

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Eugene School District 4J)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-035

I. BACKGROUND

On October 11, 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 Eugene School District (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 October 18, 2022, the Department’s Complaint Investigator sent a *Request for Response* (RFR) to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 1, 2022.

The District submitted a *Response* on November 1, 2022, denying the allegations, providing a background and context for the issues, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District Response
2. Parent Records Request, 02/11/2022
3. Student Daily Attendance Profile, 2013—2014
4. Student Daily Attendance Profile, 2014—2015
5. Student Daily Attendance Profile, 2015—2016
6. Student Daily Attendance Profile, 2016—2017
7. Student Daily Attendance Profile, 2017—2018
8. Student Daily Attendance Profile, 2018—2019
9. Student Daily Attendance Profile, 2019—2020
10. Student Daily Attendance Profile, 2020—2021
11. Student Daily Attendance Profile, 2021—2022
12. Student Discipline Profile, 2014—2015
13. Student Discipline Profile, 2018—2019
14. Student Discipline Profile, 2017—2018
15. Student Referrals by year, and referral data
16. Student Discipline Profile, 2021—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)

17. Annual Permissions 2019-20
18. Student Permanent Record, 2018—2019
19. Student 5th grade report card
20. Student 4th grade report card
21. Student Enrollment form and attachments, 08/17/2017
22. Student 3rd grade report card
23. Student 2nd grade report card
24. Student 1st grade report card
25. Student kindergarten report card
26. Student Elementary Enrollment Form, 04/25/2013
27. Student TAG Assessment and Referral Data, 2014—2016
28. Student Picture Cards
29. Student Report Cards
30. Student Eligibility Summary Statement, OHI, 06/05/2019
31. Disability Statement, Other Health Impairment (80) Criteria, 06/05/2019
32. Disability Statement, Specific Learning Disability (90) Criteria, 06/05/2019
33. Prior Written Notice, Eligibility, 06/05/2019
34. Prior Notice and Consent for Initial Provision of Special Education Services, 06/05/2019
35. Parent/Guardian Consent for Individual Evaluation, 04/25/2019
36. Prior Written Notice, Evaluation Decision, 04/25/2019
37. Student Medical Information, 03/08/2008
38. Student Confidential Psychoeducational Evaluation, 06/04/2019
39. Notice of Referral, 02/11/2019
40. Notice of Team Meeting, 05/20/2021
41. Meeting Attendance/Summary, 05/26/2021
42. Student IEP, 05/26/2021
43. Special Education Placement Determination, 05/26/2021
44. Prior Written Notice, 05/26/2021
45. Notice of Team Meeting, 05/27/2020
46. Meeting Attendance/Summary, 06/01/2020
47. Student IEP, 06/01/2020
48. Special Education Placement Determination, 06/01/2020
49. Prior Written Notice for IEP, 06/01/2020
50. Notice of Team Meeting, 05/15/2020
51. Prior Written Notice, Provision of FAPE during School Closure, 04/03/2020
52. Meeting Attendance/Summary, 11/26/2019
53. Student IEP Amendment, 06/05/2019
54. Prior Written Notice for IEP, 11/26/2019
55. Notice of Team Meeting, 05/28/2019
56. Meeting Attendance/Summary, 06/05/2019
57. IEP Meeting Minutes and attachments 06/05/2019
58. Special Education Placement Determination, 06/05/2019
59. Notice of Team Meeting, 04/19/2019
60. Meeting Attendance Summary, 04/25/2019
61. IEP Progress Report-Measurable Annual Goals, 06/18/2021
62. IEP Progress Report-Measurable Annual Goals, 06/06/2020
63. IEP Progress Report-Measurable Annual Goals, 11/27/2019
64. IEP Progress Report-Measurable Annual Goals, 06/17/2019
65. Student Health Records
66. EasyCBM Student Progress Reports, 02/17/2022
67. Student Curriculum work samples
68. Email: Re: [Student] 05/07/2019
69. Parent Information and Developmental History, 05/01/2019

70. Authorization to Use and/or Disclosed Educational and Protected Health Information
71. Parent/Guardian Consent for Individual Evaluation, 04/25/2019
72. Prior Written Notice, Evaluation Decision, 04/25/2019
73. Meeting Attendance/Summary, 04/25/2019
74. Notice of Team Meeting, 04/19/2019
75. Notice of Referral, 02/11/2019
76. Referral Review Team Findings, 04/12/2019
77. Special Education Referral
78. Parent meeting notes, 04/10/2019—05/01/2019
79. Email: [Student]-4J-student needs immediate assistance, 02/17/2022
80. Email: Re: [Student]-4J-student needs immediate assistance, 02/23/2022
81. Email: [Student]-4J_Notice of potential lawsuit, request to preserve evidence, 02/23/2022
82. Email: Email: Re: [Student]-4J: Request for IEP meeting, 02/28/2022
83. Email: Fwd: EOA for [Student], 02/24/2022
84. Email: Email: [Student]-4J_ Response requested by 5:00 Friday, March 4, 2022., 03/04/2022
85. Email: [Student]-4J point of contact?, 03/29/2022
86. Email: [Student]-4J: Follow up to Parent Record Request, 04/13/2022
87. Email: [Student]-4J; 8th grade completion activities, 05/10/2022
88. Email: Fwd: Most Recent Records, 11/01/2022
89. Email: Re: Records, 03/22/2022
90. Letter from Parents' attorney to District, Re: Notice of pending lawsuit, Oregon Tort Claim Notice, 02/23/2022
91. Letter from Parents' attorney to District Legal Counsel, Re: [Student]-4J Records Request, 04/13/2022
92. Letter from Parents' attorney to District, Re: Request for Release of Education Records; Consent for release to third party, 02/11/2022
93. Letter from District to Parent regarding records request, 09/23/2022
94. Authorization to Use and/or Disclose Education and Protected Health Information
95. Parent/Guardian Consent for Individual Evaluation, 03/15/2022
96. Prior Written Notice, Evaluation Decision, 03/15/2022
97. IEP Progress Report—Measurable Annual Goals, 06/16/2022
98. IEP Progress Report—Measurable Annual Goals, 12/17/2021
99. Notice of Team Meeting, 03/08/2022
100. Prior Written Notice, 03/18/2022
101. Prior Written Notice, 03/10/2022
102. Prior Written Notice, 03/02/2022
103. District Checklist: 3-year reevaluation, 05/25/22
104. Eligibility Summary Statement, 05/16/2022
105. Disability Statement, Other Health Impairment (80) Criteria, 05/16/2022
106. Disability Statement, Emotional Disturbance (60) Criteria, 05/16/2022
107. Prior Written Notice, Eligibility, 05/16/2022
108. Email: Re: Re-evaluation for [Student], 04/13/2022
109. Letter from Student's community mental health provider, 04/12/2022
110. Student Confidential Psychoeducational Evaluation, 05/13/2022
111. Notice of Team Meeting, 05/23/2022
112. Meeting Attendance/Summary, 05/25/2022
113. Student Individualized Education Program, 05/25/2022
114. Special Education Placement Determination, 05/25/2022
115. Prior Written Notice, 05/25/2022
116. Prior Written notice for IEP, 05/25/2022
117. Notice of Team Meeting, 05/02/2022
118. Special Education Document Checklist, 09/14/2022

