

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Clackamas)
School District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-002

I. BACKGROUND

On March 5, 2021, 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 North Clackamas School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the 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 March 15, 2020, 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 March 25, 2021.

The District submitted a *Response* on March 25, 2021 denying the allegations, providing an explanation, and documents in support of the District's position. The District submitted the following items:

1. District Written Response to Complaint, 3/24/21 (D002)
2. Table of Contents (D001)
3. School Personnel Contact Information (D014)
4. Individualized Education Program (IEP), 12/8/20³ (D015)
5. Team Meeting Notes (Annual Review), 12/8/20 & 1/7/21 (D028)
6. Special Education Placement Determination, 12/8/20
7. Prior Written Notice (PWN), 12/8/20 (D033)
8. Notice of Team Meeting, 11/12/20 (D035)
9. Parent Guardian Consent for Individual Evaluation, dated 3/3/20, but from 12/7/20⁴ (unsigned) (D037)
10. Team Meeting Notes (Adjustment to IEP), 8/13/20 (D039)
11. PWN, 8/13/20 (D041)
12. Notice of Team Meeting, 8/6/20 (D043)
13. IEP, 8/13/20 ("Transfer IEP") (D045)
14. Special Education Placement Determination, dated 5/31/19 but likely from 8/13/20 (D050)

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

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

³ The IEP dated 12/8/20 was not completed until 1/7/21.

⁴ Dated 3/3/20, but includes an evaluation added on 12/7/20

15. Eligibility Summary Statement (ORVA), 5/21/19 (D054)
16. Disability Statement (ASD), 5/21/19 (D057)
17. Disability Statement (OHI), 5/21/19 (D060)
18. Consent for Initial Provision of Special Education Services/PWN, 5/31/19 (D062)
19. Letter from the Parent to District IEP Team, 12/14/20 (D064)
20. Occupational Therapy Evaluation, 12/7/20 (D067)
21. File Review & Evaluation Planning report, 3/20/19 (D068)
22. PWN – Decision to Evaluate, 3/20/19 (D078)
23. Assessment Plan and Consent for Evaluation, 3/20/19 (D080)
24. Psychoeducational Evaluation, 4/8/19 (D083)
25. Confidential Psychoeducational Evaluation, 5/20/19 (D085)
26. Medical Statement, 12/10/18 (D094)
27. Beyond Speech Therapy Learning Speech Language Screening, 5/10/19 (D095)
28. Beyond Speech Therapy Learning Occupational Therapy Evaluation, 4/15/19 (D097)
29. E-Therapy Physical Therapy Evaluation, 5/9/19 (D102)
30. Notice of Team Meeting, 5/22/19 (D108)
31. Annual IEP Minutes, 5/31/19 (D110)
32. Oregon Virtual Academy (ORVA) IEP, 5/31/19 (D112)
33. Special Education Placement Determination, 5/31/19 (D126)
34. PWN, 5/31/19 (D129)
35. DHS Individual Support Plan, 2/1/21 (D132)
36. Timeline of Events compiled by the District, (undated, but likely 3/24/21) (D156)
37. Email exchanges compiled by the District, (including internal District emails and emails between the District and the Parent), 1/22/20 - 3/19/21 (D159-266)
38. "PT Experience summary Bilquist 2020-2021," undated (last entry 3/15/21) (D267)

The District submitted the following additional documents on April 7, April 8, April 12, and April 15, 2021, in response to the Investigator's request for additional information:

39. District response to request for additional documents, includes: (D275-D356)
 - a. ESY Teacher Contact Log, (undated, last entry 7/23/20) (D276)
 - b. Email exchanges from 2/25/20 – 4/5/21, (D277-D345; D349-D)
 - c. The Student's Daily Attendance, 2/27/20-6/14/20 and 9/17/20-4/6/21 (D346-348)
 - d. IEP Progress Report, 11/18/20 (D349)
 - e. Email exchanges from 7/9/20-10/13/20 (D350-D356)
 - f. Draft IEP, 3/3/20 (D357)
40. Internal District email exchange, 6/5/20 (D371)
41. District Physical Therapist Log, 8/12/20-4/8/21 (D372)
42. District Occupational Therapist Log, 12/7/20-4/9/21 (D377)
43. Email exchanges between the District and the Parent, 2/18/20-8/15/20 (D380-D397)
44. District IEP Deadlines Log, Spring 2020 (D398-D407)
45. Email exchanges between the District and the Parent, 2/15/20-5/14/20 (408-419)
46. District Attendance Logs for the Student, 10/5/20-4/9/21 (D420-D424)

The Parent submitted documents on March 11, 2021 in response to the Investigators request for clarifying information. The Parent submitted a *Reply* on April 1, 2021, providing an explanation and rebuttal, and supporting documents in support of the Parent's position. In total, the Parent submitted the following items:

1. Parent's Reply to the District's Response to RFR including Appendix A-H, 4/1/21 (P074)
2. Parent Guardian Consent for Individual Evaluation, dated 3/3/20, signed 8/11/20 (P001)
3. Notice of Team Meeting, 5/6/20 (P003)
4. Team Meeting Notes (Adjustment IEP), 8/13/20 (P005)

5. DHS Notice of Eligibility Determination for Community Developmental Disabilities Program, 5/12/20 (P007)
6. IEP, 5/31/19 (P008)
7. Special Education Placement Determination, 5/31/19 (P013)
8. Email exchanges between the Parent and District, 6/27/20 – 8/11/20 (P016-P022)
9. District ESY Maintenance Report, 7/30/20 (P023)
10. Email from the Parent to the District, 8/15/20 (P024)
11. Letter from Parent to the District IEP Team, 12/14/20 (P026)
12. Notice of Team Meeting, 12/16/20 (P029)
13. Notice of Team Meeting, 11/12/20 (P031)
14. IEP, 12/8/20 (*see footnote above regarding dates of document labeled 12/8/20*) (P033)
15. PWN, 12/8/20 (P046)
16. Special Education Placement Determination, 12/8/20 (P048)
17. Parent Guardian Consent for Individual Evaluation, dated 3/3/20 (but from 12/7/20)⁵ (unsigned) (P050)
18. Team Meeting Notes (Annual Review), 12/8/20 & 1/7/21 (P052)
19. Occupational Therapy Evaluation, 12/7/20 (P055)
20. Email from the Parent to the District, 1/8/20 (P058)
21. Letter from the Parent to the District IEP Team, 1/14/21 (P060)
22. Unlabeled Student medical records, 1/8/21 (P062)

The Complaint Investigator interviewed the Parent on April 8, 2021. On April 14, 2021, the Complaint Investigator interviewed the District’s Coordinators of Special Education, Learning Specialist, Speech Language Pathologist, Physical Therapist, Occupational Therapist, Autism Behavior Specialist, General Education Teachers, and Associate Director of Special Education regarding this matter. Virtual meetings were held instead of on-site interviews due to the Coronavirus pandemic. 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 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 6, 2020, to the filing of this Complaint on March 5, 2021.

