



10. Email, re: updated IEP draft, 03/01-03/05/24
11. Email, re: IEP update timeline, 03/06/24
12. Email, re: IEP updated draft, 03/15/24
13. IEP, 03/05/24
14. Email, re: clarification for upcoming IEP amendment meeting for [Student], 03/31-04/01/24
15. Email, re: [Student] - withdrawal notice, 04/22/24

The Parents submitted a *Reply* on July 31, 2024, providing an explanation, rebuttal, and documents supporting the Parents’ position. The Parents submitted the following relevant items:

1. Request for Complaint, 07/12/24
2. Email, re: fraudulent dates complaint, 05/24/24
3. Email, re: completed IEP paperwork for your student, 03/19-05/24/24

The Complaint Investigator interviewed the Parent and District personnel on August 15, 2024. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits to reach 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 July 13, 2023, to the filing of this Complaint on July 12, 2024.

Allegations	Conclusions
<p><b>Prior Written Notice (PWN)</b></p> <p>The Parents alleged that the District violated the IDEA “when the District did not provide PWN to the Parents before the changes made to the Student’s Individualized Education Program (IEP) were implemented, which is unknown.”</p> <p>(OAR 581-015-2310; 34 CFR §300.421)</p>	<p><b>Substantiated</b></p> <p>The District did not provide the Parents with PWN before special education services were implemented.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
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The Parent request corrective action as follows:

- “The Oregon Department of Education should order training of all special education staff on proper IEP document requirements, including accurate dates on IEPs and Prior Written Notices.”
- “Require [the] District to send PWNs prior to implementing the [Student’s] IEPs and provision of FAPE.”
- “Require [the] District to update their special education procedures manual.”
- From Parent Response July 31, 2024 – “The District has offered to develop internal procedures regarding PWNs. The Parents request that these procedures be added to its Special Education Procedures Manual. The procedures manual should be updated to ensure the new procedures are implemented consistently and with fidelity.”

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 July 13, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student’s disability and special education history.

1. The Student is fourteen years old and attends 8<sup>th</sup> grade at a Public Charter School in the District.
2. The Student is eligible for Special Education under the category of Other Health Impairment (OHI).
3. Previous IEP dates relevant to the Investigation include:
  - a. “Original IEP date: 3/10/2023”;
  - b. “Amendment date: 4/28/2023”; and
  - c. “IEP Review Due Date: 3/09/2024.”
4. A Notice of Team Meeting dated February 19, 2024 indicated an IEP meeting was to be held on February 29, 2024.
5. On February 23, 2024, the Case Manager emailed the Parents, “I’ve updated the parent concern section of the IEP and updated the meeting guest list (this way, everyone will get notified when I email out the draft).”
6. On February 28, 2024, the Case Manager sent a reminder notice to the IEP Team with a link to the draft IEP for the team to review with the meeting link attached.
7. A draft IEP, dated February 29, 2024, indicated that the Student exhibited behavior that impedes their learning or the learning of others. The Student had draft goals for writing, social

emotional skills, and study/organizational skills. The social emotional goal was, "By the next IEP, before transitioning to a scheduled unstructured task or activity (break or PE), when provided no more than 1 verbal or visual cues (e.g. social story, verbal reminder, etc.) to use a pre-taught grounding strategy by the classroom teacher, [The Student] will use one of the strategies before proceeding, for 4 out of 5 scheduled unstructured tasks/activities."

