

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
School District 1J

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-023

I. BACKGROUND

On August 6, 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 August 13, 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 and establishing a *Response* due date of August 27, 2021.

The District submitted a *Response* on August 27, 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, 8/27/21
2. Exhibit List, 8/27/21
3. Individualized Education Program (IEP) Amendment, dated 3/12/21 (*but completed on 4/7/21*)
4. IEP, 11/5/20
5. Internal District email exchanges between the District, Charter School, and the Parents, 8/13/20 – 5/5/21
6. Eligibility Summary Statement, 11/5/20
7. Disability Statement – Autism Spectrum Disorder (ASD), 11/5/20
8. Special Education Placement Determination, 11/5/20
9. Special Education Placement Determination, 3/12/21
10. District Meeting Minutes, 3/12/21
11. District Meeting Minutes, 11/5/20
12. Prior Written Notice (PWN) – Notice of Triennial, 11/5/21
13. PWN – Notice of Eligibility, 11/5/21
14. Notice of Team Meeting, 3/5/21
15. Notice of Team Meeting, 11/5/20

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

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

16. Parent/Guardian Consent for Individual Evaluation (unsigned), 11/5/20
17. PWN – Provision of FAPE, 11/5/20
18. PWN – Provision of FAPE, 3/12/21
19. District Meeting Minutes (Comprehensive), dated 3/9/21 (but meeting was actually on 3/12/21, not 3/9/21)
20. IEP Progress Report – Measurable Annual Goals, 3/5/21
21. Charter School Investigation,

The District submitted additional documents on September 9, 14, and 20, 2021:

1. IEP, 10/28/19
2. SLP Documents, 09/2020 – 05/2021
3. OT Documents, 12/19/20 – 3/12/21
4. IEP Progress Report – Measurable Annual Goals, 6/8/20
5. SLP’s IEP Meeting Notes, 11/5/20
6. SLP Worksheet Examples, 9/20/21

In the District’s Response, it stated that the investigator should contact the Charter School for additional records and communication. The Charter School submitted documents on September 10 and 13, 2021:

1. Notes for Responding to Complaint, 05/2021
2. List of Black History Month Videos provided to parents, 02/2021
3. General Education Teacher Notes, 11/5/20
4. List of Videos for General Education Class, 02/2021
5. Teacher Notes for Responding to Charter School Complaint, 05/2021

The Parents submitted documents as part of the Complaint filed on August 6, 2021. The Parents also submitted a *Reply* on September 3, 2021, providing an explanation and rebuttal, and documents in support of the Parents’ position. The Parents provided additional documents on September 12, 2021. The Parents submitted the following relevant items:

1. Parents’ *Reply* to the District’s *Response* to *RFR* (with appendices), 7/28/21
2. Google Meet email invitation, 10/22/20
3. Google Meet email invitation, 11/4/20
4. Google Meet email invitation, 3/2/21
5. Google Meet email invitation, 10/22/20
6. Statement from the Student’s Psychiatric-Mental Health Nurse Practitioner, 9/17/21

The Complaint Investigator interviewed the Parents on September 7, 2021 regarding this matter. On September 9 and 10, 2021 the Investigator interviewed District and Charter School personnel regarding this matter. 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 August 7, 2020, to the filing of this Complaint on August 6, 2021.

Allegations	Conclusions
<p><u>When IEPs Must Be In Effect</u></p> <p>The Parents alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><u>Substantiated</u></p> <p>The District did not provide special education and related services in accordance with the Student's IEP. The District did not fully implement the Student's specially designed instruction (SDI) and accommodations, did not take progress monitoring data on the Student's annual goals, and did not issue IEP Progress Reports in accordance with the Student's IEP.</p>
<p><u>Review and Revision of IEPs</u></p> <p>The Parents alleged that the District violated the IDEA by not reviewing and revising the Student's IEP as needed.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p><u>Substantiated</u></p> <p>Without IEP progress monitoring data, the IEP team could not review and revise the IEP in accordance with IDEA requirements. The IEP team could not determine whether the Student's annuals goals were being achieved or revise the IEP to address any lack of expected progress.</p>
<p><u>Parent Participation</u></p> <p>The Parents alleged that the District violated the IDEA by failing to address the Parents' concerns, including the Parents' concern about the District's failure to provide appropriate accommodations and its impact on the Student's ability to access and benefit from special education.</p>	<p><u>Substantiated in Part</u></p> <p>The District did not follow IDEA requirements for parent participation:</p> <p>There is insufficient evidence to determine whether the District properly considered input from the Parents at the November 5, 2020 IEP meeting. However, the District considered the Parents' input and incorporated the Parents' concerns in the March 12, 2021 IEP Amendment.</p> <p>The District did not provide the Parents with a copy of the November 5, 2020 IEP until February 24, 2021.</p>

<p>(OAR 581-015-2190; OAR 581-015-2205(1)(b) and (d); OAR 581-015-2225(1)(b)(C); 34 CFR §300.322; 34 CFR §300.324(a) and (b))</p>	<p>The District did not send the Parents meeting notices in advance with required information.</p> <p>The District did not send the Parents any IEP Progress Reports.</p>
<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Parents alleged that that the District’s refusal to provide effective services and supports has denied educational opportunity to the Student, and thus constitutes a denial of FAPE.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><u>Substantiated</u></p> <p>The District’s failure to (a) provide special education and related services in accordance with the Student’s IEP, and (b) provide the Parents with required meeting notices and IEP Progress Reports, resulted in lost educational opportunity and denial of FAPE.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • Provide staff training on IEP implementation; • Provide staff training on the needs of students diagnosed with Autism Spectrum Disorder (ASD); • Undertake a curriculum materials audit; • Provide staff training on social emotional learning, trauma/healing-informed practices, and child development, and; • Conduct a parent survey, collect parent concerns, and implement any indicated changes.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation 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 August 7, 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 11 years old and in the sixth grade in an out-of-state school district. The Student lived within the District boundaries through the end of the 2020-21 school year.
2. The Student is eligible for special education as a child with Autism Spectrum Disorder (ASD).
3. The Student attended the District’s alternative program for highly gifted students until December 2019.
4. In January 2020, the Student moved from a District school to a District-sponsored charter school (Charter School) with an IEP dated October 28, 2019.
5. The October 28, 2019 IEP included, in relevant part:

