

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Lebanon Community  
School District 9

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 22-054-009

**I. BACKGROUND**

On March 8, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (the Parent) of a student (Student) residing in the Lebanon School District (District). The Parent 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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On March 17, 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 27, 2022. The District's legal counsel requested an extension for the submission of the District's response due to the *RFR* due date falling over the District's spring break. The Department granted an additional 15-day extension to April 11, 2022.

The District submitted a *Response* on April 8, 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 Response, 4/8/22
2. Academic Record, transcript, 3/17/22
3. Grades for Student, Algebra A, 3/18/22
4. Student Schedule, 2020-2021, 3/18/22
5. Student Schedule, 2021-2022, 3/18/22
6. Student Records Request, new school district, 2/28/22
7. Special Education Notice of Team Meeting, 11/10/20
8. Notice of Transfer of Parent Rights, 12/7/20
9. Meeting Notes, annual IEP, 12/7/20
10. Student's IEP, 12/7/20
11. Prior Notice of Special Education Action, 12/7/20
12. Special Education Placement Determination, 1/7/21
13. Special Education Notice of Team Meeting, re: reevaluation 10/28/21

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

14. File Review of Existing Information/Student Referral, 10/28/21
15. Prior Notice about Evaluation/Consent for Evaluation, 10/28/21
16. Special Education Notice of Team Meeting, re: eligibility, IEP, transition, 11/18/21
17. Meeting Notes, re: annual IEP and 3-year eligibility, 12/2/21
18. Notice of Proposed Transfer of Special Education Rights, 12/2/21
19. Statement of Eligibility for Special Education, Specific Learning Disability, 12/2/21
20. Report of Psychoeducational Evaluation, 11/30/18
21. Oregon Standard IEP, 12/2/21
22. Special Education Placement Determination, 12/2/21
23. Prior Notice Special Education Action, 12/2/21
24. Notes, re: call with Parent, 4/14/21
25. Case notes (from Counselor), re: Student, 11/19/21-2/15/22
26. Notes, re: Student background, 2/10/22-2/28/22
27. Family Support Project Referral/Intake Form, no date
28. District Welcome Center Family Information, 11/19/21
29. District Welcome Center Family Information, 1/26/22
30. Parent Permission for Family Support Project Services, 1/26/22
31. Parent Authorization To Obtain And Release Information, 1/26/22
32. Student Information, 2021-2022 school year, 9/10/21
33. Email, re: checking in to see what I can do to support, 2/12/22
34. Email, re: question about SNA enrollment, 2/14/22
35. Email, re: follow up, 12/7/20
36. Email, re: Thank You, 3/9/21
37. Email, re: no subject, 3/10/21
38. Email, re: office hours today on zoom, 3/17/21
39. Email, re: no subject, 3/11/21
40. Email, re: LHS update from Principal Swanson, 4/8/21
41. Email, re: no subject 4/12/21
42. Email, re: algebra A tests, 4/23/21
43. Email, re: no subject, 5/1/21
44. Web conference invitations, 5/3-5/4/21
45. Email, re: May 11 ALEKS Work Session, 5/11/21
46. Email, re: ALEKS needs attention!, 5/13/21
47. Email, re: no subject, 5/24/21
48. Email, re: JM10-distance learning inquiry, 2/17/22
49. Email, re: communication with and about Student
50. Email, re: ODE complaint Student10, 3/28/22
51. Mental Health School Referral Form, 1/7/22
52. Email, re: referral-confidential (Student), 3/18/22
53. Email, re: touch base, 2/17/22
54. Call log, 11/12/20 and 11/18/21
55. Email, re: ODE complaint (Student10), 3/28/22
56. Email, re: absolutely incredible kid!, 3/12/21
57. Email, re: Thursday participation credits, 3/12/21
58. Email, re: parent-teacher conferences sign up, 3/30/21
59. Email, re: meet with me!, 5/13/21
60. Email, re: yearbook cameras, 9/29/21
61. Email, re: parent-teacher conference (calendar invites), 10/26/21
62. Email, re: address, 11/17/21
63. Email, re: calendar invite, 12/2/21
64. Email, re: no subject (email from Student to Parent), 1/31/22
65. Email, re: NAACP after school program, 2/7/22

