

## BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of ) FINDINGS OF FACT,  
Perrydale SD 21 ) CONCLUSIONS,  
Case No. 24-054-023 ) AND FINAL ORDER

### I. BACKGROUND

On April 25, 2024, the Oregon Department of Education (the Department) received a written Complaint (Complaint) from a parent (Parent), regarding the special education of a child (Student) who resides within the Central School District (District) attendance area but is enrolled in Perrydale School District. The Parent requested that the Department conduct a special education investigation, as provided by Oregon Administrative Rule (OAR) 581-015-2030.

The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup> The parties agreed to pause the timeline to accommodate their efforts to resolve their disagreement through mediation and IEP facilitation, but they were unable to reach agreement.

On June 17, 2024, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of July 1.

The District submitted a timely *Response* on July 1, 2024 denying the allegations, providing an explanation, and submitting the following documents in support of the District's position:

1. The District's narrative *Response* to the Complaint
2. A Table of Contents
3. IEP and Placement Determination, 5/18/2022, amended 10/27/2022
4. Prior Notice of Special Education Action, 06/06/2022,
5. Meeting Notes, 5/18/2022, 5/10/23
6. IEP and Placement Determination, 5/09/2024
7. Prior Notice of Special Education Action, 11/14/2023
8. IEP Correction Requests from Parents, 8/28/2023 with embedded responses from District dated, 11/07/2023
9. IEP and Placement Determination, 5/10/2023, amended 11/14/23
10. Prior Notice of Special Education Action, 11/14/23 with additional comment dated 12/12/2023
11. IEP, 5/10/2023, amended 11/14/2023
12. Prior Notice of Special Education Action, 11/14/2023 with additional notes from 12/12/2023 meeting
13. Prior Notice of Special Education Action, 11/14/2023
14. IEP Correction Requests from Parents, 8/28/2023 with embedded responses from

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

District, 11/07/2023

15. Notes on IEP Updates to Discuss, 4/25/24-5/2/2024
16. Emails between the Parties related to the Student's Education, 5/10/23 - 4/15/2024
17. Meeting Notes for IEP
18. PWN of Updated IEP
19. Meeting Notes re SpEd Team Meeting
20. Meeting Notes with [Special Education Teacher] re: Student
21. Special Education Meeting Notes
22. Meeting Notes re: Student
23. Meeting Notes for Special Education Team
24. Written Agreements Between Parents and the District - excusing OT
25. Special Education Notice of Team Meeting
26. Written Agreements between the Parent and the District
27. Authorization to Release Information
28. Shared Notes on Student IEP Updates
29. Communication re: Scheduling IEP Meeting
30. ODE Complaint
31. Letter from [the Parents] re: IEP Complaints
32. Scheduling of Meeting for Student IEP
33. Scheduling FIEP Meeting
34. Scheduling FIEP Meeting
35. Scheduling FIEP Meeting
36. Scheduling FIEP Meeting
37. Special Education Meeting Notes
38. [Autism Specialist] Notes re: Student Progress in Sessions
39. IEP Corrections Requested by Parents and District Responses
40. Letter re: IEP Corrections from Parent and District
41. PWN re Amending IEP
42. Parent Request of an IEP Meeting
43. IEP Corrections Requested by Parents
44. IEP Corrections Requested by Parents
45. Parent Request for IEP Meeting
46. Request for Facilitated IEP
47. Meeting Notes Related to Student IEP
48. IEP Progress Report
49. IEP Progress Report
50. Field Trip Left Behind Supports Email
51. Progress Report Email to Parent
52. Sending of IEP to Parent
53. IEP Correction Requests by Parent
54. Consent for Assessment and Screening
55. Statement of Eligibility for Special Education Autism Spectrum Disorder (82) (ECSE and School Age)
56. Informal Social Communication/Speech-Language Assessment
57. Autism Spectrum Disorder Evaluation Report
58. Confidential Psychoeducational Evaluation Report
59. Daily Notes
60. Observation Reports from 10/24/23-11/8/23
61. Progress Report
62. Progress Report
63. Data Tracking Sheet

64. Daily Reports
65. Daily Notes
66. Daily Notes
67. Class Status Report for Class of 2028
68. Class Status Report for Class of 2028
69. Class Status Report for Class of 2028
70. ASD Evaluation Report - attached to 4/1/24 email from parents
71. Notes re: Session by [Autism Specialist]
72. Notes re: Reading Goal Progress
73. Notes from [Autism Specialist] re Handling Changes with Student
74. Notes from [Autism Specialist] re Handling Changes with Student
75. [Autism Specialist] Notes re Student Progress in Sessions
76. Psychoeducational Evaluation Report
77. Informal Social Communication/Speech-Language Assessment
78. Occupational Therapy Update
79. Annual Academic and Functional Goals and Objectives Progress Report
80. Psychoeducational Evaluation Report
81. [Autism Specialist] Report on Student Progress
82. Progress Reports
83. Social Skills Goals re: Student
84. Social Skills Goals and Narratives
85. Evaluation Schedule
86. Annual Academic and Functional Goals and Objectives Progress Reports
87. PWN Notice of Special Education Action
88. PWN Notice of Special Education Action
89. PWN re: Amendments to IEP
90. PWN about Parent Failing to Provide IEP Revisions
91. PWN about Parent Failing to Provide IEP Revisions
92. Notes on IEP Updates to Discuss
93. Notes on IEP Updates to Discuss
94. Notes on IEP Updates to Discuss
95. Request for Facilitated IEP Form
96. Responsive to Request No. Five (5)
97. Responsive to Request No. Six (6)
98. Diploma Options for Student
99. Annual Academic and Functional Goals and Objectives Progress Report
100. District Response to Allegations

The Parents submitted a *Reply* to the District's *Response* on July 17, 2024, disputing the *Response* and including the following:

1. A Table of Contents
2. Narrative reply to District *Response* regarding Allegation 1
3. Note from [The Special Education Teacher] on IEP, 6/15/2023
4. Prior Notice of Special Ed Action, 10/5/2023
5. Narrative reply to District *Response* regarding Allegation 2
6. Email from [The Special Education Teacher] RE: Email Data, 2/7/2024
7. IEP Progress Notes for IEP, 5/18/2022
8. IEP Progress Notes for IEP, 5/10/2023
9. Narrative reply to District *Response* regarding Allegation 3
10. Parents' Complaint Letter to the Superintendent, 10/9/2023

11. Copy of Quarterly Grade Report and Note from [The Special Education Teacher], 9/27/2023
12. Email to [The Special Education Teacher] regarding Progress Report, 2/23/2023
13. Email to [The Special Education Teacher] regarding Progress Report, 3/6/2023
14. Email to [The Special Education Teacher] regarding Progress Report, 3/8/2023
15. Narrative reply to District *Response* regarding Allegation 4
16. Email and Documents from [The Special Education Director], 10/5/2023
17. Documents from [The Special Education Director], 11/14/23
18. Narrative reply to District *Response* regarding Allegation 5
19. Email from Parents to District Members, 4/1/2024
20. IEP, 5/10/23

The Complaint Investigator interviewed the Parents virtually on July 22, 2024. The Complaint Investigator interviewed the District’s Special Education Director (Director), the Special Education Teacher, and the Autism Specialist on July 25, 2024 virtually. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from April 26, 2023 to the filing of this Complaint on April 25, 2024.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>IEP Team Considerations and Special Factors</b></p> <p>The Parents allege that the District violated the IDEA by not considering the Parents’ concerns and unilaterally rejecting accommodations requested by the parents.</p> <p>(OAR 581-015-2205(1); 34 CFR §300.324(1)(ii))</p>	<p><b>Not Substantiated</b></p> <p>The Parents provided input in IEP meetings and provided input after the May 10<sup>th</sup>, 2023 IEP meeting. Documentation shows that the District repeatedly heard, considered, and replied in detail to the Parents’ input.</p>
<p><b>Content of IEP</b></p> <p>The Parents allege that the District violated the IDEA by not revising the Student’s IEP to address the Student’s unique educational needs and lack of progress toward IEP goals and the Student’s need for transition from middle school to high school. Specifically, the Parents allege that the District:</p> <ul style="list-style-type: none"> <li>• Insisted on providing only verbal reminders and refused to add accommodations providing for concrete visual supports, despite the</li> </ul>	<p><b>Not Substantiated</b></p> <p>The District included all required IEP components. The District staff members of the IEP Team disagreed with some of the Parents’ suggestions for IEP content, but the disagreements focused on details of the Parents’ preferred teaching and support strategies. Team members who worked with the Student on a daily basis saw the Student</p>

