

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Hillsboro
School District 1J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 19-054-038

I. BACKGROUND

On October 22, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Hillsboro School District 1J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On October 28, 2019, the Department's Complaint 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 November 11, 2019.

On November 5, 2019, the District submitted a *Response* denying the allegations and providing explanation and supporting documents in support of the District's position. In total, the District submitted the following items:

1. District response in 19-054-038
2. District's table of contents
3. Department's Request for Response
4. District response in ODE case 18-054-050
5. Email; from Student BAI Therapist, 02/26
6. Email; District to Parents, 05/20
7. Email; District regarding scheduling, 05/18
8. Email; Student Therapist to District, 02/26
9. Prior Written Notice, 03/07/2018
10. Written Agreements between the Parent and the District, 03/07/2018
11. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82) 10/11/2018
12. Prior Notice of Special Education Action, 03/07/2018
13. Student IEP, 10/16/2017, Amend Date: 03/07/2018
14. Written Agreements between the Parent and the District, 03/07/2018

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

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

15. Parent letter to District with alleged violations
16. Prior Written Notice of Special Education Action, 03/13/2018
17. Prior Written Notice of Special Education Action, 04/05/2018
18. Student IEP, 10/16/2017, Amend Date: 04/05/2018
19. Written Agreements between the Parent and the District, 04/05/2018
20. Prior Notice of Special Education Action, 04/05/2018
21. Notice of Team Meeting, 05/07/2018
22. Notice of Team Meeting, 05/07/2018 (2nd copy sent)
23. Prior Notice of Special Education Action, 05/18/2018
24. Notice of Team Meeting, 05/07/2018
25. Student IEP, 10/16/2017
26. Student IEP, 05/18/2018
27. Student IEP, 10/16/2017, Amend Date: 05/18/2018
28. IEP Meeting Minutes, 05/18/2018
29. Notice of Team Meeting, 05/07/2018
30. Prior Notice of Special Education Action, 05/18/2018
31. Prior Notice of Special Education Action, 05/07/2018
32. IEP Meeting Minutes, 05/18/2018
33. Student IEP, 10/16/2017, Amend Date: 05/18/2018
34. Email, District to Parents, 08/14/2018
35. Notice of Team Meeting, 08/28/2018
36. Email: District to Parent, 08/28/2019
37. Prior Notice of Special Education Action, 08/30/2018
38. Student IEP, 10/16/2017
39. Notice of Team Meeting, 08/30/2018
40. Prior Notice about Evaluation/Consent for Evaluation
41. Student IEP, 10/16/2017, Amend Date: 08/30/2018
42. IEP Meeting Minutes, 08/30/2018
43. Prior Notice of Special Education Action, 08/30/2018
44. Notice of Team Meeting, 08/30/2018
45. Email, "Re: staffing Rosedale" 09/04/2018
46. Student IEP, 10/11/2018
47. Prior Notice of Special Education Action, 10/11/2018
48. Autism Spectrum Disorder Eligibility Evaluation, 10/11/2018
49. Teacher Interview—ASD evaluation, 10/10/2018
50. Functional Communication Assessment, 10/09/2018
51. Medical Statement or Health Assessment Statement, 10/19/2015
52. Assessment of Basic language and Learning Skills—Revised (ABLBS-R), 10/10/2018
53. IEP Meeting Minutes, 10/11/2018
54. Letter from Teacher to Parents
55. Letter from Parents to IEP Team
56. IEP Meeting Minutes
57. Prior Notice of Special Education Action, 10/11/2018
58. Notice of Team Meeting, 08/30/2018
59. IEP Meeting Minutes, 05/18/2018
60. Written Agreement between the Parent and the District, 04/05/2018
61. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82), 10/11/2015
62. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82), 11/06/2015

