

**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. 23-054-049

**I. BACKGROUND**

On December 19, 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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 21, 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 established a *Response* due date of January 8, 2024.

The District submitted a *Response* on January 8, 2024, 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 *Response* to *RFR* in ODE Complaint No. 23-054-049, 1/8/24
2. Eligibility Summary Statement, 3/8/23
3. Special Education Placement Determination, 3/8/23
4. Prior Written Notice, Notice of Triennial, 11/21/23
5. Disability Statement, Speech and Language Impairment (50) Criteria, 3/2/23
6. Written Agreement Between the Parent and the District, 5/23/23
7. Written Agreement Between the Parent and the District, 3/8/23
8. Prior Written Notice, Notice of Eligibility, 3/8/23
9. Disability Statement, Other Health Impairment (80) Criteria, 3/8/23
10. Notice of Team Meeting, Meeting Request, 11/21/22
11. Parent/Guardian Consent for Individual Evaluation, Parent Permission, 11/21/22
12. Summary for Report, Psychoeducational Report, 2/8/23
13. [District] Special Education, Speech and Language Evaluation Report, 3/2/23
14. [District] Eligibility of Services: Adapted Physical Education, 3/6/23
15. Eligibility Determination, 3/8/23
16. [District] Occupational Therapy Initial Assessment, 5/22/23

<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)

17. Notice of Team Meeting, 10/27/22
18. Individualized Education Program, 3/8/23
19. IEP Progress Report - Measurable Annual Goals, 3/8/23
20. Individualized Education Program, Amendment, 3/8/23
21. Worksheet for Function-Based Behavior Support Planning, 5/22/23
22. IEP Progress Report - Measurable Annual Goals, 12/3/23
23. Notice of Team Meeting, 2/10/23
24. Notice of Team Meeting, 5/15/23
25. Notice of Team Meeting, 5/19/23
26. Prior Written Notice, 5/30/23
27. Prior Written Notice, 3/24/23
28. Prior Written Notice, 3/15/23
29. Prior Written Notice, 3/8/23
30. Individualized Education Program, 6/8/22
31. Individualized Education Program, Amendment, 6/8/23
32. Modified Diploma Plan and Contract, 9/30/22
33. [District] Modified Diploma Determination, 9/30/22
34. IEP Progress Report - Measurable Annual Goals, 1/27/23
35. Notice of Team Meeting, 9/30/22
36. Special Education Placement, Determination, 6/8/22
37. Special Education Placement, Determination, 9/30/22
38. Prior Written Notice, 9/30/22
39. Meeting Minutes, 6/8/22
40. Meeting Minutes, 9/30/22
41. Written Agreement Between the Parent and the District, 9/30/22
42. Notice of Team Meeting, Meeting Request, 6/6/22
43. Prior Written Notice, 6/8/22
44. Modified Diploma Determination, 9/30/22
45. Meeting Minutes, 11/21/22
46. Meeting Minutes, 5/23/23
47. Meeting Minutes, 3/8/23
48. ODE 23-054-049, Exhibit D-4, Email Communication 12/2022-12/2023, Cover Page, no date
49. [School] Student Schedule, 8/29/23
50. [School] Daily Attendance by Week 8/29/23 - 6/20/24, 1/3/24
51. [School] Student Discipline Profile, 1/12/22
52. Exhibit D-7, List of Knowledgeable Staff, no date
53. ODE 23-054-049 Exhibit List, no date
54. OT service logs, 2023-24
55. Emails from May 9, 2023 through December 13, 2023

The Parent submitted a *Reply* on January 16, 2024, and documents in support of the Parent's position. The Parent submitted the following relevant items:

1. Parent *Reply* to the District's Response to RFR, 1/16/24
2. Complaint Document, Allegation Information, 12/19/23
3. Emails from September 20, 2023 through December 13, 2023

