

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Portland Public Schools 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-009

I. BACKGROUND

On February 8, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Portland Public 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.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 February 21, 2024, 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 March 13, 2024.

On February 29, 2024, the District submitted a *Response*, disputing the allegations described in the Complaint. The District submitted the following relevant items:

1. District Written *Response* to Complaint, 2/29/24
2. Student IEP, 2/7/24
3. Meeting Minutes, 12/20/23
4. Meeting Minutes, 2/7/24
5. Special Education Placement Determination, 2/7/24
6. Prior Written Notice, 2/14/24
7. Prior Written Notice, 12/20/23
8. Prior Written Notice, 2/12/24
9. Prior Written Notice, 9/13/23
10. Notice of Team Meeting, 1/3/24
11. Notice of Team Meeting, 12/13/23
12. Notice of Team Meeting, 10/6/23
13. Student IEP, 2/8/23

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)
² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

14. Student IEP Amendment, 2/8/23
15. Meeting Minutes, 8/28/23
16. Special Education Placement Determination, 2/28/23
17. Special Education Placement Determination, 8/28/23
18. Meeting Minutes, 2/8/23
19. Notice of Team Meeting, 8/28/23
20. Notice of Team Meeting, 1/26/23
21. Prior Written Notice, 2/08/23
22. Prior Written Notice, 8/28/23
23. Eligibility Summary Statement, 6/7/22
24. Disability Statement, Autism Spectrum Disorder (82) Criteria, 6/7/22
25. Meeting Minutes, 6/7/22
26. Prior Written Notice, 2/15/22
27. Prior Written Notice, 6/7/22
28. Notice of Team Meeting, 5/16/22
29. Parent/Guardian Consent for Individual Evaluation, 2/15/22
30. Eligibility Summary Statement, 6/7/22
31. Occupational Therapy Evaluation, May/June 2022
32. Confidential Psychoeducational Evaluation Report, 6/7/22
33. Comprehensive Function Based Behavioral Support Plan (BSP), 10/17/23
34. IEP Progress Report—Measurable Annual Goals, 1/29/24
35. Email: [Student's] IEP document, 2/8/2023
36. Email: Fwd: [Student's] IEP points that parents want to address, 2/8/23
37. Email: meeting follow-up, 2/14/23
38. Email: Re: 2/10/23 social group, 2/17/23
39. Email: Re: [Student] IEP feedback?, 2/22/23
40. Email: Re: meeting follow-up, 3/8/23
41. Email: Re: Notes, 4/4/23
42. Email: Re: Next year, 5/10/23
43. Email: Re: Opting out of OSAS State Assessment?, 5/20/23
44. Email: [Student] Processed Referral 6.5.23, 6/6/23
45. Email: Re: Peer Conflict Today, 6/7/23
46. Email: Re: [Student's] Wrap Meeting, 6/13/23
47. Email: Re: CSS next year, 6/25/23
48. Email: Re: [Student] lep [sic], 8/22/23
49. Email: checking in for [Student], 8/24/23
50. Email: Re: [Student] lep [sic], 8/24/23
51. Email: Fwd: Class economy questions, 8/28/23
52. Email: Fwd: Safety and friendship building plan, 9/4/23
53. Email: Re: [Student's] schedule, 9/7/23
54. Email: Re: Safety and friendship building plan, 9/7/23
55. Email: Re: [] question, 9/11/23
56. Email: inclusion of outside document to IEP, 9/12/23
57. Email: Fwd: 9/11/23 meeting follow up, 9/12/23
58. Email: Re: Prior written notice, 9/12/23
59. Email: Fwd: Safety and friendship building plan, 9/12/23

