

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
School District 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-014

I. BACKGROUND

On June 24, 2021, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (the Parents) of a student (the Student) residing in the Portland School District 1J (the District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On June 29, 2021, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated. At the District's request, the Department granted a ten-day extension, establishing a *Response* due date of July 23, 2021.

The District submitted a *Response* on July 20, 2021, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following items:

1. District's Written *Response* to Complaint, 7/20/21
2. Exhibit List, 7/20/21
3. Individualized Education Program (IEP), dated 4/21/21 but completed 6/9/21
4. MESD Nursing Assessment, 4/30/21
5. Notice of Team Meeting, dated 5/12/21 (but not sent until 6/17/21)
6. Notice of Team Meeting, dated 5/26/21 (but not sent until 6/17/21)
7. Special Education Placement Determination, (dated 4/21/21 but placement not determined until 6/9/21)
8. Prior Written Notice (PWN), 6/9/21 (sent 6/17/21)
9. District Meeting Minutes, 4/21/21 – 6/9/21
10. Notice of Team Meeting, dated 3/18/21 (but not sent until 6/17/21)
11. PWN, dated 4/21/21 but not sent until 6/17/21
12. Adapted Physical Education File Review for Eligibility for APE Services, undated
13. MECP IFSP, 11/16/20
14. District Meeting Minutes, 4/21/21 – 6/9/21 (same meeting but different version than

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

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

meeting minutes listed above)

15. Internal District emails and email between the District and the Parents, 11/16/20 – 6/17/21
16. List of District Staff, 7/20/21

The District submitted additional documents on July 23, 2021:

1. MECP AEPS Assessment (Data Recording Form), 4/20/21
2. Portland Public Schools (PPS) Early Childhood Special Education Evaluation Report, 10/01/21
3. PPS Individualized Family Service Plan (IFSP), 4/21/21
4. MECP Comprehensive Distance Learning Plan, 4/21/21

The Parents submitted documents on July 7, 2021. The Parents also submitted a *Reply* on July 28, 2021, providing an explanation and rebuttal, and documents in support of the Parents' position. The Parents submitted the following relevant items:

1. Complaint Investigation Supporting Documents Table of Contents, 7/7/21
2. Google Calendar Invite, 4/12/21
3. Email exchange between the District and the Parents, 4/20/21 – 4/22/21
4. Parent notes from 4/22/21 telephone call with the District, 4/22/21
5. Parent notes from 4/30/21 telephone call with the District, 4/30/21
6. Email exchange between the District and the Parents, 5/12/21
7. Google Calendar Invite and Meeting Agenda, 5/12/21
8. Email exchange between the District and the Parents, 5/25/21 – 6/4/21
9. Google Calendar Invite and Meeting Agenda, 6/4/21
10. Email exchange between the District and the Parents, 6/7/21 – 6/10/21
11. Google Calendar Invites and meeting agenda, 6/4/21
12. Parent notes after 6/9/21 meeting, 6/9/21
13. Advocate's meeting notes, 6/9/21
14. Email exchange between the District and the Parents, 6/17/21
15. IEP drafts (seven drafts, all dated 4/21/21), 4/20/21 – 6/17/21
16. Final IEP, dated 4/21/21 (but completed 5/9/21 and sent 6/17/21)
17. Parents' *Reply* to the District's *Response to RFR*, 7/28/21

The Complaint Investigator interviewed the Parents on July 15, 2021. On July 22, 2021, the Complaint Investigator interviewed District personnel regarding this matter. On July 23, 2021, the Complaint Investigator interviewed an MECP provider. Virtual meetings were held instead of on-site interviews due to the Coronavirus pandemic. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 25, 2020, to the filing of this Complaint on June 24, 2021.

Allegations	Conclusions
<p>IEP Team</p> <p>The Parents alleged that the District violated the IDEA when it failed to ensure that the IEP team for the Student included the attendance and participation of required individuals at all IEP meetings.</p> <p>(OAR 581-015-2210; 34 CFR §300.321; 34 CFR §300.324)</p>	<p>Substantiated</p> <p>The District did not have a regular education teacher for the entire IEP meeting, which included three separate meeting sessions. The regular education teacher left early at the first session, without prior notice or written agreement. At the second and third sessions, a regular education teacher did not attend at all, without prior notice or written agreement.</p>
<p>Parent Participation</p> <p>The Parents alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. did not provide the Parents with an opportunity to participate in meetings with respect to the IEP and placement of the Student, and b. did not include required or accurate information in meeting notices. Specifically, the Parents alleged that the District failed to consider information provided by the Parents, and the District predetermined and unilaterally made IEP content and placement decisions, in violation of the IDEA requirements for parent involvement. <p>(OAR 581-015-2190; 34 CFR §300.322; 34 CFR §300.501)</p>	<p>Substantiated</p> <p>The District did not follow IDEA requirements for parent participation.</p> <ul style="list-style-type: none"> a. Substantiated The Parents were afforded the opportunity to participate in the development of the IEP. In contrast, the District limited the placement discussion and did not allow the Parents to ask questions, denying the Parents the opportunity to participate in the meeting with respect to the placement of the Student. b. Substantiated The District did not send the Parents formal meeting notices in advance, but provided written notice via Google calendar invitations. These invitations included the names of some individuals and email addresses of the other participants. The meeting times were included, and the subject reflected that these were IEP meetings with no

