

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Portland Public School District 1J)	CONCLUSIONS, AND FINAL ORDER
)	Case No. 24-054-062

I. BACKGROUND

The Oregon Department of Education (the Department) has received a series of complaints from a Parent (Parent) regarding the special education of a student (Student) who attended a Portland Public School District (District) high school during the 2023-24 school year. The Department received the first Complaint (Complaint 1) on May 8, 2024, and a special education complaint commenced pursuant to Oregon Administrative Rule (OAR) 581-015-2030. On August 26, 2024, the Parent requested a Due Process (DP) Hearing that included many of the same allegations then being investigated. As required by OAR 581-015-2030(10), the Complaint investigation was set aside pending the outcome of the DP Hearing. On September 27, 2024, the DP hearing request was dismissed for insufficiency. On October 3, 2024, the Parent filed another DP hearing request. On October 23, 2024, the Parent's second DP Hearing request was dismissed for insufficiency. On October 26, 2024, the Parent filed another special education Complaint with the Department. The Parent filed an additional special education Complaint with the Department on November 21, 2024. The Department combined the allegations in the Parent's DP complaints with the two most recent special education complaints to the Department into the present Complaint, #24-054-062.

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 Parent 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 Due to exceptional circumstances (extraordinary length and complexity of the Complaint and concurrent dispute resolution processes addressing the same issues), the Department extended the timeline.

On November 12, 2024, the Department's Complaint investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 26, 2024, which the Department later extended to December 6, 2024 due to the extraordinary length and complexity of the complaint and the related DP request. After the Parent submitted the November 21, 2024 Complaint, the Investigator amended the *RFR*, adding allegations and setting December 16, 2024 as the due date for the District *Response*.

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

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

The District submitted a timely *Response* on December 16, 2024, including a “general denial” as well as specific denials of each allegation in Complaint #24-054-062. The District also submitted the following documents in support of its position:

1. The District’s *Response*
2. Exhibit List
3. The Student’s IEP, 06/11/2024
4. The Student’s Special Education Placement Determination, 06/11/2024
5. The Student’s Functional Behavior Assessment (FBA), 05/23/2024
6. All notes, minutes, and/or audio and video recordings from meetings related to the Student’s special education and placement during the Complaint period, including the following:
 - a. Manifestation Determination Meeting Minutes, 05/07/2024
 - b. FBA Meeting Notes, 05/23/2024
 - c. Facilitated IEP (FIEP) Meeting notes, 06/11/2024
 - d. Facilitated IEP (FIEP) Meeting audio recordings and transcripts
7. 3136 pages of email communications between the Parent and the District, 05/07/2024-11/21/2024
8. Prior Written Notices (PWN) provided to the Parent
 - a. re FBA, 05/23/2024
 - b. re IEP, 06/12/2024
 - c. re Stay-Put placement, 09/06/2024
 - d. re Response to Due Process filing, 10/09/2024
 - e. re Resolution Meeting, 10/17/2024
 - f. re Provision of FAPE per June 2024 IEP, 11/06/2024
 - g. re Refusal of IEP meeting, 11/20/2024
 - h. re Parent Revocation of Consent for Special Education, 11/22/2024
9. A June 18, 2024 email from the Special Education Director to the Parent which included a year-end summary of district support to the Student during the 2023-24 school year.
10. A list of the Parent’s public record requests that the District has fulfilled and a status update of three pending public record requests.
11. A list of District staff knowledgeable about facts and circumstances related to this Complaint.

On December 28, 2024, the Parent replied to the District *Response* and submitted the following documents to the Investigator (Investigator):

1. A 58-page narrative reply to the District *Response*
2. A 2-page Timeline of Facts for Amended DPH
3. A 21-page document titled “[Paraeducator’s] notes on 2023-24 year with [the Student]”

In response to the Investigator’s request, the Parent sent numerous emails dated during the Complaint period as well as recordings from FIEPs held on May 23, June 10, and June 11, 2024.

The Investigator exchanged emails with the Parent nineteen times between October 30, 2024 and January 31, 2025 seeking clarity about allegations and asking for supporting documents. The Investigator spoke with the District's Senior Legal Counsel by phone on November 18, 2024 and December 12, 2024 and the Investigator sent written questions to the District on February 18, 2025. On January 13, 2024, the Investigator interviewed the IEP facilitator virtually. The 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.

II. Allegations and Conclusions

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant's allegations and the Department's conclusions are set out in the chart below.³ 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 November 22, 2023 to the filing of this Complaint on November 21, 2024. Some allegations have already been addressed in Case No. 24-054-027.

Allegations	Conclusions
<p>Parent Participation</p> <p>The Parent alleged that the District violated the IDEA by preventing meaningful parent participation during the Complaint period beginning on May 8th and continuing through the remainder of the Complaint period. Specifically, the Parent alleges that the District violated the parent participation provisions of the IDEA by:</p> <ol style="list-style-type: none"> Excluding the Parent from the FBA conducted during May 2024; Excluding the Parent from a Facilitated IEP (FIEP) meeting on June 10 and 11, 2023 Excluding persons that Parent selected for their knowledge and expertise about the Student from FIEP; Not providing accommodations the Parent needed in order to participate in the June 10 & 11th, 2024 FIEP; and Predetermining Placement in advance of the June 10 and 11 FIEP. 	<p>Not Substantiated</p> <p>The Parent had abundant opportunities to participate in all meetings in which parents are entitled to participate.</p> <p>The District did not impair the Parent's participation in either the FBA-BSP or the FIEP. At the FIEP, the District placed the Parent in a room separate from the rest of the team because the Parent's habitual interruptions and disruptions had impaired opportunities for other IEP team members to participate. At no time was the Parent excluded from participation in the FIEP. The District provided opportunities throughout the meeting for the Parent to participate in IEP team discussion and decision-making, but the Parent chose not to use them.</p>

³ The Complaint in this case includes numerous allegations that do not state a violation of the IDEA. The Parent has been directed to other potential avenues of redress for non-IDEA concerns by Department staff, District staff, and the Investigator.