Allegations	Conclusions
<p>1. When IEPs Must Be in Effect</p> <p>The Parent alleged that the District violated the IDEA by not providing the following services prescribed in the Student’s IEP: Physical Therapy, Occupational Therapy, Extended School Year services, and Accommodations related to social skills(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p>Substantiated.</p> <p>The District did not provide these services from 3/6/20 through 1/7/21, the date the IEP dated 12/8/20 IEP was completed.</p>

⁵ Dated 3/3/20, but includes an evaluation added on 12/7/20

<p>2. Review and Revision of IEPs</p> <p>a. The Parent alleged that the District violated the IDEA by: Not reviewing and revising the Student’s IEP as needed due to changing circumstances, b. Not reviewing and revising the Student’s IEP when the Parent expressed concern, c. Unilaterally removing services from the Student’s IEP, and d. Not providing the Student with services and accommodations required to address his individual special education needs.</p> <p>(OAR 581-015-2225(1)(b)(A), (C), (D), and (E); OAR 581-015-2225(3); OAR 581-015-2200; OAR 581-015-2205(1)(d); 34 CFR § 300.324(a)(1) and (6); 34 CFR § 300.324(b)(1))</p>	<p>Substantiated.</p> <p>The District did not review the Student’s IEP until 8/13/20, did not substantively revise the IEP until 12/8/20, despite the District’s belief that the Student’s IEP was deficient and could not be implemented. Substantiated for 3/6/20-1/7/21.</p>
<p>3. Parent Participation</p> <p>The Parent alleged that the District violated the IDEA by:</p> <p>a. Unilaterally refusing to provide and/or removing physical therapy, occupational therapy, and ESY services from the Student’s IEP, b. Failing to address the Parent’s concerns, including the Parent’s concerns about bullying by other students and its impact on the Student’s ability to access and benefit from special education, c. Failing to convene IEP meetings when requested by the Parent, and d. Failing to evaluate the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement.</p> <p>(OAR 581-015-2190; OAR 581-015-2205(1)(b) and (d); OAR 581-015-2225(1)(b) and (c); OAR 581-015-2105(4)(b); 34 CFR § 300.322; CFR § 300.324(a)(1) and (6); 34 CFR § 300.324(b)(1))</p>	<p>Substantiated In Part.</p> <p>The District did not provide the Parent with an opportunity to meaningfully participate in the Student’s educational program from 3/6/20-1/7/21.</p> <p>a. Substantiated b. Not substantiated c. Substantiated d. Substantiated</p>
<p>4. Evaluation and Reevaluation Requirements</p> <p>The Parent alleged that the District failed to reevaluate the Student before removing services from the Student’s IEP.</p> <p>(OAR 581-015-2105(4)(b); 34 CFR § 300.303(a))</p>	<p>Substantiated</p> <p>The District did not evaluate the Student at all until December 2020, despite the District’s belief that the services on the Student’s out-of-District IEP were inappropriate.</p>
<p>5. Transfer Student</p> <p>a. The Parent alleged that the District violated the IDEA by:</p>	<p>Substantiated.</p> <p>The District did not implement</p>

<p>Not providing FAPE, by failing to provide services comparable to those outlined in the Student's IEP from a different district,</p> <p>b. Not adopting the Student's IEP from the previous district,</p> <p>c. Failing to develop, adopt, or implement a new IEP, and</p> <p>d. Not providing the Student with services and accommodations required to address his individual special education needs.</p> <p>(OAR 581-015-2230(1); 34 CFR § 300.323)</p>	<p>the Student's out-of-district IEP, nor did it provide comparable services, resulting in the District's failure to offer special education services from 3/6/20-1/7/21.</p>
<p>6. Free Appropriate Public Education (FAPE)</p> <p>The Parent alleged that the District violated the IDEA by not providing effective services and accommodations. The Parent states that various services on the Student's IEP were not provided, removed, and/or modified, making the services less effective, and leading to the Student's regression of skills. The Parent alleged that the District's refusal to provide special education services, including physical therapy, occupational therapy, and ESY, has denied educational opportunity to the Student, and thus constitutes a denial of FAPE.</p> <p>(OAR 581-015-2040; OAR 581-015-2065; 34 CFR § 300.101; 34 CFR § 300.106)</p>	<p>Substantiated.</p> <p>The District did not implement the Student's IEP from 3/6/20-1/7/21, depriving the Student of educational opportunities and resulting in a denial of FAPE.</p>

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before Department receipt of a special education complaint. This complaint investigation did not consider any IDEA violations alleged to have occurred before March 6, 2020. 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 10 years old and in the fifth grade. The Student lives within the District boundaries.
2. The Student is eligible for special education as a child with Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI). The Student has a history of medical diagnoses, including hip instability, developmental coordination disorder, neurological gait dysfunction, PTSD, adjustment disorder, dysarthria, and speech and airway disorders.
3. The Student attended a District school from Kindergarten until mid-way through the third grade.
4. The Parent has hearing issues and shared with the District several times that she requires communication by email or face to face.
5. On November 13, 2018, the Parent signed consent for the District to evaluate the Student for special education services.

6. In early 2019, the Student enrolled in an online charter school (Charter School), which is sponsored by another school district located in Oregon (Charter School District).
7. At the time of the Student's withdrawal from the District, the District special education evaluation was not complete.
8. The Charter School District completed the evaluation process and found the Student eligible for special education services under the categories of Autism Spectrum Disorder and Other Health Impairment on May 21, 2019.
9. On May 31, 2019, the Charter School District IEP team developed the Student's IEP (5/31/19 Charter School IEP), which included the following, among other things:
 - a. Present Levels: The Student "presents with deficits in overall strength, coordination and motor planning that affect [the Student's] daily activities and overall participation in [the Student's] educational programming";
 - b. Special Factors: The Student
 - i. exhibits behavior that impedes his learning or the learning of others;
 - ii. has communication needs; and
 - iii. needs assistive technology (AT) devices or services. (D119)
 - c. Measurable Annual Goals (AGs)
 - i. Two motor skills goal, one to be "observed by" an Occupational Therapist (OT) and the other to be "observed by" a Physical Therapist (PT); and
 - ii. Progress toward the goals would be reported to the Parent by written report during the school's regular report card times.
 - d. Specially Designed Instruction (SDI)
 - i. Orientation and Mobility, at 70 minutes per month, provided by an OT; and
 - ii. Motor Skills, 30 minutes per week, provided by a PT.
 - e. Extended School Year (ESY): qualified for ESY in the areas of PT and OT;
 - f. Accommodations: Twenty-two accommodations, including in the areas of social skills, communication, OT, and PT;
 - g. Supports for School Personnel:
 - i. Autism consultation; and
 - ii. "SPED/Gen. Ed/Teacher/Parent/OT/PT Consultation."
10. On February 21, 2020, the Parent provided the District with a copy of the Student's 5/31/19 Charter School IEP. The Parent enrolled the Student on February 22, 2020.

