

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

|                   |   |                     |
|-------------------|---|---------------------|
| In the Matter of  | ) | FINDINGS OF FACT,   |
| St. Helens School | ) | CONCLUSIONS,        |
| District 502      | ) | AND FINAL ORDER     |
|                   | ) | Case No. 23-054-033 |

**I. BACKGROUND**

On August 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 St. Helens 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 Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On August 24, 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 September 7, 2023.

The District submitted a *Response* on September 7, 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. District’s Written *Response* to Complaint, 9/7/23
2. Table of Contents, 9/7/23
3. Evaluation Planning Meeting Minutes, 2/13/23
4. Draft Written Agreement, 2/10/23
5. Prior Notice and Consent for Evaluation, 2/13/23
6. Parent’s Email Consent to Evaluate, 2/13/23
7. Test Description List, 2/13/23
8. Prior Written Notice (PWN), 2/27/23
9. Parent Virtual Consent to Add Assessment, 2/27/23
10. WISC IV Test Description, 2/27/23
11. PWN, 9/1/22
12. IEP Amendment, 9/1/22
13. Email Correspondence re Amendment Meeting, 8/20/22 – 8/23/22
14. PWN, 6/15/23
15. Service Log for D/HH Service Provider, 9/20/22 - 4/4/23
16. SLP Calendar of Services, 2022-23 school year
17. Case Manager Service Dates, 2022-23 school year

---

<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)

18. PWN, 4/7/23
19. Draft IEP, 4/7/23
20. Draft Placement, 4/7/23
21. Emails re Facilitated IEP, 5/10/23
22. IEP Meeting Minutes, 4/7/23
23. Notice of Team Meeting 4/7/23, 3/21/23
24. FIEP Request Form, 4/12/23
25. PWN, 6/5/23
26. PWN, 6/5/23
27. PWN, 6/5/23
28. Draft IEP, 6/5/23
29. Special Education Placement Determination, 6/5/23
30. FIEP Meeting Minutes, 6/5/23
31. Notice of Proposed Transfer Rights, 6/5/23
32. Notice of Team Meeting on 6/5/23, 5/26/23
33. PWN, 6/15/23
34. PWN, 6/15/23
35. PWN, 6/15/23
36. PWN, 6/15/23
37. PWN, 6/15/23
38. PWN, 6/15/23
39. IEP, 6/15/23
40. Special Education Placement Determination, 6/15/23
41. FIEP Meeting Minutes, 6/15/23
42. Individualized COVID-19 Recovery Services Review
43. Draft Educational Evaluation, 4/5/23
44. Educational Service District (ESD) D/HH Report, 4/5/23
45. Statement of Eligibility (OHI), 6/5/23
46. Statement of Eligibility (SLD), 6/5/23
47. Emails between IEP Team re Eligibility Signatures, 6/5/23 – 6/6/23
48. Notice of Team Meeting on 6/15/23, 6/8/23
49. Prior Notice and Consent for Evaluation, 6/15/23
50. Assessment Descriptions, 6/15/23
51. Records Release Form, 4/6/23
52. Cumulative File, 2013 - 2023
53. Letter from District to Parent, 5/18/23
54. Emails re Records Request, 3/14/23 – 7/11/23
55. Timeline of Records Request
56. Records Release Form, 6/2/23
57. Emails Between District Staff and with Parent, 6/9/22 - 5/23/23
58. Records Release Form, 4/19/23
59. PWN, 4/7/23
60. PWN, 5/4/23
61. Discipline Records, 10/7/23 - 4/25/23

The District submitted the following additional documents on September 18, 2023:

1. IEP Progress Report, 2022-23 School Year
2. Service Log for D/HH Specialist, 9/20/23 - 6/5/23

The Parent submitted the following relevant items with their August 16, 2023 Complaint:

1. Notice of Team Meeting on 4/7/23, 3/21/23

2. List of IEP Team Members and Attendance Times, 4/7/23
3. Parent's List of Service Dates, 2022-23 school year
4. Emails Between District Staff and with Parent, 9/23/22 - 7/10/23
5. Student Discipline Information, 9/29/22 – 4/15/22
6. Notice of Team Meeting on 6/15/23, 6/8/23
7. PWN, 4/7/23
8. Educational Evaluation Report, 4/5/23
9. IEP, 6/15/23

The Parent submitted a *Reply* on September 14, 2023, providing an explanation and rebuttal, and documents in support of the Parent's position. The Parent submitted the following relevant items:

1. *Reply*, 9/14/23
2. Parent's List of Service Dates, 2022-23 school year
3. District Calendar, 2022-23 school year
4. Emails Between District Staff and with Parent, 9/15/22 - 6/16/23

The Complaint Investigator interviewed the Parent on September 20, 2023. On September 25 and 26, 2023, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. 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 Complainant's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from August 17, 2022, to the filing of this Complaint on August 16, 2023.

| <b>Allegations</b>  | <b>Conclusions</b>   |
|---|--|
| <p><b>General Evaluation and Reevaluation Procedures</b></p> <p>The Parent alleges that the District violated the IDEA by failing to assess the Student in all areas related to the Student's disabilities and failing to conduct an evaluation that was sufficiently comprehensive to identify the Student's special education and related services needs.</p> <p>(OAR 581-015-2110; 34 CFR §300.303; 34 CFR §300.304)</p> | <p><b>Not Substantiated</b></p> <p>There is no evidence that the three-year reevaluation conducted by the District was inappropriate. The Parent did not express concern or request additional evaluations until the June 2023 FIEP meetings. In response, the IEP team conducted evaluation planning on June 15, 2023 and agreed to all additional assessments requested by the Parent.</p> |
| <p><b>When IEPs Must Be in Effect</b></p>   | <p><b>Substantiated in Part</b></p>  |

|   |   |
|---|---|
| <p>The Parent alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>  | <p>There is no evidence that the District failed to provide special education and related services in accordance with the Student's IEP. Transportation services were available to the Student during the entire 2022-23 school year. However, the District did not comply with the requirement to report IEP progress information to the Parent. It is unclear to what extent the District provided the Parent with IEP progress reports, if at all.</p>   |
| <p><b>Review and Revision of IEPs</b></p> <p>The Parent alleges that the District violated the IDEA by failing to conduct an annual review of the Student's IEP within 365 days after the previous annual review of the Student's IEP.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>   | <p><b>Substantiated</b></p> <p>The Student's annual IEP was due on April 11, 2023. The District convened a meeting on April 7, 2023, which was ended before the annual IEP review occurred. The parties agreed to continue the IEP process with a facilitator. The annual IEP review occurred on June 5 and 15, 2023.</p> <p>The District determined it was more important to obtain parent participation in the development of the IEP than comply with the annual review deadline. Holding the annual IEP review after the deadline did not deprive the Student of any educational benefit or the Parent of their opportunity to participate.</p> |
| <p><b>IEP Content</b></p> <p>The Parent alleges that the District violated the IDEA when it failed to include specific special education and related services and supplementary aids and services in the Student's IEP necessary to fully address the Student's needs that result from the Student's disabilities, including social-emotional, behavior, writing, and self-care needs. The Parent also alleges that the Student's IEP did not contain sufficient present level information regarding the Student's academic achievement and functional performance.</p> | <p><b>Not Substantiated</b></p> <p>The Parent's allegation relates exclusively to the June 15, 2023 IEP.</p> <p>The June 15, 2023 IEP contained appropriate present level information, which identified the Student's strengths, needs, and how the Student's disability affects the Student's involvement and</p>  |

