

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. 23-054-034

I. BACKGROUND

On August 21, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Portland School District 1J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On August 31, 2023, the Department's Complaint Investigator sent a *Request for Response* (RFR) to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of September 14, 2023.

On September 12, 2023, the District submitted a *Response*, stating that while not entirely in agreement with the issues raised, that the District did not contest the allegations described in the Complaint. The District also submitted a proposal for corrective action.

The District submitted the following relevant items:

1. District Response with proposed corrective action
2. Student IEP, 06/07/2022
3. Student IEP Amendment, 06/07/2022
4. Special Education Placement Determination, 06/07/2022
5. Prior Written Notice, 05/17/2022
6. IEP Team Meeting Minutes, 09/22/2022
7. IEP Team Meeting Minutes, 06/07/2022
8. Extended School Year Application, 05/17/2022
9. Safe Eating Protocol, 03/30/2022
10. Prior Written Notice, Individual Recovery Services Review, 06/07/2022
11. Written Agreement Between the Parent and the District, 06/07/2022
12. Notice of Team Meeting, 09/19/2022
13. Notice of Team Meeting, 05/25/2022
14. Prior Written Notice, 06/06/2022
15. Prior Written Notice, 09/22/2022

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

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

16. Student IEP, 04/28/2023
17. Safe Eating Protocol, 02/27/2023
18. Eligibility Summary Statement, 04/28/2023
19. Special Education Placement Determination, 04/28/2023
20. IEP Team Meeting Minutes, 04/28/2023
21. IEP Team Meeting Minutes, 11/09/2022
22. Prior Written Notice, Notice of Triennial, 04/10/2023
23. Prior Written Notice, Notice of Eligibility, 04/28/2023
24. Notice of Team Meeting, Meeting Request, 11/02/2022
25. Notice of Team Meeting, Meeting Request, 04/10/2023
26. Parent/Guardian Consent for Individual Evaluation, 11/09/2022
27. Prior Written Notice, 04/28/2023
28. Special Education Placement Determination, 06/07/2022
29. Feeding Team Assessment, 03/03/2022
30. Safe Eating Protocol, 03/30/2022
31. Occupational Therapy Evaluation, 02/08/2023
32. Safe Eating Protocol, 03/30/2022
33. Adapted Physical Education, 3-year re-evaluation, 04/28/2023
34. Multi-disciplinary Evaluation Report, 04/28/2023
35. Eligibility Summary Statement, 04/28/2022
36. IEP Progress Report, 08/18/2022
37. IEP Progress Report, 04/108/2023
38. Email: Re: [Student], 09/01/2022
39. Email: Re: Checking in, 09/16/2022
40. Email: Re: Checking in, 09/29/2022
41. Email: Re: Checking in, 09/19/2022
42. Email: Re: Cut finger, 10/24/2022
43. Email: Tentative [Student] Eval Planning, 11/07/2022
44. Email: Re: Pioneer checklist/ ABAS-3 Parent Form (Ages 5-21), 11/07/2022
45. Email: Re: Conferences and other news, 11/07/2023
46. Email: Re: Facial Scratches, 12/01/2022
47. Email: Re: IEP Amendment, 12/09/2022
48. Email: Re: Pioneer [Student] (student in eval process) – Amendment, 12/12/2022
49. Email: Re: Happy new year, 01/02/2023
50. Email: Re: social studies, 01/06/2023
51. Email: [Student] re-eval & IEP, 01/09/2023
52. Email: Rm 14 teacher questionnaire, 01/10/2023
53. Email: Fwd: olfactory exploration for {Student} and or others, 01/17/2023
54. Email: FT update on [Student], 02/07/2023
55. Email: Re: Rough Morning, 02/08/2023
56. Email: [Student] T shirts, 02/09/2023
57. Email: [Students], 02/28/2023
58. Email: Re: Sharing a contact note FYI, 03/05/2023
59. Email: Re: forms for [Student], 03/09/2023
60. Email: Thursday at 8, 03/14/2023
61. Email: Re: lep amendment [Student] bus, 04/04/2023
62. Email: Re: forms, 04/04/2023
63. Email: Re: lep amendment [Student] bus, 04/04/2023
64. Email: Re: lep amendment [Student] bus, 04/06/2023
65. Email: Re: [Student's] communication system, 04/23/2023
66. Email: Sharing the safe eating protocol, 04/30/2023