8. The draft February 29, 2024 IEP was reviewed at an IEP meeting held on that date. IEP Meeting Minutes indicated "... A discussion ensued around the wording of the old [social-emotional] goal and parent disagreements with the data and the educator team's interpretation of it. The team discussed the recommended replacement goal and some alternative wording was suggested which was adopted." IEP Meeting Minutes reported that the IEP meeting ended before the IEP could be completed. "The team decided to start with communication via email to address any remaining concerns and questions..."
9. A Prior Written Notice document, dated February 29, 2024, indicated the District proposed to take action because "The IEP [T]eam has determined that [the Student] requires the services listed on the attached IEP." The description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action stated, "Results of current comprehensive evaluation and the Evaluation Team meeting." Other options considered were, "Continuing to educate [the Student] without the provision of Special Education services was rejected because [the Student's] educational needs cannot be addressed sufficiently without the services indicated on the IEP." A description of the factors relevant to the actions proposed or refused was, "All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team."
10. On March 3, 2024, one of the Parents emailed the Case Manager requesting several changes to the draft IEP. The Parents objected to social/emotional/behavioral data. The Parents stated that "currently, the IEP is hard to follow and understand for me. Goals are discussed and scattered throughout the IEP."
11. In an IEP dated March 5, 2024, the Summary of Present Levels indicated the Student received instruction primarily in the general education environment. [The Student] "is a hard-working student who has made good social connections and deepened several friendships that were formed last year. While [they] experienced some challenges with focus with work completion, [the Student] is generally viewed as a friendly and knowledgeable member of the class. All teachers agree that they have seen improvement in [their] asking for guidance and instruction in academics when unsure from [the Student], though regular check-ins and support remain important as this continues to be a growth area ... Clear instructions and examples are key to [the Student] elaborating in [their] responses."

The Parents observed improvements in the Student's social-emotional development, but were concerned about their organizational and other executive skills, handwriting, and spelling. The Parents noted that the Student did not self-advocate at the level of a neurotypical child. They believed this was due to the Student's desire to comply with adult expectations in order to avoid stressful situations.

12. This IEP also included special education services in the areas of writing, study/organization skills, and social-emotional skills, with a start date of March 5, 2024 and an end date of March 4, 2025. The social emotional goal was, "By the next IEP, before transitioning to a scheduled unstructured task or activity (break or PE), when provided no more than 1 verbal or visual cues (e.g. social story, verbal reminder, etc.) to use a pre-taught grounding strategy by the classroom teacher, [The Student] will use one of the strategies before proceeding for 4 out of 5 scheduled unstructured tasks/activities."
13. The Case Manager emailed the Parent on March 5, 2024, regarding the updated IEP draft, "There was apparently a mis[-]entry of an outside-of-school incident that had been entered as a referral and I had misunderstood the information that had been told to me as it should have been 10 incidents 1<sup>st</sup> trimester (instead of the 11 it had been with the mis[-]entry) and 2 incidents second. This has been corrected...The [T]eam has responded with increased support...regular check-ins with staff...We can convene a meeting to discuss an amendment at any time for any reason." The Case Manager included the updated IEP draft in the email.
14. The Case Manager sent an email to the IEP Team on March 6, 2024, "As our date for the IEP [due date] is approaching I wanted to reach out with where we were and what next steps would look like. I'm including a copy of the IEP if the draft sent out on the 5<sup>th</sup> were to be the finalized draft with all dates included etc. If we are okay with that draft being submitted then it will immediately go into effect. If we do not have an agreed [sic] draft by the 9<sup>th</sup> then the old IEP will be the one to remain in effect until we do have a finalized draft."
- "I will add that [the School Team] is already implementing many of the new accommodations that we discussed at the meeting as a good faith effort to meet the support need identified in our conversation (such as line of sight, check-in/out, and use of the social story). Let me know how the [T]eam would like to proceed."
15. On March 15, 2024, the Case Manager emailed the IEP Team, "After meeting with [the Program Administrator for Special Education] [they] confirmed that we really do need to include the content behind why the [T]eam made the support decisions that we did. As such the [D]istrict will move forward with finalization with the language from the draft I sent out the 5<sup>th</sup>, however [they] offered that if the family wishes they may write a letter that can be attached to the file."
- "To address the other point, if I'm understanding [the Academic Tutor] correctly, it sounds like you are looking for how progress monitoring data will be collected, not observation data specifically. As [the Academic Tutor] correctly points out observation data can vary depending on the judgment of the observer and as such we often do not use it as our primary sources of goal monitoring data. But I'm happy to include an explanation here as to how I will go about gathering the data for each goal."
16. The Parents responded to the Case Manager the same day, "I am going to move forward with having [the Attorney] involved. I was really trying to avoid it, but it seems inevitable. With the

social[-]emotional goal that you wrote last year, there is no denominator. It's a bad goal – it literally cannot be calculated – and yet you are feeling the need to defend it. I wish you could own up to your missteps and have a reasonable discussion that is student-centered and collaborative. ...”