|  |  |
|--|--|
| <p>(OAR 581-015-2200; 34 CFR §300.320)</p>   | <p>progress in the general education curriculum. The Student's IEP goals and specific special education and related services and supplementary aids and services were based on the information identified in the Present Levels.</p>   |
| <p><b>Parent Participation</b></p> <p>The Parent alleges that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.</p> <p>(OAR 581-015-2190; 34 CFR §300.322; 34 CFR §300.501)</p> | <p><b>Not Substantiated</b></p> <p>There is no evidence that the District interfered with the Parent's ability to participate. The Parent had substantial communication with District staff, participated in IEP meetings, was given the opportunity to ask questions and share concerns, and provided input.</p>  |
| <p><b>Access to Student Education Records</b></p> <p>The Parent alleges that that the District violated the IDEA by failing to comply with the Parent's requests to inspect and review the Student's records without unnecessary delay and within the required timelines.</p> <p>(OAR 581-015-2300; 34 CFR §99.1 – 99.38; 34 CFR §300.501)</p>   | <p><b>Substantiated in Part</b></p> <p>The District complied with the Parent's FERPA request, but did so late. The District failed to provide the Parent with the Student's discipline records within the required 45 day timeline.</p> <p>The District was not obligated under FERPA to provide emails or service logs and data sheets as they were not maintained by the District in the Student's file.</p> |
| <p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Parent alleges that the District failed to provide the Student with a free appropriate public education.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>  | <p><b>Not Substantiated</b></p> <p>The District's procedural errors did not result in a denial of FAPE, as the Student continued to make progress.</p>   |

|  |
|--|
| <p><b>REQUESTED CORRECTIVE ACTION</b></p>  |
| <p>The Parent requested the following corrective action:</p> <ol style="list-style-type: none"> <li>1. The IEP team should meet to craft an IEP that is calculated to confer meaningful educational benefit and free appropriate education for the Student.</li> <li>2. All team members' input and recommendations should be equally considered.</li> <li>3. A comprehensive independent educational evaluation, done by a provider the Parent chooses, should be done to get a good understanding of the Student's true educational</li> </ol> |

needs.

4. Compensatory services going back one full year should be provided to service the areas of communication, academic, behavioral, social and emotional, and as determined necessary by the IEE, in order to assist in getting the Student to where they would be if they had been receiving special education services as necessary to receive FAPE.
5. Staff training, done by an independent trainer the Parent agrees to, should be provided to all district special education staff to ensure that all staff have an accurate understanding of IDEA and state special education rules and regulations in order to ensure FAPE for the Student and all students.

### 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 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 is fifteen years old and in the tenth grade.
2. The Student is currently eligible for special education services under the category of Other Health Impairment (OHI), Deaf or Hard of Hearing (DHH), and Specific Learning Disability (SLD).
3. "[The Student] was initially evaluated and qualified for special education services in the area of hearing impairment at the age of three" and received early childhood services.
4. The Student's medical history includes diagnoses of Pendred syndrome, sensorineural hearing impairment resulting in severe to profound hearing loss in both ears, oppositional defiant disorder, attention deficit/hyperactivity disorder (ADHD), anxiety, learning disorder, and mixed receptive expressive language disorder, among others.
5. The Student's April 12, 2022 IEP: "was developed while the Student was enrolled as a Homeschool Student with an IEP, and was amended on 9/1/22 to address the Student transitioning back into the public-school setting."
6. The September 1, 2022 Amended IEP (September 2022 Amended IEP) included the following, among other things:
  - a. Annual IEP Review Date: April 11, 2023
  - b. Re-Evaluation Due Date: May 4, 2023
  - c. Present Levels of Academic Achievement:
    - i. Writing: The Student, "struggles with the structure of writing" and staying on topic; "needs concrete structured examples"; and needs help placing ideas in an outline.
    - ii. Math: The Student, "continues to struggle with multiple step problems... This has started to create a larger gap in [their] math skills because math at this level becomes

more complex and involves mostly multistep problems and longer practice assignments.”

d. Present Levels of Functional Performance:

- i. Speech: “[The Student] would benefit from continued work on the /z/ sound, and using [their] good /s/ and /s/-blend productions during conversational speech. [The Student] is capable of producing /s/ and /s/-blend sounds, but needs to be willing to independently use them to increase the clarity of [their] speech.”
- ii. Hearing: The Student has “a bilateral severe to profound hearing loss... wears a cochlear implant and a contralateral hearing aid consistently along with an FM system in the classroom.... [The Student’s] speech recognition is better in a quiet environment and in close proximity but is compromised at a distance and in competing noise (typical in a classroom). This hearing loss is considered educationally and communicatively significant based on the Oregon Administrative Rules.”

“Students with a significant hearing loss like [the Student], do not pick up incidental vocabulary from the environment like other typical children. Vocabulary in [their] case needs to be acquired through explicit instruction, repetition and visual means like speech reading and text.”

- iii. “[The Student] is functioning in most areas that is commensurate with [their] peers... can be easily frustrated with peers and needs adult intervention to solve problems. [The Student] does at times express [their] frustration by using an angry voice and body. However, [the Student] is remorseful and apologetic later.”
- e. How the Student’s disability affects involvement and progress in the general education curriculum: “[The Student’s] hearing impairment and ADHD makes it difficult for [them] to express [their] ideas clearly and effectively to [their] teacher and peers. It makes it difficult for [them] to complete multistep assignments. [The Student] needs specialized instruction in order to learn to complete multiple step assignments and gain skills to be at the level of [their] peers.”
- f. Special Factors: The Student has communication needs, is deaf or hard of hearing, and needs assistive technology devices or services.
- g. Goals: One goal each in the areas of Speech/Language (produce age-appropriate speech sounds); Vocabulary Development (increase vocabulary); Writing (independently go through writing process and create a completed essay); and Math (show knowledge solving for area/volume, functions, and geometrical shapes).

Progress reports to be provided concurrent with regular education grading periods.

- h. Specially Designed Instruction (SDI): Speech/Language (80 minutes per month, monitored by SLP); Language Development (120 minutes per month, monitored by Deaf and Hard of Hearing Specialist); Writing (60 minutes per week, monitored by Case Manager); and Math (60 minutes per week, monitored by Case Manager).
- i. Related Services: Audiology service (120 minutes per year); and Transportation service (30 minutes daily).

- j. Accommodations: FM system, copy of any required class notes, breaks from class in supervised area, alternate PE, no group ball games, no requirement for headphones or earbuds, grade level comprehension help, access to adult for problem solving issues/conflict, extended time with testing, and closed captions on videos.
  - k. Supports for School Personnel: SLP consult (one hour per year); D/HH consult (30 minutes per year); special education and general education teacher consult (one hour per year).
  - l. Nonparticipation Justification: “may be removed from the general education setting for up to 120 min weekly to receive specially designed instruction in math and writing.”
7. The District reported that the Parent participated in the September 1, 2022 IEP meeting, provided input, and “chose to enroll the Student at [an alternative high school] which resulted in the Student’s placement of General Education with Special Education Support versus the previous placement of Homeschooled with Special Education Services.”
  8. For the September 1, 2022 IEP meeting, the District reported “a Notice of Team Meeting could not be located, and an updated Placement Page could not be located.”
  9. The copy of the September 2022 IEP provided by the District to the Investigator included IEP progress notes for the 2022-23 school year (notes dated November 2022, February 2023, and April 2023), for three of the Student’s four IEP goals. The vocabulary development goal did not include any progress updates for the 2022-23 school year.
  10. The Parent reported not having any issues with the content of the September 2022 Amended IEP. Rather, the Parent alleged that it was not properly implemented, including the failure of the District to provide transportation services and SDI as required by the IEP.
  11. The Parent reported receiving a telephone call before the first day of school from the bus company that provided bus services for the District. The bus company informed the Parent that the Student’s bus route in the morning required the Student to transfer buses in the middle of the route. The Parent reported asking for a bus that did not require the Student to transfer and being told that “due to covid they are short staffed.” The Parent stated they called at the end of September and October 2022, hoping a different option would be available, but the bus company said, “they couldn’t offer [the Parent] anything different this year.”