The Complaint Investigator interviewed the Parent on January 23, 2024, and District personnel on January 22, 2024. The Complaint Investigator reviewed and considered all 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 described 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 December 20, 2022, to the filing of this Complaint on December 19, 2023.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>When IEPs Must Be In Effect</b></p> <p>The Complaint alleged that the Student was not receiving the requested sensory breaks (basketball breaks) that were described in the Student’s IEP. The Parent also alleged that the behavior modifications were not provided consistently by trained staff, and the Student did not receive transitional warnings for a change in staff and the changes to basketball breaks.</p> <p>OAR 581-015-2220; 34 CFR §300.323</p>	<p><b>Not Substantiated</b></p> <p>The Student received the requested sensory breaks. Staff was trained. Transition cues were provided.</p>
<p><b>Content of IEP</b></p> <p>The Complaint alleged that the District rejected the Parent’s request that the IEP include reasonable testing and accommodations. The Parent alleged that the staff working with the Student had not received an appropriate amount of supports to personnel to meet the needs of the Student.</p> <p>OAR 581-015-2200; 34 CFR §300.324</p>	<p><b>Not Substantiated</b></p> <p>There was no evidence that this request was made or denied.</p>
<p><b>Review and Revision of IEPs</b></p> <p>The Complaint alleged that the District did not convene an IEP meeting before winter break as requested by the Parent.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p><b>Not Substantiated</b></p> <p>The IEP meeting was scheduled in a timely manner.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<p>The Parent requested that the Department order the District to take the following corrective action:</p> <p>“Stop violating my [student’s] civil rights and stop denying my student’s] access to a free and appropriate public education with accommodations that [they] need in order to thrive at school. Please offer training to teachers and staff in order to create a school environment free of ableism and abuse. Please stop the ongoing pattern of violating the law, which includes The Individuals with Disabilities Education Act (IDEA) and The Americans with Disabilities Act (ADA). I would</p>

[sic] administration, teachers, and staff to listen attentively to my [student], validate [them], ensure [their] safety, offer assistance instead of punitive direction, meet [them] at eye level, offer [them] collaborative solutions, and ask [them] how [they] feel Don't grab or push [them], yell at [them], or criticize [them].”

### III. FINDINGS OF FACT

1. When the Complaint was filed, the Student was in the 10<sup>th</sup> grade and attending a local public high school.
2. On June 6, 2022, the team held an Individualized Education Program (IEP) meeting for an annual review. The Student's strengths were:
  - a. The Student was described as friendly, curious, and persistent. The Student enjoyed basketball, walking to the park, and finding treasures. The Parent highlighted the Student's strengths, including enthusiasm for achieving goals like independent lace tying and proficiency in basketball. Academically, the Student was described as having increased confidence in reading and dedication to playing the guitar despite facing challenges in learning.
  - b. The IEP included present levels of academic performance and developmental and functional performance in reading, writing, mathematics, communication, adapted physical education, and occupational therapy.
  - c. The description of how the Student's disability affects involvement and progress in the general education curriculum was written as follows:
    - i. “[Student] has been diagnosed with Cornelia de Lange Syndrome (CdLS), a genetic disorder that causes physical and intellectual developmental delays as well as global delays. [Student] also has hyperactivity and attention issues. [Student] benefits from peer and adult support to sustain and engage in assigned activities.”
  - d. The measurable annual goal for reading/language arts stated: “Given shorter 8th-grade passages, [Student] will read the text at the rate of 90 correct words per minute, 90% accuracy, and 60% comprehension.” Mastery criteria or short-term objectives included:
    - i. “Use a paragraph planner with visual supports to summarize the text [Student] has read in class with 80% accuracy”; and
    - ii. “When going back to the text to look for information, [Student] will scan for keywords with 80% accuracy.”
  - e. The measurable annual goal for writing skills stated: “Given various graphic organizers for writing, paper, [sic] and pencil, or word processing technology, [Student] will write a five-paragraph essay on one topic.” Mastery criteria or short-term objectives included:
    - i. “Revise [Student's] writing to include correct capitalization, punctuation, and spelling”;
    - ii. “Use a paragraph planner with picture supports to organize thoughts and ideas with 80% accuracy”; and
    - iii. “Each paragraph will include a topic sentence, supporting details, and conclusion sentence.”
  - f. The measurable annual goal for mathematics stated: “Given varied math problems and aids, [Student] will progress to the 4th-grade level in mathematics with 80% accuracy based on the short-term objectives.” Mastery criteria or short-term objectives included:

- i. "Add and subtract double-digit numbers with borrowing with 80% accuracy";
  - ii. "Using shapes on graph paper, [Student] will find the area and perimeter"; and
  - iii. "Use a multiplication chart to work double by single digit multiplication with 80% accuracy."
- g. The measurable annual goal for adapted physical education stated: "By the end of the IEP cycle, given verbal instruction and visual demonstration followed by practice, [Student] will increase [Student's] endurance as measured by short-term objectives." Mastery criteria or short-term objectives included:
  - i. "[Student] will increase [Student's] muscular strength by performing strengthening activities such as push-ups and lunges with proper form for 3 sets of 12 as measured by teacher observation"; and
  - ii. "[Student] will increase [Student's] muscular endurance by performing endurance activities such as jumping jacks and running with proper form for 2 minute [sic] as measured by teacher observation."
- h. Specially Designed Instruction included the following services:
  - i. "Adapted physical education, 120 minutes per month, starting June 8, 2022, and ending June 7, 2023";
  - ii. "Writing skills, 100 minutes per week, starting June 8, 2022, and ending June 7, 2023";
  - iii. "Mathematics, 100 minutes per week, starting June 8, 2022, and ending June 7, 2023"; and
  - iv. "Reading/language arts, 100 minutes per week, starting June 8, 2022, and ending June 7, 2023."
- i. Related Services included the following:
  - i. "Transportation, round trip, starting June 8, 2022, and ending June 7, 2023"; and
  - ii. "Speech-language therapy, 210 minutes per quarter, starting June 8, 2022, and ending June 7, 2023."
- j. Accommodations included the following:
  - i. "Access to noise blocking headphones";
  - ii. "Access to specialized seating";
  - iii. "Adult support for start/end of day transitions to and from the buses";
  - iv. "Access to sensory tools self-regulation [sic]";
  - v. "Access to step stool/foot rest [sic] at [Student's] classroom desk";
  - vi. "Shortened assignments for length, not content";
  - vii. "Access to help in locker room";
  - viii. "Preferential seating";
  - ix. "Time management tools such as checklists, assignment planners, visual schedule";
  - x. "Checklist of items that [Student] to manage (i.e., coat, backpack, clothes, school work, gym clothes)";
  - xi. "Preferred seating on the bus (sitting in front of and near the bus driver for safety purposes)";
  - xii. "Warning for transitions";
  - xiii. "Extended work time to finish tasks/assignments in the Gen. Ed. [sic]"; and
  - xiv. "Access to visual/verbal supports, prompts, reminders."
- k. Supplementary aids/services and modifications included modified assignments in general education.
- l. Support for school personnel included adapted PE consult, 60 minutes per year,

starting June 6, 2022, and ending June 7, 2023.

- m. The Statement of Non-Participation Justification stated that the IEP team determined the Student needed to be removed from participating with non-disabled students to receive specially designed instruction (SDI), related services, or supplementary aids or services. “[Student] was removed from the general education class for 63% of the day to receive specially designed instruction in [Student’s] goal areas in small group settings in the ISC.”
3. On February 8, 2023, a psychoeducational evaluation was completed by the District. The Student was referred as part of their triennial review. The primary concerns for the Student were listed as repetitive behaviors and expressive language deficits.
    - a. The report specified the Student’s diagnosis of Cornelia de Lange syndrome, manifesting in cognitive and physical developmental challenges, facial abnormalities, low birth weight, slow growth, small stature, and a small head size. Common associated medical issues encompass heart deficits, seizures, feeding difficulties, intellectual disability, vision and hearing loss, and gastroesophageal reflux disease.
    - b. The executive function rating scales revealed that the Student exhibited better emotional self-regulation at home. The assessor highlighted the contrast in academic and social challenges between school and home, suggesting potential overall challenges for the Student in the school environment. Both the school and home rating scales identified challenges related to flexibility, transitioning between tasks, and problem-solving. The overall adaptive measures indicated that the Student functioned in the extremely low range overall, except for higher scores in social skills and self-care sub-domains.
    - c. The assessor listed recommendations for the Student:
      - i. Access to structured movement breaks with supervision;
      - ii. “Access to sensory tools”;
      - iii. Provide transition warnings between tasks;
      - iv. “Discuss and practice changes to routine”;
      - v. Provide clear and concise directions for task initiation;
      - vi. Provide visuals for working memory;
      - vii. Provide instructions in small chunks and ask to repeat back to ensure understanding;
      - viii. “Preferential seating”;
      - ix. Motivate and encourage with praise when the Student demonstrated flexibility;
      - x. Transitional warning between tasks;
      - xi. Provide visual schedule including changes; and
      - xii. “Provide movement breaks throughout the day.”
  4. On March 6, 2023, an Adapted Physical Education (APE) evaluation was conducted by the District’s Adapted Physical Education Teacher to determine whether the Student was eligible for these services.
    - a. The report affirmed the discontinuation of the Student’s Adapted Physical Education (APE) services in 5th grade due to ineligibility. The school team requested an APE reevaluation considering the Student’s increased physical size, faster pace of the PE class, and larger class size.
    - b. Present levels indicated that the Student attended a general education PE class twice a week and APE one time per week. Staff reported that the Student enjoyed being active and was a competitive student. Despite enjoying physical activities and displaying competitive eagerness, the Student faced challenges