63. Autism Spectrum Disorder Eligibility Evaluation, 10/11/2018
64. Teacher Interview—ASD evaluation, 10/10/2018
65. Functional Communication Assessment, 10/09/2018
66. Medical Statement or Health Assessment, 10/19/2015
67. Assessment of Basic Language and Learning Skills-Revised (ABLLS-R), 10/10/2018
68. IEP Team Meeting Minutes, 10/11/2018
69. Prior Notice of Special Education Action, 10/11/2018
70. Notice of Team Meeting, 08/30/2018
71. Student IEP, 10/11/2018
72. IEP Team Meeting Minutes with attachments, 10/11/2018
73. Use of Protective Physical Intervention (PPI) / Seclusion Incident Report, 10/22/2018
74. Prior Notice of Special Education Action, 10/22/2018
75. Notice of Team Meeting, 01/31/2017
76. Prior Notice of Special Education Action, 10/22/2018
77. Email; FW: (Student's Day), 12/11/2018
78. Email; Para out, 10/22/2018
79. Email; (Student's) Day, and attachments 10/22/2018
80. Email; Fwd: RE: meeting, 10/23/2018
81. Email; (Student's) Day, 11/13/2018
82. Email; Re: Meeting, 10/23/2018
83. Email; Fw: Emails for investigation, 12/12/2018
84. Letter from physician, 10/24/2018
85. Email; RE: IEP Team meeting
86. Notice of Team Meeting, 10/24/2018
87. Email; Fw: (Student's) Disability Rights Ongoing Violations, 12/11/2018
88. Email; Re: meeting notice, 10/29/2018
89. Email; Fw: (Student's) Disability Rights Ongoing Violations, 10/27/2018
90. Email; Fw: IEP meeting location requested information, 10/31/2018
91. Email; (Student's) Nov. 5 2018 IEP Meeting, 11/01/2018
92. Email; Secure Filed Transfer, 11/01/2018
93. Calendar Meeting Reminders
94. Email; FW: Second Document sent Secure File Transfer, 11/03/2018
95. Email; FW:, 11/03/2018
96. Email; Fwd: Second Document sent Secure File Transfer, 11/03/2018
97. Calendar Meeting Reminders
98. Notice of Team Meeting
99. Email; Fw: Secure File Transfer, with attachments 11/06/2018
100. IEP Team Meeting Minutes, 11/05/2018
101. Notice of Team Meeting, with attachments, 11/05/2018
102. Prior Notice of Special Education Action, 11/05/2018
103. Email; Fw: Pubic Complaint Forms, with attachmetns,11/06/2018
104. Email; Fw: Questions, 11/06/2018
105. Email; Fw: Pubic Complaint Forms, with attachments,11/06/2018
106. Email; Re: Public Complaint Forms, with copies of District Polices,11/06/2018
107. Prior Notice of Special Education Action, with attachments: copies of laws, policies, and handbooks, 11/06/2018
108. Email; ODE, HSD and HB 2939 Seclusion Codes and Polices, 11/05/2018
109. Email; FW: FBA/BSP meeting letter, 11/07/2018

110. Letter from Parents: Request to cancel FBA/BSP meeting
111. Email; Re: Date to Review File, 11/07/2018
112. Prior Notice of Special Education Action, 11/07/2018
113. Email; Fw: FBA/BSP meeting Letter, 11/08/2018
114. Email; Public Complaint Forms, 11/06/2018
115. Email; Fw: FBA/BSP meeting Letter, 11/09/2018
116. Email; Fw: Rosedale, 11/09/2018
117. Email; BSP meeting next Tuesday for JP, 11/09/2018
118. Email; Fw: Safety moving forward, 11/09/2019
119. Email; Fw: District complaint forms, 11/09/2018
120. Email; Fw: Case Review, 11/19/2018
121. Email from Parent to District, 11/09/2018
122. Email; Re: (Student's) Day, 11/09/2018
123. Email; Re: Response to letter from 10/11/2018
124. Email; FBA/BSP meeting Letter, 11/09/2018
125. Letter from Parent to District, 11/12/2018
126. Email; Re: FBA/BSP meeting letter, 11/12/2018
127. Email; Fw; Attn: Elaine, 12/11/2018
128. Secure File Transfer, 11/05/2018
129. Recording of (Student) IEP Nov 5th
130. Authorization to Use and/or Disclose Educational and Protected Health Information, 11/15/2018
131. Email; Fw; Attn: Elaine, 12/15/2018
132. Email; Fw: iep revision, 1/15/2018
133. Email; IEP Audio Files, 11/16/2018
134. Email; Fw: (Student) Investigation Audio, etc. 11/16/2018
135. Email; Re: Att: Elaine, 11/16/2018
136. Email; Re: IEP Audio Files, 11/16/2018
137. Email; Re: IEP files sent, 11/16/2018
138. Email; Fwd: Pics, 11/08/2018
139. Email; Re: (Student) IEP Audio, 11/16/2018
140. Email; (Student) investigation audio
141. Email; Your call, 11/16/2018
142. Email; (Student) Pictures, 11/16/2018
143. Email; Fw: Attn. Elaine, 11/16/2018
144. Email; Fw: Investigation Results
145. Email; Fw: BSP due date, 11/19/2018
146. Email; Fw: iep revision, 11/19/2018
147. Email; Investigation- Draft email, 11/19/2018
148. Email; Fw: Investigation, 11/19/2018
149. Email; PWN and IEP revision 11/5
150. Email; (Parent) letter wording
151. Email; PWN and IEP revision 11/5
152. Email; Fw: (Parent) letter wording, 11/19/2018
153. Email; iep revision, 11/19/2018
154. Email; Fw: Investigation Results, 11/20/2018
155. Email; iep revision, 11/20/2018
156. Email; Fw: Investigation Results, 11/20/2018