The Parent drove the Student to school during the 2022-23 school year, citing safety concerns, but the Student took the afternoon bus home.

12. Multiple District witnesses reported that the District does not have any special education bus routes that require special education students to transfer buses. From the first day of school through the end of the 2022-23 school year, the bus route available to the Student was the same. The bus would: (1) pick up the Student at home; (2) stop at the District’s regular high school (students who attended that school would get off); and then (3) go to the Student’s school. The District reported that the bus route to and from school were exactly the same, in the reverse order.
13. On September 6, 2022, the Student started the first day of the 2022-23 school year as a ninth grader at the District’s alternative high school (the Alternative High School).
14. The Alternative High School had fewer students than the regular high school and offered smaller class sizes. It had four main subject matter teachers and nine staff members. The



Parent reported that the school was for students who needed more assistance in some way. According to District staff, approximately half of the student population received either special education services or were supported by a 504 plan.

15. The Student received special education services from a District special education teacher (the Case Manager), a District speech language pathologist (the SLP), and a deaf and hard of hearing specialist (the D/HH Specialist) from the local education service district (ESD).

The District reported that the SLP and D/HH Specialist had worked with the Student since elementary school.

16. The parties disagree about the amount of SDI provided to the Student during the 2022-23 school year.

- a. The District reported, “The Student received services through an Inclusionary Model with [the Case Manager] co-teaching and/or pushing into the Student’s classes to address needed SDI in Writing and Mathematics during the 2022–23 school year. The Student also received Vocabulary Support from the District’s contracted [D/HH Specialist], as well as Speech Services from [the SLP]. All services outlined in the 4/12/2022 [sic] amended 9/1/2022, were provided to the Student in accordance with the Student’s IEP.”

- b. On September 23, 2022, the Parent emailed the District Special Education Coordinator (the Coordinator) and the Case Manager, stating, “It has been brought to my attention [the Student] is not receiving the services [they are] entitled to under [their] IEP... [The Student] has had 1 - 10 minute session... check in since school started. [The Student] is now behind in all of [their] services (besides time with the hard of hearing teacher)... I am formally requesting a new case manager for my child. My child’s needs are not being met and I am not being listened to as [their] parent.” The Parent requested that each time services were delivered that it “be documented and a note sent home signed by the teacher and [the Student] to show to [the Parent]” that the services were provided.

17. The District provided a list of dates that the Case Manager provided SDI to the Student. According to this list, from September 13, 2022 to June 13, 2023, the Case Manager met with Student approximately 55 times to deliver: “services for writing and math as outlined in the IEP dated 04-12-22” and “continued to provide the services outlined in this IEP until the new IEP could be finalized by the team.” The Case Manager’s list also included a day when consultation was provided to school staff; dates the Student refused to work with the Case Manager; and dates the Case Manager was sick, along with dates when the missed services were made up.

The Parent did not agree with the service dates provided by the District. The Parent provided a different list of dates they believed that the Case Manager provided SDI to the Student, based on information provided to the Parent by the Student. The Parent’s list indicated that the Case Manager provided SDI to the Student approximately 28 times (27 fewer service dates than reported by the District).

18. The Case Manager reported that they provided at least 60 minutes of math and 60 minutes of writing SDI to the Student each week. They had two days scheduled each week to provide the Student’s SDI and collect progress data. The Case Manager was also in the Student’s classroom other days of the week and provided unscheduled instruction and support to the Student. Additionally, the Case Manager’s room was used by students, including the Student, as a quiet space and a place to ask for the Case Manager for help with assignments.

19. When asked, the Student's Math Teacher reported, "The Case Manager provided services on a regular basis. Sometimes this happened in my classroom, and sometimes the student was pulled out and worked in the Case Manager's classroom for a significant part of an 80 minute class period."

The Student's Language Arts Teacher reported, "[the Case Manager] was in my room providing services to those on [their] caseload regularly and frequently."

20. Both parties agreed that SDI provided by the D/HH Specialist was delivered as prescribed in the Student's IEP. The District provided a service log for the D/HH Specialist, which recorded services provided between September 20, 2022 and May 30, 2023, including the activity related to the Student's goal that was done and progress data for each session.
21. The District provided a calendar identifying dates the SLP provided speech services to the Student, indicating that at least 80 minutes of SDI was provided per month. The SLP reported, "I kept a data sheet where I recorded correct and incorrect productions of the goal we were working on during the session... I would write on my data sheet the sound we worked on, the level the student was working at (ex: sentences, reading, conversation, etc.), and sometimes a brief description of the activity we completed." The data sheet would be used to calculate a percentage of correct productions and write progress reports.

The Parent does not agree with the service dates provided for the SLP and reported that for the 2022-23 school year, the Student received 5 fewer service dates from the SLP than reported by the District.

22. The Student's November 2022 IEP progress notes (included in the copy of the September 2022 Amended IEP provided by the District) indicated that the Student was making progress on most goals. No progress information was included for the vocabulary development goal.
23. During the 2022-23 school year, the Student was involved in eight behavior incidents, including classroom disruptions and verbal and physical aggression towards peers.
24. When asked if the Student's behavior was an issue, District witnesses reported that the Student had behaviors of concern when the Student was younger. However, during the 2022-23 school year, behavior was not a concern. The Student's behavior did not interfere with their learning or the learning of others. Witnesses stated that the Student's behavior could be handled with general education accommodations and was at the same level as most of their peers.
25. In a January 26, 2023 email to the Case Manager, the Parent wrote, "it has been brought to my attention [the Student] needs help in math. [The Student] is supposed to be getting 1 hr [sic] of services through [the Case Manager] per week. This has failed to happen all year, which is a violation of [the Student's] IEP, along with FAPE."

The Case Manager responded by email, stating, "I have been working with [the Student] for [their] math and writing goals as well as [their] behavior at school. [Their] behavior is doing much better.... [The Student's] time with me is Thursdays and Mondays...."

26. The Student's February 2023 IEP progress notes (included in the copy of the September 2022 Amended IEP provided by the District) indicated that the Student made some progress on the speech goal, and the math and writing goals had been met. No progress information was included for the vocabulary development goal.

27. When asked, the Case Manager reported the following about the Student's math and writing goals:
- a. The Student was above grade level in all academic areas. The Student's IEP goals were at grade level, but the Student could exceed them.
  - b. The Case Manager would talk with the Student's teachers about upcoming lessons and assignments then push into classes to work with the Student on their general education coursework. They would work with the Student individually or in small groups.
  - c. After the Student's math and writing goals were met, the Case Manager continued providing instruction and monitoring progress with general education grade level work assigned in the Student's classes.
  - d. Every eight weeks the Case Manager would use the progress data recorded to write IEP progress reports for math and writing. Once the report was complete, the Case Manager shredded the progress data.
28. On February 10, 2023, "[t]he District's Education Specialist initially contacted the Parent to discuss the potential of no further evaluation being needed for consideration of continued eligibility for three-year re-evaluation... The Parent voiced agreement to the Education Specialist via phone."

The Parent reported that, during this phone conversation, they discussed the Student's behavior and, "that there is something missing with [the Student's] needs and there was a disconnect somewhere in [their] education based on [their] behaviors, not being able to follow along in class, not comprehending directions."