60. Email: Re: IEP and classroom assignment, 9/12/23
61. Email: Re: Supporting a [School] Family, 9/12/23
62. Email: inclusion of outside document to IEP, 9/12/23
63. Email: Follow up from last week's meeting, 9/13/23
64. Email: Re: Safety Plan Question, 9/19/23
65. Email: Re: Update Regarding [Student's] Safety at School, 9/24/23
66. Email: Today's Conversation with [Student], 9/29/23
67. Email: [Student] Class Incident, 9/29/23
68. Email: Re: Invitation to Wraparound Meeting, 10/2/23
69. Email: Re Today's Conversation with [Student], 10/2/23
70. Email: Re: Invitation to Wraparound Meeting, 10/2/23
71. Email: Re: Following up Regarding [Student's] Safety at School, 10/2/23
72. Email: Re: Data and communication room, 10/5/23
73. Email: [Student's] Wraparound Meeting, 10/8/23
74. Email: Please RSVP – [Student] Meeting Request [School], 10/8/23
75. Email: Re: Pain complaints, 10/9/23
76. Email: Re: Inquiry on Alternative Schooling Options for [Student] – Upcoming Wrap Meeting Discussion, 10/9/23
77. Email: Re: November Wraparound Meeting for [Student], 10/10/23
78. Email: Re: PE today, 10/11/23
79. Email: Re: separated recess swap, 10/11/23
80. Email: Incident yesterday and today, 10/12/23
81. Email: [Student] Processes Referral 10.10.23, 10/16/23
82. Email: Re: Data and communication room, 10/16/23
83. Email: Update to No-Contact Agreements, 10/18/23
84. Email: Processed referral for [Student] 10.10.23, 10/18/23
85. Email: School Options – Contact, 10/19/23
86. Email: Re: Data and communication room, 10/20/23
87. Email: [Student], Processes Referral 10.16.23, 10/16/23
88. Email: Re: A couple things, 10/25/23
89. Email: Re: Scheduling Caregiver Interview, 10/26/23
90. Email: Re: referral report Synergy, 11/26/23
91. Email: Re: Hybrid – [Student], 11/26/23
92. Email: Re: check-in, 11/27/23
93. Email: Re: Hybrid – [Student], 11/29/23
94. Email: Re: IEP history, 12/5/23
95. Email: Fwd: Plan of Care, 12/5/23
96. Email: Q1 Progress Report, 12/7/23
97. Email: Re: Shout-out to [Student], 12/8/23
98. Email: Nice job!, 12/11/23
99. Email: Re: IEP history, 12/11/23
100. Email: Re: check in for [Student], 12/01/23
101. Email: Re: Wraparound meeting, 12/12/23
102. Email: Re: Plan of Care and More..., 12/18/23
103. Email: Processed Referral 12.15.23, 12/19/23
104. Email: [Student] Processed Referral, 12/15/23

105. Email: Re: Meeting invite, 12/19/23
106. Email: Behavior Support Plan and Progress Notes, 12/20/23
107. Email: Re: PWN, 12/21/23
108. Email: [Student] point sheet, 1/02/24
109. Email: [Student] Meeting Confirmation – [School], 1/3/23
110. Email: Re: [Student's] Day, 1/8/24
111. Email: Re: Wrap Around Meeting?, 1/8/24
112. Email: Re: Consultation, 1/9/24
113. Email: Re: Plan of Care, 1/9/24
114. Email: Re: [Student] Day, 1/22/24
115. Email: Re: parent teacher conference, 1/25/24
116. Email: [Student] processed referral 1.22.24, 1/26/24
117. Email: Re: [Student] Accommodations/Services, 1/28/24
118. Email: Re Bullying incident today, 1/29/24
119. Email: Re: [Student] Accommodations/Services, 1/30/24
120. Email: Re:, 1/31/23
121. Email: Re: Wraparound meeting, 2/02/24
122. Email: [Student], 2/5/24
123. Email: Re: wraparound meeting, 2/7/24
124. Email: Re: [Student] IEP today, 2/7/24
125. Email: [Student] Q2 Progress Notes, 2/7/24
126. Email: IEP Draft, 2/7/24
127. Email: Re: Thank you!, 2/7/24
128. Email: [Student], 2/7/24
129. Email: Re: team [Student], 2/7/24
130. Email: Re: Bullying incident today, 2/8/24
131. Email: Re: IEP draft, 2/8/24
132. Email: Re: IEP draft, 2/12/24
133. Email: [Student] IEP and PWN, 2/16/24
134. Student IEP DRAFT, 2/7/24
135. List of Staff
136. Exhibit List