	additional details provided.
<p>Requirement for Least Restrictive Environment</p> <p>The Parents alleged that the District violated the IDEA when it failed to ensure that the Student’s placement was the Least Restrictive Environment.</p> <p>(OAR 581-015-2240; 34 CFR §300.114)</p>	<p>Substantiated</p> <p>The Student’s IEP does not specifically identify any reason why the Student’s IEP cannot be implemented in the regular education environment. Based on the Student’s IEP, as written, removal to a more restrictive environment is unwarranted.</p>
<p>Placement of the Child</p> <p>The Parents alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. failed to ensure that the Student’s placement was determined by a group of persons, including the parents, and other persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options; b. failed to ensure that the Student’s placement was made in conformity with Least Restrictive Environment requirements and was based on the Student’s current IEP; and c. removed the Student from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. <p>(OAR 581-015-2250; 34 CFR §300.116)</p>	<p>Substantiated in Part</p> <p>The District did not follow IDEA requirements when determining the Student’s placement.</p> <ul style="list-style-type: none"> a. Substantiated The District did not permit a team discussion on the placement options considered. The Parents were not allowed to ask questions or have a team discussion specific to the Student. b. Substantiated The Student’s IEP does not identify any student-specific reason why the IEP cannot be implemented in the regular classroom. c. Not Substantiated It is unclear if modifications played any role in the Student’s placement decision.
<p>Content of IEP</p> <p>The Parents alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. failed to specify the frequency and amount of special education services in the Student’s IEP in accordance with IDEA requirements; and 	<p>Substantiated</p> <p>The District did not specify the anticipated location of services and did not identify the amount of removal time.</p> <ul style="list-style-type: none"> a. The IEP does not identify where the Student’s services and supports can be

<p>b. failed to develop an explanation of the extent to which the Student would not participate with children without disabilities in the regular class and activities in accordance with IDEA requirements.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>satisfactorily provided or whether removal from the regular education environment is required.</p> <p>b. By failing to determine whether the Student requires removal from the regular education environment to implement IEP services and supports, the District was unable to specify the specific amount of time the Student will be removed or explicit justification for removal.</p>
<p>Review and Revision of IEPs</p> <p>The Parents alleged that the District violated the IDEA when it made changes to the Student’s IEP between annual IEP meetings and did not comply with IDEA requirements for IEP amendments and modifications.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p>Not Substantiated</p> <p>Over the course of three meeting sessions, multiple changes were made to the draft IEP, including changes made at the request of the Parents. Edits following the IEP meeting were made to ensure that the IEP reflected agreements made by the IEP team. The Parents’ requested changes were immediately made by the District.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • The IEP team reconvenes to develop the statement of nonparticipation justification on the IEP individual to the child’s needs based on the completed service summary.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before Department’s receipt of the special education complaint. This Complaint investigation did not consider any IDEA violations alleged to have occurred before June 25, 2020. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

1. The Student is five years old and entering Kindergarten. The Student lives within the District boundaries.
2. The Student is eligible for special education as a child with Visual Impairment (VI), Orthopedic Impairment (OI), and Other Health Impairment (OHI). The Student has a complex medical history, with diagnoses of epileptic encephalopathy, seizure disorder, cortical vision impairment (CVI), and dysphagia, among others.

3. The Student moved to the District in August 2020 and started receiving ECSE services through the Multnomah County Early Childhood Program (MECP). The Student also received vision services through the Columbia Regional Program (CRP), contracted by the District. The Student attended a virtual special education program for the entire 2020-21 school year.
4. On November 16, 2020, two members of the District's kindergarten transition team attended the Student's IFSP meeting, namely the Kindergarten Transition Coordinator (Coordinator) for the Student's neighborhood school and an occupational therapist from the kindergarten transition team, who specializes in managing cases for students with complex needs and serves as the Student's Case Manager (Case Manager).
5. From November 2020 through April 2021, the Coordinator and the Case Manager gathered information about the Student from a variety of sources to inform the kindergarten transition and IEP process. This included working with the Student's ECSE providers and vision specialist, contacting private service providers, observing the Student's MECP virtual classroom, and collaborating with the Parents.
6. On March 5, 2021, the Coordinator emailed the Case Manager, stating she needed to finish forecasting and would forecast the [Intensive Skills Center (ISC) classroom] for the Student.³
7. On March 9, 2021, the Coordinator and Case Manager met with one of the Parents to discuss placement options. In reviewing the ISC classroom option, the Parent expressed concern that the only ISC location options were on the other side of town and the Parent did not want the Student to spend lengthy amounts of time on the bus. The Coordinator and the Case Manager said they would check with the District to see if an ISC option could be identified closer to the Student's residence.

Following this meeting, the Coordinator emailed the Parent a description of the District's Focus-Option classrooms, stating, "The one we spoke about as a possibility for [the Student] was the Intensive Skills Learning Classroom."

8. In a March 18, 2021 email, the Coordinator contacted the District Program Administrator (PA) assigned to the Student's team to invite the PA to the Student's upcoming IEP meeting. The Coordinator shared that the Student "will be an incoming kinder to [the Student's neighborhood school]" and "[the Student] has needs in multiple areas and we will be considering a focus-option classroom."
9. On April 12, 2021, the District emailed the Parents a Google Calendar invitation for a virtual meeting scheduled on April 21, 2021. The invitation included a list of 18 people invited to the meeting, identifying five individuals by name and the other 13 by email addresses. The email invitation did not include the role for anyone invited.
10. The District provided the Investigator with a copy of a Notice of Team Meeting, dated March 18, 2021, for a meeting on April 21, 2021. This document was not sent to the Parents until June 17, 2021. The District does not dispute this fact.
11. The Student's MECP Provider (Provider) and CRP Vision Specialist (Vision Specialist) attended the IEP meeting sessions at the request of the Parents.