119. [Student]-4J: Suggest Goals
120. Student IEP Amendment, 05/25/2022
121. Special Education Placement Determination, 09/12/2022
122. Prior Written Notice for IEP, 09/12/2022
123. Emails relevant to the Parent's records requests 2022
124. Procedural Safeguards Notices
125. Email: Re: Teacher Change Request-[Student], 09/10/2022—09/17/2020
126. Email: Re: Teacher Change Request-[Student], 09/29/2020
127. Procedural Safeguards Notices
128. Email: Re: Teacher Change Request-[Student], 09/29/2022
129. Email: Re: Teacher Change Request-[Student], 09/10/2022—09/17/2020
130. Email: Re: What's Next, 02/04/2022
131. Email: [middle_parents] [School] – Please combat discriminatory language, 12/03/2021
132. Email: Re: What's Next, 02/07/2022
133. Email: Fw: [Student], 02/04/2022--02/07/2022
134. Email: Forecasting for [High School]
135. Email: Re: What's Next, 02/04/2022
136. Email: [Student], 02/03/2022
137. Email Re: What's Next, 02/04/2022
138. Email: Re: NLA026G1-08 Language Arts 8 [Student] – Checking In, 02/02/2022
139. Email: Re: Video Footage, 02/15/2022
140. Re: What's Next, 02/04/2022
141. Email: Request Your Child's Free LTD Pass!, 10/21/2021
142. Email: Re: Call, 07/14/2022
143. Email: Re: Request to Speak with Superintendent, 08/09/2022
144. Email: Re: Draft, 08/05/2022
145. Email: Re: Request to Speak with Superintendent, 08/04/2022
146. Letters from Parent to District
147. Email: Re: Draft, 08/06/2022
148. Email: Re: Request to Speak with Superintendent, 08/08/2022
149. Email: Re: Draft, 08/06/2022
150. Email: Re: Request to Speak with Superintendent, 08/08/2022
151. Email: [Student] 06/06/2002
152. Student IEP, 05/25/2022
153. Email: Re-evaluation for [Student], 04/11/2020
154. Prior Written Notice, 03/15/2022
155. Procedural Safeguards Notice
156. Parent/Guardian Consent for Individual Evaluation, 03/15/2022
157. Email: Re: [Student], (and attached SpEd documents) 06/15/2022
158. Email: Re: What Are We Doing?, 05/31/2022
159. Email: [Student] – IEP Goals & Accommodations, 05/20/2022
160. Email: Re: Draft (and attachments), 05/25/2022
161. Email: Re:, (with attachments), 03/09/2022
162. Email: Re: Follow Up, 04/21/2022
163. IEP Meeting Notes from Case Manager, 03/10/2022
164. Department Request for Response, 10/18/2022
165. Email: Formal Complaint, 10/18/2022
166. Letter from District to Parent regarding records request, 09/23/2022
167. Email: [Student], 09/06/2022
168. Email: Re: [School], 09/09/2022
169. Email: Re: [Student], 09/06/2022
170. Email: Re: [School], 09/08/2022
171. List of Relevant Staff

The Complaint Investigator interviewed the Parent on November 10, 2022. On November 23, 2022, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. 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 October 12, 2021, to the filing of this Complaint on October 11, 2022.

Allegations	Conclusions
<p>Access to Student Education Records</p> <p>The Parents alleged that the District violated the IDEA when it failed to provide the Parents with access to the Student's educational records when requested. Specifically, it is alleged that the Parents may have made requests to access the Student's educational records as early as February 11, 2022, that the District did not timely fulfill, or that the District has yet to fulfill.</p> <p>(OAR 581-015-2300; 34 CFR § 300.501 & 34 CFR § 303.405(a))</p>	<p>Not Substantiated</p> <p>The District provided the Parents with access to the Student's education records shortly after their initial request. The District differentiated the Parent's request between education records and public records, and expressed that specific public records could be provided separately through the District's public records request process.</p>
<p>When IEPs Must Be In Effect</p> <p>The Parents alleged that the District violated the IDEA when it failed to provide special education and related services to the Student in conformity with the Student's IEP. Specifically, it is alleged that:</p> <ul style="list-style-type: none"> a. the District failed to provide special education services to the Student during February and March of 2022, when the Student was attending classes through virtual learning; and b. the District failed to collect data regarding the Student's progress toward their social/emotional/behavioral goal in the Spring of 2022. <p>(OAR 581-015-2220; 34 CFR § 300.323, § 300.324)</p>	<p>Not Substantiated</p> <p>The District offered educational services to the Student. The Student was unable to take advantage of those services due to the Parents not sending the Student to school.</p> <p>The evidence in the record shows that data was not collected due in part to limited time remaining in the school year after the formulation of the goal.</p>

<p>Prior Written Notice</p> <p>The Parents alleged that the District violated the IDEA when it failed to provide prior written notice of its intent to decline the Parent’s request to change the Student’s educational placement, following the Parent’s February 2022 request that the Student be moved to online learning.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p>Not Substantiated</p> <p>The District was not required to provide prior written notice as there was no change in the Student placement proposed or rejected. Rather the issue under consideration was the choice of in-person education or online education.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parents alleged that the District violated the IDEA when it failed to use a variety of assessment tools and strategies in the process of determining the Student’s additional eligibility category of Emotional Disturbance. Specifically, it is alleged that the District may not have given appropriate consideration to peer bullying and its impact on the Student’s psychological state and academic performance.</p> <p>(581-015-2110; 34 CFR § 300.304 & § 300.305)</p>	<p>Not Substantiated</p> <p>The Student’s IEP team and the District’s School Psychologist gave consideration to the potential impact of peer bullying on the Student as part of the Student’s IEP meetings and the Student triennial reevaluation.</p>
<p>IEP Team Consideration and Special Factors</p> <p>The Parents alleged that the District violated the IDEA when it failed to consider the Parent’s concerns in the development of the Student’s IEP. Specifically, it is alleged the Parent raised concerns regarding bullying, the Student’s safety at school, and the educational impact of bullying on the Student.</p> <p>(OAR 581-015-2205; 34 CFR § 300.320, § 300.324(a)(1) & (2) & (b)(2))</p>	<p>Not Substantiated</p> <p>The records in the case demonstrate that the Student’s IEP team considered issues such as peer bullying and its alleged impact on the Student. This included the District making suggestions for a safety plan.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Parents alleged that the District violated the IDEA when it failed to include in the Student’s IEP, provisions to address concerns regarding the educational impact of peer bullying on the Student’s education, to include the provision of supports to minimize bullying and potential harm to the Student, thereby denying the Student a FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p>Not Substantiated</p> <p>The District considered the potential impact of peer bullying on the Student, and did amend the Student’s IEP to include goals with consideration toward the potential impact of peer bullying.</p>

REQUESTED CORRECTIVE ACTION

- The Parent suggests that the District implement supports for the Student to address the peer bullying which interferes with the Student's education. Such supports could include additional staff to supervise students during common times, and outside review of the supports and District policies to ensure compliance.
- The Parents request that the District ensure that District investigations do not interfere with Student accessing their education.
- The Parents request access to educational records requested.

