

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Portland Public School )  
District 1J )

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 18-054-024

**I. BACKGROUND**

On April 3, 2018 the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (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 Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of the Complaint on April 3, 2018 and provided the District with a copy of the Complaint letter on April 3, 2018.

On April 9, 2018, the Department’s Contract 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 April 23, 2018. The Parent requested clarification and modification of the allegations framed in the RFR. On April 16, 2018, the Department sent an Amended *Request for Response* to the District. The District completed its *Response*, which was received by the Investigator on April 24, 2018. The District sent more responsive documents to the Investigator on April 27, 2018. The *Response* included a narrative response, partial exhibit listing, and the following documents:

1. Kaiser Permanente Pediatric Development report dated September 10, 2014
2. Notice of IFSP Team Meeting dated September 17, 2014
3. Health Screening Checklist dated October 1, 2014
4. Prior Notice about Evaluation/Consent for Evaluation dated October 1, 2014
5. Early Childhood Special Education Evaluation Report dated October 1, 2014
6. Prior Written Notice of Early Intervention or Early Childhood Special Education Action dated October 1, 2014
7. Statement of Eligibility dated October 1, 2014
8. Early Childhood Vision Screening Certification dated October 1, 2014
9. Prior Written Notice dated October 23, 2014
10. Prior Notice and Consent dated October 23, 2014
11. IFSP dated October 23, 2014
12. Prior Notice About Evaluation/Consent for Evaluation dated October 1, 2014
13. Family Outcomes: Plan to Enhance [Student’s] Development dated October 23, 2014
14. Placement Decision October 23, 2014
15. Written Agreements between Parent and the EI/ECSE Program dated October 23, 2014
16. Communication Profile dated October 23, 2014
17. Notice of IFSP Team Meeting dated October 23, 2014
18. IFSP Team Meeting Minutes dated October 23, 2014
19. Prior Written Notice dated April 14, 2015
20. IFSP dated April 13, 2015
21. Agreement between Parent and EI/ECSE Program dated April 14, 2015
22. Notice of IFSP Team Meeting dated April 14, 2015
23. Meeting Minutes dated April 14, 2015
24. Occupational Therapy Evaluation and Plan of Care dated August 18, 2015

25. Neuro Therapeutic Report dated August 18, 2015 and updated March 7, 2016
26. IFSP dated October 2, 2015
27. Notice of Team Meeting dated October 2, 2015
28. Meeting Minutes dated October 2, 2015
29. Placement Decision dated October 15, 2015
30. Written Agreement between Parent and EI/ECSE dated October 15, 2015
31. Notice of IFS Team Meeting dated October 15, 2015
32. Communication Portfolio dated October 15, 2015
33. IFSP dated October 15, 2015
34. Attendance Histories beginning School Year 2016-2017 and School Year 2017-2018
35. Revised IFSP dated April 18, 2016
36. Written Agreement Between Parent and EI/ECSE Program dated April 15, 2016
37. Student Registration Form dated March 28, 2016
38. Immunization Record dated March 28, 2016
39. Notice of Team Meeting dated April 5, 2016
40. IEP dated May 9, 2016
41. Prior Written Notice dated May 9, 2016
42. Special Education Determination Placement dated May 9, 2016
43. Meeting Minutes dated May 9, 2016
44. Prior Written Notice dated June 15, 2016
45. Occupational Therapy Evaluation and Plan of Care dated August 26, 2016
46. Neuro-Optometric Report dated August 26, 2016
47. Emails and correspondence between the District and Parent dated August 30 through January 10, 2018
48. Occupational Therapist Records beginning August 31, 2016 through January 19, 2018
49. Kaiser Permanente medical diagnosis dated September 19, 2016
50. Notice of Team Meeting dated October 1, 2016
51. IEP Team Meeting Minutes dated October 3, 2016
52. Worksheet for Function-based Behavior Support Planning dated October 3, 2016
53. Prior Written Notice dated October 3, 2016
54. Amended IEP dated October 9, 2016
55. Prior Written Notice dated October 28, 2016
56. Consent for Evaluation dated October 28, 2016
57. Notice of Team Meeting dated October 28, 2016
58. Task Sheet (reverse side of BSP) dated November 8, 2016
59. Psychoeducational report dated November 23, 2016
60. Notice of Team Meeting December 10, 2016
61. Notice of Team Meeting December 12, 2016
62. Albertina Kerr Progress Notes and SLP evaluation dated January 9, 2017
63. Notice of Team Meeting dated January 24, 2017
64. Notice of Team Meeting dated February 1, 2017
65. Agreement between Parent and District dated February 2, 2017
66. IEP Team Meeting Minutes dated February 2, 2017
67. Notice of Team Meeting dated February 3, 2017
68. Prior Written Notice – Notice of Eligibility dated (by hand) February 7, 2017
69. Eligibility Summary dated (by hand) February 7, 2017
70. Disability Statement dated February 2, 2017
71. Prior Written Notice dated February 8, 2017
72. Parent consent for Private ABA Provider to Access Scholl Program dated February 10, 2017
73. Notice of Team Meeting dated February 13, 2017
74. Notice of Team Meeting dated March 15, 2017

