

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Portland School District 1J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-005

I. BACKGROUND

On February 8, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Portland School District 1J (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 Parents 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 February 15, 2022, 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 March 1, 2022.

The District submitted a *Response* on March 1, 2022, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 3/1/22
2. Exhibit List, 3/1/22
3. Individualized Education Program (IEP), 10/21/20
4. Eligibility Summary Statement, 10/21/20
5. Special Education Placement Determination, 10/21/20
6. IEP Meeting Minutes, 10/21/20
7. Prior Written Notice (PWN) - Notice of Triennial, 2/13/20
8. Disability Statement Developmental Delay, 10/21/20
9. PWN - Notice of Eligibility, 10/21/20
10. PWN - Changes to Assessment Plan, 10/20/20
11. Notice of Team Meeting, 2/13/20
12. Parent/Guardian Consent for Individual Evaluation, 2/13/20
13. PWN – Provision of FAPE, 10/21/20
14. Occupational Therapy (OT) Assessment, 10/21/20,
15. Confidential Psycho-Educational Report, 10/21/20

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. Speech/Language Short Form Report, 10/21/20
17. IEP, 9/15/21
18. IEP Progress Report – Measurable Annual Goals, 1/4/22
19. Special Education Placement Determination, 9/15/21
20. Notice of Team Meeting, 9/13/21
21. PWN – Provision of FAPE, 9/15/21
22. Meeting Minutes, incorrectly dated 9/6/21
23. IEP Meeting Minutes, 9/15/21
24. Meeting Minutes, 1/20/22
25. Meeting Notes, 1/13/22
26. IEP Meeting Minutes, 1/5/22
27. Parent/Guardian Consent for Individual Evaluation, 9/15/21
28. Behavior Support Team Consultation and Observation Summary Report, 9/29/21
29. Worksheet for Function-based Behavior Support Planning, 10/6/21
30. Multidisciplinary Autism Report, 12/14/21
31. Meeting Minutes, 10/18/21
32. Meeting Minutes, 12/15/21
33. List of staff knowledgeable about the Complaint, 3/1/22
34. Email exchanges between the District, Charter School Staff, and the Parents, 4/8/21 - 2/8/22

The District submitted additional documents on March 11 and 16, 2022:

1. Behavior Notes, 10/7/21-10/15/21
2. Behavior Data Forms, 10/22/21 – 12/16/21
3. Meeting Notes, 11/12/21
4. Untitled Schedule, 11/15/21
5. Schedule for the Case Manager, 10/27/21
6. Visual Schedule, undated

In the District's *Response*, it stated that the investigator should contact the District-sponsored charter school (Charter School) that the Student attended for additional records and communication. The Charter School submitted relevant documents on March 16 and 18, 2021:

1. Level 1 Student Behavior Forms, 9/14/21-1/6/22
2. Email exchanges between Charter School Staff, the Parents, and District Staff, 9/7/21-1/17/22
3. Statement from the Charter School Music Teacher, undated
4. Charter School Director's Personal Notes, 9/21/21
5. Charter School Music Teacher's Schedule, undated
6. Charter School Movement Teacher's Schedule, undated
7. Student Re-Entry Support Plan, 10/21/21,

The Parents submitted a *Reply* on March 10, 2022, providing an explanation and rebuttal, and documents in support of the Parents' position, as well as additional documents submitted on March 16, 2022. The Parents submitted the following relevant items:

1. Parents' *Reply* to the District's *Response* to *RFR* (Parent Statement), 3/10/22
2. Email exchanges between the Parents, the District, and the Charter School, 11/4/21 – 1/3/22

3. District Speech Pathologist Observation, 3/2/22
4. IEP, 2/16/22

The Complaint Investigator interviewed the Parents on March 15, 2022. On March 15 and 16, 2022 the Complaint Investigator interviewed District personnel. On March 16 and 18, 2022, the Complaint Investigator interviewed Charter School personnel. Virtual interviews were conducted 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 February 9, 2021, to the filing of this Complaint on February 8, 2022.

Allegations	Conclusions
<p>When IEPs Must Be In Effect</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>Substantiated</p> <p>The District did not provide special education and related services in accordance with the Student's IEP, did not monitor progress on the Student's goals, and did not provide IEP Progress Reports.</p>
<p>Evaluation and Reevaluation Requirements</p> <p>The Parents alleged that the District violated the IDEA by not evaluating the Student as needed, despite the Parents' request for additional evaluations.</p> <p>(OAR 581-015-2105; OAR 581-015-2110; 34 CFR §300.303; 34 CFR §300.304)</p>	<p>Substantiated</p> <p>The District did not follow IDEA evaluation requirements. The District did not meet the 60 school day evaluation timeline. The Student's eligibility for special education was not determined until two years after the Parents signed consent for the evaluation.</p>
<p>Parent Participation</p> <p>The Parents alleged that the District violated the IDEA by failing to provide the Parents with an opportunity to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.</p>	<p>Substantiated</p> <p>The Parents participated in the September 15, 2021 and January 5, 2022 IEP meetings.</p> <p>A placement decision was not discussed or determined before the Complaint was filed.</p>

<p>(OAR 581-015-2190; 34 CFR §300.322)</p>	<p>However, the District’s failure to provide IEP Progress Reports and monitor progress on the Student’s IEP goals interfered with the Parents’ right to remain informed of, and participate in, educational decisions concerning the Student.</p>
<p>Free Appropriate Public Education (FAPE)</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>Substantiated</p> <p>The District did not follow IDEA requirements for implementing special education and related services in accordance with the Student’s IEP, evaluating the Student, and parent participation, resulting in lost educational opportunity and denial of FAPE.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • Accountability by disciplinary action to all involved in the wrong assessment. • Accountability by disciplinary action for systemic retaliation against the Student and family. • Implementation of technology tools specific to the Student’s needs. • Implementation of skilled resources specific to the Student’s needs. • Individual summer program for educational opportunities lost. • A formal letter of apology for wrongdoing.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department’s receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before February 9, 2021. 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 8 years old and in the second grade.
2. The Student was evaluated by the District and found eligible for special education as a child with Developmental Disability (DD) on March 9, 2017.
3. The Student received a medical diagnosis of autism spectrum disorder (ASD) at age three.
4. The Student started kindergarten at a District-sponsored charter school (Charter School) in September 2019.

5. A February 13, 2020 Parent/Guardian Consent for Individual Evaluation (Evaluation Consent) included the following:
 - a. “[The Student’s] three year reevaluation for special education is coming due. [The Student] is currently eligible under Developmental Disability. [The Student] may qualify under Autism Spectrum Disorder.”
 - b. List of Assessments: Sensory Processing Measurement, Social Communication Assessment, Childhood Autism Rating Scale - second edition (CARS2), Developmental Profile, Observations (to include one direct interaction), Teacher Interview, Classroom Communication and Learning Checklist, Pure Tone Audiometric Screening (vision screening).
 - c. The Evaluation Consent was signed by the Parents on February 13, 2020.
6. In March 2020, District schools shut down due to the COVID-19 pandemic. Attendance for the remainder of the 2019-20 school year, as well as the 2020-21 school year, was through Comprehensive Distance Learning (CDL).
7. 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).
8. Charter School staff and District special education staff assigned to the Charter School reported that the Student consistently attended distance learning sessions.
9. An OT reported that the Student always had a Parent’s support during online learning. During online sessions, the Student’s attention would wane and the Student would get up and start to wander away from the computer. The Parent was able to redirect the Student and keep the Student on task. The OT reported that virtual learning was easier because the Parent had more influence with the Student than the Student’s team had in the classroom.
10. On October 21, 2020, the District convened an IEP meeting to determine the Student’s eligibility and develop the Student’s annual IEP.
11. The October 21, 2020 District Meeting Notes included the following:
 - a. The team was not able to conduct the ASD evaluation or observe the Student in person. The notes indicated that the team “would like to keep DD eligibility until COVID-19 pandemic is controlled and students and teachers are back in brick and mortar setting.”
 - b. The Parents shared that the Student had a medical diagnosis of ASD and was diagnosed two weeks prior with attention-deficit/hyperactivity disorder (ADHD).
 - c. The District was able to complete an occupational therapy (OT) evaluation. OT services and accommodations for heavy lifting and movement breaks throughout the day were added to the IEP.

