

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Portland School District 1J)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 24-054-047

I. BACKGROUND

On August 14, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Portland School District 1J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On August 22, 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 September 5, 2024.

The District submitted a *Response* on August 29, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District’s Written *Response* to Complaint, 8/29/24
2. Exhibit List, 8/29/24
3. Individualized Education Program (IEP), 5/8/24
4. IEP Progress Report, 6/16/24
5. IEP Meeting Minutes, 5/8/24
6. Special Education Placement Determination, 5/8/24
7. Notice of Team Meeting, 5/8/24
8. Prior Written Notice (PWN), 5/8/24
9. IEP Progress Report, 2/2/24
10. IEP Progress Report, 4/5/24

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

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

11. Special Education Placement Determination, 5/24/23
12. PWN, 5/24/23
13. IEP Meeting Minutes, 5/24/23
14. Notice of Team Meeting, 5/24/23
15. IEP, 5/24/23
16. Early Childhood Special Education Evaluation Report, 12/6/22
17. Individualized Family Service Plan (IFSP), 1/5/23
18. Statement of Eligibility for Special Education (Communication Disorder), 12/6/22
19. Written Agreements between the Parent and the EI/ECSE Program, 1/5/23
20. Authorization to Use and/or Disclose Educational and Personal Health Information, 1/6/23
21. PWN, 1/5/23
22. Authorization to Use and/or Disclose Educational and Personal Health Information, 1/5/23
23. Written Notice to Parent - Proposed Use of Public Insurance by School District/ECSE Program, 1/5/23
24. Prior Notice and Consent for Initial Provision of Special Education Services, 1/5/23
25. Notice of IFSP Team Meeting, 12/9/22
26. PWN, 12/6/22
27. Health, Hearing and Vision Annual Review, 12/6/22
28. Early Childhood Vision/Dental Screening Certification, 8/14/18
29. Evaluation Planning/Eligibility Meeting Notes, 12/6/22
30. Prior Notice About Evaluation / Consent for Evaluation, 12/6/22
31. Notice of IFSP Team Meeting, 9/22/22
32. 54 Month ASQ-3 Information Summary, 12/6/22
33. Email exchange between District Staff and Parents, 9/14/23 - 7/4/24
34. List of District Staff, 8/29/24

The Parents submitted documents on August 23, 2024. The Parents submitted a *Reply* on September 6, 2024, providing an explanation and rebuttal. The Parents submitted the following relevant items:

1. *Reply*, 9/6/24
2. Email exchange between District's Senior Director of Schools and Parent, 7/2/24 – 7/4/24
3. Email from District's Senior Director of Schools to Parents, 8/15/24
4. District's Guidance for K-5 Retention, 2024-25 School Year
5. Parents' Document – "Reasons for [the Student] to be retained in kindergarten," 4/25/24
6. Report Card for the Student, 2023-24 school year
7. Letter from Private Speech Therapist, no date
8. Letter from Student's Pediatrician, 5/31/24
9. Emails from Parents to District's Regional Superintendent, 5/22/24 and 5/31/24
10. K-5 Retention Consideration Form, 4/23/24

The Complaint Investigator interviewed one of the Parents on September 11, 2024. From September 10 to 12, 2024, the Complaint Investigator interviewed District personnel. Virtual

interviews were conducted instead of on-site interviews. 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 August 15, 2023, to the filing of this Complaint on August 14, 2024.

Allegations	Conclusions
<p>IEP Content</p> <p>The Parent alleges that the District violated the IDEA when it failed to include specific special education and related services and supplementary aids and services in the Student’s IEP necessary to fully address the Student’s needs that result from the Student’s disabilities.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>Not Substantiated</p> <p>There is no evidence that the Student’s IEPs were inappropriate or failed to address the Student’s disability related needs. The Parent’s concerns were not related to the Student’s special education services or supports.</p>
<p>Parent Participation</p> <p>The Parent alleges that the District violated the IDEA by interfering with the Parent’s ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</p>	<p>Not Substantiated</p> <p>The District did not interfere with the Parent’s ability to participate in the IEP process. The Parent’s belief that the District’s retention process was not transparent or that information was withheld from the Parent was not related to the Student’s special education.</p>

REQUESTED CORRECTIVE ACTION
<p>The Parents requested the following corrective action:</p> <ul style="list-style-type: none"> • Allow Student to repeat kindergarten and have time to get caught up on their speech goals before concrete literacy instruction.

