

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Lebanon Community SD 9)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-019

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 Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parents and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On 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 Response
2. Parent Meeting for [Student], 9/15/2024
3. Special Education Notice of Team Meeting, 09/29/2023
4. [Student] Behavior Support Plan, 10/13/2023
5. Student IEP, 10/13/2023
6. Prior Notice of Special Education Action, 10/13/2023
7. Student Behavior Scale, 12/26/2023
8. Special Education Placement Determination, 10/13/2023
9. Annual Academic and Functional Goals and Objectives, Progress Report, 12/12/2022
10. Annual Academic and Functional Goals and Objectives, Progress Report, 10/13/2023
11. Direct Messages, School-Parent, 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)

12. Text Messages, School-Parent, 2024
13. Email Communication between District and Parent
14. Student Service Records, 1/24/2023—1/24/2024
15. Student Schedules
16. Special Education Notice of Team Meeting, 12/01/2022
17. Student IEP, 12/12/2022
18. Student Behavior Support Plan, 12/12/2022
19. IEP Team Meeting Notes, 12/12/2022
20. Prior Notice of Special Education Action, 12/12/2022
21. Statement of Eligibility for Special Education, (Autism Spectrum Disorder 82), 01/04/2022
22. Autism Spectrum Disorder Evaluation Report, 11/8/2017
23. Student Education Evaluation, 12/9/2021
24. Autism Spectrum Disorder Evaluation Report, 11/8/2017
25. Developmental Information, 11/9/2017
26. IEP Team Meeting Notes, 1/4/2022
27. Student Functional Behavior Assessment Plan, 10/24/2019
28. Statement of Eligibility for Special Education, 1/4/2022
29. Student Autism Spectrum Disorder Evaluation Report, 11/8/2017
30. Student Developmental Information, 11/9/2017
31. School Psychologist Report, 12/9/2021
32. Student Autism Spectrum Disorder Evaluation Report, 11/8/2017
33. Statement of Eligibility for Special Education, Autism Spectrum Disorder (82), 11/9/2017
34. Student (Draft) IEP, 4/24/2024

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

1. Meeting Notes, 11/17/2023
2. Meeting Notes, 10/13/2023
3. Parent Notes for IEP
4. Parent Plan for Addressing Aggression
5. Student Community Therapist Notes
6. Student Behavior Schedule

On May 6, 2024, the Complaint Investigator interviewed the Parents regarding their concerns in this matter. Following the interview, the Parents submitted additional information relevant to the Complaint. 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>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, it is alleged that the District failed to implement the Student’s IEP by not providing the Student with behavioral reinforcements; obstructing the Student’s learning goals; not providing educational supports; not providing access to the Student’s communication needs; 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>There is no evidence in the record that that the services and accommodations in the Student’s IEP were not provided.</p>
<p>Review and Revision of IEPs</p> <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 skill goals or develop appropriate supports; address information about the Student provided by the Parents, and information related to the Student’s behavior intervention plan; nor, the Student’s social and emotional needs.</p> <p>(OAR 581-015-2310; 34 CFR § 300.324(a)(4), (a)(5), (& (b)(1))</p>	<p>Not Substantiated</p> <p>The record shows that recommendations from the Parents related to the Student’s behavior were considered by the District. The Student’s IEP was reviewed and revised during the 2023-24 school year, less than one year following the previous review. Following escalations in the Student’s behavior, the District amended the Student’s Behavior Support Plan and incorporated suggestions from the Parents.</p>
<p>Functional Behavioral Assessments</p> <p>The Parents alleged that the District violated the IDEA when it failed to conduct a Functional Behavioral</p>	<p>Not Substantiated</p> <p>A Functional Behavioral Assessment was conducted</p>

Allegations	Conclusions
<p>Assessment and develop an appropriate Behavior Intervention Plan for the Student.</p> <p>(OAR 581-015-2181)</p>	<p>for the Student when they attended a previous school district. The District reviewed and revised the resulting Behavior Support Plan for the Student in response to the Student's needs.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • The Parents request that the District follow the Student's IEP, acknowledge, and provide behavior reinforcements; • Conduct a functional behavioral analysis; • Consider documentation provided by the Parents on behalf of the Student; • Remove "willful" and "intentional" language from Student discipline reports; • Provide support to meet the Student's learning goals; • Provide access with support to education; • Acknowledge the Student's behavioral/social/emotional challenges and provide adequate support; • Provide communication board and access; • Provide support to meet skill goals; • Acknowledge that it cannot meet the Student's academic needs and provide an alternative placement; and • Communicate with the Parents regarding what occurred during the Student's school day before the Student arrives home.

