

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Lebanon Community School District 9)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-018

I. BACKGROUND

On April 3, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint (Complaint) from the parents (Parents) of a student (Student) residing in the Lebanon Community School District (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under 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 April 12, 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 May 1, 2024.

On May 1, 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, 5/1/24
2. District Response
3. Meeting Notes, 4/17/2023
4. Student IEP, 5/4/2023
5. IEP Team Meeting Notes, 5/4/2023
6. Special Education Placement Determination, 5/4/2023
7. Prior Notice of Special Education Action, 5/4/2023
8. Special Education Notice of Team Meeting, 9/12/2023
9. Student Behavior Plan, 9/18/2023 (2/7/2024)
10. Prior Notice about Evaluation/Consent for Evaluation, 9/19/2023
11. IEP Team Meeting Notes, 9/22/2023
12. Special Education Notice of Team Meeting, 12/11/2023
13. IEP Team Meeting Notes, 1/3/2024

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. Prior Notice of Special Education Action, 1/3/2024
15. Special Education Notice of Team Meeting, 1/10/2024
16. Student Feeding Plan, 2/7/2024
17. Student IEP, 2/7/2024
18. Student Behavior Plan, 9/18/2023 (2/7/2024)
19. Student Feeding Plan, 2/7/2024
20. Student Toileting Plan, 2/7/2024
21. IEP Team Meeting Notes, 2/7/2024
22. Prior Notice of Special Education Action, 2/7/2024
23. IEP Team Meeting Agenda, 2/7/2024
24. Student Behavior Plan, 2/29/2024
25. IEP Team Meeting Notice, 12/11/2023
26. Student Toileting Plan, 9/5/2023
27. File Review of Existing Information/Student Referral, 9/22/2023
28. Student Assessment List, 9/22/2023
29. SLP Observation, 10/5/2023
30. Functional Language Assessment, 10/5/2023, 11/30/2023
31. Autism Spectrum Disorder Re-Evaluation Report, 10/17/2023
32. Occupational Therapy Evaluation, 12/13/2023
33. Statement of Eligibility for Special Education, Autism Spectrum Disorder (82), 1/3/2024
34. Student Toileting Plan, 2/7/2024
35. Special Education Placement Determination, 2/7/2024
36. Email: [Student] Vision Screening Statement, 3/4/2024
37. Email: [Re: hearing screening], 3/5/2024
38. Annual Academic and Functional Goals and Objectives Progress Report, 10/31/2023; 1/28/2024; 4/10/2024
39. Annual Academic and Functional Goals and Objectives Progress Report, 2/7/2024
40. Direct Messages between Teacher and Parents, 1/7/2024 - 4/15/2024
41. Email: Fwd: [Student], 10/4/2023
42. Daily Tracking Forms, 10/5/2023 - 4/3/2024
43. Texts messages between Teacher and Parents
44. Email Communications
45. Student Service Record, 9/22/2023 - 3/12/2024
46. Student Schedule and Behavior Tracking Form, 9/6/2023 - 4/18/2024
47. Student IFSP, 12/9/2022
48. Statement of Eligibility for Special Education, Autism Spectrum Disorder (82), 1/3/2024
49. Autism Spectrum Disorder Evaluation Report, 11/23/2020
50. Autism Spectrum Disorder Re-Evaluation Report, 10/17/2023
51. Student Medical Statement or Health Assessment Statement, 10/13/2020
52. Occupational Therapy Evaluation, 12/13/2023
53. Statement of Eligibility for Special Education (ECSE & School Age), Autism Spectrum Disorder (82), 12/10/2020
54. Medical Statement of Health Assessment Statement, 10/12/2020

55. Autism Spectrum Disorder Evaluation Report, 11/23/2020
56. Early Intervention Evaluation Report, 6/9/2020
57. Statement of Eligibility for Special Education (ECSE & School Age), Autism Spectrum Disorder (82), 12/10/2020
58. Medical Statement or Health Assessment Statement, 10/13/2020
59. Autism Spectrum Disorder Evaluation Report, 11/23/2020
60. Early Intervention Evaluation Report, 6/9/2020
61. Statement of Eligibility for Special Education, Autism Spectrum Disorder (82) (ECSE and School Age), 1/3/2024
62. Student Behavior Plan, 4/24/2024

The Parent submitted the following items on May 6, 2024:

1. Email: FW: records request, 5/18/2024
2. Email: Fwd: ICC Minutes, 2/23/2024
3. Email: Fwd: meeting this week, 2/12/2024

On May 6, 2024, the Complaint Investigator interviewed the Parents regarding their concerns in this matter. Following the interview, the Parents submitted a written response to the District's *Response* and additional documents in support of their position. On May 16, 2024, the Complaint Investigator interviewed relevant District staff. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law 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 April 4, 2023, to the filing of this Complaint on April 3, 2024.

