

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 21-054-027

**I. BACKGROUND**

On August 20, 2021, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Portland Public School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 541-015-2030. The Department provided the District with a copy of the Complaint by email on August 20, 2021.

On August 27, 2021, the Department sent a *Request for Response* (RFR) to the District, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of September 10, 2021. The District completed its *Response* and the Department's Contract Investigator (Investigator) received it on September 10, 2021. The *Response* included a narrative, partial exhibit listing, and the following documents:

1. Authorization for Release of All Educational Records dated August 11, 2019 and executed November 1, 2019 by the Student for receipt by Counsel
2. Emails between the District and Counsel/Parent dated between October 30, 2019 and August 12, 2021
3. IEP team meeting minutes dated December 8, 2020
4. Emails between Parent and Community Transition Program (CTP) dated between December 9, 2020 and June 4, 2021.
5. Notice of Team Meeting dated December 18, 2020 (evaluation planning)
6. Notice of Team Meeting dated December 18, 2020 (transition planning)
7. Notice of Team Meeting dated January 2, 2020
8. Notice of Team Meeting — Meeting Request dated January 2, 2020 (triennial planning)
9. Individualized Education Program (IEP) dated January 8, 2020
10. IEP Team Meeting Minutes dated January 8, 2020
11. Prior Written Notice (PWN) regarding continuation of services dated January 8, 2020
12. PWN dated January 8, 2020 regarding evaluation and eligibility
13. Extended School Year (ESY) Application dated June 2, 2020
14. Summary of Performance dated June 11, 2020
15. PWN dated June 11, 2020
16. Daily Attendance Record by Week dated between September 2, 2020 and June 15, 2021
17. PWN dated December 7, 2020
18. Goal meeting notes from CTP vocational specialist dated between December 14, 2020 and April 19, 2021
19. Text messages between Student and CTP vocational specialist dated between December 18, 2020 and May 31, 2021
20. IEP dated January 6, 2021
21. Placement Determination dated January 6, 2021
22. PWN dated January 6, 2021
23. IEP Team Meeting Minutes dated January 6, 2021
24. Goal data created between January 25, 2021 and May 25, 2021
25. IEP Progress Report dated January 29, 2021

26. ESY application dated March 19, 2021
27. IEP amendment dated April 4, 2021
28. Notice of Team Meeting — meeting request dated April 19, 2021 (IEP amendment)
29. Notice of Team Meeting dated April 19, 2021
30. IEP Team Meeting Minutes dated April 19, 2021
31. PWN dated April 19, 2021
32. ESY determination dated April 19, 2021

The Investigator determined that in-person interviews were necessary. On September 26, 2021, the Investigator interviewed District counsel and then interviewed District personnel on October 1, 2021. On September 30, 2021, the Investigator interviewed the Parent.

On September 10, 2021, the Parent remitted a Reply to the District Response.

The Investigator was provided documents from the Parent, specifically the Parent’s Attorney’s memoranda to the District regarding the Student’s IEP.

The Investigator reviewed and considered the previously described documents, interviews, exhibits, and public record in reaching the findings of fact and conclusions of law contained in this order.

Under Federal and state law, the Department must investigate written complaints that allege Individual with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department’s receipt of the complaint. The Department must issue a final order within sixty days of receiving the complaint. The District and the Parent can agree to extend the timeline to participate in mediation. The timeline may also be extended for exceptional circumstances.<sup>1</sup> This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.<sup>2</sup> The Parent’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from August 21, 2020 through August 20, 2021.