75. Agreement between District and parent dated March 27, 2017
76. Enrollment and Transfer Request dated April 13, 2017
77. Transfer Letter dated April 14, 2017
78. Notice of Team Meeting dated April 14, 2017
79. Inter-District emails dated between April 17, 2017 and January 17, 2018
80. Multnomah Co. Dept. of Human Services Intake and Eligibility Release dated April 17, 2017
81. Daily behavioral tracking sheets dated between April 19, 2017 and June 15, 2017
82. Handwritten draft of annual measurable goals referencing May 8, 2017 IEP date
83. Kindergarten Development Scale dated May 15, 2017
84. IEP dated May 8, 2017
85. Substitute Teacher notes from [School 2] (undated)
86. Special Education Determination Placement dated May 8, 2017
87. Prior Written Notice dated May 8, 2017
88. IEP Progress Report – Annual Goal dated May 8, 2017
89. IEP Team Meeting notes dated May 8, 2017
90. PPS Kindergarten Phonic Survey dated May 15, 2017
91. Morning Routine sheet for Student (undated)
92. Psychological Progress Notes and testing dated June 6, 2017
93. IEP Progress Report – Annual Goal dated June 12, 2017
94. Authorization for Use and Disclosure of Individual Information (health) August 11, 2017
95. Disciplinary Notice dated August 30, 2017
96. Correspondence from outside ABA therapy providers including training practices dated between September 29, 2017 and
97. Emails between outside ABA therapists and District, undated
98. Parent Communication Log dated September 6, 2017 through September 28, 2017
99. Correspondence from Director of Special Education to Parent dated September 25, 2017
100. Notice of Team Meeting dated October 2, 2017
101. Physician Diagnostic Letter dated October 2, 2017
102. Disciplinary Incident dated November 28, 2017
103. Amended IEP dated October 9, 2017
104. Prior Written Notice dated October 9, 2017
105. IEP Meeting Minutes dated October 9, 2017
106. Team Meeting Minutes dated October 9, 2017
107. TIC notes dated October 13, 2017
108. K-2 Inclusion Project Support Request
109. Behavioral Data sheets created between September 28, 2017 and January 19, 2018 (not all school days tracked or recorded)
110. School psychologist notes (undated)
111. Student's writing journal (undated)
112. Administration journal entries dated between August 22, 2017 and December 1, 2017
113. Weekly Percent of Progress Towards Goals (data) beginning October 23, 2017 through December 1, 2017
114. Team Meeting Minutes dated October 30, 2017
115. Prior Written Notice dated October 28, 2017
116. Parent Observation notes of "specials" dated November 2, 2017 and November 3, 2017
117. Parent Teacher conference form dated November 3, 2017
118. SPED checklist (undated)
119. IEP Progress Report – Annual goal Report dated November 3, 2017
120. Notice of Team Meeting dated November 8, 2017
121. Prior Written Notice dated November 13, 2017
122. IEP Team Meeting Minutes dated November 13, 2017

123. Amended IEP dated November 13, 2017
124. Notes from ABA therapist dated December 5, 2017
125. Authorization to Use and/or disclose Education and Protected Health Information dated November 15, 2017
126. Notes regarding Student in case of substitute teacher (undated)
127. Notice of Team Meeting dated December 15, 2017
128. Prior Written Notice dated January 5, 2018
129. Amended IEP dated January 5, 2018
130. IEP Team Meeting Minutes Dated January 5, 2018
131. Correspondence and release from Parent attorney dated January 8, 2018
132. Student Profile dated January 10, 2018
133. IEP Progress Report – Annual Goal dated January 29, 2018
134. Student's Cumulative Record Folder
135. Elementary Marks for school years 2016-2017 and 2017-2018
136. Email correspondence between the Parent and District
137. Para educator Job announcement for special education, undated
138. District Restraint policy, updated June 2012
139. Work schedules of Occupational Therapists and Para educators providing services to kindergarten and first grade at [School 2] between April 17, 2017 and April 3, 2018

The Investigator determined that in-person interviews were necessary. On May 7, 2018, the Investigator interviewed the Parent. On May 16, 2018, the Investigator interviewed District personnel.

Prior to the in-person interview, the Parent submitted the following documents which were received by the Investigator on April 11, 2018:

1. District policy and consent form regarding Procedures when Parents Request Private ABA providers to Access School (September 15, 2015 version).
2. Behavioral data recorded prior to the Complaint Period
3. Memorandum: Concerns dated October 2016
4. Memorandum: Observations dated October 2016
5. Prior Written Notice dated October 3, 2016
6. Letter: IEP request October 2016
7. Letter: IEP Meeting November 2016
8. Parent notes: May annual Review IEP Meeting
9. Emails and correspondence between the Parent and the Student's schools dated November 16, 2016 through April 15, 2018
10. "Promoting Independence Plan" dated prior to the Complaint Period
11. Disciplinary Referral dated January 30, 2017
12. Disability Statement dated February 2, 2017
13. Behavioral data beginning March 21, 2017 and continuing throughout the Complaint Period
14. Memorandum: Parent Concerns for IEP review on 10/9/2017
15. Prior Written Notice about Evaluation/Consent for Evaluation dated October 19, 2017
16. Handwritten Observations dated October 19, 2018
17. Prior Written Notice dated October 28, 2017
18. Memorandum: PE Observations 11/7/17 (Tuesday) 10:25-11:15
19. Memorandum: Parent Concerns – November 13, 2017
20. Disciplinary referral dated November 28, 2017
21. Memorandum: Parent Concerns regarding ABA – January 5, 2018
22. Correspondence from Parent Attorney dated January 8, 2018

23. Correspondence to Director of Student Services and SPED director dated January 15, 2018
24. Correspondence to District TOSA (SPED) dated January 28, 2018
25. IEP Progress Report – Annual Goal dated January 29, 2018
26. Correspondence to District Director of Student Services dated February 20, 2018
27. Music Observation 11/2/2017 (Thursday) 10:25-11:15
28. Flow Chart regarding IEP Meetings for School year 2017-2018 (undated)
29. Small Group Reading Behavioral guideline (undated)
30. [Student’s] Morning Routine (undated)
31. [Student’s] End of Day Routine (undated)
32. Correspondence to District Director of Special Ed dated March 10, 2018
33. Release of Information dated April 18, 2018 inclusive of initial ABA therapy plan
34. Handwritten notes (undated)
35. District policy and consent form regarding Procedures when Parents Request Private ABA providers to Access School (August 2017 revision).

During the Parent’s in-person interview, the Investigator requested and made a copy of the Student’s math notebook/workbook.