³ Per the District's website, the ISC classrooms "support students with learning needs due to cognitive delays that impact their participation in the general curriculum."

12. In preparation for the April 21, 2021 IEP meeting, the Case Manager drafted an IEP based on information gathered from a variety of sources and with input from other team members.
13. In an April 20 to 21, 2021 email exchange with the Parents, the Case Manager provided the Parents with a copy of the draft IEP. The Parents sent suggested changes to the Case Manager, which were incorporated into the draft. The Case Manager sent the Parents the updated draft IEP.
14. At the April 21, 2021 virtual IEP meeting, the following occurred, in relevant part:
 - a. The Student was described as a delightful, happy child who loves being around children the Student's own age with typical communication skills, as evidenced by smiles and vocalizations the Student gives when the Student hears classmates on Zoom calls;
 - b. The team discussed that this IEP was being developed during the COVID-19 pandemic and comprehensive distance learning, and that the Student's "IEP can always be amended and re-written as needed during [sic] school year";
 - c. The Parents shared information about the Student's medical history and current needs;
 - d. The Parents provided extensive input on the Student's present levels, which was added to the IEP;
 - e. The Parent's asked about the level of adult assistance that the Student would need, stating that the Student needed one-to-one support;
 - f. Safety accommodations were added to the IEP, including delegated care, g-tube feeding, seizure monitoring, and use of positional devices;
 - g. While discussing the Student's specially designed instruction (SDI) in the area of communication, confusion developed among team members about the delivery of communication services and supports. No clear resolution was reached on the topic; and
 - h. After two and half hours, the team determined that the meeting would need to be reconvened as time did not allow for a full discussion on topics.
15. At this meeting, the regular education teacher left early. There is some dispute on how early the regular education teacher left the meeting, however, the District does not deny that the regular education teacher left early. There is no indication that the regular education teacher submitted or provided any input on the development of the Student's IEP prior to the meeting.
16. In an April 22, 2021 email to the Case Manager, the Parents expressed confusion about discussion of the Student's communication services that occurred at the April 21, 2021 meeting. The Parents asked about communication SDI, stating the minutes of SDI included in the draft IEP seemed to be exclusively for instruction from the Speech-Language Pathologist (SLP) and therefore did not include additional time that other staff would be working on the communication goal with the Student. This did not align with the Student's services in other SDI areas, where both instruction time from the provider as well as time spent on the goal with other staff were included in the total number of SDI minutes.
17. The Case Manager replied, stating that she was confused as well and suggested scheduling a telephone call to discuss the matter further.

18. Following the April 22, 2021 telephone call between the Parents and the Case Manager, the Case Manager sent an email to the District PA and the Parents, asking the PA for clarification “regarding how SDI minutes are reflected in the IEP and how the documented service time is implemented” as “questions came up that [the case manager] was not completely clear about.”
19. In response, an April 30, 2021 telephone call occurred between the Parents and the PA to discuss the issue of SDI communication minutes. The Parents were reportedly told that the SDI minutes listed on the IEP is time that the SLP works exclusively with Student on the communication goal. The additional ongoing support that the Student receives is reflected in accommodations provided, but this additional time is not added to the total SDI minutes as it is practice, not SDI.
20. On May 12, 2021, the District sent the Parents a Google Calendar invitation for an IEP meeting on May 26, 2021. Eleven guests were listed on the invitation, which identified three individuals by name and the rest by email address. The District did not identify the roles of anyone listed.
21. The District provided the Investigator with a copy of a Notice of Team Meeting, dated May 12, 2021, for a meeting on May 26, 2021. This document was not sent to the Parents until June 16, 2021. The District does not dispute this error.
22. In between the first and the second meetings, draft goals for the Student’s IEP were developed with collaboration from the District PT, SLP, and OT, as well as the SLP and OT from the District’s AT team, a CRP augmentative and alternative communication (AAC) consultant, and an MECP SLP.
23. On May 25, 2021 the Case Manager sent an updated draft IEP to Parents. Again, the Parents requested changes. The Case Manager made the changes and sent an updated draft to the Parents before the meeting.
24. At the May 26, 2021 virtual IEP meeting, the following occurred, in relevant part:
 - a. A regular education teacher did not attend the second meeting. The District erroneously failed to invite a regular education teacher. The District does not dispute this fact;
 - b. The MESD Nurse said that the Student needed direct, continuous care by a trained caregiver, including during transportation. The Nurse did not specify where these services should occur;
 - c. After finalizing the Student’s present levels and annual goals, the discussion again returned to communication services and the team did not reach a clear resolution;
 - d. The District stated, “it is important to keep SLP under SDI as that assures more direct intervention to benefit [the Student]... [The] SLP will also train the staff who work with [the Student] to do the daily implementation of communication goals”; and
 - e. After one hour, the team determined that a third meeting was needed to complete the Student’s IEP and the meeting ended.
25. Following the May 26, 2021 meeting, the Parents hired an Educational Advocate (Advocate) to assist at the following IEP meeting session. On June 4, 2021, the Parents notified the District that the Advocate would attend the next meeting session.
26. On June 4, 2021, the Case Manager sent the Parents an email invitation for the continuation

of the Student's IEP meeting on June 9, 2021. Twelve guests were listed on the email invitation, which identified two individuals by name and the rest by email address. The District did not identify the roles of anyone listed.