157. Email; (Student) BSP date, 11/21/2018
158. Email; Fw: Investigation Results, 11/21/2018
159. Email; iep revision, 11/20/2018
160. Email; FBA/BSP meeting, 11/21/2018
161. Notice of Team Meeting, 11/21/2018
162. Email; Fw: BSP date, 11/26/2018
163. Email; Few: Secure File Transfer, 11/26/2018
164. Email: (Student) Escalation Cycle and Staff Response Worksheet – Invitation to edit, 11/30/2018
165. Email; Fw: Email Response, 11/30/2018
166. Email; Fw: Functional Behavior Assessment – (Student) – Invitation to edit, 11/30/2018
167. Email; FW: (Student) Behavior Support Plan (goggle doc) – invitation to edit, 11/30/2018
168. Email; Email Response, 11/30/2018
169. Prior Notice of Special Education Action, 11/30/2018
170. Email; Fw: Email Response, 12/02/2018
171. Prior Written Notice of Special Education Action, 12/03/2018
172. Prior Notice of Special Education Action, 12/04/2018
173. Prior Notice of Special Education Action, 01/07/2018
174. Prior Notice of Special Education Action, 01/23/2019
175. Prior Notice of Special Education Action, 02/04/2019
176. Prior Notice of Special Education Action, 02/13/2019
177. Prior Notice of Special Education Action, 10/30/2019
178. IEP Team Meeting Minutes, and attachments, 12/16/2018
179. Additional copies of Students, 10/11/2018, 11/05/2018 IEP, 12/06/2018, and 12/06/2018 with documentation of transmission to Parents.

The Complaint Investigator (Investigator) interviewed the Parents and the Student's Applied Behavior Analysis (ABA) therapist on November 18, 2019. During that meeting, the Parents provided materials in support of the Complaint. On November 25 and November 26, 2019, the Parents submitted additional materials for consideration. The Investigator determined that onsite interviews were necessary. On December 3, 2019, the Investigator interviewed the District's Executive Director of Student Services and Director of Student Services regarding this matter. Following the interview, the District provided additional information regarding the case. The Investigator reviewed and considered all 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.³ 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 October 23, 2018, to the filing of this Complaint on October 22, 2019.

³ 34 CFR §§ 300.151-153 and OAR 581-015-2030.

	<u>Allegations</u>	<u>Conclusions</u>
1.	<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Parents allege that the District violated the IDEA in numerous ways that amounted to a denial of FAPE. The Parents allege that such violations include:</p> <p>(1) Parents' request for a change of placement, change of school location, and change of teacher, should not have been denied by the District due to the Student's credible fear of the teacher; and</p> <p>(2) Prior written notices sent by the District to the Parents stated that the District "stands ready to serve" the Student and provide FAPE, following the Parents' withdrawal of the Student from the District and the Student's enrollment in a charter school, but offered only one school and teacher option.</p> <p>(34 CFR § 300.101; OAR 581-2040)</p>	<p><u>Not Substantiated</u></p> <p>The District appropriately determined the Student's placement based on data available to it at the time. Information provided by the Parents during the investigation referred to the Student's behavior outside of school, not in the school setting. The District did not deny the Student a FAPE based on its placement decision-making.</p> <p>The IDEA only requires that a District specify the student's educational placement and services, not the exact physical location or school where those services will be delivered. The District formulated an IEP and offer of FAPE for the Student that anticipated the Student's need for supports for behaviors that may impede the Student's learning.</p>
2.	<p><u>Parent Participation</u></p> <p>The Parents allege that the District violated the IDEA when it convened an IEP meeting on December 6, 2018 without the Parents present. The Parents allege that at this meeting the District amended the Student's IEP, considered a functional behavioral assessment, and Behavior Support Plan, despite the Parents having revoked consent for the collection of such data. The Parents further allege that the District did not give appropriate notice of the purpose of the meeting.</p> <p>(34 CFR §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)</p>	<p><u>Not Substantiated</u></p> <p>School districts are required to provide parents with an opportunity to attend and participate in the development of a child's IEP. The District provided notice and rescheduled a December 6, 2018 IEP team meeting at the request of the Parent. The Parent later informed the District they would not attend. The District's timeline for completing revisions to the Student's IEP was explained to the Parents. The Parent chose to not participate in the IEP meeting.</p>
3.	<p><u>Notice of Procedural Safeguards</u></p> <p>The Parents allege that the District violated</p>	<p><u>Not Substantiated</u></p> <p>The District complied with its obligations</p>

