

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Beaverton  
School District 48J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 18-054-019

**I. BACKGROUND**

On March 12, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Beaverton School District 48J (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 it to the District on March 12, 2018.

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>

On March 16, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 30, 2018. The Parent and District agreed to attempt mediation. The timeline was tolled for mediation. Mediation was unsuccessful. A new response date was established for May 1, 2018. The District requested additional time to submit its response due to the voluminous records in this matter.

On May 8, 2018, the District submitted a *Response* indicating they disputed the allegations in the Parent's Complaint. In total, the District submitted the following items:

1. District Response
2. Chronological Educational Records Cover Sheet
3. Psycho-Educational Evaluation, 5/28/15
4. Academic File Review and Observation
5. Meeting Minutes
6. Medical Statement or Health Assessment Statement
7. Student IEP, 9/4/2015
8. Confidential Statement of Eligibility for Special Education, 9/4/2015
9. Statement of Eligibility for Special Education (Other Health Impairment 80), 9/4/2015
10. Student IEP, 6/15/2016
11. Notice of Team Meeting, 6/8/2016
12. Prior Notice of Special Education Action, 6/15/2016
13. Student IEP, 6/6/2017
14. Notice of Team Meeting, 6/6/2017
15. IEP Meeting Minutes, 6/6/2017
16. Prior Notice of Special Education Action, 6/6/2017

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

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

17. 6/6/2017 Student IEP, Amended 9/21/2017
18. Notice of Team Meeting, 6/21/2017
19. Prior Notice of Special Education Action, 9/21/2017
20. Written Agreements Between the Parents and the District, 9/22/2017
21. Level 1 Student Threat Assessment Inquiry and Screening, 9/27/2017
22. 6/6/2017 Student IEP, Amended 9/26/2017
23. Notice of Team Meeting, 9/28/2017
24. Meeting Minutes, 9/28/2017
25. Prior Notice about Evaluation/Consent for Evaluation, 9/28/2017
26. Authorization to Use and/or Disclose Educational and Protected Health Information, 9/28/2017
27. Trespass Warning, 10/18/2017
28. Sheriff's office report regarding trespass, 10/18/2017
29. Letter of Trespass Notice
30. Brief Functional Behavioral Assessment, 10/2/2017
31. Functional Communication Assessment, 10/16/2017
32. Occupational Therapy Evaluation, 10/20/2017
33. Psychoeducational Evaluation, 10/17/2017
34. Function—Based Behavior Intervention Plan (BIP), 10/18/2017
35. Function—Based Behavior Intervention Plan (BIP), 10/18/2017, Revisions:11/7/2017 and 11/17/2017
36. Student Safety Plan, 10/2/17, Revisions: 10/10/2017 and 10/17/2017
37. Student IEP, 6/6/2017, Amended 10/20/2017
38. IEP Meeting Minutes, 10/20/2017
39. Prior Notice of Special Education Action, 10/20/2017
40. District letter to Parent regarding IEE
41. Level 1 Student Threat Assessment Inquiry and Screening, 11/1/2017
42. Student Interview, 11/1/2017
43. Suicide Screening Form, 11/1/2017
44. Sexual Incident Inquiry Summary, 11/6/2017
45. Student Safety Plan, 10/2/17, Revisions: 10/10/2017, 10/17/2017, 11/7/2017
46. Student Safety Plan, 10/2/17, Revisions: 10/10/2017, 10/17/2017, 11/7/2017, 11/20/2017
47. Notice of Team Meeting, 11/7/2017
48. Notice of Team Meeting, 11/21/2017
49. Student IEP, 6/6/2017, Amended 11/20/2017
50. IEP Meeting notes, 11/30/2017
51. Authorization to Use and/or Disclose Educational and Protected Health Information, 11/20/2017 [marked "Revoked 3/16/18"]
52. Authorization to Use and/or Disclose Educational and Protected Health Information, 11/30/2017
53. Authorization to Use and/or Disclose Educational and Protected Health Information, 11/30/2017
54. Prior Notice of Special Education Action, 11/3/2017
55. Individualized Education Program, Portland Public Schools, 1/17/2018
56. Portland Public School Request for Student Records, 1/5/2018
57. Special Ed Student Contact Log, 03/04/2018
58. Notice of Team Meeting, 2/23/2018
59. Notice of Team Meeting, D272
60. Parent/Guardian Consent for Individual Evaluation
61. Authorization to Use/Disclose Protected Health Information, 2/28/2018
62. Medical Statement or Health Assessment Statement
63. Portland Public Schools Psychoeducational Evaluation, 3/6/2018
64. Portland Public Schools Eligibility Summary Statement, 03/06/2018
65. Portland Public Schools—Emotional Disturbance (60) Criteria
66. Portland Public Schools—IEP Team Meeting Minutes, 3/6/2018