<p>Student's failure to make progress toward an IEP goal for gathering items needed for class;</p> <ul style="list-style-type: none"> <li>• Refused to provide accommodations for visual concrete supports to introduce the Student to new staff;</li> <li>• Refused to provide accommodations for visual concrete supports to prepare for assemblies, despite the Student's history of becoming overstimulated and upset at assemblies;</li> <li>• Refused to add IEP goals in typing, math, and money, on the ground that these goals were not functional for the Student; and</li> <li>• Refused to provide progress reports on the progress the Student is making toward IEP goals.</li> </ul> <p>(OAR 581-015-2200(1)(b), (c) &amp; (d); 34 CFR §300.320(a)(2), (3) &amp; (4))</p>	<p>functioning well and making progress with fewer supports than the Parents preferred.</p> <p>The IDEA does not require the District to provide progress reports on goals the student has not worked on during the reporting period, and the IDEA does not require progress reporting on IEP objectives.</p>
<p><b>Parent Participation</b></p> <p>The Parents allege that the District violated the IDEA by preventing meaningful parent participation. Specifically, the Complaint alleges that the District delayed giving a copy of the Student's IEP for extended periods of time.</p> <p>(OAR 581-015-2195(5); 34 CFR §300.322(f))</p>	<p><b>Not Substantiated</b></p> <p>The Parents were very active IEP Team members. Along with their Advocate and the Student's private Tutor, they were full participants in IEP meetings.</p>
<p><b>IEP Team</b></p> <p>The Parents allege that the District has violated the IEP Team decision making requirement of the IDEA. Specifically, the Complaint alleges that the District's Director rather than the IEP Team as a whole had made decisions about IEP content.</p> <p>(OAR 581-015-2210; 34 CFR §300.321)</p>	<p><b>Not Substantiated</b></p> <p>The District documented the decision-making process for the May 10, 2023 IEP and again in the December 12, 2023 IEP meeting. The records show that the IEP Team appropriately collaborated, and no single person made unilateral decisions.</p>

<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Parents allege that the District has violated the IDEA entitlement to a FAPE. Specifically, the Complaint alleges the District has not provided to the Student an IEP that is reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.</p> <p>(OAR 581-015- 2040-2070; 34 CFR §§ 300.17, 300.101)</p>	<p><b>Not Substantiated</b></p> <p>With one notable exception—failure to give the Parents PWNs--the District complied with IDEA procedural requirements. The Student's IEP was reasonably calculated to enable the Student to make progress, and the Student has made progress, even if the progress was not always as swift as anticipated.</p>
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<p><b>REQUESTED CORRECTIVE ACTION</b></p> <p>The Parents requested corrective action as follows:</p> <ol style="list-style-type: none"> <li>1. The District should implement the Parents' requested IEP accommodations that include concrete visual supports.</li> <li>2. The Parents' ideas for IEP should be highly considered for implementation by the IEP Team.</li> <li>3. All objectives and all parts of the goals in the IEP should be reported on for the progress report. The objectives are how the goal will be achieved and if there is no progress or data reported on them, parents do not know how close the goal is to be achieved. Additionally, all parts of the goal need to be reported on. If the goal includes 3 parts, reporting on 1 or 2 of those parts is not sufficient</li> </ol>
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### III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before April 26, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is fourteen years old and has just completed 8<sup>th</sup> grade at a District middle school. The Student is eligible for special education as a child with autism spectrum disorder (ASD). The Parents have obtained support from both a professional advocate (Advocate) as well as a family friend who is also a tutor (Tutor). Both are persons with special knowledge and expertise regarding the Student, and they attend IEP meetings with the Parents.
2. On May 10 and 12, 2023, the IEP Team met to review and revise the Student's IEP. Team members included the Parents, the Special Education Teacher, a general education teacher, an instructional assistant (IA), the Parents' Advocate, the Tutor, the ASD

Specialist, the Occupational Therapist (OT), the Special Education Director (Director), and the Speech-Language Pathologist (SLP). Content of the IEP relevant to this Complaint includes the following:

a. Student's Overall Strengths, Interests, and Preferences

"[The Student] responds well to clear directions in an environment with minimal distractions. [The Student] prefers routines and has demonstrated growth in being flexible. ... [The Student] likes taking pictures, making videos, and occasionally uses texting to communicate."

b. Special Factors

The IEP indicated that the Student had communication needs.

c. Input from the Parents

The Parents expressed concern that [the Student] does not enjoy school and would like to see school as a place for [the Student] to thrive academically and socially. They appreciate the opportunity to get insight about sequential advancement of curriculum as skills are learned. The Parents report that [the Student] is difficult to understand to unfamiliar people and, when excited, speaks at a fast pace and needs reminders to slow down.

d. Present Level of Academic Achievement

7<sup>th</sup> grade reading:

"[The Student] is a fluent reader ... [and] can decode words well."

"[The Student] needs to continue to work on independent reading skills to increase comprehension ... and could benefit from a focus on vocabulary."

"[The Student's] autism learning style makes comprehension and looking for context cues and inferences difficult."

7<sup>th</sup> grade writing:

"[The Student] has very neat handwriting and takes great care in letter formation. [The Student] has good ideas and can tell stories. [The Student] almost always includes the correct punctuation with prompting. [The Student] is growing in confidence and abilities."

"[The Student] needs support in grammar and where to put punctuation marks when they fall in the middle of a sentence. [The Student] should continue to work on writing with correct spacing independently as well as pencil pressure. [The Student] writes with large lettering and has some spacing issues."

"[The Student's] autism learning style makes the process of writing difficult. [The Student] struggles to follow writing conventions without reminders. [The Student] responds well to editing comments from staff but will forget when working independently."

7<sup>th</sup> grade math:

"[The Student] is able to follow multistep problems of familiar operations. [The

Student] does well when using manipulatives to solve math problems and is not afraid to try difficult math problems independently.”

“[The Student] should continue to learn the foundations of math including when to use addition, subtraction, multiplication, and division. [The Student] needs to continue to build conceptualization skills in order to determine what operation to use. Practical skills such as money and fractions would be beneficial.”

“[The Student’s] autism learning style makes applying math to everyday concepts difficult. [The Student] knows the basic rules of math computation but struggles to find with operation is being asked and which numbers to use.”

e. Present Level of Functional Performance

Communication:

“[The Student’s] articulation of speech sounds is a strength.”

“[The Student] continues to have communicative needs in the area of language (expressive and receptive). Parents report that unfamiliar persons (both adults and peers) sometimes struggle to understand [The Student].”

“[The Student’s] language deficits make it difficult ... to communicate effectively in the academic setting. These difficulties ... could negatively impact effective participation in oral language tasks.”

Social:

“[The Student] needs prompting to engage with peers and adults. [The Student] will repeat greetings when asked but can ignore communication attempts. [The Student] has shown an increase in ability to make eye contact during conversation and is participating in class discussions with peers ... and is engaged along with classmates. [The Student] will engage in conversations about preferred topics and wants to please others. [The Student] will [self-advocate] and is empathetic.”

f. Statewide and Districtwide Assessment

The Student takes alternative statewide and districtwide assessments with accessibility supports.

g. Annual Academic and Functional Goals and Objectives

“Social Skills Annual Goal: Given reminders and opportunities to practice, by May 2024, [the Student] will respond/initiate to [*sic*] social situations within school routines; including structured routines (e.g. completing an academic task, group work or gathering materials) and unstructured routines (e.g. when transitioning to/from classes, in the hallway, at lunch, etc.) in 4 out of 5 presented and observed opportunities.”

“Objective 1: [The Student] will respond to greetings/social initiations of others, both peers and adults, in unstructured and structured routines across all school settings in 4 out of 5 presented and observed opportunities.”