<b>Allegations</b>	<b>Conclusions</b>
<p><b><u>FAPE (Transition Services, IEP Content)</u></b></p> <p>The Parent alleges that the District violated the IDEA because it failed to provide the Student special education services and failed to create appropriate transition services for the Student and thus denied the Student a free appropriate public education (FAPE).</p>	<p><b><u>Not Substantiated</u></b></p> <p>As a Student attending a Community Based School (CBS), the Student was not automatically enrolled in a transition program upon graduating with a modified diploma. Once the District became aware of the Student’s desire to attend a transition program, it scheduled an IEP meeting so that the Student could receive transition services.</p>

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

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

<p>(34 CFR §§300.101, 300.320, 300.323, and 300.324; OAR 581-015-2040, OAR 581-054-2200(2) and OAR 581-015-2220)</p>	
<p><b><u>FAPE (IEP Content and Implementation)</u></b></p> <p>The Parent alleges that the District violated the IDEA because it failed to provide the Parent with annual progress reports thus denying the Student a FAPE.</p> <p>(34 CFR §§300.301, and 300.320; OAR 581-015-2040, OAR 581-015-2200(1)(b).</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student’s IEP required that the District provide “written progress reports” to the Parent. There was no specific format required. Although there was a formatting issue with the official Progress Report documents, the Parent never informed the Teacher that the Progress Reports could not be read. The Progress Reports were also available via the District’s StudentVue portal.</p>

<p><b>REQUESTED CORRECTIVE ACTION</b></p>
<ul style="list-style-type: none"> <li>• The Oregon Department of Education should issue an order finding that the District is in violation of IDEA for failure to provide FAPE to Student.</li> <li>• The Oregon Department of Education should order compensatory education for Student due to District denying Student appropriate special education services for 2020-2021 academic year.</li> <li>• The Oregon Department of Education should order District to provide substantive IEP progress notes from 2020-2021 academic year.</li> <li>• The Oregon Department of Education should order a facilitated IEP meeting to develop an IEP for Student that is reasonably calculated to provide educational benefit for Student.</li> </ul>

### III. FINDINGS OF FACT

1. The Student is 21 years old and is a friendly individual who is interested in rap music, getting a good middle class wage job, and getting a driver’s license. The Student also loves animals. The Parent has served as the Student’s legal guardian since March 23, 2021.
2. The Student was found eligible for special education services under the primary category of emotional disturbance (ED) and the secondary categories of communication disorder (CD) and other health impairment (OHI). The Student has severe anxiety, which prevents the Student from engaging in specific activities, including entering into a school building.
3. The Student graduated with a modified diploma in June 2021 from a Community Based School (CBS). The CBS is within the District’s boundaries and receives assistance from the District with particular needs and programs. This CBS received special education services from the District during academic years 2019-20 and 2020-21.
4. Students enrolled in a District high school and graduating with a modified diploma are automatically referred to the Community Transition Program (CTP). However, students not graduating from a regular District high school must be referred to the CTP for services and

must enroll in the CTP. Students attending a CBS, an alternate learning center, or a charter school must enroll in the CTP. Admission is not automatic.

5. The Student turned 18 prior to the Student's junior year at the CBS. At that time, the rights afforded to the Parent transferred to the Student. The Student and Parent were advised of the transfer of rights on December 10, 2018. From December 18, 2018 through March 22, 2021, the Student did not have a legal guardian or a surrogate parent.
6. The District offers the opportunity to continue to receive special education services from the District in the areas of life skills, vocational skills, and other areas necessary to assist the recent graduate with transition to life after high school to all students who graduate with a modified diploma and who participate in special education. The District contracts with specific providers to continue services according to each student's IEP.
7. After students in the District graduate with a modified diploma, the CBS historically had funneled their students to the Portland Opportunities Industrial Center (POIC) to receive post-graduation special education services in accord with students' IEP goals. The District could continue to provide special education services to students until age 25 while attending POIC.
8. At the Student's January 8, 2020 IEP team meeting, the CBS principal reviewed possible service providers that would continue the Student's IEP services and that would help the Student with transition goals and life skills. The CBS principal noted the Bridge Program through Portland Community College (PCC) and the Transition Center in North Portland as two possibilities for the Student to continue services under the IEP.
9. The Student decided to graduate with a modified diploma in the academic year 2019-20; therefore, the January 8, 2020 IEP team meeting was the last IEP meeting the Student had at the CBS. As part of the Student's transition plan, the Student was to tour PCC, register for classes, and decide on two courses to take. The Student's IEP notes, however, that POIC will be the responsible agency to participate in the Student's employment/post-secondary training, including developing the Student's job skills and training.
10. The Student's January 8, 2020 IEP does not provide for any Extended School Year (ESY) services for the Student. The Student's January 8, 2020 IEP does provide for a series of goals in life skills areas, including but not limited to creating money handling skills such as making change and adding/subtracting, being able to fill out a job application, and fostering job interview skills.
11. After the Student graduated from the CBS, the Student's Case Manager at the CBS stayed in contact with the Student to discuss transition to another learning facility. The Student wanted to continue with POIC for the fall of 2020. However, the Student was not enrolled in POIC at the beginning of academic year 2020-21. Additionally, POIC was not open for in-person instruction during the fall of 2020.
12. In late summer/fall of 2020, the Parent received a postcard at the Parent's home regarding a continuing education program for the Student. The Parent did not save the postcard and is unable to recall much specific information about its contents. The Parent believed the postcard came from the District. The Parent believed the Student would be immediately enrolled in the POIC program beginning in fall of 2020. (Parent interview). The Student was not automatically enrolled in a transition program, and did not start any programs at the beginning of September 2020. Subsequently, the Parent contacted the Parent's Attorney in October 2020 to ascertain what the District was going to do regarding the Student's