- 67. Community Mental Health Provider Letter
- 68. Student Attendance Records
- 69. Student Discipline and Behavior Records
- 70. Correspondence between District and Parent, 2017
- 71. Correspondence between District and Parent, 2018

The Investigator interviewed the Parent. At that time, the Parent provided additional information. The Investigator determined that onsite interviews were necessary. The Investigator interviewed the District's Chief Human Resources Officer, School Psychologist, Elementary School Principal, and Assistant Director of Special Education with the District's Legal Counsel in attendance. The Investigator reviewed and considered all of the previously described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

On May 31, 2018, the issue date for this Order was extended once more, to June 18, 2018, due to a family emergency experienced by Department staff responsible for the order's issuance. Both the Parent and the District were notified of the extension.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>3</sup> The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from March 13, 2017 to the filing of this Complaint on March 12, 2018.

|           | <u><b>Allegations:</b></u>   | <u><b>Conclusions:</b></u>   |
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| <b>1.</b> | <p><u><b>Parent Participation</b></u></p> <p>The Parent alleges that the District violated the IDEA when the Parent was prevented from meaningfully participating in IEP and/or safety plan meetings through various means including: not responding to email, failing to share relevant information with Parent, issuing the Parent a trespass order, involving other state agencies, and not timely providing an appeal process.</p> <p>(OAR 581-015-2190, 34 CFR §§ 300.500, 300.327, 300.501(b))</p> | <p><u><b>Not Substantiated</b></u></p> <p>The Parent attended each of the Student's IEP Team Meetings. Despite the various concerns raised by the Parent, there appears to be no evidence that the Parent was hindered in any way from participating in IEP meetings or providing input regarding the Student.</p> |
| <b>2.</b> | <p><u><b>IEP Team</b></u></p> <p>The Parent alleges that the District violated the IDEA when it failed to include the Parent in IEP team decisions, and predetermined aspects of the Student's IEP.</p>  | <p><u><b>Not Substantiated</b></u></p> <p>The Parent was present at each IEP Team Meeting and provided input. At the final meeting before transferring the Student to a different district, the Parent agreed with the change in placement, but for different</p>  |

<sup>3</sup> 34 CFR §§ 300.151-153 and OAR 581-015-2030.