“Objective 2: [The Student] will initiate social conversations/interactions with



others, both peers and adults, in situationally and relationally appropriate ways (maintaining appropriate space/distance) using intentional verbal/nonverbal communication across all school settings in 4 out of 5 presented and observed opportunities.”

“Objective 3: [The Student] will ask and gain permission entering into someone’s personal space in 4 out of 5 opportunities.”

“Communication Annual Goal: Given visual and verbal cues, [the Student] will improve expressive and receptive language skills by utilizing story grammar and appropriate sequencing in order to clearly retell a story with 80% accuracy in 4 out of 5 trials during structured activities.”

“Objectives 1: Given a graphic organizer and faded cues, after hearing a story read aloud, [the Student] will state the story elements (e.g. characters, setting, plot, solution) with 80% accuracy in 4 out of 5 trials.”

“Objective 2: [The Student] will answer comprehension questions relating to events of a story or informative text read aloud with visuals, with 80% accuracy in 4 out of 5 trials.”

“Objective 3: Given faded cues, [the Student] will make an inference relating to the events of a story with 80% accuracy in 4 out of 5 trials.”

“Writing Annual Goal: By May 2024, given an outline or graphic organize [sic] [the Student] will write a paragraph that includes a topic sentence, 3 supporting details and a concluding statement with 80% accuracy in 4 out of 5 trials with no more than 2 prompts as measured by student work samples and teacher collected data.”

“Objective 1: [The Student] will use proper punctuation (period, question mark, exclamation point, comma, and quotations) in his writing with no more than two prompts with 80% accuracy in 4 out of 5 trials.”

“Objective 2: [The Student] will independently (without prompting) use appropriate spacing, write within a defined space and use appropriate pencil pressure in [their] writing with 80% accuracy in 4 out of 5 trials.”

“Reading Annual Goal: By May of 2024, [the Student] will read text at [their] independent reading level and be able to identify the main idea and 3 supporting details with 80% accuracy on 4 out of 5 trials measured by curriculum based measurements and teacher collected data.”

“Objective 1: [The Student] will increase reading comprehension and fluency to a beginning 4th grade level text (Level Q Fountas and Pinnell) with 80% accuracy in 4 out of 5 trials.”

“Objective 2: [The Student] will increase vocabulary knowledge and usage by identifying; antonyms, synonyms, adjectives, root words and suffix’s from word lists (comprised of 10 words) at his current instructional reading level with 80% accuracy in 4 out of 5 trials.”

“Objective 3: [The Student] will read dates in context using month, day, and year with 80% accuracy in 4 out of 5 trials.”

“Objective 4: [The Student] will use context clues to determine the meaning of

unfamiliar words in reading materials with 80% accuracy In 4 out of 5 trials as measured by data collection.”

“Math Annual Goal: By May 2024, [the Student] will increase [their] conceptualization of math skills by identifying and using the appropriate math operation (adding, subtracting, multiplying, and/or dividing) to solve math problems with 80% accuracy in 4 out of 5 trials.”

“Objective 1: [The Student] will be able to identify and compare fractions of equal value from a visual representation with 80% accuracy in 4 out of 5 trials.”

“Objective 2: [The Student] will be able to solve math problems involving fractions with like denominators using basic math functions (addition and subtraction) with 80% accuracy in 4 out of 5 trials.”

“Objective 3: [The Student] will be able to solve math problems involving money where [they are] expected to determine the price of the item and then round up to the next dollar with 80% accuracy in 4 out of 5 trials.”

“Objective 4: [The Student] will memorize multiplication facts 0-9 without the use of a multiplication chart with 80% accuracy in 4 out of 5 trials.”

“Functional Annual Goal: By May 2024, when given a task for direction, [the Student] will begin the task within one minute and remain on task for a minimum of 5 minutes independently with no more than 2 prompts in 4 out of 5 trials as measured by teacher observation and data collection.”

“Objective 1: [The Student] will gather appropriate materials for the given class/activity by following an informal checklist in 4 out of 5 trials.”

“Objective 2: [The Student] will complete a task at his level and then begin on the next task independently (without prompting) in 4 out of 5 trials.”

- h. Specially Designed instruction (SDI) (all SDI except Communication provided in the resource room)

Communication, 60 minutes/month (provided in all school sites)

Reading, 60 minutes/week

Written Language, 60 minutes/week

Math, 60 minutes/week

Functional Skills, 90 minutes/week

Social Skills, 45 minutes/week

- i. Related Services Team determined not needed

- j. Supplementary Aids/Services; Accommodations (except as indicated below, all provided in all school sites)

“As needed/offered, the Student will be able to take preferred electives.”

“Social skills prompting through the day to help facilitated communication with same

age peers and adults.”

“Sensory/movement breaks, scheduled or as requested.”

“Teaching mode: Visual/verbal cueing to encourage independence in navigating structured and unstructured routines.”

“Adult assistance available throughout all aspect[s] of [the] day to promoted [sic] independence and preparedness as well as social skills support.”

“Sensory supports when directed or requested through the day to minimize stress and stimming, to help with focus, and for maintaining alertness.”

“Positive reward system to encourage independence and progress in work tasks.”

“Visual/concrete supports for learning and reg. [sic] (e.g. Social Narratives). When teaching new concepts, new social skills, different classrooms, unfamiliar routines, unfamiliar assemblies [sic] high sensory events, safety drills, and new expectations.”

“School to home communication. Daily—to communicate academic, social and behavioral information; sensory supports. Periodic—work samples for new and advanced skills with prompting noted.”

“Advanced Technology: Accessibility features standard computers. To include access to word processing program (keyboarding) for longer writing assignments.”

“Pre-teach instructional vocabulary for the writing process, new learning, math problems, science vocabulary, social skills.”

k. Supplementary Aids/Services; Modifications

“Instructional materials: Modified curriculum.”

“Alternate grade scale for all of [the Student’s] general education classes.”

l. Program Modifications/Supports for School Personnel

Consultation: Speech/Language Pathologist, 120 minutes yearly (Resource Room)

Consultation: Autism, 360 minutes yearly (Resource Room)

Consultation: To teaching staff (General Education Classroom)

Consultation: Occupational Therapy (All School Sites)

m. Non-Participation Justification

“[The Student] will spend five periods per day (approximately 265 minutes) in the resource room to work on his specific goals, practice previously taught skills, social skills, work on practical application and conceptualization, as well as life skills. [The Student] responds well to a high level of structure and adult support in a less distracting environment. This setting provides the materials, support, and pace that he needs in order to be successful.”

n. Extended School Year (ESY)

“[The Student] does not experience regression on IEP goals and objectives after breaks. [The Student] does not experience a prolonged recoupment period of time to relearn previously learned skills.”

3. On May 10, 2023, the team made a placement determination based on the IEP completed on the same day. The placement option selected provided for specially designed instruction (SDI) in core academics and functional academics in the resource room. This placement enabled the Student to participate in the general education setting during non-core academic times such as electives, PE, science, social studies, and extra-curricular activities.
4. Meeting Notes from May 10, 2023 describe a detailed review of the District’s draft IEP. The Special Education Teacher read each section of the IEP. The Parents, their Advocate, and the Tutor contributed their thoughts on each item. The team made changes to some goals and added at least one objective. The Parents asked for a typing goal, and the team discussed adding a typing goal to the Student’s writing objective, but the notes are unclear about what the team agreed about adding a typing goal or objective. At the end of the time scheduled for the IEP meeting, the team agreed to meet again on May 12.
5. Meeting Notes from May 12, 2023, describe a continuation of the IEP review and revision process. The Parents and their Advocate asked questions, and District staff members of the team replied to each question. The Parents asked for changes in how the goal criteria are described, and some IEP language was revised after discussion. Because of the Student’s gains in reading fluency and lagging progress in comprehension, a reading objective was changed from fluency to comprehension. The Parents asked about adding a video-making goal and a leadership class. The Director replied these would not be goals because the Student was already making videos and video-making does not address core content. The District members of the team answered questions from the Parents, their Advocate, and the Tutor about sensory breaks, social stories, and work samples sent home.
6. The District provided no PWN after the May 18, 2023 IEP meeting.
7. District staff believed that the IEP developed at the May 10 and 12 meetings was in effect immediately, and staff implemented that IEP for the last month of the school year.
8. On June 9, 2023, the Parents received IEP Progress Reports less than a month after the May 10 IEP went into effect. Staff progress comments are summarized below:
  - a. Social Skills: The Student did not meet criteria (80% accuracy in 4/5 observations) for the annual goal or any of the three objectives.
  - b. Communication-Language: Progressing. The SLP referred to the IEP present levels in the IEP and stated that the Student had done a great job in speech therapy.
  - c. Communication-Speech: The SLP referred to the IEP present levels.
  - d. Writing: In a one-paragraph-writing trial after May 10, the Student scored 80% accuracy, including a topic sentence, three details, and proper punctuation. The Student used proper spacing and pencil pressure with 78% accuracy.
  - e. Reading-Fluency: No reading-fluency progress report for this reporting period.
  - f. Reading-Comprehension: The Student read a story and was able to provide the

main idea and one supporting detail. The Student was not assessed on the reading-comprehension objectives during this grading period.