66. Email, re: high school concerns, 2/16/22
67. Email, re: distance learning, 2/17/22
68. Email, re: concerns, 2/18/22
69. Email, re: online Edgenuity, 2/18/22
70. Email, re: concerns, 2/18/22 (duplicates)
71. Email, re: online Edgenuity, 2/19/22
72. Email, re: welcome to HS online alternative-login information
73. Email, re: online-Tuesday, 2/22/22
74. Email, re: Edgenuity Global Studies 10 quizzes, 2/24/22
75. Email, re: school records, 2/25/22

The District submitted additional documents on April 13, April 18, and April 19, 2022:

76. No title re: progress report tracking, no date
77. Annual Academic and Functional Goals and Objectives Progress Report, Reading, 1/22/21-10/29/22
78. Annual Academic and Functional Goals and Objectives Progress Report, Writing, 1/22/21-10/29/22
79. Annual Academic and Functional Goals and Objectives Progress Report, Math, 1/22/21-10/29/22
80. Annual Academic and Functional Goals and Objectives Progress Report, Transition, 1/22/21-10/29/22
81. Annual Academic and Functional Goals and Objectives Progress Reports, 12/12/19
82. Annual Academic and Functional Goals and Objectives Progress Reports, 12/02/21
83. Email, re: progress report for Student, 4/13/22
84. Email, re: LHS concerns, 2/16/22
85. Email, re: progress reports for Student, 4/13/22
86. Email, re: Lebanon high school concerns, 2/16/22
87. Email, re: LHS concerns, 2/16/22
88. Email, re: Misty, 2/16/22
89. Email, re: Lebanon high school concerns, 2/16/22
90. Voice Mail, re: online learning, 2/16/22

The Parent submitted documents in support of the Parent's position on March 22, March 25, and April 16, 2022. The Parent submitted the following relevant items:

1. Lebanon High School Complaint, re: Parent complaint, 2/16/22
2. Email, re: checking in to see what I can do to support, 2/12/22
3. Email, re: concerns, 2/18/22
4. Email, re: grade update, 10/20/20
5. Email, re: Lebanon High School concerns, 2/16/22
6. Email, re: meeting, 2/24/22
7. Email, re: Lebanon high school concerns, 4/16/22
8. Voice Mail re: Edgeniuty Confirmation, no date
9. Video taken by Parent at 3/7/22 meeting

The Complaint Investigator interviewed the Parent on March 12, 2022 and the Student's Case Manager, the District's Family and Support Liaison, and the District's Special Education Director on March 13, 2022. 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 Parent's 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 March 9, 2021, to the filing of this Complaint on March 8, 2022.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>When IEPs Must Be In Effect</b></p> <p>The Parent alleged that the District violated the IDEA when the District failed to provide special education and related services that were part of the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Substantiated in Part</b></p> <p>The District provided the Student with special education services and supplementary aids as described in the Student's IEPs. However, the District failed to provide progress reports that included progress made toward all IEP goals.</p>
<p><b>Nonacademic Services</b></p> <p>The Parent alleged that the District violated the IDEA when the District failed to provide counseling services to the Student.</p> <p>(OAR 581-015-2070; 34 CFR §300.117)</p>	<p><b>Not Substantiated</b></p> <p>Counseling services were not a component of the Student's IEPs. Thus, the District was not required to provide these services. The Student had the same access to nonacademic services as students not experiencing disabilities.</p>
<p><b>Content of IEP</b></p> <p>The Parent alleged that the District violated the IDEA when the District failed to include certain special education and related services that would address the change in the Student's behavior and mental health needs.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p><b>Not Substantiated</b></p> <p>At the time these IEPs were created, the IEP team did not have evidence that the Student's behavior and mental health needs were related to the Student's disability or that they were impacting the Student's ability to be involved in and make progress in the general education curriculum.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p>	<p><b>Not Substantiated</b></p>

<p>The Parent alleged that the District violated the IDEA when the District failed to address the Student's needs and this resulted in a deterioration of the Student's grades.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>The Student was progressing adequately in the general education program and received all passing grades. The Student also made progress toward all IEP goals that progress was reported on.</p>
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<p><b>REQUESTED CORRECTIVE ACTION</b></p>
<ul style="list-style-type: none"> <li>The Parent requested a transfer to another high school.</li> </ul>