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|    | (OAR 581-015-2210, 34 CFR § 300.344, 300.321, 300.324(a)(3) & (b)(3))  | reasons than other IEP Team Members.   |
| 3. | <p><b><u>When IEPs Must Be In Effect</u></b></p> <p>The Parent alleges that the District violated the IDEA when District staff were unaware that the Student had an IEP, and/or were unaware of the content of the Student's IEP.</p> <p>(OAR 581-015-2240, OAR 581-015-2250(1)(b); 34 CFR § 300.114)</p>  | <p><b><u>Not Substantiated</u></b></p> <p>The District informed all staff responsible for implementing services and accommodations in the IEP. The Parent had advocated for educating all adult staff at the school of the Student's needs in hopes of staff better accommodating the Student's behavior issues.</p> |
| 4. | <p><b><u>Requirement for Least Restrictive Environment</u></b></p> <p>The Parent alleges that the District violated the IDEA when it failed to consider the least restrictive environment for the Student, and instead moved directly to suggesting a more restrictive environment.</p> <p>(OAR 581-015-2240, 34 CFR § 300.114)</p>  | <p><b><u>Not Substantiated</u></b></p> <p>When the District did consider a change in placement, the IEP Team discussed a range of options and rejected the more restrictive options. The placement determination was made with the Parent in agreement.</p>  |
| 5. | <p><b><u>Disciplinary Removals/Manifestation Determination</u></b></p> <p>The Parent alleges that the District violated the IDEA when it:</p> <p>(a) Failed to follow educational due process procedures when it removed the Student from his/her educational placement for more than 10 cumulative school days, and</p> <p>(b) Failed to conduct a manifestation determination to determine whether the Student's behavior was a manifestation of the Student's disability.</p> <p>(OAR 581-015-2415, 34 CFR §§ 300.504(a)(3), 300.530, 300.531, 300.532 &amp; 300.533)</p> | <p><b><u>Not Substantiated</u></b></p> <p>The Student was not removed from the educational placement for more than ten days. The requirement to conduct a manifestation determination review was not invoked.</p>  |
| 6. | <p><b><u>Denial of Free Appropriate Public Education</u></b></p> <p>The Parent alleges that the District denied the Student a Free Appropriate Public Education (FAPE) when the district failed to formulate adequate goals for the Student's IEP.</p>   | <p><b><u>Not Substantiated</u></b></p> <p>The District worked with the Student's community physician and mental health professional, and created supports and interventions in collaboration with those professionals. Following the Student's</p>   |

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|  | (OAR 581-015-2040, 34 CFR § 300.101, and OAR 581-015-2200, 34 CFR § 300.320) | transfer to a therapeutic school, other mental health professionals provided additional advice on the supports that the Student could benefit from. The Student's IEP goals were appropriate. |
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### III. FINDINGS OF FACT

1. The Student in this case is nine years old and resides within the Beaverton School District 48J (District) boundaries. The Student is eligible for Special Education under the category of Other Health Impairment and Emotional Disturbance.
2. The Parent and classroom teacher report concerns regarding the Student's behavior, specifically attention, hyperactivity, depression, and aggression.
3. The Student began the 2017-2018 school year exhibiting strong academic performance, on grade level with peers. The Student also demonstrated needs in the areas of impulsivity, and a need for support and coaching in pro-social behaviors. The Student further exhibited depression and suicidal ideation.
4. The Parent reported that the Student had been prescribed medication to address behavior issues, but that the Student had not taken that medication over the summer.
5. The Student's initial Individualized Education Program (IEP) for the 2017-2018 school year—dated September 4, 2017—noted needs in the areas of social/emotional/behavioral, and gross/fine motor skills.
6. The Student's September 4, 2017 IEP included a behavioral goal where, given 15 minutes of direct instruction the Student would demonstrate active listening and remain in the assigned space 70% of the time, with progress reported at each grading period. The Student was assigned to weekly counseling with two other students. The Student's IEP also included a social skill goal where, given 15 minutes of free play, the Student would demonstrate prosocial peer relations by initiating play in a socially acceptable manner.
7. On September 14, 2017, a District School Psychologist suggested to the Parent that the impulsive behaviors observed at school be discussed with the Student's Pediatrician.
8. The District reported that the Parent had engaged in behavior and communications toward District staff that was perceived as hostile, threatening, and unsafe. During a meeting with the Parent, the elementary school Principal and Vice Principal discussed with the Parent the behaviors and communications of concern. That meeting was originally not scheduled to address those concerns, but rather so that the Parent could express concerns about the Student. The Parent took offense to the District using the meeting time to discuss the Parent's behaviors.
9. On September 14, 2017, the Parent and elementary school Principal had a conversation regarding the manner in which the Parent interacted and spoke with District staff. On September 18, 2017, the Principal reiterated the conversation via email with a warning that if the Parent approached District staff in a manner where staff feels unsafe, the District will consider the Parent's presence on campus as a trespass.

