

14. Prior Notice of Special Education Action, 04/05/2018
15. Notice of Team Meeting, 05/07/2018
16. Prior Notice of Special Education Action
17. Notice of Team Meeting, 05/17/2018
18. Student IEP, 10/16/2017
19. IEP Meeting Minutes, 05/18/2018
20. Notice of Team Meeting, 05/07/2018
21. Prior Notice of Special Education Action, 05/18/2018
22. Prior Notice of Special Education Action, 05/07/2018
23. Notice of Team Meeting, 05/07/18
24. IEP Meeting Minutes, 05/18/18
25. Student IEP, 10/16/2017
26. Email, "(Parents)" 08/14/2018
27. Notice of Team Meeting, 08/28/2018
28. Email, "Fwd: Intake Meeting" 10/28/18
29. Prior Notice of Special Education Action, 08/30/2018
30. Student IEP, 10/16/2017
31. Notice of Team Meeting, 08/30/2018
32. Student IEP, 10/16/2017
33. IEP Meeting Minutes, 08/30/2018
34. Prior Notice of Special Education Action, 08/30/18
35. Notice of Team Meeting, 08/30/18
36. Email, "staffing Rosedale"
37. Student IEP, 10/11/2018
38. Prior Notice of Special Education Action, 10/11/18
39. Autism Spectrum Disorder Eligibility Evaluation, 10/11/2018
40. Teacher Interview—ASD Evaluation
41. Functional Communication Assessment, 10/9/18
42. Medical Statement or Health Assessment Statement, 10/19/2015
43. Assessment of Basic Language and Learning Skills—Revised (ABLLS-R) 10/10/2018
44. IEP Meeting Minutes, 10/11/2018
45. Letter, "Team (Student)" with attachments
46. Prior Notice of Special Education Action, 10/11/2018
47. Notice of Team Meeting, 08/30/2018
48. IEP Meeting Minutes, 05/18/2018
49. Written Agreements between the Parent and the District, 04/05/2018
50. Statement of Eligibility for Special Education, 10/11/2018
51. Autism Spectrum Disorder Eligibility Evaluation, 10/11/2018
52. Teacher Interview—ASD Evaluation, 10/10/2018
53. Functional Communication Assessment, 10/09/2018
54. Medical Statement or Health Assessment Statement, 10/19/2015
55. Assessment of Basic Language and Learning Skills—Revised (ABLLS-R) 10/10/2018
56. IEP Meeting Minutes, 10/11/2018
57. Letter, "Team (Student)" with attachments,
58. --duplicates of documents above--
59. Email, "Fw: Response to letter from 10/18/2018"
60. Email, "Fw. Meeting or conference request" 12/13/2018
61. Email, "Fw: #Team(Student)" 12/13/2018

62. Email, "FW: (Student's) Day" 12/11/2018
63. Use of Protective Physical Intervention (PPI)/Seclusion Incident Report, 10/22/2018
64. Prior Notice of Special Education Action, 10/22/2018
65. Notice of Team Meeting
66. Prior Notice of Special Education Action, 10/22/2018 (with email and document attachments noted above)
67. Email, "Fw: Meeting" 12/13/2018
68. Email, "Fw: (Student's) Day" 12/11/18
69. Email, "Fwd: Re: Meeting" 10/23/18
70. Email, "Fw: (Student's) Day" 12/13/18
71. Email, "Fwd: Re: Meeting" 10/23/18
72. Email, "Fw: Emails for investigation"
73. Notice of Team Meeting, 10/24/2018
74. Email, "Fw: (Student's) Disability Rights Ongoing Violations"
75. Email, "Re: meeting notice"
76. Email, "Fw: (Student's) Disability Rights Ongoing Violations"
77. Email, "FW: IEP meeting location requested information"
78. Email, "Fw: (Student's) Nov. 5 2018 IEP Meeting"
79. Email, "New Shared File"
80. Email, "Fw: Secure File Transfer"
81. Email, "New Shared File"
82. Email, "Fw: Second Document sent Secure File Transfer"
83. Email, "Fw: A file has been downloaded from your shared link:"
84. Email, "Re: Second Document sent Secure File Transfer"
85. Email, "Discussion of investigation w/ (Parents)"
86. Email, "Fw; Second Document sent Secure File Transfer"
87. Email, "Fw: New Shared File"
88. Email, "Discussion of investigation w/ (Parents)"
89. Email, "(Student) Meeting Notice" for FBA/BSP 11/5/2018
90. Notice of Team Meeting, FBA/BSP 11/05/2018
91. Email, "Secure File Transfer" 11/05/18
92. Email, "Fwd: Change of Location" 11/05/2018
93. Email, "Fw: Secure File Transfer" 11/6/18
94. Student IEP, 10/11/2018, Amendment Date 11/05/2018
95. IEP Team Meeting Minutes (with Meeting Notice, IEP, and Prior Notice attachments) 11/05/2018
96. Email, "Fw: Public Complaint Forms" 12/11/2018
97. Document, Parent questions regarding District practices
98. Email, "Fw: Questions" 12/11/2018
99. Email, "Fw: Public Complaint Forms" 12/11/2018
100. Email, "Fw: Secure File Transfer" 11/6/18
101. Email, "New Shared File" 11/06/2018
102. Email, "Fw: Secure File Transfer" 11/6/18
103. Email, "Re: Public Complaint Forms" and attachments 11/06/2018
104. Email, "Shared file from (staff)" 11/06/2018
105. Email, "Re: Public Complaint Forms" 11/6/218
106. Email, "Fw: Questions" with attachments 12/11/2018
107. Email, "Fw: ODE, HSD, and HB 2939 Seclusion Codes and Policies" and attached