- g. Math: The Student scored 80% on 3/5 word problems involving addition, subtraction, and multiplication. The Student was able to identify the value of a fraction with visual representation with 80% accuracy in 1/5 trials. The Student was able to answer 12 multiplication flashcards without using a multiplication chart. The Student was not assessed on two objectives during the reporting period.
  - h. Functional: Progressing. The Student was able to initiate a task within one minute and stay on task for at least 5 minutes in 1/5 trials. The Student was able gather materials without prompting from a checklist in 1/5 trials. The Student was able to complete one task and initiate the next task independently in 0/5 trials.
9. In early June (June 4 according to the District and June 15 according to the Parents) the Parents received a paper copy of the Student's IEP. Attached to a paper copy of the IEP that the Parents received was a Post-It note with a handwritten message from the Special Education Teacher stating: "This does not have to be the final copy – look it over and let me know if I missed something.
10. The Parents believed that they had the option of making changes to the IEP, but they delayed responding to the invitation to let the Special Education Teacher know of any concerns about the IEP. They waited until August 28 to reply because they thought the Special Education Teacher would not be available during the summer break.
11. On August 24, 2023, the Director finalized the IEP. The Director explained to the Department's Investigator that finalizing involves a final step in the IEP software the District uses that converts a draft IEP to a completed IEP. "[W]e go through and make the changes that were determined in an IEP meeting. ... It's a click of a button in our computer system that no longer makes the document editable." When asked what might change in an IEP after the meeting and before the IEP is finalized, the Director said that it was minor, non-substantive changes, and added, "So a change like that is not going to affect goals. It's not going to affect accommodation services. It's not going to affect any part of their student's education. And so that is a change that we can do." The Director stated that the IEP developed on May 10 and 12 was complete and went into effect immediately. The Special Education Teacher and the Director told the Investigator that they wanted to keep lines of communication open and make sure parents had their voice in the IEP process, so asking the Parents to look over the IEP after the meeting seemed like a way to make sure everybody felt good about what was happening.
12. On August 28, 2023, the Parents replied to the Special Education Teacher with an extensive and detailed list of requested corrections to the IEP and to the Meeting Notes, based on their own recollection and that of their Advocate about what the team decided in the May 10 and 12, 2023 IEP meetings. Their requested changes are summarized as follows:
- a. Parent Input: The Parents expressed concern about a lack of data on IEP goals and objectives and lack of progress reporting on objectives and on the Student's communication goal. They also want the IEP to reflect their concern about "a lack of time" the Student spends with neuro-typical peers.
  - b. The Parents asked for changes in the descriptions of criteria for achieving IEP goals and objectives: The Parents asked for consistency across all goals and

objectives in describing criterion: 80% accuracy in 4/5 opportunities.

- c. The Parents asked that the Student's communication-language goal be rewritten to reflect their recollection of the Team decision, as follows: "given reminders and opportunities to practice, [the Student] will improve expressive and receptive language skills by utilizing story grammar and appropriate sequencing in order to clearly retell a story with 80% accuracy in 4 out of 5 trials during structured activities".
  - d. The Parents asserted that the Team had decided to add an objective for typing an email or sentence within a certain amount of time. The Parents stated that the team has also agreed to "extend sentences to include a conjunction or adjective".
  - e. The Parents complained that the Student's Reading goal was unchanged from the previous year and asked for a correction to the IEP goal to change the word "comprehension" to "main idea and 3 details". The Parents also said that the team agreed to add an objective for "reading fluently at level S".
  - f. The Parents asked for a correction to Math Objective 3 to include rounding up and rounding down to the next dollar.
  - g. The Parents said their thought the Team had decided to add an objective for division fact families.
  - h. The Parents asserted that the Team had agreed to "add an objective such as: Given a \$10 bill, [the Student] will purchase pre-determined items with a budget and calculate the total with 80% accuracy in 4/5 trials."
  - i. The Parents asked for a correction removing the word "independently" in the Student's functional annual goal.
  - j. The Parents asked for a change in the Student's "visual/concrete supports" accommodation deleting the word "unfamiliar" and adding "introducing new staff".
  - k. The Parents also asked for corrections to spelling, punctuation, and typographical errors.
13. After receiving no response to their August 28 email asking for IEP changes or corrections, the Parents sent the Special Education Teacher a follow-up request for changes on September 21, 2023, requesting a status update.
  14. On October 5, 2023, the Director emailed the Parents a response to the Parents' August 28, 2023 request for IEP corrections and changes
  15. On October 7, 2023, the Parents replied that they wanted to schedule an IEP meeting. In this message, they responded that "it would have been nice to know there was a deadline" for making changes in the May 10 IEP.
  16. On October 9, 2023, The Director replied as follows:

"In the future, I will send you a Prior Written Notice when the IEP is finalized. Two weeks is an appropriate timeframe for making any adjustments that do not affect goals, services, and accommodations—as these would require an IEP amendment. ... I'm sending you some information about ODE facilitated IEP meetings, as I believe this would be a beneficial avenue for us to use, moving forward."

17. On October 10, 2023, the Parents replied:

“[We] don’t see a reason to include ODE for a facilitated meeting<sup>3</sup>. We think the IEP meetings go well and ODE facilitation wouldn’t resolve this issue as it is outside the IEP meeting.”

18. On October 5, 2023, the District gave the Parents a PWN, which read as follows:

“This is in response to the email sent August 28, 2023 in regards to requesting revisions to the draft IEP that was provided to you on June 4, 2023 and emailed, per your request, on June 14, 2023. The IEP was finalized on August 24, 2023 due to the start of the year and not receiving feedback. Because the IEP is finalized, we are unable to make revisions at this time without a team meeting. The IEP you were provided in June is the one that the district has and will continue to be implemented. If you would like to meet as a team for a revision please let me know and we will get that scheduled.

This action is proposed because: The district finalized the IEP on 8/24/2023 due to the lapse in time without feedback from the parent and the school year starting.

This Action is based on the following evaluation procedures, tests, records, or reports: Internal review of process. Review appropriate actions for amend [*sic*] the IEP.

Other options we considered were: Revising the IEP by written agreement or holding an IEP meeting to discuss parent changes/requests.

We rejected those options because: The IEP was finalized on 8/24/2023. The district is offering to meet with the parent as soon as an IEP meeting can be scheduled to discuss the parent’s additional requests and/or changes to the IEP.

Any other factors considered by the team: The school year has begun and the district finalized the IEP in order to ensure that [the Student’s] IEP was in place to be implemented on the first day of school. The changes requested will not affect [the Student’s] education, goals, and service provision.”

19. On October 9, 2023, the Parents sent a letter to the District’s Superintendent reiterating their concerns about the IEP and their challenges in obtaining what they saw as necessary corrections to the IEP. The Parents complained that they had not been informed that the IEP had been finalized for five weeks after requesting revisions. The Parents wrote, “[t]his lack of communication is impeding the IEP process and not allowing [us] to be effective members of the IEP team. ... Please let us know how the District would like to move forward.”

20. On October 23, 2023, the Advocate emailed the Director, copying the Parents and the Special Education Teacher. The Advocate stated that some other school districts would “occasionally agree to refine the IEP language via group email, all the discussion and paperwork is handled via email.”

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<sup>3</sup> ODE does not directly facilitate IEP meetings. ODE contracts with neutral facilitators to support IEP facilitation.