27. The District provided the Investigator with a copy of a Notice of Team Meeting, dated May 26, 2021, for a meeting on June 9, 2021. This document was not sent to the Parents until June 17, 2021. The District does not dispute this fact.
28. In a June 8, 2021 email to the Parents, the Case Manager sent the Parents a draft IEP for the IEP meeting scheduled for the following day. The Parents made suggested edits. The Case Manager made the changes suggested by the Parents and sent them an updated IEP before the meeting.
29. At the June 9, 2021 virtual IEP meeting, scheduled from 12:30 to 1:30 p.m., the following occurred, in relevant part:
 - a. The team stated the purpose of the meeting was to complete the IEP process and to determine placement;
 - b. The Provider and the Vision Specialist both shared the opinion that the Student's services and supports could be delivered within the regular education environment;
 - c. The Vision Specialist shared that the Student uses AAC and AT devices for communication and, in order to learn to communicate, the Student will need to be in a classroom with neurotypical peers who speak using typical language;
 - d. The team determined that paraprofessionals would spend approximately 3.5 hours per day providing delegated nursing care for the Student's health and safety, and the Student would need continuous monitoring when on the school bus;
 - e. The Parents did not agree with the 420 minutes of communication SDI listed in the draft IEP, stating that the communication SDI should accurately reflect the direct instruction that would occur throughout the Student's day. The Parents requested to show a video of the Student that demonstrated how instruction was woven into the Student's daily communication practice. The District declined, despite the Provider stating that viewing the video would be helpful for the team;
 - f. The IEP team discussion got stuck on the delivery of the Student's communication instruction. The District PA stopped the discussion and stated the team would table the conversation and come back to it if there was time. It was unclear to some meeting participants whether a final decision was reached on the amount and description of the Student's communication SDI;
 - g. The District moved to the nonparticipation justification portion of the IEP and the Student's extent of removal from the regular education environment. The Parents objected, arguing that, since services were unclear, the team could not make a decision on removal; and
 - h. The District continued despite these objections. The District added up the Student's SDI minutes and stated it amounted to 22% of the Student's school day, which put the Student in the category of 40-79% in general education. The Parents objected to the reasoning that SDI minutes automatically equal removal time. The Parents believed, based on previous conversations, that the team's intent was for most of the Student's SDI to occur in the regular classroom and this was the first time the District stated that SDI minutes

translated to removal. The wording of several IEP goals also reflected the intention for some of the goals to be worked on in the regular education environment with nondisabled peers.

30. The Google calendar invitation for the June 9, 2021 IEP meeting included the names of two individuals and email addresses for nine others.
31. The June 9, 2021 IEP meeting session was scheduled for 12:30 to 1:30 p.m. At around 2:00 p.m., the Parents and the Advocate stated that they needed to leave because of other work obligations. The Parents expressed concern that the District was rushing a determination of removal and felt that the unresolved issues required a longer conversation. (P032-37) The Parents asked to end the meeting and complete the placement decision on another day, arguing that the team could not move on to a placement discussion since the IEP was incomplete.
32. The District denied this request. The District announced that the Student's placement needed to be decided that day and said that it could be completed in five minutes. The District added that there had already been three meetings and they could not have another meeting because district staff members were leaving for summer break. The District said the Parents could leave and provide input before leaving, but the team would continue with placement without the Parents if they left. Ultimately, the Parents and the Advocate did not leave as they did not want the Student's placement to be decided without them.
33. For the placement discussion, the District had a draft Educational Placement Discussion and Decisions document, but team members were not provided with a copy of this document before or during the meeting. The placement options to be considered were filled out before the meeting, as well as the descriptions, benefits, and possible harmful effects for each option. Although the PA attempted to display the document on her computer screen, attendees reported that they could only see part of the document or not at all. The District's solution was to read the placement options out loud, but it was difficult for participants to follow along.
34. Although the placement discussion and decision document listed three placement options, District staff members reported that two options were considered: (1) general education between 40-79% with ISC support, not at the Student's neighborhood school, and (2) general education between 40-79% with special education support at the neighborhood school. This is also reflected in the District's meeting minutes.
35. The Parents argued that the list of benefits and potential harms were blanket statements that did not individually apply to the Student, such as the statement that the general education with special education support option does not provide enough support for the Student's sensory needs. The Parents say that when they asked how the statement applied to the Student, as they were not aware of any sensory issues in the classroom, discussion was not permitted. This was corroborated by the Vision Specialist.
36. When the PA asked the team for input, the Parents shared that their choice was the neighborhood school, so the Student could be part of the neighborhood community, have access to nondisabled peers, and exposure to age-appropriate materials. The Vision Specialist agreed that the Student's needs could be met in the regular classroom. No other team members voiced any input. The MECF Provider informed the Investigator that she is not allowed to provide input related to placement.)
37. After reading through the placement options, the PA asked the team to vote. Specifically, team members were asked whether the team thought the Student (1) could go to the Student's

neighborhood school with special education support, or (2) should not go to the neighborhood school and should instead attend the focus classroom. The District team members voted for the second option, while the Parents, the Advocate, the MECP Provider, and the Vision Specialist voted for the first option.