11. The Student attended school in person for three days; February 24, 25, and 26, 2020, and then was absent due to illness from February 27 through March 12, 2020.
12. The District scheduled an IEP meeting for March 3, 2020; however, the Parent cancelled the meeting that morning due to a family illness.
13. Staff members on the Student's IEP team had already gathered and started to review the Student's special education file at the time the Parent cancelled the IEP meeting. Since District staff members had already planned to meet, they reviewed the Student's special education file. The District decided that the IEP would not be implemented until a meeting could be held with the Parent. A District Special Education Coordinator (SPED Coordinator) instructed District personnel to "pause on implementing the IEP" and "we will wait to hear from [the Parent]. We will not apply the IEP as is, we need clarification from [the Parent]."
14. On March 3, 2020, the District sent the Parent an email proposing to conduct a few observations of the Student. The email stated that the District and the Parent should "meet before implementing the current IEP, which confusingly lists PT and OT as [the Student's] SDI, until we better understand [the Student's] needs." In a March 3, 2020 email to the Parent, the District wrote, "We propose, with your permission, that the team do a few observations and have [the Student] participate in the resource room for diagnostic teaching in order to better assess [the Student's] needs. We have created a consent and will send it home today. Please email (or call) if you have any questions." The email does not contain any other information or explanation about the consent or the evaluation process.
15. In its Response, the District stated that on March 3, 2020, the District emailed the Parent a Consent for Individual Evaluation dated March 3, 2020. However, the District provided no email record that included a Consent for Individual Evaluation.
16. A Consent for Individual Evaluation, dated March 3, 2020, stated that the evaluation would include observations, diagnostic teaching, gross motor assessment, and fine motor assessment. The consent identified no specific assessments. Although the form is dated March 3, 2020, the first evidence we have that it was sent and signed comes on August 11, 2020.
17. The District did not convene an evaluation planning meeting for the Student during the Complaint period.
18. District schools ceased in-person instruction starting March 13, 2020, due to the COVID pandemic.
19. From April, 2020 through June, 2020, the Student participated in asynchronous distance learning provided by District. The District did not offer comparable services to those the Student had received at the Charter school, nor did the District adopt the Charter School IEP or develop and implement a new IEP during this time.
20. The District reported that the Student's participation in spring online learning was sporadic. The Student did not join any academic sessions, did not complete any assignments, and only participated in a handful of social events.
21. The annual review date on the Student's 5/31/19 Charter School IEP was May 30, 2020. The District did not convene an IEP meeting for the Student by that date.
22. In a June 27, 2020 email to the District, the Parent said she wanted to discuss the Student's

IEP and ESY, which was included in the Student's 5/31/19 IEP.

23. On June 28, 2020, a District Learning Specialist emailed the District SPED Coordinator, in which she wrote that she had "dropped the ball" and "[The Student] had an existing IEP (ASD/OHI), but the team was waiting for a transitional IEP meeting to be held, then the school shut down. The meeting was going to be held when school was back in session so more testing could be completed..."
24. On June 29, 2020, the District SPED Coordinator responded to the Learning Specialist by email, stating, "I just looked at [the Student's] IEP from [online charter school]. [The Student's] SDI was motor skills and orientation and mobility, no academics. Were we giving [the Student] any SDI? [The Student's] strong in math. Looks like [the Student] struggles in reading."
25. On June 29, 2020, a District Learning Specialist emailed the District SPED Coordinator and another Learning Specialist, stating, "[The Student] came to us and I did some testing but [the Student] was absent a lot so very little got done. [The SPED Coordinator] asked me to do diagnostic teaching with [the Student] to determine [the Student's] needs and to have more information to make a more informed decision regarding ESY. Then [the Student] was absent, then school shut down, so diagnostic teaching never happened."
26. In a July 4, 2020 email to the Parent, the District SPED Coordinator stated, "Again, OT and PT are related services, not stand alone services in our district. What I would like to propose is that [the Student] attend ESY this summer so we can collect progress monitoring data on [the Student's] academics. Please know, even though [the Student] will be enrolled in our ESY to receive progress monitoring services, [the Student] is not in the ESY program because [the Student] qualified as a student needing that level of support. [The Student] will attend so we can help determine [the Student's] academic needs."
27. In July 5, 2020 emails to the District SPED Coordinator, the Parent asked the District to convene an emergency IEP meeting to discuss the Student's IEP, as the Parent was confused about what services the District was proposing to provide for ESY and whether the District would implement the Student's IEP.
28. The District reply stated that it was "not denying [the Student's] IEP" and the District was happy to meet with Parent.
29. On July 8, 2020, an email exchange occurred between the District and the Parent. In the exchange, the District stated:
 - a. "We are ready to offer services and would like to use this opportunity to get to know [the Student] and any further needs that [the Student] has. I would also like to propose an IEP meeting towards the end of this month so that we have a solid IEP in place come the fall."
 - b. "We have [the Student's] IEP from [the Charter School] and the transfer IEP that was created by the [school] team. We will be providing supports based on those documents."
 - c. The District team "carried over accommodations and goals from [the Charter School]" to the Transfer IEP.
30. On July 8, 2020, the District sent the Parent a copy of an IEP drafted by the District. The

Parent was not aware that the District had drafted an IEP and expressed concern to the District that she was not given the chance to provide input for the IEP.

31. On July 24, 2020, the Parent emailed the District, as she had not heard from the District about scheduling an IEP meeting.
32. The District's ESY Maintenance Log listed the Student's ESY subjects as reading, math, writing, behavior/social skills, motor and mobility, and speech language.
33. The Student did not attend ESY in the summer of 2020.
34. The District asserts that ESY was offered and available to the Student, but the District was unable to reach the Parent by email or phone call during ESY, July 7 to July 30, 2020. However, as seen above, there were emails about other topics between the parties during this period. The District asserts that ESY materials were sent home weekly.
35. District staff reported that ESY materials were hand-delivered by District employees every other week to the Student's home. The Parent insists that she never received the emails or materials referenced in the ESY Maintenance Log.
36. On August 11, 2020, the District emailed a Consent for Individual Evaluation (dated March 3, 2020) to the Parent, which the Parent immediately signed and emailed to the District.
37. The District convened an IEP meeting for the Student on August 13, 2020.
38. The District reports that on August 13, 2020, the IEP team "reviewed, revised and corrected" the Student's 5/31/19 Charter School IEP "to be in compliance with state and federal guidelines."
39. The August 13, 2020 IEP (8/13/20) is five pages long. Most of the content was copied from the Student's 5/31/19 Charter School IEP, but it included several changes, as follows:
 - a. Related services for PT and OT were removed;
 - b. The SDI title of "Orientation and Mobility" was changed to "Motor Skill"; and
 - c. Most services dates were changed to 03/04/2020 – 05/30/2020.
40. The August 13, 2020 IEP was missing several required components, including in relevant part:
 - a. No general education teacher;
 - b. Summary of Present Levels of Academic Achievement and Functional Performance (PLAAFP), including no parent concerns, no academic or developmental and functional performance present levels, and no statement of how the Student's disability affects involvement and progress in the general education curriculum; and
 - c. Special Factors for IEP Development.
41. The August 13, 2020 IEP continued to state that SDI would be delivered by a physical therapist and occupational therapist.