- 67. Email: Re: Review360: Student Incident Report, 05/01/2023
- 68. Email: Denial process [Student], 05/02/2023
- 69. Email: Re; Review360: Student Incident Report, 05/08/2023
- 70. Email: [Student] BSP, 05/11/2023
- 71. Email: Re: Review360: Student Incident Report, 05/15/2023
- 72. Email: Re: [Student] Meeting, 05/17/2023
- 73. Email: [Student] Draft, 05/17/2023
- 74. Email: Fwd: [Student] Email, 05/19/2023
- 75. Email: Fwd: [Student] Draft, 05/19/2023
- 76. Email: Re: [Student] Draft, 05/22/2023
- 77. Email: Fwd: [Student] Email, 05/23/2023
- 78. Email: [Student] Draft,
- 79. Email: Fwd: [Student] Email, 05/24/2023
- 80. Email: Re: [Student] IEP, 05/29/2023
- 81. Email: Coordination of Care, 05/30/2023
- 82. Email: [Student], 05/31/2023
- 83. Email: Re: [Student] paperwork, 06/07/2023
- 84. Email: Re: Signature requested on “[Student] Summary 2023”, 06/07/2023
- 85. Email: Fwd: Requester for...Special Education Process Document Completion Form, 06/08/2023
- 86. Email: Re: [Student], 06/08/2023
- 87. Email: Re: Remaining items at school, 06/12/2023
- 88. Email: Re: Chromebook login, 08/15/2023
- 89. District record of Student Incidents (58), 08/01/2022—07/31/2023
- 90. List of Staff knowledgeable about the complaint

On September 22, 2023, the Complaint Investigator discussed the nature and content of the suggested Corrective Action with the Parent and the Student’s Social Worker.

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 June 21, 2022, to the filing of this Complaint on June 20, 2023.

Allegations	Conclusions
<p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA when it failed to have in effect an IEP for the Student during the 2022-23 school year.</p> <p>1. It is alleged that the Student’s IEP and the Student’s sibling’s IEP were confused which caused elements of the Student’s sibling’s IEP to be implemented for the Student.</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<p>2. It is alleged that the District did not have an IEP in effect for the Student that was accessible to the Student's regular education teacher, special education teacher, and service providers. Additionally, it is alleged that when the Parent requested a copy of the Student's IEP, the District provided the IEP from the prior year as the reference through which special education and related services were provided to the Student.</p> <p>3. It is further alleged that, despite the Parent's inquiries over the course of several months, the Student's transportation services were not provided in conformity with the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §§ 300.232, 303.324)</p>	
<p>IEP Team Considerations and Special Factors</p> <p>The Parent alleged that the District violated the IDEA when it failed to develop, or appropriately revise, the Student's IEP to address behavior exhibited by the Student that impeded the Student's learning.</p> <p>(OAR 581-015-2205; 34 CFR §§ 300.320, 300.324(a)(1) & (2) & (b)(2))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Related Services</p> <p>It is alleged that the District violated the IDEA when it failed to provide transportation services for the Student. The Parent alleged that, despite requests, and the District's agreement regarding the Student's need, that the Student did not receive transportation services for the majority of the 2022-23 school year.</p> <p>(OAR 581-015-2070; 34 CFR § 300.107)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Functional Behavioral Assessments</p> <p>The Parent alleged that the District violated the IDEA when:</p> <ol style="list-style-type: none"> 1. It did not obtain the Parent's consent to develop, review, and/or revise the Student's Behavior Intervention Plan (BIP); and 2. It did not ensure that the Student's BIP appropriately addressed the Student's needs. <p>(OAR 581-015-2181)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Review and Revision of IEPs</p> <p>The Parent alleged that the District did not appropriately revise the Student's IEP to address, information about the Student provided by the Parent, and the Student's needs,</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<p>specifically behavior concerns stemming from issues around clothing.</p> <p>(OAR 581-015-2225; 34 CFR § 300.324(a)(4), (a)(5), (a)(6), & (b)(1))</p>	
<p>IEP Team Consideration and Special Factors</p> <p>The Parent alleged that the District violated the IDEA when, in the development of the Student’s IEP, it did not consider the concerns of the Parent for enhancing the education of the Student. Specifically, it is alleged that the Parent was not included or consulted regarding the development, purpose, or need for the BIP.</p> <p>(OAR 581-015-2205; 34 CFR § 300.320, 300.324(a)(1))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Parent Participation</p> <p>The Parent alleged that the District violated the IDEA when it did not invite the Parent to IEP team meetings where the District determined that a BIP would be appropriate for the Student, and that the Parent was not invited to, or included in, IEP team meetings where the Student’s IEP team made adjustments to the Student’s BIP.</p> <p>(OAR 581-015-2190; 34 CFR § 300.500, 300.327 & 300.501(b))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Placement of the Child</p> <p>The Parent alleged that the District violated the IDEA when alternative placements were not considered for the implementation of the Student’s IEP. It is further alleged that, as a result, the Student has not received an education since approximately the end of April 2023.</p> <p>(OAR 581-015-2250; 34 CFR § 300.116 & 300.327)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Extended School Year Services</p> <p>The Parent alleged that the District violated the IDEA when it did not provide extended school year services to the Student following the 2022-23 school year. The Parent alleges that the Student is eligible for ESY, but that District has failed to provide ESY services.</p> <p>(OAR 581-015-2065; 34 CFR § 300.106)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Denial of FAPE</p> <p>It is alleged that the District violated the IDEA when it failed to:</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<ol style="list-style-type: none"> 1. Implement the appropriate IEP for the Student; 2. Have, in effect during the 2022-23 school year, a current IEP for the Student; 3. Consider alternative educational placements for the Student, resulting in the Student not receiving an education since the end of April 2023; 4. Appropriately implement or revise the Student's Behavior Intervention Plan to address behavior exhibited by the Student; 5. Provide ESY services to the Student; and 6. Provide the Parent an opportunity to participate in IEP team meetings related to the development and review of the Student's IEP and BIP, thereby denying the Student a FAPE. <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	
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III. FINDINGS OF FACT