12. The October 21, 2020 OT Assessment Report stated, "This Re-evaluation is written during the Covid-19 pandemic. Per executive order of the governor, school buildings were closed statewide on 3/13/20 and educational services were paused. School buildings are to remain closed, and distance learning to continue... Present level data for this Re-Evaluation was gathered prior to 3/13/20, in addition to data collected after 4/13/20 from distance learning services, file review, and anecdotal data from throughout the year."
13. An October 21, 2020 Speech/Language Short Form Report stated that the Student's three-year reevaluation was due in the spring of 2020 but was delayed because of COVID-19 related school closures. The Report contained "file review and existing information results," with assessment and observation information from 2017. In addition, the Report stated that the Student "participated in several google meet group sessions that were facilitated by the SLP and [the Case Manager]."
14. The October 21, 2020 IEP included the following, in relevant part:
 - a. Parent Concerns: The Parents "would like [the Student] to be mainstreamed and be seen as typical as possible....and they are concerned about [the Student] being placed away from peers in special education."
 - b. Present Levels:
 - i. The Student has not attended in-person schooling since March 2020. "This academic and social isolation has been difficult for [the Student]."
 - ii. Last year the Student worked on listening skills, "but continued to have difficulty attending to tasks or activities for long amounts of time, beyond listening to stories."
 - iii. The OT evaluation "indicated some challenges with adaptive responses to [the Student's] sensory environment."
 - c. Annual Goals: included two goals in the area of Communication (rules of conversations and respond to questions), three goals in Classroom/School Skills (maintain distance between self and peers, demonstrate on-task behaviors, and demonstrate understanding by following a series of three oral instructions), and one goal in Academic Readiness (respond verbally to questions and retell a story with a beginning, middle, and end).
 - i. Progress on annual goals to be reported to the Parents every trimester with written progress notes.
 - d. Specially Designed Instruction (SDI): Communication (360 minutes per trimester), Classroom/School Skills (15 minutes per week), and Academic Readiness (15 minutes per week).
 - e. Related Services: OT (120 minutes per year).
 - f. Accommodations: individualized prompts to end preferred activities and transitions; visual schedules and supports for independent task completion and for new routines and tasks; functional movement breaks and heavy lifting tasks; social narratives for social interactions, specific positive praise to shape behavior; regular check-ins and prompts; and frequent movement breaks.

- g. Supports for School Personnel: Special education consult with general education (210 minutes per year).
 - h. Nonparticipation Justification: removed from general education for 3% of the school week.
15. On October 21, 2020, the District issued a Prior Written Notice (PWN) - Notice of Eligibility which stated that “finding [the Student] eligible under Autism Spectrum Disorder was rejected since the ASD evaluation was not able to be completed due to school closures.”
 16. On October 21, 2020, the District issued a PWN - Changes to Assessment Plan, which stated:
 - a. “Team notified parent of the need to change/remove/add an assessment due to the impact on assessments with implementation of Comprehensive Distance Learning.”
 - b. “In Comprehensive Distance Learning, assessments are not able to be provided in person.”
 - c. “The team and parent has agreed [*sic*] that CARS-2, observations, Fine motor, or Functional Communication assessments will be removed or replaced to the consent for evaluation form.”
 17. When asked about the evaluation delay, the School Psychologist reported that the team did not have clarity from the District or the Department on how to conduct evaluations, particularly with autism because of the need for interaction and observation. The team decided to defer the evaluations for ASD and renew DD eligibility so that the Student would continue to receive special education services.
 18. No other documents or emails were provided by the District for the 2020-21 school year, except for two email exchanges from April 2021. No IEP Progress Reports were provided for the 2020-21 school year.
 19. The Case Manager stated that IEP Progress Reports are usually sent but “it was a crazy time” and the Case Manager had a caseload of 45 students. If the IEP Progress Reports were not completed, the Case Manager stated it was because of a lack of time.
 20. When asked if the Student worked on IEP goals during the 2020-21 school year, the Case Manager was not sure which goals were worked but recalled spending a lot of time with the Student to engage in joint attention with peers and adults.
 21. In response to requests for service logs, notes, or other documentation as evidence that SDI was delivered and progress monitoring occurred, no documents were provided to the Complaint Investigator.
 22. Before the start of the 2021-22 school year, the Student’s second grade teacher (Teacher) started contacting Charter School and District staff to request additional adult support for the classroom. The Teacher had previous experience with the Student as the Teacher was formerly a paraeducator with the District and worked in the Student’s kindergarten classroom. The Teacher anticipated that the Student would need additional support in the classroom.
 23. On September 2, 2021, the Student attended the first day of second grade.

24. District and Charter School staff reported that the Student struggled at school from the first day of school. The Student had a hard time transitioning from at-home learning to the school environment. The number of people in the classroom overwhelmed the Student. The Student had difficulty sitting in their chair, attending to instruction, following directions, and the Student was often dysregulated.
25. The Teacher reported that there were significant safety concerns from the start. On weekly walks to the park, the Student often eloped from the group even with extra adults present, and one time ran across a busy intersection. After this incident, the Parent was invited to join the weekly park walks because of concerns about the Student's safety.
26. The Teacher reported that the Parents asked to have "direct and open communication" with the Teacher about how the Student was doing at school. The Teacher had daily phone calls or text message exchanges with the Parents. Every time there was a behavior concern, the Teacher called or texted the Parents.
27. At the beginning of the school year, the Charter School started assigning staff to help the Teacher with the Student in the classroom. The Charter School Music Teacher was assigned to be with the Student one-on-one for 45 minutes each day. The Teacher was given a radio to call for help when additional adult support was needed.
28. As the school year went on, the Charter School continued to assign more Charter School staff with extra time available to help support the Student, both as scheduled assistance in the classroom as well as on-call support. This on-call support included teachers, office staff, and other Charter School personnel. The Director extended the working hours of some staff in order to have more support available for the Student. District special education staff at the Charter School were also called into the classroom to help support the Student if someone was available.
29. Staff members consistently reported that when extra support was in the classroom to help with the Student, the adult was primarily trying to keep the Student regulated and prevent the Student from distracting the rest of the class.
30. The Case Manager reported that the Student was often yelling in the classroom, leaving the class, and not following directions. The team was not able to get the Student to complete work. Witnesses reported that the most they could get the Student to do was to write their name or draw a picture, but nothing related to what the rest of the class was doing.
31. In response to the Teacher's concerns, the School Psychologist reported consulting with the Teacher about the Student's needs. The team started expanding the Student's accommodations and getting additional adults to come into the classroom to help. The level of disruption to the classroom was high, affecting the learning of the other students. The team continually communicated with the Parents about this.
32. When asked whether getting additional adult support from the District was considered, staff members reported the following:
 - a. The Director reported that, early in the school year, the District made it clear that the Charter School would not get any additional adult support from the District, as the District had a staffing shortage and no paraeducators were available.

- b. The Case Manager reported that the team talked about additional adult support, but the District said it was not a possibility.
 - c. The SLP reported that early in the school year, the District's Program Administrator (PA) in charge of the Charter School said paraeducators were not available this year. The SLP stated that getting additional adult support for the Student was not an option.
 - d. The Charter School Education Coordinator (Education Coordinator) reported that trying to get additional adult support from the District was a constant issue. The Student needed a paraeducator with them throughout the day. The Charter School tried to piece together a support schedule of adults available at the school, but the Student needed a consistent support person.
 - e. The Teacher reported requesting additional adult support from day one but was told that it was nearly impossible to get a paraeducator. The District was short staffed, and the Teacher was expected to also perform the role of a paraeducator.
33. On September 8, 2021, the Case Manager emailed a District Behavior Analyst, asking for help with the Student. The Case Manager wrote, "[The Student] has been extremely dysregulated and seems miserable. Today, [the Student] was crying and yelling and asking to go home..."
34. The Student's special education team reported that they were unable to pull the Student from class for SDI as planned because it caused the Student to become too dysregulated. Instead, the team started pushing into the classroom. However, much of the service time was spent trying to help the Student stay regulated.
35. The Case Manager was not sure if the Student's IEP goals were worked on. The Case Manager stated that they worked on interventions, but the Student was not regulated enough to work on the goals. The Student had no joint attention and was not ready to learn what they were trying to teach.
36. The SLP was originally scheduled to pull the Student out of class for services for 30 minutes per week. However, additional time was added based on times of day identified as most difficult for the Student. The SLP pushed into the classroom to be available for the Student, as well as work with the Student on the IEP communication goals.
37. The OT was scheduled to be with the Student for 20 minutes per week to go over routines and calming strategies but reported often staying longer than scheduled because the OT did not feel comfortable leaving the Teacher without adult support.
38. On September 9, 2021, the Music Teacher emailed Charter School administration to express the following:
- a. "I just wanted to reach out to express my urgent concern for [the Teacher] and needing an [sic] 1 on 1 helper for [the Student]."
 - b. "[The Student] constantly takes [their] mask off. [They have] no spatial awareness with other children. [They get] into everything around the room and [scream] when I ask [them] to put things back This is all while I am with [them] one on one. I could go on, but I think this paints a picture of how stressful it is and I can't imagine handling all of these issues and a class full of children."