- keeping up with peers due to a smaller size, less strength, and quicker fatigue.
- c. The evaluation results suggested that the Student would benefit from APE to enhance locomotor and object control skills. Emphasizing smaller class settings for individualized support with visual and verbal cues was recommended. Focus areas included fundamental motor skills, participation, physical fitness, strength, endurance, and static balance.
5. An Eligibility Summary Statement, dated March 8, 2023, indicated that the Student continued to be eligible for special education services as a student with a primary disability in the area of Other Health Impairment (OHI) and a secondary eligibility of Speech and Language Impairment.
    - a. In attendance at the Student's re-eligibility and IEP meeting were the Student, the Parent, the Case Manager, the School Psychologist, the Special Education Teacher, and the Speech/Language Pathologist.
  6. A Special Education Placement determination form was completed on March 8, 2023. The team determined that the Student would spend 40-80% of their day in the regular class setting with intensive skills focus classroom support. The benefits were listed as:
    - a. "Access to general education curriculum";
    - b. "Individualized/small group academic instruction at instructional level";
    - c. "More opportunities for increasing independence";
    - d. "More support for academic needs";
    - e. "Participation in general education settings with non-disabled peers"; and
    - f. "Supports established relationships."
  7. On March 8, 2023, the team held an IEP meeting for an annual review. The following were IEP updates relevant to the allegations:
    - a. Classroom skills were incorporated into the Student's present level of academic achievement. In November/December, the Student used planned walks or gym time for sensory breaks, successfully returning to class approximately 70% of the time. However, in January/February, there was a decline in the Student's ability to regulate upon returning from sensory breaks. Observed behaviors during this time included throwing objects, hitting objects with sticks, and vocalizing loudly. Basketball breaks were scheduled at the end of the day, and the Student employed social stories to understand expected behaviors related to taking breaks and returning to class.
    - b. Adapted Physical Education (APE) was incorporated into the Student's present levels of developmental and functional performance. The APE Teacher suggested adding APE services to the plan, with curriculum modifications aimed at enhancing safety, body awareness, and building strength and endurance. The APE Teacher also noted the Student's need for occasional redirection to maintain focus.
    - c. The Student's needs were added to the Summary of Present Levels of Performance for Transition Planning. The team determined that the Student required clear and firm expectations, preferably in writing, along with frequent breaks for self-regulation, access to preferred sensory tools, support during transitions, assistance with peer conflicts, and help to sustain attention and engage in assigned activities.
    - d. Accommodations included:
      - i. "Visually supported list of calming choices and expectations for transitions as needed throughout the day, starting March 8, 2023, and ending March