III. FINDINGS OF FACT

1. The Student in this case is in the fifth grade and attends elementary school in the District. The Student is eligible for special education under the category of Autism Spectrum Disorder.

2. On January 4, 2022, the IEP team met for the Student's triennial review and the District determined the Student's special education eligibility following the review of records, evaluations, and observations within the District. The eligibility determination included data from a School Psychologist Report completed December 9, 2021. The District's OT observed that the Student would benefit from sensory breaks. At the time of the meeting the Student was not exhibiting many behavior problems. The Student was then showing an increase in verbal communication in the school environment. The Parent reported that the Student exhibited elopement behaviors from public places, but that the Student appeared to do so in a playful manner. At the meeting, the Student's behavior protocol was written and updated. The Student's IEP team discussed the Student's present

levels and recommended OT, AAC, ASD services in the IEP. The Student's IEP team further determined that the Student should receive specially designed instruction in writing, 30 minutes, reading 60 minutes, math, 60 minutes; AAC, direct 150 minutes per year, and 120 minutes consultation, and; ASD, 90 minutes yearly.

3. The Student demonstrated helpful behaviors in the school environment. The Student enjoys trying new foods, going out for recess with classmates, doing puzzles and watching videos. The Student participates with classmates during rotations and reading circle. They show a preference for a tight schedule. Disruptions to the Student's schedule can trigger dysregulation in the Student. The Student demonstrates concentration when performing fine motor tasks, and will verbalize preferences around completing school work. The Student completes school work given some processing time, and benefits from a visual schedule.
4. The Student demonstrates strengths in picture identification skills and joint attention. The Student reads at the first grade level and does not enjoy math, but will complete assignments for preferred activities. The Student can identify 20 sight words and approximately 10 of the consonant, vowel, consonant (CVC) words.
5. On June 8, 2023, the Student received a major referral for physical aggression or assault in the classroom. The District documented that the Student was agitated for 1.5 hours and hit three staff members.
6. On June 9, 2023, the District recorded that the Student was making progress toward their behavior goal noting that the "[Student] is making progress toward this goals [*sic*] and is working hard to achieve it."
7. The Student's October 13, 2023 IEP included specially designed instruction (SDI) in written language, reading, math, behavior, functional math, life skills—cafeteria, and life skills. The Student's IEP also included the related service of transportation. The Student's IEP included the following supplementary aids and services: available adult assistance, visual supports and schedule, break area, student behavior: reteach desired behavior, student behavior: written behavior plan, token board, use of sensory breaks, and extra processing time for all activities and demands.
8. The Student's October 13, 2023 IEP also included modifications to curriculum to a first-grade level, and the following program modifications and supports for school personnel: autism, augmentative communication staff training, and speech language pathology services to assist staff in improving the Student's total communication.
9. The Student's December 12, 2022, IEP included goals in behavior, written language, and math. The Student's math goal was for the Student to "be able to complete addition and subtraction problems within 10 within [*sic*] 80% accuracy."

The Student's written language goals was for the Student to "write a simple sentence (3-4) words with support with 80% accuracy in 4 out of 5 opportunities."