The Investigator reviewed and considered all of the previously described 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 Individuals with Disabilities Education Act (IDEA) violations that occurred within twelve months prior to the Department’s receipt of the complaint and issue a final order within sixty days of receiving the complaint. The timeline may be extended if the District and the Parent agree to an extension to participate in mediation, or for exceptional circumstances.<sup>1</sup> On May 22, 2018, the issue date for this Order was extended to June 12, 2018 due to a family medical emergency experienced by Department staff responsible for the Order’s issuance. The Department notified the Parent and the District of the extension.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>2</sup> 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 4, 2017 through April 3, 2018.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1.</b>	<p><b>Parent Participation/IEP Team</b> The Parent alleges that the District violated the IDEA because it did not:</p> <p>a. Schedule an IEP Meeting to discuss the loss of para-educator support for the Student and to discuss the District’s ABA policy.</p>	<p><b>a. Not Substantiated</b> The District convened an August 29, 2017 meeting with three families to discuss educational assistant (EA) staffing for the</p>

<sup>1</sup> OAR 581-015-2030(12).

<sup>2</sup> 34 CFR §§ 300.151-153 and OAR 581-015-2030.

	<p>b. The Parent further alleges the District violated the IDEA by failing to document the Parent's concerns during IEP Meetings and by failing to provide the Parent with the Student's complete educational file including IEP meeting notes.</p> <p>c. The Parent also alleges the District violated the IDEA because it did not follow the procedure for conducting an IEP Meeting after the Parent requested a formal IEP Meeting be conducted.</p> <p>(OAR 581-015-2190, OAR 581-015-2205, OAR 581-015-2210, 34 CFR 300.324, 34 CFR 300.327, 34 CFR 300.501)</p>	<p>upcoming school year. The Student's IEP was not affected. The meeting was not an IEP Team Meeting.</p> <p>On September 20, 2017, the Parent requested an IEP Team Meeting to discuss, among other matters, the District's ABA policy. The IEP Team Meeting took place on October 9, 2017, within a reasonable time of Parent request. The Department does not substantiate this allegation.</p> <p><b>b. Substantiated in part</b></p> <p>(i) At IEP Team Meetings convened on May 8, 2017, October 9, 2017, November 13, 2017, and January 5, 2018, the District afforded the Parent the opportunity to express concerns about the Student. The Department does not substantiate this allegation.</p> <p>(ii) The District did not deliver to Parent a complete educational record within 45 days. The Department substantiates this allegation.</p> <p><b>c. Not substantiated</b> See 1a.</p>
<p><b>2.</b></p>	<p><b>IEP Content</b></p> <p>a. The Parent alleges that the District violated the IDEA because the Student's IEP content concerning para-education support and IEP goals were not supported by available data.</p> <p>b. The Parent also alleges that the District violated the IDEA because</p>	<p><b>a. Not substantiated</b> The Student's IEP goals were developed based upon sufficient District information-gathering, Parent input, and the demonstrated academic and functional needs of the Student. The Department does not substantiate this allegation.</p> <p><b>b. Not substantiated</b> The District was receptive to the Parent's</p>

	<p>the Parent's request for one-on-one support was not included in the Student's IEP.</p> <p>c. The Parent also alleges that the District violated the IDEA because the Student's math data was not included on the Student's most recent progress report</p> <p>(OAR 581-015-2220, OAR 581-015-2205, 34 CFR 300.323, 34 CFR 300.324, 34 CFR 300.320)</p>	<p>concerns regarding a 1:1 EA for the Student. Furthermore, the Student receives consistent adult assistance and support from a District EA. The Department does not substantiate this allegation.</p> <p><b>c. Substantiated</b> The District missed one quarter of progress reporting in the area of mathematics. The Department substantiates this allegation.</p>
<p><b>3.</b></p>	<p><b><u>IEP Implementation</u></b></p> <p>The Parent alleges that the District violated the IDEA because it did not provide the Student services in accordance with the Student's IEP including, but not limited to:</p> <p>a. Failing to provide an occupational therapist and para-educator to the Student</p> <p>b. Inadequately training staff to respond to the Student's needs and/or inefficiently utilizing staff</p> <p>c. Failing to provide specially designed instruction (SDI) in math</p> <p>d. Utilizing instructional methods that were inadequate for the Student's unique needs;</p>	<p><b>a. Not substantiated.</b> The District provided adequate and appropriate occupational therapy services to the Student, in conformity with the Student's IEP. The Department does not substantiate this allegation.</p> <p><b>b. Not substantiated</b> District staff that provided services to the Student were adequately trained and sufficiently utilized to provide the Student with FAPE. The Department does not substantiate this allegation.</p> <p><b>c. Not substantiated</b> The District provided the Student with SDI in conformity with the Student's IEP and the Student has made academic progress in the area of math. The Department does not substantiate this allegation.</p> <p><b>d. Not substantiated</b> The Student is making academic progress in the areas of mathematics and reading, as evidenced by teacher observation and the Student's quarterly progress reports.</p>

	<p>e. Failing to provide SDI in social emotional regulation</p> <p>f. Failing to utilize the Student's Functional Behavioral Analysis</p> <p>g. Incorrectly utilized the Student's movement breaks</p> <p>(OAR 581-015-2220, OAR 581-015-2205, 34 CFR 300.323, 34 CFR 300.324, 34 CFR 300.320).</p>	<p>The Department does not substantiate this allegation.</p> <p><b>e. Substantiated</b> The District did not provide the Student with adequate social emotional regulation in conformity with the Student's IEP. The Department substantiates this allegation.</p> <p><b>f. Substantiated</b> The District did not utilize the Student's already existing FBA from the time the Student transferred to School 2 on or about April 17, 2017 until October 9, 2017. The Department substantiates this allegation.</p> <p><b>g. Substantiated</b> The District was aware of the ineffectiveness of movement breaks with the Student, but did not intervene to explore new interventions. The Department substantiates this allegation.</p>
<p>4.</p>	<p><b><u>Evaluation</u></b></p> <p>a. The Parent alleges the District violated the IDEA because it did not respond to the Parent's inquiry regarding whether the District would create a Functional Behavioral Analysis and create a Behavior Support Plan for the Student.</p> <p>b. The Parent further alleges the District violated the IDEA because it did not evaluate the Student for dyslexia and dyscalculia.</p> <p>(OAR 581-015-2105(2), 34 C.F.R. § 300.301(b).</p>	<p><b>a. Not Substantiated</b> In October 2017, the District attempted to initiate the FBA process, but was impeded because the Parent withheld consent. The Department does not substantiate this allegation.</p> <p><b>b. Substantiated</b> The Parent made multiple inquiries to District staff about the District evaluating the Student for special education eligibility based upon the Parent's suspicion of dyslexia and/or dyscalculia. The District did not respond by addressing the matter in an IEP Team Meeting, nor furnishing the Parent with a consent to evaluate or prior written notice explaining its refusal to evaluate. The Department substantiates this allegation.</p>