- a. SDI in the areas of Classroom/School Skills, Communication, and Social/Emotional Skills, for a total of 110 minutes per week;
 - b. Parent Concerns included the Student's "ability to stay in a regulated 'ready to learn' space, rather than being in fight/flight mode";
 - c. Progress on the Student's Measurable Annual Goals to be provided to the parent quarterly;
 - d. Accommodations included: adult support for transitions, specials, math, and writing for 135 minutes per day; home/school communication; personal written visual schedule for daily activities; and offer choices in academic and/or options for preferred independent projects; and
 - e. The Student would be removed from the general education setting for 6% of the school week.
6. No changes were made to the Student's IEP when the Student transferred to the Charter School.
 7. The District continued to provide special education services to the Student at the Charter School.
 8. The District assigned a paraeducator to the Student, who provided adult support for transitions, specials, math, and writing, as well as implementing the Student's other accommodations, including person written visual schedule, home/school communication, and offering choices in assignments.
 9. The Student's general education teacher (Teacher) reported that from January to March 2020, the Student struggled with self-regulation and often needed to be removed from the classroom, resulting in limited engagement in learning or participation in academic assignments.
 10. The Student attended school in-person from January 6, 2020 until March 2020, when District schools shut down due to the COVID-19 pandemic.
 11. From March to June 2020, the Student participated in distance learning with the Charter School.
 12. The Teacher reported that during Spring 2020 distance learning, the Student's engagement was low and the Student was not turning in assignments. However, the Student's social anxiety improved by doing at-home learning rather than being in person at school.
 13. On June 8, 2020, the District issued an IEP Progress Report for the Student's Measurable Annual Goals. Updated information was only provided for one of the six goals, although the information provided did not directly relate to the goal.
 14. On September 8, 2020, the Student started fifth grade at the Charter School with Comprehensive Distance Learning (CDL) with the same Teacher as the previous school year.
 15. The Student's special education services started on September 30, 2020.

16. The Student received virtual special education services from the District special education team assigned to the Charter School, including a District Special Education Teacher/Case Manager (Case Manager) and a District Speech-Language Pathologist (SLP). The Student also received consultation services from a District Occupational Therapist (OT) and support from a District School Psychologist (School Psychologist).
17. The Case Manager and the SLP met with the Student together for weekly 30-minute virtual special education sessions, with the OT joining the sessions as needed to provide support. The Case Manager and SLP provided all SDI instruction for all the Student's goals.
18. For September and October 2020, the Teacher reported that the Student's engagement and work completion increased significantly compared to spring 2020.
19. The Teacher reported that a weekly email was sent to all parents with a schedule of what the class would be doing each day for the following week.
20. While a class schedule was posted online for the class every day, the IEP accommodation for "personal written visual schedule for daily activities" was never provided to the Student.
21. The Teacher reported that the Teacher's collaboration with the District special education team involved occasional check-ins with the team. In addition, the Teacher reached out to the team if she had any questions about the Student's special education services.
22. On October 20, 2020, the School Psychologist emailed the Parents to discuss the Student's upcoming three-year reevaluation, due on November 1, 2020. The School Psychologist suggested a telephone call and stated, "Since we are not at school in person there are complications with testing that I'd like to talk about."
23. The Parents reported that during the October 22, 2020 telephone call, the School Psychologist suggested doing a file review for the three-year reevaluation instead of conducting formal evaluations. The Parents reported that they were told this would avoid testing centers with long wait times and eliminate the risk of possible COVID-19 exposure at the testing site.
24. On October 22, 2020, the School Psychologist emailed the Parents a Google meet invitation for a meeting on November 5, 2020, titled, "[the Student's] Elig/IEP." Five guests are listed on the email invitation, which identified one individual by name and the rest by email address. The District did not identify the roles of anyone listed.
25. The Student's IEP Review Date was October 27, 2020, and the Student's Reevaluation Due Date was November 1, 2020. Neither of these were completed until November 5, 2020.
26. The OT's Treatment Notes included an entry written sometime between October 15, 2020 and November 4, 2020, which stated, "Eval and IEP overdue but it will only be a file review."
27. On October 30, 2020, the Teacher forwarded an email to all parents from the Director of the Charter School, sharing information that a former student had been shot and killed in an officer-involved shooting.
28. On the same day, the Student's class discussed what had happened to the former student after some students had heard the news and started asking the Teacher questions. The Teacher informed all parents about the discussion.