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 October 12, 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 in this matter is in the ninth grade and currently attends a private alternative school.
- 2) During the 2021-22 school year, the Student attended school in the Eugene School District.
- 3) The District found the Student eligible for special education under the eligibility categories of Other Health Impairment (80), and Emotional Disturbance (60).
- 4) The Student shows strengths in areas such as time management, conceptualizing assignments, and class participation. The Student demonstrates good math and reading comprehension skills, but still requires specially designed instruction in these areas.
- 5) During most of the 2021-22 school year, the Student was eligible for special education under the eligibility category of Other Health Impairment, largely as the result of a diagnosis of attention-deficit/hyperactivity disorder (ADHD). Data suggested that the Student is easily distracted, can be off-task in the classroom, and requires assistance in maintaining successful behaviors. The Student exhibited needs in the areas of inattention, executive functioning, learning problems, and peer relations.
- 6) The Student shows academic needs in areas such as calculation errors, attention to detail, and unwillingness to work on certain kinds of math problems. The Student has also demonstrated inconsistent performance on District math assessments.
- 7) On Thursday, February 3, 2022, one of the Student's Parents sent an email to Administrator 2 reporting that the Student was "getting pushed around" by Classmate 1. The Parents stated that the Student had "a major problem getting pushed around" by Classmate 1 in school prior to the District's shift to Comprehensive Distance Learning due to the COVID-19 pandemic. The Parent went on to write that it "was also going on during the 7th grade hybrid. [Classmate 1] is not the only one and I am trying to get the others to come forward. No one wants to tell on [Classmate 1] because of the backlash. Which is exactly what [Student] went through after [they] told you in 6th grade. It just got worse. [Student is] afraid of whats [sic] going to happen this time. It must end now. Where do I start? [Classmate 1 has] made [Student's] school life miserable since 6th grade. [Classmate 1] will be held responsible for this and I want it

escalated asap [sic]. I look forward to hearing back from you soon.”

- 8) On February 3, 2022, Administrator 3 responded to the Parents by email writing, “I am very sorry to hear that [Student] is being pushed around. This is not okay. I would like to talk to [the Student] about more specifics & also to see which other students are involved. This will hopefully allow me to: A. Interview other students to get better detail. B. Improve [the Student’s] anonymity by getting multiple sources. I [sic] looks like [Student] is absent today but my plan is to pull [the Student] from [their] downstairs period 1 classroom tomorrow ([Classmate 1 is] upstairs at that time & they should not cross paths). From there I will be able to determine appropriate next steps with [Classmate 1], and if possible, other students who may be involved.”
- 9) On February 3, 2022, the Parents responded that they were concerned about the Student’s safety, writing, “I am considering keeping [the Student] home until [Classmate 1] has been dealt with. It’s not safe for [Student] to continue to go to school with [Classmate 1]. This has caused extreme mental anguish for [Student]. [The Student] should feel safe and supported at school, and [Student] does not.” The Parents went on to write that they would allow Administrator 3 to interview the Student regarding these concerns. The Parents continued, “[Student] will not spend one more day taking the abuse from [Classmate 1]. The repercussions of telling on [Classmate 1] are why no one will come forward. [Classmate 1] just got meaner to [Student] and continued teasing [Student] last time. This is a documented problem and should be taken care of swiftly. Is there a resource officers [sic] assigned to [middle school]? I will need that information. This will escalate as far as it needs to get resolved.”
- 10) On February 3, 2022, the Parents sent an email to Administrator 3 noting that they were sending emails to ensure their conversations were documented.
- 11) On February 3, 2022, Administrator 3 sent an email to the Parents which said, “I talked with another student this afternoon & they gave me some very helpful information but I would like to keep the details of that conversation confidential in order to protect that student. We are also continuing to investigate this. I have at least one more student to talk to tomorrow & camera footage to look at to verify information.” Administrator 3 went on to write, “As far a [sic] the conversation with [the Student] goes, here are my notes regarding [Classmate 1]. They are not verbatim...” Administrator 3 then provided some details of information gathered thus far in the investigation: “[Classmate 1] pushes & yells at people in the hall but doesn’t usually target anyone in particular. There is one student from yesterday that [Classmate 1] was trying to hit but didn’t actually hit. (Note: I talked to this student today & he said they were just horsing around). [Classmate 1] has used words like "jewish" [sic], "black", & the n-word but he doesn’t target anyone in particular. [Classmate 1] has been skipping 4th period to go 2 [sic] lunches. [Classmate 1] kicked & punched [the Student] "sometime around the beginning of the school year" ([The Student] seemed unclear on when) and [the Student] had bruises & scratches from that at the time but doesn’t now. (This is the most troubling & I would love to get a better idea of exactly when this happened)”.
- 12) In the evening of February 3, 2022, Administrator 3 interviewed the Student by phone regarding the allegations raised by the Parents.
- 13) The Parents report having filed a police report regarding allegations of physical assault by Classmate 1 on the Student that same evening.
- 14) On the evening of February 3, 2022, the Parents sent an email to Administrator 3, writing in part, “I assume you and I will connect first thing tomorrow morning to discuss getting the

camera footage and getting it to epd [sic]...This is a big deal and needs to be treated that way. I think you agree. It's been a whirlwind of information today and I will work on a timeline of what happened and when tomorrow. A lot of that information will come from [redacted]. [Redacted] has a much better sense of time. [The Student] is very embarrassed and I know that's why [the Student] did not tell you about the incident 2 weeks ago." The Parents went on to detail the possibility of similar concerns about Classmate 1 and other students. The Parents also expressed concern that Classmate 1's behavior toward the Student was exacerbated or motivated by the Student's disabilities.

- 15) On the morning of Friday, February 4, 2022, Administrator 3 sent an email to the Parents writing, "We will let you know when we have any camera footage that may be helpful. I still feel pretty unclear about exactly when & where [the Student] was punched & kicked. If we cannot narrow down a time & place it will be very difficult to get video proof. You also mentioned yesterday afternoon on the phone that [the Student] was not coming back to school if the other student was present. I want to encourage [the Student] to come back. We can limit the amount of time that the other student is able to interact with [Student] but we cannot eliminate all contact & still give both students the access to education that is required by law. I will continue work with the other students you named to get information."
- 16) On February 4, 2022, the Parents responded to Administrator 3 writing, "Apparently this incident happened by the bike racks out front. [The Student] hit his head on the ground! Then [Classmate 1] was kicking him. Why aren't [sic] you doing anything?? At this point it has happened so many times that [the Student] literally has blocked things out and can't remember details. This is a regular thing. Why don't you just run the video and watch for yourself? I guarantee you'll find something. There better be cameras outside that got this recorded. CLEARLY this is only part of what goes on at [middle school]. You have a big problem on your hands."
- 17) On February 4, 2022, Administrator 3 wrote by email, "The location of the incident is very helpful, thank you for that. I assume this is right after school, that is also very helpful too. We have looked at the cameras next to the bike racks after school going back to Winter Break (19 school days) & don't see anything in that window of time. Could it have been from earlier in the year? If so, do you have a more specific time? We are also in the process of putting some other things in place to minimize possible interactions between [the Student] & the other student throughout the day."
- 18) On February 4, 2022, the Parents responded by email writing, "[The Student] is not returning unless and until [Classmate 1] is no longer attending the same school. You have not protected [the Student] for 2.5 years why would I send [the Student] back in to [sic] that? I won't. [The Student] said [they think] it might have been a Tuesday. You figure it out. You have the cameras. Maybe send out a blast on the intercom and ask the students to come forward who see this daily and say nothing [redacted] is there with [redacted] always. [Another student] sees it and won't say a word. I'll keep my [Student] home safe. When you can tell me what you've changed to keep my [Student] safe, and when [Classmate 1] is no longer there, then I'll consider sending [the Student] back. At this point [middle school] has been negligent and has caused [the Student] physical and mental anguish in the way this has/has not been handled. [The Student] has been put at risk day after day. [The Student is] getting beat up by this kid regularly and it stops now." The Parents then provided Administrator 3 with the relevant police report number for their allegations.
- 19) On February 14, 2022, the Parents sent an email to Administrator 1, with an attached letter. The email asked for "all records for [the Student]." The attached letter, dated February 11, 2022, requested that the District provide a copy of the Student's educational records. The