**REQUESTED CORRECTIVE ACTION:**

Staff should be trained in the areas of restraint, both documentation and use of restraint; reviewing parental rights with staff; ensuring para educators are current with their training regardless of their location; provide clear guidelines on who is supposed to fill in the gap when the case manager is out (i.e. a TOSA or substitute is not sufficient). Please provide the records requested on March 10, 2018 (second request)

**III. FINDINGS OF FACT**

1. The Student is seven years old and is currently home schooled. The Student attended one District elementary school (School 1), for most of the 2016-2017 school year—the Student's kindergarten year. The Parent requested a transfer to another District elementary school, and on or about April 17, 2017, the Student started at a new District elementary school (School 2). The Student completed kindergarten at School 2 and began first grade there.
2. The Student has been diagnosed with sensory processing/integration disorder and is eligible for Special Education services under the categories of Communication Disorder and Other Health Impairment.
3. On October 3, 2016, the Student's IEP Team convened. The District created a Functional-based Behavior Support Plan (BSP) for the Student. The BSP addresses two behaviors: Disrupting class and leaving the instruction area. The BSP was created pursuant to a K-2 Inclusion Project Support Request because the Student was not making adequate behavioral progress in kindergarten.
4. The Student's BSP was not uploaded into Synergy,<sup>3</sup> nor was it transferred from School 1 to School 2 at or around the time the Student began attending School 2.
5. After the conclusion of the October 3, 2016, IEP Team Meeting, the Parent requested the Student's IEP be revised to include a 1:1 educational assistant (EA).
6. The Student's IEP does not include a dedicated 1:1 EA. Rather, it calls for adult assistance throughout the day for the Student to address emotional regulation and for help in less structured activities such as recess, gym class, and art.
7. One reason the District was not inclined to offer the Student a dedicated 1:1 EA was an effort encourage the Student's independence and autonomy.
8. Both the District and the Parent contend they each inquired about developing a new BSP around the time the Student transferred to School 2 in April 2017.
9. On April 11, 2017, the School 2 Occupational Therapist contacted the School 1 Occupational Therapist and requested information regarding the Student prior to the Student's transfer to School 2. On April 12, 2017, the School 1 Occupational Therapist responded with a description of the Student's classroom supports.

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<sup>3</sup> Synergy is a special education document creation and management database used by the District.

10. The Student has received Applied Behavior Analysis (ABA) therapy from private therapists since kindergarten.
11. On April 19, 2017, the District informed the Parent that it was attempting to fill an EA vacancy at School 2 to support the Student.
12. On May 2, 2017, a District Occupational Therapist updated the Student's occupational therapy Present Levels of Academic Achievement and Functional Performance section of the Student's IEP to note that the Student engaged in sensory seeking activities throughout the day. The Occupational Therapist noted specific interventions for the Student based on observations and concluded that the Student would benefit from six hours of occupational therapy per year.
13. District Occupational Therapists collaborated with the Student's teachers and EAs to improve delivery and consistency of lessons throughout the week. The Occupational Therapist specifically supported the Student in the areas of writing, fine motor skills, and sensory processing.
14. At the Student's May 8, 2017 IEP Meeting, the IEP Team developed the Student's goals based on the Student's behavior and academic progress during the Student's kindergarten year. At the time, the Student was making academic progress and was demonstrating mostly appropriate grade-level behaviors. The Student had met an IEP writing goal and a new one was developed. The Parent participated in the IEP Team Meeting.
15. The Student's IEP Team developed two math goals that addressed counting, the relationship between numbers and quantities, and addition and subtraction of sums of twenty. The IEP Team decided the Student would receive thirty minutes of specially designed instruction (SDI) in math per week.
16. The IEP Team developed a Social Skills goal that involved the Student practicing self-calming strategies and provided for thirty minutes of SDI in Social/Emotional skills per week.
17. The Student's Special Education teacher stated that Social/Emotional skills were taught by either pre-teaching expected behavior or using negative behavior as a teaching moment. There is no indication that the Student was participating in small groups, pull-out sessions, or any other type of SDI to address social/emotional skills.
18. According to a District Teacher on Special Assignment (TOSA), SDI for classroom skills often includes role playing, videos, executive function practices, instruction in how to manage classroom tasks, self-monitoring checklists, and how to practice skills as well as teaching the ability to focus on one thing at a time.
19. On June 12, 2017, the Student's math progress report noted that the Student could count to twenty, but consistently misses the number sixteen.
20. The Parent expressed concerns about the Student's math abilities and was dissatisfied that the District was using a particular method for delivering math instruction. The Parent contended that any child with sensory integration issues should not use the method the District employed to teach math.
21. In August 2017, the District changed its policy regarding private ABA therapists delivering

services in the classroom. Prior to the policy change, private ABA therapists could interact and provide services to the students. With the policy change, a private ABA therapists' role was limited to observing students and collecting data.

