

BEFORE THE STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION

In the Matter of Portland School District 1J)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-011

I. BACKGROUND

On April 18, 2017, the Oregon Department of Education (Department) received a Letter of Complaint (Complaint) from the Parent of a student (Student) residing in the Portland Public 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 provided the District a copy of the Complaint on April 19, 2017.

On April 24, 2017, the Department 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 May 8, 2017. The District requested an extension of time to produce documents pursuant to the RFR and the Department allowed the District an extension until May 12, 2017 to produce the requested documents. The District completed its *Response* that was received by the Complaint Investigator on March 12, 2017. The District sent its *Response* to the Parent's attorney as well. The District's *Response* included a narrative response, partial exhibit listing, and the following documents:

1. EI/ECSE Heath Screening Checklist dated September 5, 2012
2. Early Childhood Team Evaluation Report dated September 5, 2012
3. Educational and Medical information release dated September 5, 2012
4. Prior Written Notice of Early Intervention dated September 5, 2012
5. Statement of Eligibility (Developmental Delay) dated September 5, 2012
6. Consent/Prior Written Notice for Evaluation dated September 5, 2012
7. Notice of IFSP Team Meeting dated September 5, 2012
8. Early Intervention Team Meeting Notes dated September 5, 2012
9. Notice of IFSP Team Meeting dated September 27, 2012
10. Consent for use of insurance dated October 2, 2012
11. IFSP dated October 2, 2012
12. IFSP Meeting notes dated October 2
13. Consent for use of insurance dated October 2, 2012
14. Prior Written Notice of Early Intervention, MESD dated March 20, 2013
15. Revised IFSP dated March 20, 2013
16. MESD meeting notes, undated
17. Notice of IFSP Team Meeting dated September 20, 2013
18. Prior Written Notice of Early Intervention dated September 27, 2013
19. Revised IFSP dated September 27, 2013
20. Notice of IFSP Team Meeting dated November 27, 2013
21. Notice of Team Meeting dated January 14, 2014
22. Early Childhood Special Education Evaluation Report dated January 14, 2014
23. Health, Hearing and Vision Annual Review dated January 14, 2014
24. Undated Family Resources Worksheet
25. Notice of Team Meeting dated January 14, 2014

26. Prior Written Notice from Gresham Barlow School District dated January 14, 2014
27. Statement of Eligibility, (Developmental Delay) dated January 14, 2014
28. Statement of Eligibility, (Communication Disorder 50) dated January 14, 2014
29. Evaluation Consent dated January 14, 2014
30. Team Meeting minutes dated January 14, 2014
31. Medical Statement for motor impairment dated January 21, 2014
32. Notice of IFSP Team Meeting dated January 26, 2014
33. Prior Written Notice Multnomah County Early Childhood including goals and progress notes dated February 3, 2014
34. IFSP dated February 3, 2014;
35. Team Meeting Minutes dated February 3, 2014
36. Statement of Eligibility (ASD 82) dated February 14, 2014
37. ADS evaluation dated February 14, 2014
38. Prior Written Notice Gresham Barlow School District dated February 14, 2014
39. Gresham-Barlow Early Childhood Special Ed ASD evaluation dated February 14, 2014
40. Team Meeting minutes dated February 14, 2014;
41. Notice of Team Meeting dated April 7, 2014
42. Prior Written Notice from Multnomah County Early Childhood including revision pages to IFSP dated April 7, 2014
43. Prior Written Notice from Multnomah County Early Childhood dated July 11, 2014
44. Revised IFSP dated July 11, 2014
45. Notice of Team Meeting dated December 8, 2014
46. Communication Portfolio dated January 5, 2015
47. Notice of Team Meeting dated December 8, 2014
48. Communication Portfolio dated January 5, 2015
49. Building Bridges School Observations dated January 7, 2015
50. Team Meeting Minutes dated January 8, 2015
51. Prior Written Notice Multnomah County Early Childhood dated January 8, 2015
52. Revised IFSP dated January 8, 2015
53. Prior Written Notice from Multnomah County Early Childhood dated January 8, 2015
54. Revised IFSP dated January 8, 2015
55. Notice of Team Meeting dated January 29, 2015
56. Notice of IFSP Team Meeting dated March 23, 2015
57. Prior Written Notice from Multnomah County Early Childhood dated April 8, 2015
58. IFSP dated April 8, 2015
59. "Goals for Fall 2015" Building Bridges recommendations, undated
60. Notice of Team Meeting Multnomah County Early Childhood dated December 16, 2015
61. Multnomah County Early Childhood Prior Written notice dated January 7, 2016
62. IFSP dated January 7, 2016
63. Communication Portfolio from Multnomah County Early Childhood dated January 7, 2016
64. IFSP Meeting minutes dated January 7, 2016
65. Release to Disclose Education and Health Information/Building Bridge release dated January 7, 2016
66. Release to Disclose Education and Health Information/Montavilla CC dated January 7, 2016
67. Team meeting minutes dated January 16, 2016
68. District ADS Parent Interview, undated
69. Behavior Therapy recommendations dated May 4, 2016
70. Notice of Team Meeting dated May 10, 2016
71. Amended IEP Dated May 17, 2016