Parents described the records sought as: "All documents, notes, videos, emails and any other record related to Student. These include Student's confidential special education file and/or 504 plan file; formal evaluations and assessments; informal classroom-based benchmark assessments; gradebook data; documents in any "working file" for any service provider; special education and general education teacher(s) and educational assistant(s) working files; data tracking notes or summaries; progress notes or reports; emails, texts, or other notes of communication about any subject between staff, between staff and outside service providers, or between Staff and Parent(s) related to Student; student absences or tardies (by day or by class period); health room logs; behavioral data collection documents; and discipline records." The Parents requested that this information be provided to their Legal Counsel.

- 20) On February 15, 2022, the Parents sent an email to the District requesting that they be provided any video footage in the District possession that showed the Student and Classmate 1 "on any [middle school] security cameras."
- 21) On February 15, 2022, Administrator 3 sent an email to the Parents responding to their request for security camera video. Administrator 3 wrote in relevant part, "The district maintains video surveillance for up to thirty (30) days and would need to be reviewed to determine if it is releasable at this time." Administrator 3 also provided the Parents with links to the District's online records request form, and the email address for public records requests.
- 22) On February 15, 2022, the Parent sent an email to the Case Manager requesting that the Student be moved to online learning. The Parents wrote that the Student "needs to be moved to distance learning for the unforeseeable [*sic*] future. Are you able to facilitate this transition for us? If there is a different person to take care of this please let me know. [The middle school's] administrators have not implemented procedures to protect [the Student]. Until they do it isn't safe for [the Student] to return and for that reason [the Student] is being forced to go on-line [*sic*]."
- 23) On February 15, 2022, the Student's Case Manager responded that they would look into the Parent's request that the Student be transferred to online schooling. The Case Manager offered to assist the Student with math via video conference the same day, and also suggested that the Student could come to school for the morning and leave at lunch, in order to avoid Classmate 1.
- 24) During interviews with District staff, staff stated that they were in communication regarding accommodations offered with an interest in having the Student return to school.
- 25) On February 16, 2022, Administrator 1 sent an email to the Parents confirming that the District would send "along all documents you requested."
- 26) On February 28, 2022, the Case Manager sent an email to the Parents inquiring after the Student and writing, "I know that the trimester is about to end and that [the Student] will be enrolled in [the District's online school]. I just asked if anything was being done about getting [the Student] earlier, and no one knew. Is that something you want to try? Or do you just want to wait? We have about 10 school days left I think. Also, I can still meet around 11 on Wednesday to help [the Student] with any work he is doing."
- 27) On March 1, 2022, the District mailed the records requested by the Parents to their Legal Counsel. These records were in response to the Parents' February 14, 2022, request.
- 28) On March 2, 2022, the District sent the Parents a letter informing them that the Student was being dropped from enrollment due to "non attendance for a period of ten consecutive days

commencing 02/03/0222 through 02/16/2022.”

- 29) On March 2, 2022, the District sent the Parents a Prior Written Notice (PWN) indicating that, “due to a lapse in attendance or a 10-day drop from enrollment, [the Student] is not currently receiving services.” The PWN also noted that “continuing services outside of enrollment were considered and rejected as students need to be enrolled and attending in order to receive services. The PWN informed the Parents that the Student was being dropped due to non-attendance, but that the District stood ready to provide special education services as soon as the Student returned to school.
- 30) The District’s website indicates that its policy on school choice requires that families apply to enroll students in such schools as the District’s online school.
- 31) On March 7, 2022, the records provided by the District arrived at the office of the Parents’ Legal Counsel. The Parents’ Legal Counsel confirmed receipt of the records by email on March 22, 2022.
- 32) On March 8, 2022, the District sent the Parents a notice of team meeting for a March 10, 2022 IEP team meeting. The stated purpose of the meeting was to develop or review the Student’s IEP and consider the Student’s placement.
- 33) On March 10, 2022, the Student’s IEP team met to discuss the Student’s IEP and enrollment status. The record contains meeting notes from the Case Manager and the Parents.

The meeting notes from the Case Manager include:

“[Parents]- The preference is for [the Student] to be at [the middle school] but the other student of concern cannot be there. If so [online school] is going to be the second alternative. The only way [the Student] will be at [the middle school] is if there is a direct line of supervision of other student or [they’re] not going to attend.”

“The question was posed. Is a different school possible? For example, [alternative middle school] or any other neighborhood school?”

“It is confirmed that the other student will continue at [the middle school] but the school will put a safety plan in for [the Student] at [the middle school] to minimize introductions. Ex.- reduce schedule periods 1 through 4. Having [the Student] leave before lunch to avoid any contact with other student. Also, changing core class schedule so [the Student] will not be in any classes with the other student.”

“[Teacher 2] stated that the other student will be around during passing periods. The team suggested staggering release times to avoid possible interactions.”

“[Parents]- Who’s going to help [the Student] at the school to be safe. [sic] [The Parents know] that there are other kids that I’ve [sic] been bullied by this other student. Further discussion of previously stated safety plan ensued.”

“[Parent’s Legal Counsel] interjected and posed the question- <What happens in high school?=> [sic] To stay on task we the team decided that we can’t speculate at this point due to not knowing enrollment status of each student. That can be discussed at the beginning of next year.”

“At this point the family team took a 10-minute break to discuss the various options of attending [online school], returning to [the middle school], or attending a new school.”

“At the end of the break the family and their support team came back and said the [online school] is the choice that they are going to go with. There are some questions that the family and support team wanted answered.”

- 34) The record also contains meeting notes from the Parents. The notes include discussion among IEP team members regarding the Student’s unenrollment from the District, discussion of enrollment in the District’s online school, or other school options. The Parents voiced the preference that the Student not attend the same school as Classmate 1. The Parents preferred that the Student attend school with peers but not in the same building as Classmate 1 due to concerns for the Student’s security.