	<p>the IDEA when the District neglected to provide the Parents with a statement of procedural safeguards; or work collaboratively with the Parents, in violation of their procedural safeguards, in the development of the Student's IEP.</p> <p>(34 CFR §§ 300.504, 300.503; OAR 581-015-2310(3)(d), OAR 581-015-2315)</p>	<p>under IDEA to provide the Parents with a copy of the procedural safeguards.</p>
<p>4.</p>	<p><u>Placement of the Child</u></p> <p>The Parents allege that the District violated the IDEA when it did not consider the Parents' input regarding the Student's placement, resulting in a more restrictive placement for the Student. Specifically, the Parents allege that the District did not consider the Parents' concerns about the school, teacher, and the Student's emotional reactions to the District's proposed placement.</p> <p>(34 CFR §§ 300.116, 300.327; OAR 581-015-2250)</p>	<p><u>Not Substantiated</u></p> <p>The District did consider information provided by the Parent, evidenced by the District providing a prior written notice regarding this issue.</p>
<p>5.</p>	<p><u>Hybrid Retaliation Claim-IDEA</u></p> <p>The Parents allege that the District retaliated against them and the Student for having filed complaints against the District. The Parents allege that such retaliation is evidenced by: (1) The District having sent the Parent several prior written notices after November 6, 2018, all of which continued to deny the Parents' request for a change of classroom/teacher for the Student; and (2) The District's December 6, 2018 IEP team meeting, where the Student's IEP and/or behavior support plan was amended without the presence and input of the Parents.</p> <p>(34 CFR §§ 300.151-153, 300.504(a)(2); OAR 581-015-2030(19))</p>	<p><u>Not Substantiated</u></p> <p>While not the Parent's preference, there is no evidence in the record that the District made decisions regarding the Student's educational placement offer based upon complaints filed by the Parents, or the Student's engagement in any other protected activity. The Parents were provided notice and opportunity to attend the December 6, 2018 IEP meeting.</p>

III. FINDINGS OF FACT

1. The Student is in the seventh grade and qualifies for special education services under the category of Autism Spectrum Disorder. During the 2018-2019 school year, the Student transferred between different school buildings within the District.
2. The Student enjoys making art and other crafts. The Student displays special interest in script dialogues from movies they have watched. The Student is a skilled reader who understands many math concepts. During the 2018-2019 school year, teachers reported that the Student came to school happy.
3. During the 2018-2019 school year, the Student showed an increase in the time they could attend to academic tasks. The Student responded to positive reinforcements and was able to ask for breaks as needed. The Student showed interest in reading and writing, but also experienced some skill regression. By contrast, the Student demonstrated progress in mathematics and made progress toward IEP goals.
4. The Student benefits from a variety of accommodations during the school day, including visual schedules, social stories, noise buffers, breaks, separate settings for test situations, accommodations for reading and writing, sensory supports, and modified assignments.
5. The Student demonstrates delays in cognitive, social, and communication skills that impact the Student's progress in the general education environment. The Student benefits from a modified curriculum and specially designed instruction at the Student's academic level in math, reading and writing. The Student benefits from a higher adult to student ratio for instruction, as well as an individualized and highly structured environment to adequately support the Student's academic and functional needs.
6. On August 30, 2018, the District sent the Parents a Prior Written Notice for an evaluation and consent for various evaluations and assessments including, functional communication evaluations, observations, direct interaction, assessment of basic language and learning skills (ABLLS), and a Functional Behavior Assessment. On September 4, 2018, the Parent signed the written consent form to allow the District to proceed with these evaluations.
7. The Student's October 11, 2018 Individualized Education Program (IEP) included information in the section for input from the Parents in the areas of academic achievement and functional performance. The section included the following language: "Parents have brought several concerns from previous placements to the attention of the team. Please see attached letters (included in meeting minutes) for further information. At this time, [Student's] parents major goals are to make sure [the Student] is included and has access to peers (where appropriate) to practice and model appropriate social skills. They would hope that in the next 6 months, [the Student] will make progress toward greeting [their] peers and adults. They communicated that a hope for a part of goals will be to work on stranger danger/awareness. They would like to access video modeling to help [the Student] learn social skills. Please see notes for more concerns from the parent."