17. On March 31, 2024, the Principal emailed the Parents, “As for your 1<sup>st</sup> point, there is often behavioral content included in IEPs to draft goals, which are typically agreed upon by the [T]eam (school and family). In this case, it seems that there is disagreement about content, which is why you sought legal advice. I believe our next step is to schedule a meeting bringing the [T]eam together. ... As far as the manifest [*sic*] determination, we would be addressing several injuries caused to other students by [the Student] that resulted in a suspension. ....”
18. On April 22, 2024, one of the Parents emailed the District, “I am writing to let you know that we are withdrawing [the Student], 8<sup>th</sup> grade, out of [the School]. We anticipate enrolling [them] in a new school some time [*sic*] this week ... As an aside, this means that [their] IEP Amendment meeting scheduled for April 30<sup>th</sup> with [the District] is canceled.”
19. On May 24, 2024, one of the Parents emailed their Attorney, “Here is the IEP packet that was emailed to me on March 19<sup>th</sup>. This was the first time I saw this PWI [*sic*]. I was shocked and dismayed when they sent this packet to me ... as we ([Parents]) had not agreed to the IEP yet. We agreed at the IEP meeting (in early March) to continue the conversation on email. Then suddenly, I was slapped with this.”
20. On May 24, 2024, one of the Parents emailed their Attorney, “So, the IEP meeting was actually on February 29<sup>th</sup> (I just double checked my calendar and emails to confirm ... earlier I said early March, but I was wrong). At the IEP meeting, we weren't finished by the time 1 hour was up, so we all decided to continue the conversation on email. I included the string below:”
  - a. “Feb 29, 2024: IEP meeting (agreeing we would continue the conversation on email)”;
  - b. “March 1, 2024: email from [the Case Manager] with an IEP draft”;
  - c. “March 3, 2024: I replied to [the Case Manager] with some suggested changes”;
  - d. “March 5, 2024: [The Case Manager] replied to me”;
  - e. “March 10, 2024: I replied to [the Case Manager] again”;
  - f. “March 12, 2024: [The Case Manager] replied to me again”;
  - g. “March 15, 2024: [The Case Manager] replied to me again and said, ‘the [D]istrict will move forward with finalization with the language from the draft I sent out on the 5<sup>th</sup>’ which erased all of the modifications we had been making on email between March 5<sup>th</sup> and March 15<sup>th</sup>. ***I did not understand***, at the time, that this meant we were reverting to [the Case Manager’s] original IEP, throwing out the modifications we ([P]arents and SP[ECIAL] ED[UCATION] [T]eam) had made together, or that the IEP was done and we were no longer working on it. I did not grasp what [they were] saying!”
  - h. “March 19, 2024: I got an email from [the Records Clerk] at [the District] with the full packet.”
21. On July 12, 2024, the Parents, through their Attorney, filed this Complaint.

22. During interviews with the Complaint Investigator, the Parent stated the IEP meeting on February 29, 2024 lasted one hour and wasn't completed because the meeting ran out of time. The Parent stated that everyone who attended the meeting, including the Special Education Teacher, agreed to continue the discussion via email correspondence and come to an agreement on what the IEP should contain.

The Parent stated there were disagreements during the meeting on February 29, 2024. The Parent explained that during the evaluation of the student's previous IEP goals, it was revealed that some of the goals were not measurable, which became a point of contention. The Parent said while new goals were being discussed, the meeting ended without fully finalizing all the new goals.

23. According to the Parent, "... my understanding ... through many of those emails in March was that we were continuing the conversation as we said we would at the end of the IEP meeting." The Parent stated they were under the impression that the team was still working on the Student's IEP. The Parent felt caught off guard when they learned the IEP had been finalized in mid-March without their knowledge. The Parent said, "And I had not received any prior written notice of this. ..."

