

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. 24-054-011

I. BACKGROUND

On February 20, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Portland School District 1J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent 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 February 27, 2024, 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 establishing a *Response* due date of March 12, 2024.

The District submitted a *Response* on March 12, 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. PPS Office of the General Counsel, 3/12/24
2. Staff List, no date
3. Individualized Education Program (IEP), 5/16/23
4. Notice of Team Meeting, 10/07/22
5. Special Education Placement Determination, 5/13/23
6. Portland Public Schools, 10/17/22
7. Written Agreement Between the Parent and the District, 05/15/23
8. Notice of Team Meeting, 5/8/23
9. Prior Written Notice, 5/8/23
10. Prior Notice about Evaluation/Consent for Evaluation, 10/21/22
11. Individualized Education Program, 5/19/22
12. IEP Progress Report, 4/20/23
13. Prior Written Notice, 6/7/22
14. Notice of Team Meeting, 4/14/22
15. Prior Written Notice, 5/19/22
16. Meeting Minutes, 5/23/23

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

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

17. Meeting Minutes, 5/15/23
18. Portland Public Schools, 10/17/22
19. Meeting Minutes, 5/19/22
20. Meeting Minutes, 2/13/24
21. Emails, 2/23
22. Daily Attendance By Week, 8/29/23
23. [High School] Student Schedule, 2023/2024
24. Q2 Report Card, 2023/2024
25. Student Discipline Profile, 2023/2024
26. TEACHING INSTRUCTION FOR: Personalized, 5/23/23
27. Behavior Analyst Observation Consent, 2/15/24
28. Behavior Analyst consent form, 2/16/24
29. Behavior Support Plan, 06/23
30. Informed and Written Consent for Placement on an Abbreviated School Day, 2/23/24
31. Notice and Acknowledgement of Information Prior to Initial Consideration of an Abbreviated School Day Program, 2/9/24
32. Abbreviated School Day Plan, 2/23/24
33. Acknowledgment of Notice of Required Information Prior to Required Meetings to Review Placement on an Abbreviated School Day Program, 2/23/24
34. Office Visit, 5/23/23
35. Delegation/TAE/Teaching, 8/25/23
36. [Student, High School], 8/25/23
37. [Student, High School], 5/17/23
38. Emails between the District and the Parent, 4/14/22-3/12/24

The Parent did not submit a *Reply* or materials.

The Complaint Investigator interviewed the Parent and District personnel on March 18, 2024. The Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from February 21, 2023, to the filing of this Complaint on February 20, 2024.

| Allegations | Conclusions |
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| <p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA by failing to provide toileting support as described in the Student’s Individualized Education Program (IEP). The District had asked the Student to attend half days due to a lack of staffing to support the Student’s needs. (OAR 581-015-2220; 34 CFR §300.323)</p> | <p>Not Substantiated</p> <p>The District provided toileting support as described in the Student’s IEP. The Student received all services required by their IEP when their school day was shortened for three school days.</p> |

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| <p>Content of the IEP</p> <p>The Parent alleged that the District violated the IDEA by consistently failing to provide the behavioral and sensory support the Student needed. The School had repeatedly sent the Student home early.</p> <p>(OAR 581-015-2200; 34 CFR §300.324)</p> | <p>Not Substantiated</p> <p>The District provided the Student with behavioral and sensory support as described in the Student’s IEP. The Parent picked the Student up from the School twice, but this was not a result of the District’s failure to provide an appropriate IEP for the Student.</p> |
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| <p>REQUESTED CORRECTIVE ACTION</p> <p>The Complainant requests that the Department order the District to take the following corrective action:</p> <ol style="list-style-type: none"> 1. “[The Student] needs to immediately have a 1:1 assigned to support [them]. [The Student] clearly requires it.” 2. “[The Student] needs a sensory assessment and support implemented.” |
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III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before the Department receives the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before February 21, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student’s disability and special education history.

1. The Student is sixteen years old, in the tenth grade, and attends a high school in the District.
2. The Student was eligible for Special Education as a Student with an Other Health Impairment (OHI) due to a chromosomal deletion of 7q, a condition associated with seizure disorder and cognitive impairment.
3. The Student strengths are, “Smile lights up the room, can be lots of fun, funny, loving, enthusiasm, creativity, and makes friends with everyone.”
4. The Student’s 2022-23 Safety Plan included visual supports and schedules, class expectations, adult support, social stories, and self-regulation supports.
5. Daily attendance for the first semester of the 2023-24 school year indicated the Student was absent 7% of the time.
6. The Student’s schedule for the first semester of the 2023-24 school year indicated the following classes:
 - a. “Basic Social Studies”;
 - b. “Basic Math”;
 - c. “Transitional Skills”;
 - d. “Intro to Leadership”;