- c. "I have never written an email like this concerning a student and just felt like I could not let this day go without addressing it. I am writing this to advocate for a Paraprofessional to be with [the Student]. I do not believe it is safe for [the Student] or the class to not have a one on one."
39. In a September 14, 2021 email to the PA, the Case Manager expressed the level of the Student's dysregulation. "We have observed [the Student] in all school environments... When the Student is dysregulated [*sic*] [the Student] is yelling, crying, and or [*sic*] running throughout the classroom, running out of the classroom, and not attending to [the Teacher's] directions and redirections. Teachers are struggling to meet [the Student's] needs and keep [the Student] safe while teaching ... [The SLP] and I need guidance and support. We don't think this placement serve's [*sic*] [the Student] at all... Parents know that [the Student] is having a difficult time everyday [*sic*] but I don't think they understand the depth and breadth of [the Student's] dysregulation and discomfort... It's clear [the Student] needs more support than we can give [the Student]. What are our next steps?"
40. On September 15, 2021, the District convened a meeting to develop the Student's annual IEP and discuss evaluations.
41. The September 15, 2021 District IEP Meeting Notes stated in part:
- a. "Challenges staying with the group/class... cries at times and it's unclear what is driving the discomfort... concerns with safety: ran across intersection during park walk."
 - b. The Student is not "attending to teacher and appears to be overstimulated with the number of students, noise and movement within class environment."
 - c. The team conducted evaluation planning and "discussed need to update [the Student's] school eligibility to ASD."
42. The September 15, 2021 IEP included the following, in relevant part:
- a. Parent Concerns: Parents noted a desire for the Student to be included in the general education setting, to be informed as issues arise, and concern over possible safety concerns, especially given the student's race.
 - b. Present Levels:
 - i. "This IEP is being written during the first seven days of school and during the transition of out-of-school for one year and seven months. The transitions for [the Student] have been difficult and [the Student] has not participated yet in the class assessments."
 - ii. "[The Student] is continuing to practice following the classroom routines, staying with [the Student's] class, expressing [themselves] safely when [the Student] is dysregulated and engaging with classroom activities and appears to need a lot of adult support throughout the day. [The Student] appears to benefit from visual schedules and visual routines. However, it is challenging to get [the Student] to engage with joint attention to provide direct instruction around these visuals and routines."
 - iii. "Has had difficulty attending to work in a busy classroom setting and following the COVID-19 protocols."

- c. Special Factors: The Student's behavior impedes their own learning or the learning of others. "[The Student] is active in the classroom, such as screaming, yelling, walking, singing, blurting out, and not following the teacher's directions. The OT, SLP, and special education teacher are collaborating with [the Teacher] to support [the Student] with accommodations, and interventions."
 - d. Annual Goals: the three Classroom/School Skills goals were carried over word-for-word from the previous IEP; the Academic Readiness goal stayed the same; and the two Communication goals were updated (engage in joint attention with peers and adults during preferred activities and progressing to non-preferred activities, and communicate wants and needs using visuals and verbally through practicing with social stories).
 - i. While the Communication goals included measurable baseline data, all three Classroom/School Skills included the same present level statement: "The school year is just beginning (6 days). [The Student] is having a difficult transition to face-to face learning, such as [COVID-19] personal space protocol, sitting quietly in [their] seat, and following directions."
 - ii. Progress was to be reported to the Parents every trimester with written progress notes.
 - e. SDI: Communication (increased from 360 to 450 minutes per trimester); Academic Readiness (increased from 15 to 30 minutes per week); and Classroom/School Skills (increased from 15 to 45 minutes per week).
 - f. Related Services: OT (120 minutes per year).
 - g. Accommodations: quiet space to unwind; social narratives, token board with fidget incentives, visuals, prompts; visual schedule and supports in steps for independent task completion, new routines and tasks; functional movement breaks; regular check ins and prompts / cues for next steps, with least to most prompting such as visual cues to verbal prompts; 5 minute prompt before an activity ends and 5 minute prompt for transition to another building, outside, and end of the day; and frequent specific praise and reassurance 5x to 1 gentle correction to shape behavior.
 - i. All accommodations to be provided by "Special Education Provider/General Education Teacher."
 - h. Supports for School Personnel: Behavior support consult added (60 minutes per year).
 - i. Nonparticipation Justification: removed from general education classroom for 6% of the school week. "[The Student] needs specially designed individual and small group instruction to make progress in the general education curriculum and classroom."
43. Participants in this IEP meeting agreed that a discussion about adult support did not occur.
- a. The Teacher reported that the PA said before the meeting that the Teacher should not bring up the issue of adult support in front of the Parents because they have always insisted on wanting the Student in general education, and the team needed to "tread lightly."

- b. The Director's personal notes stated, "para shortage," "[The PA] plant seed for placement," and "will get data for next 60 days."
 - c. The PA could not recall whether adult support was discussed at the IEP meeting but reported that the team was focused on implementing IEP supports and getting observation data, which is the normal process if there is a request for adult support. The discussion at the meeting was about the Student's behaviors and what the team could do to address them.
 - d. Staff members reported being surprised that additional services and supports were not added to the IEP.
44. The District issued a Special Education Placement Determination dated September 15, 2021, which stated, "General Education Greater than 90% with Special Education Support." Other options with more special education support were rejected as "not meet[ing] the Student's needs at this time."
45. A September 15, 2021 Evaluation Consent was signed, which included assessments that were listed on the February 13, 2020 Evaluation Consent but not completed (e.g., Social Communication Assessment, CARS2, and Pure Tone Audiometric). In addition, the Adaptive Behavior Assessment System 3rd Edition was added.
46. On September 20, 2021, the Charter School completed a Behavior Form related to an incident in which the Student was upset and kicked the Teacher. The Parents were notified of the incident by phone, and according to the Director's personal notes provided to the Complaint Investigator, the Parents offered to pick up the Student.
47. Between September 20, 2021 and January 13, 2022, 16 behavior forms were completed for the Student. Most of these behaviors involved incidents of physical aggression towards staff or peers or other instances of unsafe behavior such as elopement and climbing on elevated objects.
48. The Director reported that the Charter School only completed Behavior Forms when the Student's behavior was significant; otherwise, they would have had to complete multiple forms per day.
49. A September 29, 2021 District Behavior Support Team Consultation and Observation Summary Report included the following information:
- a. The IEP team requested consultation from the District Behavior Analyst on September 9, 2021 "for support in identifying evidence-based strategies to support [the Student] in accessing [their] educational environment and supporting [the Student] to remain with [their] class during educational activities."
 - b. Behavioral Observations, September 21 and 22, 2021: "[The Student] was observed to leave the classroom without permission and wander away from ongoing classroom activity. This behavior was noted to interfere with [the Student's] ability to attend to educational and general classroom activities. This behavior was most likely to occur during longer periods of group instruction when [the Student] had not received explicit direction for several minutes at a time."

The Student was most engaged when the “environment was highly structured, [the Student] was seated in a supportive chair to provide boundary awareness, visual supports were being utilized, and [the Student’s] teaching team ensured they had [the Student’s] attention before giving instructions 1-step instructions [sic] to participate in the ongoing activities.”

- c. Behavior Observed: The Student crossed the threshold of the classroom or left the group without permission in 60-67% of intervals.
 - d. Hypothesized Function: The Student may be leaving the class or group “in order to access different environments, items or activities... the behavior may also function to delay demands or transitioning to less-preferred tasks/activities/locations... The team should continue to collect ABC data to further inform this hypothesis and develop function based interventions to support [the Student].”
 - e. Recommended Proactive Strategies: collaborate with the Charter School to create a safety plan, consult with OT and schedule functioning movement breaks, use visual schedules and support, functional communication training for the Student, teachers should review classroom rules and expectations with the Student throughout the day, limit access to highest valued reinforcing items for remaining in or with the class, add token system for positive reinforcement, and provide frequent praise for engaging in expected classroom behavior.
 - f. Safety Plan: “A response strategy should be identified... This will ensure all team members have a plan of action should [the Student] exit the classroom or leave the ongoing activity without permission.”
50. Following this meeting, District and Charter School staff reported filling out daily behavior intervention data sheets provided by the Behavior Analyst from mid-October through December 2021, which tracked observed behavior and interventions tried.
51. On September 30, 2021, the Teacher emailed the PA to express significant concerns about the Student. In response, the PA wrote, “I do want to acknowledge that I know you are very concerned about [the Student], and also, I want to assure you that all personnel resources at our disposal are working together as quickly as possible to thoughtfully address [the Student’s] needs while being cognizant of the impact of [the Student’s] behaviors to [themselves] and others.”
52. The Teacher reported that the Student’s accommodations and interventions did not seem to be helping. The Teacher continued to request additional adult support from the District special education team, expressing concerns about safety for the Student, the rest of the students in the class, and the Teacher. An adult always needed to have eyes on the Student in case the Student eloped. With each request for additional adult support, the PA said the team had to collect more data. The Teacher asked how many weeks of data was needed, but was never given an answer.
53. The Director reported that the team had many meetings to discuss how to support the Student. Both the Charter School and District team members felt that the Student needed more support, but the PA said they needed to gather more data to justify the need for additional adult support.