Allegations	Conclusions
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parents alleged that the District violated the IDEA when the District failed to complete the Student's evaluation within 60 days.</p> <p>(OAR 581-015-2110; 34 CFR § 300.304 & 300.305)</p>	<p>Not Substantiated</p> <p>The District completed the Student's reevaluations and convened an IEP team meeting to consider the results within 60 school days.</p>
<p>IEP Team Considerations and Special Factors</p>	<p>Not Substantiated</p>

Allegations	Conclusions
<p>The Parents alleged that the District violated the IDEA when the District failed to consider the concerns of the Parents in the development or revision of the Student's IEP.</p> <p>(OAR 581-015-2205; 34 CFR § 300.320, 300.324(a)(1) & (2), & (b)(2))</p>	<p>The District accepted many of the Parents' suggestions, and provided various alternative movement options for the Student. The District purchased these alternatives and added these accommodations to the Student's behavior plan.</p>
<p>Least Restrictive Environment</p> <p>The Parents alleged that the District violated the IDEA when the District did not consider least restrictive environment considerations for the Student's educational placement.</p> <p>(OAR 581-015-2240; 34 CFR § 300.114)</p>	<p>Not Substantiated</p> <p>The concerns raised by the Parents were not related to considerations regarding least restrictive environment.</p>
<p>Placement of the Child</p> <p>The Parents alleged that the District violated the IDEA when the educational placement selected for the Student by the District did not match the consensus of the Student's IEP team.</p> <p>(OAR 581-015-2250; 34 CFR § 300.116 & 300.327)</p>	<p>Not Substantiated</p> <p>The record supports that the Student's IEP team, including the Parents, were in consensus regarding the Student's educational placement.</p>
<p>When IEPs Must Be in Effect</p> <p>The Parents alleged that the District violated the IDEA when the District failed to implement the Student's IEP as written. Specifically, the Parents alleged that the District failed to implement the Student's IEP by not providing the Student with behavioral interventions; not providing adequate movement breaks for the Student; and, not providing daily communication to the Parents.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323, & 300.324)</p>	<p>Not Substantiated</p> <p>The record includes communication from the Parent about suggested behavioral interventions, the District's consideration and additional considerations. The record does not support that the Student's interventions were not provided. Daily communication was not a provision of the Student's IEP but was provided for specific topics.</p>
<p>Review and Revision of IEPs</p>	<p>Not Substantiated</p>

Allegations	Conclusions
<p>The Parents alleged that the District violated the IDEA when it did not revise the Student's IEP to address the Student's behavioral needs. Specifically, it is alleged that the District did not address the Student's specific behavior needs, and did not consider information about the Student provided by the Parents.</p> <p>(OAR 581-015-2310; 34 CFR § 300.324(a)(4), (a)(5), (a)(6), & (b)(1))</p>	<p>The record supports that the District did consider the Parents' concerns. In response to those concerns, and behaviors exhibited by the Student, the District modified the Student's behavior plan.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parents alleged that the District violated the IDEA when the Student was not assessed in all areas related to the Student's suspected disabilities, and that the evaluations selected were not sufficiently comprehensive to identify all the Student's special education and related service needs.</p> <p>(OAR 581-015-2110; 34 CFR § 300.304 & § 300.305)</p>	<p>Not Substantiated</p> <p>Previous school districts, and the District, have found the Student eligible for special education services under the category of Autism Spectrum Disorder. The Student's evaluations suggest this was the most appropriate eligibility category.</p>
<p>Functional Behavioral Assessments</p> <p>The Parents alleged that the District violated the IDEA when it failed to conduct a functional behavioral assessment and develop an appropriate behavior intervention plan for the Student.</p> <p>(OAR 581-015-2181)</p>	<p>Not Substantiated</p> <p>The record does not include a request from the Parents to conduct a Functional Behavioral Assessment, or that one was required. The District addressed the Student's behaviors with interventions that decreased behaviors and allowed the Student to work toward their behavior goal.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • The Parents request that the District complete the Student's IEP, acknowledge concerns raised by the Parents and take them seriously. • The Parents request that the District agree on a learning environment for the Student, support the Student's learning goals, and not seclude the Student. • The Parents request that the District remove specific language from the Student safety plan, acknowledge and provide behavioral supports to the Student, and conducted a functional behavioral assessment. • The Parents request that the District consider documentation provided on the

REQUESTED CORRECTIVE ACTION
<p>Student's behalf, and that the District provide data on behaviors exhibited by the Student during the school day before the Student returns home.</p> <ul style="list-style-type: none">• The Parents request that the Student have frequent movement breaks in support of the Student's medical disability, always have access to self-regulation tools, and provide appropriate evaluations for the Student.