- e. "Basic Language Arts";
 - f. "Daily Living Skills";
 - g. "Physical Education 1"; and
 - h. "Ceramics/Sculpture: Advanced."
7. The Report Card for the second semester of the 2023-24 School Year indicated that the Student was graded on a Pass/Fail basis and that they passed all of their classes.
 8. On February 25, 2023, the Parent emailed the Case Manager to let them know "[the Student's] last day before [they] head [out-of-state] will be this Monday the 27th. [They] will be back in early May."
 9. On April 13, 2023, the Occupational Therapist (OT) responded to an email from the Case Manager about the Student possibly attending school less than full-time, "This is the first I'm hearing of the team's recommendation that [the Student] attend ½ days. ... also, we should proly [*sic*] make a self-regulation goal, so I can con't [*sic*] to support [the Student]."
 10. On April 18, 2023, the Case Manager emailed the Team, "I am wondering if [the Student's] IEP team [out-of-state] has completed [their] new IEP. It seems potentially redundant for us to write a new IEP as well. The more points of continuity we can have to goal areas and accommodations will be ideal."
 11. An IEP Progress Report – Measurable Annual Goals dated April 20, 2023 indicated the following progress:
 - a. "Adapted Physical Education [-] [The Student] will follow a non-preferred teacher[-] directed routine/activity for a minimum of 10, 15, then 20 minutes with a max of 5 additional cues to stay on task in 3 out of 5 trials, 01/27/2023. Goals were not worked on this quarter."
 - b. "Adapted Physical Education [-] [The Student] will participate in a reciprocal exchange of [their] choosing (throwing a ball, kicking. Etc.) with another person 5x, 10x and 15x consecutively in 3 out of 5 trials, 4/20/2023, [The Student] is unenrolled for this progress period to be with [their Parent out of state]."
 - c. "Social & Emotional Skills [-] [The Student] will: [k]eep [their] hands to [themselves], 01/27/23, 70% accurate, progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed."
 - i. "Share and take turns when doing activities with peers, 01/27/23, 50% accurate, progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed."
 - ii. "Ask permission to see or touch something that doesn't belong to [them], and treat said object respectfully, 01/27/2023, 50% accurate, progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed."
 - iii. "Identify how others feel when we hurt them physical [*sic*] or emotionally, 01/27/2023, 50% accurate, progress has been made towards the goal, but the goal may not be met."
 - iv. "[The Student] will use appropriate behaviors when socializing with [their] peers with 80% accuracy, 01/27/2023, progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed."
 - d. "Reading – [The Student] will advance to the primer level in reading as determined by the following objectives: "Identify main idea of a story through the use of paragraph planners that utilizes pictures and words with 70% accuracy, 04/20/2023, [The Student] is unenrolled for this progress reporting period to be with [Parent 2 out of state]."

- e. "Math – Match the amount to the corresponding number (1-20) with 70% accuracy, 04/20/2023, [The Student] is unenrolled for this progress reporting period to be with their [other Parent out of state]."
 - f. "Classroom/School Skills [-] With the use of a First and Then board, [the Student] will earn a predetermined preferred activity after completing an assignment or following directions, 04/20/2023, [The Student] is unenrolled for this progress reporting period to be with their [other Parent out of state]."
 - g. "Writing – Use picture icons to summarize main ideas and express thoughts with 70% accuracy, 04/20/2023, [The Student] is unenrolled for this progress reporting period to be with their [other Parent out of state]."
 - h. "Daily Living Skills [-] Acknowledge things that are potentially dangerous (i.e. Traffic, stairs, curbs ...), 04/20/2023, [The Student] is unenrolled for this progress reporting period to be with their [other Parent out of state]."
12. On April 25, 2023, the Case Manager sent an email to the Parent that stated, "5/2 is [the Student's] transition back to [the High School] meeting. It will be to go over where we are in the FBA process and updates to the safety plan in anticipation for [the Student's] return on 5/3. [Their] annual IEP is also due by 5/18."
13. On May 5, 2023, the Case Manager emailed the Parent, "Today at our Dance field trip, [the Student] had a great time the first 1.5 hours and was very safe with 1:1 [S]taff support. At around 11:30 AM, [the Student] started to show signs of being overstimulated. [They were] withdrawing from the crowd, laying flat on the floor, and refusing to eat snacks we offered. ... I texted [the Parent] with this update. We tried to get [the Student] to a lower sensory space ... [They] began eloping to the elevator ... and up and down the stairs."
14. A Notice of Team Meeting dated May 8, 2023, indicated, "The purpose of this meeting is to: Develop or review an individualized education program (IEP) and placement for your child."
15. A Prior Written Notice (PWN) dated May 8, 2023, indicated, "Provision of FAPE [-] The IEP team has determined that [the Student] requires the services listed on the attached IEP." A description of other options considered and why those options were rejected: "Continuing to educate [the Student] without the provision of Special Education services was rejected because [the Student's] educational needs cannot be addressed sufficiently without the services indicated on the IEP."
16. The Adaptive PE Teacher emailed the Case Manager, "[The Student] comes to [adaptive physical education] APE on Mondays for 30-45 minutes and I come to support [them] on A Days when [they have] PE. [They have] been participating a lot more than before but may need redirection to stay [o]n task. [Their] gross motor skills are improving but we are still working on certain skills such as throwing and kicking. We are also working on [them] staying [o]n task for a longer period of time. ... I hope we can keep on improving [their] motor skills and object control skills."
17. The IEP dated May 15, 2023, indicated the following Measurable Annual Goals:
- a. "Adapted Physical Education [-] [The Student] will increase independent behavior in a physical education setting (following directions & staying on task) and participate in reciprocal play with a peer or a teacher to levels described below in short[-]term objectives. All measured by Adapted Physical Education Teacher observation and retest data. Present Level: [The Student] is making great progress on [their] goals. [They are] able to follow a non-preferred activity for a maximum of 15 minutes 2/5 trials. [They are] also able to play catch and pass a ball to a peer for a maximum of 7 times 3/5 trials. We will continue to work on this goal." Short-Term Objectives were:

- i. “[The Student] will follow, a non-preferred, [T]eacher [-] directed routine/activity for a minimum of 10, 15, then 20 minutes with a max of 5 additional cues to stay on task in 3 out of 5 trials. Measurement Method [-] Adapted Physical Education Teacher observation and retest data. [-] Anticipated Date: 05/13/2024.”
 - ii. “[The Student] will participate in a reciprocal exchange of [their] choosing (throwing a ball, kicking, etc.) with another person 5x, 10x, 15x, consecutively in 3 out of 5 trials. Measurement Method [-] Adapted Physical Education Teacher observation and retest data. [-] Anticipated Date: 05/13/2024.”
- b. “Social & Emotional Skills, By the end of the IEP cycle, [the Student] will, [with] 1-1 staff support and explicit pre-teaching and re-teaching, use school appropriate behaviors when interacting with [their] peers, staff, and environment, on 80% of opportunities, as measured by the following short [-] term objectives. Present Level: [The Student] currently needs 1-1 support, significantly pre-teaching around each interaction in order to use school [-] appropriate behaviors on 63% (average) of opportunities to interact with [their] (peers 65%), staff (45%) or environment (80%).” Short-Term Objectives were:
 - i. “By the end of the IEP Cycle, [the Student] will, unless [they have] received express permission that [they] may touch the person or item, keep [their] hands off of others’ bodies and belongings and keep [their] hands to [themselves] as measured by teacher and staff observation and data collection. [-] Measurement Method [-] Teacher Observation [-] Anticipated Date: 05/14/2024.”
 - ii. “By the end of the IEP Cycle, [the Student] will ask for permission to touch items that do not belong to [them]. If [they] receive a [sic] answer of ‘yes’, [they] will handle them with care and respectfully use the item as intended, as measured by teacher and staff observations and data collections. [-] Measurement Method [-] Teacher Observation [-] Anticipated Date: 05/14/2024.”
 - iii. “By the end of the IEP cycle, [the Student] will understand the answer ‘no’ means [they] cannot have the item or interaction [they] wants. [They] will, with 1-1 staff support, compete [sic] a SEL assignment helping [them] to understand that other’s my [sic] not want to be touched or to have their personal items taken, as measured by teacher and staff observations and data collection. [-] Measurement Method [-] Teacher Observation [-] Anticipated Date: 05/14/2024.”
 - iv. “By the end of the IEP cycle, [the Student] will understand and demonstrate that [they] can ask for a fist bump or high five, instead of a hug, as measured by teacher and staff observation and data collection. [-] Measurement Method [-] Teacher Observation – Anticipated Date: 05/14/2024.”
- c. “Classroom/School Skills [-] By the end of the IEP cycle, [the Student] will, with 1-1 staff support and explicit and repeated visually supported instructions, meet daily, expectations at school as determined by the following short-term objectives. Present Level: [The Student] can elope from [their] learning environment multiple times daily. With prompting, [they] will use a break card on 605 [sic] of opportunities. With 1-1 supports in a first/then context, [the Student] attends to reduce rigor, modified, academic assignments at [their] instructional level from 10 seconds to 7 minutes.” Short-Term Objectives are:
 - i. “On 80% of opportunities, [the Student] will stay in [their] scheduled learning environment, using break cards to request a break and not eloping from the classroom or building. [-] Measurement Method [-] Teacher observations and data [-] Anticipated Date: 05/14/2024.”

- ii. "On 100% of routine opportunities, [the Student] will enter and use the restroom, without unsafe actions, asking only for assistance to manage clothing or properly cleansing [themselves]. In the event of an incidence of incontinence, staff will proactively offer assistance immediately upon entering the restroom. [-] Measurement Method [-] Teacher observations and data [-] Anticipated Date: 05/14/2024."
 - iii. "On 80% of opportunities, [the Student] will attend to an academic app. Working on [their] functional academics, on [their] iPad or Chromebook, for a minimum of 10 minutes, during each instructional period of the day. [-] Measurement Method [-] Teacher observations and data [-] Anticipated Date: 05/14/2024."
 - iv. "[The Student] will join the whole group, when responsive and regulated, to strengthen [their] emergent skills in reading, writing, and mathematics on 2/5 opportunities. [-] Measurement Method [-] Teacher observations and data [-] Anticipated Date: 05/14/2024."
- d. "Community Skills, By the end of the IEP cycle, [the Student] will, with 1-1 support, pre-teaching expectations with visually supported materials at [the Student's] instructional level, access the community safety for field trips, student[-]run business, and community learning opportunities, on 3/5 opportunities, as measured by the following short[-]term objectives. Present Level: [The Student] currently requires 2-1 support when in the community to guarantee [their] safety. [They] can identify most common safety signs but does not follow them without extensive prompting." Short-Term Objectives were:
- i. "Identify and follow common safety signs. [-] Measurement Method [-] Teacher observation [-] Anticipated Date: 05/14/2024."
 - ii. "Stay with [their] 1-1 staff and with [their] group, without elopement or periods of sitting down and/or refusing to transition with [their] group. Measurement Method [-] Teacher observation [-] Anticipated Date: 05/14/ 2024."
 - iii. "Avoid demanding to purchase items that are not part of the plan for the trip. [-] Measurement Method [-] Teacher observation [-] Anticipated Date: 05/14/2024."

18. The Service Summary for specially designed instruction (SDI) for the IEP dated May 15, 2023, with the Local Educational Agency (LEA) as a provider, a start date of May 15, 2023, through the end date of May 14, 2024, and the anticipated location of General Education/Special Education indicated:

- a. "Adapted Physical Education [-] Adapted PE Teacher [-] Time 180 min. per month";
- b. "Social & Emotional Skills [-] Time 120 minutes per week";
- c. "Community Skills [-] Role [-] Special Education Provider/General Education Teacher [-] Time 60 min per week"; and
- d. "Classroom/School Skills [-] Role, Special Education Provider/General Education Teacher [-] Anticipated Location [-] GenEd/[Special Education] [-] Time 60 min per week."

19. The Related Services for the IEP dated May 15, 2023 had a start date of May 15, 2023, and an end date of May 15, 2024. The anticipated location of General Education/Special Education, and the LEA was the provider, indicated:

- a. "Occupational Therapy [-] Role Occupational Therapist [-] Time 120 min per year"; and
- b. "Speech Language Therapy [-] Provider LEA [-] Role Speech Language Pathologist [-] Time 210 Min per quarter."