8. On October 22, 2018, an incident occurred where the Student displayed behavior that led to the initiation of a room clear procedure.
9. The Student's teacher reports having informed the Student that the class would soon redirect from one activity to another. The Teacher explained that the Student responded with an expletive. The Student went on to throw items and attempted to hit and kick others. The Teacher described that redirections were unsuccessful and that Student went on to throw chairs. The Teacher initiated a room clear procedure to remove other students from the classroom. The building principal was called to assist and observe. The Teacher monitored the situation until such time that the Student took direction, became calmer, and began assisting the Teacher in picking up items that were thrown/overtaken, whereupon the Parent was contacted. The District also noted that this incident occurred near the end of the Student's scheduled school day. School dismissal is at 2:30 p.m., and the District reported that the Parent arrived ahead of that time to meet the Student.
10. The Parents disagreed with how the District handled the incident. Following the events of October 22, 2018, the Student did not return to school. The Parents raised concerns whether the Student was physically restrained by the Teacher during this incident.
11. On October 22, 2018, the District sent a Prior Written Notice to the Parent stating that District stands ready to serve the Student and provide a free appropriate public education (FAPE). This notice was sent in response to the Parent's statement by phone that the Student would not return to school until further notice.
12. In a letter dated November 1, 2018, the Student's ABA therapist provided an overview of the changes in the Student's behavior observed since the October 22, 2018 incident. The Therapist observed that the Student, "can not speak about [their] feelings and what happens at the moment, but this will be shown later through [their] behavior in what [they] script[] and act[] in at home." The Therapist went on to describe an escalation of aggressive behaviors in the home since October 22, 2018.
13. On November 5, 2018, the District held an IEP Team Meeting to consider information previously gathered, and consented to by the Parent, for the creation of a new behavior support plan, as outlined in the August 30, 2018 prior written notice.
14. At the November 5, 2018 IEP Team Meeting, the team agreed to meet again on November 13, 2018 to develop a behavior support plan (BSP) to address the behaviors displayed by the Student on October 22, 2018.
15. The Parents insisted that the District develop a BSP prior to the Student's return to school. At this meeting the Parents also discussed with the District their interest in the Student changing school locations.
16. When meeting with the Investigator, the Parents alleged that the Student's IEP, revised on November 5, 2018, also included a revision of the parent concerns section, from prior IEPs dating back to at least October 16, 2018. Meeting minutes from the November 5, 2018 IEP Team Meeting begin with addressing the purpose of the meeting: "Purpose of

the meeting / Agenda with Norms. Offered Procedural safeguard. Introductions. We are reviewing IEP / make revisions if necessary/ parent input / Placement page”

The Parents provided the Investigator with an audio recording of the November 5, 2018 meeting. During the meeting, the Parents took issue with aspects of the District’s investigation of the events of October 22, 2018 and noted discrepancies with descriptions of the events contained in phone calls, email, and the District’s written record. The Parents also allege that preferred attendees to the Student’s IEP meeting were told they could not attend the meeting. The District clarified that the Parents could invite whomever they wanted to the meeting.

17. On November 5, 2018, the District sent a notice of IEP Team Meeting to the Parents. The notice indicated that a meeting was scheduled for November 13, 2018, for the purpose of reviewing and developing the Functional Behavior Assessment and Behavior Support Plan.
18. In response to the meeting notice, the Parent requested a change in school location, voicing concerns for the Student’s safety. Thereafter the Parents indicated other individuals they intended to invite or wanted added to the meeting notice.
19. On November 7, 2018, the District sent the Parents a Prior Written Notice explaining that their concerns about school location, teacher, and the input of the Student’s physician were considered, along with the District’s internal investigation.
20. On November 7, 2018, the Parents sent an email to the District with an attached letter requesting that the IEP Team Meeting scheduled for November 13, 2018 be cancelled. The Parents also requested that the District place the student in a different classroom due to their report that the Student feared the Teacher.
21. On November 14, 2018, the Parent sent an email to the District reiterating their request for a change in classroom, based in part of their reporting that the Student was in fear of the Teacher.
22. On November 19, 2018, the Parents sent an email to the District regarding its investigation of the events of October 22, 2018. The Parents reiterated their interest in the Student attending school a different District building.
23. On November 21, 2018, the District responded in part to the Parents, indicating that the Student’s “FBA/BSP team is required to meet by December 7th. We hope you can join us at this meeting. December 7th will mark the 60 school days the district had to conduct a Functional Behavior Assessment (FBA) and write a Behavior Support Plan (BSP) for [the Student]. Since we have not yet received any dates you are available to meet, we are scheduling this meeting for Friday, November 30th at 8:30 am in our district office.” The District went on to describe the process for the Parents to suggest different date or times for the meeting. Following the email, the District sent a meeting notice containing the same information.
24. The Parents subsequently requested a change in the meeting time from 8:30 am to 9:00