**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 March 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 16 years old and in the 10<sup>th</sup> grade. The Student attended a District high school during 9<sup>th</sup> grade, the first semester of 10<sup>th</sup> grade, and the first three weeks of second semester during the 2021-22 school year.
2. The Student is eligible for special education as a child with a Specific Learning Disability for reading comprehension, mathematics calculation and problem solving, and written expression.
3. The Student had two IEPs in effect during the complaint period. The IEPs dated December 7, 2020 and December 2, 2021 had identical service summary pages (except for start and end times) and included specially designed instruction (SDI) for reading, written language, math, and transition services. The team determined no related services were needed and consultation was to be provided to teaching staff. Accommodations in the IEP included:
  - a. Extra time for completion on assignments and tests without penalty
  - b. Read directions, grade level materials, and tests aloud as needed
  - c. Clarification of directions and check for comprehension
  - d. May use calculator on all work involving math
  - e. Text to speech program for all reading
  - f. MP3 audio recording of content when available
  - g. May redo test, quiz, daily work, assessment until pass
  - h. Provide a copy of class notes
  - i. Student may use notes on test, quizzes, assessment, evaluations, daily work
  - j. May take tests with case manager for reading support
4. The Student's IEP progress report dated January 22, 2021, indicated:

- i. Reading goal: “closely monitor progress” and “STAR: 8<sup>th</sup> percentile, 5.1 grade equivalent.”
  - ii. Writing goal: “making progress” and “Student is achieving 4’s on formal writing samples.”
  - iii. Math goal: “on target to meet annual goal” and “Student achieved an 80.75% in algebra foundations!”
  - iv. Transition goal: “making progress” and “Student is working on this goal in AVID and in Advisory.” No progress data was provided.
5. The Student’s IEP progress report dated April 2, 2021, indicated:
  - i. Reading goal: “closely monitor progress” and “Student will be completing new reading evaluations next month. The Student is in CDL learning and does not have a Warrior class. The Student is in AVID and accelerated biology.” Progress toward this goal was not reported.
  - ii. Writing goal: “on target to meet annual goal” and “Student earned 5/5 on formal writing evaluation.”
  - iii. Math goal: “on target to meet annual goal” and “Student is in Algebra A and is solving multi-step algebra equations with an 80%.”
  - iv. Transition goal: “on target to meet annual goal” and “Student is working on this goal in AVID and warrior classes.” No progress data was provided.
6. The Student’s IEP progress report dated June 6, 2021, indicated:
  - i. Reading goal: “scheduled later.” There was no progress reported for this reporting period nor an indication in the record that the assessments for this progress reporting period were scheduled or reported on later.
  - ii. Writing goal: “on target to meet annual goal” and Student has a 95% in LA9.”
  - iii. Math goal: “on target to meet annual goal” and “Student has an 89% in Algebra A.”
  - iv. Transition goal: “on target to meet annual goal” and “Student is working on this goal in AVID. 90% complete.”
7. The Student’s 9<sup>th</sup> grade second semester transcript, dated June 9, 2021, indicated the Student received 4 As, 2 Bs, and a passing grade for Advisory with an end of semester GPA of 3.67.
8. The Student’s IEP progress report dated October 29, 2021, indicated:
  - i. Reading goal: “closely monitor progress” and “Student has an 82% in language arts 10. STAR testing shows that Student is reading at a 4.8 grade level.”
  - ii. Writing goal: “on target to meet annual goal” and “Student has achieved 3’s for ideas, structure, and language in most recent three-paragraph writing sample.”
  - iii. Math goal: “on target to meet annual goal” and “Student has a 77% in Integrated Math 1.”
  - iv. Transition goal: “on target to meet annual goal” and “Student is continuing to work on this goal in AVID.” No progress data was provided.
9. On November 19, 2021, the Parent met with the District’s Family Support Liaison to discuss the “behavior problems the Parent has been having with the Student and needs some support. We discussed the possibilities for Youth Services Team (YST), Be Undivided mentorship...The Parent reported they would review the documents and get back to us.”