10. On September 15, 2017, the District communicated with the Parent that it was necessary to schedule an IEP meeting to address some of Student's observed school behaviors.
11. On September 21, 2017, the Student's IEP Team amended the Student's IEP. The IEP Team noted that the Student was still performing at grade level but demonstrated adverse behaviors during less structured times (cafeteria, playground, pick-up area after school). The IEP Team added a classroom behavior plan with accommodations. The IEP Team added organization supports for the Student, as well as movement breaks, frequent check-ins from the teacher, and the use of headphones (as suggested by the Parent).
12. The Student's classroom teacher observed an improvement in the Student's behavior coinciding with the Parent's decision to increase the Student's medication.
13. On October 18, 2017, the District reported that the Parent exhibited unsafe and threatening behavior by holding up the drop-off line, yelling, using profanity, and speeding through the parking lot while children were present. The Parent attempted to have a conversation with the School Psychologist, who was passing through the parking lot to take his/her own child to school. The District reports that several parents present at the time came into the school to report concerns. The Parent reports that the District's conduct in issuing a trespass warning was unnecessary, retaliatory, and caused the Student further trauma due to the Sheriff's arrival at the Student's home that evening. The Parent reported that the Student arrived at school thereafter in crisis, and experienced great difficulty exiting the Parent's vehicle for school, causing delay in the parking lot. The Parent denied engaging in any unsafe behavior.
14. On October 18, 2017, the County Sheriff was dispatched to the Parent's home to deliver the District-issued Trespass Warning. The Trespass Warning notes that the Parent may not return until the Parent obtains permission from the school Principal, and failure to do so subjects the Parent to arrest for Criminal Trespass II.
15. The Parent contends that the Trespass Warning disrupted the Parent's ability to transport the Student to school. The District reported that the Student's ability to travel to school was not disrupted because the Student utilized the District's bus transportation.
16. The Parent reports that the District's Trespass Warning disrupted the Parent's ability to advocate for the Student, and the Parent's ability to attend IEP meetings. The District noted that IEP Team Meetings were moved from the elementary school to the District's main offices to accommodate the Trespass Warning.
17. On November 12, 2017, the Parent sent an email to the District inquiring about the District convening a manifestation determination review for the Student. The Student's elementary school Principal responded by email at that time that the Student had not, and hopefully would not, accrue the number of suspensions that would invoke the requirement to perform a manifestation determination review.
18. On the same date, in the same email, the Parent questioned whether the District was limiting the Parent's ability to communicate with the Student's classroom teacher, and thereby not affording the Student the same access to the general curriculum as other students. The Student's elementary school Principal responded by email at that time that due to the Parent's use of "reply all" in emails, the messages were sent to numerous people in the District. To avoid uncertainty regarding who was responding to the Parent, the Student's elementary school Principal would respond to issues related to the school building, and the District's Assistant Director of Special

Education, would respond to questions regarding special education.

19. During the Fall 2017 term, the District documented numerous behavior issues including but not limited to, the Student leaving class, inappropriate behaviors in the bathroom and around toileting, acts of physical aggression, verbal threats of harm to self and others, and general disruptive and defiant behavior.
20. On November 20, 2017, a bus driver called a District administrator for assistance after observing the Student running around in the bus unloading area, then running into the school building. Once inside, the Student ran around screaming, punching objects, damaging items in the school, and exhibiting threatening and violent behavior toward District staff. The District documented various staff attempting to utilize interventions from the Student's behavior intervention plan, to no avail. After offering the Student various spaces to go with a sensory tool, the Student selected one and de-escalated.
21. On November 20, 2017, because of the day's behaviors, the District suspended the Student from the school bus for six days.
22. Following the suspension from the school bus, the District developed a plan for the Parent to drop the Student off at school without violating the Trespass Warning.
23. On November 21, 2017, the Parent stopped sending the Student to school.
24. Following the Parent's removing the Student from school, the Parent and District began to discuss alternative placements.
25. In a letter dated November 24, 2017, the Parent described concerns regarding the Student and requested an inter-district transfer.
26. On November 27, 2017, the Parent informed the District that the Student would not be attending school.
27. On November 27, 2017, the District forwarded the Parent's inter-district transfer request to a neighboring district for processing, highlighting the time sensitive nature of the request due to the Student not attending school.
28. On November 29, 2017, the District sent the Parent a copy of a draft IEP for the Student in advance of a scheduled IEP Meeting. The Parent responded by email with numerous concerns and objections to the various plans and interventions proposed by the District.
29. On November 30, 2017, the Student's IEP Team met to discuss placement. The Parent reported that the Student's Physician was favoring an underlying diagnosis of anxiety rather than ADHD, and that new medication options were being considered. The Student's placement team decided to change the Student's placement to home tutoring while a therapeutic school placement was arranged.
30. The Parent expressed concern about the District's motivation for considering other placements for the Student, specifically whether those recommendations were a matter of convenience for the District, or truly what was best for the Student.
31. On December 1, 2017, the Parent requested information about home tutoring. The District was experiencing a shortage of available tutors. By December 4, 2017, the Parent had connected with