72. IEP Meeting Minutes dated May 17, 2016
73. Placement Determination dated May 17, 2016
74. Prior Written Notice regarding implementation of IEP dated May 17, 2016
75. Prior Written Notice from Multnomah County Early Childhood dated June 15, 2016
76. Inter-District email beginning August 23, 2016 through April 13, 2017
77. Behavior Incidents and Response from September 6, 2016 through April 21, 2017
78. Occupational Therapy/Motor Skills Development Progress Notes dated September 9, 2016 through April 27, 2017
79. Discipline Incident Report dated September 9, 2016
80. SPED teacher file notes dated September 20, 2016 through 13, 2017 and April 25, 2017
81. District Autism Specialist Action/Notes dated September 20, 2016 through May 5, 2017
82. Para-Educator Request Survey dated September 26, 2016
83. Discipline Incident Report dated September 26, 2016
84. Notice of Team Meeting dated September 27, 2016
85. Discipline Incident Report dated September 27, 2016
86. Consent for Evaluation dated September 27, 2016
87. IEP Meeting Minutes dated September 27, 2016
88. Authorization to Disclose Educational and Health Information dated September 27, 2016
89. Medical Recommendations dated September 28, 2016
90. Emails between District and parent counsel beginning September 28, 2016 through April 28, 2017
91. Discipline Incident Report dated September 29, 2016
92. Autism Coordinator Meeting notes dated September 30, 2016
93. Discipline Incident Report dated October 3, 2016
94. Notice of Team Meeting dated October 11, 2016
95. ABA Behavioral Service Plan Quick Guide dated October 17, 2016
96. ASD specialist meeting notes dated October 17, 2016
97. IEP Meeting Minutes dated October 18, 2016
98. Notice of Team Meeting dated October 25, 2016
99. Re-Evaluation and Re-Eligibility Checklist dated October 18, 2016
100. Discipline Incident Report dated October 26, 2016
101. Discipline Incident Report dated October 27, 2016
102. Consent for Individual Evaluation dated October 28, 2016
103. IEP Meeting Minutes dated October 28, 2016
104. Prior Written Notice for early re-evaluation dated October 28, 2016
105. School Psychologist file notes dated November 8, 2016 and February 10, 2017
106. Student Annual Measurable Goals Progress Notes dated November 8, 2016
107. PPV Test dated November 29, 2016
108. Student speech/language sample dated November 29, 2016
109. PAT-3 Test results dated December 2, 2016
110. EVT dated December 2, 2016
111. Speech Therapy logs dated December 5, 2016
112. School Psychologist Classroom Observation Data beginning December 2, 2016 and December 13, 2016
113. Discipline Incident Report dated December 12, 2016
114. Notice of Team Meeting dated December 13, 2016
115. Prior Written Notice regarding change in evaluation scales dated December 13, 2016
116. Medical record request from school psychologist dated December 13, 2016
117. Authorization for release of Student's medical records dated December 13, 2016
118. Response to request for medical records dated December 14, 2016

119. Informal Behavior Checklist dated December 14, 2016
120. Functional Assessment Interview dated December 16, 2016
121. Reinforcement Survey dated December 17, 2016
122. ASD Parent Interview form dated December 22, 2016
123. Fax Cover from Medical Provider dated December 26, 2016 transmitting neurodevelopment test results and therapy notes for Student dated July 2, 2014, April 15, 2015, April 22, 2015, April 29, 2015, May 6, 2015, May 13, 2015, May 20, 2015, May 27, 2015, June 3, 2015 and June 9, 2015
124. Medical Statement for ASD, Anxiety and ADHD dated January 2, 2017
125. ABC Observation – Telling a Useful Story dated January 3, 2017
126. ASD Specialist Observation—Telling a Useful Story dated January 3, 2017
127. Functional Assessment Checklist and Summary Sheet dated January 4, 2017
128. ABC Recording Form dated January 5, 2017
129. ABC Recording Form dated January 6, 2017
130. PLSI test results dated January 6, 2017
131. BASC 3 Test results dated January 8, 2017
132. SLP Report dated January 8, 2017
133. Speech and language evaluation report dated January 8, 2017
134. Prior Written Notice/Notice of Eligibility dated January 10, 2017
135. Occupational Therapy Assessment dated January 10, 2017
136. Confidential Psychoeducational Evaluation Report dated January 10, 2017
137. Notice of Team Meeting dated January 10, 2017
138. Functional Behavior Assessment and Behavior Support Confidential Report dated January 10, 2017
139. Functional Behavior Assessment and Behavior Support Plan dated January 10, 2017
140. Worksheet for Function-based Behavior Support Planning dated January 10, 2017
141. ASD (82) Disability Statement dated January 10, 2017
142. Other Health Impairment (80) Disability Statement dated January 10, 2017
143. Communication Disorder (50) Disability Statement dated January 10, 2017
144. Eligibility Summary Statement dated January 10, 2017
145. IEP Team Meeting Minutes dated January 10, 2017
146. Worksheet for Function Based Behavior Support Planning dated January 10, 2017
147. Discipline Incident Report dated January 20, 2017
148. SPED instructor schedule including Student support dated January 23, 2017
149. IEP Progress Period Detail Report dated February 3, 2017
150. Discipline Incident Report dated February 7, 2017
151. Draft IEP dated February 8, 2017
152. IEP Team Meeting Minutes dated February 8, 2017
153. In class observation data for February 14, 2017, February 24, 2017, and March 1, 2017.
154. Discipline Incident Report dated February 16, 2017
155. Discipline Incident Report dated February 24, 2017
156. Discipline Incident Report dated March 1, 2017
157. Discipline Incident Report dated March 3, 2017
158. Discipline Incident Report dated March 8, 2017
159. Discipline Incident Report dated March 17, 2017
160. Prior Written Notice dated March 20, 2017
161. IEP Progress Report – Annual Goal dated March 20, 2017