24. The Parent stated they believed the IEP from 2023 was being implemented while the email communication was happening between them and the Special Education Teacher. The Parent said, "... if we're trying to collaborate, to come up with something for [the Student] ... there was no good reason for it to be approved in some of these documents backdated [sic] other than to meet their deadlines.

25. The Parent did not recall getting an email from the Special Education Teacher about implementing changes to the IEP while it was being updated, or having a conversation about it.

When asked if they recalled the Special Education Teacher emailing them and saying they would start the new accommodations, the Parent said, "... once the IEP was approved ... when I got a thing from the clerk ... saying IEP [sic] has been approved, then I'm assuming it's all gonna be implemented according to the IEP the [Special Education Teacher] wanted, not the one that had parental input."

26. The Parent stated they received the PWN in the IEP packet that came from the clerk, which was sent on March 19, 2024.

27. During interviews with the Complaint Investigator, the Special Education Teacher recalled the meeting on February 29, 2024. They stated the IEP meeting was about two hours long, and a significant amount of time was spent discussing the Student's strengths and the nuances of language in the document. The Special Education Teacher stated they eventually moved on to discussing goals and support aspects, which they felt was productive. At the end of the meeting, the Special Education Teacher suggested rescheduling or continuing via email and explained the family chose to proceed with email communication. The Special

Education Teacher stated the team stayed on for another hour to discuss other matters related to the School, but they weren't present for that.

28. When asked why they sought guidance from the Special Education Program Administrator about the IEP, the Special Education Teacher explained, "... as we were doing those follow-up communications, we ended up getting to a point where the parent really had objections not to the supports I was recommending, but instead in ... the Student's function of behavior."

The Special Education Teacher said, "And in that section where I had laid out some of the [Student's] challenges navigating interpersonal interactions, the parent really disagreed with sort of the way I was laying out the language. ... I was trying to meet them as much as I could in the middle, but still accurately describing where I felt those supports ... were necessary. ... that's when ... the parent was like, 'Hey, you know ... this needs to change, this needs to change, this needs to change.' I'm like, 'I genuinely don't think I can change those things, because if I'm saying that this [S]tudent needs these supports, I need to describe why they need those supports.' And so that's when I reached out to my [P]rogram [A]dministrator and said like, 'Hey, here's the parents' ... desires. ... I don't think I can do this. ... I need recommendation [*sic*].'"

29. The Special Education Teacher confirmed the second PWN was based on the February 29, 2024 IEP meeting.
30. The Special Education Teacher explained when the meeting on February 29, 2024 ended, "... it was understood, this is not the final draft. You know, there's still some communication we have to do. There was proposed language around the goals and around a couple [of] other areas ... that's where I offered to do a follow-up meeting and things like that. And it was understood ... we are going to go ahead ... and communicate back and forth ... to get this language to where it needs to be."
31. The Investigator reviewed an IEP that had a start date of March 5, 2024. When asked by the Investigator if that was the date that was included on the IEP document at the February 29, 2024 meeting, the Special Education Teacher said, "No. ... the one that was produced for the meeting, the draft had a date of the 29th. And then we emailed back and forth. ... And so I updated the draft on the fifth and sort of updated all of the dates ... and tried to get it like, okay, ... I think I've done my best to take my understanding of your concerns and to produce an IEP that sort of aligns as best it can. And then that's when I sent out that March 5th draft that, that [*sic*] had all of those dates in it."
32. When asked if the IEP that was dated March 5, 2024, with a start date for the services on the same day, was considered the final IEP by the District, the Special Education Teacher said, "So at the time when I sent it out, it was sort of ... the updated version. And then we continued to email back and forth. And I wanna say it was about a week later as we were arriving at the actual, like, due date for everything, 'cause all of this is taking place about a



week to two weeks, I think even maybe three ahead of the actual annual review due date.  
..."

The Special Education Teacher stated they reached out to their Program Administrator for help with the situation. The Special Education Teacher said, "... so that was through the conversation with [the Program Administrator] where [they] said, 'Hey, I've taken a look at everything at this point in time. I'm telling you the District's just gonna move to finalize the March 5th IEP, and ... that's gonna be our policy. ... go ahead and tell the family that it's the District telling you this is, this is what's gonna happen. ... at this point in time, it seems like you have really ... done your due diligence ... on getting parent feedback and involvement here. And so if they want to add a letter or any thoughts, we'll happily attach that to the file. But we're gonna go ahead and finalize.' And so that was when I ... was told this is what you're doing. And so ... I did that thing."