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 August 15, 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 six years old and in the first grade.
2. The Student is currently eligible for special education services under the category of Speech or Language Impairment.
3. On January 4, 2021, the Student "was evaluated for speech services with Early Intervention" and "has been receiving speech services since then."
4. The Student also started receiving private speech services while in preschool.
5. A December 6, 2022 Early Childhood Special Education Evaluation Report included the following information, among other things:
 - a. "Results of this assessment indicate that [the Student] demonstrates speech skills which are significantly discrepant when compared to same-aged peers."
 - b. The Student demonstrated "delayed patterns, sound substitution or errors," "Intelligibility (ability to be understood): 50%," and "frustration/awareness when not understood."
 - c. "Social-emotional development appears to be on schedule."
6. On December 6, 2022, the local Early Childhood Program found the Student eligible for special education under the category of Communication Disorder. The statement of eligibility noted that the Student met the criteria for phonological or articulation disorder.
7. The Student's January 5, 2023 Individualized Family Service Plan (IFSP) included the following, in relevant part:
 - a. Services: One hour per week of direct speech language therapy at the Student's preschool, as well as one hour per month of collaborative consultation services.
 - b. "[The Student's] speech is not understood by others. [The Student] is not able to articulate [their] wants and needs. [The Student] frequently becomes frustrated when [they are] not understood."
 - c. Five expressive communication goals were included, "to increase overall intelligibility."

8. On May 24, 2023, the District convened a virtual IEP meeting to develop the Student's initial IEP in anticipation of the Student's transition to kindergarten.
9. The May 24, 2023 IEP (May 2023 IEP) included the following, in relevant part:
 - a. Parent Concerns: The Student's Parents (the Parents) "want [the Student] to be understood by adults and [the Student's] peers. They want [the Student] to be able to say what [the Student] wants to say and not be afraid of how it may sound. They are worried [the Student's] self esteem [sic] may be impacted by [their] articulation errors... has done well in [their] speech therapy sessions, but [the Student] gets frustrated when parents want to practice."
 - b. Present Levels:
 - i. "Expressive Communication: only artic [sic] goals."
 - ii. "Artic [sic] goals:/f/, /s/ and /s/ blends, /k/, /g/, /l/, and /l/ blends, /ch/, /sh/, /dj/, /zh/, syllable deletion- nana for banana."
 - c. How the student's disability affects involvement and progress in the general education curriculum: "[The Student's] articulation errors may make it hard for others to understand what they are saying."
 - d. Measurable Annual Goals: One communication goal, to increase intelligibility and demonstrate measurable progress by meeting short term objectives for producing specific sounds with 80% accuracy (/f/; /k/ and /g/; /ch/ and /sh/; /dj/ and /zh/; /s/ and /s/ blends; /L/ and /L/ blends; and include all consonants and syllables in words).
 - e. Specially Designed Instruction (SDI): Communication (210 minutes per quarter), to be provided by the Speech/Language Pathologist (the SLP).
 - f. Accommodations: "The team considered the need for supplemental aids, services, and accommodations and determined that they are not needed."
 - g. Supports for School Personnel: "None Needed."
 - h. Non-Participation Justification: "[The Student] will be removed from [their] general education classroom setting for less than 1% of the school day."
10. The District's May 24, 2023 Meeting Minutes stated, "Team reviewed IEP for next year. Goals were based on [the Student's] progress notes from EI."
11. The District's May 24, 2023 Special Education Placement Determination selected "80% or more of day – Regular Class," from the two placement options listed.