a District tutor and a plan was developed to provide instruction to the Student.

32. On December 15, 2017, the Parent sent the District an email expressing displeasure with the manner in which the Student's placement came about and concerns over the District having potentially prematurely ended investigation of other options.
33. As of December 18, 2017, the Student was no longer enrolled in the District, having begun attending a therapeutic day treatment school outside of the District boundaries.
34. On February 20, 2018, the Parent began exploring the Student's return to the District, starting with wanting to visit placements, specifically a positive behavior intervention classroom. The District responded that because the Student's IEP did not mention placement in a positive behavior intervention classroom, an IEP Team Meeting should be scheduled ahead of the Parent visiting such classroom.
35. The District continued to assist the Parent and Student with transportation to the neighboring District.
36. On March 6, 2018, the neighboring school district completed a psychosocial evaluation of the Student. The Student was then in a day treatment program. The evaluation included details of the Student's ADHD diagnosis and prescribed psychiatric medication. The Student continued to make academic progress equivalent to the Student's grade level.
37. As of March 7, 2018, the District was in discussions with the Parent about re-enrolling the Student in the District.
38. On March 7, 2018, the Parent sent an email to the District stating that the Student would not be enrolled again in the District unless the District had a treatment team in place. The District had earlier informed the Parent that because the Student was not then enrolled in the District, services and planning could not yet be provided. The Parent expressed displeasure with the options provided. The Parent further expressed the intention to file a complaint with the Department regarding the Parent's concerns about the District's handling of the Student's education needs.
39. In March 2018, a licensed professional counselor from the Student's therapeutic day treatment facility provided a letter with recommendations for addressing the Student's behavioral needs in the school setting. Among these were "using a trauma-informed lens to understand [the Student's] behavioral challenges, rather than relying on behavioral approaches such as a system of rewards and consequences or incentive." The Student's Parent contends that had the District used such an approach, the Student likely would have been successful in the District.
40. On March 30, 2018, the Department received this Complaint.

#### **IV. DISCUSSION**

##### **A. Parent Participation**

The Parent alleges that the District violated the IDEA when the Parent was prevented from meaningfully participating in IEP and/or safety plan meetings. The Parent alleges that the District accomplished this through various means such as not responding to the Parent's email messages and failing to share relevant information with Parent ahead of IEP meetings. The Parent also alleges that District's issuance of a Trespass Warning without providing an appeal process to the Parent obstructed the Parent's



meaningful participation in the Student's IEP development. The Parent also alleges that the District further obstructed and frustrated the Parent's involvement by making reports to other state agencies regarding the Student's welfare.

Districts must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>4</sup> Districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.<sup>5</sup> That written notice must state the purpose, time and place of the meeting and who will attend, among other requirements.<sup>6</sup>

### **1. Emails**

The Parent reported copying various District staff on emails regarding the Parent's concerns and experiencing significant delay in receiving responses. The Parent also reported that the District would not always respond to each of the concerns expressed in the Parent's emails. The District reported that District staff was often unable to respond to all of the issues raised and would attempt to have a single District point person respond to the Parent's questions and concerns to avoid duplication of efforts. There is no indication that any failure to respond to Parent emails impeded the Parent's opportunity to meaningfully participate in the IEP process.