54. The District convened a meeting on October 6, 2021 and developed a Worksheet for Function-based Behavior Support Planning (BSP). Attendees included a Parent, the Case Manager, the School Psychologist, the BA, and the Education Coordinator. The BSP included several strategies and interventions that were not listed in the Student's IEP or on the list of interventions recommended by the Behavior Analyst. The BSP was not added to the Student's IEP.
55. It is unclear whether the BSP was provided to staff. The Teacher reported not knowing that a BSP existed and had never seen the October 6, 2021 BSP. The Director also did not know anything about the BSP.
56. On October 15, 2021, the Case Manager emailed Charter School staff asking for a copy of the Student's safety plan. The Teacher responded by stating that when the Student elopes, "Our safety plan has been to utilize the [radio] and say, 'I need support for [the Student] (and give location)'... whoever is available in that moment comes to respond. Many staff are aware and have offered to put eyes on the situation if they see students out of the classroom, or in another location around the school. As for Park Walks, because of running across [a busy street], [the Parent] usually joins us... [The Parent] will be joining us for Field Trips."
57. When asked if the Student had a safety plan, the School Psychologist reported that the team did a functional behavior assessment (FBA) and behavior support plan, which included aspects of how to respond to the Student when there was a problem. The Charter School office staff was the first line of response, not the District special education staff. The School Psychologist said that they left it up to the Charter School administrative team and counselor to set up a formalized response plan.
58. There is no evidence that consent to conduct an FBA was obtained, nor is there any evidence that an FBA was conducted.
59. According to interviews, the Charter School developed its own safety plan, as described in the October 15, 2021 email, although nothing was formally documented. The District did not develop a safety plan for the Student and a safety plan was not added to the Student's IEP.
60. The School Psychologist reported that the Student exhibited some incredibly dangerous behaviors, such as climbing on things. The team could not get the Student to follow verbal directions, and the Student became more aggressive as time went on. When this information was shared with the Parents, they were surprised, because the Student had never been aggressive at home.
61. In an October 19, 2021 email to the team, the Teacher reported multiple Student behaviors, including being kicked by the Student. "This is a new behavior that I have experienced and am not feeling good about. I will be meeting with [the District Behavior Analyst] ... to go over the token system but would really like to get consistent support as behaviors are increasing this week (kicking, cursing, crying/shouting out for extended periods of time) and I am the only adult in the room."
62. On October 19, 2021, there were three Behavior Forms completed for incidents in which the Student (1) "was out of seat and walked to [a Peer], squeezed [the Peer] and cursed in [the Peer's] face.," (2) "was upset as we were lining up by the garden, kicked teacher in the shins. Student kicked teacher in the shins again when coming into the school," and (3) the Student put their arms around a peer and "wouldn't let go" and "continued to chase after [the Peer]."

The Student was suspended for kicking the Teacher. The Parents were contacted by phone. A re-entry meeting was scheduled for October 21, 2021.

63. At the re-entry meeting, the Charter School developed a Re-Entry Support Plan in which the Parents stated that they “didn’t want [the Student] to get racially profiled... big concerns over [the Student] being pegged as physically aggressive/violent.” The document included a list of behavior supports that the team had been using and noted that the Parents and the Teacher expressed “need for one to one support.”
64. The Director reported that the Charter School does not suspend students for disrespect or defiance, only for physical aggression and threats. Parents are only told to pick up a student if the student is suspended. Anytime a student is suspended, there is a re-entry meeting before the student returns to school.
65. The Director reported that the Parents were insistent that they did not want the Student to be suspended. They did not want suspensions on the Student’s record and were worried how it would impact how others saw the Student. The Parents wanted communication from the school anytime the Student was dysregulated. Anytime the Charter School called and shared this information, the Parents wanted to pick up the Student to avoid the possibility that the behavior could lead to a suspension.
66. After the October 20, 2021 suspension, the Charter School assigned the Movement Teacher to be with the Student one-on-one for 30 minutes per day, in addition to the extra support provided by the Music Teacher, for a total of one hour and 15 minutes per day of scheduled one-on-one support provided by Charter School staff.
67. On November 2, 2021, the School Psychologist emailed the team and additional Charter School staff, stating “[the PA] is asking that we make sure that we’ve tried to implement ASD supports with fidelity and with data collection before they will consider moving [the Student] to a more restrictive environment, particularly since [the Parents] want [the Student] to stay in gen ed [sic]. I don’t think we’ve really been able to fully implement those supports so we brainstorming [sic] how to get it done.”
68. On November 3, 2021, a meeting was held to talk about behavior interventions to support the Student. The Parents did not attend the meeting, stating that they “were both at work and both distracted due to demand.”
69. On November 4, 2021, in an email exchange with the team about an upcoming meeting, the School Psychologist stated that the team needed to “design the best prevention, intervention and accommodation plan for [the Student]. This is essential if we are thinking [the Student] will need a higher level of special education placement ie [sic] a Special Class. We aren’t there yet though. Our inquiries about placement have been kicked back to us to make sure done [sic] our part in helping [the Student] be successful in gen ed [sic].”
70. In a November 4, 2021 email to the Director, the Parents reported that, when they picked up the Student early, the Student was crying because the Student was wet and wanted to go inside the school. The Parents reported that the Student’s physical movements were taken out of context and expressed concern that the Charter School was creating a negative profile of the Student, and that the District did not have data to show what interventions were working or not.

71. The Parents reported that they requested behavior intervention data from the District on several occasions, but the District never provided any.
72. On November 12, 2021, a meeting occurred between Charter School and District special education staff. The meeting notes stated that the goal was “consistency in support that [the Student] is receiving throughout the day.” The team discussed behavior incidents and the Student’s transition to a different class with a new teacher (the New Teacher) at a future date. The notes also included a large list of interventions and how to implement them, as well as what staff should do in response to the Student’s dysregulation or unsafe behaviors. It is unclear who this information was shared with, but it was not added to the Student’s IEP or behavior plan.
73. In a November 17, 2021 email to the Educational Consultant about parent-teacher conferences, the Teacher stated, “I would love support with [the Student’s] meeting to talk about the lack of assessment data and no academic content to share.”
74. In a November 17, 2021 email to the Behavior Analyst, the SLP reported that the Student had been climbing on things, such as chairs, tables, recycling bins, dumpsters, and short walls. The Student had fallen off of a chair a couple of times that week. The SLP requested guidance on what language or other strategies to use in these situations.
75. In a November 17, 2021 email to Charter School and District staff, including the PA, the SLP reported talking with one of the Parents about how “[the Student] has been really struggling at school despite our effort with the school team implementing a variety of interventions. [The Student] is struggling with the majority of [their] class activities and teachers. [The Student] is becoming more physical... and continues to cry and yell often. We have met as a school team with and without parents around 4 different times to collaborate and best support [the Student]. We have been collecting the data using the data sheets that [the Behavior Analyst] provided us since mid October.” During the talk, “[the Parent] stated that they were ready to move forward with a placement change. [PA], what are our next steps? Please let us know as soon as possible.”
76. In a November 17, 2021 email to the Parents, the Teacher wrote, “I’m glad [the Student] was able to get home today... [The Student] had a challenging day at school.” In response, the Parents asked if there was anything that was not working and what changes could be made to keep the Student in the class and in the Student’s seat.
77. On November 18, 2021, a Charter School staff member reported that the Student was unsafe at recess every day that week. “There have been at least five adults who have had to try and get [the Student] down from dangerous places on the dumpster, garbage cans and basketball hoop. There has to be a way for [the Student] to have recess but stay safe.”
78. On November 19, 2021, a Charter School Handwork Teacher emailed the Parents to report an incident at school in which the Student school left the class without permission. The Handwork Teacher reported that although there were three adults in the room to help, the situation was still challenging.
 - a. In response, the Parent asked what was done to help the Student regulate. The Parent stated that the Parents have heard a lot about challenging behavior but not what has been tried and whether it worked. The Parents reported that all they information they received was negative, which was frustrating for the Parents.