The Parent submitted the following items on March 13, 2024:

1. Parent Written Response to District Response
2. Student Draft IEP, 02/07/2024
3. Email: Fwd: Following up Regard [sic] [Student's] Safety at School, 9/28/23
4. Email: Fwd: Behavior Support Plan and Progress Notes, 12/20/23
5. IEP Progress Report, 11/3/23
6. Comprehensive Function Based Behavior Support Plan (BSP), 10/17/23
7. Email: Fwd: [Student] Accommodations/Services, 1/26/24
8. Email: IEP Draft, 2/7/24
9. Email: Updated invitation: [Student] Annual IEP/Goal Check-in, 1/10/24
10. Email: [Student] IEP and PWN, 2/16/24
11. Student Draft IEP, 2/7/24

12. Prior Written Notice, 2/14/24
13. Email: Fwd: Please go to www.pps.net/contact to share your questions, concerns, suggestions and/or compliments, 3/12/24
14. Re: [Student] Accommodations/Services, 3/11/24

On March 11, 2024, the Complaint Investigator interviewed the Parents regarding their concerns in this matter. Virtual interviews were conducted instead of on-site interviews. Following the interview, the Parents submitted a written response to the District's *Response*, along with supporting documentation. On April 4, 2024, the Complaint Investigator interviewed District Staff and Legal Counsel about this matter. 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 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 February 8, 2023, to the filing of this Complaint on February 7, 2024.

Allegations	Conclusions
<p>Review and Revision of IEPs (Predetermination)</p> <p>The Parents alleged that the District violated the IDEA when a single member of the Student's IEP team announced a change to the Student's IEP services. Specifically, the Parents alleged that a single member of the Student's IEP team announced that the Student's paraeducator service minutes would be reduced by a predetermined amount.</p> <p>(OAR 581-015-2225; 34 CFR § 300.324(a)(4), (a)(5), (a)(6), & (b)(1))</p>	<p>Not Substantiated</p> <p>The District proposed changes to the Student's IEP services and accommodations in the form of both a draft IEP and discussion during an IEP team meeting. The Parents objected to the proposed changes and the IEP team chose not to make these changes to the IEP.</p>
<p>Prior Written Notice</p> <p>The Parents alleged that the District violated the IDEA when it did not provide the Parents with prior written notice of its intent to reduce the Student's service minutes for direct adult support, prior to initiating the change.</p>	<p>Not Substantiated</p> <p>The District did not implement the proposed changes to the Student's IEP. Rather, the proposal was discussed during an IEP team meeting. Following the meeting, the</p>

(OAR 581-015-2310; 34 CFR § 300.503)	District sent the Parents a prior written notice documenting its intent not to implement the proposed reductions in direct adult support times.
<p>Denial of FAPE</p> <p>It is alleged that the District violated the IDEA when it reduced the Student’s access to their paraeducator which limited the Student’s access to their education, thereby denying the Student a FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p>Not Substantiated</p> <p>The record in this case supports that the District proposed, but did not implement, reductions in the Student’s services. The Student was not denied a FAPE.</p>

REQUESTED CORRECTIVE ACTION
<p>The Complainant requests that the Department order the District to take the following corrective action:</p> <ol style="list-style-type: none"> 1. The Parents suggest that the Student’s direct adult support time remain the same. 2. The Parents suggest that a 1:1 paraeducator be assigned to support the Student.