162. IEP Progress Period Detail Report dated March 20, 2017
163. Informal Progress Notes, undated
164. Memorandum from Parent's Counsel dated April 3, 2017 requesting changes to Feb. 2017 IEP
165. Detailed Behavior Incidents and Responses dated April 21, 2017
166. Staff Absence Log as of April 26, 2017
167. "All About Me" page, undated
168. Student Attendance profile for academic year 2016-2017
169. District Policy re: Student Conduct and Discipline
170. District Policy re: Student Suspension and Expulsion Procedures
171. Checklist of changes made to Student's IEP per request of Parent's Counsel (undated)
172. Draft of potential annual measurable goals (undated)
173. Fade to Independence Plan (undated)
174. Para-Educator support schedule for Student (undated)
175. ASD Specialist notes regarding Student's progress (undated)
176. ASD Specialist draft Recess Plan (undated).
177. Paraprofessional Role for Lunch/Recess guidelines originally created 2005
178. ASD Specialist Toolkit including Friend File, Contingency Plan, Social Stories (undated)
179. PPS Special Education Paperwork Checklist

The Department's Complaint Investigator determined that in person interviews were required. On May 22, 2017, the Complaint Investigator interviewed the following District personnel on site: the Autism Coach, the Special Education Program Administrator, the English Kindergarten Teacher, the Student's Case Manager, the School Principal, and a Teacher on Special Assignment that served as the Case Manager's substitute during much of Fall 2016. The Complaint Investigator specifically requested the Student's IEP on file as of the date of the interview and received:

1. Complete meeting notes dated January 10, 2017
2. Measurable Goals Progress reports dated November 2016

The Department's Complaint Investigator also interviewed the Student's Parents on May 26, 2017. At the request of the Complaint Investigator, the following documents were provided by the Parents:

1. IFSP dated April 8, 2015
2. Early Childhood Program notes dated September 14, 2015
3. MESD Prior Written Notice and Assessment Summary for the Student dated June 15, 2016
4. Disciplinary Action Forms from September 26, 2016 through May 8, 2017
5. Prior Written Notice regarding evaluation dated September 27, 2016;
6. Emails between District and Parent; Counsel provided emails dated October 4, 2016 through May 1, 2017;
7. Letter from Student's pediatrician regarding accommodations dated October 4, 2016
8. Consent for Evaluation dated October 28, 2016
9. Parent/Teacher conference notes dated November 8, 2016
10. Weekly communication log from District beginning November 28, 2016 through May 19, 2017;
11. Memorandum of requested changes to Student's IEP dated April 3, 2017;

12. Test results for Talented and Gifted Program dated April 7, 2017
13. Inter-office staff memorandum from Student's elementary school dated April 27, 2017
14. Restraint report and disciplinary action notice dated May 3, 2017
15. Student's IEP dated May 16, 2017
16. IEP Progress Report dated May 20, 2017
17. Student Progress Notes regarding Measurable Annual Goals, undated
18. Student Report card for second term, undated
19. DIBELS performance profile, undated

The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the Parent agree to extend the timeline in order to participate in mediation, or if exceptional circumstances require an extension.¹ 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. These 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 April 19, 2016 through April 18, 2017.

	Allegations	Conclusions
1	<p><u>IEP Implementation</u></p> <p>The Parent alleges that the District violated the IDEA because the Student's IEP has not been properly implemented in that:</p> <p>a) the Student has not had adult supervision provided especially during transition periods and other times when the Student may engage in aggressive behavior or may elope from school premises;</p> <p>b) the Student is not kept within a "line of</p>	<p>Partially substantiated.</p> <p>a) There is no requirement in the Student's IEP for continual individual adult supervision. The behavioral data gathered from the materials provided by the District to the Complaint Investigator demonstrate that the Student has had roughly the same amount of behavioral incidents while having increased adult supervision than without additional adult supervision. This portion of the allegation is not substantiated.</p> <p>b) Although the District currently provides</p>

¹ OAR 581-015-2030 (12)

	<p>sight supervision” when out of the classroom;</p> <p>c) the Student’s Behavior Support Plan (BSP) is not being properly implemented; and</p> <p>d) the Parents had not been given timely notice of discipline.</p> <p>(OAR 581-015-2220, OAR 581-015-2205, OAR 581-015-2245; 34 CFR 300.323, 34 CFR 300.324.</p>	<p>“line of sight” supervision when the Student is out of the classroom, the District failed to do so prior to repurposing of staff to cover the Student’s out of class time. Therefore, this portion of the allegation is substantiated.</p> <p>c) The Student’s “for later” folder strategy, which is part of the BSP written on January 10, 2017 was not being implemented by the Librarian until at least March 14, 2017, when the Autism Specialist met with the Librarian to discuss the implementation of this accommodation, this portion of the allegation is substantiated.</p> <p>d) Because the Parent was contacted within 24 hours of all behavioral incidents involving physical harm and because the instances of conduct wherein the Parent was not contacted within 24 hours did not involve physical harm, this portion of the allegation is not substantiated.</p>
2	<p><u>IEP Content</u></p> <p>The Parent alleges that the District violated the IDEA because it did not create an IEP that:</p> <p>a) addressed the Student’s needs for adequate adult supervision and assistance;</p> <p>b) provided the Student with a one-to-one aide;</p>	<p>Partially Substantiated.</p> <p>a) Because the District requested more assistance, hired a full time para-educator to assist with Student’s needs and modified the staff schedule to give the Student increased support that was not mandated in the Student’s IEP, the District has addressed the Student’s need for adequate adult supervision, and, therefore, this portion of the allegation is not substantiated.</p> <p>b) The Student has made progress with pre-teaching, positive rewards, and a structured environment. The behavioral data gathered from the materials provided by the District to the Complaint Investigator demonstrate that the</p>

