

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of) FINDINGS OF FACT,
Portland School District 1J) CONCLUSIONS OF LAW, AND
Case No. 22-054-036) STIPULATED CORRECTIVE ACTION

I. BACKGROUND

On November 1, 2022, the Oregon Department of Education (Department) received a request for a special education complaint investigation from the parent (Parent) of a student (Student) residing within the Portland Public 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 federal and state 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 November 8, 2022, the Department’s Complaint Investigator (Investigator) sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 22, 2022.

In their Complaint, the Parent alleged several IDEA violations including failure to provide special education and related services in accordance with the Student’s IEP, failure to ensure that the Student’s placement was based on the Student’s IEP and made in conformity with the least restrictive environment, failure to ensure that the Student was educated in the least restrictive environment, and failure to ensure that extended school year services were available to the Student. It was later determined that the extended school year services allegation was related to individualized COVID-19 recovery services.

On November 22, 2022, the District submitted to the Department a *Response* to the Complaint. The Response stated:

“The District has carefully reviewed the allegations and, while it does not entirely agree with them, has decided not to contest the main allegation regarding change of placement described in the complaint. Rather, the District proposes corrective action it believes will address the Parent’s concerns raised in the complaint through collaborative process.”

On December 2, 2022, the District submitted to the Department a *Supplemental Response*

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

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

to the Complaint. The Response stated:

“As previously stated, the District does not contest Parent allegations regarding placement in the least restrictive environment, LRE, or resulting denial of FAPE due to the necessity of change of placement with nursing shortage in the [school] classroom.”

The Complaint Investigator discussed the nature and content of a Stipulated Corrective Action and the District’s proposal with the Parent on December 6, 2022.

This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-300.153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below.

Allegation	Conclusion
<p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP.</p> <p><i>(OAR 581-015-2220; 34 CFR §300.323)</i></p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Placement of the Child</p> <p>The Parent alleged that the District violated the IDEA by failing to ensure that the Student’s placement was based on the Student’s IEP and made in conformity with the Least Restrictive Environment. Specifically, the Student was removed from school and placed on home instruction because of a District staff shortage.</p> <p><i>(OAR 581-015-2250; 34 CFR §300.116)</i></p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<p>Requirement for Least Restrictive Environment</p> <p>The Parents alleged that the District violated the IDEA when it failed to ensure that the Student's placement met the Least Restrictive Environment requirements.</p> <p>(OAR 581-015-2240; 34 CFR §300.114)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Individualized COVID-19 Recovery Services³</p> <p>The Parents alleged that the District failed to provide Individualized COVID-19 Recovery Services as required by the Student's IEP.</p> <p>(OAR 581-015-2065; 34 CFR §300.106)</p>	<p>Substantiated</p> <p>The District does not dispute that it was unable to provide these services during the summer of 2022 as required by the IEP due to the District's inability to hire a nurse to serve this Student.</p>
<p>Free Appropriate Public Education</p> <p>The Parents alleged that the District's refusal to provide effective services and supports has denied educational opportunity to the Student, and thus constitutes a denial of FAPE.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • Get the Student back in in-person school as soon as possible. • If the current nurse that the District is looking into is unsuccessful, then the District should look into travel nursing. • If travel nursing is not an option, then the District should be open to other options given the shortage of nurses right now. For example, a CNA plus a parent or the Parent signing a waiver of liability. • If the District uses a home nurse, then that nurse should be able to ride with a parent so that won't be an issue. If the District uses an MESD nurse, then the sedan option needs to occur a lot faster than it is. • While the Student is on home instruction, the Student's OT, PT, BCBA, vision, and SLP services should happen in person.

3. After filing this Complaint, the parties agreed that this allegation was about the provision of Individualized COVID-19 Recovery Services under OAR 581-015-2229 rather than ESY.

- The home instructor, that was promised to tag team with the Student's caregiver, needs to start as soon as possible because right now a parent and the Student's caregiver has been functioning as the Student's para during home instruction which is not appropriate.
- Compensatory services for all the time the Student has missed school and a clear plan for ESY services for summer 2023 that actually makes sense for the Student and will fit the Student's needs.

III. FINDINGS OF FACT

1. The Student is 7 years old and a 2nd grade student at a District school.
2. The Student is eligible for special education as a child with Other Health Impairment (OHI), Deaf or Hard of Hearing, Visual Impairment, Deaf-Blindness, and Autism Spectrum Disorder (ASD).
3. The District has not contested four of the five allegations made in this Complaint, and concedes that Recovery Services were not provided in the timeframe required by the Student's IEP. The Complainant has been informed of the Stipulated Corrective Action, as set forth in the Corrective Action table, below.

IV. DISCUSSION

The Complaint alleged five violations of the IDEA. The District did not contest four of these and concedes that Individualized COVID-19 Recovery Services were not provided in the timeframe required by the Student's IEP. The District claims that it has provided 42 hours of recovery services, which is what the IEP requires, while the Parent claims that these hours were for home instruction related to the other allegations in this Complaint rather than recovery services. The Parent and District have agreed to address this issue in a Facilitated IEP meeting.

Based on the District not contesting the allegations of this Complaint, the Department orders and the District stipulates to the following Corrective Action:

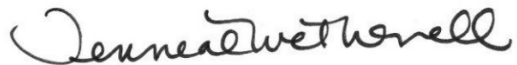
V. STIPULATED CORRECTIVE ACTION⁴

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⁴ 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)).

Action Required	Submissions	Due Date
<p>The parties have agreed to participate in an ODE-Facilitated IEP Meeting to:</p> <ul style="list-style-type: none"> a) review staff time sheets and Student attendance data to determine with specificity when nursing care was and was not available to the Student; b) review Student's progress from Individual COVID-19 Recovery Services and whether additional services hours are needed; c) determine whether additional compensatory education is appropriate and, if so, in what amount; and d) address any other concerns of the Parents or District members of the IEP team, including but not limited to the amount of recovery services to be provided as well as compensatory education to be provided for the time after this Complaint was filed that a nurse was not available. 	<p>The District will submit to the Department all documents and materials related to the Facilitated IEP Meeting, including:</p> <ul style="list-style-type: none"> 1) Agenda 2) Meeting minutes 3) Revised IEP 4) Prior Written Notice for each District proposal or refusal 	<p>February 15, 2023</p>

Dated: this 23rd day of December 2022



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

Emailing date: 12/23/22

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).)