The Parents’ Legal Counsel is recorded as expressing: “Preference is in person at [middle school], only if safe. [Classmate 1] on campus without direct instruction and line of sight supervision, [Student] isn’t safe. Without supervision at all times, don’t want [the Student] endangered anymore.”

The District’s Legal Counsel offered an overview of the issues the District had to consider including its obligation to offer an education to Classmate 1. The District’s Legal Counsel discussed that the District could not discuss the Student’s IEP with other students or families, and likewise were limited in sharing details of the specifics of the safety plan relevant to Classmate 1.

The District offered the Parents the option of in-person schooling at another building in the District rather than online school. The team discussed Classmate 1 moving to a different school. The Parents raised concerns about the perception that the Student was being punished for being the victim of bullying. The Parents also voiced concerns that, given the Student’s anxiety and special education eligibilities, transitioning to a new school with new friends would not be the right solution for the Student. The District noted that, while there was a plan in place to mitigate bullying and address the Student’s safety, the District was limited in what it could share.

The team took a break, allowing the Parents and their Legal Representative to discuss the various schooling options. The meeting notes indicate that after this break, the Parents selected online schooling for the Student going forward. The Student’s school was changed, but their educational placement was not changed.

- 35) On March 15, 2022, the District sent the Parents a PWN indicated that the Student’s IEP team would commence the Student’s triennial reevaluation.
- 36) On March 18, 2022, the District sent the Parent’s a PWN indicating that at the Student’s March 10, 2022, IEP team meeting, the team determined that it was appropriate to reevaluate the Student under the eligibility category of Emotional Disturbance/Emotional Behavior Disability. The PWN also documented the discussion during the March 10 meeting regarding the choice of school following the Student’s receipt of the 10-day drop notice and concerns about attending their current middle school given Classmate 1’s enrollment there as well.
- 37) On March 29, the Parents’ Legal Counsel sent an email to the District’s Legal Counsel and the District’s General Counsel writing in part, “On February 14, [the Parents] submitted a records request to [Administrator 1]. We did receive some records from Eugene 4J on March 7, but this release of records did not provide the full scope of records requested. At this time, I would like to submit clarification of education records request. Would this be submitted only to [Administrator 1]?”

- 38) On March 29, 2022, the District's General Counsel responded to the Parents' Legal Counsel's inquiry about records, writing, "Please submit records requests to me with an explanation of what you believe was not provided so I can check on this. Note that emails are generally not student records and will not be provided."
- 39) During the third trimester of the 2021-22 school year, the Student began attending the District's online school.
- 40) On April 12, 2022, the Student's Pediatric Psychiatrist provided a letter addressed to the District stating that they had examined the Student and that the Student's medical history was "most clinically consistent with the following diagnoses: depression, unspecified depression type; confirmed pediatric victim of physical bullying, initial encounter; anxiety; dysthymia; ADHD...combined type; adjustment disorder with depressed mood."
- 41) On April 13, 2022, the Parents' Legal Counsel sent an email to the District's Legal Counsel with a letter "requesting access to records maintained by Eugene School District 4J related to [the Student]..." That letter asked that, "To the extent that District asserts that Parent's February 11, 2022 records request does not meet the requirements of the IDEA or FERPA for records that must be provided at no cost to Parents, then pursuant to FERPA 20 U.S.C. § 1232g(a)(4); IDEA 20 U.S.C. § 1415(b)(1); OAR 581-021- 0270; OAR 166-400-0010; OAR 166-400-0015; OAR 166-400-0040; and OAR 166-400-0060; for all school years of Student's enrollment in District, please preserve the records requested on February 11, 2022 and the records requested below, even beyond state-approved retention periods."
- 42) On May 13, 2022, the District's School Psychologist completed their evaluation of the Student. The Student was assessed through a variety of means including the Behavior Assessment System for Children, Third Edition (BASC-3), Social Skills Improvement System Social-Emotional Learning Edition (SSIS SEL), Comprehensive Executive Function Inventory (CEFI), review of relevant documents, medical statements, and staff observations. The School Psychologist noted that teacher and Parents' assessments indicate elevated ratings in the areas of inattention, executive functioning, learning problems, and peer relations.
- The evaluation concluded observing: "More comprehensive and additional measures administered for this assessment resulted in significantly elevated teacher and parent ratings in the areas of Somatization, Self-Awareness, Relationship Skills, Attention, Initiation, Organization, Planning, and Self-Monitoring. Significantly elevated scores were also found in the broader composite areas of Internalizing Problems and the Social-Emotional Learning Composite."
- 43) On May 16, 2022, the District held an IEP team meeting to determine the Student's eligibility. The team determined that the Student continued to be eligible for special education under the categories of Other Health Impairment (80) and Emotional Disturbance (60).
- 44) On May 25, 2022, the Student's IEP team met to amend the Student's IEP as a result of the Student's additional eligibility categories. The Student's IEP added a new IEP goal related to social/emotional/behavioral needs. That goal stated:
- "By 5/23/2023, given a list of self-regulation strategies and tools developed by [the Student] and [the Student's] teacher or counselor, and positive behavioral supports and interventions, identifying and manage feelings of anger, anxiety, stress, and frustration on a daily basis with 80% frequency as measured by data collected by staff over 8-10 observation periods over the IEP year."

"By 5/23/2023, given specially designed instruction in developing self-awareness for [their] own distractions during class activities [The Student] will display productive social behavior on a daily basis and complete work daily with 80% frequency as measured by the teacher checklist and teacher's grade book."

- 45) June 16, 2022, was the last day of school for middle school students.
- 46) On June 16, 2022, the District provided the Parents with two IEP progress reports; one for the Student's middle school, and the second for the online school the Student attended toward the end of the 2021-22 school year. The IEP progress reports measure data in stages from 0-5. Zero ("0") indicates that the IEP meeting was recently held. Five ("5") indicates that a student's "performance is at or above what is required to meet the goals by the next review." The Student's progress toward their social/emotional/behavioral goal was rated as 4, "progress has been made toward the goals. It appears that the goal will be met by the next IEP review."
- 47) On June 17, 2022, the Parents sent an email to the District stating that they filed a records request with the middle school on March 24, 2022 for "all video footage from all break time, including lunch, from all cameras, from [the middle school]" but that they had not received a response.
- 48) On June 17, 2022, the District confirmed receipt of the Parents' June 17, 2022 request for video records. The District confirmed that no prior request was received, but would process the current request. The District noted that surveillance footage is maintained for 30 days, but that the District had some video footage from the time period sought by the Parents.
- 49) On August 8, 2022, the Parents sent an email to the District requesting records "for all student files and communication records regarding [the Student]...between February 2, 2022—August 8, 2022." The Parents' request went on to specify their interest in obtaining, "all documents, educational data tracking and summaries, progress notes or reports, notes from phone calls, texts, notes from student interviews between students and staff, [middle school] common area videos, all emails and all communications between 4J staff/administrators, between staff and outside service providers and agencies, and any other communication record related to [the Student]. Please include any documents from any "working file" from any 4J staff or from any outside service provider or agency, special education and general education teachers and educational assistants. Any confidential file, any other notes of communication about any subject related to [the Student] between Staff/Administrators, Staff and Parents, and all notes of communication with anyone that has been involved in any discussions regarding [the Student]. Additionally, pursuant to 34 CFR § 300.614 Record of access, please include the record of parties who have obtained access to my child's education records, whether physical records or electronic records stored on any electronic platform or system used by the District to maintain record of student behavioral, special education, or other educational data or documents, including the name of the party, the date access was given, and the purpose for which the party was authorized to access or use the record. Please note, this request includes all communication in any form, between anyone or any agency and 4J, related to [the Student], between Feb. 2, 2022, thru August 8, 2022." The Parents went on to specify additional records sought from specific meetings.
- 50) On September 23, 2022, the District sent a letter to the Parents in response to their August 8, 2022 request for records. The letter indicated that there were approximately 1,500 responsive documents. The letter went on to detail which records were previously provided to the Parents and what surveillance video was previously provided. The letter outlined the staff that would