- 7, 2024”; and
    - ii. “Access to adult support, visual/verbal supports, prompts, reminders for task initiation and staying on task throughout the day, starting March 8, 2023, and ending March 7, 2024.”
  - e. Supports for School Personnel included:
    - i. “Adapted PE Consult by the teacher for 60 minutes per year starting March 8, 2023, and ending March 7, 2024.”
  - f. The Statement of Non-Participation Justification stated that the IEP team determined the Student needed to be removed from participating with non-disabled students to receive specially designed instruction, related services, or supplementary aids or services. The Student was removed from the general education class for approximately 75% of the day to receive specialized instruction in their goal areas because the Student required specially designed instruction in those specific areas as determined by the IEP team.
  - g. In the Required Testing and Assessments section of the IEP, the “No” testing was selected for both Statewide and District-wide Assessments because “at the time of testing, assessment is not conducted at the student’s grade level.”
- 8. IEP and eligibility meeting notes from March 8, 2023, included the following team actions:
  - a. The Student was provided paraprofessional support in the new schedule, and the case manager updated the accommodation language to emphasize the necessity of adult support for the Student to access accommodations. The Student had sensory breaks scheduled after demanding cognitive tasks.
  - b. The IEP team noted the Student’s success with visuals tied to safety expectations. The Student was more focused in the mornings, but afternoons were challenging. The Behavior Specialist suggested the Student attend PE in the gym during 8th period with a paraprofessional as a solution for better emotional regulation in the afternoons.
- 9. The Intensive Skills Classroom Teacher described the sensory breaks as movement breaks that were scheduled for five minutes between each activity. The Student preferred to toss a ball in the back of the class. Other breaks included taking walks.
- 10. The Parent indicated that when the Student needed a sensory break, the Student remained in the classroom and did not use a real basketball hoop. The Student would also go into the hallway and play with a plastic ball. The Parent shared that the classroom had an area with sensory objects and the Student used fidgets and a stuffed animal to help regulate.
- 11. Issues that arose regarding the plan for sensory breaks or tools included gym schedules, access to keys, and communication. The unofficial routine was that the Student would play basketball with the paraprofessional. Even though the New Case Manager was not initially aware of this plan, the Student had access to an adult and to breaks in the classroom. The Student brought their own sensory tools, fidgets, and stuffed animals.
- 12. On March 24, 2023, a Prior Written Notice (PWN) issued by the district affirmed, “IEP Team will develop BSP/FBA based on data collected based on an email request from [Parent] regarding behavior support for [Student] [*sic*].” An explanation of the District’s proposed action was, “Following [Student’s] ReEval/IEP meeting [*sic*], [Parent] expressed ongoing concerns with behavior supports for [Student], and the IEP team will move forward with developing a BSP/FBA with current data.”



13. On May 22, 2023, the District conducted an Occupational Therapy Initial Assessment to address concerns about the Student's ability to self-manage responses to environmental stressors affecting the Student's education. The goal was to identify needs and challenges, enabling the development of tools and strategies for the Student and the team.
- a. The 2017 IEP was reviewed for occupational history. The Student's challenges included understanding and managing behavioral responses, specifically swearing, obsessive, and aggressive behaviors, leading to distractibility and inflexible thinking. Recommended interventions included behavioral techniques like deep breathing, knuckle cracking, neck weight, big movement, sports, affirmations, walking breaks, and seeking support from a trusted adult. The Student was discharged from Occupational Therapy services in 2022 because the Student achieved functional independence in writing, technology, and success with self-management.
  - b. Sensory processing assessments indicated the Student's coping mechanism might lead to feeling stuck and triggering stress responses, such as agitated laughter, swearing, task avoidance, and excessive aggressive movement. The OT suggested the Student could benefit from developing self-awareness of environmental stressors, recognizing discomfort, and building engagement and motivation through consistent positive experiences.
  - c. The plan included the following interventions:
    - i. "Stop, think, and read the room to encourage self-control";
    - ii. "Six-second pause and take [Student] pulse to encourage self-awareness";
    - iii. "Spoon Theory: refocus thoughts and level of motivation and empowerment with the metaphor that spoons symbolize daily energy reserves";
    - iv. "Continue access to sensory tools such as music, affirmation, snacks and water, weighted ball and blanket, gum, fidgets, alternative seating, deep breathing, carrying his basketball, slow movement, going for a walk break, and sitting in the sensory room"; and
    - v. "Continue access to a trusted adult for 1:1 academic and regulation support."
14. A Worksheet for Function-Based Behavior Support Planning dated May 22, 2023, listed the following information: Setting Factors/Lagging skills, environmental fatigue, and interfering behavior, most likely at the end of the day:
- a. "Antecedents/Triggers"
    - i. "Being denied a preferred item or activity"; and
    - ii. "Attending a non-active class later in the day."
  - b. "Behavior of Concern"
    - i. "Elopement from area/classroom";
    - ii. "Property Destruction"; and
    - iii. "Handling of Inappropriate Objects."
  - c. "Consequence/what happens next?"
    - i. "Redirected back to classroom";
    - ii. "Given verbal prompting"; and
    - iii. "Loss of inappropriate collected items."
  - d. "Setting Factor Strategies"
    - i. "Increased sensory/movement activities in the later part of the school day";