transition.

13. On November 7, 2020, the Parent's Attorney contacted the District and requested an immediate IEP meeting for the Student because the Student had not been receiving special education services since graduating from the CBS. The Attorney also requested compensatory education for the time the Student had not received special education services and requested that the District contact the CTP so that the Student could begin the program. The Attorney also requested compensatory education for ESY services that the Attorney believed were due in the summer of 2020.
14. On December 8, 2020, the District, the Student, the Attorney, and the Parent as well as teachers and administrators from the CTP attended a transition meeting for the Student. The purpose of the meeting was to gather information regarding the Student's wants and needs and to create a program that would meet those needs. The Student's start date was projected to be December 14, 2020.
15. The December 8, 2020 meeting was held virtually, and the Student participated in the meeting, expressing what the Student wanted regarding programming and what was most important to the Student. The Student expressed that the Student was extremely shy and sometimes needed support to feel comfortable. The Student wanted to get a good paying job indoors with a small staff and a quiet environment. The Student expressed aspirations to go to college. The Student was quite excited to start the CTP program at this time.
16. The Student began attending class at the CTP on December 14, 2020, after receiving a Chromebook and guidance on how to sign into class.
17. On January 6, 2021, the Student's annual IEP meeting was held. The Parent attended the meeting with their Attorney. The Student also attended portions of the meeting. The Student's goals were slightly revised at that meeting to reflect the Student's desire to learn cooking, some life skills, and skills for obtaining employment. The Student's Teacher (Teacher) also amended the Student's present levels of academic and functional performance to reflect that the Student was just learning to access computer applications and that the Student's goals would include accessing calendars, getting to class on time, and knowing the schedule as well as preparation for a driver's license and job interviews, training, and applying for jobs.
18. On January 29, 2021, the Teacher compiled the last progress notes for the Student's high school career and incorporated them into the Student's academic record at the CTP. These progress notes showed the Student's progress on the IEP goals set out in the Student's January 8, 2020 IEP. There was no data for any progress in the fall semester of academic year 2020-21.
19. On February 4, 2021, the Teacher provided progress notes to the Parent to show progress the Student had made during second semester at the CTP. Because the Student's IEP was not finalized, the Teacher sent the progress notes in a Google Doc.
20. The Student attended the CTP for a total of two hours during February 2021. The Parent knew that the Student's attendance in school had been minimal, between 2-4 hours per week. The Student initially put serious effort into reviewing the driver's manual to obtain a driver's license. However, by the end of February 2021, the Student was struggling emotionally, so the CTP Vocational Rehabilitation Teacher emailed the CTP Social Worker (Social Worker) for assistance. Thereafter, the Social Worker made a few "porch visits" to check in on the Student's mental health.