III. FINDINGS OF FACT

1. The Student in this case is six years of age and attended kindergarten in a District elementary school during the Complaint period. The Student is eligible for special education under the category of Autism Spectrum Disorder (ASD). **(D3, D6)**
2. The Student enjoys visual sensory input, swings, and rocking horses. The Student sometimes struggles with transitions which can trigger aggressive behaviors, self-injury, property destruction, non-compliance, and tantrums. The Student has a history of ingesting nonedible items. **(D6)**
3. The Student's May 4, 2023 IEP included specially designed instruction (SDI) in readiness skills (80 minutes daily), behavior management (80 minutes daily), speech/language (20 minutes daily), social emotional (80 minutes daily), and fine motor skills (80 minutes daily). The Student's IEP indicated that the Student's Case Manager (Case Manager) would provide these services. The IEP included related services in augmentative communication services, recreation services, and transportation. The IEP included accommodations such as a toileting protocol, feeding protocol, additional adult support, and a weighted vest. The Student's curriculum was also modified to a pre-kindergarten level. The IEP included additional program modifications and supports for personnel including consultation time for autism (240 minutes per year), occupational therapy (90 minutes quarterly), nursing (60 minutes monthly), augmentative communication (60 minutes yearly), speech language pathology (20 minutes monthly), and consultation for teaching staff (15 minutes weekly).
4. On May 4, 2023, the IEP team met to review the IEP in advance of the Student beginning kindergarten for the 2023-24 school year. The Parents shared their concerns for the Student, the Student's medical needs, stimming behaviors, difficulty with transitions, and the Student's need for adult support. The team discussed the Student's academic needs, other supports required in the school environment such as a toileting protocol, and common aggressive and self-injurious behaviors exhibited by the Student. The team determined that the Student's progress in the academic environment would be measured using curriculum based measures, teacher observations, and data tracking. In discussing the Student's educational placement, the team determined that the Student would receive all their education in a self-contained special education classroom for the full school day. **(D20—D21)**. The team rejected other educational placement options observing that the Student required

“access to a high level of adult supervision and support. High level of structure, conducive setting for provision of individualized curriculum towards [the Student’s] identified academic and functional needs.” The meeting notes document that the “team reached consensus on placement of self-contained special education full day (100% special education).”

5. This educational placement was based in part on the Student’s placement in early childhood education. The Student’s December 9, 2022, Individualized Family Service Plan (IFSP), included full time placement in an Early Childhood Special Education classroom.
6. The Student’s May 4, 2023 IEP indicated that certain gastrointestinal issues caused the Student to display aggressive behaviors. The Student also exhibited self-injurious behaviors such as head-banging. As a result of the gastrointestinal issues, the District created a toileting protocol for the Student.
7. The Student’s most recent evaluation was completed December 10, 2020, and their reevaluation date was December 9, 2023. As part of the December 10, 2020 evaluations, the Student was administered the Childhood Autism Rating Scale, 2nd Edition; the Assessment Evaluation and Programming System, 2nd Edition (APES II); and Battelle Developmental Inventory Screening, 2nd Edition (BDI-2).
8. On May 5, 2023, the District sent the Parents a Prior Written Notice (PWN), informing them of the Student’s educational placement in the District beginning September 2023. The District noted that the Student was then receiving Early Childhood Special Education and would continue to need school age special education services. The Team selected a self-contained placement. The PWN also reported that the Student required a toileting protocol and feeding protocol, which the District would develop in the first week of September prior to the Student beginning kindergarten.
9. On September 18, 2023, the District developed a five-point behavior plan for the Student. The Behavior Plan included specific behaviors exhibited by the student in a scale of one to five, with suggested responses from staff when the Student exhibited those behaviors.
10. On September 22, 2023, the IEP team met to discuss whether additional testing for the Student was required. The Student’s triennial reevaluation was due December 9, 2023. The IEP team discussed the appropriate evaluations for the Student, including an evaluation for ASD, a functional communication assessment, adaptive behavior, physical therapy evaluation, functional motor assessment, and a motor skills assessment (Peabody Developmental Motor Scales). The team discussed other observations such as speech, hearing screening, and a vision screening.
11. During the September 22, 2023 meeting, the Meeting Notes also documented that the Student’s Life Skills Teacher and the Parents “agreed on daily communication of [the

Student's] behavior, fluid/food intake, toileting, and overall mood of the day via" the District's communication portal.