- ii. “Available sensory breaks throughout the day on a non-contingent basis”; and
      - iii. “Visuals to support the expression of emotional state.”
    - e. “Antecedent Strategies”
      - i. “Staff will honor requests for sensory breaks throughout the day when asked for by [Student].”
    - f. “How will Replacement Behavior be Taught?”
      - i. “Modelling [*sic*] of environmentally appropriate self-advocacy”; and
      - ii. “Visual supports for requests will be available and their use modelled [*sic*].”
    - g. “How will you measure increase increase [*sic*] in Replacement Behavior?”
      - i. “Data will be collected for opportunities for use of replacement behavior vs. actual use of replacement behavior.”
    - h. “Reinforcement Plan for Replacement Behavior”
      - i. “Request for breaks will be honored, and verbal praise will be given.”
15. On May 23, 2023, an IEP Amendment showed that the evaluation team had completed an Occupational Therapy evaluation. At the meeting, the team presented, reviewed, and added the results of the evaluation to the IEP Services Summary page.
16. The Intensive Skills Classroom Teacher shared in an interview with the Complaint Investigator that the Parent did not ask for warnings about changes to staff working with the Student to be added to the IEP, nor did the Parent communicate any concerns or requests apart from the concern around the basketball breaks.
17. The Parent indicated in an interview with the Complaint Investigator that they do not believe an Occupational Therapist (OT) worked with the Student. The Parent believed that the OT consulted only and the Student was seeing a private OT.
18. On May 30, 2023, a PWN of Special Education Action proposed, “Per Prior Written Notice dated 3/24/23, [District] offered and developed and Behavior Support Plan/ Functional Behavior Assessment (BSP/FBA) Worksheet for [Student] and held an IEP amendment meeting on 5/23/23. At the parent’s request, the Behavior Support Specialist’s invitation was rescinded. The information from the Behavior Support Specialist was made available to the parent at the meeting, and the parent declined to review the worksheet during the meeting, or take to review, and expressed that they did not want a “behavior lens” discussed at the meeting [*sic*]. Per parent request, this information will not be included in the IEP Amendment dated 5/23/23.”
19. In the fall of 2023, with no notice, a Paraprofessional assigned to work with the Student unexpectedly stopped working with the Student. One of the Student’s classroom teachers discussed the departure of the paraprofessional with the students in the class. Students were asked to write thank-you notes to the paraprofessional. The Intensive Skills Classroom Teacher elaborated in an interview with the Complaint Investigator to affirm that the Student received warnings for transitions between classes, was notified of safety drills, and was notified when there was a support staff change.
20. On September 20, 2023, the Student emailed the Paraprofessional from the 2022-23 school year, “Hey [Teacher] I am crying right now because I miss you and I want you to come back like I’m feeling emotional like I want you to come back to school you left without saying goodbye get to say goodbye to me and I make my heart shatter you’re my best friend like you’re one of my you’re like a friend to me [*sic*]. From your best friend

[Student].”

21. On September 21, 2023, the Paraprofessional from the 2022-23 school year responded to the Student’s email from September 20, 2023: “Hi [Student], I’m sorry to hear that you are feeling bad about me leaving [School], it was really hard for me too. It was a difficult decision to make, but I had to leave so I could go back to school to get a teaching license. I will come back to [School] and visit as often as I can! I hope school is still going well and you are liking all of your new classes this year. Signed [Paraprofessional].”

In an interview with the Complaint Investigator, the Parent shared that they didn’t recall expressing concerns about the IEP before December 2023. The Teacher kept in communication with the Parent about the things that were happening at school. The Parent shared that the request for the IEP meeting was because the Teacher was shouting at the Student and because the Student did not participate in general education classes apart from health. The Parent also stated that the IEP meeting was requested because the Student needed a sensory break with a basketball, which was not specifically included in the IEP.

22. On December 8, 2023, the Case Manager emailed the Parent and Wraparound Coordinator, informing them that the Case Manager had included the Special Education Administrator in the email strand. The Case Manager also asked if they were available on December 11<sup>th</sup> at 1:00 p.m. for an IEP meeting. The Case Manager informed the Parent that if that date did not work, they would arrange other available times.
23. On December 11, 2023, the Case Manager emailed possible meeting dates and times when all the ISC teachers would be available. It was noted that the Family Partner was included and that general education teachers would be invited:
  - a. “Friday 12/15 at 1:00”;
  - b. “Tuesday 12/19 at 1:00”;
  - c. “Wednesday 12/20 at 3:30”; and
  - d. “Thursday 12/21 between 1-5 [sic].”
24. On December 11, 2023, the Case Manager emailed the Parent, Family Partner, Wraparound Coordinator, and the Lead Service Coordinator, informing them that the Occupational Therapist would not be available to meet until after January 15<sup>th</sup>. They inquired about prioritizing a meeting with the Student’s classroom teachers and outside service providers or scheduling a meeting after the 15<sup>th</sup> when the entire IEP team would be available.
25. The Teacher informed the Vice Principal that the Parent wanted an accommodation added to the IEP, the Teacher was struggling to get an IEP meeting scheduled, and the Parent was upset. On December 12, 2023, the Vice Principal called the Parent because the Parent requested an IEP meeting. The Vice Principal indicated in an interview with the Complaint Investigator that the Vice Principal was referring to adding an accommodation without a meeting via a written agreement.
26. The Parent overheard a call regarding an amendment to the IEP that caused the Parent to believe that the District was making decisions without the IEP team meeting.
27. On December 13, 2023, the Parent emailed the District: “IEP Team, Just received a voice message from High School’s Vice Principal emphasizing that they’re putting the brakes on when it comes to [Student’s] IEP... [Student] is not getting the support and