20. Supplementary Aids and Services and Accommodations that had the LEA as the provider, General Education/Special Education as the anticipated location, the start date of May 15,

2023, the end date of May 14, 2024, and the role responsible was the Special Education Provider/General Education Teacher, for the IEP dated May 15, 2023, indicated:

- a. Support for academics throughout the day with no minutes specified;;
- b. Access to portable computer with picture supported software for 0 minutes throughout the day;
- c. Adult support for field trips for 0 minutes per session;
- d. Adult support for seizure protocol for 0 minutes throughout the day;
- e. Adult support for recess/break for 0 minutes throughout the day;
- f. Frequent check-ins for 0 minutes throughout the day;
- g. 1-1 support for emergency building evacuation for 0 minutes throughout the day;
- h. Visual schedule/calendar, first then board for 0 minutes throughout the day;
- i. Adult supervision during meals to monitor bite size and eating pace, encourage beverage between bites and at the end of meal [for 0 minutes throughout the day;
- j. Access to mobile device with touch screen and pre-writing apps, for 0 minutes throughout the day;
- k. Positive behavioral supports/choice board for 0 minutes throughout the day;
- l. Access to snacks during the school day if [the Student] declines to eat lunch for 0 minutes throughout the day”;
- m. Toileting Protocol designed and implemented by the nurse – for 0 minutes throughout the day;
- n. Clear verbal/visual expectations and routines for 0 minutes throughout the day;
- o. Self-regulation/executive function strategies for 0 minutes throughout the day;
- p. Frequent breaks, structured breaks for 0 minutes throughout the day”;
- q. Dedicated adult supervision at all times as elopement is an issue [for 420 throughout the day;
- r. Behavior support plan for 30 minutes per day”;
- s. Access to sensory supports for 0 minutes throughout the day;
- t. Home/school communication for 15 minutes per week; and
- u. 2x adult support for following personal hygiene protocol for 45 Min [-] Frequency [-] throughout the day.”

21. Supports for School Personnel for the IEP: the provider was the LEA, the starting date was 15, 2023, and the ending date was May 14, 2024, dated May 15, 2023, indicated:

- a. School Nurse consult to Support Staff for 15 Min per month;
- b. Adapted Physical Education Teacher Consult to Staff by the Adapted PE Teacher for 120 minutes per year;
- c. Assistive Technology Consult by the Assistive Technology Specialist for 180 minutes per year”;
- d. [Special Education] consult to [General Education] [by the Special Education] Teacher/Provider for 30 minutes per semester.

22. The Statement of Non-Participation Justification in the IEP dated May 15, 2023 indicated, “The [T]eam has determined the [S]tudent will need to be removed from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids or services. The Removal Area, Extent of Removal, and Explanation and Justification were:

- a. “Removal Area [-] From General Education Settings”;
- b. “Extent of Removal [-] 90% of each academic day”;
- c. “Explanation and Justification [-] [The Student] is on a reduced stimulation/high structure plan in the ISC at [the High School]. [They are] introduced to general education, common spaces, and schoolwide events as [they] can tolerate safely. [They] will continue to [be] enrolled in 1 general education elective each day and attend

them for as long each period as [they] can meet safety expectations. Places like the crowded halls and cafeteria can be overstimulating for [the Student] so [they are] currently going to pick up [their] lunch and bring it back to [their] workspace to eat. [The Student] interacts with [their] nondisabled peers through the Peer Mentor program, and during time spent at [Team Events], in addition to short periods of general education classes.”

23. A Special Education Placement Determination dated May 15, 2023, indicated:

- a. “Less than 40% of the day [in the] Regular Class. [The Student] attends classes at [the High School] intensive Skills Program in a specially designed space with limited stimulation and high structure and transitions as [they] can safely tolerate.” Placement selected:
- b. Benefits of Option (Academic and Nonacademic): Access to transition/community-based activities:
 - i. “Individualized/small group academic instruction at instructional level”;
 - ii. “More opportunities for increasing independence”; and
 - iii. “Supports established relationships”;
- c. Possible Harmful Effects on the Student or Services:
 - i. “Not neighborhood school”;
 - ii. “Not enough support for social-emotional needs”;
 - iii. “Not enough support for sensory needs”;
 - iv. “Not enough support for behavioral needs”;
 - v. “More transitions”; and
 - vi. “Higher student-staff ratio.”
- d. Placement Option Considered Public Separate School: “Attending classes outside of a comprehensive high school setting. Benefits of Option (Academic and Nonacademic).” Placement not selected:
 - i. “Access to intensive behavioral and mental health supports”;
 - ii. “Fewer transitions”;
 - iii. “Lower student-teacher ratio”;
 - iv. “More support for behavioral needs”;
 - v. “More support for sensory needs”; and
 - vi. “More support for social-emotional needs.”

24. Meeting Minutes dated May 15, 2023, indicated, “[The Case Manager] [c]aptures p9et9’t [sic] concerns. [The Parent] wants [the Student] working towards more independence. [The Teacher] wants [the Student] to be safe and limit elopements form [sic] class and building a [sic] [the High School].”

25. On May 16, 2023, the Parent emailed the Case Manager, “I think [the Student] might have reactive hypoglycemia which would explain [their] blood sugar drops in the afternoon/after eating. My 2 suggestions would be to make sure [they get] a protein bar with [their] nachos – at least half should be fine. I’ll make sure there are always some in [their] lunch. If [they] experience a drop, the best way to help is quick carbs – even candy, followed by some protein to prevent another crash. I’ll discuss this more at [their] next doctor’s appointment.”