10. On November 23, 2021, the Parent returned the signed forms for the youth services and the mentorship program.
11. On December 2, 2021, the Student's IEP team met to conduct an eligibility meeting and the Student was found to have continued eligibility for special education and related services due to a Specific Learning Disability.
12. On December 2, 2021, the Student's IEP team also met to develop the Student's annual IEP. The Parent input statement states, "The Parent's greatest concerns are that the Student wants to take on more and more responsibilities and activities. The Parent is concerned that the Student will overwhelm themselves. The Parent wants to ensure that the Student makes good decisions. The Student is 'a worrier' and always wants to have better grades. The Student is transition [sic] away from seeing a mental health professional and the Parent is concerned this may cause the Student to struggle more."
13. On December 2, 2021, the District provided the Parent with a Prior Written Notice (PWN) that included a referral to the counseling department as another factor considered by the team.
14. On December 10, 2021, the District contacted the Parent and invited them to attend a youth services team (YST) meeting scheduled for December 10, 2021. The Parent agreed to attend the meeting but was not able to attend the meeting due to family illness and an unexpected medical appointment. District staff offered to reschedule the meeting or represent the Parent at the meeting. The Parent agreed to have District staff represent the Parent at the YST meeting.
15. On January 7, 2022, the Parent and the Guidance Counselor conducted a phone call and completed a referral form for a county mental health program that accepts referrals from the District but is not operated by the District.
16. On January 13, 2022, the Case Manager attempted to contact the Parent to review the YST meeting (held on December 10, 2021). The Parent returned the call and left a message on January 18, 2022.
17. On January 21, 2022, the Case Manager and the Parent had a communication exchange about the Student's behaviors. At this time, the District apologized for not getting back sooner with the Parent before winter break. The Parent reported, "[they] did not feel communication from the school had been very informative." District staff offered to set up a school meeting and the Parent agreed.
18. On January 24, 2022, the District held a meeting with the Parent to discuss the concerns they had about communication with the school. District contact logs indicate the Parent expressed they felt the meeting went well.
19. On January 26, 2022, the Parent signed paperwork to start services with the Family and Support Liaison. At this time, the Parent shared with District staff that the Student had threatened physical aggression at home in December, that the Parent believed the Student needed therapy, and that the Student had previously refused to participate in these services provided by another agency. The Parent requested that the District's Family and Support Liaison conduct a check-in with the Student to see how they were doing and encourage them to meet with a therapist as a support person.

20. On January 27, 2022, the Parent attended a meeting with members of the school's administrative team. At this meeting, the Parent shared, in part, that the Student was being disrespectful at home and had dropping grades. The Parent requested counseling and was referred to the Guidance Counselor who had previously made a referral for county mental health services.
21. On January 31, 2022, the Parent contacted the District with concerns that the Department of Human Services had been called by another agency. The Parent spoke again with a staff member in the Family Support Liaison's office on February 2, 2022, and expressed mistrust in the system because the system had let the Parent down too many times.
22. The Case Manager's notes from a February 2, 2022 conversation with the Student indicated that, "[the Student] seemed upset and [their] grades had dropped. When I asked [the Student] about it, [the Student] wouldn't say what was going on, just that there was a lot of stress. When I pointed out that [their] grades had dropped to D's and asked if [they] needed help, [they] said they didn't need help and they got behind on a couple big projects. I let [them] know that I could help [them] and the D's made me nervous since the end of the semester was coming near." During interviews, the Case Manager recalled "things were off" starting at the end of first semester [January 2022]. The Student's grades dropped during this period, and the Student stopped attending cheerleading and afterschool tutoring. The Student stopped responding to emails and acted more stressed. The Student always said things were ok and the Parent also started contacting the District about concerns.
23. The Student's 10<sup>th</sup> grade first semester transcript dated February 1, 2022, included 4 As, 1 B, 2 Cs, and a passing grade for Advisory with an end of semester GPA of 3.29.
24. The Student's IEP progress report dated February 1, 2022, indicated:
  - i. Reading goal: "closely monitor progress" and "This is a new goal. Evaluations will be completed in the next 2 weeks."
  - ii. Writing goal: "closely monitor progress" and "This is a new goal. The Student is currently achieving 2s and 3s own [sic] writing evaluations."
  - iii. Math goal: "making progress" and "The Student has earned 78% accuracy in integrated math 1. The Student does utilize tutoring support through an afterschool program."
  - iv. Transition goal: "on target to meet annual goal" and "Student is working on this goal in warrior and advisory." 40% complete.
25. Between February 7, 2022 - February 9, 2022, the Family and Support Liaison contacted the Parent (Liaison had been out of the office on January 7, 2022 when the referral for counseling was made) each day with a request for the Parent to make contact as a follow up to the conversation with the Parent on January 31, 2022.
26. On February 8, 2022 and February 10, 2022, the Family and Support Liaison made attempts to meet with the Student and was not successful in connecting with the Student.
27. On February 10, 2022, the Parent contacted the Case Manager and shared that "the Student had been at home for a couple of days due to the Student being disrespectful and not acting like themselves." The Parent shared that the Student had been aggressive, put hands on and pushed the Parent, and punched a hole in the wall. The Case Manager shared with the Parent that these behaviors were surprising and were not happening at

school. The Parent also requested that the Student be enrolled in the District's online learning option.