- documents, laws, and policies, 12/11/2018
108. Email, "Fw: ODE, HSD, and HB 2939 Seclusion Codes and Policies" and attached documents, laws, and policies, 12/11/2018
 109. Email, Fw: FBA/BSP meeting letter, (parent request to cancel FBA/BSP meeting) 12/11/2018
 110. Email, "Re: Date to Review File" 11/07/2018
 111. Various email meeting acceptance notifications with attachments
 112. Email, "Fw: FBA/BSP meeting letter"
 113. Email, "Fw: FBA/BSP meeting letter" 12/11/2018
 114. Email, "Fw: Public Complaint Forms" 11/08/2018 (with attached forms and policies)
 115. Email, "Fw: FBA/BSP meeting letter"
 116. Email, "FW: Rosedale" 12/11/2018
 117. Email, "FW: Rosedale Support" 12/11/2018
 118. Email, "FW: BSP meeting next Tuesday for (Student)" 12/11/2018
 119. Email, "FW: Safety moving forward" 12/11/2018
 120. Email, "FW District complaint Forms" 12/11/2018
 121. Email, "FW: Case Review"
 122. Email, "(Student's) File Review" 11/09/2018
 123. Email, "Re: Re: (Student's) Day" 11/09/2018
 124. Email, "Fwd: Re; Response to letter from 10/11/2018"
 125. Email, "Re: FBA/BSP meeting letter" and attachments 11/09/2018
 126. Email, "Fw: Attn: (staff)" 12/11/2018
 127. Email, "FW: Legal Cases—notes & recordings—Invitation to collaborate"
 128. Email, "FW: A file has been downloaded from your shared link" 12/11/2018
 129. Email, "(Person) letter and pictures from parents" 11/15/2018
 130. Email, "Secure File Transfer" 11/15/2018
 131. Email, "Recording of (student) IEP Nov 5th" 11/15/2018
 132. Email, "Fw: Attn: (staff)" 12/11/2018
 133. Email, "FW: iep revision" 12/11/2018
 134. Email, "FW: IEP Audio Files" 12/11/2018
 135. Email, "FW: A file has been downloaded from your shared link"
 136. Email, "FW (Student) IEP Audio" 12/11/2018
 137. Email, "Fw: Attn: (staff)" 11/16/2018
 138. Email, "Secure File Transfer" 11/16/2018
 139. Email, "FW: IEP Audio Files" 11/16/2018
 140. Email, "IEP files sent" 11/16/2018
 141. Email, "Fwd: Pics" 11/16/2018
 142. Email, "FW (Student) IEP Audio" 11/16/2018
 143. Email, "FW: IEP Audio Files" 11/16/2018
 144. Email, "FW (Student) IEP Audio" 11/16/2018
 145. Email, "(Student) investigation audio" 11/16/2108
 146. Email, "Your call" 11/6/2018
 147. Email, "Fw: (Student) Picture" 11/16/2108
 148. Email, "Secure File Transfer" 11/16/2018
 149. Email, "Fw: Attn: (staff)" 12/11/2018
 150. Email string: "Investigation Results" 12/11/2018
 151. Email, "Fw: BSP due date" 12/11/2018
 152. Email, "FW: iep revision" 12/11/2018