services at school that [they need] in order to ensure [they are] getting an appropriate education as a disabled person. I thought the purpose of a collaborative IEP meeting was to work together to determine what [Student] needs, in [their] best interest, in order to have access to a free public education. It appears that [District] has made a decision before the IEP meeting.”

28. On December 13, 2023, the Vice Principal emailed the following to the Parent and the IEP Team: “The voice message says that we want to put any movement breaks as needed in your [Student’s] IEP. We emphasized that if movement breaks are needed (for basketball or otherwise), we could add this to the IEP without a meeting. However, we are fully prepared to have a meeting if there are additional items to discuss. I apologize for the emphasis on letting you know that we did not need to have a meeting... cannot put basketball breaks as needed into the IEP, as your [Student] moves throughout the school, and a basketball rim may not be available. However, we are happy to put movement breaks as needed into the IEP. The reason we were hoping to meet your [Student’s] movement needs without a full team meeting, is that we can do this quickly and efficiently, without a full meeting... However, I did tell your teacher that if you feel that there are other concerns that need to be addressed by the full team or if you feel the addition of movement breaks to the IEP cannot be addressed without the full team, that we can schedule one. As a matter of fact, we have already been working to schedule a full team meeting for your [child].... I was just hoping to meet you and your [child’s] needs in the best way possible. If you feel, for any reason, that a full meeting is required, we are more than happy to hold the meeting.”
29. On December 13, 2023, the Parent emailed the District and stated, “I kindly required [sic] a collaborative full IEP meeting with the entire team last week. It appears the entire team has already corresponded via email with their scheduling availability. I gave you my schedule availability. My preference is that you continue the process of utilizing the IEP Team email message as a way to communicate anything pertaining to the IEP meeting.”
30. The Parent described feeling that the information the Parent shared in meetings regarding the Student was “shot down” by other members of the team.
31. Occupational Therapy service logs indicated that the classroom staff working with the Student were provided training and consultation on three occasions (4/20/23, 6/13/23, and 9/25/23).
32. The Parent filed the Complaint on December 19, 2023.
33. An IEP meeting was held on January 3, 2024, after the Complaint was filed. At this meeting, an accommodation requiring that the Student’s scheduled movement breaks provide access to a full-size basketball rim was added to the Student’s IEP.

#### **IV. DISCUSSION**

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

The Parent alleged that the Student did not receive the requested sensory breaks (basketball breaks) that are described in the Student’s IEP. The Parent also alleged that the behavior

modifications were not provided consistently by trained staff, and the Student did not receive transitional warnings for a change in staff and the changes to the basketball breaks.

At the beginning of each school year, a school district must have an IEP in effect for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. As soon as possible following the development of the IEP, special education, and related services must be made available to the child in accordance with the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider, and another service provider who is responsible for its implementation, and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.<sup>3</sup>

The March 2023 IEP included updated information about classroom skills, the Student's present levels of developmental and functional performance, and a summary of present levels of performance for transition planning. Accommodations around calming choices, expectations for transitions, access to adult support, and reminders about staying on task were described. Supports for School Personnel was added, which included a 60-minute consult with the Adapted PE teacher. In an interview with the Complaint Investigator, both the Parent and the District confirmed the Student's access to sensory and movement breaks both in and out of the classroom. The District shared some of the complications that interfered with the Student's preferred choices. The Parent indicated frustration with the lack of specificity in the IEP regarding the Student's sensory breaks for basketball'. The March 8, 2023 IEP meeting notes indicated the Student would be provided paraprofessional support to help access accommodations. District interviews with the Complaint Investigator revealed that the Parent did not request that notice of adult transitions be added to the IEP and that, outside of the Parent's request, the IEP team did not have reason to consider the addition of an accommodation in that area. Both the Parent and the District confirmed that sensory breaks were afforded to the Student. There is no evidence to suggest that staff were untrained. Specific prompting about the change in staff was not required in the IEP.