28. On February 10, 2022, the school's Assistant Principal attempted to contact the Parent to discuss online learning options.
29. On February 15, 2022, the Parent contacted the Case Manager with concerns that the District had not made contact about the online learning option and that no one cared about the Student's mental health. The Parent requested a call back from the school administration.
30. On February 16, 2022, members of the school administrative team and the Parent had a phone call. The District shared that the Student had been referred for counseling, the Student's academics were very good at the semester, the Student was on track to graduate, and there were no behavioral issues while at school. The call ended with the Parent still in disagreement with the level of support being provided to the Student.
31. On February 16, 2022, the Parent submitted a written complaint to the District about the concerns they had regarding the District's failure to realize the Student was struggling academically and mentally. The Parent's complaint stated in part, "My Student has been dealing with mental health issues for quite some time...I sought help from the high school and requested mental health resources. My Student was supposed to see a mental health counselor at the high school, but that never happened. My Student has an IEP, and I would expect [them] to receive extensive support from the school, school district and the IEP counselor. My Student's grades slipped into C's and D's at the end of semester." The Parent also requested a copy of the Student's IEP so the Student could transition to another school.
32. On February 17, 2022, the Parent emailed the Case Manager about the status of the request to enroll the Student in an online learning option. The Principal also emailed the Parent with a request to speak with them about the Student.
33. On February 18, 2022, the District's Assistant Superintendent left a phone message and emailed the Parent with a request that the Parent confirm their request to enroll the Student in the online learning option. The Parent was also provided with a copy of the Student's IEP.
34. On February 21, 2022, the Parent contacted the District and requested to meet with the Superintendent.
35. On February 22, 2022, the Student and the Parent were notified that the Student had been enrolled in the online learning option.
36. On February 25, 2022, the Parent notified the District the family was moving and on February 28, 2022, the District received a records request from the new out-of-state school district.
37. On March 7, 2022, the District's Superintendent, Assistant Superintendent, and Special Education Director met with the Parent. The Parent expressed concerns that the Student's "school showed no concern for the Student's mental health needs."

On March 8, 2022, the Parent filed this Complaint.

## IV. DISCUSSION

### **When IEPs Must Be in Effect**

The Parent alleged that the District violated the IDEA when the District failed to provide special education and related services that were part of the Student's IEP.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.<sup>3</sup>

The District had two IEPs in effect during the complaint window; December 7, 2020 and December 2, 2021. The records provided by the District indicated the Student's IEP services were provided. The Parent did not provide information that refuted the District's records.

However, in two of the four progress reporting periods, April 2, 2021 and June 6, 2021, progress towards the reading goal was not measured. In both cases, it was noted that evaluations would be conducted in the future. There was no evidence in the District record that the postponed evaluations to measure quarterly progress had been completed. The progress reports for the reading goal describe the District's actions as "closely monitor progress" and "scheduled later." Progress was only reported for 50% of the required reporting periods.

The Department substantiates this allegation in part.

### **Nonacademic Services**

The Parent alleged that the District violated the IDEA when the District failed to provide counseling services to the Student.

School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that help individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.<sup>4</sup>

At the December 2, 2021 IEP meeting, the Parent expressed concern that the discontinuance of outside mental health services might cause the Student to struggle more. The District's PWN dated December 2, 2021, indicated the Case Manager sent a referral to the counseling department. The District completed the referral for outside agency mental health services on January 7, 2022. There is no evidence in the record that these services started or were provided to the Student prior to the Student withdrawing from school on February 28, 2022. However, at no time did the IEP team determine these services were necessary, nor were they added to the Student's IEP.

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<sup>3</sup> OAR 581-015-2220; CFR §300.323

<sup>4</sup> OAR 581-015-2070; 34 CFR §300.117

The Department does not substantiate this allegation.

### **Content of IEP**

The Parent alleged that the District violated the IDEA when the District failed to include certain special education and related services that would address the change in the Student's behavior and mental health needs.

The individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP must also include a statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives) designed to 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 meet each of the child's other educational needs that result from the child's disability. Also required is 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 toward meeting the annual goals (such as using quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.<sup>5</sup>

Further requirements include a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and children without disabilities. The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications are also required.<sup>6</sup>

At the time the IEPs in effect during the complaint period were created, the IEP team did not have evidence that the Student's behavior and mental health needs were related to the Student's disability or that they were impacting the Student's ability to be involved in and make progress in the general education curriculum.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education (FAPE)**

The Parent alleged that the District violated the IDEA when the District failed to address the Student's needs and this resulted in a deterioration of the Student's grades.