153. Email, "Fw: Investigation- Draft email" 12/11/2018
154. Email, "FW: Investigation" 12/11/2018
155. Email, "Fw: pictures" 12/11/2018
156. Email, "FW: PWN and IEP revision 11/5"
157. Email, (Family) letter wording, and assorted attachments 11/19/2018
158. Email, "Re: iep revision" 11/19/2018
159. Email, "Fw: Investigation Results" 12/11/2018
160. Email, "Fw: IEP revision" 12/11/2018
161. Email, "FW: Investigation Results" 12/11/2018
162. Email, "(Student) IEP/PWN"
163. Email, "Fw: BSP" 12/11/2018
164. Email, "FW: BSP date" 12/11/2018
165. Email, "FW: Investigation Result" 12/11/2018
166. Email, "Re: IEP revision" 11/21/2018
167. Email, "FBA/BSP meeting" 11/21/2018
168. Email, "JP Team Meeting" (and attachments) 11/21/2018
169. Email, "FW: BSP Date" 12/11/2018
170. Email, "FW: Email" (and attachments) 12/11/2018
171. 11/27/2108 Letter from Student's Physician
172. Email, "Re: Secure File Transfer" 11/27/2018
173. Email, "Student" Dr. School Note" 11/27/2018
174. Email string: "Secure File Transfer" 11/26/0218
175. Email, "Fw: (Student) Escalation Cycle and Staff Response Worksheet: -invitation to edit"
176. Email, "Fw: Email Response" 11/30/2018
177. Email, "FW Functional Behavior Assessment—(Student)—Invitation to Edit", 11/30/2018
178. Email, "FW: (Student) Behavior Support Plan (google doc)—Invitation to edit" 12/11/2018
179. Email, "Email Response" (an attachments) 11/30/2018
180. DHS Individual Support Plan, 9/1/2018—8/31/2019

The Parents (each Parent individually and jointly are referred to here as "Parents") submitted a response on December 20, 2018. The Parents submitted additional materials throughout the complaint timeline. The Investigator interviewed the Parents on January 5, 2019. The Investigator determined that onsite interviews were needed. On January 9, 2019, the Investigator interviewed the District's Executive Director of Student Services, Director of Student Services, Building Principal, and Teacher regarding this matter. Following the interview, the District provided additional information regarding the case. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.³ The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the

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

Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from December 5, 2017, to the filing of this Complaint on December 4, 2018.

<p>1.</p>	<p><u>IEP Team</u></p> <p>The Parents allege that the District violated the IDEA when it made changes to the Student's IEP without conducting an IEP Team Meeting. Specifically, the Parents' concerns were changed/amended and specific requests involving the Student's behavior incidents were removed or disregarded.</p> <p>(34 CFR §§ 300.321, 300.324; OAR 581-015-2210)</p>	<p><u>Not Substantiated</u></p> <p>The Parents were consulted in the development of each of the Student's IEPs. The "input from parent(s)" narrative changed over time. The District did not modify the Student's IEP outside of appropriate IEP Team processes.</p>
<p>2.</p>	<p><u>IEP Implementation</u></p> <p>The Parents allege that the District violated the IDEA when it neglected to educate the Student in conformity with the Student's IEP, made alterations to the Student's IEP without convening an IEP Team meeting, and without the input of the Parent. Specifically, the Parent alleges that specific Student accommodations outlined in the IEP were not implemented.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p><u>Not Substantiated</u></p> <p>The Student's IEP did not require communication between the District and the Parent immediately after the Student exhibited significant behaviors in class. Nevertheless, on October 22, 2018, the District promptly called and spoke to the Parents soon after an incident involving the Student.</p>
<p>3.</p>	<p><u>Consent/IEP Team Considerations</u></p> <p>The Parent alleges that the District violated the IDEA when:</p> <p>(1) relevant documents required for the review and revision of the Student's IEP were forged or altered;</p> <p>(2) the District created consent forms that were not provided to the Parent, that the Parent did not sign; and which</p>	<p><u>Not Substantiated</u></p> <p>There is no indication that the District altered documents or misled the Parents with its characterization of how the Student's placement and provision of FAPE was being changed.</p> <p>On August 30, 2018, the District sent the Parents a Prior Written Notice for an evaluation along with a consent form for</p>