be required to gather or prepare the request records and provided the Parents with an estimate of the time needed to produce the records and the cost for staff time. The letter also gave a projected estimate for the amount of time required to complete the work.

51) On October 11, 2022, the Parents filed this Complaint.

52) On October 11, 2022, the Department's Complaint Investigator interviewed the Parents. The Parent's report having had concerns regarding Classmate 1 in prior school years. The concerns abated over the course of the COVID-19 pandemic as students were accessing their education through Comprehensive Distance Learning and the Student and Classmate 1 had no physical contact. The Parents assumed that there was no further conflict between the Student and Classmate 1.

The Parents reported that conflict with Classmate 1 had continued. On February 3, 2022, the Parents reported these concerns to Administrator 2 and Administrator 3. Administrator 3 interviewed the Student by phone that same day. The Parents report that the Student gave Administrator 3 an accounting of the conduct of Classmate 1 toward them. The Parents stated they also made a police report of the alleged attacks on the Student. The Parents interpreted specific aspects of an email from Administrator 3, sent March 3, 2022, as indicating that Administrator 3 had gathered information confirming the report made by the Parents.

The Parents explained that they had ongoing concerns regarding the Student's safety, and therefore kept the Student home. The Parent's commended Case Manager for their assistance during this time. However, the Parents expressed concern that the Student was not attending school, nor was the Student receiving services at home from the District. The Parents explained that they attempted to have the District transfer the Student to online schooling during this time, but were either unsuccessful or frustrated in those attempts. The Parents noted that during these attempts to have the Student transferred, that the District sent them notice that the Student was dropped from enrollment due to lack of attendance.

The Parents also reported concerns whether the District had not appropriately considered the impact of peer bullying on the Student. The Parents noted that the Student has significant anxiety, and possibly other psychological conditions stemming both from the psychological and physical impact of Classmate 1's conduct toward the Student. The Parents also highlighted concerns whether IEP progress reports generated by the District were actually supported by data gathered.

53) On November 23, 2022, the Department's Complaint Investigator interviewed the Administrator 1, Administrator 3, the Case Manager, and one of the School Psychologists that evaluated the Student. As part of these interviews the Department's Complaint Investigator discussed specifics of Classmate 1. As that information is confidential to Classmate 1 it cannot be included here.

54) As part of the November 2, 2022, interviews, Administrator 3 indicated that they had led the investigation into the allegations raised by the Parents regarding Classmate 1. This included interviewing the Student. Administrator 3 reports having interviewed the Student. The Student reportedly gave little detail regarding any dates or locations of the alleged physical assaults. Administrator 3 confirmed working with police based on the police report filed by the Parents. After gathering information from other students and review of surveillance video, the District was unable to confirm the allegations.

The Department's Complaint Investigator discussed with the District at length the various steps in the investigation, the methods involved, and steps taken during and after the

investigation to ensure the Student would be safe at school had the Parent's decided to send the Student back to school. Administrator 1 and Administrator 3 explained that, without supporting evidence, the District could not expel Classmate 1. The District reports having continued to urge the Parents to return the Student to school with the understanding that a safety plan would be in place.

- 55) Administrator 1 and the District's Legal Counsel indicated that records were sent to the Parents and their Legal Counsel on March 1, 2022. The District's Legal Counsel and Administrator 1 reported that the Parent's Legal Counsel had not contested the content of the records but had requested additional records that were public records. The District later provided additional educational records for the Student, such as those arising out of subsequent IEP team meetings. The District indicated that the Parents made requests for both education records and public records. Administrator 1 indicated that the Parents appeared confused about the difference between these two types of records in their requests.
- 56) As part of the November 23, 2022, interviews, the Case Manager reported that, following the Parents' reports of bullying toward the Student, they reached out to the Parents and the Student to offer opportunities to work with the Student through online education and tutoring sessions. The Case Manager reported that the Student did not take advantage of these opportunities and confirmed that it was possible that the Student submitted work or completed posted assignments in their courses despite not attending school in person.

Administrator 1 explained that the District's attendance system was automated. From the District's perspective, the Parents informed the District that they would not send the Student to school so long as Classmate 1 was still attending. The Student's absences were counted as unexcused. Administrator 1 related that the Parents had requested only a single excused absence from the date the report regarding Classmate 1 was made and when the Student began attending the District's online school. Administrator 1 indicated that the Parents could have requested excused absences but did not do so.

- 57) Administrator 1 and the Case Manager noted that educational services were offered to the Student following the Parents' decision not to send the Student back to school. The Case Manager offered to conduct meetings with the Student through video conferencing. Administrator 1 noted that the Parents had requested that the District transfer the Student to the District's online academy. Administrator 1 explained that the District's online academy was established in response to the COVID-19 pandemic, was a separate school, and had limited resources. The nature of the school required that Parents apply for enrollment there, and it was not the District's process to transfer students to that school.
- 58) The Case Manager indicated that the social/emotional/behavioral goal added to the Student's IEP at the May 23, 2022, IEP team meeting was really more of a goal to work on with the Student's high school special education team. Formulated as it was, so close to the end of the school year meant that it was not practical to fully implement as it was written. The goal required that the Student, in conjunction with their teacher and/or counselor, develop a list of self-regulation strategies and tools. The Case Manager indicated that this largely had not occurred prior to the end of the 2021-22 school year partially due to lack of time and partially due to the Student not participating in online school sessions.
- 59) As part of the November 23, 2022, interviews, the Department's Complaint Investigator interviewed the District's School Psychologist. The School Psychologist indicated that they had conducted the Student's previous three-year evaluation. The School Psychologist indicated that, absent the allegations of bullying or assault, they likely would have conducted a file review of the Student's progress as there were no other significant indicators to suggest

that the Student was facing additional academic struggles which may indicate additional areas of eligibility.

The School Psychologist noted that they would normally have a direct conversation or communication with a student's physician when they are presented with medical statement or letter from a physician reporting a relevant diagnosis. The School Psychologist indicated that the Parents had not provided consent for them to discuss these issues with the Student's pediatrician. The School Psychologist reported that they only had the April 12, 2022, letter from the Student's pediatric psychiatrist. The information from the pediatric psychologist was added to the evaluation, along with assessments from teachers and the Parents. The School psychologist further explained that by the time of the assessment the Student was attending school virtually, and that the observations were complicated by the Student not having their camera on during class.