22. At the beginning of the 2017-2018 school year, School 2 notified the Parent that it would be losing one of its staff's EA<sup>4</sup> positions.
23. On or about August 21, 2017, the School 2 Principal emailed Parents scheduling an August 29, 2017 Meeting to discuss the EA vacancy and addressing adult assistance for the Student and others for the upcoming school year.
24. On August 24, 2017, the Parent contacted School 2 to request that the District add topics for discussion at the August 29, 2017 Meeting, specifically an update to the Student's speech goal, clarification of the term "adult assistance" in the Student's IEP, and to request the addition of another EA to support the Student.
25. On August 24, 2017, the School 2 occupational therapist notified the School 1 occupational therapist that she was leaving the District and that School 2 had not replaced the occupational therapist position. The outgoing School 2 occupational therapist then introduced the School 1 occupational therapist to the Student's case manager to assist with the Student's transition to first grade.
26. On August 31, 2017, the School 1 Occupational Therapist met with an EA who had been working with the Student and modeled how and when to do various exercises so the Student could have successful movement breaks.
27. The Student's teacher kept a chart of movement breaks both in the Student's notebook at the teacher's desk and pinned to the wall next to the door for easy access.
28. When the Student began first grade during the 2017-2018 school year, the Student displayed classroom behaviors that included screaming, using unacceptable words, refusals, and other off-task behaviors.
29. During one visit, the Parent had observed the Student sitting in the hall at a desk for more than five minutes. The Student reported to the Parent that sometimes the Student would be in the hall up to one half hour. The Parent opined that the District was improperly removing the Student from the classroom under the guise of "movement breaks" as a form of punishment when the Student's behaviors were overwhelming.
30. During the 2017-2018 school year, staff observed that the Student's movement breaks were no longer effective.
31. On September 13, 2017, a District staff member emailed the Parent, thanking the Parent for taking notes at the August 29, 2017 Meeting, asked the Parent if the Parent would like annual measurable goals updated, and offered an amended IEP dependent upon the Parent's response.

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<sup>4</sup> The terms "paraprofessional" and "instructional aide" have the same meaning as "educational assistant." (OAR 581-037-0005)

32. On September 20, 2017, the Parent requested an IEP Meeting to discuss changes to the District's ABA therapist policy.
33. In response, on October 2, 2017, the District sent a Notice of Team Meeting for October 9, 2017 to amend the Student's IEP. The Parent drafted a three page letter outlining concerns to be discussed at that meeting.
34. On October 9, 2017, the IEP Team met to review the Student's IEP, add a speech goal, review occupational therapy strategies, EA support, data collection, and discuss the District's ABA policy. District staff took eight pages of notes.
35. At the October 9, 2017 IEP Team Meeting, the Parent renewed the issue of having a 1:1 EA assigned specifically to the Student. At the time of this meeting, the Student was receiving adult support in all areas throughout the day, but did not have a dedicated 1:1 EA. The EAs who supported the Student were being trained and supported by the Student's private ABA therapists.
36. At the October 9, 2017 IEP Meeting, the Parent provided strategies from the Student's private Occupational Therapist. Based upon this input, the District implemented scheduled breaks as outlined by the private Occupational Therapist.
37. At the October 9, 2017 IEP Team Meeting, the District TOSA suggested the District develop a functional behavioral assessment (FBA) for the Student to reduce the Student's most significant behaviors. The Parent refused to give consent for the District to conduct an FBA.
38. The Parent wanted to retain the FBA that the private ABA therapists had created rather than have the District create a new FBA.
39. On October 16, 2017, the Parent emailed the District TOSA and School 2 Principal requesting copies of the October 9, 2017 IEP Team Meeting minutes. Soon thereafter, the District TOSA sent out an email attempting to locate the meeting minutes. The District did not deliver these meeting minutes to the Parent until after a January 2018 records request submitted to the District by the Parent's Legal Counsel.
40. On October 17, 2017, the District TOSA emailed two district psychologists regarding obtaining support for a comprehensive FBA for the Student. The District gave the Parent a consent form for an FBA. The Parent did not return a signed consent form for an FBA.
41. The District provides updates to annual measurable goals quarterly to Parents when report cards are sent home.
42. On November 3, 2017, the District sent the Parent an IEP Progress Report in the areas of classroom/social skills, communication, writing skills, and reading/language arts. The Student regressed in classroom skills and behavior. The District did not provide an IEP Progress Report in the area of math.
43. On November 3, 2017, during a parent-teacher conference, the District communicated to the Parent that the Student was not yet meeting overall expectations in the areas of reading, writing, or math. In math, the Student was making some progress. For example, the Student could solve simple word problems and could count to 69 with a few reversals in numbers.

44. On November 13, 2017, the Present Levels of Academic Achievement and Functional Performance section of the Student's IEP was updated in the areas of emotional and behavioral dysregulation. The November 13, 2017 IEP also notes that the Student was being pulled out for small group instruction in math, which was working well.
45. Near the end of December 2017, School 2 added an Occupational Therapist to its staff.
46. On or about January 8, 2018, the Parent retained legal counsel. Parent's Legal Counsel requested a complete educational record of the Student. On January 29, 2018, the District delivered educational records to the Parent's Legal Counsel.
47. The Parent contends the District did not deliver the Student's complete educational record. On March 10, 2018, the Parent emailed the District and reiterated a request for the Student's complete educational record, including data that had been used to compile graph reports, behavioral data and several emails.
48. The Student's May 8, 2017 IEP was amended on October 9, 2017, November 13, 2017, and January 5, 2018. Parent concerns section for the Student's IEP are memorialized in the IEP's meeting minutes.
49. The Parent asked for input from the Student's Special Education teacher's on possible evaluations for dyscalculia or dysgraphia. The Special Education teacher opined that a proper course of action would be to wait given that the school psychologist who typically conducts evaluations was out on leave.
50. At a parent-teacher conference, the Parent raised the issue of the Student demonstrating characteristics associated with dyslexia. The Student's Special Education teacher opined that many of those such characteristics would resolve themselves.
51. On January 5, 2018, an Occupational Therapist observed the Student in class and noted the Student was resistant to using sensory/movement breaks. On January 19, 2018, the Occupational Therapist observed the Student again and noted the Student's handwriting and work samples was difficult to read.
52. The Parent disenrolled the Student from the District on January 19, 2018.
53. The District issued a January 29, 2018 IEP Progress Report for the Student, noting that the Student was resistant to practicing self-calming strategies, but was nevertheless making progress on a social skills goal. The District reported the Student was able to practice self-calming strategies with 1:1 support.