21. On October 18, 2023, the Director replied to the Advocate expressing confusion and suggesting that an “IEP amendment would be more appropriate---especially since we seem to have different understandings about what was agreed upon.” The Director suggested that IEP facilitation could be helpful because of a “disconnect between school and home about what we agree to at our IEP meeting.” The Director added that, “In the future, I will provide a date that the IEP will be finalized so that there are no surprises.”
22. On October 31, 2023, the Director replied in depth to the Parents’ August 8, 2023 request to make corrections and changes to the IEP. The Director agreed to add Parent input and to make some changes but provided sections of the May 10 and 12 Meeting Notes that were not consistent with the Parents’ recollection of the team’s decisions (as itemized in a PWN dated 11/13/2023).
23. On November 7, 2023, the Parents replied to the Director’s October 31 response to the Parents’ August 28, 2023 request for corrections and changes to the IEP. The Parents reiterated their disagreements with the District.
24. On November 8, 2023, the Parents received IEP Progress Reports that showed the following:
  - a. Social Skills: Progressing. Progressing. The Student met accuracy criterion in 0/5 observations for the annual goal and the “initiating social conversations” objective. The Student met the accuracy criterion in 2/ 5 observations toward the “responding to greetings” objective and in 1/5 observations toward the “gaining permission” objective.
  - b. Communication-Language: The SLP reported that the Student was making progress in using a graphic organizer to guide recognition of story elements and understanding the feelings of characters in the story. The Student met the criterion of identifying all story elements in 2/3 trials, and most of the story elements in 1/3 trials. The Student was able to answer comprehension questions with 100% accuracy in 2/2 trials. The Student was able to make inferences in a story with 71% accuracy in 1/1 trial.
  - c. Communication-Speech: Progressing. The SLP reported that the Student could state or recall two clear speech strategies in 2/3 trials when given verbal and visual cues and was able use clear speech strategies to produce understandable speech with 63% accuracy in one trial and 100% accuracy in another trial. The SLP did not report progress on the Student’s third objective because it had not been worked on during the reporting period.
  - d. Writing: Progressing. The Student is making good progress toward the annual goal, writing a paragraph with 80% accuracy using a graphic organizer in 3/5 trials. The student is making progress on the objectives, scoring 80% accuracy in punctuation in 1/5 trials and scoring 80% in 2/5 trials.
  - e. Reading-Fluency: Progressing. The Student read a level S passage with 80% accuracy in 3/5 trials. The Student did very well overall but struggled with multisyllabic words or words that do not follow spelling rules. The Student did not work on the objective during this progress report period.
  - f. Reading-Comprehension: The Student read a level Q text and scored 44%, 33%, and 60% in the first three trials. When assessed at a lower reading level, the



Student scored 33% on trials 4 and 5. The Student did not work on objective 1. For objective 2, the Student was observed using context clues to determine the meaning of unfamiliar words with 80% accuracy in 1/5 trials.

- g. Math: The Student scored 80% on 3/5 word problems involving addition, subtraction, and multiplication. The Student was able to identify the value of a fraction with visual representation with 80% accuracy in 0/5 trials. The Student was not assessed on two objectives during the reporting period. The Student has shown great improvement in memorization of basic multiplication facts, scoring 80% in 3/5 trials.
- h. Functional: Progressing. The Student was able to initiate a task within one minute and stay on task for at least 5 minutes in 0/5 trials. The Student was able gather materials without prompting from a checklist in 0/5 trials. The Student did not work on objective 2 during this reporting period.

25. A PWN dated November 13, 2023 itemized the changes to the Student's IEP made without a meeting by agreement of the District and the Parent. The PWN included the following verbatim content:

"The district received a request on 8/28/2023 to amend [the Student's] IEP, dated 5/10/2023. After back and forth communication via email and documents, the district response is as follows. Items have been numbered for simplicity and that document is attached to this response for reference. The IEP will reflect the following changes:

1. "Input from parents will be amended and include the date. It will read as follows: On 8/28/23, parents requested that the previously listed concerns be removed and changed. Parents are concerned about the lack of data reporting on IEP goals and objectives on IEP, noting not all objectives have data reported each progress report as required and no LEA reporting on social communication annual goal or objectives over the first 3 required reporting progress reports. Parents are also concerned about the lack of time [the Student] spends in the classroom with neurotypical peers."

2. "not all objectives have data reported each progress report 'as required'..... Response: The district will continue to report on annual goals for every reporting period. Objectives do not require reporting with progress reports but will have updated information if they have been addressed during the reporting period. No change to the IEP at this time."

3. "Social skills: adding 'reported'" as well as 80% of the time in 4 out of 5 presented, reported, and observed opportunities. Resolved and updated."

4. "Criteria changed to 80% of the time in 4 out of 5 presented, reported, and observed opportunities. With the adjustment in criteria, the district will change "how progress will be measured" to include work samples in all goal areas."

5. "Wording in the Communication-Language goal. Resolved and updated."

6. "Writing goal: grammatical correction and typing objective request. The team agreed to focus on vocabulary first, as a stronger vocabulary will assist in meeting all goals and be multi-functional. Typing can be a part of lesson planning but not a separate objective. If this is still a concern when he is in high school, this request can be addressed in [the Student's] transition page. No change to the IEP at this time."

7. "Reading: The goal will be separated into two goals: one for reading fluency and one

for reading, comprehension. Updated.”

8. “Math Objective 3 (rounding): the underlying reason for teaching rounding and money is for budgeting purposes. This would indicate that a primary focus is rounding up, as we want to ensure we have the right amount of money to make purchases. If this is still a concern when he is in high school, completing taxes and other more complex math problems can be addressed in the transition page. We are still building foundational skills and learning to conceptualize numbers. No change to the IEP at this time.”

9. “Math (fact families): multiplication is taught using memorization strategies. Division is the inversion of this. Once this knowledge is acquired, division will be introduced. The first step in this process is knowing multiplication facts. After those are obtained, ‘the concept of division is introduced. No change to the IEP at this time.”

10. “Math (budgeting and calculating): no new objective and no change to the IEP at this time. Resolved -- no update.”

11. “Functional annual goal. No response, deleted independently per parent request. Resolved.”

12. “Functional Objective 1 (informal checklist): The district will continue to meet [the Student] at his current level of understanding. Our goal is independence and, depending on the day/stressors/environment, that level can change. Goal will remain as it is written in the IEP. No changes to the IEP will be made at this time.”

13. “Accommodations (visual/concrete supports): At this time, the district has anecdotal data and observations to support [the Student’s] need for visual and concrete supports as used for learning and regulation. The language will remain as it is stated in the IEP, which states, “When teaching new concepts, new social skills, different classrooms, unfamiliar routines, field trips, unfamiliar assemblies, high sensory events, safety drills, and new expectations. “The district will continue to monitor [the Student’s] responses to a variety of situations and provide support as needed.”

“The revised IEP will be sent with this notice.”

26. An IEP identified as a November 14, 2023 amendment to the May 10, 2023 IEP includes all changes indicated in the District’s November 13, 2023 PWN.

27. On December 6, 2023, the Director sent an email to the Parents, informing them that District staff members of the Team were available to meet on December 12. The Director added:

“You mentioned that you wanted to address [the Student’s] writing goal, math goal, functional goal, social communication goal, and visual/concrete accommodations; these goal areas and accommodations were discussed through our email communications 8/29/23, 10/31/23, 11/7/23 and 11/14/23, with the district’s reasoning and justification provided. These response regarding these areas of the IEP were outlined in the prior written notice you received 11/15/2023. Do you have any new or additional information or data for the team to review or consider that would warrant another amendment to the current IEP? This information would make an IEP amendment necessary and appropriate in order to make changes.”

“If there is no new or additional information but you’d still like to discuss what was addressed in our written amendment and outlined in the prior written notice, we can

certainly consult with specialists and meet informally to discuss the district's IEP decisions.”

