

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. 23-054-037

I. BACKGROUND

On August 28, 2023, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) attending school in the Portland Public School District (District). On September 13, 2023, the Parent submitted an amendment to the Complaint. The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this original Complaint, confirmed receipt of the amended Complaint, forwarded the original request to the District by email on August 30, 2023, and forwarded the amended Complaint to the District by email on September 14, 2023.

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

On September 18, 2023, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the amended Complaint to be investigated and establishing a *Response* due date of October 2, 2023.

The District submitted a *Response* on September 29, 2023, stating that: “The District does not contest the Parent’s allegations as described in the September 18 RFR”. The District proposed Corrective Action, as discussed below. The District submitted documents with its *Response*. The District submitted the following relevant items:

1. District’s Written *Response* to Complaint, dated 9/29/23
2. IEP, 6/14/22
3. IEP Amendment, 9/2/22
4. Meeting minutes, 6/8/22
5. Meeting minutes, 9/2/22
6. Notice of Team Meeting, 9/1/22
7. Notice of Team Meeting, 11/3/21
8. Parent Consent for Evaluation, 12/16/21
9. PWN, 6/8/22
10. PWN, 9/2/22
11. IEP, 6/13/23
12. Behavior Support Plan (BSP), 11/21/22 “working draft”

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

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

13. Notice of Team Meeting, 1/9/23
14. Written Agreement between Parent and District, 9/2/23
15. Notice of Team Meeting, 6/13/23
16. PWN, 6/13/23
17. Prior Notice about Consent for Evaluation, 10/24/22
18. Manifestation Determination Draft Agenda, undated
19. Notice of Team Meeting, 5/26/23
20. PWN, 5/26/23
21. Manifestation Determination, 10/21/22
22. Manifestation Determination, 5/30/23
23. Notice of Team Meeting, 5/26/23
24. Manifestation Determination, 5/30/23
25. Email communication, 10/18/22 to 9/6/23
26. Progress Report, 2021-22
27. Progress Report, 2022-23
28. IEP Progress Report, 6/13/23
29. Disability Statement, 6/8/22
30. Eligibility Summary Statement, 6/8/22
31. Disability Statement, 6/8/22
32. Placement Determination, 9/2/22
33. Placement Determination, 6/14/22
34. PWN, 12/17/21
35. PWN, 6/8/22
36. Parent Consent for Initial Evaluation, 12/16/21
37. Parent Consent for Evaluation, 12/16/21
38. Evaluation Permission History, 2/17/21
39. Parent Consent for Evaluation, 12/16/21
40. Consent History, 2/3/22
41. Medical Statement, 4/30/19
42. Authorization to Disclose Educational/Protected Health Information, 4/19/19
43. Evaluation Referral, 6/8/22
44. Academic Evaluation Report, 5/19/22
45. Placement Determination, 6/13/23
46. Prior Notice about Evaluation/Consent for Evaluation, 10/24/22
47. Manifestation Determination Review of Records, 10/18/22
48. Academic Evaluation Report, 5/19/22
49. Letter regarding Expulsion, 6/2/23
50. Letter regarding Expulsion and Placement, 7/6/23
51. List of Knowledgeable Staff

The Parent submitted a *Reply* on October 6, 2023, via email. The Parent did not submit any additional documents.

The Complaint Investigator interviewed the Parent by telephone on October 23, 2023. Following that interview, the Parent provided information concerning the Parent's position regarding Corrective Action in emails received on October 25, 2023 and October 26, 2023. On November 1, 2023, the District provided via email further information concerning the District's calculation of compensatory education hours set forth in the District's proposed Corrective Action in its *Response*. 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 Parent’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 29, 2022 to the filing of the original Complaint on August 28, 2023, and the additional time from August 28, 2023 to the receipt by the Department of the amended Complaint on September 13, 2023.

Allegations	Conclusions
<p>When IEPs Must Be in Effect (Implementation)</p> <p>The Complaint alleges that the District violated the IDEA by failing to implement the Student’s IEP, as follows:</p> <ol style="list-style-type: none"> 1. During the 2022-23 school year, the District provided specially designed instruction in the Student’s IEP through the use of a: “non-certified [special education] substitute M-TH, and an additional non-certified [special education] instructor...on Fridays.” 2. During the 2022-23 school year, the District did not timely complete a Behavioral Safety Plan, as required in the Student’s IEP. <p>(OAR 581-015-2220; 34 CFR §§ 300.323 & 300.324).</p>	<p style="text-align: center;">Not Contested</p> <p>The District does not contest this allegation.</p> <p style="text-align: center;">Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Parent Participation – General; Placement of the Child</p> <p>The Complaint alleges that from May of 2023 through August of 2023, the District violated the IDEA, as follows:</p> <ol style="list-style-type: none"> 1. By failing to communicate with the Parent and by failing to allow participation of the Parent in the determination of a placement decision made unilaterally by the District, to place the child in a: “45-day alternative learning environment.” Specifically, the Parent alleges that the District failed to: “share any documentation or [the Student’s] file regarding the placement decision with [the Parent]”. Additionally, the Parent alleges that despite notifying the District of the lack of communication by the District’s Special Education Department with the Parent, the District failed to communicate with the Parent from May 17, 2023 to August 23, 2023. 2. By stating at a meeting on May 30, 2023 that following an incident on May 17, 2023, the District would not communicate with the Parent and would not provide school work for the Student; and by 	<p style="text-align: center;">Not Contested</p> <p>The District does not contest this allegation.</p> <p style="text-align: center;">Not Contested</p> <p>The District does not contest this allegation.</p>