29. In an October 30, 2020 email, the Parents emailed the Teacher to share that the Student is very sensitive and struggles to regulate and communicate feelings. Because of the nature of the recent news, the Parents asked the Teacher to notify them if she noticed that the Student was having any strong reactions during class.
30. The Student is described as very sensitive, anxious, and can easily become overwhelmed. The Parents reported that the Student is triggered by “emotionally charged” information about history, science, literature, and current events (e.g., death, climate change, extinction of animal species, etc.). At the same time, the Student is extremely interested in history, particularly WWII and the Holocaust, making the Student’s triggers somewhat unpredictable.
31. The Student’s class had a lesson on November 2, 2020 about the history of policing in America, which included topics such as slavery, the Civil War, white supremacy, and systemic racism.
32. On November 2, 2020, the Parents emailed the Teacher to share that the Student was upset and confused following this class lesson and asked the Teacher to “help us think about how [the Student] can continue to participate in the [Charter School] community conversations, but with an awareness that some topics might require more preparation on our part, or even an alternative option that can allow [the Student] to process complex and emotionally-charged material in a way that is more attuned to [the Student’s] special needs.”
33. In making this November 2, 2020 email request, the Parents believed that the Teacher would commence notifying the Parents in advance of potentially emotionally charged lessons and/or offer the Student an alternative assignment if this occurred.
34. In the Teacher’s November 2, 2020 email response to the Parents, the Teacher wrote that they had been impressed with how the Student was doing and “if there are a few times that [the Student] is feeling emotionally overwhelmed because of our conversations about social justice I think that’s a normal reaction... I believe that all kids can handle what we are learning...” The Teacher’s email does not mention the Parents’ request for advance notice and alternative assignments.
35. The District provided the Investigator with a copy of a Notice of Team Meeting, dated November 5, 2020, for a meeting on November 5, 2020. It appears that this document was not sent to the Parents until March 3, 2021.
36. The District convened a virtual team meeting on November 5, 2020 to determine the Student’s eligibility for Special Education and to conduct an annual review of the Student’s IEP. It is difficult to determine what occurred at this meeting, as the District’s Meeting Minutes do not contain many details and most witnesses could not recall any specific information about discussions or agreements that occurred.
37. The November 5, 2020 Meeting Minutes included the following information about the Student’s Reevaluation, in relevant part:
 - a. The District “reviewed Consent for Reevaluation and that the evaluation would be done via file review” and the Parents gave consent;
 - b. The School Psychologist and SLP reviewed the Student’s Medical Statement and “previous eligibility reports/data supporting ASD”; and

- c. The team determined that the Student continued to be eligible for special education as a child with ASD.
38. There is no evidence that evaluation planning occurred before or during the November 5, 2020 eligibility and IEP meeting. Based on the October 22, 2020 telephone conversation between the School Psychologist and the Parents, the entry in the OT Treatment notes, and the Meeting Minutes, it appears that the decision to conduct a file review rather than formal evaluations was made before the meeting, without the input of the team.
39. The November 5, 2020 District Meeting Minutes included the following statements about the annual IEP review, in relevant part:
- a. Parent concerns: the Parents “want [the Student] to continue through ‘fight or flight’ response,” “[M]om is acting as the para-educator [*sic*] at home”; and visual schedules help the Student internalize routines; and
 - b. Items were listed with no details or explanation, including: “[The Case Manager] described present levels in academics”; “[The SLP] described [the Student’s] present levels in communication”; “Team discussed accommodations”; and “[the Case Manager] reviewed the Placement Page.”
40. While the November 5, 2020 Meeting Minutes stated that various IEP sections were discussed, the document does not include any information about what was discussed or whether any decisions were made by the IEP team. It stated that the present levels were described, but no description of the present levels were included (except that the Student was at a middle sixth grade reading level). The Student’s annual goals were not mentioned. There was no information about any discussions related to the Student’s accommodations or the Parents’ request.
41. The Parents reported that the following was discussed at the November 5, 2020 meeting:
- a. The Parents expressed concern about the Student’s increased anxiety resulting from exposure to emotionally charged class lessons;
 - b. The Parents requested advance warning about lessons “to avoid lesson content that might put [the Student] in ‘fight or flight mode’ and preclude [the Student’s] further learning”;
 - c. The Parents asked how the IEP should be revised to address these concerns, and the IEP team discussed the Student’s current accommodations, including personal written visual schedule, home/school communication, and offer alternative assignments or choices;
 - d. The District told the Parents that the Student’s existing accommodations, as written in the IEP, were sufficient to address these issues and would provide for pre-warning and alternative assignments.
42. It was the Parents’ understanding that the entire IEP team was in agreement with these changes, and moving forward (1) the Parents would be pre-warned about upcoming lessons that may be emotionally challenging for the Student, and (2) the Student would be offered alternative assignments if the Student needed to miss a lesson for this reason.

43. The SLP reported that the IEP team “added or ‘tweaked’ a few accommodations as per our discussion during the meeting,” but did not recall any conversation from the Parents about triggering lesson content or pre-warning of upcoming lessons.
44. The November 5, 2020 IEP included the following, among other things:
- a. Parent Concerns: “[The Student’s] ability to stay in a regulated “ready to learn” space, rather than being in fight/flight mode”; the Student “gets overwhelmed by Zoom, doesn’t stay focused, and doesn’t complete his work”; and the Student’s “moral development, overly black or white point-of-view, world views, explain the world to fit [the Student’s] view, ability to keep perspective without a fight-or-flight reaction...”
 - b. Annual goals: While some of the Student’s five annual goals were changed, the remaining goals were carried over from the previous IEP with no explanation provided. None of the goals included a baseline or present level. Some present levels were left blank, while three of the goals stated, “Due to the COVID-19 pandemic and school building shuttered there hasn’t been any data collected since March 13, 2020.”
 - c. Accommodations: The October 28, 2019 IEP stated that all accommodations would be provided by “Special Education Provider/General Education Teacher.” However, for the majority of accommodations, the role was changed to “General Education Teacher,” including the accommodations for personal written visual schedule for daily activities, home/school communication, and “offer choices in academic assignments and/or options for preferred independent projects”; and
 - d. SDI in social/emotional and classroom/school skills was reduced, resulting in the reduction of total SDI minutes from 110 minutes per week to 70 minutes per week.
45. It is unclear why the role of who would be responsible for the accommodations changed. It does not appear that the Teacher was aware of this change in responsibility or that the District informed her of it.
46. It is unclear what agreements were made, if any, about what was expected for the implementation of the accommodations for personal written visual schedule, home/school communication, and “offer choices in academic assignments and/or options for preferred independent projects.”
47. Following the November 5, 2020 IEP meeting, the Teacher’s understanding of the Student’s accommodations did not change, and the Teacher did not make any adjustments to the implementation of accommodations.
48. The District issued a Prior Written Notice (PWN) (Notice of Triennial) dated November 5, 2020, which stated “prior evaluations, teacher reports, progress towards goals and information provided by the parents” were used as the basis of the proposal to conduct a reevaluation for the Student. This PWN was not provided to the Parents until March 3, 2021.
49. The District issued a second PWN dated November 5, 2020, which stated, “Due to COVID-19 pandemic closure of school buildings the reevaluation was limited to file review and prior observations and students [sic] work samples from January 2020-March 13, 2020, including results of current comprehensive evaluation for file review, reports from special education team, and the Evaluation Team Meeting.” This PWN was not provided to the Parents until February 24, 2021.