12. On September 5, 2023, the Student started school as a kindergartener at a District elementary school (the School) in a Dual Language Immersion program, “where instruction is given in both Japanese and English in a 50/50 model.” The Student had two teachers, one for instruction in English (the English Teacher) and another for instruction in Japanese (the Japanese Teacher). The first half of the Student’s school day was in Japanese and the second half was in English.
13. On September 13, 2023, the Parents emailed the Speech Language Pathologist (SLP) at the School to ask if the Student was receiving speech services. The SLP responded on September 14, 2023, stating services would “start today or tomorrow”, and noted that the SLP had pushed into the classroom during the first week to avoid interrupting students getting familiar with new school routines.
14. A December 4, 2023 IEP Progress Report for the Student stated, “[The Student] produced /l,k,g,f/ in words and phrases with 80% accuracy. [The Student] produced the /s/ and /l/ blends in sentences with 80% accuracy given cues. The /sl/ blend is the most challenging but [the Student] can correct [themselves] if given a model/cue. [The Student] has been working on the ‘sh’ and ‘ch’ at the sound level and it has been observed that in conversation [sic], [the Student] is developing more accuracy with these sounds in some contexts.”
15. A February 2, 2024 IEP Progress Report for the Student stated, “sh=with cues in initial words= produced an approximate sound in 70%... [The Student] continues to benefit from cues to increase accuracy for the /l/ and /l/ blends.”
16. In a March 12, 2024 email, the Parents asked the Student’s teachers, “I’m wondering... how ready you think [the Student] is for first grade... I worry about [the Student] being a [child] with a speech impediment and [a late summer] birthday. This has been a little rough with some emotional meltdowns, especially at the beginning of the school year, and I’m wondering if [the Student] carries anxiety around being behind [their] peers.”

The English Teacher responded on March 14, 2024, stating, “[The Student] is young, but has made progress over this year. When [the Student] was first assessed, [they] stated that [they didn’t] know letters, and started with 0 letters, so [the Student] has made steady progress this year. Were you asking if [the Student] should be held back a year? This is not something we generally do except in very special circumstances.”

The Japanese Teacher responded on March 15, 2024, stating, “[The Student] seems emotionally young and learning Japanese might not have been easy. However, [the Student] has been growing and gaining skills in Japanese. I can see [the Student] is getting more confident as well. I think if we continue to encourage [the Student] to participate in learning activities at school and home, [the Student] should be ok.”

17. The English Teacher stated the Student self-reported that they did not know any letters at the beginning of the 2023-24 school year. The English Teacher was unsure if this was accurate or if the Student did not respond to questions about letters because they were shy.

18. For the second half of the school year the School switched the kindergarten schedule, with English instruction for the first half of the day and Japanese for the second half.
19. In an April 3, 2024 email to the Student's Parents, the Japanese Teacher noted that the schedule change had been hard for the Student.

The Parent's' email response stated, "by the end of school day [the Student] is a bit stressed out (tantrums after [the Student] gets home are not uncommon) so it makes sense [the Student] isn't able to focus." They were trying to work on practicing Japanese at home, but the Student was "generally resistant to practice after the school day."

20. In an April 4, 2024 email to the Parents, the Japanese Teacher wrote, "[the Student] is young but we know [the Student] is doing [their] best, we are all doing our best to help [the Student], and [the Student] keeps growing. I wouldn't push and force [the Student] when [they are] exhausted and stressed..."

21. An April 5, 2024 IEP Progress Report for the Student stated, "In conversation, [the Student] does still produce some gliding by producing a /w/ for an /l/ but [the Student is] more accurate with this sound in structured activities and when given cues... continues to show progress with 'sh' sound in initial words given cues. [The Student has] been working on the 'j' sound and frequently will produce a /z/ sound but has worked on tongue placement... and has produced a more approximate 'j' sounds... [The Student has] shown consistent accuracy with the /f/ sound at the word and sentence level given cues."