26. On May 16, 2023, a teacher emailed the Case Manager, “I do need to report a couple of incidents from yesterday that occurred in my absence.”

- a. “At the end of lunch (12:15 PM), [the Student] wanted to sit in the same seat as another student ... [They] put [their] face against the other student’s face and yelled loudly. When the student did not get up [they] closed the [C]hromebook the student was using on the student’s fingers, pretty hard. [The Student] then went into the hall and laid in

- the crowded lunchtime hallways. After a restorative talk, [the Student] expressed remorse and apologized to the other student.”
- b. “End of day/Dismissal (3:25 PM) [the Student] was practicing some refusal surrounding dismissal routine and [they] slapped at [S]taff, knocked [their] backpack out of [S]taff hands, refused snacks to help with blood sugar and yelled, loudly multiple times in [S]taff face. Laid on the ground outside in front of the door when meeting with [the Parent].”
27. On May 18, 2023, the School Nurse emailed the Vice Principal, “The piece we can add in with [the Student] if an event occurs is having [S]taff gown up in addition to gloves. We have a big supply of gowns. [The Student] and [S]taff can also use the health room bathroom if an incontinent event occurs. My supervisor recommends: The [T]eacher, CNN (Complex Needs Nurse), and PT/behaviorist meet and devise a plan of care to protect [S]taff and students.”
28. On May 18, 2023, the Parent emailed the Case Manager, “The incident yesterday with [the Student] highlights the fact that [they aren’t] getting appropriate support. I’ve reached out to ODE Special Education Legal to start the process for a facilitated IEP. I don’t feel that the current team is making sure that [the Student] has what [they need] to be successful at school and I need some help to make sure that [they do] going forward. I think [they need] several IEP updates and a process to make sure that it is actually followed.”
29. On May 20, 2023, the School Nurse emailed the Vice Principal, “Yes, we reviewed the toileting plan first thing this morning. There is a written procedure in place. Staff can use personal protective equipment and [the Student] can have access to the bathroom in the [health room].”
30. On May 21, 2023, the Case Manager emailed the Parent, “[The Nurse] has developed and implemented a toileting protocol and I will adjust the language of [their] IEP goal to match. It is not finalized yet, so it will not require an amendment. I can also add this to the parent concerns portion of the IEP. Please let me know if there are any additional questions or concerns.”
31. On May 23, 2023, the Case Manager emailed the Parent, “Our final field trip of the year is approaching fast. We have some unexpected [S]taff absences and would greatly appreciate parent volunteers for this event.” The Parent responded, “I’ll meet you at the [M]useum to hang out with [the Student] and then bring [them] home after as I’m sure [they’ll] be wiped out by then.”
32. Meeting Minutes dated May 23, 2023, indicated, “Continued from IEP meeting on 5/15/23. Before IEP Draft was finalized, [the Parent] expressed some new concerns that have been captured in the IEP. A toileting protocol was added by [the Nurse], the present level of functional performance, IEP goal, and service summary page was updated by [the Case Manager] in response to [the Parent’s] concerns.” According to an office visit document an updated personalized toileting procedure was developed on May 23, 2023, which indicated that the Student had “to have 2 staff present with toileting.” The toilet protocol indicated:
- a. “Assemble supplies,”;
 - b. “Apply gloves,”;
 - c. “Teach student to wipe from front to back and to discard toilet tissue into the toilet,” and
 - d. “Soiled toilet paper should be placed in the toilet.”
33. On May 23, 2023, the Case Manager emailed the Parent, “Please see the attached IEP Draft with updates added to address concerns surrounding toileting protocols.” Areas addressed:
- a. “Parent Concerns”;

- b. "Present Levels of Developmental and Functional Performance";
 - c. "Short Term Objective 2, of Classroom/School Skills Goal";
 - d. "Item 13 on Service Summary Page 2/Accommodations"; and
 - e. "Nurse Developed Individual Toileting Plan (attachment)."
34. Teaching instructions for the personal care and toileting of the Student, dated May 23, 2023, indicated, "This procedure is effective for 1 year beyond date and is only for use by designated caregivers. ... [ESD] School Health Services nurses will provide training based on nursing assessment." The instructions required "Two employees should always be present when performing these tasks."
35. On May 24, 2023, the Special Education Program Director emailed the Case Manager, "I know we had a conversation if [the Student] had a sensory diet and guidance from the OT. I agree with [the Parent] that [the Student] needs structured sensory breaks with modeling from the para [sic] and OT guidance and training."
36. On May 24, 2023, the Parent emailed the Case Manager, "A few things I would like to add to this that we discussed today:"
- a. "1. [The Student] can only assist in wiping in the case where [their] clothes aren't soiled, and everything is normal. In any other case staff should fully take care of cleaning. [The Student] is not capable of dealing with problem[-] solving when [their] clothes or body are dirty. I believe this will avoid the situation like last week and times past where the staff tried to let [them] clean [themselves] and [they] didn't know what to do."
 - b. "2. [The Student] should be offered movement breaks once an hour and the activities should vary [-] walking to the track, going to the library, riding an exercise bike, etc. I would like assistance from APE with creating this list. This helps tremendously with keeping [them] centered and focused for short periods of academics. If [the Student] is eloping or lying in [sic] the floor [they're] trying to indicate that [they need] a break. These offerings will usually motivate [their] behavior in a positive way."
37. On May 24, 2023, the Case Manager emailed the Special Education Program Director, "I think it is important to honor the P11et11't's [sic] voice, but we are in an FBA process to determine the function of [the Student's] behaviors. [The Student] can elope and/or practice refusal for entire hours-days so the idea that [they] simply need a break is reductionist and does not honor our specialists' hard work and expertise."
38. A Behavior Support Plan dated June 2023 indicated:
- a. "Behavior of Concern-Inappropriate Physical ... Contact, 3-4 times a day";
 - b. "Elopement-Elopement (classroom) 4 per day, Elopement (building) 9 per day";
 - c. "Active Non-Compliance – 70% of stated directives";
 - d. "Theorized Function of Behavior";
 - e. "Social (Attention/Preferred Items)";
 - f. "Sensory/Automatic – [The Student] engages in problem behavior to obtain automatic or sensory reinforcement"; and
 - g. "Social (Escape from Tasks/Activities) – [The Student] engages in problem behavior (elopement) to escape from unwanted/less wanted activities. This is a secondary function."
39. On June 7, 2023, the Case Manager emailed the Board Certified Behavior Analyst, "I still have not been able to ge [sic] the completed forms back from [the Parent] that [were] sent out. As the year draws to a close, and all the demands that entails, I am wondering if we just let [their] new [C]ase [M]anager for next year handle this?"