42. The District's IEP Team Meeting Notes for the August 13, 2020 IEP included the following statements, among others:
 - a. "[The Student's] IEP from [the Charter School] lists [the Student's] Physical Therapy and Occupational Therapy minutes under 'Specially Designed Instruction.' The team shared with [the Parent] that in [District], these minutes go in the 'Related Services' section in the IEP. There is a need to add goals into the Specially Designed Instruction section of the IEP;"
 - b. "Since there was not an Occupational Therapist present at this meeting, [the OT] will address these concerns at the next IEP meeting;"
 - c. The Parent expressed concern about the Student's social skills;
 - d. The Parent continued to express concerns about the Student's OT needs, specifically the Student's handwriting; and
 - e. When the Parent expressed concern about what happened with ESY, the District told the Parent that someone from the District would reach out to discuss ESY with the Parent at a later date.
43. At the August 13, 2020 IEP meeting, the IEP team agreed that another IEP meeting needed to be scheduled soon.
44. On August 13, 2020, the District issued a Prior Written Notice (PWN), which stated, "[The Student's] IEP will need to be adjusted to fit the service model of [the District]. Occupational Therapy, and Physical Therapy are considered 'Related Services' in [the District]. The team will meet again when school is in session, and when all team members can attend, to update an annual IEP which includes additional goals to meet [the Student's] needs."
45. The August 13, 2020 PWN was the earliest PWN the investigator was able to obtain from the District.
46. The District scheduled a follow-up IEP meeting for August 20, 2020. The District canceled the August 20, 2020 meeting the night before, as several key members from the District were unable to attend on that day.
47. The Student started the 2020-21 school year on September 8, 2020, with comprehensive distance learning.
48. The District Learning Specialist reviewed the Student's 8/13/20 IEP with the Student's Regular Education Teacher at the beginning of the school year.
49. From September 8, 2020 through December 7, 2020, the District did not provide the SDI in OT or PT listed on the Student's 8/13/20 IEP.
50. Throughout the 2020-21 school year, the Student's attendance and participation continued to be sporadic. From October 12, 2020 through the end of the Complaint period, March 5, 2021, the Student attended approximately 60 percent of his general education live class sessions and completed approximately 38 percent of assignments.
51. In the fall of 2020, the District invited the Student to join a writing group with a District Learning Specialist, a social communication group with a District SLP, and sessions for

diagnostic teaching opportunities. The Student rarely participated.

52. On October 13, 2020, a District Learning Specialist emailed the District OT, PT, SLP, ASD Specialist, and the District SPED Coordinator, stating, “logical next steps are to wrap up testing asap, and get [the Student’s] annual IEP held, which is late.”
53. On November 9, 2020, the Parent contacted the District by email and asked, “[a]re we going to be looking at IEP dates for [the Student] soon?”
54. In a November 13, 2020 email to the Parent, a District Learning Specialist wrote, “... I have not had the chance to get to know [the Student] at all. This extra time spent with myself and my staff will allow us the chance to get information we need to get an IEP up and running that is very reflective of [the Student’s] needs.”
55. On November 13, 2020, the Parent contacted District about an incident perceived as bullying, in which classmates hurt the Student’s feelings. The District responded the same day, apologized for the Student’s hurt feelings, and gave its perspective on the incident.
56. On November 17, 2020, an incident occurred during an online class in which the Student was typing words not relevant to the class in the class chat function, and classmates asked the Student to stop. The Parent reported that the Student was being bullied, which made the Student feel like the teacher and classmates were ganging up on him, and “this is why [the Student] hates school.”
57. The District responded, apologizing that the Student felt bullied. The Student’s teacher reported that the reason the other students asked the Student to stop was that the Student’s typing in the chat was distracting to the learning environment. The District suggested that the Student would benefit from more social connections with classmates.
58. The District provided to the Complaint Investigator one IEP Progress Report for the Complaint period, dated November 18, 2020. The November 18, 2020 IEP Progress Report stated:
 - a. OT: The Student has not worked on [the Student’s] OT goal because, “[the Student] requires testing in this area to assess current strengths and needs. At the time of this report, [the Parent] had not responded to email correspondence to set this up;” and
 - b. PT: “Physical Therapy during this progress period has been provided via comprehensive distance learning due to a national pandemic and Statewide school building closures. Contact yet to be established with family after multiple attempts. No PT scheduled yet with family.”
59. From November 12 to 19, 2020, the District attempted to schedule PT and OT evaluations for the Student in preparation for the December 8, 2020 IEP meeting. The District and the Parent ultimately agreed to December 3, 2020.
60. On December 3, 2020, the District noted that the Student did not appear for the virtual OT/PT evaluation observation.
61. The District OT completed an evaluation on December 7, 2020, which included in relevant part:
 - a. The Student’s fine motor skills were assessed on April 13, 2019, and fell into the very

low range;

- b. The OT conducted a virtual observation of the Student copying two sentences with a marker on a white board;
- c. An informal fine motor assessment was not completed due to scheduling conflicts;
- d. The Student presents with difficulty in handwriting, specifically with proper letter formation, sizing, and line adherence; and
- e. The OT did not feel that information gained from an informal fine motor assessment would change her recommendations for accommodations and consultative OT services to support the Student.

62. A December 7, 2020 internal District email exchange regarding input for a draft IEP included the following information:

- a. The District PT completed a file review and stated that he had a video sent by the learning specialist, and otherwise did “not have any present level data to determine a need for school based physical therapy. At this time there is no justifiable direct or consult school based PT.” The District PT suggested a different assessment, stating the District was waiting for written consent from the Parent; and
- b. The District OT deleted the Student’s existing fine motor goals because “some were sensory based and the others were more written language and I’m proposing consult.”

63. In a December 7, 2020 email to the Parent, the District requested the Parent’s consent to conduct a different PT evaluation (PEDICAT) instead of what was listed (functional gross motor assessment) on the consent form, signed 8/11/2020. The Parent replied by email, that she consented to conducting the PEDICAT assessment.

64. The District asserts that the PEDICAT was added because the Parent did not make the Student available for proposed or scheduled evaluation sessions.

65. The Parent did not waive the District’s obligation to complete the remaining evaluations listed on the evaluation consent form signed on August 11, 2020.

66. On December 8, 2020, the District convened an IEP meeting to develop the Student’s annual IEP.

67. At the December 8, 2020 IEP meeting, the IEP team did not complete the review and development of the new IEP and the meeting was continued. The IEP dated December 8, 2020 was completed on January 7, 2021.

68. It is unclear what special education services were implemented between December 8, 2020 and January 7, 2021, during the time that the December 8, 2020 annual IEP was not yet completed.