- b. The Director suggested that the Student should start in the New Teacher's class on November 29, 2021 and suggested that the classroom change should be full time rather than part time.
79. In a November 15 to 18, 2021 email exchange between the Parent, the Teacher, and the School Psychologist, the Parent wrote that the Student came home and reported being hit by a specific peer. The Student felt anxious about this peer and reported needing to be away from the class because of the peer. The Parent expressed concern that the Student felt bullied.
- a. In response, the Teacher wrote that what the Charter School staff observed was not in alignment with what the Student was reporting at home.
 - b. In response, the School Psychologist stated that "[the Student's] disability of ASD impacts [the Student's] social thinking and communication in important ways. [The Student's] real time interpretation of events may be affected and the [Student's] retell once [the Student] gets home is also likely to not match events and circumstances exactly." There might be "ambiguities or distortions to [the Student's] retelling of events."
 - c. The Parent responded by requesting that the Student be moved to the other classroom.
80. The Student started in the other second grade classroom with the New Teacher on November 29, 2021. The New Teacher reported that the first day went well.
81. On December 1, 2021, the Student's third day in the new class, the New Teacher reported the following by email to the team:
- a. "My entire class was dysregulated for the first few hours of the school day in a way that I've never seen before. I had students crying, covering their ears, yelling, taking breaks in the hall, and shouting that [the Student] needs to go to the principal's office. This happened both when other adults were in the room and when I was the only adult... learning couldn't happen."
 - b. "When I returned to my classroom at the end of Handwork class, some students were crying and many told me that [the Student] had grabbed them or squeezed their arm." At the end of class "[the Student] tackled multiple students and laid on top of them. They were screaming to get up. Based on behaviors today, it seems like I will need a restraint training in order to keep students physically safe."
 - c. Throughout the day, I used all of the visual cues and positive reinforcement tools that were given to me. The rest of my class was very helpful and tried to help redirect [the Student] all day long."
 - d. "I am very concerned about my students' emotional regulation and the impacts to their learning if [the Student] is not given further support."
82. In response to the New Teacher's December 1, 2021 email:
- a. The School Psychologist forwarded the email to the PA, stating, "it sounds like [the Student] is making quite an impact in [their] new gen ed [sic] classroom... We are very near to completion of [the Student's] ASD eligibility and could alter placement then."

- b. The Director reported that the Student had been eloping from the classroom and coming into the office, but they were unable to get the Student to regulate or return to class. The Director had to leave for a meeting and “there were literally no other people to support [the Student].”
 - c. The PA asked where the team was with the FBA, as “that is a critical piece that needs completed asap [*sic*], regardless of where [the Student] may attend school... Sending a student to another school (even to a focus classroom specializing in behavior modification) without sharing your collective hypothesis regarding the function of their behavior would not be setting [the Student] up for success.”
 - d. The School Psychologist reported that the team completed the FBA the previous day but added that “there is nothing magical about an FBA that solves all our problems or removes anyone’s confusion.”
83. It is unclear what FBA the School Psychologist is referring to. The only relevant document provided by the District was the October 6, 2021 Function-based Behavior Support Worksheet.
84. In a December 1 to 6, 2021 email exchange between the team:
- a. The Movement Teacher stated, “I have been struggling to mitigate [the Student’s] unsafe behavior...I have concerns for the direction of the class dynamic. I think because I am making accommodations for [the Student] in movement, other students are both assuming that the same behavior is acceptable and are emboldened to disregard class expectations...The result is that things escalate and both [the Student] and the class became further dysregulated.
 - b. The New Teacher responded, reporting seeing similar effects in the classroom. “When [the Student] is dysregulated, it’s not possible for me to teach or hold the attention of the class.” The New Teacher also reported that other students become overwhelmed, leading to outbursts of yelling, crying, hitting, and running out of the classroom to take a break, and that they were “struggling over whether I should prioritize [the Student’s] behaviors or holding the rest of the class. My instinct has been to not call for support and focus on [the Student], which means that less learning is happening for the rest of the class.”
 - c. The School Psychologist reported having an upcoming meeting with the PA on December 8, 2021, and added “I will make sure [the PA] understands what is happening and the resources we need to realistically support [the Student].”
85. In a December 9, 2021 email to the Parents, the SLP reported an incident that occurred in which a teacher was trying to get the Student to go back to class and the Student climbed on a cart and fell off. When the SLP asked if the Student was okay, the Student “softly punched” the SLP in the stomach. The SLP reported that it seemed like the Student was communicating that [the Student was] upset and not that the Student wanted to hurt the SLP.
- a. The Parent expressed concern that the Student’s “emotional gesture was misunderstood.” The Parent felt that documenting “misunderstood or non-intentional events” was not going to help the Student.
86. In a December 10, 2021 email to the Director, the School Psychologist, and the Case Manager, the New Teacher reported:

- a. "I am asking for more support for [the Student]... I am trying my best to give [the Student] the support that [the Student] needs. [The Student] is not accessing the curriculum or participating in academics. This is not a learning space that supports [the Student], and the rest of my class is deeply affected by [the Student's] behavior."
- b. "Every day [the Student] puts hands on other students, and pushes, hits, and kicks other students and teachers... I do not have restraint training and am limited with how I can intervene. My classroom is often not a safe space for students or teachers...."
- c. "I am very frustrated that the solution was to switch classes without giving further supports. [The Teacher] needed more support and asked for more support, and now I need more support and am asking for more support."
- d. "Each day [the Student] is there, I need another adult in the room at all times. My classroom is an unsafe space for students, and something needs to change soon."

87. The School Psychologist replied to the New Teacher's email on December 10, 2021, stating, "I too am being frustrated w [sic] the situation in which we are being made to jump through hoops to prove [the Student] needs a higher level of support from [special education]. [The Student] and [their] adults are suffering from the mismatch between [the Student's] needs and support. [The District] is understaffed due to shortages and we are told there is no para available on a temporary basis. We are completing [the Student's] ASD eval [sic] soon and my hope is that the IEP meeting where that is finalized will be pivotal."

88. In interviews, the New Teacher reported:

- a. The New Teacher received lot of ideas for support but felt like the Student needed someone with them full time. Most of the New Teacher's time was spent trying to keep the Student regulated. The Student did not participate in class instruction, but when an extra adult was there the Student was able to focus more and stay in their seat.
- b. The New Teacher had to modify established class routines, move supplies, change the types of songs the class listened to, and change transitions because these things would cause the Student to be dysregulated.

89. A December 14, 2021 Multidisciplinary Autism Report included the following:

- a. "[The Student] was able to attend to a task for about 30 seconds and occasionally respond to verbal directions to come back to the table and engage in the activity."
- b. "[The Student's] scores on the CARS-2 indicated a score in the upper end of the 'Moderate Symptoms of Autism'.... Areas of largest impact were in Adaption to Change and Activity Level."
- c. "[The Student] appears to struggle with tracking conversations, sequencing events, telling a cohesive story, eye contact and joint attention."
- d. "[The Student] struggles to attend to direct instruction, teacher directions unless it is for a preferred activity and following classroom/school expectations."

- e. “[The Student] appears to struggle with connecting with peers, social awareness/social rules.”
 - f. “[The Student] may use physical contact toward school staff and students and yelling, to express discomfort and dysregulation.”
90. The SLP emailed the Parents on December 16, 2021 and January 4, 2022, asking for a medical statement for the Student’s ASD and OHI eligibility, adding that without this information the team would not be able to find the Student eligible.
91. The Parents reported that, within the first week of the 2021-22 school year, the Charter School started emailing and calling the Parents to ask for help and telling the Parents to pick the Student up early. The Parents stated that they received a phone call at least once a week to pick up the Student, without any suspension documentation.
92. When asked whether the Parents were asked to pick the Student up early, witnesses reported the following:
- a. The Director reported that the Parents said on multiple occasions that they wanted to pick up the Student because they did not want the Student to be suspended.
 - b. The Teacher reported that the Parents asked to know when the Student was having a difficult time. The Teacher would text or call the Parents and explain what was happening, and the Parents would say they were coming to get the Student. The Teacher reported always making it known to the Parents and the Charter School office that the Student was not being sent home.
 - c. The Educational Coordinator said that the Teacher had an arrangement with the Parents to inform the Parents when there was a challenging situation. The Educational Coordinator reported calling the Parents a couple of times, after a few days of the Student exhibiting repeated behaviors. The phone calls were to let the Parents know what was happening and to relay the Charter School’s plan to provide additional support.
 - d. The SLP reported that the Director made the decisions on whether to call the Parents and have them pick the Student up early. The SLP made a couple of phone calls to the Parents when the Director was not available. The team called the Parents when physical contact was made or when the Student’s emotional regulation was beyond what the team could support in the classroom. The SLP did not know how often this occurred.
 - e. The Case Manager did not know whether this occurred but reported that when the Case Manager communicated to the Parents that the Student was struggling, the Parent asked, “why don’t you just call me and let me come and get [the Student]?”
93. When asked whether the Teacher implemented the Student’s accommodations and interventions, witnesses reported the following:
- a. The OT felt like the Teacher saw the OT as help to watch the Student, so the Teacher did not interact a lot with the Student when the OT was in the classroom.
 - b. The School Psychologist reported that the Teacher tried but was a new teacher. There were problems with data collection as the data from the Teacher was anecdotal. The Teacher did not write down what happened right before a behavior incident, so the team

could not analyze the behavior. The team was frustrated and questioned the fidelity of the data. However, the magnitude of the Student's behaviors made this kind of approach to data collection difficult.

- c. The PA stated that the Behavior Analyst made recommendations designed for a general education teacher and special education staff to implement. The PA felt that the Teacher had a hard time implementing the suggestions – which the PA thought were basic and doable by general education teacher with a full classroom. The Teacher was new and clearly overwhelmed. The team reported that there were issues with the Teacher implementing the accommodations and interventions with fidelity or regularity. This is why they suggested switching the Student to the New Teacher.