	<p>c) reinforced positive behaviors;</p> <p>d) provided adult regulation on a daily or consistent basis;</p> <p>e) clearly delineated the time services should be started for the Student; and</p> <p>f) provided adult support "as needed". (OAR 581-015-2200; 34 CFR 300.320)</p>	<p>Student has had roughly the same amount of behavioral incidents while having increased adult supervision than without additional adult supervision. There is no demonstrated need for a one-to-one aide; therefore the District would be in violation of the requirement that the Student be educated in the Least Restrictive Environment by assigning one. This portion of the allegation is not substantiated.</p> <p>c) Because the District has given the Student positive rewards, sought out which rewards are most meaningful, and has given rewards for specific positive behavior, this portion of the allegation is not substantiated</p> <p>d) The IEP Team, including the Parent, made decisions about the necessary accommodations for the Student. The Meeting Notes from the May 17, 2016 IEP Meeting do not indicate any discussions about adult regulation. This portion of the allegation is not substantiated.</p> <p>e) The District is responsible for ensuring the Student had appropriate services in non-academic settings. The IEP states that the Student will receive services "throughout the day". The Student was not transitioned to the first period class from the cafeteria on a consistent basis for a significant portion of the school year, despite the concerns about the Student's ability to appropriately transition from location to location. This portion of the allegation is substantiated.</p> <p>f) The District has provided adult support to the Student in areas where the Student struggles. This portion of the allegation is not substantiated.</p>
3	<p><u>FAPE</u></p> <p>The Parent alleges that the District violated the IDEA because it failed to</p>	<p>Not Substantiated</p> <p>The Student has made behavioral and social gains over the last academic year</p>

<p>provide a free, appropriate public education to the Student, i.e. the District denied the Student lunch and recess, did not provide adequate support for the Student and created an unsafe environment for the Student due to its lack of staffing. The Parent further alleges that because the District could not guarantee the Student's safety at school, the Parent had been unable to send the Student to school.</p> <p>(OAR 581-015-2040, 34 CFR 300.101).</p>	<p>and the District has provided adequate adult support as well as created and implemented a BSP and a process to keep the Student from eloping. The District has made adjustments throughout the 2016-2017 school year to address the Student's behaviors, and to provide a safe environment for the Student. The Student's attendance records indicate that the Student's attendance has remained consistent throughout the school year.</p>
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<p>REQUESTED CORRECTIVE ACTION:</p> <p>Parent requests that the Department:</p> <p>A. Require the District to have a one-to-one aide assigned to Student during the school day, who is not also assigned to support other students at the same time;</p> <p>B. Require the District to provide compensatory education in the areas of social skills, communication skills and executive functioning skills;</p> <p>C. Require District staff who work at, or are associated with [the] Elementary School regarding proper implementation of IEPs, provision of adult support to students with autism and proper inclusion methods.</p>

III. FINDINGS OF FACT

1. At the time of the filing of the Complaint, the Student was 6 years old and attending elementary school as a kindergartner. The Student resides in the Portland Public School District.
2. The Student began receiving Early Intervention/Early Childhood Special Education services in 2012. The Student was found to be eligible for services under the classification of Autism Spectrum Disorder (ASD) as of February 14, 2014. The Student also has medical diagnoses of Autism, Attention Deficit Hyperactivity Disorder (ADHD) and Anxiety.
3. On May 17, 2016, the Student's IEP Team met and created an IEP for the Student so the Student could transition to kindergarten at the Student's neighborhood school for academic year 2016-2017. During that meeting, the Parents made the District aware that transitions and following directions were problematic. The Parents represented that the Student was not a "runner" but it would be best to have an adult with "eyes on [the Student] when outside". The Parent also warned the District that there could be "behaviors" if the Student is hungry. The Parent also noted that ample transition warnings were needed.

4. According to the Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP), the areas of concern were communication, social skills, patterns of behavior and sensory processing. It was noted that the Student stays with the group and lines up and was learning to follow simple directions. However, the Student needs multiple prompts and re-direction. It was noted that the Student had pushed and hit an educational assistant. The Student needed to learn how to interact easily with other children, exhibit self-control regarding aggressive behavior, and follow school-wide rules. Further, it was observed that the Student will engage often with adults but not with peers.
5. The Student does not have academic limitations. However, the Student began school with the related service of Occupational Therapy that is "provided to facilitate school-related activities such as accessing the environment and curriculum." The Occupational Therapist is tasked with providing interventions for the Student.
6. The Student began school in the District in academic year 2016-2017 at the kindergarten level in a Chinese Immersion Program.
7. The Chinese Immersion Program allows for one half-day instruction in English and the other half-day instruction in Mandarin. In addition, the Chinese Immersion Program utilizes full-time "volunteer teachers" who are student-teachers referred to as Confucius teachers from the Confucius Institute at Portland University through the Confucius Institute Program; K-6 students are given instruction in Chinese culture and language courses.
8. In order to understand how to positively reward the Student, the English Program Teacher attempted various positive rewards at the beginning of the 2016-2017 school year, including stickers. Once the stickers were not enticing the Student, various other rewards were attempted. The District finally understood that the Student was motivated by snack rewards and extra play time.
9. When the Student entered school at the beginning of the academic year 2016-2017, the District had assigned two para-educators/educational assistants (PE/EA) to the Student's school on a temporary basis. The PE/EAs were deemed "floaters" and would be assigned to schools with the greatest needs after the academic year started and the District could better ascertain needs.
10. On September 14, 2016, the District's Transition Coordinator contacted the Special Education Program Administrator with concerns that the Student was "showing signs of aggression and [was] having a difficult time." There was also concern that other students were not being served properly because the classroom staff had to spend "a lot of time" on the Student. The Transition Coordinator noted the Student's IEP calls for adult support but the school did not have a para-educator available.
11. On September 19, 2016, the Special Education Program Administrator requested data to justify the addition of a PE/EA but had also requested additional para-educators be assigned to support the Student. The Program Administrator uses a "3D" approach to providing services for Special Education students: data driven determination, i.e. collect data regarding the student's behaviors, design and implement possible interventions, and track outcomes.
12. On October 3, 2016, the Principal extended the hours of a PE/EA to provide more support to the Student. On October 10, 2016, the District added additional PE/EA support for the

Student from 9:45 am to 10:15 am; from 11:03 am to 11:40 am and from 12:10 pm to 2:30 pm.