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 (ASD).
2. The Student enjoys swimming, engaging with peers and adults, and forming strong relationships with adults. The Student displays a sense of humor and shows strengths in maintaining topics of mutual interest in conversation, identifying emotions and physical states, and finding solutions to communication breakdowns.
3. The Student receives specially designed instruction (SDI) in areas impacted by their eligibility, including social/emotional skills, classroom/school skills, reading/language arts, writing skills, mathematics, and communication.
4. The Student’s February 7, 2024 IEP, includes 210 minutes per quarter of Speech/Language Pathology services; 90 minutes per week of Social and Emotional

Skills; and, 30 minutes per week of Classroom/School Skills. In addition, the Student's IEP includes 120 minutes per week of SDI each in reading, writing, and mathematics. The Student also receives 300 minutes per year of occupational therapy direct services.

- a. The Student's social and emotional skills goal indicated that, "after independently determining that they feel stressed or anxious, [the Student] will verbally request a break to use a stress reeducation strategy, (e.g. take a walk, journal feelings, listen to music on headphone), and use kind words, in 4 out of 5 observed stressful moments, as measured by a progress reporting assessment."
- b. The Student's first social skills goal indicated that, "in an explicit social skills session, and when give [sic] a role play scenario of a peer conflict/interaction, unexpected or other school behavior, [the Student] will a) identify 2 or more perspectives/feelings of students/adults in the video and b) predict what will happen next in the social scenario, in 4 out of 5 social skills lessons."
- c. The Student's second social skills goal indicated that, "in an explicit social skills session, and when give [sic] a role play scenario of a peer conflict/interaction, unexpected or other school behavior, [the Student] will a) identify 2 or more perspectives/feelings of students/adults in the video and b) predict what will happens next in the social scenario, in 4 our [sic] of 5 social skills lessons."
- d. The Student's first classroom/school skills goal indicated that, "given a schedule of 6-10 daily activities, [the Student] will a) during a transition time, check schedule with one or less prompts, b) transition to the next activity c) demonstrate 80% engagement in activity, with 80% independence for a 2-week period."
- e. The Student's first reading goal indicated that, "when presented with a timed reading passage at [their] instructional level, [the Student] will read 30 correct words per minute with 90% accuracy on 4 out of 5 progress monitoring assessments."
- f. The Student's second reading goal indicated that, "when presented with a time reading passage at [their] instructional level, [the Student] will read 30 correct words per minute with 90% accuracy on 4 out of 5 monitoring assessments."
- g. The Student's writing goal indicated that, "after an illustrated, instructional-level text is read aloud, [the Student] will a) identify the main idea and 3 supporting details, and b) write a structured summary or opinion paragraph with a topic sentence, three details, and a conclusion, in 3 our [sic] of 4 assignments."
- h. The Student's mathematics goal indicated that, "given two 2-digit numbers, [the Student] will write the sum or difference by using a strategy based on place value, properties of operations, or the relationship between addition and subtraction (e.g., combining tens then combining ones, using the standard algorithm, using base 10 blocks or other manipulatives), then use an alternate strategy or calculator to check [their] work, for 4 out of 5 problems, on 2 out of 3 progress monitoring assessments."
- i. The Student's first communication goal indicated that, "during a conversation with another peer or adult, [the Student] will independently use at least one

