. Permanent removal from the class and assignment to a new major; barred from taking future manufacturing classes.
  - g. Reinforcement strategies included praise and being able to stay in the class/major.

19. On May 2, 2023, the PWN described the following actions: “The district will not implement the proposed Behavior Support Plan related to Manufacturing classes, and as such, [Student] will not return to Manufacturing classes at [School]. The district will fill [Student’s] schedule with other courses, as discussed with [Student] and [their] school counselor.” The District included the following as an explanation: “The decision to not implement the drafted BSP was due to the family’s refusal to accept the plan.”
20. On June 14, 2023, the Case Manager assigned either a “3” or a “4” to describe both social and emotional skills goals and self-advocacy goals. These scores indicated that progress had been made toward meeting the goals.
21. According to the Student’s high school transcript, printed on August 3, 2023, they were present for 167 out of 171 days of school during the 2022-23 school year.
22. On July 31, 2023, the Parents filed a Complaint with the Department.
23. During interviews, both the Manufacturing Teacher and the Case Manager described the consultation the Manufacturing Teacher received from the Case Manager that included an IEP snapshot, regular check-ins and specific consultation about the safety plan. The Manufacturing Teacher also had access to the Student’s IEP through the electronic student information system and was able to describe specific accommodations noted in the Student’s IEP.
24. During interviews, the Case Manager acknowledged that the Parents had not received copies of the IEP progress reports because the District only provides them electronically. The Case Manager did not have the correct digital setting turned on and the electronic progress reports were not viewable. Further, the Case Manager could not confirm that the Parents had been notified that electronic versions of the IEP progress reports were available.

## **IV. DISCUSSION**

### **When IEPs Must Be In Effect**

The Complaint alleged that the District violated the IDEA when it failed to provide: 1) IEP support and services including consultation to teachers on the content of the IEP, 2) the manufacturing teacher with access to the Student’s IEP, 3) accommodations during a manufacturing class, 4) support to the Student when they were participating in an IEP meeting on March 20, 2023, and 5) IEP progress reports.

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 services 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.<sup>3</sup>

The Case Manager and Manufacturing Teacher did have consultative discussions, and the Manufacturing Teacher received information about and access to the Student's IEP. The Manufacturing Teacher was able to describe implementation of the IEP accommodations in the manufacturing class. The Parents asserted that the Student was not allowed to use their self-advocacy skills at the March 20, 2023 IEP meeting. District staff refuted this claim, reporting that the Student was offered their input at the meeting. District staff viewed the class setup and determined the Student's preference could not be accommodated. Self-advocacy goals were added to the IEP when the April 24, 2023 IEP was developed.

The Case Manager acknowledged that the Parents had not received copies of the IEP progress reports because the District only provides them electronically, and the Case Manager could not confirm whether the Parents had been notified that the electronic versions were available for viewing. The Manufacturing Teacher failed to timely notify Parents of the Student's behavioral incidents in the class, only doing so after several incidents occurred.

The Department substantiates this allegation in part.

### **Disciplinary Removals**

The Complaint alleged that the District violated the IDEA when the Student was disciplined, the School left the Student inside the school with nowhere to go, nothing to do, and unsupervised.

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 these disciplinary removals school districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time. School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability. For the purpose of counting days of suspension, a half day or less is counted as a half day, and suspensions of more than a half day are counted as a whole day.<sup>4</sup>

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 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.<sup>5</sup>

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<sup>3</sup>OAR 581-015-2220

<sup>4</sup> OAR 581-015-2405(1-3)

<sup>5</sup> OAR 581-015-2410(2)(3)

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. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal for a child with a disability who violates a code of conduct.<sup>6</sup>

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. 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 for a behavior involving weapons, drugs, or serious bodily injury; or the school district obtains an order from an administrative law judge allowing a change in placement to an interim alternative educational setting for injurious behavior.<sup>7</sup> When the behavior is determined to be a manifestation, the school district must conduct a functional behavioral assessment, 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.