38. The Parents made it clear that they disagreed with the placement selected as it did not represent the Student's needs, and that they believed that the District did not follow proper procedures for IEP and placement decisions.
39. The District asserted that the placement chosen was the best option for the Student because of the Student's complex needs. The District PA offered to stay longer in order to discuss the placement options in more detail with the Parents. The District offered information to the Parents about the process for disagreeing with the placement decision.
40. The Student's IEP, completed on June 9, 2021 but dated April 21, 2021, includes the following:
 - a. "This initial IEP was written during the Covid-19 pandemic. It is written for the Student to be at school in-person this fall and may not reflect services needed, as [the Student] will not have been in in-person school since March 2020"; and
 - b. Statement of Nonparticipation, extent of removal: "According to the IEP the Specially Designed Instruction totals 22% of the student's day in addition the student requires medical/delegated nursing [sic] needs for 3 hours and 30 minutes for personal care, toileting, medical, health and safety needs. The 40-79% range of possible removal from general education applies."
41. The Special Education Placement Determination, dated April 21, 2021 but completed on June 9, 2021, includes the following information:
 - a. Three placement options were considered:
 - i. "General Education between 40-79% with Intensive Skills focus classroom support," which was selected;
 - ii. "General Education between 40-79% w/Special Education Support," which was rejected; and
 - iii. "General Education less than 39% with Intensive Skills focus classroom support," which was rejected.
42. The placement percentage range in the IEP does not match the range listed on the placement determination document. While the IEP states 40-79% range of removal from general education, the placement determination is listed as general education 40-79% with ISC support. When asked by the investigator, the District stated that 40-79% removal from general education, as listed in the IEP, was an error.
43. The District issued a Prior Written Notice (PWN), dated June 9, 2021 and sent to the Parents on June 17, 2021, stating:
 - a. The District proposes to provide the Student's special education services and support through a combination of the ISC with general education inclusion because it is the LRE for the Student given the Student's complex medical and special education needs, and the requirements needed to fulfill medical protocols; and

- b. The Parents disagreed with the District's determination and requested full inclusion in general education, which was rejected because the District believes a higher level of services and supports are necessary to provide FAPE while maintaining the health and safety of the Student.
44. On June 10, 2021, the Parents emailed the Case Manager to request a copy of the draft placement page used at meeting. The Parents did not receive a response and cannot determine whether the final placement document provided on June 17, 2021 is the same as the version used at the June 9, 2021 meeting during the placement discussion.
45. On June 17, 2021, the District emailed the Parents multiple documents, including a copy of the final IEP, placement determination, meeting notices, and PWNs.
46. On June 17, 2021, the Parents emailed the District in response to the documents received, specifying an accommodation that the Parents felt was added to the IEP but not discussed at the IEP meeting, as well as an accommodation that was agreed to at the meeting but not included in the IEP.
47. The District made the requested changes, immediately responded to the Parent's email, and sent an updated IEP.
48. On June 24, 2021, the Parents filed this Complaint.

IV. DISCUSSION

IEP Team

The Parents alleged that the District violated the IDEA when it failed to ensure that the IEP team for the Student included the attendance and participation of required individuals at all IEP meetings.

School districts must ensure that the IEP team for each child includes the participation of required members, including at least one regular education teacher.⁴ The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development of the child's IEP, including assisting in the determination of supplementary aids and services, program modifications, and supports for school personnel.⁵ A mandatory IEP team member is not required to attend an IEP meeting, in whole or in part, if the parent and the district agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.⁶

If the IEP team member's area of the curriculum or related services is being modified or discussed at the meeting, the member may be excused, in whole or in part, if the parent and district consent to the excusal in writing and the member submits input into the development of the IEP before the meeting in writing to the parent and the IEP team.⁷ A school district's failure to ensure the participation of a regular education teacher on the IEP team when there is a

⁴ OAR 581-015-2210(1); 34 CFR §300.321(a)

⁵ OAR 581-015-2210(4); 34 CFR §300.324(a)(3) and (b)(3)

⁶ OAR 581-015-2210(3)(a); 34 CFR §300.321(e)

⁷ OAR 581-015-2210(3)(b); 34 CFR §300.321(e)

possibility that the student could be placed in a regular education classroom is a significant violation of the IDEA's procedures.⁸

In this case, the IEP team developed the Student's IEP over the course of three IEP meetings on April 21, May 26, and June 9, 2021. At the first meeting, a regular education teacher attended the first part of the meeting but left early, without prior notice to the Parents or written agreement. The District does not dispute this, reporting that it did not know that the regular education teacher would be leaving early and therefore could not provide advance notice.

At the second meeting, a regular education teacher did not attend. There was no notice provided, or written agreement excusing the regular education teacher's attendance. The District does not dispute this, stating that the District failed to invite a regular education teacher to the second meeting.

No regular education teacher was listed on the written "IEP Meeting Notice" provided to the Parents for the third meeting, nor do the Meeting Notes reflect that any regular education teacher participated in this meeting. Nor is there evidence that appropriate excusal procedures were followed.

The Department substantiates this allegation.