29. The Case Manager reported disagreeing with the Education Specialist and believed new assessments were needed. The Student was meeting their goals, completing grade level work and above, and the Case Manager was running out of things to teach the Student. The Case Manager wanted clarity on whether the Student needed SDI in math and writing or could access their education solely with the use of accommodations. The Case Manager stated they did not want to recommend the reduction or removal of services based solely on classroom work.
30. The District stated an evaluation planning meeting was not held. Rather, after informal conversations amongst District staff and telephone calls with the Parent, it was agreed that evaluations were needed.
31. The February 13, 2023 Consent for Evaluation stated the team was proposing to reevaluate the Student because, "[the Student] made learning gains and we want to formally assess where [their] achievement levels are." "This proposal is based on... parent and teacher input, observations, grades, progress monitoring, progress reports."
- The Parent signed and returned the consent form on February 13, 2023.
32. On February 27, 2023 the Parent requested that a cognitive assessment be added to the reevaluation. The District issued a February 27, 2023 PWN, stating the team agreed with the Parent's request to add a cognitive assessment.

33. On March 15, 2023, the Student's Science Teacher emailed the Parent to address a mistake made related to the IEP accommodation for providing the Student with a copy of any required class notes. An assignment was given requiring students to use notes taken in class to write a summary. The Science Teacher failed to provide the Student with notes and the Student received a low grade on the summary. The Science Teacher offered to exempt the Student from the assignment or provide notes and give the Student another chance to write the summary. The Science Teacher stated, "I will continue to be more aware of these types of assignments and how I can adapt them to fit [the Student's] needs and IEP accommodations."
34. On March 15, 2023, the Case Manager emailed the Parent with a list of dates that SDI in math and reading had been provided to the Student.
35. In a March 18, 2023 email to the Principal and the Director, the Parent wrote: "In preparation for my child's upcoming IEP meeting, I am submitting a Family Education Rights and Privacy Act (FERPA) requesting [sic] a copy of all of [the Student's] records since August 20<sup>th</sup> 2022 to present... Please include all of [the Student's] records, which include, but are not limited to: cumulative file ... summary reports of evaluation team and eligibility committee meetings; IEPs; school team committee meeting notes; any correspondence written between school personnel regarding our child where s/he is mentioned by name, initials or by code, including any emails; any correspondence written between parents and school personnel, including any emails; any and all records maintained by teachers and any member of the IEP team; any service records or logs; notes or letters written in connection with any planning or discussions, or any other matters in connection with the student."
36. The parties disagreed about which documents the District was required to provide in response to the Parent's FERPA request. The Parent believed the District was required to provide emails, services logs, and progress data.
37. The District reported, "Parent was informed that part of what [the Parent] requested in [their] FERPA request was actually part of the Public Records Request, including documents that are not education records required to be produced under FERPA or the IDEA, specifically emails related to the Student."
38. The District issued a March 21, 2023 Notice of Team Meeting for a meeting scheduled for April 7, 2023 to review evaluations, determine eligibility, and develop or review an IEP and placement.
39. In an April 3, 2023 email to the Coordinator, the D/HH Specialist wrote that they were unable to access the computer program needed to enter the Student's IEP progress report update for the vocabulary development goal. The email included the IEP progress update compiled by the D/HH Specialist.

The D/HH Specialist's progress note stated, "[The Student] has met [their] Vocabulary goal. [The Student] was given the PPVT-4 (Peabody Picture Vocabulary Test) on March 7<sup>th</sup> and received a standard score of 117 which places [them] in the 87<sup>th</sup> percentile and moderately high score range. In our weekly sessions together [the Student] has been reading grade level passages... and answering the related questions with about 90% accuracy." The D/HH Specialist also drafted a new IEP goal for "Hearing Self Advocacy."
40. The record indicated that the D/HH Specialist's IEP progress notes were never entered into the District's computer system.

No IEP progress reports were provided for the vocabulary development goal during the 2022-23 school year.

41. The Case Manager reported they printed an IEP progress report at the end of each quarter, put it in an envelope, and gave it to the Student to take home. The Case Manager reported that each service provider was responsible for printing their own reports. "Sometimes the [other providers] would let [the Case Manager] know when they were done" entering their IEP progress updates in the computer system "but often they would send their own at their timing."
42. The Director reported that if the other providers entered their IEP progress notes before the Case Manager printed an IEP progress report, those progress notes would be included in the report.
43. It is unclear whether IEP progress reports were sent to the Parent during the 2022-23 school year. If any IEP progress reports were brought home by the Student and given to the Parent, it is unclear whether they included progress information for the math and writing goals only, or if progress information for other goals was included as well.
44. An April 5, 2023 Educational Evaluation Report included the following, in relevant part:
  - a. Math Teacher report: "[The Student] has been doing well when it comes to being on task, participating, and staying up to date with assignments... is quick to ask for help when [the Student] needs it... Sometimes [the Student] is able to work independently for most of the class period but other times [the Student] is frequently needing help... sometimes scores lower than expected on assessments but after reviewing specific content, [the Student] is able to make corrections.... [The Student] has been making progress with [their] communication. Earlier in the school year, [the Student] was frequently yelling and cursing at others. This behavior still happens sometimes, but it has become more typical for [the Student] to use appropriate language or take a short break when [they are] frustrated.
  - b. "A review of current intelligence testing indicated [their] overall cognitive score falls solidly in the average range."
  - c. "A review of achievement testing indicated reading scores fell in the average range except in the area of comprehension... writing scores fell in the average range. [Their] math score fell in the significantly below average range in all areas."
45. An April 5, 2023 ESD D/HH Evaluation Report stated the Student's level of receptive vocabulary acquisition was "in the 87th percentile and in the moderately high range when compared with same age peers with normal hearing." The Report recommended continuing "direct and consult services from a teacher of the Deaf/HH."
46. The D/HH Specialist reported the Student scored above grade level in the evaluation conducted. The D/HH Specialist did not want to remove services completely because of the Student's significant hearing loss and suggested adding a hearing advocacy goal to the IEP.
47. On April 6, 2023, the Parent signed a Records Release, which stated the Student's "Special Education File, Draft IEP and Draft Placement for IEP meeting date 04-07-2023, and Educational Evaluation Report dated 04-05-2023" were provided by the District.
48. On April 7, 2023, the District convened an annual IEP meeting to review evaluations, determine eligibility, and review and revise the Student's IEP. The meeting lasted

approximately twelve minutes. The parties do not agree on what occurred at the meeting or who ended the meeting.

49. The District reported, “The Parent became upset during this meeting and the offer of working with [the Department] for a Facilitated or Mediated IEP was made. The Parent stated the meeting was over until a Facilitator could be lined up.” After the Parent left the meeting, District participants stayed online, had brief discussion about whether to continue the meeting but decided having parent participation outweighed the possibility of missing the annual IEP review due date.
50. The District’s April 7, 2023 IEP Meeting Minutes included the following, in relevant part:
  - a. “[I]f masks come back – needs to clear face shield. [The Coordinator] says no – [the Parent] upset – says we are non compliant.”
  - b. “Parent took offer of facilitator until [the Coordinator] can get it scheduled.”
51. When asked about the April 7, 2023 IEP meeting, District staff consistently reported that the Parent got upset, behaved inappropriately, and yelled at District IEP team members. The Coordinator tried get the Parent to calm down and be respectful, stating that otherwise they would have to end the meeting. The Coordinator offered the option of obtaining a facilitator. The Parent agreed and ended the meeting.
52. The Director was not at the April 7, 2023 IEP meeting but reported speaking with the Coordinator before the meetings as they anticipated it might be a difficult meeting. The Director told the Coordinator that if something happened and the Coordinator needed to stop the meeting, they could offer a facilitator or mediator. The District would not proceed without the Parent even if that meant missing the annual IEP review deadline.
53. The District issued an April 7, 2023 PWN, which stated: “The team met today... The meeting began at approximately 2:30 PM. Around 2:42 PM, [the Parent] stated that the IEP meeting was over. [The Parent] reported [they] would not meet with the school personnel until the district could schedule a Facilitator or Mediator to work with the team. The parent left the virtual meeting. Based on the parent request and district practice of including parents in IDEA meetings, it was decided to end the meeting because parent participation and input are key to student success as outlined in district practice... The district understands that in making this decision, timelines (IEP/Placement and Eligibility due dates) that we adhere to and as outlined in Oregon Administrative Rules may not be met as we work with [the Department] to gain a Facilitator as the parent requested.”
54. In an April 7, 2023 email to the District, the Parent reported their version of what happened at the meeting: “I was trying to speak about concerns and the requests... of staff to wear clear masks if masks are to come back, the questionable service dates provided to my child and the lack of data to support the removal of services and our concerns about the services that we were just told are going to be removed from [the Student’s] IEP. When I brought up the masks I was immediately shut down and told by [the Coordinator] that the school district cannot go against the staff’s medical decisions for themselves... I was told ‘to be quiet’ and that I was not ‘dictating the meeting’. I do not feel that I had equal parent participation in this meeting as this was a conversation around the needs for [the Student] to be provided FAPE... [The Coordinator] said ‘I guess we need a facilitator and the meeting is over.’ [I] agreed and left. I did not cancel or end the meeting.”