69. The December 8, 2020 IEP (12/8/20 IEP) (completed on 1/7/21) included the following:

a. Present Levels:

- i. Parent Concerns: including

1. how peers have engaged with the Student, including an incident in which another student gained control of a meeting and hung up on the Student;
 2. the District's removal of direct PT and OT services, in exchange for consultative services only; and
 3. the Student missing ESY services in Summer 2020.
- ii. Academic Performance: The Student was invited to join peers in small education writing group, as a means to monitor progress through diagnostic teaching, but the Student only attended one session in the first term of the 2020-21 school year;
 - i. Developmental and Functional Performance:
 1. The fine and gross motor skills information is primarily from 2019 Charter School data, along with one virtual observation using a video of the Student copying two sentences on a white board;
 2. Although the District did not complete informal fine motor assessments for the Student, due in part to scheduling difficulties with the Parent, the OT did not believe that additional assessments would change anything;
 3. The District PT obtained gross motor information from a file review of ORVA records, and the PT included, "SDI: No proper SDI listed on [the Student's] IEP for related service to support"; and
 4. The gross motor section also included information from a 20-minute virtual observation led by the District Learning Specialist.
 - ii. The Student has "many functional gross motor skills for success on campus. However, based on current parent and staff concerns regarding balance, safety on stairs and competency with PE related movements, [the Student] will do best with continued exposure to agility and coordination based movement activities through [the Student's] PE curriculum," along with "accommodations and school based physical therapy consultation as a staff support"; and
 - iii. The Present Levels stated that the Student's disabilities "can impact [the Student's] ability to demonstrate appropriate social communication and/or social interaction skills with [the Student's] peers and teachers."
- b. Measurable Annual Goals: The Student's two existing annual goals were removed and replaced with two annual goals in the areas of Communication and Writing. Specific baselines for the new annual goals were not included with the annual goals or in the Present Levels;
 - c. Specially Designed Instruction: SDI in PT and OT were removed and replaced with SDI in the areas of Written Language, at 120 minutes per week, and Communication Skills, at 120 minutes per month to be delivered by a Speech Language Pathologist (SLP);
 - d. Related Services: PT and OT removed;
 - e. ESY: ESY determination has not been reached but is anticipated by 4/30/21;

- f. Supports for School Personnel: continued to include OT, PT, and ASD consultations, and added SLP consultation, all at 60 minutes per year; and
- g. It was determined that the Student would be removed from the general education environment in order to receive SDI in writing and communication in a small group setting, that allows for frequent and immediate feedback.

70. The December 8, 2020 District IEP meeting minutes noted the following:

- a. The Parent shared that the Student struggles socially and that social communication skills are important for the Student to succeed;
- b. The Parent is concerned about the social aspects of school, which impede the Student's ability to focus on academics;
- c. The IEP team agreed that a social skills goal is not needed because a social communication annual goal was included in the IEP;
- d. The Parent disagreed with the decision to remove direct services for PT and OT, reducing PT and OT services to consultations for school personnel;
- e. The Parent requested data to support the PT and OT changes made and stated he/she will contest the decision;
- f. The IEP team discussed the 2020 ESY issue, with the Parent stating the District did not provide ESY even though the 5/31/19 Charter School IEP said the Student qualified. In response, the District "explained that because the transfer IEP meeting didn't happen (parent was sick at the March 3, 2020 meeting and the team was unable to reschedule the meeting before ESY started), we didn't know [the Student's] needs and wanted to do progress monitoring as a way to collect that information."

71. The District issued a PWN for the Student, dated December 8, 2020, which stated the following: (D33)

- a. The transfer IEP meeting never occurred because the District was unable to establish communication with the Parent in order to reschedule;
- b. The District offered the Student ESY as a way to collect progress monitoring information; and
- c. The District offered multiple times to evaluate the Student in PT/OT but was unsuccessful.

72. On January 7, 2021, the Student's IEP team met again to continue IEP review and revision.

73. On January 15, 2021, the Parent provided a copy of the Student's recently completed Individual Support Plan from the Oregon Department of Human Services. The Parent requested that the District look at the information included regarding bullying at school and how it affects the Student.

74. On January 20, 2021, The Parent requested an emergency IEP meeting to discuss bullying, following an incident in which some students in the class, including the Student, were unable

to access or turn in an assignment because of technology issues. The Parent reported that the Student felt the teacher did not believe his explanation for not being able to complete the assignment, which made the Student feel singled out and embarrassed.

75. On January 25, 2021, the Parent provided the District with a letter from the Student's Developmental-Behavioral Pediatrician, stating that the District should do additional fine motor assessments before decreasing OT services at school. The pediatrician conveyed his belief that the District failed to conduct any direct, standardized reassessments and the asynchronous video observation completed by the District of the Student was insufficient.
76. On January 29, 2021, the District sent an email to the Parent, which explained what the District was doing to address bullying concerns.
77. On February 3, 2021, the District convened a meeting to discuss the Parent's concerns about bullying.
78. In a February 4, 2021 email to the Parent, the District shared its plan to support the Student, including ways for the Student to express when he is feeling bullied or share ideas that he was unable to communicate during the class chat.
79. On February 4, 2021, the Parent emailed the District to share that the Student was making progress and making connections with school staff.
80. On February 5, 2021 the District requested permission from the Parent to contact the Student's former PT and OT from the Charter School, which the Parent refused.
81. In February 8, 2021 email to the District, the Parent thanked the District for coming together to develop a plan that meets the Student's needs.
82. On February 11, 2021, the District convened a meeting to discuss the Parent's concerns about PT and OT services.
83. On February 22, 2021, the Parent emailed the District and reported an incident that occurred at school involving an interaction between the Student and classmates, which upset the Student. The District was able to resolve the conflict at the school level.
84. The Parent filed this Complaint on March 5, 2021.

IV. DISCUSSION

1. When IEPs Must Be in Effect

The Parent alleges that the District violated the IDEA by failing to implement services prescribed in the Student's IEP, including Physical Therapy, Occupational Therapy, Extended School Year services, and accommodations related to social skills.

A school district must ensure that at the beginning of each school year an IEP is in effect for each child with a disability within the district's jurisdiction.⁶ The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their

⁶ OAR 581-015-2220(1)(a); 34 CFR § 300.323(a)

responsibilities for implementing the IEP.⁷ As soon as possible after the development of the IEP, the services included therein must be made available to the student in accordance with the student's IEP.⁸

Not every instance of a school district failing to implement a student's IEP constitutes a violation of the IDEA.⁹ A district violates the IDEA when it "materially" fails to implement an IEP.¹⁰ "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."¹¹ A student's educational progress, or lack thereof, is probative but not determinative, of whether the failure to implement the IEP was material.¹²

Physical Therapy, Occupational Therapy:

The District received a copy of the Student's existing, out-of-district IEP (5/31/19 IEP) on February 21, 2020. The District asserts that there were problems with the way the IEP was written. When the scheduled IEP meeting was canceled on March 3, 2020, the District made a unilateral decision to not implement the 5/31/19 IEP until the IEP could be reviewed and discussed with the Parent. The District instructed District personnel to not implement the IEP. The first IEP meeting convened for the Student was on August 13, 2020, although no substantive changes were made to the Student's IEP services until January 7, 2021.

The District does not deny that it did not provide the PT and OT services listed in the Student's 5/31/19 and 8/13/20 IEPs from March 6, 2020 through December 7, 2020. The District asserts that it could not implement the Student's 5/31/19 IEP because the services contained therein could not be provided as written in the IEP. The District told the Parent that it did not deliver PT and OT as direct services.

The IDEA requires that IEP team decisions about IEP content must be based on an individualized assessment of a student's needs, not on preferred District practices. While the Department cannot determine whether the services contained in the Student's IEP from March 6, 2020 through January 7, 2021 were appropriate for the Student's individual needs, the District violated the IDEA by not providing the Student these special education services until it developed a new IEP.