12. On September 22, 2023, the Parents provided consent to the District to conduct a reevaluation on the Student.
13. As part of the September 22, 2023 evaluation planning process the District documented that the District would assess the Student's cognitive, communication, and behavior needs. Given that the Student was then in kindergarten, the team determined that academic assessments would not be useful at that time. The District documented that a Functional Communication Assessment was needed. The District also documented that the Student did not have an Functional Behavior Assessment (FBA), or Behavior Safety Plan (BSP) at that time. At the evaluation planning meeting, the Parents shared concerns about the Student's behavior and the hope that the District could avoid seeing the Student as violent because of the behaviors exhibited.
14. On October 17, 2023, the District completed an ASD Re-Evaluation Report. As part of that report, the District documented that that the Student was then separated in the classroom from other students as a safety measure. The District further documented that the Student's "challenges with regulating [their] body and emotions, along with limited communication skills, lead to an isolated learning environment. This isolation impacted [their] ability to participate in groups and learn with [the Student's] peers." The Student was observed to seek sensory input throughout the observation period in a variety of ways.
15. On October 31, 2023, the District provided a progress report for the Student's Annual Academic and Functional Goals and Objectives.
 - a. The Student showed no progress toward their readiness skills goal. The District documented that the Student, "...has not been able to follow arrival and classroom routines independently or with adult support yet. It is a struggle for [them] to follow directions at this point."
 - b. The Student showed no progress toward their social emotional goal. The District documented that the Student was "unable to communicate [their] needs and wants. When frustrated [they] will hit or bite whoever is asking [them] to perform the task. The team is working on using sign language as well as pecs systems [sic] as well as [their] Augmentative device in the classroom."
 - c. The Student showed no progress toward their behavior management goal. The District documented that the Student was "unable to self regulate for more than 30 seconds. [The Student] will change [their] behavior and try to regulate [themselves] using [their] preferred toys."
 - d. The Student showed no progress toward their fine motor skills goal. The District documented that the Student "will attempt to feed [themselves] if it is a preferred food, but is very picky."
16. On December 8, 2023, the District completed an Occupational Therapy Evaluation of

the Student. The District's Occupational Therapist observed that the Student presents as dysregulated, and that the Student scored high on the sensory profile.

17. On December 11, 2023, the District sent the Parents a notice for an IEP meeting scheduled for January 3, 2024 to review the Student's evaluation results, consider special education eligibility, and determine whether additional testing was necessary.
18. On December 11, 2023, the District documented, in emails between the Case Manager and other staff working with the Student, input from the Parents that the Student was displaying increased behaviors since the Student started school. The District noted that the Parents suggested a feeding protocol for the Student, and the use of a swing or vibrating chair to help the Student. The District documented that the Parents had suggested this accommodation the year before but that the District had rejected the suggestion at that time.
19. On January 3, 2024, the District sent the Parents a PWN documenting the completion of the Student's reevaluation. The reevaluation included a file review, developmental history, occupational therapy evaluation, three observations, and a functional communication assessment. The District documented that the District Nurse had attempted to conduct a vision and hearing screening of the Student, but the Student was unable to tolerate the examinations. The District also documented that the Student's IEP team reviewed and updated all protocols for the Student including toileting, feeding, dehydration, aspiration and choking, and constipation. The District also documented review of relevant medical information for the Student. The team determined that the Student continued to be eligible for special education under the category of ASD.
20. As part of the January 3, 2024 meeting the IEP team reviewed the Statement of Eligibility for Special Education, ASD, that included observation dates, collection of developmental history, and information from the Parents. In addition, the team reviewed the results of evaluations and observations conducted by the Autism Specialist, Speech Language Pathologist, and Early Childhood Special Education (ECSE) Specialist. Additionally, the team reviewed the Student's medical examination, occupational therapy evaluation, and vision and hearing screening results. Meeting documentation indicates that all members of the IEP team, including the Parents, agreed with the outcomes of the assessments and the Student's eligibility for special education under the category of ASD.
21. The Student's January 3, 2024 toileting plan included a goal for the District to determine how the Student communicated their toileting needs, and noted that the Student displayed aggression and behavior around toileting tasks.
22. At the January 3, 2024 meeting, the District documented that the team ran out of time, and planned to schedule an IEP team meeting to revise the Student's IEP later.
23. On January 10, 2024, the District sent the Parents a Notice of Team Meeting,

scheduled for February 7, 2024, to continue the meeting for revising the IEP.

24. On January 8, 2024, the District documented that the Student exhibited aggression against classmates.
25. On January 29, 2024, the District provided a progress report for the Student's Annual Academic and Functional Goals and Objectives.
 - a. The Student was progressing toward their speech/language goal. The District documented that the Student, "...has been observed in class without the partition defining [their] work area. [The Student] walked about the room and tipped some chairs over. As discussed in the last meeting, [the Student] may simply like the sound, but is probably that [the Student] uses this behavior as a means of communicating. When the chairs are tipped [the Student] consistently gains the attention of staff as they remind [them] to have 'safe hands' and 'safe body'."
26. On February 7, 2024, the IEP team met to revise and update the IEP. During the meeting, the Parents shared their concerns about the Student's sensory, eating, and behavior needs. The Parents shared that the Student can wander or elope at times, and expressed their desire that the Student have movement breaks multiple times per day. The Parents also made suggestions for the Student's sensory breaks and interventions. The Parents raised concerns about the Student being isolated from the rest of the class during rotations. The team also discussed the possibility that a staff member should be assigned to the Student at all times during the day.
27. The February 7, 2024 IEP included SDI in readiness skills (80 minutes daily), behavior management (80 minutes daily), speech/language (20 minutes daily), social emotional (80 minutes daily), and fine motor skills (80 minutes daily). The Case Manager would provide these services. The IEP included related services in augmentative communication services (60 minutes per year), recreation services (60 minutes per week), and transportation (two trips daily). The IEP included accommodations such as a toileting protocol, feeding protocol, additional adult support, and weighted vest. The Student's five-point behavior plan was reviewed and added to the IEP. These accommodations and plans were reviewed at the February 7, 2024, meeting. The IEP also required the Student's curriculum to be modified to a pre-kindergarten level. The IEP included additional program modifications and supports for personnel including consultation time for autism (240 minutes per year), occupational therapy (90 minutes quarterly), nursing (60 minutes monthly), augmentative communication (60 minutes yearly), speech language pathology (20 minutes monthly), and consultation for teaching staff (15 minutes weekly). The IEP team reviewed the relevant service times and decided to keep them the same as in the May 4, 2023 IEP.
28. On February 7, 2024, as part of the IEP team meeting, the Student's toileting plan was reviewed. The District noted that the Student can become aggressive at toileting times due to the Student's gastrointestinal issues and may cry until discomfort is relieved.)

