

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Portland School District 1J)
Case No. 23-054-039)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-039

I. BACKGROUND

On October 19, 2023, the Oregon Department of Education (Department) received a request for a special education complaint investigation from the parents (Parents) of a student (Student) residing within the Portland Public School District 1J (District). The Parents alleged a systemic violation of the Individuals with Disabilities Education Act (IDEA) at their child’s school (District School). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act 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 October 30, 2023, the Department’s Complaint Investigator (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 November 13, 2023. On November 7, 2023, the District requested, and the Department granted, a ten-day extension to the *Response* due date.

In their Complaint, the Parents alleged a number of IDEA violations including failure to provide special education and related services in accordance with students’ IEPs at the District school; interfering with parents’ ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of their child, and the provision of a free appropriate public education to the child, at the District School; and failure to provide students at the District School with a free appropriate public education.

On November 29, 2023, the District submitted to the Department a *Response* to the Complaint. The Response stated:

“The District has carefully reviewed the allegations and stipulates speech services were not provided during leaves of absence by the assigned speech pathologist during two periods of time: 12/04/22 to 02/14/23 and 09/13/23 to 11/01/23.”

“The District stipulates Parents’ allegations that Students’ IEP has [*sic*] not been in effect and served during the two identified periods the school SLP was on leave and the District

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

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

was unable to provide substitute speech services during the leave.”

“The District stipulates that parent participation in special education processes were impaired when parents were not timely informed that the school SLP was on leave and services suspended due to lack of availability of a substitute SLP.”

“The District has determined the absence of SLP coverage during the leaves in questions, also impacted some timely evaluation, eligibility decisions, and IEP creation and implementation.”

“The District stipulates to Parents’ allegations that Students were denied a free and appropriate public education when speech services, as outlined in individual IEPs, were not provided during the identified leave periods in the 2022-23 and 2023-24 school year, due to the lack of an available substitute speech language pathologist.”

The Complaint Investigator discussed the nature and content of the District’s proposed corrective action with the Parents on December 8, 2023. The Parents were provided an opportunity to provide additional input regarding proposed corrective action.

This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-300.153 and OAR 581-015-2030. The Parents’ allegations and the Department’s conclusions are set out in the chart below.

Allegation	Conclusion
<p>When IEPs Must Be In Effect</p> <p>The Complaint alleges that the District violated the IDEA by not providing special education and related services in accordance with students’ IEPs at the District School.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Parent Participation</p> <p>The Complaint alleges that the District violated the IDEA by interfering with parents’ ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of their child, and the provision of a free appropriate public education to the child, at the District School.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</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 failed to provide students at the District School with a free appropriate public education.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
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<p>REQUESTED CORRECTIVE ACTION</p> <p>The Parent requested the following corrective action:</p> <ol style="list-style-type: none"> 1. Fill the vacant position left by the SLP on leave. 2. Have a substitute to prevent more missed minutes. 3. Have more than one SLP in the building to meet the needs of the 60 students not being serviced by a single individual. 4. Hire a SLP contractor to fill in when the only SLP is on leave. 5. Increase funding to provide solutions. 6. Provide real time communication to families when there are missed services. 7. Follow through with compensatory services that do not require summer school or online school. 8. Ask SLP to keep detailed, electronic notes so that someone filling in knows what is going on with each group and so parents know what is being focused on in groups.

III. FINDINGS OF FACT

1. The students referenced in the Complaint were all receiving special education services at the District School during the one-year complaint period.
2. During the complaint period, the Speech Language Pathologist (SLP) assigned to the District School was on leave during the following time periods:
 - a. 12/4/22 to 2/14/23; and
 - b. 9/13/23 to 11/1/23.
3. During these two time periods, the District did not have a substitute SLP available. All students at the District School with speech or language services in their IEPs missed services during this time.
4. The District stipulated that all students who missed speech or language services during this time should receive compensatory services.
5. The District has tracked missed service minutes for each student at the District School with speech or language services in their IEPs. The District reported it offered a compensatory service plan to each of these students.
6. Additionally, the District reported that it “determined the absence of SLP coverage during the leaves in questions [sic], also impacted some timely evaluation, eligibility decisions, and IEP creation and implementation.”

7. The District has not contested the allegations made in the Complaint in this matter and the Complainants have been informed of the Corrective Action, as set forth in the Corrective Action table, below.

IV. DISCUSSION

The Complaint alleged several IDEA violations, which the District did not contest.

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

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

V. CORRECTIVE ACTION³
In the Matter of Portland School District 1J
Case No. 23-054-039

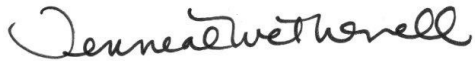
Action Required	Submissions	Due As Soon As Possible But Not Later Than
<p>1. The District will:</p> <p>a. Contact the parents or guardians of all students who did not receive speech-language services in accordance with their IEPs and explain the students' loss of speech-language services.</p> <p>b. As part of the compensatory service provision, the District will offer IEP reviews when necessary for individual student accommodation, or at parent request, to discuss compensatory services.</p>	<p>Documentation of notifying parents/guardians of all affected students.</p> <p>Documentation of offers to hold IEP meetings made to parent/guardians of all affected students.</p>	<p>February 28, 2024</p> <p>February 28, 2024</p>

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)).

Action Required	Submissions	Due As Soon As Possible But Not Later Than
<p>c. Reach agreement with parents or guardians about the type, amount, and scheduling of compensatory services, with a minute for minute make-up to be provided as directed in students' IEPs. Compensatory services will be made available at the District school through a District-contracted provider and/or parents may arrange for private speech services by a licensed provider with reimbursement of up to \$80 per hour.</p> <p>d. Give parents or guardians prior written notice of the compensatory speech-language services.</p>	<p>Documentation of agreements between parents or guardians and the District, including the type and amount of compensatory speech-language services that each affected student has received or will receive.</p> <p>Evidence of delivery of required compensatory services to all affected students.</p> <p>Documentation of PWNs issued related to compensatory speech-language services for each affected student.</p>	<p>April 30, 2024</p> <p>December 15, 2024</p> <p>April 30, 2024</p>

Action Required	Submissions	Due As Soon As Possible But Not Later Than
<p>2. The District will:</p> <ul style="list-style-type: none"> a. Develop written procedures for monitoring compliant implementation of all IEPs. b. Establish written procedures for special education staff to communicate with administrators about interruptions or other problems in delivering services prescribed in students' IEPs. c. Disseminate procedures to all special education staff and administrators. 	<p>Documentation of written procedures and evidence of dissemination of these materials.</p>	<p>March 30, 2024</p>
<p>3. The District will provide training to staff on:</p> <ul style="list-style-type: none"> a. The District's obligation to fully implement IEPs, even in light of staffing shortages. b. Communicating with families about staffing shortages and the District's ongoing obligation to enable FAPE, including timely Parent communication with any future staff leaves of absence. c. Parent participation, identification, evaluation, eligibility, and IEP development and service initiation. 	<p>Training materials and agenda provided to ODE.</p> <p>Documentation of training completed including sign-in sheet.</p>	<p>May 30, 2024</p> <p>September 30, 2024</p>

Dated: this 16th Day of February 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: February 16th, 2024

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)).