94. When asked if things improved with the change to the New Teacher, witnesses reported that the transition went well at first, but after a few days the same problem behaviors started occurring again.

- a. The School Psychologist reported that the implementation of accommodations and data collection improved, but the Student's behaviors were still at a very severe level. The Student was in distress and struggling to meet expectations of the classroom. The impact of the Student's behaviors on the new class environment was massive.
- b. The PA reported that the New Teacher was more experienced. The New Teacher communicated to administration that things were not working but did not seem as distraught to the Parents. The Parents thought the change was very helpful and were surprised when the PA told them that the New Teacher reported that the move to the new class was not going well.

95. When asked whether the Student's accommodations or additional interventions provided by the Behavior Analyst helped, both Charter School and District staff stated they did not see any noticeable improvement. Several reported that it would be hard for a teacher to implement the accommodations and interventions independently as the nature of some accommodations and interventions required a lot of adult support.

- a. The School Psychologist reported that adult support helped when an adult was there. The accommodations and interventions did not seem to be making a huge impact based on the data collected.
- b. The Case Manager reported that things got worse as the year went on. It seemed like the Student was communicating to the team that the Student could not be in that environment.
- c. The SLP reported that the team implemented the interventions to the best of their ability and took a lot of data, but it became clear that it was not the support that the Student needed to engage with curriculum and peers.
- d. The Teacher reported that the interventions might have been helpful if there was someone else to implement them, as it was very difficult to provide them while teaching the class.

96. When asked if there were any additional discussions with the District about getting additional adult support for the Student, staff members reported that it was clear that they were not going to get more support.

- a. The School Psychologist reported letting the PA know that the team thought the Student needed more adult support, but because of massive staffing shortages there were no paraeducators. When the PA and other supervisors asked for the data to prove adult support was needed, the team did not have good data and nothing to support a change in the Student's placement. After the Student moved to the more experienced teacher, the team got more data and was able to present it to supervisors to show that there was a need.
 - b. The PA reported that there was a staffing shortage and, if the team determined that a paraeducator for the Student in general education was the least restrictive environment to serve the Student, adult support would not be immediate. The District would have to hire a paraeducator and that would be a process. The PA did not feel that a paraeducator was the solution since the District had not seen interventions implemented consistently and accurately by the Teacher.
97. Of the data collected, the District provided eleven behavior intervention data sheets filled out by the Case Manager and the OT. Although the SLP, Teacher, and New Teacher reported filling out data sheets, these were not included in the materials submitted by the District.
98. The Teacher reported being told by the Behavior Analyst to not share the behavior data sheets with the Parents, as they were for internal use.
99. When asked why the team did not hold a meeting to review and revise the Student's IEP, staff members reported that the District repeatedly said that the team needed to collect more data before any changes could be made.
100. The Director reported that the District said that the Student's IEP needed to be implemented with fidelity before anything could be changed. The Director also reported:
- a. The IEP as written did not provide enough support. It was not possible to implement the IEP as written without additional adult support to help provide the accommodations and interventions. Some were hard to implement because they either required constant adult presence to provide the accommodation in the moment (e.g., "frequent positive praise for and reassurance 5x to 1 gentle correction to shape behavior"), or implementation of the accommodation required that the Student follow directions (e.g., "functional movement breaks (passing out papers, delivering mail) and heavy lifting tasks such as pushing a broom, carrying a heavy book") which the team could not get the Student to do.
 - b. The IEP goals were too ambitious and not accessible. Because of the Student's dysregulation, SDI was not really on the table. Goals such as "demonstrate understanding by following a series of three oral instructions, in the correct order, to complete the task" and "demonstrate (3) on-task behaviors ... for 15 minutes" were not feasible. Staff could not get the Student to follow directions or stay on task for one minute.
101. A January 4, 2022 IEP Progress Report was the only Progress Report provided by the District. The IEP Progress Report did not include any progress information for five of the Student's seven goals. Only the two communication goals included updated progress data. It is unclear whether the January 4, 2022 IEP Progress Reports was provided to the Parents, who could not recall ever receiving an IEP Progress Report.

102. On January 5, 2022, the District convened a meeting to discuss the Student's evaluations, determine eligibility, and review and revise the Student's IEP.

103. The January 5, 2022 IEP Meeting Notes stated the following:

- a. The Parents reported that they had a medical statement with a medical diagnosis of ADHD. The team decided to find the Student eligible for OHI in good faith that the Parents would provide the medical statement as soon as possible. The Parents said they would provide it by the end of the week.
- b. "All members of team provided verbal agreement with ASD eligibility and OHI eligibility."
- c. The team reviewed the Student's DD eligibility and decided that the Student no longer met the DD criteria, as ASD and OHI better described the Student's strengths and challenges.
- d. Under parent concerns, the "Parents wanted to include that they want to make sure [the Student] is not portrayed as a 'problem student/child.'"
- e. The IEP team did not finish reviewing the IEP at the meeting as "Members of the IEP team were needing to leave and return to the classroom and join other meetings. The team scheduled another meeting..." The continuation meeting was scheduled for January 13, 2022.

104. The Parents reported feeling that the District pressured them to provide medical information and the medical questions that the District asked were very invasive. The District had previously stated that if the Parents provided more medical information, the Student could get more services and supports. Since the District never delivered on that promise, the Parents did not trust the District and did not see any reason to provide additional medical information. The Parent felt that any medical information they provided was used against them.

105. When asked whether the Student's eligibility was completed at the January 5, 2022 meeting, the Case Manager reported that the team did not have a medical statement and decided they would finalize eligibility once the IEP was completed.

106. The Parents reported that, on January 6, 2022, they received a phone call from the SLP providing a "heads up" that a decision had been made to transfer the Student to another school. In response, the Parent told the SLP that "we as parents are not willing to place [the Student] in a different school and do not agree with the decision." (*Email dated 1/31/22 described the 1/6/22 PC*)

107. The SLP reported that, after the January 5, 2022 IEP meeting, the PA asked the SLP to contact the Parents to let them know that the team would be discussing placement at the next meeting and one of the options on the table was a communication behavior classroom. The SLP called the Parents on January 6, 2022 and shared this information. When the SLP said that one of the placement options to be discussed was a communication behavior classroom, the Parent stated that they did not agree with that. The SLP reported that the phone call did not involve any discussion about changing schools or that the Student was no longer allowed to attend the Charter School. The PA confirmed that the SLP was asked to make this call.

108. Other staff members stated that to the best of their knowledge, there was never a discussion or decision made that the Student could no longer attend the Charter School.

109. The PA said that placement is the IEP team's decision and the team felt that a communication behavior classroom was something that needed to be considered. However, a decision about placement is not made until the IEP is completed and the team never got to that point.
110. On January 6, 2022, the Charter School filled out two Behavior Form for incidents in which the Student (1) "punched [the New Teacher] in the arm and then in the stomach," and (2) "hit [the Music Teacher] when [the Student] became upset that [the Music Teacher] took [the Student's] pen because [the Student] was drawing on books... [the Student] told [the Music Teacher] that [the Student] 'would kill' [the Music Teacher] multiple times. The Student was suspended for these incidents. The Parents were called by the Director and the Student went home early.
111. The Music Teacher reported that they spent 45 minutes per day in the classroom, mostly assisting the Student. The Music Teacher also reported:
- a. The Music Teacher spent a lot of time trying to redirect the Student. They would take walks in the hallway when the Music Teacher was unable to redirect the Student in the classroom. The Student would sometimes "run outside and away from me and climb the trees or dumpsters. [The Student] would often try to take materials off students [sic] desk or interrupt when they were trying to focus."
 - b. "A lot of the time, I didn't feel like I had the proper training or tools to know how to support [the Student]."
 - c. "I had to write a few incident reports when [the Student] would hit or kick me. This was intentional... [The Student] also told me [they were] going to kill me twice... Though I know [the Student's] threats do not have weight, it was very upsetting to think how much [the Student] is hurting to say something like that."
 - d. The team implemented the reward program but the Student "did not seem to have any interest in these charts most of the time."
112. A January 10, 2022 email from the PA indicated that the Parents called the PA to express the Parents' distress about hearing the potential placement options during the January 6, 2021 phone call with the SLP. The PA anticipated that the continuation meeting would be difficult. The Parent "was under the impression that placement could be determined later, after this new IEP was implemented for a period of time. I let [the Parent] know this was not the case because the IEP might not be implementable in the current setting (due to SDI mins [sic] and resources)."
113. The IEP continuation meeting occurred on January 13, 2022. At the meeting, the Parents shared their concerns and complaints about the Charter School and the team, and then the Parents left. The Student's IEP, placement, and eligibility were not discussed or completed. The January 13, 2022 Meeting Notes stated the following, in relevant part:
- a. The Parents reported that they had a horrible experience with the Charter School for the past three years. The Charter School was not accepting of people experiencing disabilities or people of color. Charter School and District staff emails to the Parents were very negative, the Student was seen as a problem, and the school environment was toxic.