29. On February 13, 2024, the District reported that the Student was doing well and making progress toward their IEP goals. As a student in foster care, an Intensive Care Coordination (ICC) team meets regularly related to the Student. However, as a result of the Student's progress, the District voiced the opinion that that an ICC meeting was not needed. The District reported that the Student's behavior was consistently within the level one and two ranges outlined in the Student's Behavior Support Plan (BSP) created by the District.
30. On February 14, 2024, the Parents sent an email to the District asking about the Student's access to recess if the Student was not going outside.
31. On February 15, 2024, the Student's DHS Family Support Liaison sent an email to the District regarding scheduling an ICC meeting to discuss the Student's needs. The District reiterated the opinion that the Student was making significant improvements and that an ICC meeting was not necessary. **(D401)** That same day, the regional ESD Family Support Liaison, who was assisting with the coordination of the ICC meeting, speculated that the Student's progress was due to other stabilizing effects in their life. However, later that day the District acknowledged that due to some data having not been updated, the Student was "actually not doing as well as we thought." The District agreed to send staff to the ICC meeting as requested by DHS.
32. On February 15, 2024, the Student received a major referral for behavior that involved physical aggression and assault.
33. On February 23, 2024, the Student's DHS Case Manager met with the District for an ICC meeting. During the meeting, the DHS Case Manager asked the District for a copy of the Student's FBA and BSP. The District reported to the DHS Case Manager that the Student spent a significant amount of time displaying behaviors that ranked at level five on the behavior rating scale created by the District. At this meeting, the District reported that the Student's IEP was still being finalized and agreed to do additional observations around behavior and the Student's other needs. The group also discussed concerns whether behaviors at school were "being managed with the correct consideration to [the Student's] needs." During this meeting, the use of a swing is described as related to the Student's sensory needs.
34. On February 29, 2024, the Student's BSP was updated. The BSP was updated to include such behaviors as elopement, access to preferred items and reinforcers, and effective sensory items to support sensory regulation. The BSP included the provision of sensory breaks, including the use of a swing.
35. On February 29, 2024, staff requested that the District purchase additional swings and chairs for the Student's use. The District approved the purchase.
36. On March 4, 2024, the District documented additional information required to finalize the Student's IEP, including hearing and vision screening, recent observations, and

an updated medical statement for the Student.

37. On April 10, 2024, the District provided a progress report for the Student's Annual Academic and Functional Goals and Objectives.
 - a. The Student showed progress toward their speech/language goal. The District documented that the Student, "...has shown great communicative improvements since the beginning of March. [The Student's] utterances have included uttering 'koe' for 'coat', responding to a social greeting by saying 'Hi', and referring to 'mama'. Prior to March, [the Student was] not witnessed...using oral language with such clear meaning."
 - b. The Student showed progress toward their readiness goal. The District documented that the Student, "...can match and sort shapes and colors using puzzles and shape sorters with the help of staff. [The District was] working on identifying the letters of [the Student's] names using letter manipulatives and dry erase writing."
 - c. The Student showed progress toward their social/emotional goal. The District documented that the Student, "...can self soothe and choose calming strategies 80% of the time. [The Student] will choose to walk into the calming room to sit when [they] need a break. [The Student is unable to verbally communicate what emotions [they are] feeling, but [they do] communicate [their] wants and needs via body language, signing 'more', gestures and sounds."
 - d. The Student mastered or completed their behavior management goal. The District documented that the Student, "...self regulated within 1 minutes [sic] in at least 4/5 opportunities. [The Student] is rarely getting frustrated and upset to the point of needing redirection."
 - e. The Student showed they had mastered or completed their fine motor skills goal. The District documented that the Student "...can use all utensils by [themselves] without the help of an adult. When the food is on a plate [they] can have a harder time scooping it up depending on the consistency."
38. As part of the District's *Response* in this matter, the District provided behavior tracking data for the Student. The data shows an increase in serious behavior from near the end of December 2023 through February 2024. Following the revisions to the Student's BSP on February 29, 2024, the Student showed a marked decrease in serious behaviors through to the date of the filing of this Complaint.
39. On April 3, 2024, the Parents filed this Complaint.
40. On May 6, 2024, the Department's Complaint Investigator interviewed the Parent regarding their concerns in this matter.