- learned strategy (i.e., making comments, asking questions, etc.) to maintain a topic of mutual interest for at least 3 conversational turns in 80% of opportunities.”
- j. The Student’s second communication goals indicated that, “during a conversation with another peer or adult, [the Student] will independently use at least one learned strategy (i.e., making comments, asking questions, etc.) to maintain a topic of mutual interest for at least 3 conversational turns in 80% of opportunities.”
5. On August 28, 2023, the Student’s IEP team met to revise the Student’s IEP. During the meeting the team discussed whether having a full-time paraeducator was “becoming more and more restrictive as [the Student] ages and grows [their] skills.” The team further discussed the sufficiency of service minutes and reviewed behavior supports in place for the Student.
6. During the August 29, 2023 IEP team meeting, the Parents expressed concerns regarding the Student’s reading and whether there was sufficient SDI in reading for the Student to make academic progress. The Parents also expressed interest in the Student having access to academic and social opportunities at the same rate as peers. The Student’s IEP included the following SDI:
- a. 210 minutes per quarter in communication;
 - b. 90 minutes per week in social and emotional skills;
 - c. 30 minutes per week in social skills;
 - d. 30 minutes per week in classroom/school skills;
 - e. 120 minutes per week in reading;
 - f. 120 minutes per week in writing; and
 - g. 120 minutes per week in mathematics.
7. The Student’s IEP also includes the following supplementary aids, services, and accommodations, provided by the Student’s Special Education Teacher, Special Education Provider, or General Education Teacher:
- a. 305 minutes per day of access to direct adult staffing for: transitions within the classroom and around the school campus, whole group instruction, small group instruction, learning of new routines, unstructured play times;
 - b. 15 minutes per day of access to break spaces with pre-taught plans for utilization of established spaces;
 - c. 250 minutes during instruction of access to supportive seating to support “read to learn” body postures and strategic seating to minimize distractions;
 - d. 250 minutes per day of access to visual checklists and schedules;
 - e. 15 minutes per day of access to supervised movement breaks;
 - f. 250 minutes during instruction time of access to visual time to support working behaviors and transitions;
 - g. 90 minutes during unstructured time of access to social stories and an adult to present and reinforce them;
 - h. 250 minutes throughout the day of access to visual supports, inclusive of those related to voice volume, emotional regulation and problem-solving skills and

- working/school/expected behaviors;
- i. 20 minutes during instruction of access to an adult to gain the Student's attention before giving directions and then checks for the Student's understanding;
 - j. 20 minutes during transitions of pre-warning of transitions by an adult;
 - k. 30 minutes during unstructured time of in the moment access to direct adult support and coaching on how to respond to peers when they are upset by comments the Student has made;
 - l. 305 minutes throughout the day, of in the moment access to adult support for peer related problem-solving situations;
 - m. 30 minutes per week of access to teaching and reinforcement of concepts related to time management and emotional regulation;
 - n. 90 minutes during testing of specific supports for during high-stakes district testing;
 - o. 15 minutes throughout the day, fade to independence plan;
 - p. 30 minutes during instruction of access to portable computers with cloud-based computing capability;
 - q. 30 minutes throughout the day during independent work times and/or breaks, access a device and headphones that allow the Student to listen to music in order to support self-regulation;
 - r. 10 minutes throughout the day of school to home communication log recording the times of day/incidences; and
 - s. 30 minutes per week of opportunities to participate in structured social groups.
8. On September 28, 2023, the Parents sent an email to the District expressing concerns about potential bullying of the Student, and the District's response to those concerns.
9. On October 17, 2023, the District developed a Behavior Support Plan (BSP) for the Student.
10. The Student's November 2, 2023 IEP progress report indicated that the Student was making progress toward most of their goals, or making progress with the potential that instructional strategies may change to ensure that the goal is met by the next IEP review.
11. On December 10, 2023, the District sent the Parents a draft of a proposed behavior support plan for the Student as well as progress notes documenting the Student's progress toward IEP goals.
12. On December 13, 2023, the District sent the Parents a Notice of Team Meeting to develop or review the Student's IEP. The meeting was scheduled for December 20, 2023.
13. On December 20, 2023, the Student's IEP team met to discuss the Student's IEP and BSP.