13. The Parent obtained a letter from the Student's Pediatrician on October 4, 2016 that stated, in part: "[Student] currently has an IEP in place but there are concerns that not all of the needed accommodations are being met. Transitions and unstructured times through the day are a challenge for [the Student]. Having Adult Support assigned . . . is a key factor in [the Student's] daily success of managing certain behaviors. Adult Support is especially necessary during drop-off and pick-up to and from school, between classes, at recess and at lunch."
14. On October 18, 2016, there was an IEP Meeting to try to reach a consensus about how much adult support the Student needed. The Student's IEP was not amended at that time because the Parent and the District could not agree on the content of the IEP. During this meeting, the Chinese Teacher stated that the Student had to be reminded to return to class from the restroom, which indicates that the Student was not under "line of sight supervision" at that time. The School revised the schedule of a para-educator to provide more support for the Student. There were PE/EAs with the Student during recess and lunch. The PE/EAs worked with the District's ASD Specialist to create prompts for the Student to interact more appropriately with peers during recess. The Parent and District agreed to create a Functional Behavior Assessment (FBA) and a Behavior Support Plan (BSP).
15. On November 4, 2016, the District provided notice to the Parent of the Student's support coverage.
16. The District specifically scheduled adult support for the Student beginning November 7, 2016, assigning Educational Assistants (EA), the Special Education Teacher or a Para-educator to the Student's classes. The Student's support began at 8:15 a.m. and ended at 2:30 p.m.
17. On November 8, 2016, the Student's Parent alleged that there was no PE/EA in the Student's classroom at the beginning of the day. On November 10, 2016, the Parent's attorney emailed the District and stated that the Student was not getting support before school. Thereafter, the District arranged for an EA to meet the Student and the Parent in the school cafeteria so the EA could transition the Student to the Student's first class.
18. As of November 22, 2016, the District had not been consistently sending a weekly log home to the Parent as required by the Student's IEP. Beginning November 28, 2016, the District began sending written updates home to the Parent on a sporadic basis. Beginning February 10, 2017, the Special Education Teacher began sending weekly updates to the Parent.
19. During the 2016-2017 school year, the Student has exhibited aggressive behaviors towards both peers and staff members. The Student has difficulty interacting and playing appropriately with peers.
20. The Parent believes that the Autism Para-professional is having a positive effect on the Student. The Parent and the District agree that the Student does not exhibit behaviors meriting discipline when the Student participates in the Chinese class.
21. The Student had a total of nineteen recorded behavior/discipline instances, eight of which occurred in the classroom. Many of these instances involved physical aggression toward

staff and/or peers. The Student has eloped from school property on two occasions. Staff members do not chase the Student because chasing will trigger more behaviors from the Student.

22. There were other instances of behavioral problems; however, the District does not always choose to engage in formal disciplinary measures if: 1) there is no pattern of behavior, 2) if other students are not a continued target of harassment, 3) if there is not serious injury, and 4) if the infraction presents a “teachable moment”.
23. According to the District’s Administrative Directive 4.30.020-AD, regarding Student Discipline Procedures, if a student threatens violence or harm, the “administrator must promptly, but no later than 24 hours after the incident, notify the parent or legal guardian about the student’s behavior and the school’s response” For a student who is in the fifth grade or lower, the use of out-of-school suspension is limited to non-accidental conduct causing serious physical harm to a student or school employee.
24. A FBA and BSP were completed by the Autism Specialist for the District on January 10, 2017. At that time, an IEP Meeting was held to review these documents. The FBA and BSP used data from the Parent, School Psychologist, Speech Language Pathologist (SLP), and Special Education Teacher. One of the goals of the Autism Specialist was to allow the Student to become an independently functioning individual.
25. The Student’s January 10, 2017 BSP is as follows:

Setting Factor Strategies (include Who and When)	Antecedent Interventions (include Who and When)	How Will Alternative Behavior be Taught? (Include Who and When)	What to do When Behavior of Concern Occurs? (Include Who and When)	Reinforcement Plan for Alternate Behavior (Include Who and When)
<p>Snack will be offered in the morning and afternoon</p> <p>Classroom jobs during transitions (e.g. will hand out papers on the way, transition back from carpet, door holder, high-five giver)</p> <p>Individualized</p>	<p>Video modeling and social narratives to teach of play skills</p> <p>Recess plan to include pre-cuing using visuals for expectations and reinforcement for expected behavior</p> <p>Folder with additional activities for [Student] if</p>	<p>Pre-teaching to include modeling and prompting. Prior to transition or unstructured activity, visually prompt [Student] to replacement behavior. Fade prompting and cueing as [Student] becomes more independent.</p>	<p>Eliminate or minimize the amount of attention student receives. Limit verbal interaction. Redirect to visual</p> <p>If behavior escalates or continues, redirect to think space</p>	<p>Can earn tokens for identifying [Student’s] needs/wants to earn special 1:1 attention (either with peer or adult)</p> <p>Frequent and consistent positive attention for positive behavior (verbal praise, token board)</p> <p>Class wide point</p>