am. On November 23, 2018, the Parents indicated an interest in attending the meeting, and inquired about the meeting participants. Thereafter the District and the Parents discussed whether a State Senator would attend the meeting as an invitee of the Parents, with the State Senator responding with their availability to attend.

25. On November 21, 2018, the District sent the Parents a notice of team meeting for December 6, 2018 for consideration of the "Functional Behavior Assessment, Behavior Support Plan."
26. On November 29, 2018, the Parents sent the District an email stating, "We [Parents] of [Student], hereby, revoke our PN consent for Evaluation (FBA), signed 9/9/2018, (which states we can by law revoke it) Based on the fact that said evaluation for an FBA/BSP was agreed by the IEP team on Oct. 11 2018 as NOT needed. (As per our rights under IDEA and Federal and Legal State Rights) . . . [the Student] behavior has never been deemed as needing a FBA/BSP. This and Previous school year records are proof of that." The Parents went on to describe their concern that the October 22, 2018 incident would be considered as part of the information relied upon in the development of the FBA.
27. On November 30, 2018, the District responded that the revocation of consent was received, and that the District would move forward with the BSP meeting previously scheduled for December 6, 2018. The District noted that, ". . . the law allows for us to move forward with [the Student's] BSP meeting on December 6, 2018 with existing data that has already been collected. We hope that you will join us at the meeting you agreed to attend in your email dated November 26, 2018, 10:49 a.m. We sincerely hope you can attend. If you would like to have a IEP conversation regarding [the Student's] education, you are welcome to schedule an IEP meeting . . . We stand ready to serve [the Student] . . . as indicated in our prior written notice dated 10/22/18."
28. On December 2, 2018, in response to additional inquiries from the Parents, the District reiterated its hope that the Parents would attend the December 6, 2018 meeting to address the Student's BSP.
29. On December 3, 2018, the District sent the Parents a Prior Notice of Special Education Action, noting the Student had not attended school since October 22, 2018, and that the District stands ready to provide FAPE for the Student. The notice indicated that the District was aware of a letter sent from the Student's physician that recommended the Student not return to school until the Student's "situation has been resolved to [the Student's] parent's satisfaction."
30. On December 6, 2018, the Student's IEP Team met to discuss the Student's FBA and develop a BSP. Present for the meetings were relevant IEP team members. The Parents did not attend this meeting.
31. Following the December 6, 2018 IEP team meeting, the District amended the Student's IEP to include the BSP developed on December 6, 2018.
32. The District sent additional prior written notices to the Parents indicating that the District

stands ready to serve the Student and provide FAPE. These notices were dated October 22, 2018, November 6, 2018, November 30, 2018, December 4, 2018, January 7, 2019, January 23, 2019, February 4, 2019, February 13, 2019, and October 30, 2019. Additional prior written notices were sent regarding other meetings and meeting requests.

33. On February 12, 2019, the District sent the Parents a letter documenting the Student's release from the Hillsboro School District and enrollment in the Estacada School District.
34. On February 22, 2019, the Estacada School District sent notification to the District that the Student had withdrawn from the Estacada School District.

IV. DISCUSSION

A. Free Appropriate Public Education (FAPE)

The Parents allege that the District violated the IDEA in numerous ways that amounted to a denial of FAPE. The Parents allege that such violations included the District's failure to offer the Student a different placement, change of school location, and change of teacher based on the Student's fear of the teacher. The Parents also allege that prior written notices sent by the District to the Parents stated that the District "stands ready to serve" the Student and provide FAPE, following the Parents' withdrawal of the Student from the District and the Student's enrollment in a charter school, but offered only one school and teacher option.