In Fall 2020, the District offered the Student opportunities for diagnostic teaching, sessions with the Learning Specialist to work on writing skills, and sessions with the SLP to work social communication skills. While the Student may have had needs in these areas and could have benefited from these special education sessions, they were not the SDI services listed in the Student's 8/13/20 IEP and did not cure the District's non-implementation of the Student's IEP.

The Department substantiates this portion of the allegation.

Extended School Year:

⁷ OAR 581-015-2220 (3)(a) and (b); 34 CFR § 300.323(d)

⁸ OAR 581-015-2220(2)(b); 34 CFR 300.323(c)(2)

⁹ Van Duyn v. Baker Sch. Dist. 5J, 502 F3d 811, 821 (9th Cir. 2007)

¹⁰ *Id.* at 822

¹¹ *Id.*

¹² *Id.*

Extended School Year services are special education and related services that are provided to a child with a disability, beyond the normal school year of the district, in accordance with the child's IEP, and at no cost to the parents of the child.¹³ Extended School Year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE for the child.¹⁴ A school district may not unilaterally limit the type, amount, or duration of ESY services.¹⁵ School districts must develop criteria for determining the need for ESY services.¹⁶

The Student's 5/31/19 IEP stated that the Student's qualified for ESY services. As the District did not amend or revise the Student's IEP, the Student was entitled to ESY services for the summer of 2020. The District did not offer the Student's ESY services as specified in his IEP. Instead, the District offered the opportunity for the Student to attend the District's ESY program to "receive progress monitoring services," but made it clear that the Student did not qualify for ESY "as a Student needing that level of support." The District violated the IDEA when it did not offer the Student ESY services as specified in his IEP, and by unilaterally putting restrictions on the type of ESY services available to the Student.

The Department substantiates this portion of the allegation.

2. Review and Revision of IEPs

The Parent alleges that the District violated the IDEA by: (a) not reviewing and revising the Student's IEP as needed due to changing circumstances; (b) not reviewing and revising the Student's IEP when the Parent expressed concern; (c) unilaterally removing services from the Student's IEP; and (d) not providing the Student with services and accommodations required to address his individual special education needs.

A student's IEP must be revised periodically, but at least annually, to determine whether the annual goals for the child are being achieved.¹⁷ A school district must ensure that the IEP Team reviews the child's IEP to revise the IEP, as appropriate, to address: (1) any lack of expected progress towards the annual goals and the general education curriculum; (2) the results of a reevaluation conducted; (3) information about the child provided to, or by, the parents; (4) the child's anticipated needs; or (5) other matters.¹⁸ A district and the parents may agree to amend or modify the IEP between annual IEP meetings, without holding a meeting but by documenting the changes in writing.¹⁹

(a) Not reviewing and revising the Student's IEP as needed due to changing circumstances:

The time frame relevant to this Complaint was unusual and chaotic. The Student transferred to the District and only attended three days of in-person school before the District schools shut down on March 13, 2020 because of the COVID pandemic. The scheduled March 3, 2020 IEP meeting was cancelled and the District decided not to implement the Student's IEP. If the District believed that the Student's 5/31/19 IEP was deficient or impossible to implement, the District should have reviewed and revised the IEP rather than leaving the Student with no special

¹³ OAR 581-015-2065(7)(a); 34 CFR § 300.106(b)

¹⁴ OAR 581-015-2065(2); 34 CFR § 300.106(a)(2)

¹⁵ OAR 581-015-2065(3)(b); 34 CFR § 300.106(a)(3)

¹⁶ OAR 581-015-2065(5)

¹⁷ OAR 581-15-2225(1)(a); 34 CFR § 300.324(b)(1)(i)

¹⁸ OAR 581-15-2225(1)(b); 34 CFR § 300.324(b)(1)(ii)

¹⁹ OAR 581-15-2225(2)(a); 34 CFR § 300.324(a)(4)(i)

education services at all.

The Student's attendance and participation has been sporadic since his transfer to the District. Whether this was due to COVID, school shutdowns, not having special education services available, or other factors, the level of the Student's disengagement should have triggered the District to convene the IEP team to review and revise the Student's IEP.

The Department substantiates this portion of the allegation.

(b) Not reviewing and revising the Student's IEP when the Parent expressed concern:

The Student entered the District with an IEP in effect from the previous district. Shortly thereafter, the District informed the Parent that the Student's IEP services could not be implemented until a meeting could be held and the IEP could be discussed. The Parent expressed concern about the Student not receiving the services outlined in his IEP, and that the Student's individual needs were not being met.

The Parent also expressed concern about the Student feeling bullied during online classes, and the effect it had on the Student and his ability to participate in class. The Parent offered additional information from private providers with recommendations for the services the Student needed. The IEP team did not materially revise the Student's IEP until January 7, 2021.

The Department substantiates this portion of the allegation.

(c) Unilaterally removing services from the Student's IEP:

The District determined that the Student's 5/31/19 IEP was deficient and would not provide the Student's special education services contained therein. The District stated that it does not provide PT/OT services in the manner prescribed by the Student's 5/31/19 IEP. The District made this decision without convening the IEP team to discuss and revise the Student's IEP. The Parent never agreed to amend or modify the Student's IEP between meetings, nor did the District make such a request.

The Department substantiates this portion of the allegation.

(d) Not providing the Student with services and accommodations required to address his individual special education needs:

The record in this case is silent on whether the Student made any progress or experienced any regression during the Complaint period. While the Department cannot determine what services the Student needed during the Complaint period to address his individual special education needs, the District had an obligation to implement the services prescribed in the Student's IEP until an IEP team appropriately revised the Student's special education services following the relevant IDEA procedural requirements.

The Department substantiates this portion of the allegation.

3. Parent Participation

The Parent alleges that the District violated the IDEA by: (a) unilaterally refusing to provide and/or removing physical therapy, occupational therapy, and ESY services from Student's IEP; (b) failing to address the Parent's concerns, including the Parent's concern about bullying by other students and its impact on the Student's ability to access and benefit from special education; (c) failing to convene IEP meetings when requested by the Parent; and (d) failing to evaluate the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement.

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 student, as well as the provision of a free appropriate public education (FAPE).²⁰ This includes notifying parents of meetings early enough to ensure they will have an opportunity to attend and scheduling the meetings at a mutually agreeable time.²¹ A school district must provide written notice of the time and purpose of a meeting, who will attend, and allow the parent to bring others knowledgeable about the child.²² Educational placement of a child with disabilities is determined by a group of persons, including the parents and others knowledgeable about the child and relevant evaluation data.²³ A school district must consider the concerns of the parent among other indicators of the student's academic, developmental, and functional needs.²⁴

"In order to fulfill the goal of parental participation in the IEP process, the school district was required to conduct a meaningful IEP meeting, not just an IEP meeting."²⁵ A school district violates the IDEA's procedural requirements regardless of the discussion at a meeting when it predetermines the Student's placement.²⁶ Predetermination occurs when a District makes a determination about the type or form of services it is willing to provide prior to the IEP meeting, regardless of the individual needs of the student provide prior to the IEP meeting and is unwilling to consider alternatives.²⁷ When no alternatives to a proposed IEP or placement are considered at an IEP meeting, the Parent is denied meaningful participation in an IEP meeting as required by the IDEA.²⁸

(a) Unilaterally refusing to provide and/or removing physical therapy, occupational therapy, and ESY services from the Student's IEP:

The District did not allow the Parent to meaningfully participate in the Student's special education program between March 6, 2020 and December 7, 2020. During this time the District did not implement the Student's existing IEP, as the District would not consider delivering PT and OT services as described in the Student's IEP. When the District unilaterally made the decision to not provide the services prescribed in the Student's 5/31/19 and 8/13/20 IEPs (including PT, OT, and ESY services), the District infringed on the Parent's opportunity to meaningfully participate in the development of the Student's educational program. When the Parent and the District had disagreements about the Student's special education services, or when the Parent requested that the District take some action and the District refused, the District did not provide Prior Written Notice.