<p>visual schedule</p> <p>Consistent cue prior to transition</p> <p>Offered his own materials at table</p> <p>Adult support for transitions during arrivals/departures, recess/lunch, specials, and preferred to non-preferred activities</p>	<p>[Student] finishes early. Social narrative to teach expectations for what to do when finished.</p> <p>Pre-teaching for multi-step assignments.</p> <p>A "later" folder to finish unfinished work</p>	<p>How will you measure increase in Alternate Behavior?</p> <p>Anecdotal data and frequency data</p>	<p>How will you measure decrease in Behavior of Concern?</p> <p>Frequency Data</p>	<p>system. Class can earn points for problem solving</p>
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26. The BSP is designed to "fade out" adult support for the Student after the Student gains appropriate social skills and behaviors. The District is not in favor of a one-to-one aide at this point because the Student needs to make friends and learn social interaction; with an adult standing over the Student every minute of every day, spontaneous interaction between the Student and classmates will not readily take place. The Student will still have adult support but will not be looking to an adult for continual guidance. When the Student gains appropriate socialization and behaviors, the support will fade according to the BSP.
27. On February 8, 2017, the Student's IEP Team met to amend the IEP. However, the parties have not agreed to the content in this IEP and it has not been implemented.
28. The Parent requested an Independent Educational Evaluation (IEE) at public expense to obtain a Functional Behavior Assessment, which the District agreed to. The parties are presently awaiting these results.
29. On March 14, 2017, the Autism Specialist contacted the Student's Special Education providers at the Student's school regarding how to implement a "later folder". The "later folder" is a tool developed to lessen the Student's anxiety about transitions when work has not yet been completed. This appears to have been prompted by a behavioral incident in the Library on March 8, 2017.
30. The District created a "Recess Plan" for the Student so the Student could learn proper play behavior and practice social interaction with peers through visual strategies and re-teaching. The Student was able to earn an additional, short recess if the Student interacted with peers appropriately. The Student could also choose a classmate with whom to spend the extra recess. The extra recess time was supervised by the Special Education Teacher. The "Recess Plan" was implemented in April, 2017.
31. On May 3, 2017, the Student attempted to elope from school premises and was restrained in order to keep the Student in the building.
32. On May 25, 2017, the Student once more attempted to elope from campus. The Student was upset because he/she had failed to obtain the Parent's signature on a Chinese Immersion assignment. Staff intervened and the Student was prevented from eloping. On that same day, the Student had behaved appropriately during initial recess so, according to the Recess Plan was rewarded with an extra recess and the Student's choice of a playmate

with whom to spend the extra five minutes of recess.

IV. DISCUSSION

Section 1: IEP Implementation

The Parent alleges that the District violated the IDEA because the Student's IEP has not been properly implemented in that: (a) the Student has not had adult supervision provided especially during transition periods and other times when the Student may engage in aggressive behavior or may elope from school premises; (b) the Student is not kept within "line of sight supervision" when out of the classroom; (c) the Student's Behavior Support Plan is not being properly implemented and (d) the Parents had not been given timely notice of discipline.

OAR 581-015-2200 provides that an IEP must contain a statement of the specific Special Education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child. The IEP team must consider the academic, developmental and functional needs of the child as well as parental concerns and the most recent evaluations when implementing the IEP.

a) Adult Supervision

The Parent alleges that the Student has not had adult supervision provided especially when the Student may engage in aggressive behavior or when the Student may elope from the premises.

The Student's IEP calls for adult support "throughout the day" and does not require constant individualized supervision of the Student. The IEP requires adult support for transitions, work tasks, group activities, specials, recess, safety and new activities. The District supplied continuous additional supervision after notice from staff members that the Student was having difficulties in class especially with aggressive and socially appropriate behavior.

The Student had engaged in nineteen instances of documented conduct which staff deemed worthy of formal discipline. Of these incidences, eight occurred prior to November 7, 2016 when there was no continuous additional adult supervision for the Student. One of the eight instances concerned "elopement" from the premises and five concerned aggressions, two of which occurred in the classroom where there was an adult supervising the Student and classmates. Two disciplinary referrals were made from the cafeteria, which was an area that did not have additional adult support until after November 7, 2016. It should be noted that the "elopement" incidents occurred when the Student had the additional supervision of the Autism Para-educator.

After the provision of additional adult supervision on a continual basis after November 7, 2016, the Student had eleven more disciplinary incidents, ten of which were aggressive and one concerned elopement. Of the ten aggressive incidents after full time adult support was provided, six incidents occurred in a class and four occurred during a transition or recess.

This Department does not substantiate this portion of the allegation.

b) Line of Sight Supervision

The Student's May 17, 2016 IEP requires "line of sight supervision when out of the classroom".

As previously discussed, the District added additional adult supervision for the Student on or around November 7, 2016. Thereafter an extra adult (whether PE/EA or volunteer teacher) has been present during the Student's transitions, recesses, and lunch periods. There is no credible evidence to suggest the Student has not been in "line of sight" supervision when out of the classroom since November 7, 2016. Although the Student still may engage in eloping or inappropriate behavior, there is evidence that this behavior occurs even if a supervising adult is present. The Student is impulsive and incidents occur quickly

The District stated in its *Response* that "There was no indication that Student needed "line of sight supervision outside the classroom in the IFSP or IEP." However, the May 17, 2016 IEP specifically lists "constant line of sight supervision when out of classroom." The *Response* also indicates that on one occasion early in the 2016-2017 school year, the Student left the classroom to go to the bathroom and went to a bathroom on another floor, resulting in the need for a staff member to retrieve the Student. Although the District currently provides "line of sight" supervision when the Student is out of the classroom in the outdoors, the District fails to provide "line of sight" in relation to bathroom breaks and failed to provide line of sight supervision prior to repurposing staff to cover the Student's out of class time.