55. On April 7, 2023 the Director sent an email to the Parent about their records request, which stated, “[The District] does not keep service logs or notes as you described for the students we serve. Rather we gather student information which is transcribed to Progress Notes or to the Present Levels of Performance which, I believe the district has provided you with. As such, there are no records from the [District] staff to provide to you as requested. The ESD provider (Hearing Specialist) does keep service logs and those will be provided to you as soon as we have those gathered... you have requested records that are not educational records as defined by FERPA, for example, email. If you still want to make a request for those records, like emails, that are beyond the scope of FERPA, then there is a separate process for that, specifically the district’s public records request process.”
56. The District reported in interviews that, once IEP progress reports are created, District providers shred their data sheets.
57. On April 10, 2023, “a request was made by the District to [the Department] for a Facilitator to support the FIEP process. A Facilitator was assigned; however, the Parent requested a new Facilitator due to the initial Facilitator and [the Director] having worked on a professional panel together in the past.”
58. The Parent signed a Records Release on April 10, 2023, which stated that the Parent received student records from the District, including a PWN dated April 7, 2023 and a copy of the D/HH Specialist’s Service Log.
59. The Student’s April 2023 IEP progress notes (included in the copy of the September 2022 Amended IEP provided by the District) indicated the Student made progress in speech and writing. The update for the math goal stated, “[The Student] continues to struggle with multiple step problems and answers...significantly better at short, quick assignments with only 1 step to complete the problem,” but no measurable data was provided. Progress information was not included for the vocabulary development goal.
60. The Parent made a public records request on April 24, 2023.
61. In a May 4, 2023 email to the Director, the Parent wrote, “Emails, when contained by the school district as an educational record, is a document covered under FERPA. Because you have these emails contained (stored) for educational purposes are [sic] either stored electronically (emails, information in Synergy, parent square/vue) or paper copies (CUM folder), these would be considered educational records and accessible to a family... The fact you have these available, is evidence they are maintained as part of [the Student’s] educational file.”

The Director responded, “When it comes to the maintenance of FERPA records under IDEA the court has interpreted the records in the following way... The outcome of the Ninth Circuit case cited... is that the court explicitly held that only the emails that were physically printed and placed in the student’s file counted as an ‘education record’ under FERPA. In other words, the district was not required to produce all the emails that could be found by searching the district’s email servers. That is the controlling law in our jurisdiction at this time. However, if you want access to emails on the server that are relevant to your child, there is a process we can use to review and pull those emails. It is the public records request process... We are moving forward with that process given we have your request for these emails.”

62. The District issued a May 4, 2023 PWN for the refusal to provide emails in response to the Parent’s FERPA request. “[The Parent] has asked the district to provide FERPA educational records. The district complied with this request providing [the Parent] with [the Student’s] CUM

file and Special Education Records... emails are not considered to be education records under FERPA and the district is currently working through the public records process to provide [the Parent] with the emails [the Parent] has requested.”

63. On June 2, 2023, the Parent signed a Records Release, which stated that the District provided the Parent with email records associated with the Student.
64. On June 5, 2023, a facilitated IEP (FIEP) meeting was convened.
65. The June 5, 2023 FIEP Meeting Minutes included the following, among other things:
  - a. The team reviewed evaluation results. The Parent asked, “[a]ny behavior evaluations completed based on the behaviors [the Student] has had ongoing this year and previous years?” The response was, “Nothing formal, didn’t see any new questions or concerns.”
  - b. The Math Teacher reported, “Passing grades in math classes, lower assessment scores, but when [the Student] goes back through with [the Case Manager] and really looks at the instructions [they] improve scores.”
  - c. The Language Arts Teacher reported, “longer assignments [the Student] needs help, but a lot of kids in the class do.”
  - d. The Case Manager reported, “Pays attention for most part in math, can get side tracked easily and sometimes hard to redirect. Chooses often to work on [their] own. Does not always want my help. In [Language Arts] more open to help...”
  - e. The team agreed the Student met the eligibility criteria for Deaf and Hard of Hearing, Other Health Impairment, and Specific Learning Disability.
  - f. “Special Factors Review: No changes.”
  - g. “[The SLP] reviewed speech, recommended not continuing specially designed instruction.” The Parent disagreed with the removal of speech services and stated that a comprehensive evaluation was not done.
  - h. “[The Parent]: When [the Student] speaks too fast it can be hard to understand, [the Student] reports the /s/ sound is hard for [them].” “[The SLP] explained that there are accommodations but what [the Student] needs does not require [the SLP] to directly provide.” “[The SLP] shared that in all the time [the SLP] has worked with [the Student] [the SLP] has never seen [the Student’s] speech negatively impact [them] in classes or with peers.”
  - i. Transportation: The Parent reported that there was no bus to bring the Student to school without transferring buses at the high school. “[The Director] said [they] will need to look into this as this is the first [they have] heard of it.”
  - j. The Parent shared concerns, including, “No comprehensive evaluation regarding behavior so don’t feel it was a complete evaluation. Behavior was brought up with [the Education Specialist] and [they] shared that since no one brought up behavior so [sic] nothing was done. Was brought up before signing consent and [the Education Specialist] felt like test from [an outside provider] would be better.”
  - k. The team agreed they would do evaluation planning and consent at next meeting.



66. The District reported that the June 5, 2023 meeting: "...ran for the Facilitator's allotted three hours... The FIEP team was able to complete the evaluation review, update eligibility and begin working through the IEP document, but did not complete the process... An additional FIEP meeting was scheduled for 6/15/2023."
67. The District issued three PWNs for the June 5, 2023 IEP meeting regarding eligibility, removal of SDI for speech, and new goals added to the IEP.
68. The District issued a Notice of Team Meeting dated June 8, 2023 for a virtual meeting scheduled on June 15, 2023.
69. On June 15, 2023, before the scheduled FIEP meeting, the Director emailed the Parent with "the Service Logs and Calendars for special education services provided to [the Student] during the 2022-23 School Year."
70. The June 15, 2023 FIEP meeting minutes included the following:
- a. When asked if all services were provided this school year, the Director "explained Anticipated Amount and district's belief that services were provided to the best of our ability."
  - b. The Parent asked about inconsistencies with service dates provided by the District. The Case Manager shared they generally provided math and writing services on the same two days each week, but in the case of holidays, sick days, etc., make-up services might be provided on different days.
  - c. The Parent requested evaluations in the areas of "Social/Emotional Behavior, Organization, Speech, FBA, Autism." The team agreed.
  - d. The Director shared information obtained about transportation. The Student is "[n]ot riding in the morning but is riding in the afternoon. Last pick up in the morning then to [the regular high school] where other students get off but [the Student] does not get off bus, and then is driven to [the Alternative High School]. Afternoon is same in reverse."
71. The June 15, 2023 IEP (June 2023 IEP) included the following, among other things:
- a. Parent Concerns: "I do not feel that non-known peers are able to understand [the Student]... due to [the Student's] ongoing behaviors the district should have done an FBA to understand why [their] behavior is interfering with [their] learning... I have concerns with service minutes not being conducted. Raw data being destroyed that makes the progress reports for the IEP goals. Data not being collected in a timely manner, and/or shared when requested. Trust in the case manager and student services department is limited due to these factors.... IEP team meeting in April 2023 was disheartening, made us feel that our opinions, feelings and information did not matter. Communication is important for me to be an equal member of the IEP team to allow me to have parental participation."
  - b. Present Levels of Academic Achievement:
    - i. Math: "[The Student] continues to struggle in math with multistep problems and answers" and needs SDI "in order to make progress towards grade level goals."