Allegations	Conclusions
<p>(OAR 581-015-2210(1)(a); 34 CFR § 300.321(a)(1)) (OAR 581-015-2190, 581-015-2195; 34 CFR § 300.322) (OAR 581-015-2250(1)(a); 34 CFR § 300.327) (OAR 581-015-2195(5); 34 CFR § 300.322(f)) (OAR 581-015-2305; 34 CFR § 300.502)</p>	<p>All persons invited to the meetings by the Parent were welcome to attend and had opportunity to contribute their expertise.</p> <p>The District agreed to pay the Parent's attorney fees as a disability accommodation requested by the Parent. The District refused the Parent's request to be in the same room with the rest of the Team as a disability accommodation.</p> <p>The Placement determination was based on the Student's completed IEP. The District's draft IEP and Placement Determination forms were clearly identified as "drafts" and the Team was able to modify as needed at the meeting.</p>
<p>IEP Team</p> <p>The Parent alleged that the District violated the IDEA by excluding the Student from the IEP team beginning on May 9 and continuing through the remainder of the Complaint period.</p> <p>(OAR 581-015-2210(1)(b); 34 CFR § 300.321((a)(7))</p>	<p>Substantiated</p> <p>The District neither invited the Student nor obstructed the Student's attendance at any IEP meetings during the Complaint period. However, the IDEA required the District to invite the Student to the June 10-11th FIEP meetings to address transition planning because the Student would turn 16 years old during the time the IEP was in effect.</p>
<p>Placement and Least Restrictive Environment (LRE)</p> <p>The Parent alleged that the District violated the IDEA by not following the requirements of federal and state regulations for placement and LRE.</p> <p>(OAR 581-015-2240, 581-015-2245, 581-015-2250; 34 CFR § 300.114, § 300.115, § 300.116)</p>	<p>Not Substantiated</p> <p>The documents provided by the District and the Parent document compliance with federal and state regulations for placement and LRE. After completing the June 11th IEP, the team considered several placement options and determined that a separate day school was the least restrictive environment in which it would be possible to successfully implement the IEP and to provide FAPE to the Student.</p>
<p>Prior Written Notice (PWN)</p>	<p>Substantiated in Part</p>

Allegations	Conclusions
<p>The Parent alleged that the District has repeatedly violated the IDEA by not providing prior written notice as required whenever the District proposed or refused to initiate or change anything about the Student's special education identification, evaluation, educational placement, or the provision of a free, appropriate public education (FAPE).</p> <p>(OAR 581-015-2310; 34 CFR § 300.501, § 300.503)</p>	<p>The District gave the Parent detailed PWN for many proposals or refusals between May 8th, 2024 to the date of filing this Complaint. However, the PWNs for the June 12, 2024 and October 17, 2024 IEP meetings did not include a description of other options considered. The Parent asked for PWN frequently, but the PWN requests sometimes related to District decisions that did not directly implicate IDEA requirements.</p>
<p>When IEPs Must Be in Effect</p> <p>The Parent alleged that the District violated the IDEA by failing to ensure that the Student's 1:1 paraeducator was fully informed of their responsibilities for IEP implementation during the 2023-24 school year.</p> <p>(OAR 581-015-2220(3); 34 CFR § 300.323(d))</p>	<p>Not Substantiated</p> <p>The Paraeducator was supervised by and received direction about their responsibilities from the Case Manager and the Vice Principal.</p>
<p>Review and Revision of IEPs</p> <p>The Parent alleged that the District violated the IDEA by repeatedly refusing the Parent's request to convene IEP meetings.</p> <p>(581-015-2225(1)(b); 34 CFR § 300.324(b))</p>	<p>Not Substantiated</p> <p>After the IEP team revised the Student's BSP, IEP, and Placement, the Parent several times demanded a new IEP meeting in order to change those decisions. The IDEA does not require a District to reconvene an IEP team if the Parent disagrees with IEP team decisions. The District provided PWN of the decisions, and the Parent's option was to use IDEA dispute resolution mechanisms to contest those decisions.</p>
<p>Nonacademic Services</p> <p>The Parent alleged that the District violated the IDEA by denying the Student's access to a variety of extracurricular and co-curricular activities, e.g., band, sports, outdoor school.</p> <p>(OAR 581-015-2070; 34 CFR § 300.107)</p>	<p>Not Substantiated</p> <p>The Student lost opportunities to access extracurricular activities during times of suspension from school and times during which the Parent chose not to send the Student to school.</p>

Allegations	Conclusions
<p>Independent Educational Evaluation</p> <p>The Parent alleged that the District violated the IDEA by refusing to approve an Independent Educational Evaluation (IEE) at district expense. Specifically, the Parent disagrees with the FBA that the District conducted during May 2024 and seeks an IEE.</p> <p>(OAR 581-015-2305; 34 CFR § 300.502)</p>	<p>Not Substantiated</p> <p>A parent is entitled to an IEE at District expense only after the District has completed its own evaluation. The Parent requested an IEE at District expense after seeing a draft FBA plan but did not request an IEE at District expense after the District completed the FBA.</p>
<p>Access to Student Educational Records</p> <p>The Parent alleged that the District violated the IDEA by not providing the Student’s educational records which were referenced in documents the Parent obtained through a public records request but which the Parent was unable to access.</p> <p>(OAR 581-015-2300; 34 CFR § 300.501(c))</p>	<p>Not Substantiated</p> <p>The District provided the Student’s educational records to the Parent within the time limits required by the IDEA. The Complaint investigation did not address the Parent’s public records request, which is not an IDEA issue.</p>
<p>Pre-Hearing Conference, Notice of Hearing and Hearing Rights</p> <p>The Parent alleged that the District has violated the IDEA by not complying with the stay-put requirement during the pendency of the Parent’s due process complaint proceedings.</p> <p>(OAR 581-015-2360(5)(a); 34 CFR § 300.518)</p>	<p>Not Substantiated</p> <p>The District and the Parent agreed that the July 2023 IEP was the stay-put placement, which was to be implemented at the High School. The Parent refused to send the Student to school at the stay-put location.</p>
<p>Parental Consent</p> <p>The Parent alleged that the District has violated the IDEA by not complying with IDEA provisions related to parental revocation of consent for special education.</p> <p>(OAR 581-015-2000(5), 581-015-2090(4)(e) & (7)(a)(C); 34 CFR § 300.9, § 300.300(b)(4)(e))</p>	<p>Not Substantiated</p> <p>Parents need only to notify the school district in writing of revocation of consent for special education. The IDEA places no responsibility on school districts to convene a meeting for that purpose.</p>
<p>Free Appropriate Public Education (FAPE)</p>	<p>Not Substantiated</p>

Allegations	Conclusions
<p>The Parent alleged that the District has violated the IDEA entitlement to a FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.17, 34 CFR § 300.101)</p>	<p>The District complied with almost all procedural requirements, and the Student lost no educational opportunity due to any procedural errors. The Student did not have an opportunity to benefit from the June 11th, IEP because the Parent refused to send the Student to school.</p>