<p>failing to provide tutoring to the Student as promised in March of 2023.</p> <p>3. By predetermining the Student's placement and simply notifying the Parent on May 30, 2023, of the earlier placement decision.</p> <p>(OAR 581-015-2190; 34 CFR §§ 300.500, 300.327 & 300.501(b); 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>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleges that the District has denied the Student a FAPE. Specifically, the Parent alleges that the Student has not been in school since May 17, 2023 and on May 30, 2023 the District stated that following an incident on May 17, 2023, it would not communicate with the Parent and would not provide schoolwork for the Student, and has failed to provide tutoring promised in March of 2023.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<p>REQUESTED CORRECTIVE ACTION</p> <p>The Complainant requests that the Department order the District to take the following corrective action:</p> <ol style="list-style-type: none"> 1. "Facilitated IEP meeting, 2. Allow family to fully participate in full cycle of placement and open/transparent communication with family, 3. Uphold IEP as written; meet child's needs according to IEP needs, 4. For the school district and [special education] to be held accountable for their contribution to my child's placement decision from my child's file due to failure on PPSD/[special education] actions"

III. FINDINGS OF FACT

1. The Student in this case is 13 years old and in the eighth grade. The Student is eligible for special education as a child with Other Health Impairment (OHI), Emotional Behavior Disability (EBD), and Specific Learning Disability (SLD).
2. During the 2022-23 school year, the Student attended 7th grade at a middle school in the District, until the Student transferred to another middle school in the District on March 13, 2023.
3. At the beginning of the 2022-23 school year, the Student received services under an IEP dated June 14, 2022, which was amended on September 2, 2022 and January 11, 2022. Before the 2022-23 school year, the Student attended an online program.

4. The 9/2/22 IEP amendment included several goals for the Student and provided for Specially Designed Instruction in “Social & Emotional Skills” (30 minutes per week), “Writing” (60 minutes per week), “Mathematics” (60 minutes per week), “Reading” (60 minutes per week) and “Classroom/Social Skills” (60 minutes per week). The “Statement of Nonparticipation Justification” states that the Student “will be removed from participating with nondisabled students for 14% of the school week.”
5. On August 28, 2023, the Parent filed the original Complaint in this case and on September 13, 2023, the Parent filed an amended Complaint.
6. The District provided relevant documents and additional background information relevant to the Student and has considered the allegations made in the amended Complaint. The Complaint Investigator interviewed the Parent regarding the amended Complaint and received information concerning appropriate Corrective Action from both the Parent and the District.

IV. DISCUSSION

The amended Complaint alleges multiple IDEA violations. The District stated in its *Response* that it does not contest the allegations.

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

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

V. CORRECTIVE ACTION³ *In the Matter of Portland School District 1J Case No. 023-054-037*

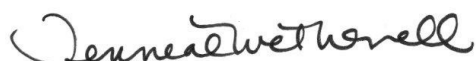
Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions	To Be Completed As Soon as Possible but No Later Than
1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to Student’s IEP. The Compensatory Education to be offered to the Parent shall include at least: <ul style="list-style-type: none"> • 316 hours of specially designed instruction in writing, mathematics, reading, classroom/school skills and social & emotional skills; 	The District shall submit the following to ODE: Completed plan for delivery of Compensatory Education developed in IEP meeting with Parent;	January 15, 2024

³ 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)).

<ul style="list-style-type: none"> • 10 hours of the related service of psychological services; and • 12 hours of tutoring through Sylvan Learning Center as recovery services. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver the SDI, tutoring and psychological services.⁴</p>	<p>Evidence showing compensatory education was provided.</p> <p>Evidence showing the related services were provided.</p>	<p>October 15, 2024</p> <p>October 15, 2024</p>
<p>2. 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:</p> <ul style="list-style-type: none"> • IEP Review/Revision; • IEP Implementation; • Placement Determinations, including Interim Alternative Placements, • The obligation to provide FAPE to expelled students, and; • Parent Participation. 	<p>Training agenda/materials to ODE review/approval.</p> <p>Sign-in sheet for training.</p>	<p>January 15, 2024</p> <p>March 15, 2024</p>

Dated: this 13th Day of November 2023



Tenneal Wetherell
 Chief of Staff
 Oregon Department of Education

E-mailing Date: November 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).)

⁴ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email ode.disputeresolution@ode.state.or.us.