This Department substantiates this portion of the allegation.

c) Improper Implementation of Behavioral Support Plan

The Parent alleges that the BSP was not properly implemented because the Student had a recess period taken away and because the Librarian failed to create a "for later" folder for the Student to use when work has not yet been completed and it is time for the Student to transition. Specifically, there was an incident on March 8, 2017, during which the Student exhibited physical aggression toward the Librarian because the Student was not ready to transition to another activity.

The Parent is correct that the Student's BSP does not include the "taking away" of Student's lunch or recess, but that facts do not support the contention that the Student was deprived of lunch and that recess was taken away as a punishment. However, after this incident, the Student proceeded to class. Once in class, the Student was quietly pulled out by the Special Education Teacher and re-taught the appropriate behavior to the Student. Then the Student wrote an apology letter and had lunch. The Student was not denied lunch or recess as a punishment; the Student ate lunch with the Autism Para-educator.

The incident on March 8, 2017 presented the District with the opportunity to act with immediacy. The Special Education Teacher's handling of the situation was in accord with the BSP as the amount of attention the Student received was minimized and the Student was re-taught the rule. Finally, the Student was kept in "time out" for the remainder of the day under the supervision of the Special Education Teacher. Again, this comports with the BSP in that after a behavior of concern occurs, the Student is to be re-directed to a "think space" with adult support. However, there is no evidence that the Student was directed to put any incomplete work in a "for later" folder prior to this incident. Moreover, the District's Autism Specialist did not contact the Special Education providers at the Student's school regarding implementation of a "for later" folder until March 14, 2017.

The Department substantiates this portion of the allegation.

d) Failure to Give Timely Notice of Discipline

The Parent contends that timely notice of discipline has not been provided.

According to the District, the Parent has been advised of all formal disciplinary incidents that have occurred over the last year. The incidents are both Stage 1 incidents and Stage 2/3 incidents that imply a rule has been broken and can be dealt with in the classroom (Stage 1) or in the office (Stage 2/3) for more serious infractions. If the Student is engaging in behavior that can be used as a “re-teaching moment”, staff has a choice of engaging in re-teaching and positively supporting the Student immediately in the classroom rather than going through the formal disciplinary process.

The Disciplinary Notices have all contained information regarding what type of notice has been given to the Parent and when. The September incidents did not arise to serious physical harm or threat of physical harm; therefore, the District’s failure to give the Parent notice of discipline within twenty-four hours is inapplicable. The December 12, 2016 incident was serious and the Parent received notice within twenty-four hours of its occurrence, on December 13, 2016. Further, pursuant to OAR 581-015-2405, although the Student has a disability, the Student will be disciplined in the same manner as non-disabled peers so long as the Student has not been suspended for more than ten consecutive days. The Student has not been disciplined any differently than non-disabled classmates.

The Department does not substantiate this portion of the allegation.

Section 2: IEP Content

The Parent alleges that the District violated the IDEA because it did not create an IEP that (a) addressed the Student’s need for adequate adult supervision and assistance; (b) provided the Student with a one-to-one aide; (c) reinforced positive behaviors; (d) provided adult regulation on a daily or consistent basis; (e) clearly delineated the time services should be started for the Student; and (f) provide adult support “as needed”. (OAR 581-015-2200, ER CFR 300.320)

Under OAR 581-015-2200(1)(a), an IEP must contain a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. Further, OAR 581-015-2205(1)(b) mandates that the concerns and input of the parent must be considered when developing, reviewing, or revising an IEP.

a) Failure to Address Student’s Need for Adequate Adult Supervision

The Parent alleges the District has not addressed the Student’s need for adequate adult supervision.

According to the PLAAFP section of the Student’s IEP, the Student does not require constant supervision. The IEP Team was concerned with the Student’s ability to properly socially interact with peers. When the Student entered kindergarten, there were four other students with Autism in the class with two para-educators assigned on a temporary basis. The Program Administrator requested additional PE/EA help on September 19, 2016, approximately two weeks into the school year. Thereafter, one temporary PE/EA was hired on a full time basis to ensure there

would be adequate support. The staff schedule was continuously rearranged to address any lapses in full time supervision of the Student by an extra adult. By the middle of the first semester, the Student had full time adult supervision even though the May 17, 2016 IEP did not call for full time adult support.

The Department does not substantiate this portion of the allegation.

b) Provision of One-to-One Aide

The Parent alleges the Student should have been provided a one-to-one aide.

The District has been exploring options to give the Student independence rather than providing a one-to-one aide for the Student that may promote continual reliance on an adult to direct interaction with peers and others. There has been no credible evidence provided regarding the need for a one-to-one aide. Although the Parent remitted a pediatrician's letter regarding the need for adult support, said letter simply restated the accommodations that were already included in the Student's May 17, 2016 IEP, i.e. the Student needs adult support, not a one-to-one aide. Further, given the Student's behavior in the Chinese class, it is clear the Student can function somewhat independently in specific environments. The provision of a one-to-one aide under these circumstances would result in a violation of the requirement to educate the Student in the Least Restrictive Environment appropriate given the Student's needs.

As stated in the PLAAFP section of the Student's IEP, the Student interacts easily with adults; it is peer interaction which needs further developing. Since the Student has behaved in a manner that seeks adult attention, the District is attempting to fade the Student from excess adult support through the use of positive reinforcement and strategic jobs/behaviors during critical times, e.g. transitions. The Student has responded to pre-teaching and a positive reward system since the Recess Plan has been implemented.

Although the District has provided a para-educator to the Student for support at lunch and recess, the Student still has twice eloped from campus while being supported by the Parent's preferred staff member. The Student has continued to sporadically engage in aggressive and socially inappropriate behaviors while being supported by a para-educator. However, the Student behaves appropriately when participating in the Chinese class and has not had any recent disciplinary referrals during the time the Student is in that class.