40. On August 9, 2023, the Parent sent an email to Staff, "The plan is for [the Student] to be at [the School] starting September 7th."
41. On September 12, 2023, the Nurse emailed the Case Manager, "For [the Student] goal to do own personal toileting care. The [P]ara educators [sic] would like flash cards or laminated papers with each step to toileting with urination and then when having a bowel movement. [The Student] wants to quickly stand up and pull up [their] pants before any wiping."
42. On October 1, 2023, the Case Manager emailed the Parent, "[The Student's] last day this semester will be October 10th." The Student was going to spend time with the other Parent out-of-state.
43. On January 15, 2024, the Parent emailed the Case Manager, "[The Student's Parent 2] has decided to end [their] visits [out-of-state] so [the Student] will be with me indefinitely. Of course, this means that [they] can stay enrolled at [the High School] consistently without interruption."
44. On February 6, 2024, the School Psychologist emailed the Board Certified Behavior Analyst, "[The Student] at [the High School] has been demonstrating escalating behaviors recently. I know you are not assigned here this year, but [the School Psychologist] told me you may have been working with the team on an FBA last year? I see a Safety Plan in [the Student Information System] but no FBA/BSP. Is there anything that you could share with me?"
45. On February 6, 2024, the Board Certified Behavior Analyst emailed the School Psychologist, "I think it wasn't finished maybe? I'm not really sure, but I'm working on it to make it more correct."
46. On February 8, 2024, the Board Certified Behavior Analyst emailed the School Psychologist, "I'm going to share that form with you now. [Y]ou go ahead and share the google doc [sic] with me- and the new designated adult support paperwork is on the special education website-so definitely get that filled out if you are looking to add FTE for that designated adult support outside of the [P]ara [sic] support in the ISC."
47. On February 8, 2024, a Google Calendar Invite indicated an IEP Review and Safety Plan Meeting was going to be held on February 13, 2024.
48. On February 11, 2024, the Assistant Director of Special Education emailed the Program Administrator, "There is a process that needs to happen before a placement discussion is acted upon. It looks like there was a consent for an FBA in 2022 but I don't see anything uploaded into [the Student Information System]. We would need to run the BSP through a few cycles to ensure the intervention is working or not. ... In the Special Education Manual under Least Restrictive Environment please see section 2, Making Changes to Student Placement, Item 4. ... [I]t is definitely a good idea to hold the IEP meeting and begin the discussion of what can be implemented now, the creation of the FBA/BSP, and any accommodations that may be added. It would be helpful to discuss a continuum of services, but a change of placement should not happen without the steps taking p-lace [sic]."
49. On February 13, 2024, the Nurse emailed the Parent, "If [the Student] has hypoglycemia and continues to wear a [continuous glucose monitor] CGM I request we get orders. Typically, with our diabetics they get treatment when blood sugar is under 80." The Parent responded, "Until we have a diagnosis the best we can do is make sure [they eat] every 2 hours. My plan is to send snacks for 10 and 2."

50. Meeting Minutes dated February 13, 2024, indicated, "Meeting purpose is to address unsafe behaviors that have been in the classroom recently. Beginning of the year, [the Student] was doing great and was going to all electives and maintain [sic] safety. [They were] following directions. Since [they have] returned from [out-of-state], there has been a huge shift. High frequency of unsafe behavior, school staff is concerned about both [their] safety and that of other students in the class. ... Data from last few days – 15-30 incidents of entering others' personal space inappropriately/unsafely in one day, had to go home early ... [The Parent] asks about level of support [the Student] is getting. [Staff Members] respond that [the Student] has been getting 1:1 or even 2:1 adult support to intervene for [their] safety. ... 1:1 may not be a perfect solution. ... [The Parent agreed] that when [the Student] was on the medication [they] were on in the fall things were going much better. ... Abbreviated day proposed."
51. According to Meeting Minutes dated February 13, 2024, "Abbreviated day proposed- data showed [the Student] has more incidents in the morning. Should we try an abbreviated day in the afternoon? Team is in agreement, including Parent. ... Abbreviated day – it needs to be reviewed with [the Parent] every 30 days at a maximum. [The Parent] says [they] would like to review it sooner than that, within a week or two of starting."
52. On February 15, 2024, the Parent emailed the Nurse, "[The Student] is now having lunch at home and coming after noon. I want to verify you are giving [the Student's] after lunch divalproex."
53. A Behavior Analyst Observation Consent dated February 15, 2024, indicated, "This [S]tudent's school-based [T]eam has requested a BCBA (Board Certified Behavior Analyst) observation in order to provide recommendations to increase student engagement and participation and/or decrease interfering behavior. ... The observation generally takes between 1-2 hours. It is possible that in order to get a full picture of student support needs more than one observation may be required."
54. On February 16, 2024, the Parent emailed the Case Manager, "Today I had to pick up [the Student] from school early because [they were] being unsafe with scissors and swinging beads around. Since [they are] on half days [they] didn't even make it 2 hours. It's my understanding that [they were] in a higher energy environment. While there are many things that [the Student] needs to be successful, one of the many important ones is that [they have] sensory breaks when [they need] them. [They are] almost guaranteed to escalate if [they are] in a loud chaotic environment. I'd like to ask that we please work these options into [their] plan."
55. On February 20, 2024, the Parent filed this Complaint.
56. An Informed and Written Consent for Placement on an Abbreviated School Day dated February 23, 2024, did not have a Parent signature. The noted reason for a reduced day was, "Behavior Needs – To help [S]tudent meet their IEP goals related to behavior."
57. An Acknowledgement of Notice of Required Information Prior to Required Meetings to Review Placement on an Abbreviated School Day Program form dated February 23, 2024, was not signed by the Parent.
58. During interviews with the Complaint Investigator, the Parent reported that when the Student transitioned to the 2023-24 school year, the Student's toileting protocol was not followed and it appeared that the School staff, including the School Nurse, did not know the Student had such a protocol. The Student was out of state in November and December 2023 and