1. The Student in this case is 11 years of age and attended the fifth grade in a District middle school during the Complaint period. The Student is eligible for special education under the category of Autism Spectrum Disorder (82).
2. The District completed the Student's triennial reevaluation on April 28, 2023.
3. On August 21, 2023, the Parent filed this Complaint.
4. The District provided relevant documents and additional background information relevant to the Student and has considered the allegations made in the Complaint. The Department's Complaint Investigator interviewed the Parent regarding these Complaint issues and the Parent has been apprised of the nature and content of the Corrective Action, as set forth in the Corrective Action table below.

IV. DISCUSSION

The Complainant alleges multiple IDEA violations. While the District provided additional information and expressed some disagreement with the specifics of the alleged violations, the District indicated that it would not contest the allegations.

The Department does not make a substantive determination in the allegations of the Complaint.

Based on the District not contesting the allegations in this Complaint, the Department orders the following Corrective Action:


VII. CORRECTIVE ACTION
In the Portland School District 1J
Case No. 23-054-034

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

Action Required	Submissions	Due Date
<p>1. The District will conduct a full Functional Behavioral Assessment (FBA) of the Student. The District should make every attempt to conduct observations of the Student in the classroom environment as part of the FBA.</p> <ul style="list-style-type: none"> • The District will hold an IEP meeting to determine how to appropriately implement the Student's IEP pending completion of assessments. • As part of the FBA, and in light of changes in the Student's behavior since the Student's last multi-disciplinary evaluation, the IEP team must consider what other aspects of the Student's IEP may need to be addressed or reconsidered. The IEP team must also consider the Student's prior educational placements and the Student's progress in addressing sensory concerns since the Student last attended school in-person. 	<p>The District will submit to the Department all documents and materials related to the FBA.</p> <p>Completed IEP and meeting notes.</p> <p>The District will submit to the Department a copy of all documents and materials related to the updated BIP and/or FBA.</p>	<p>January 10, 2024</p> <p>October 27, 2023</p> <p>January 30, 2024</p>
<p>2. With the Parent's input and the input of specialists working with the Parent, the IEP team will determine an appropriate amount of, and method to deliver, compensatory education services in light of the Student's absence from school and lack of ESY services.</p>	<p>The District will submit the result of the assessments, the developed FBA and BIP, and revised IEP for the Student.</p>	<p>January 30, 2024</p>
<p>3. Following the completion of the assessments, the IEP team will review this data with behavior specialists and social work professionals assisting the Parent and consider their input. The IEP team will consider the full continuum of placements available and select</p>	<p>Notes from meeting with Parent and designated specialists.</p>	<p>February 15, 2024</p>

an appropriate educational placement.		
4. Pending the results of the evaluations, the District will convene an IEP team meeting to discuss and determine an appropriate placement for the Student.	Notes from meeting with Parent and designated specialists.	March 1, 2024
5. The District must review and, if necessary, revise its policies and procedures regarding scenarios when Functional Behavioral Assessments must be conducted and Behavior Support Plans drafted and/or revised. If changes are made to District policies and procedures, the District must ensure that all applicable staff have been informed of the revisions.	The District will submit policy revisions, if deemed necessary.	April 15, 2024
6. The District will conduct staff training of licensed and administrative staff at the Student's elementary school regarding the following: <ul style="list-style-type: none"> • IEP implementation, • IEP review and revision, • FBA/BSP requirements and timelines; and • Restraint and seclusion procedures, specifically notification to parents and debriefing incidents. 	The District will submit to the Department documents and materials related to the training, including: <ul style="list-style-type: none"> • Training materials • Attendance list 	April 15, 2024

Dated: this 16th Day of October 2023



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: October 16, 2023

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial

review resides. Judicial review is pursuant to the provision of ORS § 183.484. (OAR 581-015-2030 (14).)