50. The District issued a third PWN (Notice of Eligibility) dated November 5, 2020. This PWN was not provided to the Parents until March 3, 2021.
51. A copy of the November 5, 2020 IEP was not provided to the Parents until February 24, 2021, after the Parents requested it.
52. The Eligibility Summary Statement, dated November 5, 2020, stated that the documentation used to determine eligibility consisted of "File Review: Medical/Health Assessment, Autism Evaluation." A copy of the Eligibility Summary Statement was not provided to the Parents until March 3, 2021.
53. The District did not provide the Investigator with a copy of an IEP Progress Report for November 6, 2020. However, the IEP Progress Report dated March 5, 2021 included the following information, dated November 6, 2020, for two of the Student's six annual goals: "[The Student] is getting academic and social/emotional support from [the Student's] mom and family. [The Student] is making progress in completing and quality of academic assignments." The IEP Progress Report does not contain any measurable data on the Student's annual goals.
54. The Parents reported that the Student did well through January 2021, but the Student's emotional distress and anxiety increased over the month of February, to the point that the Parents sought medical attention for the Student.
55. The Parents reported that the Teacher told them at parent night that the class would be covering "heavy duty" material during Black History Month. The Parents were concerned but believed that the Teacher would notify them "if any of the material could or had the potential to be inappropriate for [the Student]."
56. The Teacher reported that she sent an email to all parents with a list of videos that the class would be watching for Black History Month, in addition to the regular weekly email to parents with the schedule for the week. The list was also available to all parents online. The Teacher stated that she encouraged parents to watch these videos with their children.
57. On February 12, 2021, the Teacher emailed the Parents to check in on the Student as the Student had not been attending class. The Parents responded, stating that they had noticed a change in the Student over the past few weeks, the Student had been extremely anxious and incredibly inflexible, and the Parents were trying to figure out why.
58. From February 12-23, 2021, the Parents and the Teacher continued to have email exchanges about how the Student was doing and what the source of the increased anxiety could be.
59. On February 23, 2021, the Student's class had a lesson involving the topic of systemic racism and the justice system.
60. On February 23, 2021, the Parents emailed the Teacher to report that the Student was extremely upset because of the class lesson, writing that it was a very traumatic day for the Student and the entire family.
61. In a February 24, 2021 email to the Case Manager, the Parents requested a copy of the Student's November 5, 2020 IEP, writing that the Parents had never received a copy of the completed IEP after the November 5, 2020 IEP meeting. Shortly after this request, the District emailed the Parents a copy of the IEP, along with copies of the Student's Placement Determination and a PWN, all dated November 5, 2020.

62. On February 24, 2021, the Parents emailed the School Psychologist to request a time to talk, as the Parents were having “a serious issue with [the Student]” and they were “very hesitant to send [the Student] back to class until the issue is resolved.”
63. In a February 24, 2021 email to the Teacher and the special education team, the Parents expressed the following concerns:
- a. The accommodations and assurances that were discussed at the November 5, 2020 IEP meeting had not been provided, although the Parents believed that everyone on the team had reached an understanding on these issues;
 - b. The Parents expected warning “about lessons with emotionally-charged or morally-challenging material likely to put [the Student] in ‘fight or flight’ mode or to affect [the Student’s] moral/identity development,” and “that [the Student] be offered alternative assignments if necessary”;
 - c. The lesson on February 23, 2021 caused the Student emotional stress at a level that the Parents considered harmful. It negatively affected the Student’s school engagement and mental health, and the Parents did not want the Student to continue to be exposed to this type of material; and
 - d. The Parents needed to know the Student would be safe before the Student could participate in future class meetings.
64. On February 25, 2021, the Teacher responded to the Parents’ February 24, 2021 email, writing that the Teacher had spoken to the School Psychologist to better understand the Student’s processing of the material the class had been studying. The Teacher asked the Parents to provide a list of potential emotional triggers, to help the Teacher filter lesson content for the Student and alert the Parents.
65. The Parents reported that in February 2021, the Student showed “regression in behavior.” Symptoms included skin picking, extreme difficulties with sleep, increasing anxiety and fear, complete loss of ability to self-regulate, refusal to eat, and refusal to engage or do schoolwork, among others. The Parents believed this change in behavior was the result of class lessons throughout the month of February, with the February 23, 2021 lesson as the most harmful.
66. In a March 1, 2021 email to the Parents, the School Psychologist asked the Parent to provide “a list of things that have triggered [the Student] in the past as well as several examples of what is likely to trigger [the Student]” to help the Teacher.
67. In a March 1, 2021 email response to the Teacher, the Parents requested that an IEP meeting be convened as soon as possible and wrote the following:
- a. There “seems to be a lack of common understanding around the concerns we have raised”;
 - b. The Student “is being exposed to emotionally charged material that is not age- or developmentally- appropriate. The problem is not located within [the Student] nor any particular subject matter, but rather in the manner in which the material is being presented”;