21. On March 9, 2021, the Teacher emailed the Parent and notified the Parent that the Student wanted to work on getting a job as soon as possible. The Teacher also told the Parent that the Student was having problems attending classes due to anxiety. The Teacher stated that the Student was welcome to attend any classes that the Student desired and that staff was willing to do anything to keep the Student engaged. On March 15, 2021, the Teacher emailed the Student and asked if they could meet to check in regarding the Student's goals.
22. The January 6, 2021 IEP required psychological services to be provided at least once per quarter for thirty minutes. To that end, the Social Worker continued to make "porch visits" to the Student's home for mental health checks as much as possible.
23. On March 23, 2021, the Parent was granted legal guardianship of the Student. The Petition for Legal Guardianship was filed by the Parent's Attorney on February 22, 2021 and contained the following sworn allegations by the Parent: The Student is unable to perform many basic tasks of daily living including, cooking, going to school, taking transportation, and routine tasks. The Student cannot wash laundry and needs prompting regarding personal hygiene. The Student is paralyzed by anxiety and is afraid to get a job. The Student is intellectually impaired. The Student cannot handle personal finances and is vulnerable to financial exploitation.
24. On March 29, 2021, the Teacher emailed the Parent notifying the Parent that the Student had eleven absences in the month of March. The Student notified the Teacher that the Student was not comfortable working online in virtual meetings and just wanted to work with the CTP staff via phone. The Teacher then proposed an IEP meeting to revise the Student's goals to meet the Student's current needs.
25. The staff at the CTP were becoming increasingly concerned about the Student's non-attendance and called an IEP meeting to see if the IEP team could create any solutions for the Student. The IEP team met on April 19, 2021, and the Student's IEP was revised to only address the goals the Student was most interested in obtaining, specifically getting a job and obtaining a driver's license. The only IEP goal that remained on the Student's IEP was a communication goal. All other goals of daily living skills were removed. The Parent was in agreement with this revision. The Student did not attend this meeting.
26. The Student's anxiety became so debilitating in the spring of 2021 that the Student requested phone calls rather than virtual meetings with the CTP to work on jobs goals. The Student continued sporadic work towards the goal of obtaining a driver's license over the phone and using the driver's manual. The Student also worked on the driver's manual with the help of an aunt. On May 21, 2021, the Student travelled with the Student's grandmother to the CTP for driver's permit practice but was too anxious to leave the parking lot and did not enter the school building. Thereafter, the CTP staff continued to work on the driving test goal with the Student, and the Student eventually scored a 75% on a practice test. After review, the Student retook portions of the test that were missed and scored 100%.
27. The Parent, through their Attorney, filed this Complaint on August 20, 2021.
28. The Teacher provided progress reports via email to the Parent on May 6, 2021 for progress to April 9, 2021 and again on June 14, 2021 for progress to June 8, 2021. However, the Parent was unable to read these progress reports, but did not inform the Teacher of that.
29. The Student's progress reports were also available to the Parent through StudentVue, but the Parent does not check StudentVue to track the Student's progress.

## IV. DISCUSSION

### **FAPE - Transition Services, IEP Content**

The Parent alleges that the District violated the IDEA because it failed to provide the Student with special education services and failed to create appropriate transition services for the Student and thus denied the Student a FAPE.

After a student reaches the age of 16, the IEP team must determine, annually, appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The IEP team must also identify transition services (including courses of study) needed to assist the child in reaching those goals.<sup>3</sup>

An IEP must contain a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child. . . and a statement of the program modifications or supports for school personnel that will be provided for the child.<sup>4</sup> The IDEA only guarantees a floor of opportunity and does not guarantee the best education possible but an education designed to enable a child to make progress appropriate in light of their circumstances.<sup>5</sup>

Because the Student graduated from a CBS, the Student's enrollment into a transition program was not automatic. The Student had to enroll in a District program in order to receive services.<sup>6</sup> The District did send a postcard to the home during the summer with respect to transition services; however, the Parent did not take any action after receiving it. The Meeting Notes from the Student's January 8, 2020 IEP meeting reflect that multiple options were discussed, but the CTP was not one of those options. The Student seemed to be most interested in attending community college classes in the fall.