Except as provided in OAR 581-015-2045, school districts must provide a free appropriate public education for all school-age children with disabilities for whom the district is responsible pursuant to ORS 338, ORS 339, OAR 581-021-0019, or open enrollment under section 9, chapter 718, Oregon Laws 2011. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current

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<sup>5</sup> OAR 581-015-2200(1)(a)(b)(c); 34 CFR §300.320(a)(1)(2)(3)

<sup>6</sup> OAR 581-015-2200(1)(d)(e); 34 CFR §300.320(a)(4)(5)

school year. An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year. These requirements also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to 581-015-2440.<sup>7</sup>

The Parent and the Case Manager had concerns for how the Student was performing in school when the Student received Ds on a couple of class projects toward the end of the first semester of the 2021-22 school year. The Parent had additional concerns for the Student's mental health needs and behaviors occurring at home. The Student's grades did not appear to be impacted by the mental health needs suspected by the Parent. The District was required to provide an IEP designed to meet each of the Student's needs that resulted from the Student's disability and other educational needs that result from the child's disability that would enable the Student to be involved in and make progress in the general education curriculum.<sup>8</sup> The Student's final grades were all within the passing range and even though the Student's GPA fell by almost four-tenths of a point, it was still within good standing. The Student was also on track to meet all IEP goals that progress was reported on.

The Department does not substantiate this allegation.

### **Additional Findings**

During this investigation, the Complaint Investigator discovered the following violation of the IDEA:

#### **Review and Revision of IEPs**

A school district must ensure that the IEP team reviews the child's IEP periodically, but at least once every 365 days to determine whether the annual goals for the child are being achieved and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate; the results of any reevaluation conducted under OAR 581-015-2105; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters.<sup>9</sup>

The Parent expressed concerns about their Student's mental health and at-home behaviors to the District starting at the end of November 2021. The District held the Student's annual IEP meeting at the beginning of December 2021, during which the Parent shared their concerns that the Student might struggle more because mental health services, provided by another agency, were ending. The District made a referral to a county mental health program that never provided services. The Parent communicated their concerns to District staff, the Student's IEP team, and building and district level administration ten times between November 19, 2021 and the time the Parent notified the District that the Student was going to be withdrawn from school on February 25, 2022. Eight of these times occurred after the Student's annual IEP meeting was held on December 2, 2021. The Parent's complaint letter sent to the Superintendent states, "My Student has an IEP, and I would expect her to receive extensive support from the school, school district and the IEP counselor."

The District confirmed that an IEP meeting to consider the Parent's concerns was not scheduled because the Student was doing well in school, the behaviors were only occurring at home, and the Student had been referred to an outside counseling program. The District was made aware

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<sup>7</sup> OAR 581-015-2040; 34 CFR §300.101

<sup>8</sup> OAR 581-015-2200; 34 CFR §300.320

<sup>9</sup> OAR 581-015-2225; 34 CFR §300.324

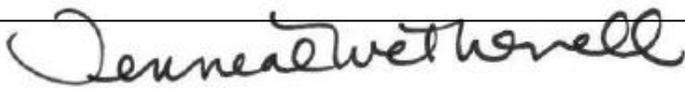
numerous times of the Parent's concerns and continued requests for services. The District should have convened an IEP team meeting to consider the information provided by the Parent or provided the Parent with a PWN detailing the District's refusal to convene an IEP meeting to discuss the requested services.

**V. CORRECTIVE ACTION<sup>10</sup>**  
*In the Matter of Lebanon School District*  
*Case No. 022-054-009*

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

Action Required	Submissions	Due Date
1. The District must ensure that all District special education staff who were responsible for reviewing, revising, developing, and implementing IEPs for this Student during the Complaint period receive training in each of the following areas: <ul style="list-style-type: none"> <li>• Review and Revision of IEPs;</li> <li>• IEP Progress Reporting; and</li> <li>• Prior Written Notices.</li> </ul>	The District shall submit the following: Training agenda/materials to County Contact for review/approval  Sign-in sheet for training.	<p style="text-align: center;"><b>June 15, 2022</b></p> <p style="text-align: center;"><b>September 15, 2022</b></p>

Dated: this 4<sup>th</sup> Day of May 2022

  
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Tenneal Wetherell  
 Assistant Superintendent  
 Office of Enhancing Student Opportunities

E-mailing Date: May 4, 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).)

<sup>10</sup> 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)).