- c. The Parents did not understand why the Teacher was still asking what kind of materials were triggering because the Parents already explained that the Student is triggered by “emotionally-charged material”; and
 - d. The Parents asked that “[the Student] be excused from any class lessons or discussions which are intended to be, or may be, emotionally-challenging or emotionally-charged, whatever the content, subject matter, or purpose of those lessons or discussions.”
68. On March 2, 2020, the Case Manager emailed the Parents a Google meet invitation for an IEP meeting on March 9, 2021. Eight guests are listed on the email invitation, which identified one individual by name and the rest by email address. The District did not identify the roles of anyone listed.
69. Several documents provided by the District list the IEP meeting date as March 9, 2021, including the Google meet invitation, the SLP log notes, and the District’s handwritten comprehensive Meeting Minutes. Other District documents list the IEP meeting date as March 12, 2021, including the IEP Amendment, Meeting Notice, and PWN. When asked, the District stated that the March 12, 2021 IEP and special education documents appear to be incorrect as the meeting is listed as March 9, 2021 on the calendars for District team members.
70. On March 3, 2020, the District sent the Parents additional documents dated November 5, 2020, including: Consent for Evaluation, Disability Statement, Eligibility Summary, Notice of Team Meeting, PWN - Notice of IEP, PWN - Notice of Triennial, and Meeting Minutes. It appears that March 3, 2020 is the first time that these documents were provided to the Parents.
71. In a March 3, 2021 email to the School Psychologist, the Parents wrote that they tried to make a list of emotionally charged content but there were so many topics that it would not be useful.
72. On March 5, 2021, the District issued an IEP Progress Report on the Student’s Measurable Annual Goals, which included the following information:
- a. For four of the six annual goals, the report stated, “Due to the COVID-19 pandemic and school buildings shuttered there hasn’t been any data collected since March 13, 2020”;
 - b. For the other two annual goals, the report did not include progress information related to goals. Rather, both goals have the same entry listed word-for-word, stating, “[The Student] had a difficult time during the winter 2021 with heightened anxiety and stress as a reaction to fifth grade content...”
73. There is no evidence that this IEP Progress Report was ever provided to the Parents. The Parents reported that they did not receive any IEP Progress Reports during the complaint period.
74. The Case Manager later reported that the Student’s goals were written for the Charter School classroom setting, not the home setting. The Case Manager and the SLP did social/emotional teaching virtually, but the Student’s learning was “at a great disadvantage” as the Student “didn’t have peers to talk to, interact, and practice social skills with.” They reported, “Data was anecdotal and sparse. It would have been unfair and disingenuous to report that [the Student] could or could not meet the goal based on the environment.”

75. The District provided the Investigator with a copy of a Notice of Team Meeting, dated March 5, 2021, for a meeting on March 12, 2021. It appears that this document was not sent to the Parents until April 7, 2021.
76. The March 12, 2021 IEP meeting focused on the Parents' concerns. The Parents shared their objections to the Student's exposure to emotionally charged content, the serious impact seen outside of school in the Student's physical and emotional health, and the Teacher's failure to provide advance warning and alternative assignments, which the Parents believed had been previously agreed upon. The Parents' concerns were discussed by the team and ultimately incorporated into the March 12, 2021 IEP Amendment.
77. The March 12, 2021 IEP Amendment, which was finalized on April 7, 2021, included the following accommodations, in relevant part:
 - a. "Home/School communication (i.e., emails, phone calls, etc.) in advance of emotional charged lessons or when anxiety or maladaptive behaviors are exhibited during lessons";
 - b. "Let parents know in advance of classroom content/topics that may be emotionally charged"; and
 - c. "Alternative assignments when content(s) or presentation of the lesson(s) is or may be emotionally is [*sic*] triggering."
78. The District issued a PWN (Provision of FAPE) dated March 12, 2021, which stated, "Due to the COVID-19 pandemic stress, the Comprehensive Distance Learning model, sensitive social studies and environmental curricula, [the Student] is experiencing increasing anxiety and demonstrating a high level of emotional and physical fragility. The IEP team has determined that [the Student] requires the services listed on the attached AMENDED IEP."
79. The Student's Psychiatric-Mental Health Nurse Practitioner attended the March 12, 2021 IEP meeting at the Parents' request. The Nurse Practitioner later reported that the Student had been stable and making progress until the abrupt change in February 2021, which the Nurse Practitioner believed to be the result of the February 23, 2021 class lesson. The Student's symptoms were very severe.
80. As the IEP team did not complete the IEP changes at the March 12, 2021 IEP meeting, the District sent the draft IEP Amendment to Parents on March 17, 2021 and requested feedback from the Parents. Emails were exchanged between the District and the Parents from March 17 to April 7, 2021, with the Parents requesting specific edits to the draft IEP. The IEP Amendment ultimately incorporated the exact language chosen by the Parents for the relevant IEP accommodations.
81. In a March 30, 2021 email to the Parents, the District stated that the IEP was still considered a draft, until the Parents agreed with the changes and additions.
82. In a March 31, 2021 email, the Parents informed the special education team that the Student would continue with CDL and not attend any in-person school for now.
83. On April 7, 2021, the District emailed the Parents to report that the IEP had been finalized and sent copies of the IEP Amendment, Notice of Team Meeting, PWN, and Meeting Minutes.
84. On April 7, 14, 23, and 27, 2021 the Teacher emailed the Parents to provide notice of upcoming class content that might be concerning.