33. According to the Special Education Teacher, at the end of the IEP meeting on February 29, 2024, there was general agreement on significant portions of the framework, and it was decided those items would be implemented. The Special Education Teacher stated implementation began within a few days. The Special Education Teacher said, "... I forget when the email was, but it was within a week where ... I sent a follow-up communication saying like, 'Hey, the [School] team is implementing in good faith, these aspects of the IEP as we've agreed here ... . And so yeah, ... it was pretty right away."

According to the District's Attorney, the Special Education Teacher sent an email on March 6, 2024 that stated the School had already been implementing some portions of the IEP, the date of the PWN reflected the date of the meeting, which was February 29, 2024. The District's Attorney stated the aforementioned packet was emailed to the Parents on March 19, 2024.

34. The Special Education Teacher said their understanding of when PWN had to be provided to a parent was when the District told them to send out a PWN document. The Special Education Teacher explained the purpose of a PWN was to ensure that everyone understood the services, adjustments, and timelines.

## IV. DISCUSSION

### **Prior Written Notice**

The Parents alleged that the District violated the IDEA "when the District did not provide the Prior Written Notice (PWN) to the Parents before the changes made to the Student's IEP were implemented, which is unknown."<sup>3</sup>

The IDEA requires a school district to give parents PWN within a reasonable period of time before it proposes or refuses to initiate or change anything related to the identification,

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<sup>3</sup> OAR 581-015-2310(4)

evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>4</sup> PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

During an IEP meeting held on February 29, 2024, there was a discussion about the wording of the social-emotional goal in the current IEP. The Parents disagreed with the data and how the educators on the Team interpreted it. The Team also discussed the recommended replacement goal and some alternative wording suggestions that were adopted. The IEP meeting minutes noted that the meeting ended before the IEP could be completed, and the Team decided to continue communicating via email to address any remaining concerns and questions. The Parents reported disagreements during the meeting, indicating that some of the IEP goals needed to be measurable.

On March 19, 2024, the Parents received a finalized copy of the IEP dated March 5, 2024, and a PWN dated February 29, 2024. On May 24, 2024, the Parents indicated the IEP packet received on March 19, 2024 was the first time they had received PWN, even though they had not yet agreed to the IEP. According to the District's Attorney, the PWN's date reflected the meeting date, which was February 29, 2024.

In this case, the IEP Service Summary included starting service dates of March 5, 2024 and the Special Education Teacher reported the revised special education services also started at this time. The District was required to provide the Parents with PWN before March 5, 2024, the date the services were implemented.

The Department substantiates this allegation.

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<sup>4</sup> OAR 581-015-2310; 34 CFR § 300.503(a)

**V. CORRECTIVE ACTION<sup>5</sup>**  
*In the Matter of Portland School District 1J*  
*Case No. 021-054-040*

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

<b>Action Required</b>	<b>Submissions</b>	<b>As Soon As Possible But No Later Than Due Date</b>
1. Review and revise the District’s written procedures to include the IDEA requirement for PWNs being provided to Parent(s) prior to implementation of IEPs and provision of FAPE.	Draft of revised procedures to be provided to ODE for review/approval.  Finalized procedures to be provided to ODE.	<b>October 15, 2024</b>  <b>January 15, 2025</b>
2. Train all special education staff on the District’s written procedures to include the IDEA requirement for PWNs being provided to Parent(s) prior to implementation of IEPs and provision of FAPE.	Training agenda/materials to ODE for approval.  Sign-in sheet for training as well as a participant sign-in sheet, to ODE.	<b>October 15, 2024</b>  <b>January 15, 2025</b>

Dated: this 9th Day of September 2024

*Ramonda Olaloye*

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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

<sup>5</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)).

E-mailing Date: September 9th, 2024

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).)