The Department does not substantiate this allegation.

### **Content of IEP**

The Parent alleged that the District rejected the Parent's request that the IEP include reasonable testing and accommodations. The Parent has alleged that the staff working with the Student have not received an appropriate amount of supports to school personnel to meet the needs of the Student.

The IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. A statement of measurable annual goals, including academic and functional goals and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives designed to meet the child's needs that result from the child's disability to enable the child to be

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<sup>3</sup> OAR 581-015-2220 (1)(2b)(3)

involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability.<sup>4</sup>

The IEP must include a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals; to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and children without disabilities. The projected dates for initiation of services and modifications and the anticipated frequency, amount, location, and duration of the services and modifications are also required.<sup>5</sup>

Also required is an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities and a statement of any appropriate accommodations that are necessary for the child to participate in state and districtwide assessments used to measure their academic achievement and functional performance relative to state standards. A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability unless the parent has requested an exemption and if the IEP team determines that the child must take the alternate assessment instead of the regular Statewide or a district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment is appropriate for the child.<sup>6</sup>

The March 2023 IEP did not indicate that state or district-wide assessments were required at the Student's grade level when the IEP was in effect. After the March 2023 IEP was in effect, the Parent expressed concern about behavior support for the Student. The District completed a behavior support planning worksheet based on available data; this is documented in a PWN. In May of 2023, an amendment to the IEP indicated that results from an OT assessment were added to the Services Summary. The Parent indicated that the District OT only provides consultation services, not one-on-one work with the Student. There is no evidence to suggest that the Parent requested reasonable testing accommodations or that the District denied that request. There is no evidence that the Parent requested additional support for school personnel or that the District denied that request. There is nothing in the record that would indicate the school district had an obligation to consider those items in the absence of a request from the Parent.

The Department does not substantiate this allegation.

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

The Parent alleged that the District did not convene an IEP meeting before winter break as requested by the Parent.

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<sup>4</sup> OAR 581-015-2200 (1a)(1b)

<sup>5</sup> OAR 581-015-2200 (d)(e)

<sup>6</sup> OAR 581-015-2200 (f)(g)

Each school district must ensure that the IEP team reviews the child's IEP periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate. The school district needs to consider the results of any reevaluation, information about the child provided to or by the parents, the child's needs, or other matters.<sup>7</sup>

The school district needs to consider an agreement to amend or modify the IEP in making changes to a child's IEP between annual IEP Team meetings. The parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to make these changes and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP, the district must ensure that the child's IEP team is informed of these changes. Amendments to the IEP, including changes to the IEP, may be made either by the entire IEP team at an IEP team meeting by amending the IEP or by redrafting the entire IEP. Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.<sup>8</sup>

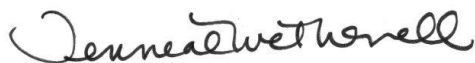
The Parent requested an IEP meeting on December 8, 2023. Efforts began on December 8, 2023 to schedule that meeting. The Case Manager proposed multiple dates. The Vice Principal suggested the use of a written agreement to add an accommodation to the IEP in the event that the Parent and District agreed that the addition did not require a meeting, but the Parent preferred to convene the IEP team for a meeting. The Parent's perception was that the alternative approach suggested as a possibility by the District meant that the District did not involve the Parent in the IEP decision-making process. The Parent requested an IEP meeting, and the District began the scheduling process immediately. A meeting was scheduled for January 3, 2024, and while this did not occur prior to the winter break as the Parent requested, it was scheduled in a timely manner.

The Department does not substantiate this allegation.

**VII. CORRECTIVE ACTION**  
*In the Portland School District*  
*Case No. 23-054-049*

The Department does not order corrective action in this matter.

Dated: this 16th Day of February 24



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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

Emailing Date: February 16th, 2024

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<sup>7</sup> OAR 581-015-2225 (1)  
<sup>8</sup> OAR 581-015-2225 (2)(3)

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).)