85. While the Teacher reported that alternative assignments or options were offered, the Parents reported that the Student was not offered alternative assignments or a method of accessing the lesson content in a way that was appropriate for the Student. Rather, the Parents stated that they were warned about lessons that they might not want the Student to attend. The Parents felt that this resulted in excluding the Student from class rather than finding ways to include the Student and that the responsibility of finding alternative options was placed on them.
86. On April 22, 2021, the SLP emailed the Parents, asking about the autism consultation on the Student's IEP and who had provided this in the past. The SLP wrote that she did not know if autism consultations were being provided during COVID-19.
87. The District provided a copy of the SLP's log notes, indicating that the SLP worked with the Student once a week from October 7, 2020 to April 27, 2021. The log notes contain short descriptions of activities or anecdotal information for each week. The only data included in the notes related to the Student's annual goals was, "Turn taking [appropriately] – 80%" and "responded 90% accurate to [nonverbal]." The SLP reported that the Student participated in 22 of the 24 weekly sessions.
88. The SLP reported that the SLP and the Case Manager provided the Student with 30 minutes per week of direct instruction, but that the adult to student ratio was higher than what is typical (the SLP, the Case Manager, and often also the Student's Mother). The SLP stated that she "think[s] 'measuring' [the Student's] data, progress and overall performance should be considered with some caution because [the Student] had so much support in each session with 2 and often 3 adults present." Additionally, "we were 'encouraged' to write goals to reflect the possibility that we could/would return to in-person learning within the year."
89. On May 3, 2021, the Parents informed the Charter School and the District that the Parents were withdrawing the Student from the Charter School and were moving out of the District.
90. On May 5, 2021, the Parents filed a complaint with the Charter School. The Charter School conducted an internal investigation in response.
91. The Charter School's internal investigation report of the Parents' complaint included the following, in relevant part:
 - a. Personal Visual Schedule: The IEP likely intended the personal visual schedule to include "pictorial images of the activity to be completed, with a label, and follow the flow of the day." For this to be provided by the Teacher, additional training in creating a visual schedule and supporting students with ASD would be required, as well as access to the computer programs needed to create a personal visual schedule;
 - b. Home/School Communication: The November 5, 2020 IEP should have provided clarity on this issue, but clarity was not added until the March 12, 2021 IEP Amendment;
 - c. Offer Choices: The Teacher and the Parents had a different "understanding of what choice would look like in the classroom... documenting specifically in the IEP what was meant by choice would have been helpful in understanding what was intended" by the entire IEP team; and
 - d. Emotionally Charged Content: The Parents made a request for pre-warning and alternatives for content in a November 2, 2020 email, but the request was "a little unclear."

“It may be that the communication around the topic of providing a heads up on emotionally charged content and alternative assignments occurred during the IEP meeting that happened on November 5th, though there is little indication of that in the IEP...”;

92. On August 6, 2021, the Parents filed this Complaint.

IV. DISCUSSION

When IEPs Must Be In Effect

The Parents alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP.

A school district must serve resident children with disabilities attending public charter schools located in the district in the same manner as the district serves children with disabilities in the district’s other schools.³ This includes identifying, locating, and evaluating students in a public charter school, as well as implementing special education and related services according to each child’s individual IEP.⁴ School districts must ensure that an IEP is in effect for each child with a disability within the district’s jurisdiction at the beginning of each school year.⁵ The district must ensure that each staff member, including service providers, has access to a student’s IEP and is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports in accordance with the IEP.⁶ A district is required to provide the services listed in the IEP, “not those discussed at the IEP meeting but left out of the IEP.”⁷ A discussion at a meeting does not amount to an offer of services.⁸

“[T]he essential function of an IEP is to set out a plan for pursuing academic and functional achievement.”⁹ An IEP must include a statement of measurable annual goals designed to (1) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum, and (2) meet each of the child’s other educational needs that result from the child’s disability.¹⁰ The IEP must also include a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making will be provided.¹¹ School districts should expect to “be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable to child to make progress appropriate in light of his circumstances.”¹²

A district violates the IDEA when it materially fails to implement an IEP.¹³ “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”¹⁴

³ OAR 581-015-2075(2); 34 § CFR §300.209(b)

⁴ OAR 581-015-2075(2); 34 § CFR §300.209(b)

⁵ OAR 581-015-2220(1)(a); 34 CFR §300.323(a)

⁶ OAR 581-015-2220 (3)(a) and (b); 34 CFR §300.323(d)

⁷ *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1199 (9th Cir. 2017)

⁸ *Id.*

⁹ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017)

¹⁰ OAR 581-015-2200(1)(b); 34 § CFR §300.320(a)

¹¹ OAR 581-015-2200(1)(c); 34 § CFR §300.320(a)(3)

¹² *Andrew F.*, 137 S.Ct. at 1002

¹³ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 822 (9th Cir. 2007)

¹⁴ *Id.*

There were three different IEPs in effect during the complaint period. The October 28, 2019 IEP was in place until the annual IEP meeting on November 5, 2020. The November 5, 2020 IEP was in place until April 7, 2021, when the IEP Amendment from the March 12, 2021 meeting was finalized.

Implementation of the November 5, 2020 IEP Accommodations

The three accommodations at issue in the November 5, 2020 IEP are (1) personal written visual schedule for daily activities, (2) home/school communication, and (3) offer choices in academic assignments and/or options for preferred independent projects, which were all carried over from the previous IEP. The Parents and the District disagree about the nature of these accommodations. The Parents recall that the team agreed that home/school communication would include providing the Parents with advance warning of upcoming lessons that might be emotionally charged and troubling for the Student and the offer of choices would include providing alternative assignments to the Student to access these lessons in a way that was appropriate for the Student.

In interviews with the Investigator, District staff members of the IEP team and the Charter School Teacher were unable to recall whether any agreements were made at the meeting about the implementation of these accommodations. The District's Meeting Minutes simply stated, "Team discussed accommodations." The Teacher's handwritten notes, as well as those from the SLP, do not mention emotionally charged lessons or pre-warning of lessons. If the meaning of these accommodations changed at the November 5, 2020 IEP meeting as the result of IEP team discussions and agreements, it was not documented.

The only change made to these accommodations in the November 5, 2020 IEP was that the role of who would be responsible for these accommodations changed from "Special Education Provider/General Education Teacher" to "General Education Teacher." There is no evidence that the District informed the Teacher of any change in responsibility in providing the Student's accommodations.