### **2. Trespass Warning**

On October 28, 2017, the District issued, through local law enforcement, a Trespass Warning to the Parent. The District reported that the Trespass Warning was the result of incidents of harassment, intimidation and unsafe actions on the part of the Parent toward District staff and on District property. In issuing a Trespass Warning, the District confers with local law enforcement, especially the assigned school resource officer. After issuing the Trespass Warning, the District made arrangements to hold future IEP Team Meetings at the District's main offices, rather than the Student's elementary school. There is no indication that moving IEP Team Meetings affected the Parent's opportunity to meaningfully participate in the IEP process.

### **3. Reporting to the Department of Human Services**

The District reported to the Oregon Department of Human Services after the Student revealed to District staff that there was no adult at home with the Student after school. Teachers and school district employees are mandatory reporters of child abuse in Oregon.<sup>7</sup> The definition of "abuse" includes "negligent treatment of maltreatment" of a child and is a Class A misdemeanor.<sup>8</sup> The minimum age for a child to be left home alone in Oregon is ten years old.<sup>9</sup> At the time of the report (Fall 2017), the Student was eight years old. The Parent acknowledged that the Student is left home alone for short periods of time. The Parent had hoped the District would understand or consider the Parent's circumstances before the reporting the Parent.

The Parent attended each IEP Team Meeting that the District held during the 2017-2018 school year. Most IEP Team Meetings extended beyond the scheduled time so that the Parent could thoroughly explain concerns and participate fully. There is no indication that the Parent was not afforded a meaningful opportunity to participate in the review or development of the Student's IEP's due to

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<sup>4</sup> OAR 581-015-2190(1).

<sup>5</sup> OAR 581-015-2190(2).

<sup>6</sup> OAR 581-015-2190(2)(b)(A)—(D).

<sup>7</sup> ORS 419B.005(5)(c).

<sup>8</sup> ORS 419B.005(1)(F).

<sup>9</sup> ORS 163.545(1).

incomplete District staff email responses, the Trespass Warning, or the involvement of other state agencies. The Department does not substantiate this allegation.

## **B. IEP Team**

The Parent alleges that the District violated the IDEA when it failed to include the Parent in IEP Team decisions and predetermined aspects of the Student's IEP. Specifically, the Parent points to disagreements with the District regarding the Student's safety plan interventions and placement decisions.

School districts are required to include the parent, and where appropriate other participants in IEP team meetings.<sup>10</sup> Other individuals that should be included in IEP team meetings include the student's regular education teacher, a special education teacher, and a representative of the school district.<sup>11</sup> In addition, the IEP team should also include someone who can interpret the instructional implications of evaluations,<sup>12</sup> and other appropriate individuals.<sup>13</sup>

The Parent expressed displeasure and disagreement with the Student's IEP modification due to the Student's ongoing behavior issues. The Parent disagreed with many of the interventions recommended by the District, suggesting that the District's interventions were the cause of the Student's behaviors. Many of the District's recommendations and modifications to the Student's IEP were based on behavior data collected about the Student and recommendations from the District's School Psychologist in consultation with the Student's Physician and mental health providers.

The IEP Team Members based their recommendations and placement suggestions on data and input from a diverse group of people. The Student's underlying mental health condition manifested in a host of behaviors. During the November 30, 2017 IEP Meeting, the Parent disagreed with some aspects of the Team recommendations but agreed that the Student needed a different placement. The Department does not substantiate this allegation.

## **C. When IEPs Must Be In Effect**

The Parent alleges that the District violated the IDEA because certain District staff members were unaware that the Student had an IEP, and/or were unaware of the content of the Student's IEP. The Parent noted that not all staff in the elementary school were notified of the Student's IEP needs. The Parent further alleged that if every adult in the Student's school had been educated about the Student's IEP, there would have been fewer behavior reports and incidents involving the Student.

A district is responsible for providing special education and related services to a child with a disability in accordance with an IEP.<sup>14</sup> The special education and related services specified in the IEP must be made available to the child in accordance with the IEP as soon as possible following the creation of the IEP.<sup>15</sup> The district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service providers responsible for implementing the IEP.<sup>16</sup> The district must also inform each teacher/staff responsible for implementing the IEP, of their specific responsibilities for implementing the child's IEP, and the specific accommodations,

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<sup>10</sup> OAR 581-015-2210(1).