REQUESTED CORRECTIVE ACTION
<p>The Parent's requested corrective action is summarized below:</p> <ul style="list-style-type: none"> • Commit to a facilitated IEP meeting with all parties in the room (as desired), ensuring meaningful participation of Parent and all parties knowledgeable of the Student to address deficiencies in the IEP, including SDI, related services, accommodations, and supplementary services. • Immediate enrollment at District high school that the Student prefers. • Placement of Student full-time in general education classroom. • Assignment of the Student's preferred paraeducator. • Access to extracurricular activities at the Student's preferred District high school. • No modifications following the BSP that was never implemented before a new BSP was initiated and that is not following IDEA laws. • Provision of the managing escalating behavior cycle training to all staff in the Student's high school. • Keep language from mediation 2020, allowing community partners at the school. • Avoid use of security with the Student at school (unless there is immediate danger). • Train staff and Integrate methods of communication and behavioral support for the Student as recommended by the Parent and others who know the student well, including Restorative Justice (RJ), Collaborative Problem Solving (CPS), dialectical Behavioral Therapy (DBT), and five language level charts. • Provide a BCBA as a resource to work on behavior skills in classroom and non-classroom settings while assisting school in interventions. • Work with family and community teams to determine alternatives to exclusion while addressing the needs for the Student and school community. • Do not use behavior or grades to find ineligible for sports or social activities. • Modify any discipline policy requiring any form of exclusion. • Utilize the Wraparound team, allow time for response to problem-solving, aid in positive behavioral interventions, and ensure all members are listed in the IEP accommodations. • Ensure all general and special education teachers, substitutes, paraeducator, and anyone responsible for implementing IEP services have access to IEP, BSP and IEP. • Ensure weekly wraparound meetings for transitioning back to school until in a stable

REQUESTED CORRECTIVE ACTION
<p>and safe space, as perceived by the school and family.</p> <ul style="list-style-type: none">• Opportunity to view or obtain copies of outstanding record requests, including a waiver for outstanding public records (transparency and contain education records).• Ensure consent before sending sensitive information to people without need to know.• Provided sufficient advance notice and relevant documents in advance (hardcopy at least 7 business days), allowing adequate time for meetings.• Allow the Parent to record conferences.• Maximum amount of compensatory services allowed for all the denial of a FAPE.• Reimbursement for classes family has had student in (piano, guitar, upcoming plan to enroll in sewing class, two workbooks, sewing machine to be able to take class and to work on fashion design goals at home and in class, meals for breakfast and lunch and stipend for days moving forward).• Amendment of Student records remove discipline from prior to ASD diagnosis.• Change of the Student's grades from the second half of the year 2023-24 because they are reflections of IDEA violations.

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 November 22, 2023. 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, special education history, and the relationship of this Complaint to related earlier proceedings.

1. The Student is fifteen years old. The Student attended 9th grade at a District high school (High School) during the 2023-24 school year and would be a 10th grade student if enrolled in and attending school.
2. The Student is eligible for special education as a child with autism spectrum disorder (ASD), emotional behavior disability (EBD), and other health impairment (OHI).
3. The Student is academically capable but, throughout their schooling experience, has exhibited behavior that interfered with learning. These behaviors include offensive language directed towards others, impulsivity, classroom disruption, difficulty establishing positive peer relationships, noncompliance with school rules, and defiance of school authorities, among others. Except for a single academic goal for Math in the IEP in effect during the 2023-24 school year, the Student's IEP goals focused on social-emotional skills, study and organizational skills, and behavior support.

4. The Student has a large Wraparound Team consisting of the Parent, a Native American Rehabilitation Association (NARA) Case Manager, a Case Manager from the Therapeutic School, a Native American Youth and Family Association (NAYA) Youth Advocate, a Multnomah County Developmental Disability Service Coordinator (DD Service Coordinator), and the Student's Private Therapist. The Parent asked District staff to copy the Student's Wraparound Team on all emails.
5. Throughout the complaint period, the Parent sent frequent emails to High School staff, to District special education administrators, to District administrators in non-special education departments, to school board members, and to numerous other people. Most of the emails were addressed to several people, sometimes even to dozens of people. Some of the Parent's emails were several pages long, and the Parent preferred to add new emails to previous emails on related topics, resulting in lengthy email threads that sometimes stretched over several months. District staff found it difficult to keep up with the Parent's emails because of their frequency, length, and complexity. Many of the emails were reiterations of grievances expressed in prior emails. Some District staff felt insulted by the Parent's criticisms and/or threatened by implied or expressed intention to file various kinds of complaints, including complaints to professional licensing agencies (e.g., Teacher Standards and Practices Commission (TSPC), Oregon State Bar (OSB)).
6. On April 29, 2024, the Program Administrator sent an email to the IEP team, sharing a copy of the meeting request for a facilitated IEP (FIEP) meeting scheduled for June 10-11th, 2024. The Program Administrator said a location for the meeting had not yet been determined.
7. The Parent replied that the law required meetings to be held at a mutually agreed upon time and place. The Parent continued at great length to repeat a variety of grievances, with focus on accusations that the District was not allowing the Parent to "provide clarity on an IEP that was already created with data we have that we know works", that a "BSP is being made from data [the Paraeducator] is collecting", "[the Vice Principal] made percentages based on goals that have been misinterpreted", and the District "doesn't know how to help [the Student]" because "you have all not been willing to speak to me and learn from me." The Parent added:

"The real intention for this email is to share that the meeting needs to be at [the High School] so that when [the Student] wants to participate and is able to participate. ... [The Student] has a right to participate and leave as [they need] so all meetings are to always be at [the High School]. ... Please confirm I will have all records and that it will be at [the High School] and with the wrap members invited as per my email in August of 2023."
8. On May 6, 2024, a Board-Certified Behavior Analyst (BCBA) called the Parent and asked to arrange an interview with the Student for an upcoming functional behavior assessment (FBA). The Parent replied, "No, that's not what we agreed to, so I take back my consent. I don't want you doing an FBA period." The Parent asserted a right to participate in any FBA

planning, added that an FBA was not necessary because the District had an FBA from 2020, and had failed to do escalation cycle training based on the 2020 FBA.

9. On May 7, 2024, the Parent sent the Director and the Wraparound team an email agreeing to “entertain the idea of an FBA” and giving consent for the BCBA to reach out to any person for whom the Parent has provided a release of information (ROI). The Parent added:

“I am not consenting yet and would prefer that [the BCBA] reach out to me for next steps first. I do want [the BCBA] to know [the Student] and be able to help your team understand... What I don’t want is the reccs [*sic*] to change because I and my team believe in what works for [the Student].”

10. On May 9, 2024, the BCBA called the Parent to gather information needed for the FBA. They spoke about what the FBA would look like. The Parent asserted that the District still did not have consent to conduct the FBA. The BCBA said that the purpose of this call was to describe the process so the Parent could give informed consent. The Parent said it would be harmful to subject the Student to go through another FBA.