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 notify the parents of that decision and provide the parents with notice of procedural safeguards, on the date on which the decision is made to remove the student. The school district must also provide services to the student in an interim alternative educational setting, determined by the IEP team, and 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.<sup>8</sup>

The Student was suspended out of school for 1.5 days during the 2022-23 school year. The Student's attendance records during the 2022-23 school year do not indicate the Student had any in-school suspensions. The Student stopped attending the manufacturing class when a safety plan was required in order for the Student to continue attending the class. A safety plan was developed and proposed that would have enabled the student to return to the manufacturing class. The Parent and Student did not agree to the safety plan, so the District offered three alternative classes in place of the manufacturing class. The Parents declined the replacement classes and elected to pick the Student up early from school.

The Department does not substantiate this allegation.

### **Manifestation Determination**

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<sup>6</sup> OAR 581-015-2415(1)(2)

<sup>7</sup> OAR 581-015-2415(3)(4a)

<sup>8</sup> OAR 581-015-2415(4b)(5)

The Complaint alleged that the District violated the IDEA when the Student was disciplined for behaviors that were a manifestation of the Student's disabilities.

In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the school district's failure to implement the IEP. If the school district, the parent, and relevant members of the IEP team determine that either of those conditions are applicable for the child, the conduct must be determined to be a manifestation of the child's disability. If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.<sup>9</sup>

The Student was suspended out of school for 1.5 days during the 2022-23 school year; there was no record that in-school suspensions occurred. The Student was not suspended for more than 10 school days in a school year, nor was there a pattern of behavior that resulted in discipline. Therefore, a manifestation determination review was not required.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education (FAPE)**

The Complaint alleged that the District violated the IDEA and denied the Student a FAPE when the District failed to implement the Student's IEP.

School districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible, including children who have been suspended or expelled. "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.<sup>10</sup>

The District failed to provide IEP progress reports for the Student, as required. The Manufacturing Teacher also failed to provide the Parents with timely communication about the behavior concerns when the behaviors first started in the class, as required by the Student's IEP. The Manufacturing Teacher brought the concerns forward when the behaviors continued and, due to the nature of safety requirements in the class, the District required that a safety plan be developed in order for the Student's continued enrollment in that course. The District considered the Student and Parent preferences for adjustments to the safety plan and determined that the requests were not feasible. The Parents refused to sign the safety plan as presented by the District; as a result, the District offered three other elective course options.

The Parents declined the District's offer of alternate classes, and elected to pick up the Student early from school each day. Although the District failed to provide timely communication and progress reports, these failures did not constitute a denial of a FAPE as the Student had access to and was making progress in the general curriculum, and was making progress toward their IEP goals.

The Department does not substantiate this allegation.

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<sup>9</sup> OAR 581-015-2420

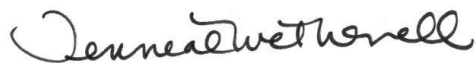
<sup>10</sup> OAR 581-015-2040(1)(3)

**V. CORRECTIVE ACTION<sup>11</sup>**  
*In the Matter of Portland School District 1J*  
*Case No. 023-054-030*

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

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
1. The District must provide the Parents with IEP progress reports for the 2022-23 school year.	Copies of 2022-23 progress reports to ODE.	<b>November 1, 2023</b>
2. The District must ensure that all District parents are notified that IEP progress reports are available for viewing, at the same time report cards are issued each term.	Copy of communication provided to parents.	<b>January 15, 2024</b>
3. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this student during the 2022-23 school year receive training in each of the following areas: <ul style="list-style-type: none"> <li>• IEP Implementation; and</li> <li>• Progress Reports.</li> </ul>	Training agenda/materials to ODE for review/approval.  Sign-in sheet for training.	<b>January 15, 2024</b>  <b>April 1, 2024</b>

Dated: this 26th Day of September 2023




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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: September 26, 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).)

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<sup>11</sup> The Department's orders 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)).