28. On December 11, 2023, the Advocate sent an email to the Director, copying the Parents and the Special Education Teacher. The Advocate stated that the family would like to proceed with an IEP [meeting] to consider the additional information of how the Student had progressed over the months since the May 10 IEP went into effect. The Advocate specified that the Parents wanted to discuss: the criterion for the Social Skills goal, a writing goal involving email use, math goals involving rounding up and rounding down, and accommodations to include checklists with photos or images. The Advocate also asked the Director to connect the Parents to an ODE IEP meeting facilitator and to provide a reference from ODE on whether progress reporting was necessary for IEP objectives.
29. On December 11, 2023, the District sent a Special Education Notice of Team Meeting to the Parents for a meeting to be held on the following day.
30. December 12, 2023, the IEP Team met to discuss possible revisions to the IEP. Meeting Notes added to the May 10 Meeting Notes summarize the team's discussion:

The Parents expressed concern about not getting progress reports on all goals and objectives for each reporting period. The Special Education Teacher and Director explained that progress reports were required for goals but not objectives.

The Team discusses the Parents' request for a writing goal for email use. The Director replied that they needed baseline data before developing a new goal. The Team agreed that getting baseline data by the end of January would be sufficient.

The Team discussed the need for rounding up and/or rounding down as part of a math goal. The Director said that the District's math specialist had recommended focus on rounding up as a more functional skill before teaching the more conceptual skill of rounding down.

The Team discussed the Parents' request for a visual checklist. District staff members of the Team report that the Student responds well to verbal prompts, that [they read and understand] written prompts, and that pictures prompts are a lower level skill that does not promote the Student's independence.

The Team agreed to add an accommodation for the use of social stories for introducing new staff.

31. On December 12, 2023, the District gave the Parents a PWN dated November 14, 2023 that included a brief update that reads as follows in its entirety:

“The team met to review the IEP revisions that were made 11/14/2023. No changes were made to the revised IEP. Clarification of accommodations were discussed and “unfamiliar staff members” was added as a specific example of when social narratives could be used. Parents signed a written agreement to excuse the OT but, because the IEP was not amended, it is not needed. Input from parents, [the Student's] tutor, [the General Education Teacher], the [Special Education Teacher], [the Autism Consultant], and [the SLP] was received. Since our annual IEP meeting in May, [the Student] has received the services and accommodations that were outlined in the amended IEP, which has been finalized. There has been no lapse in services or denial of FAPE.”

32. On February 5, 2024, the Parents emailed the Special Education Teacher asking for the

status of typing baseline data.

33. On February 5, 2024, the Parents received IEP Progress Reports that showed the following:
- a. Social Skills: Progressing. The Student met accuracy criterion in 2/5 observations for the annual goal. The Student met the accuracy criterion in 3/5 observations toward the “responding to greetings” objective, in 1/5 observations toward the “initiating social conversations” objective, and in 3/5 observations toward the “gaining permission” objective.
  - b. Communication-Language: Progressing. The SLP reported that the Student was able to meet criteria for recognizing story elements in 5/5 trials, for answering comprehension questions in 4/5 trials, and making inferences in 3/3 trials.
  - c. Communication-Speech: Progressing. The SLP reported that the Student could state or recall 3 clear speech strategies in 5/5 trials when given verbal and visual cues and was able use clear speech strategies to produce understandable speech with 80% accuracy in one trial and 70% accuracy in another trial. The Student made progress on the third objective, using clear and intelligible speech, with 80% accuracy in 2/2 trials.
  - d. Writing: Progressing. The Student was able to write paragraphs with 80% accuracy in 3/5 trials. The Student is working on writing emails, using a graphic organizer. The student is making progress on the objectives, scoring 80% accuracy in punctuation in 4/5 trials and 80% in spacing in 3/5 trials.
  - e. Reading-Fluency: Progressing. The Student read a level S passage with 80% accuracy in 4/5 trials. The Student did very well overall but struggled with multisyllabic words or words that do not follow spelling rules. The Student scored 15/22 on the objective.
  - f. Reading-Comprehension: Progressing. The Student read a level Q text and scored 90% for comprehension. The Student is increasing vocabulary and scored with 40% accuracy. The Student is using context clues to determine the meaning of unfamiliar words with 80% accuracy in 1/5 trials.
  - g. Math: The Student scored 80% on 1/5 word problems involving multiplication or division. The Student scored 80% on 1/5 word problems involving addition and subtraction. The Student was able to identify the value of a fraction with visual representation with 80% accuracy in 3/5 trials. The Student scored 0/9 when given the price of an item and asked to round up to the next dollar. The Student has shown great improvement in memorization of basic multiplication facts, scoring 80% in 4/5 trials. The Student did not work on objective 2 during this reporting period.
  - h. Functional: Progressing. The Student was able to initiate a task within one minute and stay on task for at least 5 minutes in 2/5 trials. The Student was able gather materials without prompting from a checklist in 3/5 trials. The Student was able to complete one task and initiate the next task independently in 0/5 trials.
34. On February 7, 2024, the Special Education Teacher sent the Parents an email describing in detail the teaching process and the data collected on the Student’s emailing skills. Attached to the email were samples of the Student’s work. The Special Education Teacher reported being pleased with the Student’s ability to follow streamlined directions.

35. On March 29, 2024, the Director emailed the Parents copies of assessment reports to be used in the Student's upcoming eligibility meeting. The Parents replied that they did not feel a need to go into depth on assessment scores because they "see [the Student] making progress."
36. Meeting Notes from April 3, 2024 describe an eligibility meeting for the Student, including discussion as follows:
- a. A report from the SLP describing the Student's strengths in voice, enunciation, sentence structure, and story retell. The SLP indicated that visual cues are powerful for the Student.
  - b. A psychoeducational report from a school psychologist: The Special Education Teacher and the Parents expressed disagreement with the Student's cognitive test scores. The school psychologist suggested that the results from a non-verbal assessment might look different.
  - c. A report from the Autism Specialist, who indicated that the Student was showing increased independence and social responsiveness.
  - d. A report from the OT, describing the Student's ability to remain regulated and focused. The OT stated that the Student's handwriting and keyboarding looked really good.
  - e. The team agreed that the Student was eligible for special education.
37. On April 9, 2024, an ODE-contracted IEP facilitator contacted the Director and the Parents to begin the process of scheduling a facilitated IEP meeting.
38. On April 12, 2024, the Parents received IEP Progress Reports that showed the following: : (D790-804)
- a. Social Skills: Progressing. The Student met accuracy criteria in 4 of 5 observations for the annual goal. The Student met the accuracy criteria in 4 of 5 observations toward the "responding to greetings" objective, in 3 of 5 observations toward the "initiating social conversations" objective and achieves the "gaining permission" objective when reminded or pre-corrected.
  - b. Communication-Language: Progressing. The SLP reported that the Student had mastered the annual language goal, met criteria for 2 objectives, and was close to meeting criteria for the third objective.
  - c. Communication-Speech: Progressing. The SLP reported that the Student had achieved mastery of objective 1 and was very close on objective 2. The Student demonstrated the use of clear speech strategies to produce understandable speech in 3/5 trials and was almost at mastery level in 2/5 trials. The Student achieved 80% accuracy on objective 3 in 3/4 trials.
  - d. Writing: Progressing. The Student met criteria for the annual goal, with 80% accuracy in 4/5 trials. The Student needs prompting to stay on task. The student continued to progress on the objectives, scoring 80% accuracy in punctuation in 4/5 trials and 80% accuracy in using proper spacing in 4/5 trials.
  - e. Reading-Fluency: Progressing. The Student read a level S passage with 80% accuracy in 4/5 trials. The majority of errors were skipped or blended words. The

Student scored 17/22 on the objective.

- f. Reading-Comprehension: The Student read a level Q text and scored 46%. On a pre-test, the Student was given a short vocabulary list and scored 0%; after practice, the Student scored 100% on the post-test. The Student struggles with longer vocabulary lists even with extensive practice. The Student is using context clues to determine the meaning of unfamiliar words with 80% accuracy in 2/5 trials.
- g. Math: The Student scored 80% on 4/5 word problems involving multiplication or division with teacher prompting and a checklist. The Student scored 80% on 1/5 word problems involving addition and subtraction. The Student was able to identify the value of a fraction with visual representation with 80% accuracy in 5/5 trials. The Student scored 17/21 when given a list of two-digit numbers and asked to round up to the 10s place. When asked to round up from the cost of an item to the next dollar, the Student scored 2/10. When given a budget and the cost of an item, the Student was able to write how many dollars they would need in 5/5 trials. The Student scored 38/40 on a multiplication facts assessment.
- h. Functional: Progressing. The Student was able to initiate a task within one minute and stay on task for at least 5 minutes in 3/5 trials. The Student was able gather materials without prompting from a checklist in 5/5 trials. The Student was able to complete one task and initiate the next task independently in 1/5 trials when in a general education classroom. The Student does better in the resource room with a checklist or reminders that he has multiple steps to complete.