#### **IV. DISCUSSION**

##### **A. Parent Participation/IEP Team**

The Parent alleges that the District violated the IDEA because it did not schedule an IEP Meeting to discuss the following issues: (1) the loss of EA support for the Student; and (2) the District's new ABA policy. School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, and the provision of a free appropriate public education (FAPE) to the

student.<sup>5</sup> An IEP Team Meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision.<sup>6</sup>

### **1. August 29, 2017 Meeting about EA Staffing**

At the beginning of the 2017-2018 school year, School 2 experienced a reduction in EA staffing. On August 21, 2017, the School 2 Principal sent out an email scheduling an August 29, 2017 meeting to discuss the EA staffing issues with three affected families, including the Student's family. On August 24, 2017, the Parent contacted School 2 to add Student-specific topics for discussion and action at the August 29, 2017 meeting—specifically updating the Student's speech goal, clarifying the term "adult assistance" in the Student's IEP, and requesting the addition of another EA to support the Student. However, the August 29, 2017 meeting was scheduled to discuss broader EA staffing issues at School 2 with the Parent and other families. At the meeting, the Principal reassured the families that School 2 would fulfill the adult support needs described in each student's respective IEP. The District did not propose to, or change the Student's IEP at this meeting. The District was not required to follow IEP meeting procedures under IDEA for this meeting. The Department does not substantiate this allegation.

### **2. ABA Policy**

On September 20, 2017, the Parent requested an IEP Team Meeting to discuss changes to the District's ABA therapist policy. In response, on October 2, 2017, the District sent a Notice of Team Meeting for October 9, 2017 to amend the Student's IEP. The Parent drafted a three-page letter outlining concerns to be discussed at that meeting. On October 9, 2017, the IEP Team met to review the Student's IEP, add a speech goal, review occupational therapy strategies, EA support, data collection, and discuss the District's ABA policy. The District took eight pages of IEP Team meeting notes.

In response to the Parent's request, the District noticed and convened an IEP Team Meeting to discuss the Parent's concerns within a reasonable period of time. The Department does not substantiate this allegation.

### **3. Parent Concerns**

The Parent alleges the District violated the IDEA by failing to document the Parent's concerns during IEP Team Meetings. When developing an IEP, the IEP Team must consider the Parent's concerns.<sup>7</sup> "Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know."<sup>8</sup>

During the Complaint period, the IEP Team convened on May 8, 2017, October 9, 2017, November 13, 2017, and January 5, 2018. At each meeting, the District allowed the Parent to express concerns about the Student. Parent concerns were documented in the IEP Team Meeting

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<sup>5</sup> OAR 581-015-2190.

<sup>6</sup> 34 CFR § 300.501(b)(3).

<sup>7</sup> OAR 581-015- 2205.

<sup>8</sup> *Amanda J. v. Clark County School District*, 267 F.3d 877, 882 (9th Cir. 2000).

minutes. The Parent separately communicated concerns to the District regarding the Student by letter and email. The Parent was afforded the opportunity to meaningfully participate in the IEP process. The Department does not substantiate this allegation.

#### **4. Inspection of Records**

The Parent alleges that the District failed to provide the Parent with the Student's complete educational record. A school district must give a parent the opportunity to inspect and review records pertaining to the identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE) to that student. The District must produce these records in a period of time not to exceed 45 days.<sup>9</sup>

On January 8, 2018, the Parent's Legal Counsel requested a complete educational record of the Student. On January 29, 2018, the District delivered educational records to the Parent's Legal Counsel. As part of this production, the District did not furnish the Parent with the entirety of the Student's record. On March 10, 2018, the Parent emailed the District and requested the District provide the Parent with the Student's complete educational record, including data that had been used to compile reports, behavioral data and several emails. At the time the Parent filed this Complaint, the District had not delivered to Parent a complete educational record of the Student. The Department substantiates this allegation.

### **B. IEP Content**

#### **1. Data Supporting IEP Goals**

The Parent alleges that the District violated the IDEA because the Student's IEP content concerning adult support and IEP goals were not supported by available data. When developing a child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.<sup>10</sup>

During the Complaint period, the Student's IEP goals were first developed at the May 9, 2017 IEP Team Meeting. The Student's goals were developed in part based upon the Student's academic and behavioral performance during kindergarten at School 1. The IEP Team added behavioral goals (school skills and social skills) and noted the Student had met a writing skill goal, prompting the development of a new one. The IEP Team also developed a communication goal. The Parent participated in this IEP Team Meeting and did not request any re-evaluation or further testing of the Student. After these goals were created, the Parent requested a modification to the communication goal, which was done at the October 9, 2017 IEP Team Meeting. The Student's IEP goals were developed based upon appropriate District information-gathering, Parent input, and the demonstrated academic and functional needs of the Student. The Department does not substantiate this allegation.

#### **2. Parent's Request for an EA**

The Parent alleges that the District violated the IDEA because the Parent's request for one-on-one support was not included in the Student's IEP. A parent's right to participate in an IEP Team Meeting is not equivalent to the right to have each of their requests adopted by the IEP Team.

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<sup>9</sup> OAR 581-015-2300.

<sup>10</sup> OAR 581-015-2205.

Ultimately, the District makes the decision regarding the extent of services its students require.<sup>11</sup>

One reason the District was not inclined to offer the Student a dedicated 1:1 EA was an effort encourage the Student's independence and autonomy. Nevertheless, the District received the Parent's input regarding the importance of the Student having a dedicated 1:1 EA. While not specifically assigned, the Student receives consistent adult assistance and support from District EAs throughout the school day. The District was receptive to the Parent's concerns about the Student having a 1:1 EA, and was not obligated to accede to the Parent's request for one. The Department does not substantiate this allegation.