14. On January 3, 2024, the District sent the Parents a Notice of Team Meeting for an IEP team meeting scheduled for February 7, 2024. The meeting was to develop or review the Student's IEP and placement.
15. On January 10, 2024, the District sent the Parents an invitation for the Student's annual IEP team meeting. The meeting was scheduled for February 7, 2024.
16. On January 26, 2024, the Parents sent an email to the District alleging that the District was not providing the Student's IEP accommodations and services. The Parent's alleged that the District was not providing the access to direct adult staffing for: transitions within the classroom and around the school campus; whole group instruction; small group instruction; learning of new routines; and, unstructured play times. The Parents noted that the Student's IEP called for 305 minutes per day. The Parent reported that on December 20, 2023, during a meeting with school staff, the District reported that it was meeting all of the Student's service minutes, and that the Student's school had only one paraeducator on staff. The Parents requested that the District rectify the situation, as they believed that this meant that the Student would not receive the service minutes required by the IEP.
17. On January 30, 2023, the Parents sent an email to the District reiterating the concerns expressed in their January 26, 2024 email' and asked for the District to respond. The Parents reported that, based on conversations with school staff, they believed that the Student's IEP services were not being provided.
18. On February 7, 2024, the District sent the Parents a copy of a draft IEP for the Student for discussion ahead of the February 7, 2024 IEP team meeting. The draft IEP included the following proposed changes to the Student's SDI:
 - a. Removal of the 30 minutes per week in social skills;
 - b. Reduction from 120 minutes per week, to 90 minutes per week in reading;
 - c. Reduction from 120 minutes per week, to 90 minutes per week in writing; and
 - d. Reduction from 120 minutes per week, to 90 minutes per week in mathematics.
19. The February 7, 2024 draft IEP included the following suggested changes to the Student's supplementary aids, services, and accommodations:
 - a. Reduction from 305 minutes per day, to 105 minutes per day, of access to direct adult staffing for: transitions within the classroom and around the school campus, whole groups instructions, small group instruction, learning of new routines, and unstructured play times.

On February 7, 2024, the Student's IEP team met for the Student's annual IEP review. During the meeting, there was disagreement about the number of minutes on the IEP for adult support. The team agreed to reconvene later.
20. On February 8, 2024, the Parents filed this Complaint.

21. On February 14, 2024, the District sent the Parents a prior written notice (PWN) documenting that the Parents disagreed with the District's proposed changes in service minutes and accommodations. The District proposed maintaining the service minutes and accommodations outlined in the revised IEP from August 29, 2023. As a result, the Student would continue to receive 120 minutes of SDI in reading, writing, and math. The PWN also documented that the District would implement the following IEP goals as discussed during the February 7, 2024 meeting:
- a. Communication, by next annual IEP review, [the Student] will independently use at least 1 practiced communication repair strategy (i.e., repeat what was misunderstood slower, ask communication partner to repeat or rephrase, etc.) to gain clarification during a one-on-one conversation with an adult or peer in the special education classroom in 3 out of 4 of opportunities across 3 data collection days.
 - b. Social/Emotional Skills, When emotionally escalated, and offered strategies, [the Student] will regulate and rejoin class activity within 5 minutes in 2 out of 3 opportunities.
 - c. Classroom Skills, by next IEP review, [the Student] will follow classroom routines with 3 or less visual or verbal prompts in 80% of opportunities, as measured by informal session, point sheets, or teacher report.
 - d. Mathematics, by next IEP review, [the Student] will add and subtract numbers to 20 with 75% accuracy as measured by informal assessment.
 - e. Reading, by next IEP review, [the Student] will read at mid-1st grade level with 94% accuracy and 75% comprehension as measured by informal or curriculum-based assessment.
 - f. Writing, by next IEP review, [the Student] will independently write 4 sentences with correct spacing, capitalization, and punctuation, with phonetic spelling with 80% accuracy, as measured by writing samples/teacher report.
22. The PWN provided by the District to the Parents on February 14, 2024 also noted that the Student would continue to receive 305 minutes per day of "Access to direct adult staffing for the following: Transitions within the classroom and around the school campus, Whole group instruction, Small group instruction, Learning of new routines, Unstructured play times".
23. On February 16, 2024, the District sent an email to the Parents informing them that the District intended to move forward with providing the service minutes and accommodations outlined in the Student's August 29, 2023, IEP. The District noted that this included 120 minutes of SDI in reading, writing, and math. The District also indicated its intent to continue with 305 minutes per day of "access to direct adult staffing" for transitions, whole group instructions, small group instruction, learning of new routines, and unstructured play times. Included with the email was a draft of the Student's IEP with the stated services times.
24. On March 11, 2024, the Department's Complaint Investigator interviewed the Parents regarding the concerns raised in this Complaint. The Parents reported the

understanding that the Student's IEP included access to a 1:1 aide. The Parents wondered how the Student's services minutes could be appropriately provided by the District when it was their understanding that the Student's school had only one paraeducator for all students.