39. On April 15, 2024, the Parents filed this Complaint.

#### IV. DISCUSSION

##### **IEP Team Considerations and Special Factors**

The Parents allege that the District violated the IDEA by not considering the Parents' concerns and unilaterally rejecting accommodations requested by the Parents.

Oregon administrative rules and federal special education regulations provide that, in developing an IEP, an IEP team "must consider ... the concerns of the parents for enhancing the education of their child."<sup>4</sup> The IDEA does not define what consideration by the team should look like, but the plain language of the IDEA and its implementing regulations indicate that an IEP team cannot unilaterally make decisions about the content of an IEP without taking into account input from parents.

In this case, the team met repeatedly and for extended periods of time. At these meetings, the Parents had ample opportunity to share their thoughts and preferences. The District provided draft IEPs to the Parents in advance of IEP meetings, enabling the Parents to consider the District's proposed IEP content and to bring to the meeting their own suggested content. The documentary record does not indicate an unwillingness to listen and consider the Parents' ideas. Instead, it details lengthy discussions in which the Parents, their advocate, and the Student's private tutor all contributed.

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<sup>4</sup> OAR 581-015-2205(1)(b) and 34 CFR §300.324(a)(ii)

The Department does not substantiate this allegation.

### **Content of IEP**

The Parents allege that the District did not revise the Student's IEP as necessary to meet the Student's special education needs.

An Individualized Education Program (IEP) is a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability<sup>5</sup>. The definition of IEP<sup>6</sup> in the federal IDEA regulations specify that an IEP must be developed, reviewed, and revised in accordance with regulations describing required participants, the process of development, review, and revision of the IEP, and IEP implementation.<sup>7</sup> These federal regulations and state administrative rules are unambiguous in their requirement that an IEP is to be developed by an IEP team that includes the parents<sup>8</sup>, that occurs in the context of a meeting of the entire IEP team<sup>9</sup>, unless the district and parent agree in writing that one or more team members' attendance is not required or they can be excused, or the school district is unable to convince the parents to participate.<sup>10</sup>

At an IEP meeting to develop or review and revise an IEP, the IEP team must review all required IEP components, including as relevant to this Complaint:

A statement of the student's present levels of academic achievement and functional performance, including how disability affects the student's involvement and progress in the general education curriculum;

A statement of measurable annual goals, including academic and functional goals, (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives);

A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the student;

The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications;

An explanation of the extent, if any, to which the child will not participate with children

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<sup>5</sup> OAR 581-015-2000 (15)

<sup>6</sup> 34 CFR §300.23

<sup>7</sup> OAR 581-015-2190 through 581-015-2235; 34 CFR §§300.320 through 300.324

<sup>8</sup> OAR 581-015-2210; 34 CFR §300.321

<sup>9</sup> Under some circumstances, the parents and district may agree in writing to excuse the attendance of one or more members of the IEP Team. OAR 581-015-2210(3); 34 CFR §300.321(e).

<sup>10</sup> OAR 581-015-2190(5); 34 CFR §300.322(d)

without disabilities in the regular class and activities; and

A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments.

Although parents are not entitled to participate in informal or unscheduled conversations among school staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision<sup>11</sup>, nothing in the language of the IDEA or in special education case law suggests that school districts have absolute discretion over choice of instructional methodology. All aspects of a student's special education are open for discussion at an IEP meeting, and the IEP team should consider methodology.<sup>12</sup> If the IEP team does not reach agreement on IEP content, including what methodologies a school district should use to address a student's special education needs, the District may make a decision it deems necessary to provide FAPE. A school district should be mindful of the requirement that whatever methodology plays a role in a student's special education must enable the student to make progress, and that progress must be appropriate in light of the student's circumstances<sup>13</sup>.

All the of the Student's IEPs in effect during the Complaint period included all required IEP components. The Parents' disagreement with the District is not whether the components are not addressed but rather that some specific IEP content differs from their preferences. For example, the Parents want the Student's IEP to include an accommodation for picture and text reminders rather than just text for a checklist. District members of the IEP team did not agree that the Student needed pictures, as [they] had moved beyond a need for that sort of support and that the Student responded quickly to simple verbal reminders. Similarly, the Parents wanted the IEP to include an accommodation for visual concrete support for every school assembly. District staff said the Student was accustomed to assemblies of all sorts and did not appear to experience stress. Although the Student's progress toward some specific objectives was slow, the Student made substantial progress overall toward achieving IEP goals.

The Parents expressed dissatisfaction at not receiving progress reports on every IEP goal and objective at every reporting period, but the IDEA requires progress reporting only on annual goals and not objectives. Furthermore, neither the IDEA nor the Student's IEP required the District to work on every goal during every reporting period.

The Department does not substantiate this allegation.

## **Parent Participation**

The Parents allege that the District violated the IDEA by preventing meaningful parent participation. Specifically, the Complaint alleges that the District delayed giving a copy of the Student's IEP for extended periods of time.

The right to parent participation is one of the core principles of the Individuals with Disabilities Education Act (IDEA). Parents are members of their children's IEP teams,<sup>14</sup> and The Office of Special Education Programs (OSEP) at the US Department of Education, has long interpreted

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<sup>11</sup> OAR 581-015-2190(4); 34 CFR §300.501(b)(3)

<sup>12</sup> Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176, 207 (1982)

<sup>13</sup> Endrew F. v. Douglas Cnty. Sch. Dist, RE-1, 137 S.Ct. 988, 1001 (2017)

<sup>14</sup> OAR 581-015-2210(1)(a); 34 CFR §300.321(a)(1)



the parent role as “equal participants along with school personnel, in developing, reviewing, and revising the IEP.”<sup>15</sup> The US Supreme Court has repeatedly emphasized the critical role of the parents as IEP team members.<sup>16</sup>

Parents of children with disabilities are entitled to participate in numerous decision-making processes:

Parents have the right to participate in meetings related to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE)<sup>17</sup>. The right of parents to participate in meetings is not unlimited. School personnel are not required to include parents in “informal or unscheduled conversations ... on issues such as teaching methodology, lesson plans, or coordination of service provision.”<sup>18</sup>

School districts must schedule meetings at a mutually agreeable time and place and must provide notice of meetings sufficiently in advance to ensure that parents have an opportunity to attend.<sup>19</sup> The meeting notice must describe the purpose of the meeting, identify who will attend, and inform parents that they may invite persons who have special knowledge or expertise about the child.<sup>20</sup>

Parent participation is not a *pro forma* exercise. The US Supreme Court has stated that developing an appropriate IEP is a “fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.”<sup>21</sup>

In this case, the Parents have been actively engaged in IEP development. They have attended all IEP meetings, along with their Advocate and the Student’s private Tutor. The District has not attempted to limit the Parent’s involvement in IEP decision making. Meeting Notes, the District’s *Response*, the Parents’ *Reply*, and interviews with all parties evidenced the Parents’ involvement in developing the Student’s IEP and monitoring its implementation.

The Department does not substantiate this allegation.

## **IEP Team**

The Parents allege that the Director rather than the IEP team as a whole had made decisions about IEP content.

The IDEA provides that the IEP team as a whole develops a student’s IEP.<sup>22</sup> The IEP team includes one or both parents, the student (if appropriate), at least one regular education teacher, at least one special education teacher or related services provider, a district representative, an individual who can interpret the instructional implications of the evaluation results, other persons who are invited by the school district or the parent who has knowledge or special expertise about the student, and transition service representatives (if appropriate).<sup>23</sup>

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<sup>15</sup> 34 CFR Appendix A to Part 300 (1999)

<sup>16</sup> Bd. of Educ. v. Rowley, 458 U.S. 176 (1982); Schaffer v. Weast, 546 U.S. 49 (2005); Endrew F v. Douglas County School Dist. RE-1, 580 US 386 (2017).