The Parents reported that despite the District holding the IEP meeting on January 3, 2024, the District had not finalized the IEP until March.

The Parents reported their understanding that the Student was secluded from classmates during the school day. The Parents asserted that the Student spent four to five hours per day in a space that they described as a "cell." The Parents reported that such seclusion techniques were not part of the IEP. The Parents understood that this space was described as the Student's workspace, but noted that this space was not included in the Student's IEP.

The Parents described certain health issues the Student experienced that required the Student be allowed to move throughout the day. The Parents raised the concerns that this need to move conflicted with the Student's behavior goals and the District's expectations. The Parents reported suggesting a swing for this purpose, and that the Student should be allowed access to the swing in the classroom or on the playground. The Parents reported their displeasure when, on occasion, they learned that the Student was not allowed access to the playground as well as the District's rejection of the Parent's suggested in-class swing solution. The Parents also reported that, on occasion, the Student's access to the swing was limited due to the Student's behavior, and the District's insistence that the Student display safe behaviors to access the swing. The Parents took exception to this, asserting that the Student's primary means of regulating their behavior was using the swing. The Parents further reported that the Student did not have enough access to the swing or other calming tools.

The Parents reported that the District tracked behavior, but that they were unsure how the behavior was tracked. The Parents questioned the accuracy of behavior data reported in percentages relevant to behavior levels devised by the District. The Parents also questioned the behavior report provided by the District, suggesting that they were incomplete or vague. The Parents also reported that changes to the physical classroom arrangement, classroom assignment, and staff triggered or exacerbated the Student's behavior. The Parents further reported that the Student's behavior needs often resulted in the District calling the Parents to the school. The Parents further reported that the District has assured them that the Student had a 1:1 aide, but that there was no such provision in the Student's IEP. The Parents observed that, prior to starting kindergarten, the Student did have a 1:1 aide.

The Parents reported having told the District's Occupational Therapist about the Student's feeding needs and the danger of stuffing food and potential aspiration concerns. The Parent's noted that the Student had significant sensory needs and sought sensory stimulation. The Student needed additional replacement behaviors. The Parents were unsure what supports were provided by the District's Occupational Therapist.

The Parents explained modifications made to the home to accommodate the Student and questioned whether the District had sufficient accommodations or supports in the school environment to keep the Student safe. Concerns were voiced about the adequacy of a 2:1 student-to-teacher staffing ratio. The Parents further reported their understanding that the Student's behavior needs were not appropriately assessed, that the District has an insufficient understanding of the Student's behavior needs, and

that the Student had not undergone a functional behavior assessment.

41. On May 16, 2024, the Complaint Investigator interviewed the Principal, the Teacher, the Instructional Coach, and the Case Manager.

The Teacher and the Instructional Coach explained that the Student was educated in the same classroom as other students and in accordance with their IEP. At times during the 2023-24 school year, the District utilized dividers to separate the Student's workspace from that of other Students to support that Student's concentration. The District reported that the Student was free to move around the classroom. As part of the discussion with the Complaint Investigator, District staff agreed that this was comparable to a study carrel. The District reported that the use of the dividers was discontinued prior to the filing of the Complaint.

The Teacher and the Principal provided additional details regarding class arrangement and size. The Principal observed that during the 2023-24 school year, the teacher assigned to the Student's classroom was changed, and that the physical classroom used was changed. The Principal and the Case Manager observed that the Student's educational placement remained the same.

The Teacher reported taking over the classroom about halfway through the 2023-24 school year. They reported that the previous classroom teacher provided daily updates to the Parents through a variety of communication methods. They first tried to maintain that same frequency of communication, but it became unmanageable. The Principal directed the Teacher to utilize the District portal and respond to the Parent's inquiries during their work hours. This resulted in a change in the frequency and detail of communications provided to the Parents. The Principal and the Case Manager noted that the Parent received daily updates regarding the Student's toileting plan and behavior, but that this was not included in the Student's IEP.

The Instructional Coach explained that they worked closely with classroom staff to address the Student's behavior needs. The District explained that the Student was then in kindergarten and that an understanding of the Student's behavioral behavior needs were largely drawn from the Student's Individualized Family Service Plan (IFSP) and the evaluations completed during the 2023-24 school year.

The Teacher and the Case Manager reported understanding that the Student's behaviors were in part exacerbated by factors outside of the school environment. District staff noted that the Student and the Student's sibling displayed elevated behaviors around the same time.

IV. DISCUSSION

General Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA when the District failed to complete the Student's evaluation within 60 days.