10. The Student's October 13, 2023 IEP included behavior goals. Those goals were updated from the Student's previous December 12, 2022, IEP. The Student's October 13, 2023, IEP included the goal that, "By October 2024, when given an unpreferred task, using a first/then board [Student] will complete the task to the best of [their] ability in 4 out of 5 opportunities." The District measured progress toward the goal through data collected by the classroom teacher. The goals included the objectives that, "By February 2024"...the Student would "complete the task to the best of [their] ability in 2 out of 5 opportunities," and "By June 2024...the Student would "complete the task to the best of [their] ability in 3 out of 5 opportunities." The goal was changed from the goal in the Student's December 12, 2022, IEP, where the behavior goal was, "By December 2023, When upset [the Student] will protest verbally or by using [their] communication device in 4 out of 5 opportunities."
11. The Student's October 13, 2023 IEP indicated that the Student displayed violent or aggressive behavior 2% of the day, with 98% of the day spent at level one, on the District five-level behavior plan.
12. The October 13, 2023 IEP noted that the Student's Autism Spectrum Rating Scales (ASRS) were based on the October 25, 2017, School Psychologist Report for the Student.
13. On October 13, 2023, the IEP team met to revise the Student's IEP. The Parents attended this meeting. The team noted that the Student can communicate their needs with verbal communication, and can understand communication with verbal directions from teachers. Based on the Student's progress, the team determined that the Student no longer required a communication goal. The results of the Student's most recent augmentative communication evaluation (2023) suggested the Student would benefit from Augmentative and Alternative Communication (AAC) systems. At this IEP team meeting the Parents voiced concern about the use of high-tech AAC systems, and the team agreed to change the Student's AAC system to a low-tech system.
14. As part of the Student's October 13, 2023, IEP revision, the Parents requested that the Student utilize more visual schedules, specifically one for each activity in the Student's day such as recess and lunch. The District reported that the Student had a visual schedule created by the District that was then working well for the Student.
15. On October 13, 2023, the District sent a copy of the Student's IEP to the Parents by email.
16. On October 17, 2023, the Student received a major referral for disorderly conduct, disruptive behavior, and physical aggression.

17. On October 31, 2023, the District provided a progress report for the Student's IEP goals. The Student showed limited progress toward their reading goals on these dates; limited progress toward their behavior goal in October; no progress toward their functional math goal in October, no progress initially on their life skills-cafeteria goal in October; no progress initially on their general math goal in October; no progress initially on their general life skills goal in October, The District observed that the initial lack of progress in October 2023, was likely due to the goal being new, having only been revised October 13, 2023.
18. On November 8, 2023, the Parents sent an email to the District seeking a meeting regarding the Student's behavior and the likelihood that the Student would ask for the Parents "during a meltdown."
19. On November 13, 2023, the District sent a meeting invitation to the Parents for a meeting scheduled for November 17, 2023.
20. On December 26, 2023, the District updated the Student's BSP, which had been previously updated on December 12, 2022. The BSP included a three-point scale of ranked behaviors, and suggested strategies for how District staff should respond. The plan also included common behavior triggers for the Student, likes, and self-regulation goals. The use of a visual schedule and token board system were added to this plan.
21. On January 11, 2024, the Parents sent an email to the District asking for a copy of the Student's IEP.
22. On January 25, 2024, the Student's Teacher (Teacher) sent an email observing that the Student was becoming "stuck" in the health room after taking medications. District staff reported that the Student would often refuse to leave the health room after taking their medications. The District documented that the Parents suggested a preferred snack reinforcement, or token economy, to help with the Student's behavior.
23. On January 25, 2024, the Teacher sent an email to the Behavior Instructional Coach documenting the Parent's suggestions for addressing the Student's behaviors. The Teacher documented that the Parent recommended that the Student first go to the "...meds/health room, then reinforcement, then to the cafeteria to eat lunch, then [the Student] will get [their] preferred snack as reinforcement for going and eating..." The Teacher expressed that they were unsure what strategy would assist the Student in leaving the meds/health room and appropriately address the behaviors exhibited by the Student. The Teacher expressed that it had "been a hard time since we have been back from ... break."
24. On January 25, 2024, the District provided a progress report on the Student's IEP goals. The Student showed some progress toward their behavior goal in January

2024, and showed progress on all their other goals; written language, reading, functional math, life skills-cafeteria, general math, and general life skills by the January reporting date.