The BCBA said the process was to get information from the Parent and from the Student, but an observation to collect data on antecedents-behaviors-consequences was unnecessary because that information was already available.

The Parent agreed that the BCBA could talk to the Student but the BCBA should talk to the Parent first to get background information. The BCBA asked for consent to record the call and use it for the caregiver interview, and the Parent agreed.

In a one-hour conversation, the Parent described family history but primarily focused on the Student’s educational history. The Parent placed great emphasis on the events of 2020, which included a Due Process (DP) Hearing request. A mediation connected with the DP request yielded a settlement agreement. In this conversation with the BCBA, the Parent expressed a belief that the terms of the 2020 mediated agreement limited the District’s authority to take action and make decisions that, in the Parent’s view, differed from the agreement.

11. On May 9, 2024, the Director sent an email to the Parent stating, among other things, that the Student was suspended for the next four school days for behavior that was a substantial disruption of the educational environment, including “disruptive conduct, property damage—major, and language—abusive, profane”. The Parent replied that the District had not followed the IEP and the suspension policy and that the suspension was “clearly retaliation and discrimination.”
12. On May 10, the Vice Principal sent the Parent a weekly update, which included point sheets and progress toward IEP goals as well as assignments and materials for the Student’s

assignments for the following week and lists of missing assignments from past weeks. The Parent replied:

“[The Student] won’t be able to do any of this since you didn’t provide hard copies and provide [the] assignments prior to [the] suspension and I requested they be sent to our home as I suspected you would send this insulting ableist email you have been sending at least biweekly and I wish you would explain it properly and provide [the] accommodations properly because it’s very overwhelming to receive this if [the Student] is not afforded an education.”

13. On May 16, 2024, the District sent an email to the Parent, to relevant District staff, and to numerous members of the Wraparound team inviting them to an FIEP meeting to be held at the District Office on May 23, 2024.
14. On May 22, 2024, the Parent requested an independent educational evaluation (IEE) at District expense because the Parent disagreed with the FBA to be completed on May 23, 2024. The District refused the request for an IEE because the District was still in the process of conducting the FBA.
15. On May 23, 2024, the District convened an FIEP meeting for the purpose of completing an FBA and developing or revising a Behavior Support Plan (BSP). Participating in this meeting were: the meeting facilitator (Facilitator), the Parent, the Special Education Director (Director), the District’s legal counsel (Legal Counsel), the Parent’s counsel, the Special Education Program Administrator (Program Administrator), the Vice Principal, the Case Manager, a General Education Teacher (General Education Teacher), the Speech Language Pathologist (SLP), the Occupational Therapist (OT), the BCBA, the Student’s Paraeducator, a NAYA Youth Advocate, and a Developmental Disability Service Coordinator (DD Coordinator).

At the beginning of the meeting, the Parent reiterated complaints from previous meetings that the District already had a good BSP and an effective escalation cycle, but the District had not trained staff to implement these strategies.

Throughout most of the meeting, the team members exchanged ideas and resolved disagreements respectfully. The BCBA led the team through the FBA process, describing sources of data and seeking input from the participants. Following the FBA, the BCBA worked with the team to develop a BSP based on the FBA.

The Parent provided substantial input regarding the Student’s needs for behavior support and their preferences for communication with the District. The Paraeducator provided information throughout the meeting on their observations of the Student and the effectiveness of various strategies.

The team agreed that the newly revised BSP should include more clearly defined replacement behaviors (i.e., appropriate behaviors that could serve the same functions for

the Student as the behaviors that led to discipline during the 2023-24 school year). In addition, the team agreed that it was necessary to review a report from an independent licensed psychologist (Psychologist) that would soon be available. The Facilitator suggested that the BSP could be finalized at beginning of the FIEP meeting.

The Director agreed to prepare and circulate a document that reflected the BSP as agreed upon at this meeting. The Parent asked the Director to clearly highlight all the changes from the current BSP. The Parent stated, "I'm going to look for everything that's on [current BSP] to be on the new one. ... I just want to see so I have the opportunity to speak to it and understand why it's not on it. ... I want every word of that on there on the new one. And if it's not on there, I want a conversation about that". The Director replied, "I hear what you're asking for. And what we discussed today, we'll put in here into this. ... Anything that's not in there, we can discuss. ... But I'm not going to just automatically put things in."

In the final ten minutes of the meeting, the Parent began again to express multiple grievances against school personnel; to accuse District personnel of lying, bullying the Student, and other offenses; and to inform the District that the Parent would be working on a Due Process Hearing Request.

16. The District prepared a Prior Written Notice (PWN) on May 23, 2024 which states in its entirety:

"DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: FBA/BSP

- * [the Student] will return to school
- * District will implement FBA/BSP completed on 5/23/2024.
- * BSP format will be converted to a word document per parent request. - Attached
- * Copies of documents that are "links" on the FBA/BSP will be provided to the family Parent Interview, Data Sheet - Attached

In Preparation for IEP meeting on June 10-11, 2024:

- * Parent Concerns - Parent indicated copy and paste previous parent concerns into draft of next IEP.
- * Transition Interview with [the Student] - upon [their] return to school.
- * Copy of [the Psychologist's] report will be provided to the District

Counsel for the parent and Counsel for the District will communicate timeline for delivery of documents and information in preparation for the Facilitated IEP meeting.

Explanation of why the district proposes or refuses to take the action:

Due to suspension and subsequent manifestation - Completion of FBA/BSP needed to occur.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refuses action:

File review included BCBA reviewing following reports/plans as referenced by [the Parent]-

- [Parent's preferred] BSP - Discussed at July 2023 IEP
- [Psychologist] Letter
- [Therapeutic School] Tier 1 Behavior Support Plan
- [Psychologist's] Assessment
- Interview with Parent
- Interview with Teacher
- During the FBA/BSP Meeting:
 - Plan for Management of Escalation Cycle
 - BSP developed at [the High School]
 - Input from IEP team at meeting on 5/23/2024

Description of other options considered and why those options were rejected:

Continued implementation of the BSP developed by [the High School] Staff -
This was rejected because -

- * Increased behavior resulting in disciplinary action including suspension and manifestation required updated FBA/BSP
- * Result of recent Mediation in April 2024 was consent for an FBA.
- * This BSP was not based on a current FBA as the parent provided consent in September 2023, then revoked consent the next day.