Significant email communication occurred between the Parents, the Teacher, and the District special education team. The Teacher provided all parents with some information about upcoming class units throughout the school year. As the Teacher was not aware of any requirement to provide the Parents with advance warning of lessons that could potentially upset the Student, along with alternative assignments for these lessons, she did not provide them. These elements were not provided until they were explicitly added as accommodations to the March 12, 2021 IEP Amendment. The District was not obligated to implement any supplementary services that were not written in the Student's IEP.

The Student was not provided with any personal written visual schedules. According to the Charter School Director, the Teacher would not be able to provide these to the Student without additional training and access to appropriate computer programs. This accommodation was not implemented throughout the entire complaint period.

Implementation of the March 12, 2021 IEP Amendment Accommodations

Following the finalization of the March 12, 2021 IEP Amendment on April 7, 2021, the Teacher sent a handful of emails to the Parents about upcoming lessons that may be concerning. The Teacher reported offering alternative assignments to the Student to replace these lessons.

The Parents disagreed and there was no other evidence to corroborate the Teacher's position. The District failed to implement the accommodation for "alternative assignments when content(s) or presentation of the lesson(s) is or may be emotionally triggering" while the IEP Amendment was in effect between April 7, 2021 and May 3, 2021.

Implementation of SDI and Annual Goals

The District did not follow the IEP's requirements for progress monitoring and reporting. According to the Student's November 5, 2020 IEP, as well as the Student's June 8, 2020 and March 3, 2021 IEP Progress Reports, the District did not take data on the Student's IEP goals from March 13, 2020 through the 2020-21 school year. The District did not provide the Parents with any IEP Progress Reports, although the IEP stated that written progress reports would be provided quarterly. Without progress data on the Student's annual goals, the District cannot demonstrate that the Student's IEPs were implemented.

It is unclear what special education services the District provided to the Student during the complaint period. The Case Manager and the SLP met with the Student once a week, for 30 minutes, to work on all the annual goals. However, the Student's October 28, 2019 IEP required 110 minutes of SDI minutes per week, and the November 5, 2020 IEP required 70 minutes of SDI per week. The District provided SLP log notes for the 2020-21 school year, but the log notes (1) do not provide sufficient information to determine which areas of SDI were provided during these sessions, or for how long, and (2) only include two instances of recorded data on the Student's goals. There is no evidence of any additional progress data collected.

Regardless of what instruction was provided during the weekly sessions, the amount of instruction was insufficient. The District was required to provide 110 minutes of SDI to the Student from September until November 5, 2020, then 70 minutes of SDI per week for the rest of the school year. The District only provided 30 minutes of SDI per week.

The deficiency in the amount of SDI provided and the failure to monitor and report progress as prescribed in the Student's IEP constitutes a material failure to implement all IEPs that were in effect during the 2020-21 school year. Further, the failure to collect progress data influences the entire IEP process, including the IEP team's ability to identify whether the Student's annual goals were appropriate and whether the Student's IEPs were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

The Department substantiates this allegation.

Review and Revision of IEPs

The Parents alleged that the District violated the IDEA by not reviewing and revising the Student's IEP as needed.

A student's IEP must be reviewed and revised periodically, but at least yearly, to determine whether the annual goals for the child are being achieved.¹⁵ A school district must ensure that the IEP Team reviews and revises the child's IEP, as appropriate, to address: (1) any lack of expected progress towards the annual goals and the general education curriculum; (2) the

¹⁵ OAR 581-15-2225(1)(a); 34 CFR §300.324(b)(1)(i)

results of a reevaluation conducted; (3) information about the child provided to, or by, the parents; (4) the child's anticipated needs; or (5) other matters.¹⁶ "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth."¹⁷ "This fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians."¹⁸

November 5, 2020 IEP Meeting

The Student's IEP was reviewed at the Student's annual IEP meeting on November 5, 2020. Although the Student's annual IEP review occurred a week after the IEP review due date, the delay was not significant. As stated above, it is unclear what occurred at the November 5, 2020 annual IEP meeting or what information the IEP team considered when reviewing and revising the Student's IEP.

The record suggests that the decision to limit the reevaluation to a file review occurred before the November 5, 2020 meeting. The OT's treatment entry written before the IEP meeting stated that the reevaluation was overdue, but it was only going to be a file review. The District issued three PWNs dated November 5, 2020, one of which stated that the reevaluation was limited to a file review because of COVID-19. Another PWN stated that the Student's progress monitoring data was used as a basis, among other factors, for making team decisions.

However, the IEP team did not have any current progress monitoring data. Present levels for the annual goals stated that no data had been collected since March 13, 2020 because of COVID-19. The Parents expressed concern at the meeting, but no provisions were added to the IEP outside of the parent concerns section. Some of the Student's annual goals changed and some were carried over from the previous IEP. There is no information to explain why the changes were made or whether the Student's progress was considered.

Without collecting progress data, the IEP team could not determine whether the Student's annual goals were being achieved or whether the IEP needed to be revised to address any lack of expected progress.

March 12, 2021 IEP Meeting

Information that the Student was experiencing a school-related problem did not materialize until February 23, 2021. When the Parents expressed concern following the February 23, 2021 class lesson, the District convened the IEP team within a reasonable amount of time. The March 12, 2021 IEP meeting was dedicated to addressing the Parents' concerns about the Student's exposure to emotionally charged lessons. The IEP team incorporated the Parents' input into the resulting March 12, 2021 IEP Amendment. The IEP was reviewed and revised to address the Student's needs related to this specific issue. However, the District did not have progress data on the Student's annual goals to inform IEP team decisions.

The Department substantiates this allegation.

Parent Participation

¹⁶ OAR 581-15-2225(1)(b); 34 CFR §300.324(b)(1)(ii)

¹⁷ *Andrew F.*, 137 S.Ct. at 999

¹⁸ *Id.*

The Parents alleged that the District violated the IDEA by failing to address the Parents' concerns, including the Parents' concern about the District's failure to provide appropriate accommodations and its impact on the Student's ability to access and benefit from special education.