22. In an April 12, 2024 email to the School Principal (the Principal), the Parents wrote, "[The Student] is extremely young for [their] grade. [The Student] has been struggling this year. [The Student's] speech has been an issue since [the Student] started talking. Last year [the Student] began seeing a speech therapist through our insurance and [the Student] is slowly improving. After speaking with the SLP, I am learning that speech is closely linked to literacy – it's difficult to learn to read and write before you can pronounce phonemes and morphemes correctly. I feel that [the Student] would definitely benefit from another year of kindergarten and another year of speech therapy before moving forward to first grade..."

The Principal responded and offered to meet with the Parents in person to review the Student's progress and discuss "what potential types of support we can offer."

23. On April 23, 2024, the Parents met with the Principal to discuss their concerns and request for the Student to be retained in kindergarten the following school year.

The Parents reported that they were not given any information about the District's policy on retention or the retention consideration process at this meeting.

24. In an April 25, 2024 email to the Parents, the Japanese Teacher shared that the Student had been doing well lately but had engaged in disruptive behavior that day which affected other students' learning environment.
25. The Parents created an April 25, 2024 document titled, "Reasons for [the Student] to be retained in kindergarten," which they provided to the District. The document contained the following, among other things:
- a. The Student should be retained in kindergarten because of their late birthday, speech delay, academic metrics, the Student's Private SLP's recommendation and concerns that speech delays can influence literacy skills, signs of increased stress (meltdowns, bedwetting) since starting kindergarten, and concerns about safety.
 - b. Safety: With another year of learning and development, the Student "would be better equipped to handle potential social challenges."
 - c. "[The Private SLP] recommends keeping [the Student] in kindergarten another year so [the Student] can receive more speech therapy before the rest of the class jumps ahead to reading when [the Student] will likely be unable to fully participate, thus beginning a pattern of disengagement and negative feelings about school."
26. The Parents attached an undated letter from the Student's Private SLP to the April 25, 2024 document, which stated, "Due to the importance of speech sound development for reading readiness and overall academic success, I also recommend keeping [the Student] behind for another year in kindergarten... This will help [the Student] build a stronger foundation in both speech and literacy skills, ultimately setting [the Student] up for greater success in the future."
27. On May 8, 2024, the District convened a virtual IEP meeting to review and develop the Student's annual IEP.
28. The May 8, 2024 IEP (May 2024 IEP) included the following, in relevant part:
- i. Parent Concerns: The Student has improved a lot but still has trouble with certain things, including struggling with major sounds and saying their own name. The Parents are worried that speech errors are going to impact the Student's reading.
 - j. Present Levels: Under Communication Progress, it was reported that the Student "has shown accuracy during structured activities producing the /f,k,g,s,l/ and /s/ and /l/ blends in sentences with 80% accuracy. [The Student] is also producing these sounds with more accuracy during conversation although [the Student] does sometimes produce /w/ for /l/ in some words... has also been working on the 'ch', 'j' and 'zh' sounds. Given models and cues, [the Student is] showing some approximation with these sounds at the sound and syllable levels but not consistent accuracy in words yet..."