The Department does not substantiate this portion of the allegation.

c) Failure to Reinforce Positive Behaviors

The Parent alleges the District has failed to reinforce the Student's positive behaviors.

At the start of the school year, the Student's English Program Teacher attempted to use stickers as a positive reinforcement but found that this had little effect. Thereafter, multiple rewards were tested and finally the token board was introduced with a snack or extra recess given.

The District recognized that the unstructured recess time poses the most challenges for the Student. Rather than punish the Student for poor recess behavior, the District implemented the "Recess Plan" which allows the Student to gain extra recess for displaying proper behaviors. It should be noted that even when the Student has acted impulsively such as attempting to leave school to have Chinese homework signed, the Student was still rewarded for proper behavior in

another setting by obtaining an extra recess according to the Recess Plan.

The Department does not substantiate this portion of the allegation.

d) Failure to Provide Adult Regulation on a Daily Basis

The Parent alleges that the Student has not had adult regulation on a daily basis from the beginning of the school year.

The Accommodations Page of the Student's IEP makes no mention of "adult regulation". Rather, the IEP calls for "adult supports" but does not provide any specificity for this term. It goes on to list "adult supports for transitions, work tasks, group activities, specials, recess, safety, new activities". The IEP Meeting Minutes do not reflect that the Parent ever requested that the District provide "adult regulation" to the Student. The supports provided to the Student are specifically discussed in other sections of this Order.

The Department does not substantiate this portion of the allegation.

e) Failed to Clearly Delineate When Services Should Be Started

The Parent has alleged that the IEP is deficient because it was not clear when services would be commenced and that the Student needed support before the school day started.

Pursuant to OAR 581-015-2255, school districts must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

The Student's IEP allows for services to be provided "throughout the day". Further, the IEP provides that the Student will need extra support during transitions. However, there is no mention as to the specific time when said services will be started; the IEP simply states that services will be provided "throughout the day". Because transitions are a problem for the Student, the Parent had concerns about the time prior to the beginning of the first class when the Student was dropped off. Until mid-November, the Student was not transitioned to the first period class. Given the need for support during unstructured and transitional times, the IEP should have more clearly delineated when support would begin pursuant to OAR 581-15-2244.

The Department substantiates this portion of the allegation.

f) Failed to Provide Adult Support "As Needed"

The Parent alleges that the Student has not been supported "as needed" in that a one-to-one aide has not been made available to the Student and that even through there are extra adults in the Student's classroom, the Student should have an aide for extra support.

Although the "adult support" provisions of the Student's IEP may be vague, the District has engaged in alternate methods to provide supports to the Student rather than assign a one-to-one aide so that the Student may act independently. With this in mind, the District has provided the Student with extra recess time as a positive reward and has the Special Education Teacher supervise the Student's "reward" recess time. The Student is further now "pre-taught" certain play behaviors before recess so that socialization is now learned. The FBA also provides support through the use of re-teaching and time outs with proper adult interaction so the Student

will be able to make the correct choices in the future. The provision of a one-to-one aide when the Student's behavior does not necessitate such a high level of supervision would violate the District's obligation to educate the Student in the Least Restrictive Environment.

The Department does not substantiate this portion of the allegation.

Section 3: Free Appropriate Public Education (FAPE)

The Parent alleges that the District violated the IDEA because it failed to provide a free, appropriate public education to the Student.

School districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible. OAR 581-015-2040. Further, a student is to be able to make educational progress given the student's disability.

The Parent alleges that because the Student was without full time adult support from September 2016 through November 2016, the District failed to provide the Student with a FAPE. However, the Student's IEP did not call for full time adult support. Further, the advancement of the Student's social skills and ability to comply has evidenced that the Student is making progress. There has never been any question that Student is academically sound and on target with peers; the Student's disability manifests itself in aggression, anxiety and lack of social skills.

Over the last year, the Student has reacted positively and appropriately in the Chinese class and is learning to interact properly during recess with the help of the Recess Plan. The Student has also recently stopped targeting specific children with aggressive behaviors. Further, the District created an FBA and BSP for the Student specifically to address the Student's behaviors brought on by the Student's Autism and anxiety.

The Parent also alleges that the District failed to provide the Student a FAPE because it cannot keep the Student safe, i.e. eloping from campus. As of May 3, 2017, the District has turned to restraint to keep the Student safe and keep the Student from going home or out the front door. This restraint was documented and Parent was notified. The Student attempted to elope from campus again on May 25, 2017 but staff dissuaded the Student from doing so. On this occasion, staff employed techniques to keep the Student safe which did not include restraint. Hence the strategies employed by staff are currently keeping the Student safe.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²

In the Matter of Portland School District 1J
Case No. 17-054-011

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

² 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)).

No.	Action Required	Submissions ³	Due Date
1.	Provide professional development to special education staff* in the student's school, regarding developing accommodations based on student needs and strategies for consistent implementation of accommodations.	<p>Submit evidence of completed planning meeting between District representative(s) and ODE staff regarding content, date(s), agenda, and participants in ordered professional development.</p> <p>Submit evidence of completed staff development, including agenda, materials, presenter, and participant sign-in sheet including names and positions.</p>	<p>August 4, 2017</p> <p>September 15, 2017</p>
2.	If a new IEP has not been developed for the 2017-18 school year the District will reconvene the IEP team, including the parent, prior to the beginning of the 2017-2018 school year to review and revise the IEP as necessary, including review and revision of accommodations based on student needs.	Submit a copy of the student's complete IEP in effect for the 2017-18 school year and any prior written notices related to this IEP.	September 15, 2017

Dated this 16th Day of June 2017



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: June 16, 2017

³ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.