IV. DISCUSSION

Access to Student Education Records

The Parent alleged that the District violated the IDEA when it failed to provide the Parents with access to the Student's educational records when requested. Specifically, it is alleged that the Parents may have made requests to access the Student's educational records as early as February 11, 2022, which the District did not timely fulfill, or that the District has yet to fulfill.

School districts are public bodies that maintain public records.³ School districts, like all public bodies, may establish a fee reasonably calculated to reimburse the public body's actual costs of making public records available, including costs for summarizing, compiling, or tailoring the public records or separating the records into exempt and nonexempt records.⁴ The amount and manner of calculating fees for the production of public records should be part of the response to requesters. Public entities should respond to records requests as soon as possible without unreasonable delay.⁵

Public records must be distinguished from education records. Education records are those documents and records regarding the identification, evaluation, and educational placement of the child. A district must comply with the parent's request to inspect and review records without unnecessary delay.⁶ The Family Educational Rights and Privacy Act (FERPA) defines education records as those records that contain information directed related to a student, and which are maintained by an educational agency or institution.⁷ Education records are those that are maintained "in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled."⁸ Emails in the possession of a district may only be considered part of a student's educational record when they are printed and/or added to a student's file.⁹ A similar reasoning extends to other dispersed records in the possession of a district but not maintained in a student's permanent file.¹⁰

³ ORS 192.311(4)

⁴ ORS 192.324(4)(a), (4)(b)

⁵ ORS 192.324, ORS 192.329

⁶ OAR 581-015-2300

⁷ 20 U.S.C. § 1232g(a)(4)(A)

⁸ *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, 534 U.S. 426, 432-33 (2002)

⁹ *Burnett v. San Mateo-Foster City School District*, 739 F. App'x 870 (2018)

¹⁰ *Saddleback Valley Unified Sch. Dist.*, 57 IDELR 298 (SEA CA 2011)

The Parents made several requests for records in this matter. The first was an email to Administrator 1 on February 14, 2022. The Parent requested that the records be sent to their Legal Counsel. On February 16, 2022, the District responded that they would send the requested documents. On March 22, 2022, the Parent's Legal Counsel confirmed that they had received the requested records on March 7, 2022. On March 29, 2022, the Parent's Legal Counsel sent an email to the District indicating that the District had provided some but not all of the records requested. On the same date, the District's General Counsel responded asking for clarification regarding what records the Parents' Legal Counsel felt were not provided in response to their request. On April 13, 2022, the Parents' Legal Counsel sent an additional request to the District's Legal Counsel for those documents that the District asserted did not "meet the requirements of IDEA or FERPA that must be provided at no cost." During interviews with District staff it was reported that the District had provided later education records after the March records production for such records as those related to later IEP team meetings.

The Parent made later records requests of the District that included requests such as communications among staff, confidential communications within the District regarding the Student, and requests for surveillance video. Though there appear at times to have been records requests that were not received or communicated to the District's custodian of records, on March 1, 2022 the District sent the education records requested by the Parents on February 14, 2022 to the Parents' Legal Counsel as requested. The Parents' Legal Counsel confirmed receipt of those documents. The District later communicated to the Parent that requests beyond education records were subject to public records laws and would require that the Parent reimburse the District for staff time to gather and produce those records.

The Department does not substantiate this allegation.

When IEPs Must Be in Effect

The Parents alleged that the District violated the IDEA when it failed provide special education and related services to the Student in conformity with the Student's IEP. Specifically, it is alleged that the District failed to provide special education services to the Student during February and March of 2022, when the Student was attending classes through virtual learning. It is further alleged that the District failed to collect data regarding the Student's progress toward their social/emotional/behavioral goal in the spring of 2022.

At the beginning of each school year, a district must have an IEP in effect for each child with a disability within the district's jurisdiction. The district must provide special education and related services to the child in accordance with that IEP. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with that child's IEP. In addition, the district must ensure that the IEP is accessible to each regular education teacher, special education teacher, and related services provider responsible for its implementation. Each teacher and service provider responsible for implementing the IEP must be informed of their specific responsibilities therein.¹¹

On February 3, 2022, the Parents informed the District that Classmate 1 may have been bullying or physically assaulting the Student. On the same date the Parents informed the District that, due to safety concerns regarding Classmate 1, they would not send the Student to school. Following the Parent's report of their concerns regarding Classmate 1, the District pledged both to investigate the concerns, and put measures in place to ensure the Student's safety in school. The Parent chose not to send the Student to school for the remainder of February and much of

¹¹ OAR 581-015-2220(1)—(3)

March despite the District offering a safety plan and measures to maintain the Student's safety. The Parent's requested that Classmate 1 be expelled or moved to a different school as a solution to their concerns about the Student's safety.

In interviews with the Department's Complaint Investigator, the District indicated that it was unable to find evidence to support the Parent's allegations and therefore could not remove Classmate 1 from the middle school.

During this period the District offered educational services to the Student through their Case Manager. Case Manager reported that the Student did not take advantage of those offers. Administrator 1 indicated that, during the period of time when the Parents did not send the Student to school, the Parents and the District did discuss scheduling an IEP team meeting (which occurred in March 2022) and were in discussions with the Parent's Legal Counsel about the difference between the District transferring the Student and the Parent's enrolling the Student in a different school. These conversations continued through the March 10, 2022, IEP team meeting.

The Parents chose not to send the Student back to school after reporting allegations of bullying and assault by Classmate 1 on the Student. The Parents later decided to enroll the Student in the District's online school. In the intervening time, the District offered services to the Student in person at the middle school, as well as offering the option for the Case Manager to work with the Student virtually. The Parents opted not to send the Student to school or take advantage of these options.

The Parents also alleged that the District has not gathered IEP progress data for the Student's social/emotional/behavioral goal that was developed as part of the Student's May 25, 2022 IEP team meeting. The goal indicated that the Student would work with their teacher and/or counselor to develop specific strategies to work on through the goal. The Parent alleged that these meetings had not occurred and therefore questioned how the District generated an IEP progress report for this goal dated June 16, 2022. During interviews with the District, the Case Manager reported that, given that the goal was developed near the end of the school year, the intent of the goal was for the Student to work with their high school team to develop the goal. The Case Manager acknowledged that no data was gathered relevant to this goal largely due to lack of time in the school year for the Student to articulate their specific concerns with District staff. Based on interviews with the Department's Complaint Investigator and District staff, the content of the progress report was inaccurate.

The IEP goal was intended to serve as a means of meeting the Student's needs in cooperation with the Student's high school. The District acknowledged that there was insufficient time following the addition of the IEP goal to the Student's IEP to both structure the goal and collect data prior to the end of the school year.

The Department does not substantiate this allegation.

Prior Written Notice

The Parents alleged that the District violated the IDEA when it failed to provide prior written notice of its intent to decline the Parent's request to change the Student's educational placement, following the Parent's February 2022 request that the Student be moved to online learning.