- k. Measurable Annual Goals: One communication goal, to improve speech by meeting short term objectives for producing specific sounds with 80% accuracy (/l/ and /l/ and /s/ blends; 'sh'; and 'ch', 'zh', 'j', /r/, and /th/).
 - l. SDI: Communication (remained at 210 minutes per quarter).
 - m. Accommodations/Supports for School Personnel: None needed.
 - n. Non-Participation Justification: Removal remained at "less than 1% of the school day."
29. The May 8, 2024 Meeting Minutes did not include any additional information on IEP team discussions and did not mention the retention request. Under the discussions for Annual Goals, Services, and Placement, the District wrote, "reviewed and team agreed."
30. The May 8, 2024 Special Education Placement Determination again selected "80% or more of day – Regular Class," from the two placement options listed.
31. On May 8, 2024, the District issued PWN for the "Provision of FAPE." The PWN did not mention the retention request.
32. The IEP team members reported the following about the May 8, 2024 IEP meeting:
- a. The English Teacher and the Japanese Teacher could not remember anything specific about the meeting or any discussions that occurred.
 - b. When asked about related services and supplementary aids and services, the SLP stated the team would have reviewed these but could not recall any specific discussions. With direct speech services, the SLP reported it was appropriate to not include any additional supports or services. The SLP could not recall any discussions about retention, behavior, safety, or other concerns.
 - c. The Parent reported they brought up the Private SLP's recommendation for retention but could not recall if the Private SLP's letter was reviewed at the meeting. The Parent brought up the retention request at the end of the meeting but was given the impression that it was not something they were allowed to talk about at the IEP meeting. The Parent stated that the IEP meeting was only 30 minutes long and they felt like there was not time to discuss their literacy concerns, among other things. The Parent was surprised that the Principal did not attend the meeting, considering the pending retention request and ongoing discussions with the Principal.
33. In a May 10, 2024 email to the Parents, the Principal stated they were working on the retention request and wrote, "So far I am finding that the district does not approve these types of requests due to the research that shows it is not supportive of student learning or growth. However, I continue to look into the process for further evaluating your request."

34. On May 16, 2024, the Parents emailed the English Teacher and the Japanese Teacher to report that the Student had an altercation with a peer during afterschool care.
35. A May 22, 2024 email from the Principal to the Parents stated, "I have gathered data, checked with our school team at [the School] and met with our Senior Director, and the decision has been made to deny the request to have [the Student] repeat kindergarten next year. Based on the evidence provided and gathered, it was not found that [the Student] has made inadequate levels of progress that show [the Student] would not find success in 1st grade next year. There were also many concerns expressed about [the Student's] social-emotional wellbeing and a lack of academic engagement from repeating the same curriculum next year, even if [the Student] did have new teachers..."
36. In a May 22, 2024 email to the District's Regional Superintendent, the Parents stated they wanted to appeal the Principal's decision, and included the following:
- a. They cited the District's policy for the promotion and retention of students, which stated "there will be a careful review of physical development, psychological development, emotional maturity, and social development."
 - b. They expressed concern that the Principal based the denial on data gathered, but this data had not been shared with the Parents.
 - c. They expressed concern that their April 25, 2024 reasons for retention had not been acknowledged, and included an additional list of reasons the Student should be retained in kindergarten.
 - d. They noted an incident that occurred the previous week in which a peer "trapped [the Student] against some playground equipment and repeatedly stomped on [the Student]," and stated they had "concerns about [the Student] being vulnerable as the most immature one in the class."
37. The Parent reported that the District failed to provide the Parents with relevant information on the District's retention consideration process. The Parent eventually discovered the District's policy and guidelines for retention, but they were never provided with this information during the process. The District's "Guidance for K-5 Retention" stated school principals should meet with families to discuss their retention concerns and, if a student has an IEP, the "IEP team should be included in this meeting."
38. On May 29, 2024, the Japanese Teacher emailed the Parents to report disruptive behaviors, including the Student "[n]ot getting in line, not coming to the carpet, during the instruction time, not doing tasks." The Japanese Teacher expressed concern that the Student was choosing to be with a peer who made bad decisions. The peer identified was the same peer who hurt the Student during the May 16, 2024 incident after school.

39. In a May 30, 2024 response to the Japanese Teacher, the Parents shared that they talked to the Student about the issues raised and wrote, “I do think [the Student] is extremely immature for [their] grade because of [their] age and speech disorder, and I worry that this is going to be a reoccurring problem if [the Student] doesn’t get held back like we’ve requested. [The District] is saying it wouldn’t be good to hold kids back because it separates them from peer groups, but this seems to be the opposite of what [the Student] needs.”