	<p>(3) resulted in the IEP Team relying on potentially incorrect materials in the formulation of the Student's IEP.</p> <p>(34 CFR §§ 300.320, 300.324(a)(1) & (2) & (b)(2); OAR 581-015-2090, OAR 581-015-2205)</p>	<p>various evaluations. On September 4, 2018, the Parent signed the written consent form. There is no indication that the District failed to provide the Parents with the appropriate consent forms, nor that the Parents did not sign the September 4, 2018 consent form.</p> <p>The record shows that the District complied with the IDEA's procedural requirements at the November 5, 2018 IEP Team Meeting and relied on relevant, accurate information in developing the Student's IEP.</p>
<p>4.</p>	<p><u>Functional Behavioral Assessment</u></p> <p>The Parent alleges that the District violated the IDEA when it did not conduct an appropriate Functional Behavioral Assessment (FBA) by not utilizing a qualified person, collecting required data, or assuring that the FBA appropriately addressed the Student's needs.</p> <p>(OAR 581-015-2181)</p>	<p><u>Not Substantiated</u></p> <p>The Department did not uncover, nor did the Parent offer, information to support a claim that District staff forged or misappropriated documents, nor that certain District staff was unsuitable to provide input into the FBA. Furthermore, the Department found that the events surrounding the October 22, 2018 incident were relevant toward arriving at a hypothesis about the function of the Student's behavior.</p>
<p>5.</p>	<p><u>Evaluation Planning</u></p> <p>The Parent alleges that the District violated the IDEA by withholding important data from the IEP Team relevant to the provision of special education services to the Student. Specifically, the Parent alleges that complaints regarding service providers and investigations regarding allegations of misconduct were excluded from the IEP Team's review, resulting in the same individuals against whom allegations were made, being recommended as service providers for the Student.</p> <p>(34 CFR § 300.305; OAR 581-015-2115)</p>	<p><u>Not substantiated</u></p> <p>The District reviewed and considered a variety of information in developing the Student's November 4, 2018 IEP and as part of the FBA planning process. The inclusion of a District staff member whom the Student is fearful of did not nullify the efforts exerted by the District to appropriately develop the Student's IEP and undertake the FBA and Behavior Support Plan (BSP) planning process.</p>

III. FINDINGS OF FACT

1. The Student in this case is in the sixth grade, resides in the District, and receives special education services under the eligibility category of Autism Spectrum Disorder. The Student is artistic and enjoys creating art. The Student is a skilled reader and writer, and enjoys scripting dialogue between characters from movies the Student watches. The Student is increasingly able to attend to academic tasks over time and works well for positive praise and small reinforcers such as short breaks.
2. The Student demonstrates delays in cognitive, social, and communication skills that impact the Student's progress in the general education curriculum. The Student requires a modified curriculum and specially designed instruction at the Student's academic level in math, reading, and writing. The Student benefits from a higher adult-to-student ratio for instruction, as well as an individualized and highly structured environment to adequately support the Student's academic and functional needs.
3. During the 2018-2019 school year, the Student returned to the classroom on a modified schedule after receiving "home instruction" during the previous school year. Upon returning to the classroom, the Student attended classes five days per week for two hours per day, with a plan to increase instructional time based on the Student's readiness. During this time the Student was included with typical grade-level peers for 50% of the time.
4. At the beginning of the 2018-2019 school year, it was reported that the Student had made progress toward meeting an IEP goal in the area of behavior management/self-management—specifically transitioning between activities, following one-step directions, and working on assigned tasks while refraining from off-task behaviors—but had experienced some regression over the summer break. After adjusting to the new school year, the Student made progress toward regaining these skills.
5. The Student's IEP provides for a variety of accommodations including a visual schedule, social stories, noise buffers, breaks, separate setting for testing situations, sensory supports, and prior warning of changes in schedule.
6. The Student has "quite extensive receptive language skills" and is able to follow many simple directions.
7. On August 30, 2018, the District sent a Prior Written Notice (PWN) for an evaluation and consent for various evaluations and assessments, including "[f]unctional communication evaluations, observations, direct interaction, Assessment of Basic Language and Learning Skills (ABLLS), DRA, work samples, file review, medical statement, developmental history, Childhood Autism Rating Scales. Functional Behavior Assessment." On September 4, 2018, the Parents signed the evaluation consent form.
8. The August 30, 2018 PWN states, "[The Student's] 3 year re-evaluation is due November 6, 2019. All of [the Student's] current testing is out of date we will need to complete updated testing to re-establish an Autism Eligibility. [The Student] has shown significant behaviors that would best be supported by a behavior support plan."