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, and the provision of a free appropriate public education to the student.¹⁹ 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.²⁰ The school district must give the parents a copy of the IEP at no cost to the parent.²¹ "Parents must be able to use the IEP to monitor and enforce the services their child is to receive."²²

A school district must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.²³ "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."²⁴ While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."²⁵

Parent Concerns

The Parents had a considerable amount of communication with the Charter School and IEP team, and they participated in IEP meetings. It is unclear whether the District and the IEP team fully discussed the Parents' concerns and considered the Parents' input at the November 5, 2020 IEP meeting. There was a significant misunderstanding during, and following, the meeting about expectations regarding the IEP accommodations. The November 5, 2020 IEP did not contain any changes related to the concerns expressed by the Parents, nor do the other November 5, 2020 District documents provide any insight. If the Parents' concerns regarding emotionally charged lesson content was discussed at the meeting, there is no record of it. There is insufficient evidence in the record to determine that the District failed to consider the Parents' input at the November 5, 2020 IEP meeting or failed to respond appropriately to the Parents' concerns.

The Department does not substantiate this portion of the allegation.

Written Notice

The District failed to provide the Parent with required notice and IEP documents. The District did not send the Parents meeting notices containing required information until after the IEP meetings that occurred on November 5, 2020 and March 12, 2021. Although the District sent email invitations to the Parents prior to each meeting, they only included a list of email addresses and did not identify the name or role of the individuals invited to attend each

¹⁹ OAR 581-015-2190(1); 34 CFR §300.322(a)

²⁰ OAR 581-015-2190(2)(b)(A) and (B); 34 CFR §300.322 (b)

²¹ OAR 581-015-2195(5); 34 § CFR §300.322(f)

²² *Antelope Valley*, 858 F.3d at 1198

²³ OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

²⁴ Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006)

²⁵ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

meeting. Other documents were not provided to the Parents in a timely manner, including the Student's annual IEP and prior written notices. Documents dated November 5, 2020 were not provided to the Parents until February 24 and March 3, 2021, after the Parents requested a copy of the Student's annual IEP. Further, the District did not provide the Parents with any IEP Progress Reports for the Student during the complaint period.

The Department substantiates this portion of the allegation.

Free Appropriate Public Education (FAPE)

The Parents alleged that that the District's refusal to provide effective services and supports has denied educational opportunity to the Student, and thus constitutes a denial of FAPE.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.²⁶ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities."²⁷ If an IEP cannot be implemented as written for distance learning, the IEP team must meet to review and revise the IEP.²⁸

In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.²⁹ If a school district cannot demonstrate that it has complied with the procedures in the IDEA and state education laws, the question of whether its proposed program meets the substantive benefit test need not be addressed.³⁰

Not every procedural error is sufficient to rise to a denial of FAPE.³¹ The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;³² (2) whether the Parent's right to participate in the IEP process was infringed; or (3) whether the procedural error caused a "deprivation of educational benefit."³³ Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."³⁴

The District reported that the Student's IEP goals were written for the school environment and with the notion that school might return to in-person learning at some point in the school year. However, it was the IEP team's duty to determine whether the Student's IEP could be implemented as written for distance learning. If not, the team had an obligation to revise the Student's IEP services as necessary to provide FAPE.

²⁶ OAR 581-015-2040(1); 34 CFR §300.101(a)

²⁷ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

²⁸ Oregon's Extended School Closure Special Education Guidance (ODE 5/11/20)

²⁹ *Andrew F.*, 137 S.Ct. at 999

³⁰ *Target Range*, 969 F.2d at 1485

³¹ *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990))

³² *Target Range*, 969 F.2d at 1484

³³ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

³⁴ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. 2005)

The District did not provide the Student with SDI in accordance with the IEP. The District failed to collect data and monitor progress on the Student’s annual goals, resulting in a material failure to implement the Student’s IEP. By not providing the Parents with IEP Progress Reports, as well as prior written notice and the Student’s IEP, within a timely manner, the District interfered with the Parents right to participate in special education decisions related to the Student. These violations deprived the Student of educational opportunity and resulted in a denial of FAPE.

The Department substantiates this allegation.

V. CORRECTIVE ACTION³⁵

*In the Matter of Portland School District
Case No. 21-054-023*

The Department orders the following corrective action in this matter.

Action Required	Submissions	Due Date
<p>1. The District must provide 12 hours of compensatory education in classroom/school skills and 12 hours of compensatory education in social/emotional skills.</p>	<p>The District shall submit the following:</p> <ul style="list-style-type: none"> • Logs or other evidence showing compensatory education was provided. 	<p>August 1, 2022</p>
<p>2. The District must provide training for all charter school staff who participated in the Student’s IEP meetings during the complaint period as either: (a) the special education teacher or special education or related services 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.</p>	<p>The District shall:</p> <ol style="list-style-type: none"> a. Submit a training plan to the Department for approval, b. Complete the training according to the approved plan, 	<p>November 30, 2021</p> <p>Training plan must be submitted to the Department for approval no later than November 30, 2021.</p> <p>Training must be completed consistent with timelines established in the plan, but not later than February 15, 2022.</p>

³⁵ 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>Training must be provided in each of the following areas:</p> <ul style="list-style-type: none"> a. District procedures to ensure that evaluations are completed appropriately and in a timely fashion. b. District procedures to ensure that prior written notices are appropriately developed and provided as required. c. IEP Review/Revision d. IEP Implementation e. Parent Participation 	<ul style="list-style-type: none"> c. Submit evidence of completed training, materials, agenda, and sign-in sheets. 	<p>Evidence of completed training must be submitted by March 30, 2022.</p>
--	--	--

Dated: this 4th Day of October 2021



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: October 4, 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).)