The Japanese Teacher’s response stated, “[The Student] has the skills and abilities to be successful. Choosing to be with [their] friends who guide [the Student] to make good choices seems the key for [the Student], since [the Student] is more of a follower. I feel that sticking to this group and going to 1st grade gives [the Student] more access to friends who can support [the Student].”

40. On May 30, 2024, the Regional Superintendent upheld the Principal’s denial of the retention request and commented, “In reading the child’s information, it just seems to me that the kid might be a late bloomer. So, we continue to monitor [them].”

41. On May 30, 2024 the Principal emailed the Parents a copy of the District’s completed Retention Consideration Form and stated, “I referred your request to our Senior Director and Regional Superintendent. Both have denied your request based on the growth [the Student] has made this school year. Our team believes that retaining [the Student] can be harmful on a social-emotional level, and [the Student] has shown enough academic progress to begin the 1st grade with additional support as needed from [their] teachers and support team at school.

42. The Parent reported that the “additional support” available to the Student was never identified by the District.

43. The District’s “K-5 Retention Consideration Form for 2024-25 SY” for the Student included the following, in relevant part:

- a. The retention request was made on April 12, 2024 and a meeting was convened between the Parents and the Principal on April 23, 2024. The Parents’ April 2024 concerns were included.
- b. The request was denied by the Principal and the Senior Director of Schools (the Senior Director) on May 17, 2024, as well as by the Regional Superintendent on May 30, 2024.
- c. The form noted the Student had an IEP.

44. In a June 2, 2024 email to the Principal, the Parent expressed concern that they emailed the Regional Superintendent on May 25, 2024 with their reasons for appealing the decision, including “details of an incident that occurred after our initial meeting that raised additional concerns about [Student’s] safety in [their] current peer group,” but did not receive a reply. Additionally, as the Parents’ updated concerns were not noted on the Retention Consideration Form, the Parent had emailed the Regional Superintendent again. The Parent

asked the Principal to confirm that that Regional Superintendent received the Parent's emails. The Parent also attached a letter from the Student's pediatrician.

45. The letter from the Student's Pediatrician, dated May 31, 2024, stated that based on the Parents' report, "[the Student] is having symptoms related to stress" and recommended repeating kindergarten to "benefit [the Student's] mental and physical health."
46. A June 14, 2024 email exchange between the Parents, the English Teacher, and the Japanese Teacher, confirmed that for the following school year the Student would not be in the same class as the peer the Teachers and the Parents were concerned about.
47. The SLP reported the following about the Student and the 2023-24 school year:
 - a. At the beginning of the school year the SLP worked on early developing sounds with the Student, then moved on to later developing sounds. The Student was hard working and engaged. The Student made steady progress in speech sounds and intelligibility throughout the school year.
 - b. The Student was an effective communicator, very social and talkative, engaged with peers, and made friends.
 - c. When asked about literacy concerns, the SLP did not think the Student was behind in class and did not believe that any delay in learning letter sounds was necessarily related to the Student's speech disorder.
 - d. The SLP could not recall being asked by the Principal or other District personnel about the retention consideration.
48. Both the English Teacher and the Japanese Teacher reported the following about the 2023-24 school year:
 - a. The Student was quiet at the beginning of the school year but overall was very social and talkative with peers. The Student was well liked by others and seemed happy. When asked if the Student was misunderstood by peers or got frustrated or embarrassed by their speech, they were not aware of this ever occurring.
 - b. The Student had issues with one peer who had a negative effect on the Student's behavior, but they guided the Student to positive friendships and made sure the Student was put in a separate class for the 2024-25 school year.
 - c. The Principal checked in with them about their opinions on the retention consideration. Both believed that retention would have a negative effect on the Student, including the Student's confidence, motivation, and engagement in class, as well as their friendships with peers.

- d. The Student made progress throughout the year and, while on the less mature side and slower to progress in some areas, the Student was ahead of peers in other areas.