9. On August 30, 2018, the District also sent the Parent a PWN that states the Student would “begin coming to school for a modified day of 2.5 hours and will increase time as team determines [the Student] is ready.” The stated purpose of the modified day was to successfully shift the Student from a previous placement of home instruction to attending school and experiencing a small number of transitions. The PWN noted an expectation that the length of the Student’s school day would be increasing.
10. The Parents assert that the PWN is incorrect as the Student transitioned from home instruction at a May 8, 2018 IEP Team Meeting.
11. After obtaining the Parents’ consent, the District began collecting information relevant to the Student’s FBA with an intention to develop the Student’s Behavior Support Plan.
12. The Department of Human Services (DHS) developed an Individual Support Plan related to the Student with an effective date range of September 1, 2018 through August 31, 2019. The DHS plan included suggested interventions for the Student in the event of physical aggression, self injury, or property destruction. The Individual Support Plan notes that, “[the Student] is easily agitated when [the Student] does not get [the Student’s] way. Tantrums, disruptive, agitation, self injury, self neglecting, bites right wrist/arm, head banging on wall, throws self on wall, screaming, throws objects. When this happens clear room of other siblings,” and goes on to provide calming suggestions, as well as recommended interventions when outside and in the community.
13. On October 11, 2018, the Student’s IEP Team met to revise the Student’s IEP. The Parents were in attendance and provided input at this meeting. The IEP Team Meeting Minutes reflect the Parents’ description of the Student’s previous placement receiving home instruction, social skills, personality, effective calming techniques, and academic abilities, and need for routine.
14. On October 22, 2018, near the end of the school day, an incident occurred where the Student exhibited behaviors that led to a room clear and seclusion of the Student. According to a District Special Education Teacher, the Student was informed that the class would soon transition from one activity to another, and the Student responded with an expletive. The Student then began throwing items and attempting to hit and kick the Special Education Teacher. The Special Education Teacher stated that attempts at redirecting the Student were unsuccessful, and that Student began throwing chairs. The Special Education Teacher then initiated a room clear procedure to remove other students from the classroom, resulting in the Student being secluded.
15. The Building Principal was called to assist and observe the situation. The Special Education Teacher monitored the situation until such time that the Student calmed down, listened to directions, then the two began picking up classroom objects that were thrown or overturned. After that, District staff called and spoke to the Parents, who came to school to pick the Student up. The Parents were met at the school door by the Special Education Teacher and School Principal, who led the Parents to the Student.
16. The Parents objected with the way the District handled the District’s response to the Student’s behavior. Following the October 22, 2018 incident, the Student did not return to

school.

17. On November 5, 2018, an IEP Team Meeting convened to consider information previously gathered and consented to by the Parents, as outlined in the August 30, 2018 PWN. At the IEP Team Meeting, the Parents shared the following input: (1) a desire to “be on the same page when addressing emergencies for [the Student]”; (2) a desire for “a communication plan to inform them as soon as possible when the (sic) is a behavior escalation”; (3) a desire for a “daily written communication notebook, rather than a digital document”; (4) a request that “a peer buddy support [be] added to the IEP to help [the Student] transition during entry and exits”; (5) a request for “access to ipads for speech to text”; (6) a desire to “continue discussion of goals once team has met to develop a Functional Behavior Assessment and Behavior Support Plan”; (7) a desire that “the doctors note provided on October 24th to be documented for for (sic) [the Student’s] absence from school from October 23-November 5th”; and (8) a request for “a prior written notice to specifically address their concerns about a change in location.”
18. The Student’s IEP Team agreed to the following: (1) contacting the Parents about the Student’s behavior escalations as soon as safely able; (2) furnishing the Student with a written communication notebook; (3) identifying a District staff member as a point person for communications; (4) providing the Student with access to a peer for entering and exiting the school as well as access to technology throughout the day; (5) acknowledging receipt of District policies surrounding restraint and seclusion; (6) excusing the Student’s absences between October 23, 2018 and November 5, 2018; and (7) providing the Parents with a PWN addressing the District’s decision regarding a proposed location change for the Student.
19. At the November 5, 2018 meeting, the IEP Team agreed that a meeting to discuss the Student’s Behavior Support Plan would take place at 9:00 a.m. on November 13, 2018. The District sent out a Notice of Team Meeting to this effect.
20. On November 6, 2018, the District issued a PWN indicating a refusal to change the Student’s location based on the results of an internal investigation finding that District staff did not engage in any wrongdoing related to the October 22, 2018 incident, and that the Student’s teacher “has the skills and qualifications to implement the [S]tudent’s IEP.”
21. On November 7, 2018, the Parents requested that the District cancel the November 13, 2018 meeting due to the Parents’ unavailability but also due to their “submitting a request of location change for the [the Student].”
22. The Parents provided the District with a November 27, 2018 letter from the Student’s physician. The letter states, that the physician “saw [the Student] today in my office. [The Student’s] parents continue to have concerns about [the Student’s] safety at school. I recommend that [the Student] not return to school until [the Student’s] situation as (sic) been resolved to [the Parents’] satisfaction.” The Parents assert that the physician’s letter reflect the Student’s fear of certain District staff members following the October 22, 2018 incident.