### **3. Math Progress Reporting**

The Parent alleges that the District violated the IDEA because the Student's math progress was not included on the Student's most recent progress report. Each student's IEP must contain a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided.<sup>12</sup>

Here, the District noted in the Student's IEP that it would provide IEP goal progress reports to the Parent in writing, on a quarterly basis. For the 2017-2018 school year, the first quarter's report cards and goal updates were sent to the Parent on November 3, 2017. The Student's annual measurable goals were each updated with the exception of the Student's math goals. The District next provided a written quarterly report on January 29, 2018, at which time the District did include a math progress report. The District missed one quarter of progress reporting in the area of math. The Department substantiates this allegation.

### **C. IEP Implementation**

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the school district's jurisdiction. A school district must provide special education and related services in accordance with the student's IEP.<sup>13</sup> A material failure to implement an IEP constitutes a violation of the IDEA. "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."<sup>14</sup>

The Parent alleges that the District violated the IDEA because it did not implement the Student's IEP in each of the following areas:

#### **1. Failing to Provide an Occupational Therapist**

On May 2, 2017, a District Occupational Therapist updated the Student's occupational therapy Present Levels of Academic Achievement and Functional Performance section of the Student's IEP to note that the Student engaged in sensory seeking activities throughout the day. The Occupational Therapist noted specific interventions for the Student based on observations and concluded that the Student would benefit from six hours of occupational therapy per year.

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<sup>11</sup> *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1482 (9th Cir. 1992).

<sup>12</sup> OAR 581-015-2200.

<sup>13</sup> OAR 581-015-2220(1).

<sup>14</sup> *Van Duyn v. Baker Sch. Dist. SJ*, 502 F.3d 811, 822 (9th Cir. 2007).



An Occupational Therapist from School 1 worked with the Student's instructors until the end of the 2016-2017 school year by providing movement break ideas and other skills to assist the Student in daily classroom skills.

At the time of the Student's transfer, School 2 did not have a dedicated Occupational Therapist on staff. Upon learning this, the Occupational Therapist that serviced School 1 sent training materials and other helpful aids to the School 2 staff for the beginning of the 2017-2018 school year. School 2 added an Occupational Therapist at the end of December 2017. Upon starting work at School 2, the Occupational Therapist observed the Student and began making recommendations to staff. The District provided adequate and appropriate occupational therapy services to the Student, in conformity with the Student's IEP. The Department does not substantiate this allegation.

## **2. Failing to Provide an EA**

The Student's IEP states that the Student will receive adult support. The IEP describes the amount of adult support as, "throughout the day." The Student's IEP does not state that the Student would receive a dedicated 1:1 EA. As such, the Student's IEP allowed for time during the school day where the Student would not receive dedicated adult support. Despite this, School 1 and School 2 provided the Student with continuous adult support throughout the day. The Department does not substantiate this allegation.

## **3. Inadequately Trained Staff**

The Parent alleges that the District improperly trained its staff in restraints and behavioral methodology and/or that staff was being inefficiently utilized. A parent cannot dictate who will provide services pursuant to an IEP so long as the service providers are qualified.<sup>15</sup>

The Parent has requested that staff engage in more ABA therapy-type interventions and has repeatedly attempted to have the Student's private ABA therapists included in the classroom. In addition, the Parent has endeavored to assist District staff by emailing suggestions and involving outside therapists in the discussion surrounding the Student's educational program. District staff has made use of some of the Parent's suggestions. District staff that provides services to the Student were found to be adequately trained and sufficiently utilized to provide the Student with FAPE. The Department does not substantiate this allegation.

## **4. Specially Designed Instruction (Math)**

The Parent alleges the District did not deliver the adequate math SDI to the Student. The Student's May 8, 2017 IEP calls for thirty minutes of math SDI per week. An EA pulled the Student out of class to participate in a small math group for thirty minutes, four times per week. The Student could count to 20 with some reversals and was learning simple addition concepts. Progress reports the District issued indicate the Student has made progress in counting and understanding the concept of values. The Department does not substantiate this allegation.

## **5. Instructional Methods**

The Parent contends the mathematics and reading instructional methods are not adequate for the Student's academic progress. In developing an IEP, a school district is not required to provide

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<sup>15</sup> *Gellerman v Calaveras Unified School District*, 37 IDELR 125 (2002).

a specific program or employ a specific methodology requested by a parent. The Student's IEP does not provide for a specific instructional method. Nevertheless, the Student is making academic progress in the areas of mathematics and reading, as evidenced by teacher observation and the Student's quarterly progress reports. The Department does not substantiate this allegation.

## **6. Specially Designed Instruction (Social Emotional Regulation)**

The Parent alleges the District failed to provide the Student with adequate SDI in the area of social emotional regulation. A failure is material "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."<sup>16</sup>

The Student's IEP provides for thirty minutes of social/emotional skills SDI per week. During the Complaint period, the District did not provide any specific instruction in classroom skills or behaviors to the Student. There was no role playing, use of video instruction regarding correct classroom decorum, or skills or self-assessments regarding classroom skills. Rather, District staff would either attempt to "pre-teach" a concept during the school day, or when the Student exhibited adverse behaviors in class, District staff would use it as a "teaching moment" to discuss proper classroom behavior. The Student's reported levels in the area of classroom skills decreased between the June 18, 2017 and January 29, 2018 reporting period.

The District did not provide the Student with adequate social emotional regulation in conformity with the Student's IEP. The Department substantiates this allegation.

## **7. Functional Behavioral Assessment**

The Parent alleges the District failed to implement the contents of the Student's existing functional behavioral assessment (FBA). The District developed an FBA for the Student in October 2016 while the Student attended School 1. When the Student transferred to School 2, the FBA did not follow the Student. The District did not upload the FBA into Synergy, nor was a paper copy transferred to School 2 for use. The District did not implement the Student's FBA at the beginning of the 2017-2018 school year because School 2 staff was unaware of its existence.

In October 2017, a District TOSA approached the Parent regarding developing a new FBA. The District TOSA and members of the Student's IEP Team opined that an FBA was appropriate for the Student because the Student's behaviors were uncontrollable at times. On or about October 9, 2017, District staff provided the Parent with a consent form for a new FBA. The Parent refused to consent to an FBA.