Parent Participation

The Parents alleged that the District violated the IDEA when it (a) did not provide the Parents with an opportunity to participate in meetings with respect to the IEP and placement of the Student, and (b) did not include required or accurate information in meeting notices. Specifically, the Parents alleged that the District failed to consider information provided by the Parent, and the District predetermined and unilaterally made IEP content and placement decisions, in violation of the IDEA requirements for parent involvement.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the student.⁹ This includes notifying parents of meetings early enough to ensure they will have an opportunity to attend and scheduling the meetings at a mutually agreeable time.¹⁰ A school District must provide written notice of the time and purpose of a meeting, who will attend, and allow the parent to bring others knowledgeable about the child.¹¹ In addition, the written notice must inform the parent that the team may proceed with the meeting even if the parent is not in attendance.¹²

A school district must consider the concerns of the parent among other indicators of the student's academic, developmental, and functional needs.¹³ "Parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."¹⁴ While school districts have educational discretion, parents still have the right "to remain

⁸ *M.L. v. Federal Way School Dist.*, 394 F.3d 634, 651 (9th Cir. 2004)

⁹ OAR 581-015-2190(1); 34 CFR §300.322(a)

¹⁰ OAR 581-015-2195(1); 34 CFR §300.322(a)

¹¹ OAR 581-015-2190(2)(b)(A) and (B); 34 CFR §300.322(b)

¹² OAR 581-015-2190(2)(b)(C)

¹³ OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

¹⁴ Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006)

informed of, and to participate in, educational decisions concerning their children.”¹⁵

a. The District did not provide the Parents with an opportunity to participate in meetings with respect to the IEP and placement of the Student:

The Parents had multiple opportunities to participate in the development of the Student’s IEP. From November 2020 - June 2021, the Parents worked in collaboration with the District’s Kindergarten Transition Coordinator and Case Manager. Numerous email exchanges, telephone calls, and meetings occurred to discuss the transition process, the development of the Student’s IEP, and the continuum of placement options. The Parents provided extensive input during IEP meetings, contributing important information on present levels, goals, and services and supports. The team relied heavily on parent input to inform the development of the IEP.

At the third meeting session, the team was unable to reach consensus on communication services and nonparticipation justification. The Parents asked questions about the Student’s services and supports, including the location of services and why removal of the Student for services was necessary. The Parents argued that the extent of removal for the nonparticipation justification could not be determined if the team could not establish the amount of time the Student would be removed from the regular education environment. Although the Parents disagreed with the District on IEP services and the nonparticipation justification, team discussions on the Parents’ concerns were permitted. Without consensus, the District had the authority to make the final decision. The Parents were afforded the opportunity to participate in meetings with regards to the development of the Student’s IEP.

When the District moved to the placement portion of the meeting, the Parents objected. The Parents felt IEP matters remained unsettled, therefore the team could not move on to placement. The Parents requested that the meeting be adjourned and reconvened at a later time. The District denied the request. The District asserted that, if the Parents left, the team would continue with the placement discussion and decision without them, as District staff were leaving for summer break and the team needed to finish the meeting. The District stated that the team could complete the placement discussion and decision in five minutes.

During the description of placement options, team members did not have access to the draft placement document and it was difficult for team members to follow.¹⁶ When the Parents asked questions and requested clarification on how the stated benefits and potential harms specifically applied to the Student, the District did not allow a discussion to occur. The District’s refusal to listen to the Parent’s concerns or allow discussion before making a decision deprived the Parents of the opportunity to meaningfully participate in meetings with respect to the placement decision.

The Department substantiates this portion of the allegation.

b. The District did not include required or accurate information in meetings notices:

The District sent Google Calendar invitations to the Parents prior to each meeting session, but

¹⁵ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

¹⁶ While the District is not required to provide documents in advance, the District’s Special Education Procedural Manual states that copies of documents to be reviewed at IEP meetings should be provided to team members.

the invitations did not identify the role of the individuals invited to attend each meeting session. With a few exceptions, the invitations only included a list of email addresses and did not include the names of the individuals invited to attend the meeting. The invitations also did not adequately indicate the purpose of the meetings, saying only that these were IEP meetings. The District did not send the Parents meeting notices containing required information prior to the meeting sessions occurring on April 21, May 26, and June 9, 2021. On June 17, 2021, after the conclusion of the final meeting session, the District sent the Parents three meeting notices. The District does not dispute this error.

School districts must provide notice to parents of IEP meetings early enough to ensure they will have the opportunity to attend.¹⁷ This notice must indicate the purpose, time, and location of the meeting and who will be in attendance.¹⁸ Failing to include neither the names nor the roles of many of those who will be in attendance neither meaningfully informed the Parents who would actually be in attendance, nor what the purpose of the meetings was. This lack of specificity negatively impacted the ability of the Parents to participate in the IEP process.

The Department substantiates this portion of the allegation.

Requirement for Least Restrictive Environment

The Parents alleged that the District violated the IDEA when it failed to ensure that the Student's placement was the Least Restrictive Environment.

School districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with children who do not have a disability.¹⁹ Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁰ Even though some students with highly complex needs may require intensive individual services and supports, the IEP team must consider the possibility of delivering those services and supports in the regular classroom before removing the student to a separate classroom.²¹

Here, the team did not discuss whether the Student's IEP could be implemented satisfactorily in the regular classroom with the use of supplementary aids and services. The District Nurse did not assert that any of the Student's medical needs required removal from the regular classroom. The Student's MECP Provider and Vision Specialist, the only meeting participants who had worked with the Student, both stated that the Student could receive necessary supports and services in the regular classroom. Though the IEP team did not identify any specific barriers to the implementation of services in the regular classroom, the IEP states that the Student's needs require removal. Without a determination that the Student is unable to receive supports and services in the regular education environment, removal of the Student to a more restrictive environment was not justified.

The Department substantiates this allegation.

Placement of the Child

¹⁷ OAR 581-015-2190(2)(a); 34 CFR §300.322(a)(1)

¹⁸ OAR 581-015-2190(2)(b); 34 CFR §300.322(b)(1)(i)

¹⁹ OAR 581-015-2240(1); 34 CFR §300.116(a)(2)(i)

²⁰ OAR 581-015-2240(2); 34 CFR §300.116(a)(2)(ii)

²¹ Letter to Beckwith, (OSEP 4/18/2017)

The Parents alleged that the District violated the IDEA when it:

- a. failed to ensure that the Student's placement was determined by a group of persons, including the parents, and other persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options;
- b. failed to ensure that the Student's placement was made in conformity with Least Restrictive Environment requirements and was based on the Student's current IEP; and
- c. removed the Student from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.²² In addition, the educational placement of a child must be made in conformity with Least Restrictive Environment requirements, be based on the child's current IEP, be determined at least once every 365 days, and be as close as possible to the child's home.²³ A child with a disability cannot be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.²⁴ In selecting the least restrictive environment, consideration should be given to any potential harmful effect on the child or quality of services the child needs.²⁵

The goal in making IEP and placement decisions is for the team to reach consensus.²⁶ Nonetheless, the school district is responsible for ensuring that the IEP includes services the individual student needs to receive a free appropriate public education (FAPE).²⁷ When consensus is not possible, the district has the authority to make the final decision.²⁸ But "it is not appropriate to make IEP and placement decisions based on a 'majority' vote."²⁹ If the team cannot reach consensus, the district must make the decision and provide the parents with PWN of the district's decision "and of the parents' right to seek resolution of any disagreement by initiating an impartial due process hearing or filing a State complaint."³⁰

a. Failure to ensure that the Student's placement was determined by a group of persons, including the parents, and other persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options:

As mentioned above, the placement determination was made without full team discussion of the placement options being considered. The ability of team members to follow the description of each placement option as it was read aloud was limited. When the Parents asked to review benefits and harms, and how they applied to the Student in the specific educational environment being considered, discussion was not allowed. When later asked why discussion was limited, the PA reported that placement options had already been discussed at length on previous occasions and team members came to the meeting with an understanding of what

²² OAR 581-015-2250(1); 34 CFR §300.116(a)(1)

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

²⁴ OAR 581-015-2250(5); 34 CFR §300.116(e)

²⁵ OAR 581-015-2250(4); 34 CFR §300.116(d)

²⁶ Letter to Richards (OSEP 1/7/2010)

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter to Richards (OSEP 1/7/2010)

the placement options were.

While many discussions on placement options did take place between the Parents and the District, they were not in the context of a placement meeting with all team members present. The discussions outside of the meeting did not include specific inquiries about the potential benefits and harms of each placement option in terms of the individual Student's needs. By refusing to have a conversation on whether each placement option could address the Student's individual needs, the District excluded team discussion and an informed decision could not be made by the team. The placement decision was made by the District, not by a group of persons knowledgeable about the Student and the placement options.

The Department substantiates this portion of the allegation.

b. Failure to ensure that the Student's placement was made in conformity with Least Restrictive Environment requirements and was based on the Student's current IEP:

The Student's IEP should form the basis for the Student's placement decision.³¹ Here, the Student's IEP did not indicate any services that must be provided in the ISC self-contained classroom, as opposed to a regular education classroom or the special education classroom at the Student's neighborhood school. While such reasons may exist, they were not included in the IEP. The placement decision made was not supported by the contents of the Student's IEP. Without this support, the removal to a more restrictive placement was not warranted.

The Department substantiates this portion of the allegation.

c. Removal of the Student from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum:

It is unclear if modifications played any role in the Student's placement decision. The record contains conflicting information on whether the IEP team reached an agreement regarding modifications, or whether the IEP accurately reflects any decisions made. The Student's IEP states that modifications were discussed but the team determined that they were not needed. It was the Parents' understanding that modifications were discussed, agreed to, and included in the IEP. The District reported to the Investigator that it would be appropriate to add modifications to the Student's IEP, but modifications are not necessarily a differentiation that needs to be made at the kindergarten level. Regardless, the record does not support a finding that the Student was removed to a more restrictive placement solely because of needed modifications in the general curriculum.

The Department does not substantiate this portion of the allegation.

Content of IEP

The Parents alleged that that the District violated the IDEA when it:

- a. failed to specify the frequency and amount of special education services in the Student's IEP in accordance with IDEA requirements; and
- b. failed to develop an explanation of the extent to which the Student would not participate with children without disabilities in the regular class and activities in

³¹ OSEP Memorandum 95-9

accordance with IDEA requirements.