25. The Parents reported that, during IEP team meetings, District staff reported that the Student required more support not less, especially more 1:1 support. The Parents reported the Student's General Education teacher, had, during the February 7, 2024, IEP team meeting, asserted that the Student's Special Education teacher could provide the support that the Parents understood was the Student's 1:1 support. The Parents noted that they received a February 7, 2024, draft IEP the day of the IEP team meeting. They related that during the meeting, they asked about whether the draft IEP reflected the District's intention to reduce the service minutes provided to the Student. The Parents reported that the District stated that this was the proposal from the District. The Parents reported that no reason was provided during the meeting for this proposal.
26. The Parents voiced concern that the provision of services to the Student were not adequately tracked. They reported having not seen forms documenting the provision of services to the Student, such as check-in/check-out sheets. This led the Parents to question the information that formed the basis for the District's proposal to reduce the Student's service minutes. The Parents further voiced concern regarding the PWN received from the District. The Parents noted that no PWN was provided prior to the proposal to reduce the Student's service minutes. The Parents further observed that the PWN provided following the meeting was not responsive to the Parent's request. The Parents further reported having not seen data that would support a reduction in service times to the Student.
27. Additionally, the Parents observed that the District had not yet responded to a records request made by the Parents to the District.
28. On April 4, 2024, the Complaint Investigator interviewed the Student's Special Education Teacher and District Legal Counsel. The Special Education Teacher reported that, when the Student came to the school, the Student received accommodations with the support of a paraeducator. Due to staffing changes, the support was provided by the special education teacher, general education teacher, and paraeducator. The District's Legal Counsel observed that staff changes during and between school years often impact the individual staff members who provide services, including the Student's accommodations, and that this may have caused confusion.

The Special Education Teacher indicated that the draft IEP was intended as a means of starting a conversation with the Student's IEP team regarding the Student's needs as they transitioned to middle school. The Special Education Teacher noted general concerns for students at that age and education level regarding providing the necessary support to the Student, and not obstructing the Student's independence,

and development of social connections. The Special Education Teacher reported that the quantity of support required by students as they transition to middle school generally changes. Students often display additional interest in seeking out peer relationships and can become more self-aware regarding the services received. The Special Education Teacher noted that IEP teams have to be sensitive to student independence. The District reported that the draft IEP was intended as a catalyst for that conversation with the Student's IEP team.

IV. DISCUSSION

Review and Revision of IEPs (Predetermination)

The Parent alleged that the District violated the IDEA when a single member of the Student's IEP team announced a change to the Student's IEP services. Specifically, the Parent alleged that a single member of the Student's IEP team announced that the Student's paraeducator service minutes would be reduced by a predetermined amount.

School districts must ensure that the IEP team reviews a child's IEP at least once every 365 days. Such reviews are used to determine whether the annual goals for the child are being achieved, and to revise the IEP as appropriate to address any lack of expected progress toward the annual goals, the results of reevaluations, information about the child provided by the parents, the child's anticipated needs, or others matters. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP.³ A meeting does not include preparatory activities that public agency personnel engage in to develop a proposal that will be discussed at a later meeting, such as the development of a draft IEP.⁴

“With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents 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. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It

³ OAR 581-015-2225(1)—(3)

⁴ OAR 581-015-2190(4)

is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.”⁵

On February 7, 2024, the District sent the Parents a draft IEP showing a proposed reduction in the service minutes in several areas including social skills, reading, writing and mathematics. During the February 7, 2024, IEP team meeting, the Parents questioned the draft IEP. The District endorsed the service times reflected in the draft IEP. The Parents objected to the reduction in service times, and further questioned the reasoning for the reduction in service times. The IEP team meeting ended without modifying the Student’s IEP. Following the February 7, 2024, IEP team meeting, the District, on February 14, 2024, sent the Parents a PWN documenting its intent not to modify the service minutes in the Student’s August 29, 2023, IEP. The Student’s IEP in effect prior to the February 7 did not specify that a paraeducator would provide the Student’s accommodations.