IV. DISCUSSION

A. IEP Team

The Parents allege that the District violated the IDEA when it made changes to the Student's IEP without convening an IEP Team meeting. Specifically, the Parents allege that the District removed language from the "Input from parent(s)" sections of the Student's IEP where the Parents make specific requests regarding interventions and parent communication in the event of an incident involving the Student's behavior.

A school district has the responsibility to ensure that each student's IEP Team include certain participants.⁴ A student's IEP is reviewed annually, and as needed to address any lack of expected progress toward annual goals.⁵ A school district is required to consider the concerns of the parent in the development of the IEP,⁶ and include the parent in the development of the IEP. Changes to an IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amendment.⁷

The Student's October 16, 2017 IEP "Input from parent(s)" section contains a quote from the Parents that originated in a letter provided to the Student's IEP Team during a meeting on November 3, 2016. The quoted language provides information about the Student's educational history and also expresses a hope for "open communication" between the Parents and District staff, including "immediate notification of acute problems like behaviors at school." The Parents go on to note appreciating if the Student's "speech deficit, and other development issues be addressed with proactive interventions with common issues before reactive interventions." The Student's August 30, 2018 IEP also contains this language. The Student's October 11, 2018 IEP does not contain this language in the "Input from parent(s)" section. Instead, there is a reference to parent concerns and "attached letters (included in meeting minutes.)" The Student's November 5, 2018 IEP does not contain either quoted language from the November 3, 2016 IEP, or a reference to attached letters in the "Input from parent(s)" section. The November 5, 2018 IEP "Input from parent(s)" section does note the Parents' desire to be on the same page when addressing emergencies for [the Student] and desire for a communication plan to inform them when the Student experiences an escalation in behavior.

The Parents were each active participants in the October 11, 2018 and November 5, 2018 IEP Team Meetings. IEP Team decision-making closely tracked the Parents' input. The Parents appear to ascribe some nexus between the District's removal of the "Input from parent(s)" reference to language in the Parents' November 3, 2016 letter and the October 22, 2018 incident involving the Student's seclusion. However, the IEP language the Parents allege was wrongfully removed after the November 5, 2018 IEP was removed from the "Input from parent(s)" section of the October 11, 2018 IEP, which was completed eleven days before the incident involving the Student's seclusion. Furthermore, the November 5, 2018 IEP contains comparable language regarding the Parents and the District reaching a consensus regarding addressing the Student's behaviors and how to communicate such incidents to the Parents.

⁴ OAR 581-015-2210.

⁵ OAR 581-015-2225(1)(b)

⁶ OAR 584-015-2205(1)(b)

⁷ OAR 581-015-2225(3)

The District did not modify the Student's IEP outside of appropriate IEP Team processes. The Department does not substantiate this allegation.

B. IEP Implementation

The Parents allege that the District violated the IDEA when it neglected to educate the Student in conformity with the Student's IEP. Specifically, the Parents allege that the District failed to implement the Student's IEP in two ways: (1) by not calling them during or immediately after the October 22, 2018 incident, as allegedly specified in the Student's IEP; and (2) by improperly removing relevant instructions about parent communications from the Student's IEP (*discussed supra, Section A*).

School districts must have in effect at the start of each school year an IEP for a child with a disability.⁸ The student must be educated in accordance with that IEP.⁹ School districts are responsible for ensuring that the IEP is accessible to all regular and special education teachers who are responsible for implementing the IEP.¹⁰ School districts must also inform each teacher of their specific responsibilities for implementing accommodations or modifications and supports provided for in the IEP.¹¹

On October 22, 2018, the Student was involved in a behavior incident that resulted in the District clearing a classroom and secluding the Student. The Student's October 11, 2018 IEP—the operative IEP at the time of the incident—did not contain a specific protocol for the District to contact the Parents in the event of a behavior incident. The October 11, 2018 IEP's "Input from parent(s)" section references the Parents' concerns from previous placements, which is presumably the November 3, 2016 letter that requests "immediate notification of acute problems like behaviors at school." Reference to immediate parent notification of behavior issues involving the Student is limited to the IEP's "Input from parent(s)" section and is not part of the IEP's agreed upon supplementary aids/services, or modifications. Nevertheless, District staff did call and speak to the Parents on October 22, 2018, soon after District staff cleared the classroom of other children, redirected the Student, and was able to resume classroom tasks.¹²

The Parents contend that the District should have called them immediately after the onset of the Student's behaviors that precipitated the October 22, 2018 incident. But this was not a requirement of the Student's IEP. Still, the District responded to the Student's behavior and promptly called and spoke to the Parents soon after the Student's behaviors abated and the Student was able to resume classroom tasks, certainly before the end of the school day. The Department does not substantiate this allegation.