There are many items that must be included in an IEP, including a statement of the specific special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided for the child (to advance appropriately toward attaining annual goals, to be involved and progress in the general education curriculum, and to be educated and participate with other children with and without disabilities).³² The IEP must include the projected dates for initiation of services and modifications and the anticipated frequency, amount, location, and duration of services and modifications.³³

Additionally, the IEP must include an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular classroom and activities.³⁴ “At the student’s IEP meeting, the extent that the student will be able to participate in regular education programs is one of the matters to be addressed by all of the participants on the student’s IEP team before the student’s IEP is finalized.”³⁵ “The IEP must explain the extent, including amount, ... of any removal from the regular classroom environment, and provide justification for the removal. This is not a range of times.”³⁶

a. Failed to specify the frequency and amount of special education services in the Student’s IEP in accordance with IDEA requirements:

The anticipated location for all five areas of the Student’s SDI, as well as the Student’s related services, is listed in the IEP as “GenEd / SpEd.” The present levels include a statement, explaining that the Student’s IEP “is written for the Student to be at school in-person this fall and may not reflect services needed, as [the Student] will not have been in in-person school since March 2020.” The IEP does not provide any further explanation of the anticipated location for services, or a reason why multiple locations for services were listed. The IEP emphasizes that the Student has a high level of needs but fails to identify any explicit barriers that would necessitate removal for services. The District reported that it does not yet know when removal will be required as the District does not have enough information about the Student.

The Department substantiates this portion of the allegation.

b. Failed to develop an explanation of the extent to which the Student would not participate with children without disabilities in the regular class and activities in accordance with IDEA requirements:

The nonparticipation justification in the IEP asserts that the Student’s SDI minutes amount to 22% of the Student’s school day, and the Student requires 3.5 hours daily of delegated nursing support “for personal care, toileting, medical, health and safety needs.” Therefore, “the 40-79% range of possible removal from general education applies.”³⁷ The justification listed for removal is that the Student requires delegated nursing care, has SDI needs, has several health and safety protocols, and “these needs impact the amount of removal from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids or services.” The District did not identify a specific amount of removal

³² OAR 581-015-2200(1)(d); 34 CFR §300.120(a)(4)

³³ OAR 581-015-2200(1)(e); 34 CFR §300.120(a)(7)

³⁴ OAR 581-015-2200(1)(f); 34 CFR §300.120(a)(5)

³⁵ OSEP Memorandum 95-9 (11/23/1994)

³⁶ Writing High-Quality IEPs, Best Practices & Supporting Guidance Document, ODE

³⁷ The District stated that this is an error and the IEP should state 40-79% in general education, not 40-79% removal from general education.

time and provided no clear justification for why removal is required to implement the Student's services and supports.

The Department substantiates this portion of the allegation.

Review and Revision of IEPs

The Parents alleged that the District violated the IDEA when it made changes to the Student's IEP between annual IEP meetings and did not comply with IDEA requirements for IEP amendments and modifications.

Each school district must ensure that the IEP team reviews the child's IEP periodically, but at least once every 365 days.³⁸ Changes or amendments to a child's IEP between annual IEP meetings may be made if the school district and the parents of the child agree not to hold an IEP team meeting to make the changes, and instead develop a written document to amend or modify the child's current IEP.³⁹

This case involves the development of the Student's initial IEP. The Student's IEP was not completed until the last of three meetings, on June 9, 2021. Following the final meeting session, the District incorporated IEP team agreements discussed at the meeting to finalize the IEP. The District sent the Parents a copy of the final IEP on June 17, 2021. The Parents reviewed the IEP and identified errors, specifically that one accommodation the team agreed to at the meeting did not make it into the final IEP, and one accommodation had been added to the IEP that was not agreed to. The Parents emailed the District to point out these errors, and the District immediately made the requested changes. These changes were not made outside of the IEP development process.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION⁴⁰

*In the Matter of Portland School District 1J
Case No. 021-054-014*

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

Action Required	Submissions	Due Date
1. The District must hold a Facilitated IEP Meeting to develop an IEP that enables the Student to receive FAPE.	The District shall submit the following: <ul style="list-style-type: none">All IEP meeting paperwork	October 7, 2021.

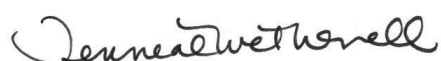
³⁸ OAR 581-015-2225(1); 34 CFR §300.324(b)(1)(i)

³⁹ OAR 581-015-2225(2); 34 CFR §300.324(a)(4)

⁴⁰ 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)).

<p>2. Staff training for all district staff who participate in IEP meetings as either: (a) the special education teacher or special education provider of the child; or (b) a representative of the school district who is qualified to provide, or supervise the provision of, specially designed instruction; knowledgeable about the general education curriculum; knowledgeable about district resources; and authorized to commit district resources and ensure that services set out in the IEP will be provided, in each of the following areas:</p> <ul style="list-style-type: none"> a. District procedures to ensure that parents are provided the opportunity to meaningfully in educational decisions about their student; b. District procedures to ensure that students are placed in the Least Restrictive Environment in which the needs of the student can be met; c. District procedures to ensure that IEPs contain language clearly stating the basis for placement determinations. 	<p>The District shall:</p> <ul style="list-style-type: none"> a. Submit a training plan to the Department for approval, b. Complete the training according to the approved plan, c. Submit evidence of completed training, materials, agenda, and sign-in sheets. 	<p>September 22, 2021</p> <p>December 7, 2021</p> <p>December 7, 2021</p>
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Dated: this 23rd Day of August 2021



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: August 23, 2021

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