49. The English Teacher reported the following about the Student:

- a. The Student had difficulties with letter sounds and phonemic awareness but made a lot of progress throughout the year. Although it might have taken longer than others, the English Teacher believed the Student caught up to grade level by the end of the school year. Other students in the class struggled more in this area than the Student.
- b. They provided the Student with general education interventions, such as meeting with the Student in small groups to provide additional support in the classroom, providing preferential seating close to the Teacher, and other efforts to keep the Student's attention. The English Teacher noted that the Dual Language Immersion program can be difficult for students because they are expected to meet the same kindergarten benchmarks but only receive English instruction for half of the school day.

50. The Japanese Teacher reported that they did not have any trouble understanding the Student's speech. The Student did very well in their class, although the Student was more successful when the Student had Japanese in the first half of the school day.

51. One of the Parents reported the following about the 2023-24 school year:

- a. They had concerns about the Student's intelligibility and witnessed many examples of adults not understanding the Student, including when the Student said their own name.
- b. They had concerns that the Student was not able to communicate with friends or communicate boundaries to peers, which could result in safety issues. They were worried about the Student's elevated stress level and ability to advocate for themselves.
- c. They had concerns about literacy and that the Student's disability could make the normal challenges of learning to read even more challenging, although they acknowledged this was a potential problem, not a current problem.
- d. They agreed that the Student made a lot of progress, including on their speech goals. When asked if they thought the Student needed additional services, the Parent stated they did not want to increase the Student's removal time from class.
- e. The reason the Parents made the retention request was because of the Private SLP's recommendation. They felt that the District did not take their concerns seriously, did not appropriately consider information presented by the Parents, and did not fully respond to or address the Parents' concerns.

f. The Parents' special education concerns were not addressed in the Retention Consideration Form. If the District consulted with the IEP team about the retention consideration, the Parents were not informed.

52. The Student's June 16, 2024 IEP Progress Report stated, "[The Student] continues to benefit from verbal prompts/cues to increase accuracy with [their] target sounds. [The Student is] a hard worker! [IEP] held recently so data is consistent with the present level of [the Student's] current [IEP]." The IEP Progress Report did not include any measurable progress data.

53. In a June 20, 2024 email to the Parents, the Principal confirmed that the Regional Superintendent received all of the information provided by the Parents for the retention request. The Principal wrote, "[the Regional Superintendent's] response was based on the info you provided and your speech and medical concerns (stress / meltdowns / bedwetting) were included."

54. On July 2, 2024, the Parents emailed the Senior Director, indicating the Parents had questions about the decision to deny their retention request.

55. On July 3, the Senior Director called the Parents and had a discussion with them about their concerns.

56. On July 4, 2024, the Parents emailed the Senior Director, claiming the Parents' concerns were not adequately addressed on the Retention Consideration Form or in their appeal. The Parents were also concerned that the Regional Superintendent did not respond to the Parent's' emails.

The Senior Director's response reported that the Regional Superintendent did receive and consider all of the information carefully. Based on the information provided by the Parents and the School, "[the Student] will best be served continuing to first grade."

57. On August 14, 2024, the Parents filed this Complaint.

58. In response to the Complaint, the Senior Director emailed the Parents on August 15, 2024, maintaining that the School followed the District's retention process. "The school team considered [the Parents'] request carefully and looked at all of the data they had for [the Student] and they also utilized their experience working with [the Student] last year to arrive at their decision. This decision was reviewed by [the Regional Superintendent] at the time and then again by me in July... the decision for [the Student] to continue to 1st grade with [their] peers is a final one."

59. On August 27, 2024, the Student started first grade at the School.

IV. DISCUSSION

IEP Content

The Parent alleges that the District violated the IDEA when it failed to include specific special education and related services and supplementary aids and services in the Student's IEP necessary to fully address the Student's needs that result from the Student's disabilities.