The Student experiences challenges related to anxiety and has extremely limited life skills. The Student's emotional health prevents the Student from engaging in everyday tasks that most people take for granted. The Student's January 8, 2020 IEP recognized and noted various needs in the Student's transition services plan to address the Student's anxiety and inability to function both inside and outside of the home. This IEP also created a set of goals specifically designed to assist the Student in tasks that would be necessary for independent living such as counting money, cooking, and filling out employment applications.

The Student's January 6, 2021 IEP goals reflected the Student's need for independent living skills and daily communication skills. This IEP, which was created after the Student was enrolled in CTP, included goals in basic skills such as calendaring appointments so the Student would not forget them, cooking skills, vocation skills (such as participating in mock interviews), and using the internet to locate job opportunities. The IEP also included developing skills to get a driver's license.

The Student's IEP was amended on April 19, 2021 in response to the Student's inability to stay engaged with the CTP program. The Student did not attend that IEP meeting to provide

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<sup>3</sup> OAR 581-015-2200(2)(b)

<sup>4</sup> OAR 581-015-2200(1)(d)

<sup>5</sup> Andrew F. v. Douglas County, 137 S. Ct 998 (2017)

<sup>6</sup> It should be noted that the Student still retained their own educational rights and that it was the legal right of the Student to decide whether or not to pursue transition services pursuant to the Student's IEP.

personal input. The Student's IEP was pared down to two goals — obtaining a driver's license and getting a job. At the conclusion of academic year 2020-21, the Student had scored well enough on the driver's practice tests to show mastery of the materials and to be able to take the driver's test. Further, the Student was engaging (when possible due to anxiety) with the CTP job coach and had been assigned a vocational rehabilitation counselor in order to pursue job opportunities.

In the Parent's February 22, 2021 Petition for Legal Guardianship, the Parent echoes the same concerns as addressed in the Student's IEPs from both January 8, 2020 and January 6, 2021. The Parent states in the Petition that the Student cannot cook, will not keep appointments, and is paralyzed by anxiety. Further, all three of the Student's IEPs in effect during the complaint period create specific short-term goals that would enable the Student to eventually become independent.

The Department does not substantiate this allegation.

### **FAPE (IEP Content and Implementation)**

The Parent alleges the Student was denied a FAPE because the Parent was denied access to the Student's annual progress reports.

At least once, every 365 days, the IEP team reviews the child's IEP to determine whether the annual goals for the child are being achieved and to revise the IEP, as appropriate, to address: any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate.<sup>7</sup> Further, an IEP must address the manner and time in which progress toward achieving measurable annual goals will be disseminated.<sup>8</sup>

In the instant case, the Student was not enrolled in an educational program until December 2020. Upon enrollment, the CTP immediately produced a Progress Report detailing the Student's progress on the goals outlined on the Student's January 8, 2020 IEP. After the Student's IEP meeting was held on January 6, 2021 and the Student's goals changed, the Teacher emailed the Parent an update on the Student's progress towards goals. The Teacher sent Progress Notes to the Parent on February 4, 2021 noting the Student's progress for the start of second semester of academic year 2020-21. When the Student's IEP was amended on April 19, 2021, the Teacher once more emailed the Parent updates on the Student's progress on May 6, 2021, detailing the Student's progress through April 19, 2021 and again at the end of the school year on June 15, 2021 detailing the Student's progress through June 8, 2021.

The Parent also had access to the Student's Progress Reports via StudentVue. There is no evidence that the Student was denied access to a FAPE.

The Department does not substantiate this allegation.

## **V. CORRECTIVE ACTION<sup>9</sup>**

*In the Matter of Portland Public School District 1J*  
Case No. 21-054-027

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<sup>7</sup> OAR 581-015-2225

<sup>8</sup> OAR 581-015-2200(1)

<sup>9</sup> The Department's order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (OAR 581-015-2030(15).) The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. (OAR 581-015-2030(17)-(18).)

Based on the facts provided, the Department does not order corrective action.

Dated: this 18th day of October 2021

x  \_\_\_\_\_  
Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: October 18, 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).)