Continued implementation of the July 2023 BSP

This was rejected because -

- * The BSP from July 2023 was not updated for the comprehensive high school setting.
- * This BSP was developed as a transitional BSP for the beginning of High School to be adjusted once staff were able to get to know [the Student].
- * This BSP was a [middle school] BSP with some updates from the [Therapeutic School] for a Comprehensive High School Placement and required adjustment.

Description of the factors relevant to the actions proposed or refused are:

Parent shared that [the Psychologist was] updating [the] evaluation and would have results of that evaluation on 5/29/2024. Parent shared verbally during the 5/23 meeting a summary of this assessment.

Team agreed to consider the written report at the Facilitated IEP meeting."

17. On May 29, 2024, the Parent sent an email to the Director replying to the PWN. The Parent expressed multiple grievances and disagreements with District policies but emphasized that the District should follow an older BSP that the Parent preferred rather than the BSP the IEP team developed at the May 23, 2024 FIEP meeting. The Parent claimed that the Student was not safe at school without the old BSP and stated that the Student could not go back to school if the District refused to use the old BSP.

18. On May 29, 2024, the Parent received an evaluation report from the Psychologist and circulated it to the District.
 - a. The report described the findings from Parent and Student interviews and assessments of the Student conducted in May 2024.
 - b. The Psychologist analyzed the results of assessments measuring the Student's cognitive and intellectual development, academic achievement, attention and concentration, executive function, learning and memory, visuomotor and visuospatial integration, social communication and autism-specific behaviors, behavior patterns, and personal and emotional adjustment.
 - c. The Psychologist offered numerous recommendations applicable to home, community, and school environments including recommendations for a panoply of specific instruction, related services, and accommodations to be implemented in school settings.
19. On June 1, 2024, the Parent applied for a transfer of the Student from the High School to another District High School (High School #2).
20. On June 4, 2024, the District sent an invitation to the FIEP meeting scheduled for June 10-11, inviting all District staff team members as well as the Parent, the Parent's Attorney, and several members of the Wraparound team. The Student was not on the invitation list.
21. On June 5, 2024, the Senior Director of Schools responded to the Parent's appeal of the Student's May 23, 2024 suspension for attending a school event while suspended. The Senior Director reviewed the Student's series of suspensions over the previous month and the Student's appearances at events on campus in violation of the terms of suspension, which stated: "For the duration of the suspension, [the Student] may not attend school, participate in school activities, or enter any other Portland Public School property without the permission of the Principal." The Senior Director denied the Parent's appeal because the Student repeatedly appeared at school events at the High School and High School #2 while suspended.
22. On June 10 and 11, 2024, the District convened an IEP meeting facilitated by a contracted neutral facilitator. Twenty-five people participated in this meeting, including: the Parent, the Facilitator, the Case Manager, the Paraeducator, five General Education Teachers, the Program Administrator, the Director, the Vice Principal, the SLP, the OT, the BCBA, the DD Case Manager, the DD Behavior Consultant, the Therapeutic School Case Manager, the Private Therapist, the NAYA Advocate, the Parent's Counsel, and the District Counsel.
23. The June 10 and 11, 2024, meetings were conducted caucus style, with District staff members of the IEP team in one room either in person or participating virtually via video or telephone conferencing, and the Parent participating in person in an adjacent room. The District chose the caucus format due to:

“.... Parent’s behavior in prior meetings including interruptions, yelling, and general vitriol directed at staff which created a chilling effect on essential staff participation in Student’s IEP service development, and on-going unfounded allegations and threats to licensure directed at district and building staff. As a result, it was necessary to separate the parties in order to ensure active meeting participation by all parties.”

All IEP team members and the Student’s non-District supporters (the Wraparound Team) were free to join with the rest of the IEP team either in person or virtually. One Wraparound support member joined the Parent.

Throughout the meeting, the Facilitator physically shuttled between the two rooms as needed, sharing information and soliciting input. The Parent’s Counsel was available to the Parent via telephone throughout the meeting and also joined in deliberations with the other members of the IEP team by telephone and videoconferencing. Meeting notes were generated electronically in real time as discussion and team decision-making occurred, and those notes were available to the Parent throughout the meeting, and the District repeatedly sought the Parent’s input.

The Parent objected to the caucus format and sought a disability accommodation. The Parent obtained a physician’s note requesting that the Parent be permitted to join the meeting in the same room as the rest of the IEP team. The Parent chose not to participate in the meeting until the District responded to the accommodation request. The District refused the Parent’s request.

24. At the June 10, 2024, meeting, the District distributed to IEP team members a draft IEP, clearly identified as a third draft, which the IEP team could amend as they determined necessary.

25. The final IEP resulting from the June 10 and 11, 2024 IEP Meeting (June 11, 2024 IEP) includes the following content relevant to this Complaint.

a. STRENGTHS OF THE STUDENT

- i. Academic: Strong reading and writing skills, strong vocabulary, able to utilize mental math strategies quickly.
- ii. Functional: Has successfully learned to navigate the high school environment, follows schedules, has demonstrated asking for breaks appropriately, and knows the [High School] rules in multiple settings.
- iii. Behavior: [The Student] is a social person who enjoys friends immensely, enjoys being at school, loves music, and enjoys talking with peers and staff, and is a loyal friend. Interests include: dance, music production, guitar, and piano. [The Student] is a great cook and enjoys cooking as a hobby.
- iv. Learning Characteristics: [The Student] had strong fluid reasoning skills. When grouped with preferred peers, [the Student] will either allow the group to complete academic activities without disrupting them or engage in the

activities. Over time, [the Student] develops relationships with adults and peers. Their strongest relationships are with peers and adults who are consistently kind and available.

b. CONCERNS OF THE PARENT

This section of the IEP incorporates by reference other documents reflecting the Parent's concerns, including:

- i. A document with previous Parent concerns from the 7/2023 IEP
- ii. Transcribed document of 6/10/24 meeting recording
- iii. A document entitled Incomplete description of Parent Concerns, which the Parent provided to the District by email after the FIEP meeting

c. PRESENT LEVEL OF ACADEMIC ACHIEVEMENT (summarized)

- i. The report of the May 2024 independent evaluation indicated that the Student's academic performance is average for spelling and written expression, but the data shows notable strength in basic literacy skills and relative weakness in reading comprehension and math computation.
- ii. The Present Levels statement juxtaposed input from the High School staff who worked with the Student during the 2023-24 school year with information from the Psychologist's independent evaluation report. Teachers report Student academic performance that was higher than the evaluation report might have predicted. Following are some paraphrased examples of teacher input:
 1. Reading: The Student is able to read material written at grade level with accuracy and fluency and is able to demonstrate literal and inferential comprehension of material written at a 9th grade level.
 2. Written Expression: The Student has developed paragraph composition at a 9th grade level. The Student composes arguments, explanatory texts and/or narratives of 4-5 paragraphs that include an introduction to the topic, clear evidence, reasons, explanations and examples, and correct placement of phrases and clauses within sentences; and uses a variety of compound, complex and compound-complex sentences.
 3. Math: The Student is able to add and subtract, to multiply and divide (within 100 mentally and fluidly), to solve one and two-step inequalities, and to use $y=mx+b$ format and standard format to graph and solve linear equations and inequalities.
 4. Physics: The Student had a "solid and productive" first semester, but in the second semester, there was "lots of emotional volatility standing in the way between [the Student] and [their] work."
 5. English: Good vocabulary, strong writing skills for narratives, and strong at reading aloud and acting. When engaged, the Student types work on the computer, has conversations about the work, and is able to hear and use several ideas for revision.