<sup>11</sup> OAR 581-015-2210(1)(a)-(e).

<sup>12</sup> OAR 581-015-2210(f).

<sup>13</sup> OAR 581-015-2210(e).

<sup>14</sup> OAR 581-015-2220(1)(b).

<sup>15</sup> OAR 581-015-2220(2)(b).

<sup>16</sup> OAR 581-015-2220(3)(a).

modifications, and supports provided in accordance with the IEP.<sup>17</sup>

The District was not required to inform every possible adult who may contact the Student of the Student's needs under the IEP. Rather, the District need only provide this information to those responsible for its implementation. The District fulfilled this obligation with respect to District staff that implement the Student's IEP. The Department does not substantiate this allegation.

#### **D. Least Restrictive Environment**

The Parent alleges that the District violated the IDEA when it failed to consider the least restrictive environment for the Student, instead prematurely recommending placement in a more restrictive setting.

School districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have disabilities.<sup>18</sup> School districts must ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes cannot be achieved satisfactorily.<sup>19</sup> School districts must also ensure that educational placement decisions for students with disabilities are made in conformity with the provisions around least restrictive environment.<sup>20</sup> The least restrictive environment provisions require that the District ensure the participation of students with disabilities, to the greatest extent possible, in educational and extracurricular activities with their non-disabled peers.<sup>21</sup> Moreover, school districts must ensure that placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child.<sup>22</sup>

At the November 30, 2017 IEP Team Meeting, the Parent and District staff agreed that the Student was struggling with various behaviors at the elementary school. The IEP Team Meeting Minutes reflect that the Team Members agreed that a more restrictive placement was appropriate, but disagreed about the reasons why a new placement was necessary. This IEP Team Meeting convened after the Student's safety plan was amended four times in four months. The IEP Team amended the Student's Behavior Intervention Plan three times to address the Student's behavior. These changes were made in consultation with the District School Psychologist, who was in communication with the Student's Physician and community mental health providers.

The IEP Team concluded that home tutoring was too restrictive as a long-term placement, and that a therapeutic school was a more appropriate placement for the Student. The IEP Team, including the Parent, agreed that while the Team researched a suitable therapeutic school placement for the Student, the District would provide the Student with tutoring, either at home, or at a nearby library. The District and the Parent discussed and agreed that home tutoring alone was not suitable for the Student on a long-term basis.

The IEP Team met and amended the Student's IEP four times between September and November 2017. The Student continued to exhibit behavior that impacted the Student's access to the Student's education. Following those modifications and adjustments, the IEP Team discussed and decided on a change of placement to a therapeutic school. The Department does not substantiate this allegation.

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<sup>17</sup> OAR 581-015-2220(3)(b).

<sup>18</sup> OAR 581-015-2240(1).

<sup>19</sup> OAR 581-015-2240(2).

<sup>20</sup> OAR 581-015-2250(1)(b)

<sup>21</sup> *Id.*

<sup>22</sup> OAR 581-015-2250(1)(a)

## **E. Disciplinary Removals/Manifestation Determination**

The Parent alleges that the District violated the IDEA when it disciplinarily removed the Student from the Student's educational placement for more than ten cumulative school days without conducting a manifestation determination review.

A disciplinary removal is considered a change in placement if the student is removed for more than ten consecutive school days, or the student will be removed for more than ten cumulative school days from their current educational placement in a school year, and those removals constitute a pattern.<sup>23</sup> If such a removal takes place, the school district must conduct a manifestation determination review within ten days of such a change in placement.<sup>24</sup> The school district must then determine whether the student's behavior is a manifestation of the student's disability.<sup>25</sup> School districts are required to attempt to limit the use of suspensions for students fifth grade and under.<sup>26</sup> Such consideration should extend to the underlying behavior exhibited by the student with suspension used in cases of physical harm, threats to health and safety, or otherwise required by law.<sup>27</sup>

The District suspended the Student for a total of six days. On September 20, 2017 and October 24, 2017, the Student was suspended for a half-day. On September 28, 2017, October 18, 2017 and November 20, 2017, the Student received full-day suspensions. On November 7, 2017, the Student was suspended for two days. On November 20, 2017, following an episode of behavior that placed the Student in physical danger upon existing the school bus, the Student was suspended from the bus for six days. At the time, transportation was not a related service on the Student's IEP.