underwent medication adjustments that significantly escalated the Student's behavior. When the Student returned to the High School in January 2024, it took a couple of weeks for the Student's behavior to stabilize.

The Parent reported that the Student was sent home from the High School approximately 10-12 times over a two-month period due to behavior. The Parent originally agreed to the abbreviated school day for the Student because they believed they did not have a choice. The Parent also reported that the Case Manager repeatedly told them there was not enough staff to provide the Student with sensory breaks outside the classroom. After learning that the Student was not receiving the support in the IEP, the Parent decided to decline agreeing to and signing the informed and written consent for an abbreviated school day. The Student returned to a full day of school after this decision. According to the Parent, the Student now has the support needed, is accessing the sensory breaks, and is doing well at school.

59. During interviews with the Complaint Investigator, the 2022-23 Case Manager shared that when the Student started the High School as a freshman, the Case Manager started collecting data for a possible functional behavioral assessment (FBA) during the first quarter of the school year. During this time, the Student received in-class support, such as 1:1 adult support and personalized learning space in the classroom that provided less stimulation for the Student. After eight weeks, the Student withdrew from the High School to have a scheduled eight [-] week visitation with Parent 2. In the Spring, when the Student returned to the High School, an FBA was conducted in May 2023. The IEP Team at the time decided to have the following year's IEP Team develop the behavior support plan (BSP), as the IEP Team would be comprised of new staff.

The Case Manager reported that the '0' minutes listed for accommodations in the May 15, 2023 IEP was a clerical issue not related to these accommodations and 'throughout the day' was the intended amount and frequency for the implementation of these accommodations.

60. During interviews with the Complaint Investigator, the 2022-23 Board Certified Behavior Analyst reported that they had conducted the FBA in May 2023. The Board Certified Behavior Analyst conducted observations of the Student as part of the FBA process and noted that the supports in the special education classroom were tailored to the Student's interests, and there were times when the school bells and transitions between locations were challenging for the Student. Overall, the support, including the Student taking walks, mitigated the concerns.
61. During interviews with the Complaint Investigator, the 2023-24 Case Manager reported that a paraprofessional was with the Student because of "personal space boundaries being so significant," but not all year and only when the behavior warranted it. The 2023-24 Case Manager reported that, even with the 1:1, the Student's behavior was still unsafe. The IEP stated throughout the day the paraprofessional would be in line of sight for the Student.
62. During interviews with the Complaint Investigator, the 2023-24 Case Manager indicated the Student's behavior was "great" in the fall, but after the Student came back from out of state, the Student behaved very differently. It took multiple prompts to get the Student's attention. The changes were "extreme". According to the 2023-24 Case Manager there had been a medication change for the Student. According to data taken on the Student's behavior, the highest behavioral issue time was in the morning. The medication was adjusted, and the Parent agreed to an abbreviated school day for the Student.
63. During interviews with the Complaint Investigator, the 2023-24 Case Manager indicated the Parent was on board at first with the abbreviated school day schedule. The schedule went

back to a full school day when the Parent changed their mind. The Student was on an abbreviated school day for three days during the Complaint period, but was never on an abbreviated school day program. The 2023-24 Case Manager shared that there was one day that the class was understaffed due to four staff members being out with COVID. Staffing was not part of the decision to abbreviate the Student's school day. When asked how many times the Student was sent home early and whether these times were documented suspensions, the 2023-24 Case Manager shared that when the School recommended that the Student go home but was not required to, the 2023-24 Case Manager thought it was a collaborative process. They went on to state that the Parent may have believed it was required, and the two occasions in which the Parent was called were not counted as suspensions.

64. During interviews with the Complaint Investigator, the 2023-24 Case Manager reported the toileting protocol was to ensure cleanliness. The 2023-24 Case Manager didn't think there were any issues during the 2023-24 school year with toileting. Regarding sensory supports, the Student had access to the sensory room, calm lighting, music, and fidgets. The Student could choose from activities and access in-class social stories. The Student would sometimes refuse to go to the sensory room and instead used the break space in the classrooms.

IV. DISCUSSION

When IEPs Must Be In Effect

The Parent alleged that the District violated the IDEA by failing to provide toileting support as described in the Student's IEP. The District had asked the Student to attend half days due to a lack of staffing to support the Student's needs.