25. On January 28, 2023, the District recorded that the Student was making progress toward their behavior goal, noting that the “[Student] just started this goal recently, [they are] working hard on the goals, staff will monitor progress.”
26. On January 30, 2024, the Teacher noted that the Student would become “stuck” at times when transitioning between locations in the school.
27. On January 30, 2024, the Case Manager (Case Manager) sent an email to the Behavior Instructional Coach requesting an observation of the Student in response to the Student becoming “stuck” in the health room and associated behaviors. The Case Manager noted that these were “the same behaviors you observed last time.”
28. On January 30, 2024, the Teacher sent an email to the Principal observing that the Student had attempted to destroy the computer in their classroom and requesting an alternative solution.
29. On February 6, 2024, the Case Manager sent an email to the Parents reporting the Student’s Community Board Certified Behavior Analyst (BCBA) had developed a potential plan for pairing the school token system and that used in the home, and seeking a time to discuss the details with the Parent.
30. On February 6, 2024, the Case Manager sent an email to the Principal, reporting that the Student’s behavior “occurrences are happening more often and are increasingly violent... It is happening consistently from 8:15-9 and at the end of the day when it is time to go home. [After the school day, the Parent had] to come and get [the Student] and take [them] home this whole week. Yesterday it took [the Parent] 45 minutes to get [the Student] on [their] way home.”
31. On February 7, 2024, the Principal, in response to an email from the Case Manager regarding a proposed behavior plan for the Student from the Parents, suggested that the Parents share the proposal with the District and agreed to meet with the Parents to discuss the recommendations.
32. On February 9, 2024, the Teacher requested support from the Instructional Coach regarding the use of the suggestions from the Parent. The Teacher wrote in relevant part that they needed, “help with transitions... as each day it seems to be getting worse and I am not sure what to do about it.”
33. On February 9, 2024, the Office Secretary sent an email to the Principal and others reporting that the Student was having a tough time coming to the office to take their medications.

34. On February 13, 2024, the Teacher sent an email to the Instructional Coach and the Case Manager, seeking assistance with suggestions from the Parents to establish a token system to assist with the Student's behavior, and helping with establishing the system in the classroom.
35. On February 13, 2024, the Teacher sent an email to the Case Manager regarding the Student's behavior, noncompliance, and behaviors that obstructed the learning environment by the Student.
36. On February 13, 2024, the Teacher sent an email to the Instructional Coach regarding the implementation of the token system for the Student, the Parents' concerns about implementing the system in a comparable manner as that implemented in the home, and that the Teacher welcomed the Parents' input.
37. On February 15, 2024, the Parents sent an email to the District reporting that the Student had some significant behaviors the day before and that morning and reported the Student was experiencing gastrointestinal issues.
38. On February 16, 2024, the Principal sent an email to the Teacher, the Case Manager, and other members of the IEP team observing that the Student did not have a FBA, but that the District needed to conduct one for the Student.
39. On February 16, 2024, the Principal sent an email to the Instructional Coach seeking assistance for behavior supports for the Student.
40. On February 20, 2024, the Student received a behavior referral. During this incident, the Student used objects as weapons to hit staff, charged staff, bit a classmate, pulled hair, scratched, kicked, threw a computer, and ripped out cords. The Student was suspended for half of February 20, 2024 and all of February 21, 2024 as a result.
41. On February 21, 2024, the Principal sent an email to the Teacher, the Case Manager, and others regarding scheduling a reentry meeting with the Parents following the Student's February 20 and February 21, 2024 suspension.
42. On February 22, 2024, the BCBA sent an email to the District summarizing an earlier meeting regarding the Student. The BCBA provided detailed suggestions regarding the Student's schedule and presenting the schedule visually. The BCBA stressed the need for the schedule to include choices for the Student to make themselves and the use of positive behavior reinforcements. The BCBA also suggested creating a token board for the Student. The BCBA proposed rewarding the Student's behavior compliance with preferred snacks.
43. On February 26, 2024, the District documented services provided by the District's Autism Specialist. The Autism Specialist documented that, on February 14, 2024, they observed the Student in a "physically aggressive behavioral incident." The

Autism Specialist provided support to staff, but the Student's behavior resulted in a room clear and required the Parent to come to school to calm the Student.

44. On February 28, 2023, the BCBA sent some additional suggestions to the Instructional Coach.
45. On February 29, 2024, the BCBA provided specific recommendations for addressing the Student's behavior in the educational environment, drawn from the systems used in the home.
46. On March 1, 2024, the Instructional Coach corresponded with the District's Director of Special Education, observing that the District would implement the Student's visual schedule as suggested by the BCBA even if that required hiring additional staff.
47. On March 4, 2024, the regional ESD sent an email to the District providing recommendations to assist the creation of a schedule for the Student.
48. On March 5, 2024, the District withdrew the Student from enrollment due to lack of attendance. Starting after the February 20, 2024 suspension, the Parents began keeping the Student home over safety concerns.
49. On March 7, 2024, the Teacher sent an email to the Principal seeking support for the Student. The Teacher wrote that the current staffing in the Student's classroom was insufficient to support the Student due to needs of other classmates.
50. On March 12, 2024, the Autism Specialist documented that they supplemented materials in support of the creation of mini schedules for the Student.
51. The District included with its *Response* service records of the Student's services providers. Records were provided from January 24, 2023, through January 24, 2024. Included in these records were the specific date, time, service minutes, and service provider, and their progress note for the service provided. Records included service provision information from the Augmentative Communication Specialist, Autism Specialist, and Occupational Therapist.
52. The District also noted that the Student previously utilized an AAC system beginning in March 2022, that went back and forth between home and school. Following concerns raised by the Parents around a high-tech system, at the October 13, 2023, the Student's IEP team changed the Student's AAC system to a low-tech one.
53. The District reported that the Student's IEP did not specify daily communication between the Student's school and the Parents, did not include a toileting protocol, or feeding protocol. While no specific school/home communication schedule was included in the Student's IEP, the District observed that the Student's school