- ii. Writing: “[The Student] is able to write a multi-paragraph essay with an introduction, 3 or more details, and a conclusion with 80% accuracy. [The Student] has made significant progress in [their] written language is able to use in class accommodations to complete grade level work with a 70% or higher. [The Student] is able to proofread [their] work and fix errors with 80% accuracy. [The Student] has passed [their] 9th grade ELA courses with A’s using accommodations in the general education classroom.”
- c. Present Levels of Functional Performance:
- i. “[The Student] is able to follow school routines... takes care of [their] personal needs... is able to communicate [their] needs with staff and students, but [their] articulation can be difficult to understand when [the Student] is talking too quickly... can be easily frustrated with peers and needs adult intervention to solve problems but this has been steadily improving over [their] 9th grade school year.”
  - ii. Speech: “[The Student] continues to need multiple prompts and reminders to use [their] good /s/ sound during conversational speech...will frequently focus on [their] good sound productions for the first 10 minutes and then starts forgetting [their] good sound unless prompted... [the Student] is not demonstrating a need for specially designed instruction in articulation as [the Student] knows how, and is capable, and making all [their] speech sounds accurately. [The Student] needs to be willing to use [their] good sound productions during conversational speech.”
  - iii. Hearing: “At this time, [the Student] does not need specially designed instruction in language/vocabulary development. [The Student] would benefit from working on hearing self-advocacy...”
- d. Special Factors: removed communication as a special factor.
- e. Goals: three goals, one each for Hearing Self-Advocacy (explain hearing loss, audiogram, accommodations student needs and list organizations for the D/HH and the services they provide in 4/5 opportunities. Current baseline: 0/5); Math (use correct formula and follow the correct steps as outlined with a passing score; Baseline: is able to complete algebra and geometry math concepts with 80% accuracy or higher); Written Language (complete assignments with a passing score in written expression in 4/5 opportunities; Baseline: able to complete ninth grade written work with 80% accuracy or higher)
- f. SDI: Hearing Self-Advocacy (60 minutes per month); Math (60 minutes per week); and Written Expression (160 minutes per month). Removed SDI in Speech/Language and Language Development.
- g. Nonparticipation Justification: “[The Student] may be in the general education setting for 100% of [their] school day. Specially designed instruction will be provided in [their] general education classroom.”

72. It is unclear why the recent academic evaluations were not included in the present levels, or why communication was removed as a special factor. When asked, witnesses could not explain the removal of communication as a special factor and did not recall a discussion about it.

73. The Parent emailed the District on June 15, 2023 to report the Student's discipline records were not included in the FERPA records provided. The District responded by email the next day, stating, "Apologies for that oversight. I've attached the requested items here..."

"The District agrees that this piece of information was not received by the Parent within the expected time frame as it had inadvertently been missed as it was believed to be part of the Student's Cum File."

74. The District issued six PWNs related to the June 15, 2023 IEP meeting, which stated the following, among other things:

- a. "[The Parent] reported the school district violated [the Student's] Free and Appropriate Education by not providing bus services to [the Student] as [the Parent] had been transporting [the Student] to school daily...[the Parent] reported ... the bus company telling [the Parent] that [the Student] had to change buses at the high school.... The district investigated this report and discovered that [the Student] does not change or get off the bus during the high school drop off ... The bus company did report that [the Parent] called in the early fall (2022) and was concerned about the early pick up time but that no other concerns were raised during that conversation. [The District] continues to stand ready to provide bus transportation to/from school as outlined on [the Students'] IEP."
- b. "[The Parent] requested that all data sheets from the case manager and service providers be provided to [the Parent]. Rather than provide [the Parent] with data sheets, [the District] stands ready to provide [the Parent] with written IEP progress reports, IEP meetings, regularly scheduled report cards, conferences to discuss [the Student's] educational progress, and access to synergy/ParentVue... Due to the nature of data sheets, they are often difficult for parents/guardians to interpret because they do not hold the licensure of a special education teacher, speech language pathologist, or teacher of the deaf and hard of hearing."
- c. "The team reviewed accommodations requests provided by [the Parent] and [the Student] and agreed to add seventeen additional accommodations including nine universal accommodations provided to all students at [the Alternative High School]."
- d. "[The Parent] indicated the district did not evaluate [the Student] in all areas of eligibility or educational need and requested additional evaluations in the area of Social-Emotional Learning/Behavior, Organization (Executive Functioning), Speech/Language, and Autism Spectrum Disorder. [The District] stands ready to provide these evaluations" and has drafted a consent form for the Parent to review and sign.
- e. "The IEP team met to continue [the Student's] annual IEP review... After discussion and team agreement baseline data was added" to the IEP goals and present levels.

75. The Parent signed an evaluation consent form on June 20, 2023.

76. On a July 9, 2023 email to the Principal, the Parent reported that the Student had been allowed to play kick ball on the last day of school, in violation of the Student's IEP. "This is a reminder that [the Student's] IEP states that NO BALL is allowed to be played because of [their] cochlear implant." The Principal responded, stating, "...I will communicate and remind staff of this expectation."

The Parent reported that the Student was allowed to play ball games multiple times throughout the 2022-23 school year. The Principal could only recall it happening one time.

77. On August 16, 2023, the Parent filed this Complaint.

#### IV. DISCUSSION

##### **General Evaluation and Reevaluation Procedures**

The Parent alleged that the District violated the IDEA by failing to assess the Student in all areas related to the Student's disabilities and failing to conduct an evaluation that was sufficiently comprehensive to identify the Student's special education and related services needs.

A reevaluation must occur at least every three years, unless the parent and the school district agree that a reevaluation is unnecessary.<sup>3</sup> Before conducting any evaluation or reevaluation of a child, a district must conduct evaluation planning.<sup>4</sup> As part of a reevaluation, the district must review existing evaluation data on the child.<sup>5</sup> On the basis of that review, and input from the child's parents, the school district must identify what additional data, if any, are needed to determine (1) whether the child is a child with a disability; (2) the present levels of academic achievement and related developmental needs of the child; (3) whether the child continues to need special education and related services; and (4) whether the child needs any additions or modifications to special education and related services.<sup>6</sup> A district must ensure that the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.<sup>7</sup>

The District's Education Specialist initially suggested a reevaluation was unnecessary and the team had sufficient information to determine the Student's eligibility and special education needs. The Education Specialist called the Parent with this recommendation and the Parent agreed. The Student's service providers disagreed and requested evaluations be conducted to obtain additional information. The Case Manager reported that because the Student was meeting their goals and performing grade level work, evaluations were necessary to determine whether the Student needed SDI in academics or if they could be sufficiently supported with accommodations. The D/HH Specialist also reported wanting to assess the Student as they were meeting their vocabulary development goal.