6. History: The Student has a lot of background knowledge, is capable of making connections, and seems to have passion and interest in the subject matter.

d. PRESENT LEVELS OF DEVELOPMENTAL AND FUNCTIONAL PERFORMANCE

- i. The teachers' reports in this area are more equivocal. Much teacher input distinguishes between the Student's performance when engaged and when disengaged, and all noted a decline during the second semester.
- ii. The IEP offers examples of the Student's behaviors that interfere with the Student's engagement and learning:
 1. The Student left class frequently, averaging 35% of the time out of class, with out-of-class rates varying by subject area, ranging from 15% in physics to 61% in Japanese.
 2. The Student tried to join friends in other classrooms, disrupting the learning of other students while impeding the Student's ability to access core content as well as SDI.
 3. The Student refused to access the special education classroom and has consistently refused special education services within the general education classroom.
 4. The Student often refused to engage with teachers who checked in or offered help.
 5. The Student struggled with work completion.
 6. The Student has challenges with personal boundaries, including personal contact (jumping on or hugging peers or getting in others' faces).
 7. The Student often said disrespectful or socially inappropriate things.
- iii. The IEP identifies several areas of special education need:
 1. Social-Emotional Skills:
 - a. Identifying emotions and implementing pro-social calming strategies
 - b. Restorative/collaborative practices in response to inappropriate language towards racial and LGBTQ2SIA+, specifically transgender people
 2. Social Skills:
 - a. Decreasing interruption when others are speaking
 - b. Decreasing reactivity to touch from others
 - c. Decreasing impulsivity and considering consequences before acting
 3. Classroom Skills:
 - a. Focus on remaining in class
 4. Study/Organizational Skills:
 - a. Increase turning in work
 - b. Improve active listening
 5. Communication:

- a. [The Student] is highly social, has strong peer relationships, and has been observed to be fully capable of engaging with peers in appropriate ways and adjusting ... communication depending on who [they are] talking to, but it is inconsistent. [The Student] has strong peer relationships at [the High School] and is highly social. [The Student] has made a ton of friends this year and has been on positive terms with them. When breakdowns have occurred, [the Student] takes time away and the connection appears to resolve within a few weeks, based on observation and paraeducator report. While [the Student] continues to be wary of the adults in [their] environment [they have] identified a few individuals that [the Student] seems to trust enough to seek out. This has been great to see, despite ongoing challenges.
 - b. The Student breaches communication norms at times in attempts to be funny or in periods of dysregulation. Dysregulation is more likely to occur when the Student perceives demands from adults that are without clear justification.
 - c. The Student communicates beautifully with adults when there's a need to do so.
 - d. The Student "has generally not been receptive to working with the SLP in either gen[eral]-ed[ucation] push-in or 1:1 or small group pull-out opportunities" but has been most responsive to interacting when the SLP has focused on other students or staff in [the Student's] vicinity. The SLP believes that communication support would be best provided as an addition to the Student's school support team in the context of a formal academic skills classroom setting.
- e. HOW DISABILITY AFFECTS THE STUDENT'S INVOLVEMENT AND PROGRESS IN THE GENERAL EDUCATION CURRICULUM
 - i. The most recent three-year re-evaluation and the IEP team determined that the Student meets the criteria to qualify for Special Education services under the categories of Autism Spectrum Disorder, Emotional Behavior Disability, and Other Health Impairment.
 - ii. Because of these disabilities, the Student has impaired ability to self-regulate and utilize executive functioning in moments of distress.
 - iii. The Student benefits from Specially Designed Instruction and Special Education supports to fully access the General Education curriculum.
- f. SUMMARY OF PRESENT LEVELS OF PERFORMANCE FOR TRANSITION PLANNING
 - i. INTERESTS/ STRENGTHS: The Student is interested in movies and music, likes to read and write, has many social strengths (establishing

relationships with peers, self-advocacy, strong interpersonal skills), and is very intelligent.

- ii. EMPLOYMENT: The Student has expressed interest in becoming a lawyer or a chef. The Student likes to be active, enjoys creative expression, is a good writer, and prefers working in a small quiet environment.
- iii. EDUCATION: Becoming a lawyer requires a great deal of post-secondary education. Becoming a chef either requires on-the-job training or a culinary institute.
- iv. NEEDS: The biggest need for the Student to attain the goal of becoming a lawyer is academic perseverance. The Student's greatest need for attaining the goal of becoming a chef is being able to make responsible decisions and to self-regulate.
- v. INDEPENDENT LIVING: The Student is able to navigate the physical environment and to perform activities of daily living independently. This is not an area of educational need at this time.

g. SUMMARY OF AGE-APPROPRIATE TRANSITION PLANNING

i. Measurable Post-Secondary Goals:

- 1. Training: The Student will obtain a standard diploma to work toward higher training opportunities post high school.
- 2. Education: The Student will explore training opportunities post high school.
- 3. Employment: The Student will participate in gainful employment post high school.
- 4. Independent Living Skills: The Student will live independently post high school.

- ii. Transition services (including projected courses of study) to assist in meeting post-secondary goals were not documented in the IEP.

h. SPECIAL FACTORS FOR IEP DEVELOPMENT

- i. The IEP team identified only one special factor to address: Because the Student exhibits behavior that impedes the learning of the Student and others, the team addressed the factor as follows: "Student behavioral needs addressed in the Annual Goals, Behavior Support Plan (BSP)".

i. REQUIRED TESTING AND ASSESSMENTS

- i. Statewide assessment is not administered at the Student's grade level.
- ii. Districtwide assessment is not administered at the Student's grade level.

j. MEASURABLE ANNUAL GOALS

Progress toward all measurable annual goals was to be reported quarterly, via written progress reports, at times coinciding with the High School quarterly grade reports.

i. Social & Emotional Skills

1. Goal 1: By the end of the IEP cycle, given specially designed instruction in emotional regulation and given educational setting, [the Student] will be able to identify [their] emotional state (sad, angry, excited), choose a self calming strategy from a menu, and implement the strategy independently in 5/5 opportunities as measured by time in class.