frequently communicated with the Parents through the District's own portal, email, and text messaging systems.

54. On April 3, 2024, the Parents filed this Complaint.
55. On April 24, 2024, the Student's IEP team met to review and revise the Student's IEP and Behavior Support Plan.
56. On May 1, 2024, the District submitted its *Response* to this Complaint. The District reported that the Student had a BSP, and that during the period relevant to the Complaint, the District had reviewed the BSP, revising it on December 26, 2023. The District also reported that the Student accessed their visual schedule during each transition. The District also reported that it documented the provision of education supports through service logs included with the District's *Response* in this matter.
57. On May 6, 2024, the Department's Complaint Investigator interviewed the Parents. The Parents reported that the District did not have an FBA for the Student, necessitating the Parents provide one for the District. The Parents further noted that the Student's teachers changed mid-year which had negative impacts on the Student. The Parent noted that, as the Student began to exhibit behaviors in school that obstructed the Student's learning, that the Parents had recommended the use of edible behavior reinforcements. The Parents reported success with this method in the home environment, but the District had rejected this suggestion because it allegedly violated District policy. The Parents noted that the District initially reported that the use of edible reinforcements were rejected, but that the District later agreed to their use in school.
58. The Parents reported that the Student used a physical communication board that was intended to move with the Student around the school environment as a means for the Student to communicate their needs to staff. The Parents reported having observed the Student without this communication device in the school environment and speculated whether the absence of the communication device exacerbated the Student's behavioral outbursts. The Parent further reported that the District did provide behavior supports such as a weighted blanket and calming corner, but noted that, on at least one occasion, a classmate caused scratches to the Student's face, which the Parents found inconsistent with the purpose of the calming space.
59. The Parents reported that the Student has an outside ABA therapist who worked with the family to develop a behavior plan. The Parents reported having made suggestions to the District based on this plan, and that the ABA therapist was willing to work with the school to integrate a similar plan in the school environment. The Parent reported that the District was not amenable to these suggestions initially which, in their opinion, resulted in school staff becoming frustrated with the Student. The Parents further reported having made such suggestions to the District

as a 1:1 aide for the Student and having the Student's community ABA therapist come into the school to provide support to the Student. The Parent reported that the District rejected these suggestions.

60. The Parents reported that, for a period in the spring of 2024, they were called to school 10 consecutive days to address the Student's behavior. The Parents reported that, on one day, they were called to the school to manage the Student's behavior twice in one day. The Parents also reported that the Student was secluded alone in a classroom and observed that this method of addressing the Student's behavior was not in the Student's IEP. The Parents also reported the understanding that the Student was left in the health room for 1.5 to 2 hours per day. The Parents reported that the Student was eventually suspended for behaviors exhibited at school.
61. The Parents noted that, at the Student's reentry meeting following their suspension, the District made changes to the Student's behavior plan. These additions included variations on the Parent's suggested edible reinforcements. The Parents voiced additional concern that the District refused to implement the same behavior plan used in the home in the school environment. The Parents questioned whether the Student's current educational placement was appropriate given the behavior concerns observed.
62. On May 16, 2024, the Complaint Investigator interviewed the Principal, the Teacher, the Instructional Coach, and the Case Manager.
63. The Teacher reported that the Student was in a class with approximately eight classmates and three staff, with additional support staff coming to the classroom throughout the day. The Teacher moved between another classroom, which was similarly staffed, leading to an approximate ratio of nine staff to 12 students. The Teacher explained that when they took over the classroom that the previous teacher had communicated with the Parents by text message and that, within a few days, that the Principal had advised them to use the District's communication portal.
64. The Teacher confirmed that the Parents advocated for a visual schedule like the one used in the home environment. The Teacher understood the schedule was detailed. The Teacher further explained their understanding that the visual schedule used by the District was primarily for prompting the Student to transition between tasks, rather than as a means for the Student to communicate with District staff. The visual schedule was described as a first/then sequencing of steps for the Student to follow throughout the day.
65. The Teacher provided an overview of an average day for the Student, their schedule, and routine. The Student used a visual schedule as a prompt to prepare for transitions and move from task to task. The Teacher reported that the visual schedule was effective. The Teacher and the Principal reported that, starting