- b. The Parents decided to withdraw the Student from the Charter School. The Parents believed that racism was prevalent at the Charter School, the team provided inconsistent supports, and did not implement the Student's IEP. The Parents also reported that the entire family experienced personal trauma.

114. On January 17, 2022, the New Teacher emailed the Parents, stating, "I'm sorry that the transition to my classroom wasn't a successful experience for [the Student]. I love [the Student] and am hopeful the [the Student] will received [sic] the support [the Student] needs to thrive at [their] next school."

115. A January 18, 2022 email exchange between the PA and the Neighborhood School team contained the following information:

- a. Background information from the School Psychologist stated, "[The Charter School] team was in the middle of changing [the Student's] placement to a communication and behavior classroom for kids with ASD. Parents disagree and have withdrawn and transferred. [The PA]... will be contacting [the Parents]... to give them some time to process their feelings and thoughts... the IEP is not complete since we were not able to discuss and determine placement before they left the IEP meeting."
- b. The PA wrote that the Charter School was caught off guard by the Parents' decision to move the Student to the Neighborhood School. This decision was revealed at the IEP meeting January 13, 2022, "after which parents were not very interested in reviewing the IEP or discussing placement and left the meeting... Until the updated IEP is accepted and a placement decision is made, [the Student] continues to be a learning center student, and should be permitted to attend [the Neighborhood School]."

116. On January 18, 2022, the Parent emailed the team at the Charter School stating, "we understand a conversation is taking place between [the Charter School] and potential school options for our kids." The Parents asked the Charter School team not to share documents (such as the draft IEP), emails, or verbal information with the Neighborhood School team.

117. On January 18, 2022, a phone call occurred between the PA and the Parents. The Parents said that the PA called them to discuss the IEP and transition. The Parents were upset that the Neighborhood School team had access to the draft IEP created by the IEP team at the Charter School. The Parents told the PA that the Charter School team should not have any communication with the Neighborhood School team. The PA reported that the draft IEP was in the District's computer system and the Neighborhood School team had already seen it. The Parents asked the PA to remove any drafts so the Student could start school and create an IEP that included the Student's new environment and support staff.

118. In a January 20, 2022 email to a District Special Education Assistant Director, the Parents reported:

- a. The District pressured the Parents to submit medical information that they did not want to share during the IEP meeting, including information from the Student's childhood that was not relevant to the Student's current educational needs.
- b. The Parents could not believe that their experience could be typical for other families in the District with children in special education.

- c. The Parents did not know what help the Student was getting at school, as the level of adult support was never disclosed to the Parents and the Student's IEP was never implemented. The team was building negative data against the Student and decisions were made without the Parents.

119. The Student's first day of school at the Neighborhood School was on January 24, 2022.

120. On February 8, 2022, the Parents filed this Complaint.

121. The Complaint does not include any allegations against the Neighborhood School.

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 experiencing disabilities attending public charter schools located in the district in the same manner as the district serves children experiencing 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 experiencing a disability within the district's jurisdiction at the beginning of each school year.⁵ The district must ensure that each staff member, including each service provider, 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 "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."⁷

"[The] essential function of an IEP is to set out a plan for pursuing academic and functional achievement."⁸ 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.⁹ 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.¹⁰ "IEP Teams must implement policies, procedures, and practices relating to... how a child's progress towards meeting annual goals will be measured and reported," to ensure that the district offers "an IEP reasonably calculated to enable a child

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); 34 CFR §300.323(a)

⁶ OAR 581-015-2220(3); 34 CFR §300.323

⁷ Questions and Answers on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

⁸ *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017)

⁹ OAR 581-015-2200(1)(b); 34 § CFR §300.320(a)

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

to make progress appropriate in light of the child's circumstances."¹¹

A district violates the IDEA when it materially fails to implement an IEP.¹² "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."¹³

It is unclear what special education services the District provided to the Student. Two IEPs were in effect during the Complaint period; the October 21, 2020 IEP and the September 15, 2021 IEP. During the 2020-21 school year, the Student participated exclusively in distance learning. When asked, the Case Manager could not recall which IEP goals were worked on with the Student, other than that they worked a lot on joint attention. For the 2021-22 school year, most of the goals in the September 15, 2021 IEP were carried over from the previous IEP. The Case Manager, as well as other staff members, reported that most of the Student's IEP goals were not worked on, except for the communication goals worked on with the SLP.

Support was provided by Charter School and District staff, who implemented accommodations and interventions when assisting the Student. However, it is unclear whether the IEP accommodations were provided consistently, particularly when the Teacher did not have another adult in the classroom. The PA and the School Psychologist questioned the Teacher's implementation of the Student's accommodations and interventions. Other District and Charter School staff stated that the Teacher did their best to implement the Student's accommodations, while also adding that it was the Teacher's first year teaching.

District special education staff were in the classroom longer than their scheduled service minutes to provide extra support time for the Student. Additional adult support was scheduled and provided by the Charter School staff daily, as well as extra unscheduled support in response to the Teacher's calls for assistance. However, this additional adult support was not included in the Student's IEP.

The District did not follow the IEP's requirements for progress monitoring and reporting. The District did not have IEP Progress Reports for the 2020-21 school year, although the Student's IEPs stated that they would be provided each trimester. For the 2021-22 school year, the District created one IEP Progress Report, which only included progress information for the two communication goals. No progress information was provided for the remaining five goals. It is unclear whether this one Progress Report was provided to the Parents, as the Parents reported that they never received any IEP Progress Reports. There is no further evidence that the Student's SDI was delivered or that progress monitoring occurred. When service logs and notes were requested, none were provided. Without progress data on the Student's annual goals, the District cannot demonstrate that the Student's IEPs were implemented.

The District did not provide special education and related services in accordance with the Student's IEP, did not take progress monitoring data on the Student's annual goals, and did not issue IEP Progress Reports as required. This constitutes a material failure to implement both IEPs that were in effect during the Complaint period.

The Department substantiates this allegation.

¹¹ Q&A on *U.S. Supreme Court Case Decision Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

¹² *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 822 (9th Cir. 2007)

¹³ *Id.*

Evaluation and Reevaluation Requirements

The Parents alleged that the District violated the IDEA by not evaluating the Student as needed, despite the Parents' request for additional evaluations.

As part of a reevaluation, the child's IEP team must review existing evaluation data on the child.¹⁴ Based on this data, a district should determine what additional information, if any, is needed to determine whether the child needs any changes to special education and related services (1) to enable the child to meet measurable annual goals in the child's IEP, and (2) to participate in the general education curriculum.¹⁵ If the team determines that additional data are needed, the district must administer tests and other evaluation materials as may be needed to produce the additional data identified by the team.¹⁶ If the IEP team determines that no additional data are needed to determine the child's educational and developmental needs, the district must provide notice of that determination, the reason, and the parents' right to request an evaluation.¹⁷

A reevaluation must occur at least every three years but not more than once a year, unless the parent and district agree otherwise.¹⁸ A reevaluation must occur if the educational or related service needs of a student warrant a reevaluation, or if the child's parents or teacher requests a reevaluation.¹⁹ If a district refuses an evaluation requested by the parent, the district must provide the parent with prior written notice.²⁰ An evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs.²¹ An evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility, continuing eligibility, or the student's educational needs.²²

In response to the COVID-19 pandemic challenges, the Department issued guidance on how school districts should address any lapses in required timelines due to school closures. "The timeline for evaluation is 60 School Days from the time consent is obtained... If the student is not present during the evaluation window after schools begin Distance Learning for All and special education service delivery on April 13, 2020, the district would note the attempts to conduct the evaluation..."²³ The Department's guidance did not include any exceptions to the evaluation timeline.

On February 13, 2020, the IEP team determined that the Student needed to be evaluated in the area of ASD in order to identify the Student's educational needs. The Parents signed consent for the evaluation on the same day. The February 13, 2020 evaluations were not completed within the 60 school day timeline. No attempts were made during the 2020-21 school year to reinstate the incomplete evaluations. The District did not complete the evaluations and eligibility determination until two years after consent was signed (after this Complaint was filed).