The District did not utilize the Student's already existing FBA from the time the Student transferred to School 2 on or about April 17, 2017 until October 9, 2017. The Department substantiates this allegation.<sup>17</sup>

## **8. Student Movement Breaks**

The Parent alleges the District failed to correctly implement movement breaks as noted in the Student's IEP. At the beginning of the 2017-2018 school year, both the Parent and the School 1

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<sup>16</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 822 (9th Cir 2007).

<sup>17</sup> The Department does not substantiate this allegation for the period of time after October 9, 2017 because the Parent declined consent to proceed with the development of a new FBA.

Occupational Therapist provided information to School 2 staff about the use of movement breaks. The Student's IEP allows for "movement breaks" in the "Supplementary Aids/Services" section. The Student's teacher maintained examples of movement breaks in the Student's file, a notebook, and tacked to the classroom wall for easy staff access.

District staff prompted the Student to engage in movement breaks when the Student became disruptive in class or veered off task. At the beginning of the 2017-2018 school year, movement breaks became ineffective. However, because School 2 did not have a dedicated Occupational Therapist on staff during the beginning of the 2017-2018 school year, the District did not explore an appropriate replacement for movement breaks. Eventually, the Parent contacted the District and expressed doubt about the efficacy of the movement breaks, and they were discontinued. The District was aware of the ineffectiveness of movement breaks with the Student, but did not intervene to explore new interventions. The Department substantiates this allegation.

## **D. Evaluation**

### **1. Functional Behavioral Assessment**

The Parent alleges the District violated the IDEA because it did not respond to the Parent's inquiry regarding whether the District would develop an FBA and create a Behavior Support Plan for the Student. "When an FBA is conducted to help a district determine . . . the extent of special education and related services the child requires, the FBA qualifies as an evaluation or reevaluation."<sup>18</sup> A parent must consent to such an evaluation or re-evaluation.<sup>19</sup>

At the October 9, 2017 IEP Meeting, the District proposed conducting an FBA. The District gave the Parent a form to consent to the evaluation. The Parent refused consent for the FBA. In October 2017, the District attempted to initiate the FBA process, but was impeded because the Parent withheld consent. The Department does not substantiate this allegation.

### **2. Dyslexia/Dyscalculia**

The Parent contends that the District violated the IDEA because it did not evaluate the Student for dyslexia and dyscalculia. A parent may request an evaluation to determine if a child is eligible for special education services.<sup>20</sup>

The Parent discussed the Student's struggles with math and writing with the Student's Special Education teacher. In an email to the Student's teacher, the Parent expressed concerns about dysgraphia and, at a meeting with the Special Education teacher asked for the teacher's input on evaluating the Student for dyscalculia or dysgraphia. The Special Education teacher responded by noting it may be best to wait on any evaluation since the regular school psychologist—who would typically conduct the evaluation—was out on leave. Later, the Parent raised the issue of Student and dyslexia at a parent/teacher conference. The teacher responded that the Student's issues would resolve themselves.

The Parent made multiple inquiries to District staff about the District evaluating the Student for special education eligibility based upon the Parent's suspicion of dyslexia and/or dyscalculia. The District did not respond by addressing the matter in an IEP Team Meeting, nor furnishing the

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<sup>18</sup> Letter to Christiansen, 48 IDELR 161 (Feb. 9, 2007).

<sup>19</sup> OAR 581-15-2090.

<sup>20</sup> OAR 581-015-2105.

Parent with a consent to evaluate or prior written notice explaining its refusal to evaluate. The Department substantiates this allegation.

**V. CORRECTIVE ACTION<sup>21</sup>**

*In the Matter of Portland School District 1J*  
Case No. 18-054-024

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

With assistance from the Department/County Contact, review and provide professional development regarding:

No.	Actions	Submissions <sup>22</sup>	Due By
1.	<p><b>IEP Content/IEP Implementation/Progress Reporting/Requests for Evaluation/Responding to Records Requests specifically-</b></p> <ul style="list-style-type: none"> <li>▪ Writing and implementing measurable IEP goals aligned to a child’s present levels of academic achievement and functional performance that lead to progress in the general education curriculum and address each of the child’s special education needs;</li> <li>▪ Progress reporting requirements;</li> <li>▪ IEP implementation;</li> <li>▪ Requests for evaluation;</li> <li>▪ Responding to records requests.</li> </ul> <p>Primary participants: Special education coordinator(s), TOSA(s), and instructional staff at the Student’s school.</p>	<p>a. Copy of Proposed Agenda, Training Date, Content, and Presenter</p> <p>b. Evidence of completed training, with sign-in sheet including name and position, Final Agenda and Materials Used</p>	<p><b>August 30, 2018</b></p> <p><b>October 31, 2018</b></p>

<sup>21</sup> The Department’s order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

<sup>22</sup> 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

<p><b>2.</b></p>	<p><b>General Records</b></p> <p>a. Propose revisions, if needed, of school and district processes for:</p> <ul style="list-style-type: none"> <li>▪ Timely transfer of student records/information between District schools to ensure an IEP can be implemented without delay</li> <li>▪ Timely input/filing of student information in electronic and manual records systems, including, but not limited to, IEP, IEP notices, meeting notes and minutes, behavior support plans, and progress reports.</li> </ul> <p>b. Upon ODE approval, distribute revised processes to school special education coordinator(s); TOSA(s), and school/District staff who may be responsible for receiving managing school and district student information systems.</p>	<p>a. Submit for ODE approval, proposed revisions of school/district processes, with edits showing.</p> <p>b. Evidence of distribution to staff described in 2.b. Distribution may be done electronically or in a meeting. If distributed electronically, contact the Department for specific documentation required</p>	<p><b>October 15, 2018</b></p> <p><b>October 31, 2018</b></p>
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Dated: this 12th Day of June 2018




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

Mailing Date: June 12, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)