An IEP must contain (1) a statement of the student's present levels of achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum; (2) measurable annual goals and a description of how the student's progress toward meeting the annual goals will be measured and reported; (3) a statement of the specific special education and related services and supplementary aids and services to be provided to the student; (4) the projected dates for initiation of services and the anticipated frequency, amount, location, and duration of the services; and (5) an explanation of the extent to which the student will not participate with children without disabilities in the regular class and activities.³

The specific special education and related services and supports to be provided must enable the student to (1) advance appropriately toward attaining annual goals; (2) be involved and progress in the general education curriculum; and (3) be educated and participate with other children with and without disabilities.⁴ The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁵ "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."⁶

In developing, reviewing, and revising a student's IEP, the IEP team must consider the strengths of the student; the concerns of the parents for enhancing the education of the student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.⁷ The goal in making IEP decisions is for the team to reach a consensus.⁸ Nonetheless, the school district is responsible for ensuring that the individual student receive FAPE.⁹ When consensus is not possible, the district must determine what services are necessary to provide FAPE.¹⁰

There were two IEPs in place during the Complaint period, the March 2023 IEP and the May 2024 IEP. Both IEPs included the same services, with 210 minutes of SDI in Communication per quarter. No related services, supplementary aids and services, or supports for school personnel were included. Both IEPs stated these were considered but the team determined that they were not needed. When asked, IEP team members could not specifically remember a discussion about accommodations or other supports. The District's Meeting Minutes did not provide any information about what was specifically discussed related to the Student's services.

³ OAR 581-015-2200(1); 34 CFR §300.320(a)

⁴ OAR 581-015-2200(1)(d); 34 CFR §300.320(a)(4)

⁵ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

⁶ *Id.* at 1000

⁷ OAR 581-015-2205(1); 34 CFR §300.324(a)

⁸ Letter to Richards (OSEP 1/7/2010)

⁹ *Id.*

¹⁰ *Id.*

The Parent argued that the Student's IEP did not address the Parents' concerns that led to the retention request, specifically that the Student was young, immature, below grade level in some academic areas, and the Student's speech delay might affect their access to literacy. However, the Parent could not identify any additional supports or services that should have been included in the Student's IEP. The Parent further stated that they did not want any increase in the Student's services that would result in removal from the general education classroom. The Parent acknowledged that the literacy issue was a concern about what may happen in the future, not an existing or current problem. While the Parent continued to have concerns about the retention issue and the District's decision-making process, these concerns were not related to the Student's special education.

All IEP team members reported that the Student made progress during the 2023-24 school year, in both the general education curriculum and on their IEP goals.

The Department does not substantiate this allegation.

Parent Participation

The Parent alleges that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.¹¹ Districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.¹² "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."¹³ While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."¹⁴

The Parents were provided the opportunity to participate in the IEP meetings held during the Complaint period. At the May 8, 2024 IEP meetings, the Parents expressed their concerns, which were noted in the IEP and the Meeting Minutes. It is unclear whether the Parents were told that they could not discuss the retention issue at the IEP meeting. The Parent reported that they felt like it was an issue that they were not supposed to discuss. The other IEP team members could not recall any specific information about the IEP meeting.

¹¹ OAR 581-015-2190(1); 34 CFR §300.322(a)

¹² OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

¹³ Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006)

¹⁴ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

The District responded to the Parents' concerns related to the retention request, through email, telephone, and an in-person meeting with the Principal. The Parent asserted the District was not transparent throughout the retention consideration process and withheld information. The Parent cited emails that were not responded to, although other District personnel involved confirmed that the Regional Superintendent did receive and consider all of the information provided by the Parents. Regardless, there is no evidence to suggest that this impeded the Parents' ability to participate in decisions regarding the Student's special education. The retention consideration was a general education issue.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

*In the Matter of Portland School District 1J
Case No. 24-054-047*

The Department does not order corrective action in this matter.

Dated: this 9th Day of October 2024



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: October 9th, 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).)