The Parent signed an evaluation consent form on February 13, 2023, which contained the evaluations requested by the service providers. On February 27, 2023, the Parent requested that a cognitive assessment be added. The team agreed, the Parent signed a second consent form, and the District issued a PWN. There is no evidence that the Parent voiced any disagreement with the reevaluation plan or raised any concerns about other suspected areas of need at that time.

All District IEP team members interviewed reported that they did not have any behavior concerns; therefore, the team had no reason to include behavior assessments in the Student's reevaluation.

The District completed the evaluations prior to the April 7, 2023 IEP meeting. The Parent did not express concerns with the Student's reevaluation until the June 5, 2023 facilitated IEP meeting.

---

<sup>3</sup> OAR 581-015-2105(4); 34 CFR § 300.303(a)

<sup>4</sup> OAR 581-015-2110(1); 34 CFR § 300.305

<sup>5</sup> OAR 581-015-2115(1)(a); 34 CFR § 300.305(a)(1)

<sup>6</sup> OAR 581-015-2115(1)(b); 34 CFR § 300.305(a)(2)

<sup>7</sup> OAR 581-015-2110(4); 34 CFR §300.304

In response, the team conducted evaluation planning on June 15, 2023 and agreed to all the assessments requested by the Parent.

The Department does not substantiate this allegation.

### **When IEPs Must Be in Effect**

The Parent alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.<sup>8</sup> The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.<sup>9</sup> "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."<sup>10</sup>

"IEP Teams must implement policies, procedures, and practices relating to... how a child's progress towards meeting annual goals will be measured and reported."<sup>11</sup> "IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child's progress."<sup>12</sup>

A district violates the IDEA when it materially fails to implement an IEP.<sup>13</sup> "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."<sup>14</sup>

One IEP was in effect during the complaint period, the September 1, 2022 Amended IEP.

The Parent reported that they communicated concerns about transportation directly with the bus company. The Director stated that they were not aware that the Parent had concerns about transportation until the June 5, 2023 FIEP meeting. Evidence suggests that there was a misunderstanding between the Parent and the bus company. Multiple District witnesses reported that transportation was available to the Student on the same bus route throughout the entire 2022-23 school. Neither the morning nor afternoon bus route required the Student to transfer buses. Although the Parent decided to drive the Student to school, transportation services were available to the Student all year.

The record does not contain evidence indicating that the District failed to provide special education services and supports as prescribed by the Student's IEP. All three service providers presented information about the services they delivered and how they recorded progress data. Additional District staff reported witnessing the Case Manager pushing into the Student's classrooms regularly and frequently. The District provided service dates for the Case Manager; a calendar with service minutes for the SLP; and a service log with notes and progress data for the D/HH Specialist.

---

<sup>8</sup> OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

<sup>9</sup> OAR 581-015-2220; 34 CFR §300.323

<sup>10</sup> Questions and Answers on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 822 (9<sup>th</sup> Cir. 2007)

<sup>14</sup> *Id.*

It is uncertain to what extent the District provided the Parent with IEP progress reports, if at all. The Student's IEP indicated IEP progress reports would be provided at normal grading periods. When asked, the District could not say whether progress reports were provided to the Parent. The Student's three service providers each wrote IEP progress updates based on data collected on the Student's IEP goals, but it is unknown whether this information was shared with the Parent. The D/HH Specialist wrote IEP progress notes, but these were never entered into the District's computer system. The Case Manager reported printing IEP progress reports for the Student's math and writing goals at the end of each quarter, which were handed directly to the Student. It is unclear if any of these printed reports (1) included progress updates for the Student's speech goal, or (2) were given to the Parent. The Parent did not recall receiving any IEP progress reports during the 2022-23 school year. The District failed, at least in part, to comply with this provision of the IEP.

The Department substantiates this allegation in part.

### **Review and Revision of IEPs**

The Parent alleges that the District violated the IDEA by failing to conduct an annual review of the Student's IEP within 365 days after the previous annual review of the Student's IEP.

A child's IEP must be reviewed and revised periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved.<sup>15</sup> School districts must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate.<sup>16</sup> An IEP meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.<sup>17</sup>

"An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved."<sup>18</sup> "When confronted with the situation of complying with one procedural requirement of the IDEA or another... the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in a denial of FAPE... we will allow the agency reasonable latitude in making that decision."<sup>19</sup> Circumstances where it is appropriate for a district "to prioritize strict deadline compliance over parental participation" "will be rare given the central role parents have in helping to develop IEPs."<sup>20</sup>

There is no dispute that the Student's annual IEP review occurred after the review deadline. The Student's annual review was due by April 11, 2023, but did not occur until June 5 and 15, 2023. While the parties do not agree on exactly what happened at the April 7, 2023 IEP meeting, the basic facts are evident. The Parent was upset and the District offered the option of moving forward with a facilitator. The Parent and District agreed the team would stop the IEP process until a facilitator could be arranged.

When the Parent left the April 7, 2023 IEP meeting, the District made a deliberate decision to miss the annual deadline, rather than conduct an IEP review without the Parent. The District determined that it was more important to have parent participation than comply with the annual review date. At the time, there was no indication of how long it would take to schedule a

---

<sup>15</sup> OAR 581-15-2225(1)(a); 34 CFR §300.324(b)(1)(i)

<sup>16</sup> OAR 581-015-2195(1); 34 CFR §300.322; 34 CFR §300.501

<sup>17</sup> OAR 581-015-2195(3); 34 CFR §300.322(d)

<sup>18</sup> *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9<sup>th</sup> Cir. 2001)

<sup>19</sup> *Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1046-1047 (9<sup>th</sup> Cir. 2013)

<sup>20</sup> *Id.* at 1047

facilitated meeting. The annual IEP review was not completed until June 15, 2023. However, the Student's existing IEP remained in effect until that time. The Student was meeting their IEP goals, producing grade level work, and passing all of their classes.

Because (1) the Parent was not notified of the possibility that the team might continue the IEP meeting without the Parent, and (2) the Parent did not affirmatively refuse to attend an IEP meeting, the District's decision to wait until a facilitated IEP meeting could be held was appropriate. However, the decision resulted in a procedural violation that did not deprive the Student of any educational opportunity or the Parent of their opportunity to participate in decision making.

The Department substantiates this allegation.

### **IEP Content**

The Parent alleges that the District violated the IDEA when it failed to include specific special education and related services and supplementary aids and services in the Student's IEP necessary to fully address the Student's needs that result from the Student's disabilities, including social-emotional, behavior, writing, and self-care needs. The Parent also alleges that the Student's IEP did not contain sufficient present level information regarding the Student's academic achievement and functional performance.

In developing, reviewing, and revising a student's IEP, the IEP team must consider the strengths of the student; the concerns of the parents for enhancing the education of the student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.<sup>21</sup> The IEP team must also consider special factors, including communication needs and whether the student's behavior interferes with their learning or the learning of others.<sup>22</sup> An IEP must contain a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects their involvement and progress in the general education curriculum.