around the beginning of January 2024, the Student began to exhibit increased behaviors and physical aggression. The Teacher reported that these behaviors were likely due to various outside factors.

66. The Teacher and the Instructional Coach explained that the Student's behavior plans were present in the classroom in physical form and that data related to each aspect of the plan was collected. The collected data was then input into a form for tracking the Student's behavior data over time.
67. The Principal provided a history of the Student's behavior and escalation in observed behavior beginning in January 2024. The Principal reported the understanding that the Parents were interested in the District implementing the same behavior plan that was used in the home. The Principal spoke to the potential problems with that plan observing that it did not always use positive behavior reinforcements, and its extensive use of edible reinforcements. The Principal noted that many of the edible reinforcements were violative of District policy or would be counterproductive in the educational environment. Following the Student's suspension, the District considered the limited use of edible reinforcements in limited settings. The District reported that the Parents have not returned the Student to school following the suspension.
68. The Teacher and the Principal provided an explanation of the Student's behavior that resulted in the Student's suspension. The Student's behavior resulted in a room clear procedure as they became increasingly agitated and displayed physical aggression toward staff. After causing injury to several staff, the Student was observed through the classroom door to provide them time and space to deescalate. The Teacher and the Principal explained that the Student only fully deescalated once one of their Parents came to the school.
69. On May 17, 2024, the District provided additional documents relevant to these matters.

IV. DISCUSSION

When IEPs Must Be In Effect

The Parents alleged that the District violated the IDEA when the District failed to implement the Student's IEP as written. The Parents specifically alleged that the District failed to implement the Student's IEP by not providing the Student with behavioral reinforcements; obstructing the Student's learning goals; not providing educational supports; not providing access to the Student's communication needs; and, not providing daily communication to the Parents.

At the beginning of each school year, a district must have in effect, and IEP for each child with a disability. School districts must provide special education and related

services to a child with a disability in accordance with an IEP. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. School districts must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider responsible for implementing the IEP. The district must also inform each teacher and service provider of their specific responsibilities for implementing the child's IEP.³

The Parents reported that the District neglected to provide behavioral reinforcements suggested by the Parents and the BCBA. The Parents alleged that the District had not appropriately responded to the Student's behavior which obstructed the Student's learning. The Parent reported that the Student's visual schedule was one means by which the Student communicated to District staff, and that the Student did not always have the visual schedule with them throughout the school day. Finally, the Parents alleged that the District neglected to provide daily communication regarding the Student.

The Student's IEP did not include a provision regarding daily communication from the District to the Parents. Rather, the District reported that the Student previously had a teacher who provided frequent communication and, following a staffing change, that practice ceased. The Student's October 13, 2023, IEP also did not include behavior supports later sought by the Parents. The District and the Parents reported that the BCBA provided suggestions for behavioral reinforcements in the home. The Parents suggested that the District implement the same program in the school environment. The record contains discussion among staff regarding the appropriateness and feasibility of implementing the same plan, or aspects of the plan, in the school environment. In early February, the District began corresponding with the BCBA about the behavior plan used at home. The record contains communication among District staff about the aspects of the plan used in the home, and aspects that could be implemented in the educational environment. The visual schedule and visual cues and supports were added to the Student's December 26, 2023 Behavior Plan.

By February 13, 2024, the District had implemented aspects of the behavior plan used in the home, including establishing a token board and revised visual schedule. The District reported that the edible reinforcements used in the home would likely not be suitable in the educational environment. The District reported that the specific suggestions around edible behavior reinforcers contradicted the District's policies. Following the Student's suspension, the District revisited that position and implemented some edible reinforcements for the Student on a limited basis. The District reported that, if the Student returned to school, the use of these additional interventions would be attempted.