In a draft IEP provided to the Parents prior to the IEP meeting, the District proposed to change the service times and services provided to the Student. During the February 7, 2024 IEP team meeting, the Parents objected to these changes. Following the Parents’ objection, the IEP team ultimately determined not to change the Student’s IEP.

The Department does not substantiate this allegation.

Prior Written Notice

The Parent alleged that the District violated the IDEA when it did not provide the Parents with prior written notice of its intent to reduce the Student’s service minutes for direct adult support, prior to initiating the change.

Prior written notice must be given to the parent, within a reasonable period before a school district proposes or refuses to initiate or change the provision of a free appropriate public education to a child with a disability. Prior written notice must also be given when a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child with a disability. The prior written notice must include a description of the action proposed or refused. The notice must also contain an explanation for the proposal or refusal, the reasoning, and the basis for the proposal or refusal. Prior written notices should also contain references to procedural safeguards, sources for parents to obtain assistance in understanding their procedural safeguards, other options the IEP team considered, and a description of the other options the IEP team considered.⁶

On February 7, 2024, the District sent the Parents a draft IEP with proposed reductions in the Student’s IEP services and service times. As discussed in the previous section, the IEP team ultimately decided not to adopt these proposed reductions.

⁵ FR 46678

⁶ OAR 581-015-2310(1)—(3)

The District's proposal to change aspects of the Student's IEP were presented for discussion during the Student's IEP team meeting. The Parents raised objections to the District's proposals. There is no evidence in the record that the District attempted to implement the changes either before or after the February 7, 2024, IEP team meeting. Following the February 7, 2024 meeting, the District documented its intent to maintain the services minutes outlined in the Student's August 29, 2023, IEP while making changes to the Student's IEP goals that were discussed in the February 7, 2024 IEP team meeting.

The Department does not substantiate this allegation.

Denial of FAPE

It is alleged that the District violated the IDEA when it reduced the Student's access to their paraeducator which limited the Student's access to their education, thereby denying the Student a FAPE.

School districts must provide a free appropriate public education to school age children with disabilities.⁷ At the beginning of each school year, a school district must have in effect an IEP for each child with a disability. Districts must provide special education and related services to a child with a disability in accordance with their IEP.⁸

The Parents alleged that the Student did not have access to an appropriate paraeducator to meet the requirements of the Student's IEP. Specifically, the Parents reported that the school the Student attended had insufficient paraeducator staff to provide 1:1 support for the accommodations outlined in the Student's IEP. The Student's IEP does not specify the assignment of a dedicated 1:1 aide or paraeducator. Rather, the IEP specifies that the Student's special education teacher or general education teacher would provide these accommodations. The Student's IEP specifies "access to direct adult staffing" for the 305 minutes of support for transitions within the classroom, while receiving instruction for learning new routines, and during unstructured play times. The Student's IEP indicated that the Student's "Special Ed Teacher/Provider" would provide this accommodation. There is no evidence that this accommodation was not provided.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION

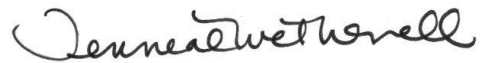
*In the Portland Public School District
Case No. 24-054-009*

⁷ OAR 581-015-2040(1)

⁸ OAR 581-015-2220(1)—(3)

The Department does not order corrective action in this matter.

Dated: this 8th Day of April 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of education

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).)