Present level for Goal 1: 163 times this year across all periods of the school day.

2. Goal 2: By the end of the IEP cycle, when [the Student] notices [they are] near escalation, [the Student] will use self-identified coping skills to aid in self-regulation in 4 out of 5 opportunities observed weekly, as measured by behavioral [data] and teacher [observation].

Present level for Goal 2: [The Student] identified coping skills 47% of the time.

3. Mastery Criteria or Short-Term Objective: [The Student] will use self-identified coping skills.
 - a. With 2 or more adult prompts.
 - b. With 1 adult prompt.
 - c. Independently

ii. Classroom/School Skills

1. Goal: By the end of the IEP cycle, [the Student] will remain in class 85% of the time as measured by teacher observation and attendance data.

Present Level for Goal: [The Student] ranges from 15% out of class during Physics and 61% of the time out of [] Japanese class over the course of the year.

iii. Study/Organizational Skills

1. Goal 1: By the end of the IEP cycle, with provided explicit adult support to increase [their] developing executive functioning, [the Student] will turn in assignments and materials each period, 3 out of 5 assignments weekly, as measured by teacher gradebooks.

Present Level for Goal 1: [The Student] manages assignments with and without prompting 61% of the time.

2. Goal 2: By end of the IEP cycle, when listening to a peer or teacher speak during an academic class (e.g. whole-class or small-group discussion), [the Student] will demonstrate (2) active listening skills (e.g. eye contact with the speaker, taking notes, nodding), for (5 of 5) student presentations or discussions. When [the Student] has a question or comment during instruction, [they] will raise [their] hand and wait for the teacher to call on [them].

3. Present Level: Baseline to be determined.

iv. Mathematics

1. Goal: By the end of the IEP cycle, given specially designed instruction and a calculator to assist with basic computation in numbers and operations, algebraic thinking, measurement and data, and geometry, [the Student] will demonstrate growth in mathematics skills as measured by averaging 80% accuracy on work samples, curriculum-based measures, or informal assessments at 7th-grade level
 2. Present Level: This is a new skill for [the Student, who] is able to identify key features (e.g., intercepts, max, min) in context by creating a graph or completing a table, for 0 out of 5 word problems.
- v. Social Skills
1. Goal: By the end of the IEP cycle, given specially designed instruction, [the Student] will decrease use of inappropriate language towards students of color, students who are [LGBTQ+], and trans in the school setting as measured by data collection.
 2. Present Level: [The Student] had an average of 2.8 appropriate communications per period vs interruptions.

k. SERVICE SUMMARY

IEP indicates that all services would be provided at “Special School”.

- i. Specially Designed Instruction (SDI)
 1. Social Skills, 150 min/week
 2. Social & Emotional Skills, 150 min/week
 3. Study/Organizational Skills, 200 min/week
 4. Mathematics, 30 min/week
 5. Classroom/School Skills, 100 min/week
- ii. Related Services
 1. Transportation, 60 min/day round trip
 2. Speech/Language, 180 min/quarter
- iii. Extended School Year Services (ESY)

“Data does not show regression/recoupment that demonstrates need for ESY”
- iv. Supplementary Aids/Services; Accommodations
 1. Learning Support—in all settings during instruction
 - a. access to calculator for computation on math assignments and math tests
 - b. written instructions
 - c. more time for tasks that require visual memory
 - d. mnemonics and memory aids
 - e. use auditory cues
 - f. break tasks into small steps
 - g. advance notice of transitions from activity to activity if possible
 2. Executive Functioning—Adult support to facilitate organizational support and tools, 10 minutes per period in all settings

- a. Check for completion
 - b. Tasks organized
 - c. Assist with due dates
 - d. Verbal prompts
 - e. Explicit expectations
 - f. Visual Schedules
 - g. Checklists
- 3. Behavior Support—in all settings throughout the day
 - a. Snacks allowed in class and on transportation
- 4. Behavior Support—in all settings throughout the day
 - a. Access to sensory tools
 - b. Movement breaks, spaces with reduced noise and lights for regulation
 - c. Opportunities to engage in repetitive behaviors (Such as shooting hoops) of high interest to [the Student]
- 5. Behavior Support to improve resilience and adaptability—in all settings throughout the day
 - a. Encourage and facilitate positive social interactions
 - b. Provide consistent positive reinforcement
 - c. Involve [the Student] in decision-making processes
- 6. Behavior Support—in all settings throughout the day
 - a. Adult Support to facilitate implementation of Behavior Support Plan
- 7. Social/Emotional—in all settings throughout the day
 - a. Acknowledging [the Student's] strengths and positive attributes is vital in supporting [their] self-esteem and motivation
 - b. Approach [the Student] with understanding and respect for [their] individuality
 - c. Recognize [the Student's] capabilities
- 8. Social/Emotional—in all settings throughout the day
 - a. Adult support to facilitate engagement in collaborative and restorative practices to problem solve and non-violent communication.
- 9. Social/Emotional—in all settings throughout the day
 - a. Before semester starts, [the Student] will have the opportunity to meet [their] new teachers before the start of any new classes
- 10. Social/Emotional—in all settings throughout the day
 - a. Access to trusted adult in school setting
 - b. Be calm and responsive even when [the Student] is dysregulated
 - c. Student may call home or trusted adult (Parent, Therapist)

11. Emotional Regulation, Adult Support—in all settings throughout the day
 - a. Provide advance notice of changes in schedules, routines, and staffing when possible
 - b. Provide advance notice of drills
12. Executive Functioning—in all settings throughout the day
 - a. Access to non-disruptive fidgets
 - b. Ability to stand during tabletop activities as needed
13. Home/School Communication Plan—in all settings throughout the day
 - a. Collaboration with student's therapist team
 - b. This is a mediation discussion Item
 - c. IEP should indicate Home/School Communication Plan
14. Home/School Communication—in all settings throughout the day
 - a. Work from days/time missed sent home and labeled with due date.
- v. Need for Aids/Services; Modifications.
The team considered the need for supplemental aids, services, and modifications and determined that they are not needed.
- vi. Supports for School Personnel
 1. BCBA Consult; Review BSP with assigned staff each quarter, 30 min/quarter
 2. Special Education Team to collaborate with general education staff members, 30 min/quarter

I. STATEMENT OF NON-PARTICIPATION JUSTIFICATION

- i. The team has determined the student will need to be removed from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids or services.
- ii. Removal from General Education settings—100% removal

26. On June 11, 2024, after completion of the IEP, the team made a placement determination based on the 06/11/2024 IEP. Participating in the placement determination were: the Parent, the Facilitator, the Case Manager, the Paraeducator, the Program Administrator, the Director, the Vice Principal, the SLP, the OT, the BCBA, the DD Case Manager, and the NAYA Advocate.