School districts must conduct reevaluations of students within 60 school days from the date of written parent consent to the date of the meeting to consider eligibility, continuing eligibility, or the student's educational needs.³

The Parents provided written consent to the District to perform the Student's reevaluations on September 22, 2023. On January 3, 2024, the District sent the Parents a PWN documenting the completion of the Student's reevaluation. On the same day, the IEP team met to review the results of the reevaluations. January 3, 2024 was the 55th school day following the District obtaining the Parents' consent to conduct the Student's reevaluations.

The Department does not substantiate this allegation.

IEP Team Considerations and Special Factors

The Parent alleged that the District violated the IDEA when the District failed to consider the concerns of the Parents in the development or revision of the Student's IEP.

In developing, review, and revising the child's IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child. The team must also consider the results of the most recent evaluation, as well as the academic, developmental, and functional needs of the child. The IEP team must also consider other various special factors.⁴

The Parents alleged that the District did not consider suggestions from the Parents regarding the Student's medical and behavioral needs. Specifically, the Parents alleged that they brought forward suggestions regarding the Student's movement needs, specific sensory tools and accommodations, and behavior interventions. The Parents alleged that these needs related to the Student's specific medical needs, and that the District failed to consider the Parent's concerns in this area. The District reported their awareness of the Student's specific medical needs and having a toileting plan in place to meet those needs. The District denied that the Parents had provided input linking the medical needs with the movement needs. Meeting Notes describe the Student's medical needs and the Parent's interest in ensuring that the Student had access to movement breaks. There is no evidence in the Meeting Notes that the Parents linked the movement breaks to the Student's medical condition.

During interviews with the Complaint Investigator, District staff denied having understood that these two needs were connected. However, the District did provide a variety of movement devices to accommodate the Student. The Student's revised February 29, 2024 Behavior Support Plan included the use of a swing as a sensory

³ OAR 581-015-2110(5)(b)

⁴ OAR 581-015-2205(1)—(3)

break. Additionally, the District approved the purchase of additional swings and movement chairs to address the Student's sensory needs.

The Department does not substantiate this allegation.

Least Restrictive Environment

The Parents alleged that the District violated the IDEA when the District did not consider least restrictive environment provisions for the Student's educational placement.

A district must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁵

The Parents reported concerns about the Student's educational placement. These concerns included changes in teachers assigned to the Student's classroom, changes to the physical classroom location, and dividers placed between the Student and classmates. The District reported that during the 2023-24 school year the classroom to which the Student was assigned was changed, and that the Student's teacher changed mid-year. The District agreed that dividers were placed between the Student's workspace and that of other classmates to assist the Student's concentration, but reported that these dividers did not limit the Student's movement or interaction with classmates. There is no evidence that the Student was removed from their special education placement or limited from accessing their classroom or peers.

The Department does not substantiate this allegation.

Placement of the Child

The Parents alleged that the District violated the IDEA when the educational placement selected for the Student, by the District, did not match the consensus of the Student's IEP team.

School districts must ensure that the educational placement of a child with a disability is determined by a group of people, including the parents, and other people knowledgeable about the child, the meaning of the evaluation data, and placement options. The educational placement of a child must be made in conformity with least restrictive environment provisions and be based on the child's current IEP. In selecting the least restrictive environment, consideration is given to any potential harmful effects on the child or on the quality of services which the child needs.⁶

⁵ OAR 581-015-2240(1)—(2)

⁶ OAR 581-015-2250(1)--

The Parents raised concerns whether the Student's educational placement was appropriate and alleged that the District selected the Student's placement over the objection of the Student's IEP team members.

The IEP team determined the Student's educational placement on May 4, 2023. At that time, the Student was attending pre-kindergarten, and the Student's educational placement was based in part on the Student's Individualized Family Service Plan (IFSP). The District observed that the Student's pre-kindergarten placement, determined in December 2022, was the same as the placement selected by the Student's IEP team in 2023, and later in 2024. The Meeting Minutes document that the Student's IEP team was in consensus regarding the Student's educational placement.

The Department does not substantiate this allegation.

When IEPs Must Be In Effect

The Parent's alleged that the District violated the IDEA when the District failed to implement the Student's IEP as written. Specifically, the Parents alleged that the District failed to implement the Student's IEP by not providing the Student with behavioral interventions; not providing adequate movement breaks for the Student; and not providing daily communication to the Parents.

School district 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 District did not provide the Student with behavioral interventions contained in the Student's IEP. The Parents also cited occasions when they alleged that the District did not provide movement breaks to the Student. Specifically, the Parents alleged that the Student required the use of a swing, and that at certain times during the school year, the Student was not provided access to the playground to utilize the swing. The Parents also alleged that the District did not provide daily communications regarding the Student.

The record contains communications regarding the Parent's concerns about movement breaks and access to swings or similar devices for providing movement. While Meeting Notes indicate that the Parent raised the concern, there is no evidence that the District did not provide the behavioral interventions in the Student's IEP. Rather, the record supports that the Parents made suggestions for additional behavioral interventions such as swings and vibrating chairs. The record further supports that the District moved to purchase those additional behavior supports in February 2024. The record also contains evidence that the Student's Teacher at the beginning of the 2023-24 school year agreed

⁷ OAR 581-015-2040(1)

⁸ OAR 581-015-2220(1)—(3)

to send daily communications to the Parents, but this service was not required by the Student's IEP.