²⁰ OAR 581-015-2190(1); 34 CFR § 300.322(a)

²¹ OAR 581-015-2195(1); 34 CFR § 300.322(a)

²² OAR 581-015-2190(2)(b)(A) and (B); 34 CFR 300.322 (b)

²³ OAR 581-015-2250(1)(a); 34 CFR § 300.116(a)(1)

²⁴ OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1)

²⁵ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992).

²⁶ *H.B. v. Las Virgenes Unified Sch. Dist.*, 48 IDELR 31 (9th Cir. 2007).

²⁷ *Id.*

²⁸ *Target Range*, 960 F.2d at 1484

Starting on December 8, 2020, the District provided the Parent with meaningful opportunities to participate in the IEP process. The Student's outside providers (e.g., doctors, therapists, etc.) provided recommendations through the Parent, which were considered by the IEP team. While the decision model for all team decisions is consensus, the District has the obligation implement an IEP that offers a FAPE. Parents do not get to veto IEP team decisions if they disagree. Although the Parent believed the 12/8/20 IEP to be inadequate, the District was legally obligated to implement the IEP, which it did.

The Department substantiates this portion of the allegation.

(b) Failing to address the Parent's concerns, including the Parents concern about bullying by other students and its impact on the Student's ability to access and benefit from special education:

The Parent had two major concerns regarding the Student: (1) anxiety about the Student's interaction with peers that was perceived as bullying; and (2) the implementation of the Student's IEP.

The IDEA does not include any provisions that expressly reference bullying. However, under some circumstances, bullying may cause or contribute to a denial of FAPE to a student with a disability. If the bullying of a student results in the loss of meaningful educational benefit, it constitutes a denial of FAPE.²⁹ That is not the case here.

The District listened to the Parent and responded appropriately to address bullying concerns, including convening meetings and making plans to provide additional support to address the Student's needs. The District was prompt and open to discussions when Parent contacted the district about perceived bullying. The District convened meetings when requested by the Parent to discuss concerns, including on January 29, February 3, and February 11, 2021. At the February 3, 2021 meeting, the Parent raised specific points about the effect that bullying had on the Student, and the team discussed ways to support the Student. The District and the Parent worked together to develop a bullying plan, which the District and Parent agreed has been improved the Student's connections at school and willingness to participate in class.

The Department does not substantiate this portion of the allegation.

(c) Failure to convene IEP meetings when requested by the Parent:

According to the Student's 5/31/19 IEP, the Student's annual IEP was scheduled to occur by May 30, 2020. The District did not hold an IEP meeting by the annual IEP review date.

On July 5, 2020, the Parent requested an emergency IEP meeting to discuss the Student's special education services, including ESY services to be provided to the Student, as the ESY program was scheduled to start on July 7, 2020. The first IEP meeting the District convened for the Student occurred August 13, 2020, almost two weeks after the conclusion of ESY. Given the need for a discussion about the Student's special education services for ESY, the District did not convene the IEP team in a timely manner.

²⁹ US DOE Dear Colleague Letter, 08/20/2013

At the August 13, 2020 IEP meeting, the District told the Parent that the District did not provide services in the manner listed on the Student's 5/31/19 IEP. Although OT services needed to be discussed by the IEP team, an OT was not present. Despite the District's statement that the Student's Measurable Annual Goals would need to be rewritten to match the service method offered by the District, the IEP team did not change the Student's goals at the meeting. The Student's existing special education services were carried over to the 8/13/20 IEP. When the IEP team was unable to complete the meeting on August 13, 2020, the team agreed that a continuation IEP meeting would be scheduled soon. An IEP meeting to finish the review and revision of the 8/13/20 IEP did not occur until December 8, 2020.

The Department substantiates this portion of the allegation.

(d) Failing to evaluate the Student when requested by the Parent, in violation of the IDEA requirements for IEP development, IEP amendment, and parent involvement:

The District made decisions about whether or not to evaluate the Student without the Parent's input. The District issued an evaluation consent form without conducting any evaluation planning. After March 3, 2020, the District did not mention evaluations until August 2020. After the evaluation consent form was signed on August 11, 2020, the District did not make any attempts to schedule the evaluations until November 12, 2020. The evaluations were not completed before the December 8, 2020 meeting, when the Student's PT and OT services were removed. Despite the Parent's request for the District to gather more information and perform additional evaluations before removing services from the Student's IEP, the District did not hold an evaluation planning meeting or propose any additional evaluations.

Although scheduling with the Parent was difficult, the District did not involve the Parent in the evaluation process. The Parent did not have the chance to provide input, including sharing information to help identify the Student's suspected areas of need. The District made unilateral decisions about whether evaluations should be conducted and in which areas, without providing an opportunity for the Parent to meaningfully participate.

The Department substantiates this portion of the allegation.

4. Evaluation and Reevaluation Requirements

The Parent alleges that the District failed to reevaluate the Student before removing services from the Student's IEP.

Before conducting any evaluation or reevaluation of a child, the public agency must conduct evaluation planning.³⁰ A school district must provide notice to the parents, describe any evaluation procedures the school district proposes to conduct as a result of the evaluation planning process, and obtain written consent from the parents.³¹ If a school district refuses an evaluation or reevaluation requested by the parent, the school district must provide the parent with prior written notice.³² Although the IEP team may hold reevaluation planning without a meeting, the district must invite the parents if it "holds a meeting."³³ If the IEP team determines that "no additional data are needed to determine whether the child is or continues to be a child

³⁰ OAR 581-015-2110(1)

³¹ OAR 581-015-2110(2)(a) and (b); 34 CFR § 300.300 and 304

³² OAR 581-015-2110(2)(c); 34 CFR § 300.304

³³ OAR 581-015-2115(2)

with a disability, and to determine the child's educational and developmental needs," the district must provide notice of that determination, the reason, and the parents' right to request an evaluation.³⁴

As part of a reevaluation, the child's IEP team, and other qualified professionals, as appropriate, must review existing evaluation data on the child.³⁵ Based on this data, a district should determine what additional information, if any, is needed to determine whether the child needs any changes to special education services.³⁶ An evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs.³⁷ A reevaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility, continuing eligibility, or the student's educational needs.³⁸ If the parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the district's control, an evaluation may be completed in more than 60 school days.³⁹

The District drafted an evaluation consent form for the Student without input from the Parent. The District did not hold an evaluation planning meeting before drafting or sending a copy of the consent form to the Parent. The evaluations listed on the consent form were not sufficiently comprehensive to identify all of the Student's special education needs. The District did not evaluate the Student before making the decision, on March 3, 2020, to not implement the Student's 5/31/19 and 8/13/20 IEPs.