The Student was suspended for six days total. The Student received an additional suspension from the use of school-provided transportation. The Student was not suspended for enough days to invoke the requirement that the District conduct a manifestation determination review. The Department does not substantiate this allegation.

## **F. FAPE**

The Parent alleges that the District denied the Student a free appropriate public education (FAPE) when the District failed to formulate adequate goals for the Student's IEP. The Parent alleges that the Student's IEP was deficient because it neglected to include positive behavioral interventions, strategies, or supports, to address the Student's behavioral, social, and emotional needs. The Parent alleges that the behaviors manifested at school were evidence of these failures.

School districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible.<sup>28</sup> School districts are required to offer IEPs that are "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>29</sup> A FAPE includes both "special education" and "related services."<sup>30</sup> Related services are those that assist a child with a disability to benefit from special education.<sup>31</sup>

The Student began the 2017-2018 school year showing strong grade-level academic performance. The Student's IEP initially contained goals in the areas of behavior and social skills. The Student was

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<sup>23</sup> OAR 581-015-2410(2); OAR 581-015-2415(1)(a) & (b).

<sup>24</sup> OAR 581-015-2415(3).

<sup>25</sup> *Id.*

<sup>26</sup> ORS 339.250(2)(d), Senate Bill 553 (2015).

<sup>27</sup> *Id.*

<sup>28</sup> OAR 581-015-2040.

<sup>29</sup> *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017).

<sup>30</sup> OAR 581-015-2045(5)(b).

<sup>31</sup> OAR 584-015-2000(28).

provided with sixty minutes per month of psychological services, in the form of group counseling and movement and sensory breaks throughout the day as needed. The Student's IEP was revised several times as the Student's behaviors continued to impede the Student's learning and the educational environment. By November 2017, the Student's IEP included organization, behavior, psychological services, transportation services and planning, movement and sensory breaks. In addition, the Student was provided with frequent teacher check-ins, access to headphones, a behavior and safety plan, and consultations with the School Psychologist, Occupational Therapist, and Speech Language Pathologist. As the Student's behaviors changed, the IEP Team met to adjust the related services offered to the Student.

The Student's IEP Team, including the Parent, decided that placement in a therapeutic day treatment school was more appropriate for the Student's needs. Shortly after adding these modifications to the Student's IEP, the Parent removed the Student from school. The Parent reported that in November 2017 the Student was in a psychological crisis and that the Student had subsequently benefitted from the therapeutic school. In March 2018, following the Student's removal from the District, a licensed professional counselor who had observed the Student in the therapeutic school provided suggestions for addressing the Student's behavior in school. Those suggestions included, "using a trauma-informed lens to understand [the Student's] behavioral challenges, rather than relying on behavioral approaches such as a system of rewards and consequences or incentive." Following a period of engagement with the therapeutic school, the Student entered a school in the neighboring school district that offered more support and a higher staff to student ratio. The Parent was hoping the Student would return to a general education environment in the near term.

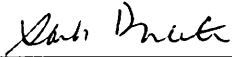
During the time the Student was enrolled in the District, the Student made academic progress on IEP goals. The Student's capacity for engaging with the academic environment was obstructed by the Student's behaviors. The Student's IEP Team met frequently to review available information and revise the Student's IEP to appropriately address the Student's behaviors. The District convened IEP Team Meetings to adjust the Student's IEP so that it offered a program designed for the Student to progress in school, and take into account the Student's changing circumstances. The Department does not substantiate this allegation.

**V. CORRECTIVE ACTION<sup>32</sup>**

*In the Matter of Beaverton School District #48J  
Case No. 18-054-019*

The Department does not order Corrective Action resulting from this investigation.

Dated: this 18th Day of June 2018



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Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Student Services

Mailing Date: June 18, 2018

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).)

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<sup>32</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).