At the beginning of each school year, a school district must have an IEP in effect for each student with a disability within its jurisdiction. School districts must provide special education and related services to a student 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 student in accordance with the student's IEP.³

Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation. Each school district must inform each teacher and provider of their specific responsibilities for implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the student in accordance with the IEP.⁴

According to the IEP dated May 15, 2023, Supplementary Aids and Services and Accommodations indicated "Toileting Protocol designed and implemented by the Nurse to be implemented throughout the day." Support for School Personnel for the IEP indicated the School Nurse would consult with Support Staff 15 minutes per month. An email from the Nurse to the Vice Principal indicated to have staff wear protective gowns in addition to gloves. The Student and staff were to use the health room bathroom if an incontinent event occurred. It was recommended that the Teacher, Complex Needs Nurse, and the PT/behaviorist meet and

³ OAR 581-015-2220(1)(2b)

⁴ OAR 581-015-2220(3)

devise a plan of care to protect staff and students. The Nurse indicated that there was a written procedure in place.

On May 20, 2023, the School Nurse emailed the Parent to say that the Nurse had developed and implemented a toileting protocol and that the language of the Student's IEP goal would be adjusted to match. The updated IEP indicated that the Student "had to have 2 staff present with toileting." There was no evidence that the District failed to provide toileting support for the Student during the Complaint Period.

Supplementary Aids and Services and Accommodations dated May 15, 2023, stated adult support for field trips, recess, breaks, adult supervision for meals, and dedicated adult supervision at all times as elopement is an issue. A June 2023 Behavioral Support Plan indicated that behaviors of concern were inappropriate physical contact 2-3 times a day, elopement from the classroom 4 times a day, elopement from the building 9 times per day, and active non-compliance occurring for 70% of stated directives. According to meeting minutes dated February 12, 2024, the Student "has been getting 1:1 or even 2:1 support to intervene for [their] safety." During interviews with the Complaint Investigator, it was noted that a paraprofessional was always with the Student and side by side with the student when needed.

An abbreviated school day was proposed, and initially, the Parent verbally agreed to a shortened school day. The Student attended a shortened day for approximately three days before the Parent filed the written Complaint. The Parent originally agreed to the student's abbreviated school day because they believed they did not have a choice. However, the parent decided to decline consent for an abbreviated school day. The Student returned to full school after this decision. The District fully implemented the Student's IEP during the three days that the Student's school day was abbreviated, and there is no evidence that the District failed to implement the IEP during the Complaint period.

The Department does not substantiate this allegation.

Content of the IEP

The Parent alleged that the District violated the IDEA by consistently failing to provide the behavioral and sensory support the Student needed. The School had repeatedly sent the Student home early.

The IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. A statement of measurable annual goals, including academic and functional goals (and, for students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives or benchmarks) designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum. In addition, meet each of the student's other educational needs that result from the student's disability.⁵

The IEP must include a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. In addition, a statement of the

⁵ OAR 581-015-2200(1)(a)(b)

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 student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals. Each IEP must also include a statement of the specific special education, related services, and supplementary aids and services to be involved and progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students with disabilities and students 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 required to be included.⁶

Also required, is a statement of the program modifications or supports for school personnel that will be provided for the student 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 students with disabilities and students without disabilities. In addition, an explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and activities must be included.⁷

The Parents had a visitation schedule that required the Student to attend an out of state school every two months, which impacted the Student's behavioral and sensory needs. Because of attending school in Oregon every two months, many of the Student's measurable annual goals in sensory and behavior were either not worked on or not met during the first and second quarters of the 2022-23 school year as well as the first semester of the 2023-24 school year. The Student had a social and emotional skills goal to support appropriate behaviors with 1:1 staff support and explicit pre-teaching and re-teaching of behaviors when interacting with peers, staff, and the environment. In addition, the Student had an IEP goal for classroom/school skills, which addressed 1:1 staff support and explicit and repeated visually supported instructions. The Student needed to stay in their learning environment, "using break cards to request a break and not eloping from the classroom or building." According to IEP data, "the Student can elope from [their] learning environment multiple times daily." The Student required 1:1 support because of this.

According to the May 15, 2023 IEP, the Student received a modified curriculum in all areas to address sensory and behavioral support needs. The Student received occupational therapy, speech-language therapy, and adaptive physical education to support sensory and behavioral needs. Supplementary aids and services and accommodations indicated the Student had a Behavioral Support Plan, positive behavior supports, and self-regulation/executive functioning strategies throughout the day. Because of the Student's individualized educational need, the May 15, 2023 IEP Statement of Non-participation Justification indicated the Student would be "removed from the general education setting 90% of each academic day." The explanation and justification stated, "[The Student] is on a reduced stimulation/high structure plan in the ISC at [the High School]." The Student will spend less than 40% of the day in the regular classroom.

Records indicated the Parent wanted the Student to "work towards more independence." IEP Progress reports and meeting notes documented several strategies to address sensory and behavioral needs. A Behavioral Support Plan dated June 2023 indicated behaviors of concern were inappropriate physical contact, 2-3 times a day, elopement from the classroom 4 times a day, elopement from the building 9 times per day, and active non-compliance occurring 70% of stated directives. According to meeting minutes dated February 12, 2024, the Student "has

⁶ OAR 581-015-2200(1)(c-e)

⁷ OAR 581-015-2200(1)(d-f)

been getting 1:1 or even 2:1 support to intervene for [their] safety.” The IEP team proposed and the Parent initially agreed to an abbreviated school day.

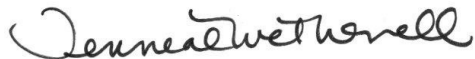
When asked how many times the Student was sent home early, the response was two times. The Student’s removal from school for two partial days does not demonstrate that the IEP content was inappropriate.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION
In the Portland School District
Case No. 24-054-011

The Department does not order corrective action in this matter.

Dated: this 19th Day of April 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: April 19th, 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).)