The District did not attempt to evaluate the Student until November 12, 2020, when the District first contacted the Parent about scheduling the evaluations listed in the evaluation consent, even though the Parent provided consent to evaluate on August 11, 2020. There was some difficulty in scheduling this, as the Parent informed the District that the initial dates proposed would not work. Once the District and the Parent finally agreed on a date for the Student's evaluations, the Parent and the Student did not sign in using the link provided in a District email. It appears that there may have been some confusion on the part of the Parent and Student, as the Student signed into a class during this time.

The District asserts it did not complete all of the assessments that it planned to complete before the December 8, 2020 IEP meeting due to the scheduling issues noted above. However, the District chose to go ahead and hold the IEP meeting. The PT and OT were able to conduct some limited video observations and perform a file review of existing evaluation data from the Charter School. At the December 8, 2020 IEP meeting, the IEP team removed PT and OT SDI and related services. While the Department is unable to determine whether the IEP team had sufficient data to make an informed decision regarding the Student's PT and OT needs, as the identified evaluations were not sufficiently comprehensive and had not been completed, other than a PEDICAT assessment completed by the Parent, the IEP team removed these services over the Parent's objections.

The Department substantiates this allegation.

³⁴ OAR 581-015-2115(4)(a); 34 CFR § 300.305(d)

³⁵ OAR 581-015-2115(1)(a); 34 CFR § 300.305(a)

³⁶ OAR 581-015-2115(1)(b)(C); 34 CFR § 300.305(a)

³⁷ OAR 581-015-2110(4)(e); 34 CFR § 300.304(c)(6)

³⁸ OAR 581-015-2110(5)(b)

³⁹ OAR 581-015-2110(5)(c)(A); 34 CFR § 300.323(e)

4. Transfer Student

The Parent alleges that the District violated the IDEA by: (a) not providing FAPE, by failing to provide services comparable to those outlined in the Student's IEP from a different District (5/31/19 IEP); (b) not adopting the Student's IEP from the previous district; (c) failing to develop, adopt, and implement a new IEP; and (d) not providing the Student with services and accommodations required to address his individual special education needs.

When a student with an IEP that was in effect in a previous school district in Oregon transfers to a new school district in Oregon within the same school year, the new school district must provide a free appropriate education (FAPE) to the child.⁴⁰ That FAPE must include services comparable to those described in the student's previously held IEP from the outside school district, in consultation with the parents.⁴¹ The new school district must continue offering FAPE in this manner until adopts the child's IEP from the previous school district or develops, adopts, and implements a new IEP.⁴²

On February 21, 2020, the District received a copy of the Student's 5/31/19 IEP. The IEP included specially designed instruction in PT and OT. The IEP noted that the Student's annual IEP date was set for May 30, 2020. Between February 24, 2020 and December 8, 2020, the District did not provide the Student with comparable services to those described in the 5/31/19 IEP, in violation of the IDEA.

The Department substantiates this allegation.

5. Free Appropriate Public Education (FAPE)

The Parent alleges that the District violated the IEP by not providing effective services and accommodations. The Parent states that the various services on the Student's IEP were not provided, or were removed and/or modified, making the services less effective, and leading to the Student's regression of skills. The Complaint alleges that the District's refusal to provide special education services, including physical therapy, occupational therapy, and ESY, has denied educational opportunity to the Student, and thus constitutes a denial of FAPE.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.⁴³ In order to evaluate compliance with the IDEA, and thereby determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive requirements for the student's education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IDEA; and (2) whether the school district developed an IEP through these procedures reasonably calculated to enable the child to receive educational benefits.⁴⁴ "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."⁴⁵

If a school district cannot demonstrate that it has complied with the procedures in the IDEA and

⁴⁰ OAR 581-015-2230(1); 34 CFR § 300.323(e)

⁴¹ OAR 581-015-2230(1); 34 CFR § 300.323(e)

⁴² OAR 581-015-2230(1); 34 CFR § 300.323(e)

⁴³ OAR 581-015-2040(1); 34 CFR § 300.101(a)

⁴⁴ *Bd. of Ed. of Hendrick Hudson Central Sch. Dist. Bd. of Westchester Co. v. Rowley*, 458 U.S. 176, 206-207 (1982)

⁴⁵ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017)

state education laws, the question of whether its proposed program meets the substantive benefit test need not be addressed.⁴⁶

Not every procedural error is sufficient to rise to a denial of FAPE.⁴⁷ The procedural test is an “either/or” test that consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity⁴⁸; (2) whether the Parent’s right to participate in the IEP process was infringed; or (3) whether the procedural error caused a “deprivation of educational benefit.”⁴⁹ Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a “strong likelihood” that alternative educational possibilities for the student “would have been better considered.”⁵⁰ “Thus, an IEP team’s failure to properly consider an alternative educational plan can result in a lost educational opportunity even if the student cannot definitively demonstrate that his placement would have been different but for the procedural error.”⁵¹

As stated above, the District did not conduct evaluation planning and did not attempt to evaluate the Student until November 2020. The District did not implement an IEP for the Student until the IEP team developed the 12/8/20 IEP. The District did not provide comparable services to the Student. The District made no offer of FAPE from March 6, 2020 until December 7, 2020.

The cumulative result of the District’s procedural violations deprived the Student of educational opportunity. The unilateral decisions the District made when it did not conduct evaluation planning and did not implement the Student’s IEP deprived the Parent of the right to participate in special education decisions related to the Student. Either of these would amount to a denial of FAPE.

The Department substantiates this allegation.

V. CORRECTIVE ACTION⁵²

*In the Matter of North Clackamas School District
Case No. 021-054-002*

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

Action Required	Submissions	Due Date
1. Compensatory Education for lost educational opportunities from March 6, 2020 to January 7, 2021 in the amount of 25 hours. The content of this compensatory education is to be determined after a review of any evaluations conducted	Proof of delivery of compensatory education services.	April 1, 2022

⁴⁶ *Target Range*, 969 F.2d at 1485

⁴⁷ *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990))

⁴⁸ *Target Range*, 969 F.2d at 1484

⁴⁹ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

⁵⁰ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. 2005)

⁵¹ *Doug C. v. Hawaii Dep’t of Educ.*, 720 F.3d 1038, 1047 (9th Cir. 2013)

⁵² 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)).

following item #3 below.		
2. Training on Transfer Students, Evaluation Planning, General Evaluation Requirements, IEP Review/Revision, and Parent Participation.	Training agenda/materials to County Contact for review/approval. Sign-in sheet for training.	August 15, 2021 January 1, 2022
3. Evaluations/Evaluation Planning Meeting	June 1, 2021	All evaluations resulting from this meeting to be completed by September 1, 2021.

Dated: this 3rd Day of May 2021



Sara Green
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: May 3, 2021

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).)