The Parents described the Student's visual schedule, and token board jointly developed by the District and the Student's Community BCBA as one of the many ways the Student communicated with District staff. The visual schedule and token system are not described in the Student's IEP as a means of communication. District reported that the

³ OAR 581-015-2220(1)—(3)

Student did have an augmentative and alternative communication and assistive technology device and program for communication. While this was changed from a high-tech solution to a low-tech solution during the 2023-24 school year, this was the intended communication system for the Student, rather than their visual schedule which was primarily used to prompt the Student for transitions. The District acknowledged that the Student's means of interacting with the token board can be a means of communicating the Student's emotional state, but this was not its intended purpose.

The Department does not substantiate this allegation.

Review and Revision of IEPs

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 skill goals or develop appropriate supports; address information about the Student provided by the Parents, and information related to the Student's behavior intervention plan; nor, address the Student's social and emotional needs.

A district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days. IEP reviews should determine whether the annual goals for the child are being achieved and revise the IEP as appropriate to address any lack of expected progress. IEPs should also be revised to address the results of any reevaluation, information about the child provided by the parents, the child's anticipated needs, or other matters.⁴

Progress reports from January 28, 2023, March 23, 2023, and June 9, 2023, showed that the Student was making progress toward their IEP goals. On October 13, 2023, the IEP team met to review the Student's IEP. The Student's IEP goals were updated from those in the previous IEP. The Student's IEP team expanded the number of goals, adding specific life skills goals, and updated the Student's academic goals to reflect progress made the prior year. The Student's October 13, 2023, IEP included goals in reading, behavior, written language, math, and various life skills. Following the October 13, 2023, IEP meeting progress was reported on October 31, 2023, and January 25, 2024. The Student showed limited progress toward their IEP goals, the District observed, likely due to the goals having only been introduced on October 13. By January 25, 2024, the Student was progressing toward all their goals other than their behavior goal.

Following observed escalations in the Student's behavior the District revised the Student's BSP on December 12, 2023. However, the Student's behavior continued to escalate through January and into early February 2024. The Parents, District staff, and the BCBA engaged in discussion on adapting components of the Student's home behavior reinforcement system to the educational environment. By February 13, 2024, the District had implemented a token economy system adapted from Student's

⁴ OAR 581-015-2225(1)(a)—(1)(b)

home system. During interviews with District staff, it was observed that elements of the system used in the Student's home were not suitable to the education environment, including the use of edible reinforcers.

The Department does not substantiate this allegation.

Functional Behavioral Assessments

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.

A school district must conduct a functional behavioral assessment and develop, review, or revise a behavior intervention plan within 45 school days of receiving parental consent to conduct the assessment. Assessments should be conducted for students with an individualized education program who have placed the student or other students or staff at imminent risk of serious bodily injury as the result of the student's behavior. If a functional behavioral assessment was previously completed, the district must review and/or revise the existing functional behavioral assessment. When a behavior intervention plan is developed, reviewed, or revised, the district must ensure that it is based on a functional behavior assessment conducted by a qualified person. Districts must ensure that the behavior intervention plan addressed the student's needs and ensure that the plan was correctly implemented before making any revisions.⁵

The Parents alleged that the Student did not have a functional behavioral assessment (FBA), or that the District had not appropriately updated the Student's functional behavioral assessment considering the Student's behavioral needs. The District provided the Department with a functional behavioral assessment conducted October 24, 2019. The District reported that the Student's behavior and the hypothesized function of the behavior were the same. The District noted that the behavior support plan developed by the District from this FBA was updated during the school year to address changes in the Student's behavior. The Student displayed behavior for which they were suspended, but that behavior did not pose an imminent risk of serious bodily injury which would have required the District to formulate a new FBA or review/revise the current FBA.

The Department does not substantiate this allegation.

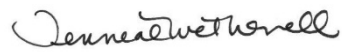
VII. CORRECTIVE ACTION

*In the Lebanon Community School District 9
Case No. 24-054-019*

The Department does not order corrective action in this matter.

⁵ OAR 581-015-2181

Dated: this 31st day of May, 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: May 31, 2024

Appeal Rights: Partied 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).)