¹⁴ OAR 581-015-2115(1)(a); 34 CFR 300.305(a)

¹⁵ OAR 581-015-2115(1)(b); 34 CFR 300.305(a)

¹⁶ OAR 581-015-2115(3); 34 CFR § 300.305(c)

¹⁷ OAR 581-015-2115(4); 34 CFR 300.305(d)

¹⁸ OAR 581-015-2105(4); 34 CFR § 300.303(b)

¹⁹ OAR 581-015-2105(4); 34 CFR § 300.303(a)

²⁰ OAR 581-015-2110(2); 34 CFR 300.503(a)(2)

²¹ OAR 581-015-2110(4)(e); 34 CFR 300.304(c)(6)

²² OAR 581-015-2110(5)(b); 34 CFR 300.301(d)

²³ Oregon's Extended School Closure Special Education Guidance, Frequently Asked Questions: Regarding Special Education in Light of the Coronavirus (COVID-19) Outbreak, May 11, 2020 (Updated)

The District issued a PWN on October 20, 2020 removing assessments from the February 13, 2020 Evaluation Consent, stating that they could not be completed because of COVID-19. The PWN was not issued because the District refused to conduct an evaluation requested by the Parent; rather, it was issued because of the assumption that evaluations could not be conducted. Regardless, the District did not have the authority to remove assessments which the IEP team determined were necessary. Even if evaluations had been unable to be completed at that time, the District had an obligation to complete them as soon as possible, rather than waiting until after this Complaint was filed.

The Department substantiates this allegation.

Parent Participation

The Parents alleged that the District violated the IDEA by failing to provide the Parents with an opportunity to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.

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 (FAPE) to the student.²⁴ 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.²⁵ "In order to fulfill the goal of parental participation in the IEP process, the school district [is] required to conduct a meaningful IEP meeting, not just an IEP meeting."²⁶ When no alternatives to a proposed IEP or placement are considered at an IEP meeting, the Parent is denied meaningful participation as required by the IDEA.²⁷

While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."²⁸ "Parents must be able to use the IEP to monitor and enforce the services their child is to receive."²⁹ "IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child's progress. Parents and other IEP Team members should collaborate and partner to track progress appropriate to the child's circumstances."³⁰

The Parents had a considerable amount of communication with the Charter School and IEP team, through in-person, telephone, text message, and email contact. The Charter School and District staff were responsive to the Parents' emails but did not always provide the information the Parents asked for. The Parents requested data on the behavior interventions being implemented by the District, but there is no evidence that this information was provided. On the contrary, the Teacher reported being instructed by the Behavior Analyst to not give the behavior intervention data forms with the Parents.

²⁴ OAR 581-015-2190(1); 34 CFR §300.322(a)

²⁵ OAR 581-015-2205(1); 34 CFR §300.324(a)(1)

²⁶ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992).

²⁷ *Id.* at 1484

²⁸ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

²⁹ *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017)

³⁰ Q&A on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

The Parents also requested more information regarding when and how much additional adult support was provided to the Student. It is unclear to what extent this information was communicated. While some adult support from Charter School and District staff was prescheduled, much of the support time varied by day depending on how the Student was doing. Regardless of what was communicated, the Parents did not realize that additional adult support was not included in the Student's IEP.

The Parents participated at the September 21, 2021 and January 5, 2022 IEP meetings. At the January 13, 2022 IEP meeting, the Parents voiced their concerns and left the meeting before the IEP could be completed or placement discussed. The Parents assert that they were not given the opportunity to participate in placement decisions, but a placement decision was never made.

However, the Parents did not know that SDI was not provided or that progress monitoring on the Student's IEP goals did not occur. Without progress data or written progress reports on the Student's IEP goals, the Parents could not monitor the Student's progress or identify whether the Student's IEPs were appropriate. These failures interfered with the Parents right to be informed of and participate in special education decisions related to the Student.

The Department substantiates this 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 FAPE to school age children experiencing disabilities for whom the school district is responsible.³¹ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a [FAPE] is provided to all children with disabilities."³²

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.³³ Not every procedural error is sufficient to rise to a denial of FAPE.³⁴ The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;³⁵ (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.³⁶

The District did not follow IDEA procedures for implementing the Student's IEPs, evaluating the Student, or parent participation. The Student's September 15, 2021 IEP was not

³¹ OAR 581-015-2040(1); 34 CFR §300.101(a)

³² Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

³³ *Andrew F.*, 137 S.Ct. at 999

³⁴ *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)

³⁵ *Target Range*, 969 F.2d at 1484

³⁶ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994

reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. These violations deprived the Student of educational opportunity and resulted in a denial of FAPE.

The Department substantiates this allegation.

Additional Findings

IEP Content

"The IEP must aim to enable to child to make progress."³⁷ "It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth."³⁸ The IEP must include the specific special education and related services and supports to be provided for the child to (1) advance appropriately toward attaining annual goals, (2) be involved and progress in the general education curriculum, and (3) be educated and participate with other children with and without disabilities.³⁹ "Where necessary to provide FAPE, IEPs must include consideration of behavioral needs in the development, review, and revision of IEPs. IEP Teams must consider and, if necessary to provide FAPE, include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers."⁴⁰ In such a case, if "the IEP team has decided that a [behavior intervention plan (BIP)] is appropriate... the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child."⁴¹

"The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."⁴² School districts are expected to "be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable a child to make progress appropriate in light of his circumstances."⁴³

The Student's September 15, 2021 IEP was not appropriate and did not meet the Student's educational needs. The Student's behavior was preventing access to SDI and the general education curriculum. The IEP did not contain any additional adult support, although everyone who worked with the Student agreed that adult support was needed. The interventions and safety plan recommended by the Behavior Analyst were not included in the IEP. Additionally, as the ASD evaluation was not completed until January 2022, the Student's IEPs did not address all the Student's disability-related needs.

Review and Revision of IEPs

"An IEP is not a guarantee of a specific educational or functional result for a child with a disability. However, the IDEA does provide for revisiting the IEP if the expected progress is not occurring."⁴⁴ A student's IEP must be reviewed at least yearly to determine whether the annual goals for the child are being achieved.⁴⁵ The IEP Team must revise a student's IEP to address (1) any lack of expected progress towards the annual goals and the general education

³⁷ *Andrew F.*, 137 S.Ct. at 999

³⁸ *Andrew F.*, 137 S.Ct. at 999

³⁹ OAR 581-015-2200(1)(d); 34 CFR §300.320(a)(4)

⁴⁰ Q&A on U.S. Supreme Court Case Decision *Andrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

⁴¹ Questions and Answers on Discipline Procedures, 52 IDELR 231 (OSERS 2009)

⁴² *Andrew F.*, 137 S.Ct. at 1001

⁴³ *Andrew F.*, 137 S.Ct. at 1002

⁴⁴ Q&A on U.S. Supreme Court Case Decision *Andrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

⁴⁵ OAR 581-015-2225(1)(a); 34 CFR §300.324(b)(1)

curriculum, and (2) the student’s anticipated needs, among other things.⁴⁶

As the September 15, 2021 IEP did not address the Student’s needs and the Student was unable to work towards attaining IEP goals or access the general education curriculum, the team had an obligation to review and revise the Student’s IEP services as necessary to provide FAPE. The IEP should have been revised to incorporate the Student’s behavior plan and recommendations made by the Behavior Analyst, including a safety plan.

V. CORRECTIVE ACTION⁴⁷
In the Matter of Portland School District 1J
Case No. 022-054-005

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

Action Required	Submissions	Due Date
<p>1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to Student’s IEP. The Compensatory Education to be offered to the Parent shall include at least:</p> <ul style="list-style-type: none"> • 30 hours of specially designed instruction in classroom/school skills; • 20 hours of specially designed instruction in academic readiness skills; and • 23 hours of specially designed instruction in communication skills. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver this SDI.⁴⁸</p>	<p>The District shall submit the following:</p> <p>Completed plan for delivery of Compensatory Education developed in IEP meeting with Parent; Evidence showing compensatory education was provided.</p>	<p style="text-align: center;">May 15, 2022</p> <p style="text-align: center;">September 8, 2023⁴⁹</p>
<p>2. The District must complete an FBA for the Student and, if appropriate, based on the results develop a BIP.</p>	<p>The District shall submit a copy of the FBA and, if developed, BIP.</p>	<p style="text-align: center;">June 15, 2022</p>
<p>3. The District must provide training for all Charter School and District staff who participated in the Student’s IEP meetings during the complaint period.</p>	<p>The District shall:</p> <p>a. Submit a training plan to the Department for approval,</p>	<p style="text-align: center;">June 15, 2022</p>

⁴⁶ OAR 581-015-2225(1)(a); 34 CFR §300.324(b)(1)

⁴⁷ 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)).

⁴⁸ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student’s IEP team in this meeting. If a Facilitated IEP meeting is desired, please email ode_disputeresolution@ode.state.or.us.

⁴⁹ OSEP recognizes that in some instances, corrective action may take more than one year to complete, and specifically identified compensatory education as one of those instances in *Letter to Zirkel* (August 22, 2016), 68 IDELR 142.

<p>Training must be provided in each of the following areas:</p> <ul style="list-style-type: none"> • IEP Implementation • Evaluation and Reevaluation Requirements • Parent Participation • IEP Content • Review and Revision of IEPs 	<p>b. Complete the training according to the approved plan, and</p> <p>c. Submit evidence of completed training, material, agenda, and sign-in sheets.</p>	<p>September 15, 2022</p> <p>September 30, 2022</p>
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Dated: this 7th Day of April 2022



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: April 8, 2022

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).)