Each school district is responsible for making a clear and coherent offer of FAPE. To "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."⁴

1. Placement

A group of people, including the parents, and others knowledgeable about the child decide the student's educational placement.⁵ A district must ensure the student's educational placement is based on the child's current IEP, and consideration must be given to any potential harmful effect on the child.⁶ The physical location where a student attends school is different from their educational placement.⁷

The Parents provided documentation from the Student's therapist and others describing the Student's current behavior, and concerns about the Student's reaction to the Teacher and returning to the same classroom. These documents post-date the District's development of the BSP. Moreover, none of the documentation relates to data collected or events that transpired in the classroom. Should the Parents re-enroll the Student in the District, the Parents' documents about the Student's current behaviors could be part of what the Student's IEP team would consider in developing an IEP for the Student and determining an appropriate educational placement. But the District did not have any such information when it

⁴ *Andrew F., v Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017).

⁵ OAR 581-015-2250(1)(a).

⁶ OAR 581-015-2250(1)(c), OAR 581-015-2250(4).

⁷ *R.M. v. Gilbert Unified School District*, 119 LRP 16384 (9th Cir. 2019).

developed the Student's IEP and determined placement. Given the lack of data available to the team at the time of the formation of the Student's IEP, and given the lack of observations of the Student in the school environment since October 22, 2018 to indicate the Student's placement in their current classroom was inappropriate, the Department concludes that the District made an appropriate offer of FAPE based on the information available. The Department does not substantiate this allegation.

2. Prior Written Notice

The Parents allege that prior written notices sent by the District since October 22, 2018, have referred to the same IEP developed on December 6, 2018. The Parents object to the IEP because the IEP does not specify a different classroom and teacher from those on October 22, 2018. As noted above, educational placement and physical location are not synonymous. The IEP Team determines the "student's educational program and services."⁸ The meaning of "location" in the IDEA "does not necessarily include the specific school where special education services will be implemented."⁹ The IEP Team appropriately determined the educational placement of the Student based on information available to it at the time. The District was not required to identify the specific school building where education services are to be delivered. The Department does not substantiate this allegation.

B. Parent Participation

The Parents allege that the District violated the IDEA when it convened an IEP meeting on December 6, 2018 without the Parents present. The Parents allege that at this meeting the District amended the Student's IEP, considered a functional behavioral assessment, and behavior support plan, despite the Parents having revoked consent for the evaluation. The Parents further allege that the District did not give appropriate notice of the purpose of the meeting.

School districts must provide parents with an opportunity to participate in meeting regarding the identification, evaluation, IEP, and educational placement of the child.¹⁰ School districts must provide parents with written notice of the meeting sufficiently in advance to ensure that they have an opportunity to attend.¹¹ The notice must include the purpose, time, and place of the meeting and who will attend.¹² The notice must also inform parents that they may invite others, and that the team may proceed with the meeting if the parent does not attend.¹³ An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.¹⁴

The Student's IEP team convened on November 5, 2018. At the meeting, the team agreed to meet again on November 13, 2018 to develop a behavior support plan (BSP) to address behaviors the Student displayed on October 22, 2018. The Parents insisted the District

⁸ *Rachel H. v. Department of Education, State of Hawaii*, 868 F.3d 1085 (9th Cir. 2017)

⁹ *Id.*

¹⁰ OAR 581-015-2190(1).

¹¹ OAR 581-015-2190(2)(a).

¹² OAR 581-015-2190(2)(b)(A).

¹³ OAR 581-015-2190(2)(a)(B) and (2)(a)(C).

¹⁴ OAR 581-015-2195(3).

develop a BSP prior to the Student's return to school. On November 5, 2018, the District sent the Parents a notice of IEP team meeting to the Parents for November 13, 2018 for the purpose of reviewing and developing the Student's functional behavior assessment and behavior support plan. On November 7, 2018, the Parents requested that the November 13, 2018 IEP team meeting be cancelled. The District reached out to Parents on November 21, 2018, and rescheduled an IEP team meeting for November 30, 2018 so the team could review the results of the Student's FBA within 60 school days. The Parents then requested a change in the meeting's time and also indicated they would be attending with a State senator. Thereafter, the District rescheduled the IEP team meeting for December 6, 2019. On November 29, 2018, the Parents revoked their consent for the FBA evaluation. The District acknowledged receipt of the Parents' revocation, and noted it would move forward with the BSP meeting on December 6, 2018 based on existing data. On December 2, 2018, the District reiterated its hope that the Parents would attend the December 6, 2018 meeting. The December 6, 2018 meeting convened without the Parents in attendance.