A school district must provide prior written notice (PWN) to parent when a district proposes to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education to a child. A district must also provide PWN when it refuses to initiate or change the child's identification, evaluation, educational placement, or provision of a free appropriate public education to a child. The PWN must include a description of the action refused or proposed by the district, and an explanation for the proposal or refusal. The PWN should also include a description of the basis upon which the district relies for the proposal or refusal.¹²

The physical location where a student attends school is not the same as their educational placement.¹³ "Placement does not mean a 'particular school,'" rather it refers to the "setting" and "general education program of the student."¹⁴ The educational placement of a student with a disability is determined by a group of people, including the parents, and others knowledgeable about the child.¹⁵ The district must ensure the student's educational placement is based on the child's current IEP, and consideration must be given to any potential harmful effect on the child.¹⁶ An offer of FAPE is generally the IEP developed by a district. To "meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁷

Following the Parents report of Classmate 1's alleged behavior toward the Student, the Parents informed the District that they would not be sending the Student back to school. As observed above, the District offered the option for the Student to return to the middle school or for the Case Manager to work with the Student virtually. During the period at issue, the District, directly, and through the Parent's conversations between the District's Legal Counsel and the Parent's Legal Counsel, explained that the Parent's request that the Student move to the District's online school was not a transfer but rather a process requiring the Parents to enroll the Student in that school.

The Parents requested an IEP team meeting to discuss concerns regarding the Student. During interviews with the Department's Complaint Investigator, the District reported that from the time of the Parent's report through March 2022, the District was unable to confirm the Parents' allegations regarding Classmate 1's behavior toward the Student. The parties subsequently worked to coordinate a time to schedule the meeting. March 10, 2022, was selected for this meeting. During the meeting the Student's IEP team discussed and considered a range of issues including a safety plan for the Student and concerns regarding Classmate 1. Also discussed during this meeting was the Parents' preference for the Student to remain in their neighborhood school, transfer to a different school in the District, or transfer to the District's online school. The change of physical location was not a change in educational placement that required that the District issue a prior written notice.

The Department does not substantiate this allegation.

General Evaluation and Reevaluation Procedures

The Parents alleged that the District violated the IDEA when it failed to use a variety of assessment tools and strategies in the process of determining the Student's additional eligibility category of Emotional Disturbance. Specifically, it is alleged that the District may not have given

¹² OAR 581-015-2310

¹³ *R.M. v. Gilbert Unified School District*, 119 LRP 16384 (2019)

¹⁴ *N.D. v. Hawaii Department of Education*, 600 F.3d 1105, 1116 (9th Cir. 2010)

¹⁵ OAR 581-015-2250(1)(a)

¹⁶ OAR 581-015-2250(1)(c), and OAR 581-015-2250(4)

¹⁷ *Andrew F., v Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017)

appropriate consideration to peer bullying and its impact on the Student's psychological state and academic performance.

School districts must utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student. This should include information from the parent. This information is used to determine whether the child is a child with a disability. This information will also be used to determine the content of a student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. Districts may not use any single measure as the sole criterion for determining whether a child is a child with a disability. Districts must ensure that children are assessed in all areas related to the suspected disability, including social and emotional status. Evaluations must be sufficiently comprehensive to identify all the student's special education and related service needs.

The District's School Psychologist considered concerns from the Student's IEP team, and the Student's pediatric psychiatrist when assessing the Student. The School Psychologist performed a variety of assessments on the Student including obtaining the input of the Parents and the Student's teachers. During interviews with the District, the School Psychologist observed that they were not permitted to speak directly with the Student's pediatric psychiatrist. Rather, they were provided with a letter from the Student's physician with relevant diagnoses and observations regarding the Student's experiences. The School Psychologist indicated that they completed the Student's triennial reevaluation nonetheless. The Student's IEP team later met and added IEP goals for the Student to address potential concerns related to bullying such as anxiety.

The Department does not substantiate this allegation.

IEP Team Considerations and Special Factors

The Parents alleged that the District violated the IDEA when it failed to consider the Parent's concerns in the development of the Student's IEP. Specifically, it is alleged that the Parent raised concerns regarding bullying, the Student's safety at school, and the educational impact of bullying on the Student.

In the development, review, and revision of a student's IEP, the IEP team must consider a variety of factors including the strengths of the child, the concerns of the parent for enhancing the education of their child, and the results of the child's initial or most recent evaluation. The IEP team must also consider the child's academic, developmental, and functional needs.¹⁸ The IEP team should also consider the student's communication needs and whether they require assistive technology devices and services.¹⁹ The IEP team must also consider a variety of additional special factors that may impact or impede the student's learning.²⁰

IEP team meeting notes provided by the District and the Parent show that the Student' IEP team discussed the Parent's concerns about alleged bullying and alleged assaults on the Student by Classmate 1. Both sets of meeting minutes indicate that the District offered to discuss a safety plan for the Student. The safety plan discussed included the potential for monitors for the Student and Classmate 1, and modifications to school schedules to limit the potential for interactions during the school day. At the March 10, 2022, IEP team meeting, the Student's IEP

¹⁸ OAR 581-015-2205(1)(a)—(1)(d)

¹⁹ OAR 581-015-2205(2)(a)—(2)(b)

²⁰ OAR 581-015-2205(3)

team discussed the Student returning to their current middle school, moving to a different middle school building, or enrolling at the District's online school. During that meeting the Parents decided that the best solution to address their concerns would be for the Student to attend the District's online school.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parents alleged that the District violated the IDEA when it failed to include provisions to address concerns regarding the educational impact of peer bullying on the Student's education in the Student's IEP, to include the provision of supports to minimize bullying and potential harm to the Student, thereby denying the Student a FAPE.

Each school district must provide a free appropriate public education to school age children with disabilities for whom the school district is responsible.²¹ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities."²² If an IEP cannot be implemented as written for distance learning, the IEP team must meet to review and revise the IEP.²³

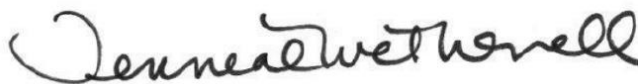
As observed above, the Student's IEP team met, on March 10, 2022, May 16, 2022, and May 25, 2022, to discuss the Student's IEP goals and educational placement. During the Student's March 10, 2022, IEP team meeting a safety plan was discussed for the Student. The Parents opted to remove the Student from school and enroll the Student in the District's online school. During interviews with the Department's Complaint Investigator, the District reported that, had the Parents chosen to return the Student to their neighborhood school, the District would have implemented the elements of the safety plan that were discussed during the meeting. As part of the May 25, 2022, IEP meeting, a social/emotional/behavioral goal was added for the Student. This goal was formulated with input from the Parent. The goal was designed to be further refined with the Student's input through cooperation with their teacher and counselor. In this way the goal could meet the Student's specific needs as articulated by the Student.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION *In the Matter of Eugene School District 4J* *Case No. 022-054-035*

The Department does not order corrective action in this matter.

Dated: this 9th Day of December 2022



²¹ OAR 581-015-2040(1); 34 CFR §300.101(a)

²² Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

²³ Oregon's Extended School Closure Special Education Guidance (ODE 5/11/20)

Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: December 9, 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).)