C. Consent/IEP Team Considerations

The Parents allege that the District violated the IDEA when relevant documents required for the review and revision of the Student's IEP were forged or altered. The Parents contend that

⁸ OAR 581-015-2220(1)(a).

⁹ OAR 581-015-2220(1)(b).

¹⁰ OAR 581-015-2220(3)(a).

¹¹ OAR 581-015-2220(3)(b).

¹² The District points out that this approach tracks provisions of the Individual Support Plan developed by the Oregon Department of Human Services (DHS), effective date September 1, 2018 – August 31, 2019.

the District created consent forms that were not provided to the Parent and which the Parent did not sign. The Parents also allege that these actions by the District resulted in the Student's IEP Team relying on potentially incorrect materials when formulating the Student's IEP.

1. Forgery/Alteration of August 30, 2018 Prior Written Notice

The Parents contend that the District incorrectly indicated in an August 30, 2018 PWN that as of that date, the Student's placement was "home instruction" when in fact, the Student stopped receiving home instruction on or about May 8, 2018. The purpose of a PWN is to inform parents when a school district intends to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to the child.¹³

Here, the District issued a PWN on August 30, 2018 noting that it proposed to change the Student's placement and provision of a FAPE to the Student. The PWN notes that the IEP Team discussed the Student's needs and special education eligibility, considered continuing the Student's "home instruction" placement, but instead decided that it would revise the Student's IEP to reflect a change in placement from "home instruction" to participation in a school environment on a modified day with an increase in instructional time as the IEP Team determines the Student is ready. The District had previously issued a PWN on May 18, 2018 indicating that the Student's placement for the 2018-2019 school year would be in a classroom on a modified day with opportunities for mainstreaming. The May 18, 2018 PWN also states that the Student's "current placement is home instruction."

The District fulfilled its obligations to provide the Parents with timely prior written notice of its intent to initiate or change the identification, evaluation, educational placement, or provision of a FAPE to the Student. The District explained its actions, described the basis for the action, and considered other options. There is no indication that the District altered or misled the Parents with its characterization of how the Student's placement and provision of FAPE was being changed. The Department does not substantiate this allegation.¹⁴

2. August 30, 2018 Consent to Evaluate Forms

The Parents allege that the District created consent forms that were not provided to the Parents and that the Parents did not sign. School districts must obtain informed written consent from parents before conducting evaluations.¹⁵ Between the 2017-2018 and 2018-2019 school years, the Student moved from a "home instruction" placement to attending a District classroom on a modified schedule. At the outset of the 2018-2019 school year, the District Special Education Teacher reviewed the Student's educational history and suggested that the District complete, among other assessments, a Functional Behavioral Assessment (FBA). On August 30, 2018, the District sent the Parents a PWN for an evaluation and consent form for various evaluations, including functional communication evaluations, observations, direct interaction, assessment of basic language and learning skills (ABLIS), and a Functional Behavior Assessment. On September 4, 2018, the Parent signed the written consent form, giving consent for the indicated reevaluations. There is no indication that the District failed to provide

¹³ OAR 581-015-2310(2).

¹⁴ If the Parents assert that the Student's education records contain information that is inaccurate or misleading, the Parents may request that the District amend the record. (OAR 581-021-0300).

¹⁵ OAR 581-015-2090(3)(a).

the Parents with the appropriate consent forms, nor that the Parents did not sign the September 4, 2018 consent form. The Department does not substantiate this allegation.

3. Impact of Allegedly Erroneous Information

The Parents allege that the District developed an IEP for the Student based on erroneous information and in violation of the Parents' procedural safeguards. After the October 22, 2018 incident, the Parents did not return the Student to school. The District gathered and reviewed relevant information about the Student and the Student's behavior, and relied upon that information during a November 5, 2018 IEP Team Meeting, which the Parents attended and actively participated. There, the IEP Team developed an updated IEP for the Student and included specific concerns and requests raised by the Parents. The record shows that the District complied with IDEA's procedural requirements at the November 5, 2018 IEP Team Meeting, and relied on relevant, accurate information in developing the Student's IEP. The Department does not substantiate this allegation.