The specific special education and related services and supports to be provided must enable the student to (1) advance appropriately toward attaining annual goals, (2) be involved and make progress in the general education curriculum, and (3) be educated and participate with other children with and without disabilities.<sup>23</sup> The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>24</sup> "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."<sup>25</sup>

The goal in making IEP decisions is for the team to reach a consensus.<sup>26</sup> Nonetheless, the school district is responsible for ensuring that the individual student receive FAPE.<sup>27</sup> When consensus is not possible, the district must determine what services are necessary to provide FAPE.<sup>28</sup>

The June 2023 IEP Present Levels included the Parent's concerns for enhancing the education for their child; the strengths of the Student; the needs of the Student; and an

---

<sup>21</sup> OAR 581-015-2205(1); 34 CFR §300.324(a)

<sup>22</sup> OAR 581-015-2205(2); 34 CFR §300.324(a)

<sup>23</sup> OAR 581-015-2200(1)(d); 34 CFR §300.320(a)(4)

<sup>24</sup> *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

<sup>25</sup> *Id.* at 1000

<sup>26</sup> Letter to Richards (OSEP 1/7/2010)

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

explanation for how the Student's disability affects involvement and progress in the general education curriculum. The Present Levels identified that the Student continued to struggle in math and needed SDI in order to make progress towards grade level goals; made significant progress in writing and could complete grade level work using accommodations; was able to make all speech sounds accurately and did not demonstrate a need for SDI in articulation but may continue to need prompts; and no longer needed SDI in language/vocabulary development but would benefit from working on hearing self-advocacy. The Present Levels also stated the Student's functioning was aligned with peers in most areas, and the Student was able to follow school routines and take care of their personal needs. The Present Levels and IEP goals included baselines and measurable data related to the Student's goals. The Student's IEP goals, and specific special education and related services and supplementary aids and services, were based on the information identified in the Present Levels.

The Student's IEP included services and supports for writing. It did not contain services for social-emotional, behavioral, or self-care needs, as the IEP team did not identify these as areas of need. District staff reported that the Student's behavior was not interfering with their education or the education of others. When behaviors did occur, they could be managed by general education accommodations. Speech services for articulation were removed from the IEP based on progress data and the recommendation of the SLP, who had worked with Student since elementary school and was knowledgeable about the Student's progress. District IEP team members reported that the Student's articulation did not interfere with their ability to communicate with peers or staff. The Parent did not agree with every decision made by the IEP team, but the team considered the Parent's input and concerns, as noted in the IEP, meeting minutes, and PWNs.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleges that that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>29</sup> Districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.<sup>30</sup> "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."<sup>31</sup> While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."<sup>32</sup>

The Parent was provided the opportunity to participate in all four IEP meetings held during the complaint period. Despite conflict at the April 7, 2023 IEP meeting, the District did not exclude the Parent. To the contrary, as stated above, the District explicitly chose to commit a procedural violation in order to ensure the Parent's participation in the IEP process. The District communicated this information to the Parent in the April 7, 2023 PWN.

---

<sup>29</sup> OAR 581-015-2190(1); 34 CFR §300.322(a)

<sup>30</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

<sup>31</sup> Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006)

<sup>32</sup> *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9<sup>th</sup> Cir. 1996)



At the June 5 and 15, 2023 facilitated IEP meetings, the team listened to the Parent's concerns, addressed questions, accepted Parent input, and adopted many of the Parent's recommendations and requests. The District added accommodations requested by the Parent and agreed to evaluate the Student in all areas requested by the Parent. Parent input and concerns were noted in the IEP and in the meeting minutes. The District issued three PWNs related to the June 5, 2023 meeting and six PWNs for the June 15, 2023 IEP meeting.

The District responded to the Parent's requests for education records and other information. When the District determined it would not provide data sheets from service providers, this was documented in a PWN. However, as discussed previously, the District did not provide the Parent with IEP progress reports as required by the Student's IEP. It is unclear whether this impeded the Parent's ability to participate in decisions regarding the Student's special education.

The Department does not substantiate this allegation.

### **Access to Student Education Records**

The Parent alleges that the District violated the IDEA by failing to comply with the Parent's requests to inspect and review the Student's records without unnecessary delay and within the required timelines.

School districts must comply with a parent's request to inspect and review their child's education records without unnecessary delay before any meeting regarding an IEP, and in no case more than 45 days after the request has been made.<sup>33</sup> As OAR 581-015-2205 adopted the provisions of FERPA, "education records" are defined as those records that are (1) directly related to a student; and (2) maintained by an educational agency. This does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.<sup>34</sup> "Maintain" has been interpreted as covering records that are "kept in a filing cabinet in a records room at the school or on a permanent secure database."<sup>35</sup> Therefore, a district "is not required to turn over emails that were not 'maintained' in a physical file or secure electronic data base."<sup>36</sup>

The Parent filed a FERPA request on March 18, 2023 for all the Student's records, including emails, service records or logs, and all records maintained by teachers and any member of the IEP team. The District provided the Parent with records on April 6, 2023, which included the Student's cumulative file and special education file. On April 10, 2023, the District provided the Parent with two additional documents (a PWN and the D/HH Specialist's service logs). On June 15, 2023, the District provided a list of service dates for the Case Manager and a service calendar for the SLP.

On June 15, 2023, the Parent discovered that discipline records had not been provided and notified the District. The District apologized and provided the Parent with the missing discipline records (six pages total) on June 16, 2023. The District admitted it failed to provide the Parent with the Student's discipline records within the required timeline. The District stated these records were inadvertently missed because District staff thought they were part of the Student's cumulative file provided on April 6, 2023.

---

<sup>33</sup> OAR 581-015-2300(3); 34 CFR §303.405

<sup>34</sup> OAR 581-015-2300(1); 34 CFR §99.3

<sup>35</sup> *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 536 U.S. 426 (2002)

<sup>36</sup> *S.B. v. San Mateo-Foster City Sch. Dist.*, 118 LRP 31608 (N. D. Cal. 04/11/17), *aff'd*, *Burnette v. San Mateo Foster City Sch. Dist.*, 72 IDELR 147 (9th Cir. 2018, unpublished)

The District had no obligation to provide the Parent with emails, service logs, or data sheets in response to the FERPA request as the District did not maintain any of these documents in the Student's file. The District reported that staff (1) were not required to keep service logs; and (2) would shred progress data collected after writing IEP progress reports. Although emails were not kept in the Student's file, these were provided on June 2, 2023 in response to the Parent's April 24, 2023 public records request.

The District provided all records requested under the IDEA within the required timeline except for the Student's discipline records, which were provided more than 45 days after the records request was made.

The Department substantiates this allegation in part.

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

The Parent alleges that the District failed to provide the Student with a free appropriate public education.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.<sup>37</sup> In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with 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 requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>38</sup>

Not every procedural error is sufficient to rise to a denial of FAPE.<sup>39</sup> The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;<sup>40</sup> (2) whether the Parent's right to participate in the IEP process was infringed;<sup>41</sup> or (3) whether the procedural error caused a "deprivation of educational benefit."<sup>42</sup> Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."<sup>43</sup>

Although some procedural errors occurred, there was no lapse in services, no evidence of lost educational opportunity or benefit and, therefore, no denial of FAPE.

The Department does not substantiate this allegation.

## **V. CORRECTIVE ACTION<sup>44</sup>** *In the Matter of St. Helens School District 502*

---

<sup>37</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

<sup>38</sup> *Andrew F.*, 137 S.Ct. at 999

<sup>39</sup> *Amanda J.*, 267 F.3d at 892 (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990)

<sup>40</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, 969 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

<sup>41</sup> *Id.*

<sup>42</sup> *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

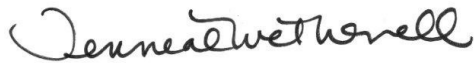
<sup>43</sup> *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9<sup>th</sup> Cir. 2005)

<sup>44</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

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

| Action Required  | Submissions  | Due Date   |
|--|--|--|
| 1. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this Student receive training in each of the following areas: <ul style="list-style-type: none"><li>• Progress Monitoring and Reporting Requirements;</li><li>• Review and Revision of IEPs; and</li><li>• Access to Student Records.</li></ul> | Training agenda/materials to ODE for review/approval.<br><br>Sign-in sheet for training. | <b>January 15, 2024</b><br><br><b>April 15, 2024</b> |

Dated: this 13<sup>th</sup> Day of October 2023



---

Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: October 13, 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).)