The Parents were afforded an opportunity to attend the December 6, 2018 IEP team meeting. The Parents initially indicated they would attend the meeting, then later stated they would not and revoked consent for gathering information for the Student's FBA. The District and the Parents engaged in a great deal of communication around the purpose of the meeting, and that the Parents were welcome to invite any person of their choosing, and composition of the attendees. The District gave the Parents appropriate notice of the meeting and revised the schedule to allow for the Parents to attend. The Parents conveyed a message to the District that they were not going to attend the December 6, 2018 IEP team meeting. The Department does not substantiate this allegation.

C. Notice of Procedural Safeguards

The Parents allege that the District violated the IDEA when it neglected to provide the Parents with a statement of procedural safeguards; or work collaboratively with the Parents, in violation of their procedural safeguards, in the development of the Student's IEP.

School districts must give parents a copy of the notice of Procedural Safeguards at a minimum one time per year.¹⁵ School districts must also provide a copy upon initial referral or parent request for evaluation.¹⁶ The Department publishes content for the procedural safeguards.¹⁷

The District met their requirement to provide the Parents with a copy of the Notice of Procedural Safeguards. IEP records indicate that procedural safeguards were either provided or offered at in-person meetings during the Complaint period. But the Parents allege more, that is, that the District failed to follow the guidelines outlined in the procedural safeguards when it neglected to work collaboratively with the Parents. But this is a more expansive reading of the requirements of the IDEA's Notice of Procedural Safeguards requirement. The Notice of Procedural Safeguards contain descriptions of processes available to parents to resolve disputes, including the State complaint process. The District fulfilled their

¹⁵ OAR 581-015-2315(1).

¹⁶ OAR 581-015-2315(1)(a).

¹⁷ OAR 581-015-2315(2).

responsibility to provide the Parents with a copy of the Notice of Procedural Safeguards during the Complaint period. The Department does not substantiate this allegation.

D. Placement of the Child

The Parents allege that the District violated the IDEA when it did not consider the Parents' input regarding the Student's placement, resulting in a more restrictive placement for the Student. Specifically, the Parents allege that the District did not consider the Parents' concerns about the school, teacher, and the Student's emotional reactions to the District's proposed placement. School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and others knowable about the child.¹⁸ Placement decisions should be made considering the least restrictive environment provisions.¹⁹ Importantly, placement must be determined with reference to the child's IEP.²⁰

As explained above in Section (A)(1), location and educational placement are not synonymous.²¹ The District considered the Parent's input regarding their preference for a change in school location, documentation from the Student's physician, and the District's own internal investigation, as evidenced by the November 7, 2018 prior written notice document.²² The Department does not substantiate this allegation.

E. Hybrid Retaliation Claim—IDEA

The Parents allege that the District retaliated against them and the Student for having filed complaints against the District. The Parents allege that such retaliation is evidenced by the District having sent the Parent several prior written notices after November 6, 2018, all of which continued to deny the Parents' request for a change of classroom or teacher for the Student. The Parents also allege that this violation is evidenced by the District's December 6, 2018 IEP team meeting, where the Student's IEP and/or behavior support plan was amended without the presence and input of the Parents.

Education programs may not retaliate against students who file complaints or participate in the complaint procedure.²³ Any person who believes they have been subject to retaliation may file a complaint with the Department.²⁴

The initial "stand ready" prior written notice was sent to the Parents prior to their filing a complaint with the Department. The record does not contain evidence to support the Parents' contention that the District sent multiple prior written notices limiting the locations where the Student could attend school in retaliation of the Student or Parents' engaging in the protected activity of filing a complaint. Rather, it appears the District aimed to intermittently notify the

¹⁸ OAR 581-015-2250(1)(a).

¹⁹ OAR 581-015-2250(1)(b).

²⁰ OAR 581-015-2250(1)(c).

²¹ *Rachel H. v. Dept. of Educ.*, 868 F.3d 1085 (9th Cir. 2017).

²² Many of the Parents' concerns were addressed in a previously issued Department order (Case No. 18-054-050).

²³ OAR 581-015-2030(19).

²⁴ *Id.*

Parents that it stood ready to serve the Student and provide a FAPE, and based its placement offer on data available to it. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²⁵

In the Matter of Hillsboro Public School District #1J

Case No. 19-054-038

The Department does not order corrective action in this matter.²⁶

Dated: this 20th Day of December 2019

Candace Pelt, Ed.D

Candace Pelt
Assistant Superintendent
Office of Enhancing Student Opportunities

Mailing Date: December 20, 2019

²⁵ 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)).

²⁶ The District indicated that it was unaware the Parents had returned to homeschooling the Student in the District. It appears notice of the Student's return to the District for homeschooling was sent to the District but was not communicated to the Student Services Office. The Department urges the District to evaluate these internal processes.