D. Functional Behavioral Assessments

The Parents' objections to the appropriateness of the Student's FBA focus on: (1) the Parents' suspicion that input from a District General Education Teacher was not created by that teacher; (2) the Parent's conclusion that a District Special Education Teacher's input was improper because of the Special Education Teacher's involvement in the October 22, 2018 incident; and (3) the impropriety of considering the events of the October 22, 2018 incident itself in the FBA's development. A Functional Behavioral Assessment is an individual assessment of a child resulting in a hypothesis about the function of a child's behavior and as appropriate, recommendations for a behavior intervention plan.¹⁶ The District must ensure that each FBA is conducted by a qualified person.¹⁷ If a behavior intervention plan is developed, the District must ensure that the plan appropriately addresses the student's needs.¹⁸

The Department did not uncover, nor did the Parent offer, any information to support a claim that the District General Education Teacher's input was forged or misappropriated, nor that the District Special Education Teacher was unqualified to provide input into the FBA simply because of the Special Education Teacher's involvement in the October 22, 2018 incident. Lastly, the events surrounding the October 22, 2018 incident are relevant toward arriving at a hypothesis about the function of the Student's behavior. The Department does not substantiate this allegation.

E. Evaluation Planning

The Parents allege that the District violated the IDEA when it withheld important data from the IEP Team. Specifically, the Parents allege that an inadequate IEP resulted from the District not taking into account the Student's fear of a particular District staff member when it developed the November 5, 2018 IEP, and improperly engaged in evaluation planning for the Student's FBA with the involvement of that particular District staff member.

¹⁶ OAR 581-015-2181(1)(c)

¹⁷ OAR 581-015-2181(3)(a).

¹⁸ OAR 581-015-2181(3)(b).

As part of an initial evaluation or part of any reevaluation, a student's IEP Team and other qualified professionals must review existing evaluation data related to the student.¹⁹ This should include evaluations and information provided by the parents and assessment data including current classroom-based, local, or state assessments, and classroom-based observations.²⁰ In addition, the team should consider observations by teachers and related service providers.²¹ On the basis of this collected information and input, the team should determine, in a meeting involving the parent, the child's continued eligibility, present levels of academic achievement, and related developmental needs of the child.²²

At the November 5, 2018 IEP Team Meeting the District considered—and the IEP Team agreed to implement—several of the Parents' requests for changes to the Student's IEP (e.g., addressing emergencies, parent-school communications, peer-buddy systems, assistive technology, etc.) These components were also discussed in the context of FBA planning and the development of a Behavior Support Plan (BSP).²³ The Parents point to a November 27, 2018 letter from the Student's physician to substantiate the Student's fear of a particular member of the District's staff. The November 27, 2018 physician's letter notes that the Parents have concerns about the Student's safety, but it does not make reference to any of the Student's particularized fears. Meanwhile, the District is aware of the Parents' safety concerns, has asked for additional information about the Student's particular fears, and is willing to consider additional information related to the Parents' concerns as part of FBA and BSP planning as well as IEP development. The inclusion of a District staff member that the Parents contend the Student is fearful of does not nullify the efforts exerted by the District to appropriately develop the Student's IEP and undertake FBA and BSP planning processes.

The District reviewed and considered a variety of information in developing the Student's November 4, 2018 IEP and as part of the FBA planning process. The District acknowledges the Parents' concerns and has expressed a willingness to consider them. The Department does not substantiate this allegation.

F. Restraint and Seclusion and Additional Issues

The Parents allege that on October 22, 2018, the District engaged in improper restraint and seclusion practices on the Student. Complaints regarding restraint and seclusion are outside of the scope of the special education complaint investigation procedures. The procedure for such matters is governed by OAR 581-021-0570. While some instances of improper restraint and seclusion give rise to allegations of IDEA violations, the Parents' concerns in this instance besides those addressed in this Order are beyond the scope of this investigation. Similarly, the Parents suggest that other alleged actions by the District violate other rules or laws. These determinations are likewise outside of the scope of the Department's authority to conduct a special education investigation under OAR 581-015-2030.

¹⁹ OAR 581-015-2115(1)(a)(A).

²⁰ OAR 581-015-2115(1)(a)(B).

²¹ OAR 581-015-2115(1)(a)(C).

²² OAR 581-015-2115(1)(b)(A)-(B).

²³ For this Order's purposes, the terms Behavior Support Plan and Behavior Intervention Plan are used interchangeably.

V. CORRECTIVE ACTION²⁴

***In the Matter of Hillsboro School District #1J
Case No. 18-054-050***

The Department does not order correction action in this matter.

Dated: this 1st Day of February 2019

Candace Pelt, Ed.D.

Candace Pelt, Ed.D.
Assistant Superintendent
Office of Student Services

Mailing Date: February 1, 2019

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).)

²⁴ 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)).