

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of) FINDINGS OF FACT,
Portland School District 1J) CONCLUSIONS OF LAW, AND
Case No. 22-054-026) STIPULATED CORRECTIVE ACTION

I. BACKGROUND

On August 2, 2022, the Oregon Department of Education (Department) received a request for a special education complaint investigation from the parents (Parents) of a student (Student) residing within the Portland Public 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 federal and state 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 August 10, 2022, the Department’s Complaint Investigator (Investigator) sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 24, 2022.

In their Complaint, the Parents alleged a number of IDEA violations including failure to timely review and revise the Student’s IEP, failure to provide the services and accommodations the Student needed for participate in regular education settings, failure to determine whether the Student needed extended school year (ESY) services or individualized COVID-19 recovery services, and failure to develop an appropriate behavior support plan.

On August 11, 2022, the District submitted to the Department a *Response* to the Complaint. The Response stated:

“The District has carefully reviewed the allegations and, while it does not entirely agree with them, has decided not to contest the allegations described in the complaint. Rather, the District proposes several corrective actions it believes will address the Parents’ concerns raised in the complaint and move the parties forward in a collaborative manner to support [the Student] at school.”

The Complaint Investigator discussed the nature and content of a Stipulated Corrective Action and the District’s proposal with the Parents on August 19, 2022.

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)
² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-300.153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below.

Allegation	Conclusion
<p>Placement and Least Restrictive Environment</p> <p>The Complaint alleged that, during the 2021-22 school year, the Student was full-time in a self-contained classroom, contrary to the placement determination, which provided for the Student to “be accessing General Education 60% of [the] day.”</p> <p>The Complaint further alleges that the Student's limited or absent access to education in age-appropriate regular classrooms was solely because of needed modifications in the general curriculum.</p> <p>(OAR 581-015-2240; 581-015-2250(1)(b) & (c) and (5); 34 CFR §300-114, 34 CFR §300.116(a) & (e))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>When IEPs Must Be In Effect</p> <p>The Complaint alleged that, during the 2021-22 school year, the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. The Parents allege that the Student's IEP accommodations intended for the Student's time spent in a regular education setting may not have been implemented.</p> <p>(OAR 581-015-2220(1)(b); 34 CFR § 300.323)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

<p>Review and Revision of IEPs</p> <p>The Complaint alleged that, during the 2021-22 school year, the District did not complete an annual IEP review and revision. The current IEP is dated 5/18/2021.</p> <p>The Complaint further alleges that, on August 4, 2021, the Parents notified a District special education administrator that the Student had experienced changes that caused concern to the Parents. The Parents asked if it were possible to revise the IEP to address the Student's changes, but the District did not schedule the requested IEP meeting.</p> <p>(OAR 581-015-2225(1); 34 CFR § 300.324(b)(i) & (ii)(C))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Extended School Year</p> <p>The Complaint alleged that, during the 2021-22 school year, District did not consider whether the Student needed ESY services.</p> <p>(OAR 581-015-2065; 34 CFR § 300.106)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>COVID-19 Recovery Services</p> <p>The Complaint alleged that, during the 2021-22 school year, the District did not consider whether the Student needed COVID-19 recovery services.</p> <p>(OAR 581-015-2229)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Behavior Support Plan</p> <p>The Complaint alleged that, during the 2021-22 school year, the District was aware that the student had behavior that prevented the Student's access to regular education classrooms but did develop a behavior support plan based on a functional behavior assessment.</p> <p>(OAR 581-015-2205(3)(a); 34 CFR § 300.324(a)(2)(I))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

REQUESTED CORRECTIVE ACTION

- Staff training
 - Provide training to the special education team and general education teacher to make sure they implement [the Student's] IEP.
 - Provide training for district special education staff regarding:
 - the discussion, documentation and implementation of ESY services so there are no missed opportunities for students to access ESY services;
 - the discussion of recovery services and considering student needs related to the pandemic;
 - when to conduct a functional behavior assessment and develop, review, or revise a behavior intervention plan; and
 - parent requests to hold an IEP meeting when there are communicated changes with [the Student].
- Facilitated IEP meeting
 - Hold a facilitated IEP meeting to:
 - develop an annual IEP for the Student, and
 - discuss and determine recovery services for [the Student].
- Compensatory education
 - Provide compensatory education for [the Student] for:
 - failing to develop [an] annual IEP and missed educational opportunities as a result of this;
 - failing to implement [the] IEP and missed educational opportunities as a result of this; and
 - failing to provide [the Student] ESY services.
- Adult support
 - Provide consistent additional adult support for [the Student] so [the Student] can access all [the Student's] General Education time and individualized instruction.
 - Develop an adult support plan for outlining how [the Student] is supported and ensure the consistency of this support.
- Develop an inclusion plan for outlining how [the Student] will be supported in the general education classroom and supports that they need to access.
- Conduct a functional behavior assessment and develop a behavior support plan based on the data collected through the functional behavioral assessment process.
- Provide training for parents in the community around their participation in the IEP process and requesting IEP meetings.

III. FINDINGS OF FACT

1. The Student is 6 years old and a 1st grade student at a district school.
2. The Student is eligible for special education as a child with an Autism Spectrum Disorder (ASD).

3. The District has not contested the allegations made in the Complaint in this matter and the Complainants have been informed of the Stipulated Corrective Action, as set forth in the Corrective Action table, below.

IV. DISCUSSION

The Complaint alleged several IDEA violations, which the District did not contest.

The Department does not make a substantive determination on the allegations of the Complaint.

Based on the District not contesting the allegations of this Complaint, the Department orders and the District stipulates to the following Corrective Action:

V. STIPULATED CORRECTIVE ACTION³

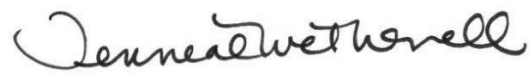
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Action Required	Submissions	Due Date
<p>The District will participate in an ODE-Facilitated IEP Meeting to:</p> <ul style="list-style-type: none"> a) complete [the Student]’s annual IEP review; b) discuss ESY; c) discuss individualized COVID-19 recovery services; d) determine whether compensatory education is appropriate and, if so, in what amount; e) and 	<p>The District will submit to the Department all documents and materials related to the Student’s, including:</p> <ul style="list-style-type: none"> 1) Agenda 2) Meeting minutes 3) Revised IEP 4) Prior Written Notice for each District proposal or refusal 	<p>September 30, 2022</p>

³ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<p>address any other concerns of the Parents or PPS members of the IEP team.</p>		
<p>The District will complete a Functional Behavioral Assessment (FBA), to be conducted by a District Board Certified Behavior Analyst (BCBA).</p>	<p>The District will submit to the Department all documents and materials related to the Functional Behavioral Assessment.</p>	<p>September 30, 2022</p>
<p>Update [the Student]’s existing Behavioral Support Plan (BSP) and/or Safety Plan as is warranted based on the completed FBA.</p>	<p>The District will submit to the Department a copy of the all documents and materials related to the updated BSP and/or Safety Plan.</p> <p>The District will specify needed changes or additions the BSP may require in the Student’s IEP goals, specially designed instruction, related services, modifications and accommodations, and support for personnel.</p>	<p>September 30, 2022</p>
<p>Provide training to the relevant members of the elementary school staff regarding FBA requirements and best practices.</p>	<p>The District will submit to the Department documents and materials related to the training, including:</p> <ol style="list-style-type: none"> 1. Training materials 2. Attendance list 	<p>September 30, 2022</p>

Dated: this 21st day of September 2022



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

Emailing date: 9/21/22

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).)