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Parent's alleged that the District violated the IDEA when it did not revise the Student's IEP to address the Student's behavioral needs. Specifically, it is alleged that the District did not address the Student's specific behavior needs and did not consider information about the Student provided by the Parents.

Each district must ensure that the IEP team reviews the child's IEP periodically, but at least once every 365 days. The student's IEP should be reviewed to determine whether the annual goals for the child are being achieved. The IEP should be revised as appropriate to address any lack of expected progress toward the annual goals and, if appropriate, the results of any reevaluation. The district should, where appropriate, revise the student's IEP to address information about the child provided by the parents, to address the child's anticipated needs, or others matters.⁹

The Student's initial IEP was formulated on May 4, 2023. On September 9, 2023, the District created a Behavior Support Plan for the Student. The IEP team met on September 22, 2023. During this meeting, the Parents raised concerns about behaviors exhibited by the Student, which the team discussed. The District documented that, beginning in December of 2023, the Student began to display more concerning behaviors. On January 3, 2024, the IEP team met to review the results of the Student's reevaluations. Having run out of time to complete the meeting, the IEP team reconvened on February 7, 2024. During the February 7, 2024 meeting, the Parents made suggestions for supporting the Student's sensory and behavior needs. Consequently, the Student's Behavior Support Plan was updated to include many of the recommendations from the Parents.

The Department does not substantiate this allegation.

General Evaluation and Reevaluation Procedures

The Parents alleged that the District violated the IDEA when the Student was not assessed in all areas related to the Student's suspected disabilities, and that the evaluations selected were not sufficiently comprehensive to identify all the Student's special education and related service needs.

A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parents. Information that may assist in determining whether the child is a child with a disability should be considered. The district should also

⁹ OAR 581-015-2225(1)(a)—(1)(b)

consider relevant information that would assist in determining the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum. A district should not use any single assessment or measure as the sole criterion for determining whether a child has a disability or for determining an appropriate educational placement. The assessment should be technically sound for assessing the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.¹⁰

The Parents alleged that the behaviors exhibited by the Student in the classroom were partially the result of the District not having a sufficient understanding of the Student's behavior needs. The District reported that the Student was initially found eligible for special education as part of early childhood special education programs. The Student was found eligible under the category of autism spectrum disorder. In the most recent evaluation planning meeting, the team determined which assessments were required to assess the student's educational needs in addition to determining eligibility. Regarding the Student's most recent eligibility determination, the IEP team, including the Parents, agreed with the Student's eligibility determination of autism spectrum disorder. The record in this case does not contain discussion, consideration, or suspicion of other eligibility categories.

Previous school districts and the District found the Student eligible under the category of ASD. The Student's most recent evaluation results indicated that the Student continued to be eligible under ASD.

The Department does not substantiate this allegation.

Functional Behavioral Assessments

The Parents alleged that the District violated the IDEA when it failed conduct a functional behavioral assessment and develop an appropriate behavior intervention plan for the Student.

A functional behavioral assessment is an individualized assessment of a student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan. A behavior intervention plan is an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior, and increase or teach an alternative appropriate behavior. A district must conduct a functional behavioral assessment and develop, review, or revise a behavior intervention plan following incidents where a student places the student, other students, or staff at imminent risk of serious bodily injury as a result of the student's behavior.¹¹

The Parents noted that the Student displayed elevated behavior in the school environment, and expressed concern about whether the current Behavior Support Plan

¹⁰ OAR 581-015-2110(3)

¹¹ OAR 581-015-2181(1)—(2)

was sufficient to address this behavior. In its *Response*, the District observed that the Parents had not requested a functional behavior analysis. The District reported that it had in place for the Student a Behavior Support Plan and specific IEP goals to address the Student's behavior needs. On September 18, 2023, the District developed a five-point behavior plan for the Student. The District revised the Student's Behavior Support Plan on February 7, 2024 and February 29, 2024. At the February 29, 2024 meeting, the District specifically added additional sensory support items for the Student's use, along with preferred items as reinforcers.

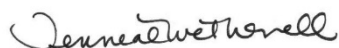
The District tracked the Student's behavior daily across the school year. The Student showed an increase in concerning behaviors beginning near the end of December, 2023, through the end of February 2024. Following the changes to the February 29, 2024 Behavior Support Plan, the Student demonstrated a marked decrease in disruptive behaviors and as well as an increased ability to regulate their behavior. The April 10, 2024 progress report showed that the Student, "...self regulated within 1 minute in at least 4/5 opportunities. [The Student] is rarely getting frustrated and upset to the point of needing redirection."

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION
In the Lebanon Community School District
Case No. 24-054-018

The Department does not order corrective action in this matter.

Dated: this 31st day of May, 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: May 31, 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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)