<sup>17</sup> OAR 581-015-2190(1); 34 CFR §300.501(1)

<sup>18</sup> OAR 581-015-2190(4); 34 CFR §300.501(3)

<sup>19</sup> OAR 581-015-2195(1); 34 CFR §300.322(1)

<sup>20</sup> OAR 581-015-2190(2); 34 CFR §300.501(2)

<sup>21</sup> Endrew F. at 999

<sup>22</sup> 34 CFR 30.320(a)

<sup>23</sup> OAR 581-015-2210; 34 CFR §300.321

While the IDEA assigns responsibility for IEP development to the IEP team, it is silent on the mechanism for IEP Team decision making. The US Department of Education (US DOE), as the designated administrative agency authorized to implement the IDEA has long described the role of parents as “equal participants with school personnel” in developing, reviewing, and revising a student’s IEP.<sup>24</sup> The US DOE further explained that, while IEP teams should strive for consensus and that a majority vote was inappropriate,<sup>25</sup> if the IEP team is unable to reach consensus, the school district “must provide the parents with prior written notice of the district’s proposals or refusals.”<sup>26</sup> OSEP consistently applies this interpretation in advisory letters. For example, in Letter to Richards, OSEP explains:

“The IEP Team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child. The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based on a majority “vote.” If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency’s determinations regarding the child’s educational program and of the parents’ right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint.<sup>27</sup>”

In this case, the IEPs and Meeting Notes provided by the District, as well as interviews with the Parents and District staff demonstrate that the IEP team engaged in extensive discussion. However, it became clear that consensus was elusive on a few specifics of the Student’s IEP. The District had both the authority and the obligation to proceed with an IEP that the District believed necessary to provide FAPE.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education (FAPE)**

The Parents allege that the District has violated the IDEA by not providing to the Student an IEP that is reasonably calculated to enable the Student to make progress in light of the Student’s circumstances.

School districts must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the district is responsible. The IDEA defines FAPE as special education and related services that:<sup>28</sup>

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the [state educational agency];
- c. Include an appropriate preschool, elementary school, or secondary school education;

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<sup>24</sup> Appendix C to Part 300: Notice of Interpretation, Q.26 (1981); Appendix A to Part 300: Notice of Interpretation, Q.5 (1999).

<sup>25</sup> Appendix A at Q.9

<sup>26</sup> Id.

<sup>27</sup> 55 IDELR 107 (OSEP 2010)

<sup>28</sup> 34 CFR §300.17

and

- d. Are provided in conformity with an individualized education program (IEP).<sup>29</sup>

The IDEA does not include a standard for determining whether a school district has provided FAPE. However, in 1982, the US Supreme Court articulated a two-prong FAPE test that includes procedural and substantive elements:

- a. Procedural: Did the school district comply with IDEA procedural requirements, and
- b. Substantive: Was the IEP reasonably calculated to enable the child to receive educational benefit?<sup>30</sup>

Not all procedural violations amount to a denial of FAPE. However, a district's procedural violation(s) deny FAPE to a student if they result in loss of educational opportunity or if they seriously infringe the parents' opportunity to participate in IEP development.<sup>31</sup> If procedural violations alone constitute a denial of FAPE, it is unnecessary to address the second prong of the FAPE inquiry.<sup>32</sup>

If a school district demonstrates that it observed IDEA's procedural requirements, the question remains whether the IEP is substantively adequate. When this is the case, it is necessary to determine whether the IEP enabled the student to benefit.

In a 2017 decision the US Supreme Court attempted to clarify a substantive standard for educational benefit.<sup>33</sup> The Court held that "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and added that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act."<sup>34</sup> The Court emphatically rejected the "merely more than *de minimis* standard that prevailed in some US Circuit courts and elaborated that an IEP must be "appropriately ambitious" and that "every child should have the chance to meet challenging objectives"<sup>35</sup>.

In this case, the District complied with most of the procedural requirements of the IDEA. The IEP Team, which includes the Parents, developed an IEP that was reasonably calculated to enable the Student to benefit from their educational program and to make progress appropriate in light of the Student's circumstances. The Parents were active IEP Team members, involved in every decision.

The Parents pointed to the Student's relatively slow progress toward a few IEP goals as proof that the District denied FAPE to the Student. The District monitored the Student's progress regularly. In those instances where there were concerns about the Student's progress, the staff made adjustments to instructional strategies and assessed their effectiveness.

The IDEA does not guarantee that a Student will meet all IEP goals that the IEP team

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<sup>29</sup> OAR 581-015-2040

<sup>30</sup> *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

<sup>31</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

<sup>32</sup> *Id.* at 1485

<sup>33</sup> *Andrew F. v. Douglas County Sch Dist RE-1*, 137 S.Ct. 988 (2017)

<sup>34</sup> *Id.* at 999

<sup>35</sup> *Id.* at 1000

anticipated would be attainable. Rather, it envisions a process for review and revision of the IEP when it becomes evident that it is necessary to ensure that a student is receiving a FAPE. The District convened IEP meetings and engaged in dialogue with the Parents again and again to address the Parents' concerns and made changes in the IEP as determined by the Student's team. This Student participates and is making progress.

The Department does not substantiate this allegation.

### **Additional Finding**

#### **Prior Written Notice (PWN)**

The IDEA requires school districts to give parents PWN within a reasonable period of time before a school district it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>36</sup> PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning.

Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

In this case, the District sent only three PWNs during the Complaint period. There was no PWN following the May 10 and 12 IEP meetings. These meetings yielded a revised annual IEP, which went into effect immediately after the May 12 meeting. The technical requirements of the District's IEP software included a review to make sure all IEP components were present followed by pushing a button to convert the IEP document from a draft that could be edited to a non-editable IEP document. Completing this software process does not "finalize" an IEP for IDEA purposes. The determination of the IEP Team that the IEP had been reviewed, revised, and was ready to implement, followed by a PWN satisfies IDEA requirements and sends a clear message to parents that the IEP development or revision process is complete. At no point during the Complaint period did the District give the Parents PWN of its proposal to implement

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<sup>36</sup> OAR 581-015-2310; 34 CFR §300.503(a)

the Student's newly revised and already implemented May 10, 2023 IEP.

The first PWN the Parents received during the Complaint period was sent on October 5, 2023, almost five months after the May 10 effective date of the IEP and about six weeks after the Parents asked for edits and corrections in the May 10 IEP. This PWN was issued to notify the Parents of the District's refusal to adopt the edits and corrections that the Parents asked for. The second PWN was dated November 13, 2023 and notified the Parents of the District's proposals to make some changes in the May 10 IEP and refusal to make other changes. This PWN appears to have been timely. The third PWN was exceptional that it was actually the November 13, 2023 IEP with a single paragraph at the top summarizing the December 12 IEP meeting and thus did not comply with IDEA requirements for PWN explaining the District's decisions.

For each decision a school district makes regarding a child's special education, regardless of whether the decision is a proposal or refusal or whether it is to initiate or change something about a child's special education, the IDEA mandates prior written notice explaining the school district's decision. PWN must be provided after a decision is made but before it is implemented by the school district in order to give parents "a reasonable time to fully consider the change and respond to the action before it is implemented."<sup>37</sup> The Parents in this Complaint were never given PWN of the Team's decisions in the May 10 IEP or the District's plan to immediately implement the IEP, leaving the Parents with the impression that the IEP decision-making process was ongoing.

**V. CORRECTIVE ACTION**  
*In the Matter of Perrydale SD 21*  
*Case No. 24-054-023*

Based on the facts provided, the following corrective action is ordered.

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
<b>Staff Training</b>  The District must ensure that all District staff responsible for serving students with disabilities receive training in the in timely provision of Prior Written Notice a reasonable time before the District proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a student with a disability.	Training agenda and materials to ODE for review/approval.  Sign-in sheet for training.	October 1, 2024  January 15, 2025

Dated: this 9th Day of August 2024

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<sup>37</sup> OSEP Letter to Chandler, 59 IDELR 110 (2012)

*Ramonda Olaloye*

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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: August 9<sup>th</sup>, 2024

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14)).