- a. The Placement Team considered three placement options:
 - i. Public Separate School
 - ii. Regular Class, 40 to 79% of day
 - iii. Regular Class, less than 40% of day
- b. The Team selected the Public Separate School because it offered:
 - i. Access to intensive behavioral and mental health supports
 - ii. Individualized/small group academic instruction at instructional level
 - iii. Fewer transitions
 - iv. More support for social-emotional needs

- v. More support for behavioral needs
- c. The Team rejected the two Regular education settings because a therapeutic milieu was not available, the Student would have to deal with too many transitions, and the regular education setting could not offer enough support for behavior and social-emotional needs.
- d. The Team chose the Public Separate School.

27. The District prepared PWN on June 12, 2024, which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Provision of FAPE

1. The District proposes to implement their offer of FAPE as determined at the IEP meeting on 6/11/2024.
2. The District Refused Parent request to extend Facilitated IEP past 5:00 on 6/11/2024.
3. The District Refused Parent Request for accommodation of joining both PPS and Parent teams into one room for the IEP revision during the Facilitated IEP.
4. The District proposes to implement Placement at the beginning of the 24-25 school year.

Explanation of why the district proposes or refuses to take the action:

1. The District developed an IEP in good faith and provided ample opportunity for meaningful Parent Participation.
 2. Draft IEP #1 provided on May 22 which included all text from the July 2023 IEP with list of changes the district proposed changing and current data on July Goals in order to accommodate Parent’s indication in previous meetings that she need to compare the difference between Current IEP and new Draft.
 - * Parent submitted a new [psychological evaluation] report on 5/29/2024, District incorporated the new Psych-Ed report into the June 5, 2024 IEP draft #2.
 - * A list of changes made in consideration of the [Psychologist’s] report was provided on June 5, 2024.
 - * District made multiple requests to parent for parent concerns, and input on the IEP without response.
 - * District reviewed emails since 5/22/2024 to determine if there were any items that should be included in or considered during the IEP and did not find any.
 - * May 23, 2024 Facilitated FBA/BSP meeting was held with full team in attendance.
 - * IEP is current through July 2024, however, Building staff is not available after Friday June 14, 2024 to meet prior to IEP due date in July.
 - * Monday June 10 (4 hours) and Tuesday June 11, 2024 (4 hours) add up to 8 hours of opportunity for the parent to provide additional input and have back and forth discussion. As of 4:58 on 6/11/2024, parent did not share Parent Concerns to be addressed by the IEP.
 - * No clarifying questions nor feedback were provided by the parent until 4:07 on 6/11/2024.
- District needs to provide an offer of FAPE.

3. The District is providing reasonable accommodations for the [Parent]. An office space, technology, with windows and air were provided. In addition, NAYA Advocate from [the Student's] wrap team was available in the room with the parent during the meeting and Facilitator and the Parent's attorney were also available.
It is essential that district staff members also have the opportunity to engage meaningfully in the IEP process without interruption, challenges, and threats from the Parent which has been a historical issue in previous meetings.
4. The Facilitated IEP occurred on 6/11/2024. The Last Day of School is 6/14/2024. The Prior Notice must give at least 3 days notice to the family. As a result, Placement cannot begin prior to the end of the 23-24 school year.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refuses action:

Review of Goal Data

[Psychologist's] Report from 5/29/2024

[Therapeutic School Case Manager] report

Input from School Staff.

Input from parent and clarifying questions regarding the Placement Recommendation - ultimately explained and added to IEP Present Levels.

Doctor's note indicating that [Parent] "participates alongside other participants"

Description of other options considered and why those options were rejected:

1. Less Restrictive Placement was considered. District believes that the Offer of FAPE for a Separate Day School⁴ Placement meets the Educational and Social Emotional needs of the student at this time.
3. District considered holding a meeting together in one room OR virtually. However, the experience of the team on May 23, 2024 when all participants were together was detrimental to the meaningful participation of all members of the team.

In addition, on 6/10/2024, with separate rooms the Parent was unwilling to engage and disruptive to the District Work Environment for an extended period of time.

In order to maintain the well being of staff due to the challenging behaviors, interruptions, and consistent threat to School Staff from the [Parent], the District declined to combine into one room for IEP discussion.

Description of the factors relevant to the actions proposed or refused are:

At the end of the IEP meeting, the Parent shared this statement of disagreement:

Parent does not have an IEP document that is complete. Parent states that the Present Levels section does not accurately reflect District's statements regarding [the Student's] behaviors of concern or the amount of time [they are] missing classes, or what [they are] doing when [they are] not in class.

⁴ The District uses the terms "Separate Day School" and "Public Separate School" interchangeably.

Complete IEP Document was sent home via email along with this PWN on 6/12/2024. Due to the discussion during the IEP meeting on 6/11/2024, changes were made to the draft IEP provided on 6/11/2024.

28. On June 12, 2024, the Parent sent an email addressed to almost two dozen people, including District staff, the Wraparound Team, and others. The Parent expressed dissatisfaction at the way the District had conducted the FIEP meeting, particularly the inability to hear what the other team members were saying or to have a line-by-line conversation about IEP content. Attached to the Parent's email was a 9-page Parent Concerns statement. Although the Parent described this statement as "present levels", the first few pages focus heavily on the Student's educational history, many placements, and the Parent's disagreements with District practices.
29. The Parent refused to accept the June 11, 2024 IEP as the Student's IEP. On June 14, 2024, the Parent presented the District with a notice of intent to parentally place the Student in a private school at public expense.⁵ In this letter, the Parent expressed the view that the District had prevented the Parent and Wraparound team the opportunity for meaningful participation in the June 10-11, 2024 FIEP meeting. The Parent added: "Our team remains open to meeting for a new FIEP with full parent participation in the same room as all as soon as possible."
30. On June 18, 2024, the Director emailed the Parent stating:
- "We have received your 10-day notice of intent to parentally place [the Student] in private school at the District's expense after the annual IEP review on June 10 and June 11th, 2024. The District stands by its offer of FAPE, developed through the facilitated IEP process, that was provided to you via email on June 12, 2024."
- The Director's email disputed the Parent's allegations that the District had denied FAPE to the Student and added a multi-page summary of the educational services the District had provided during the 2023-24 school year.
31. On June 18, 2024, the Parent again rejected the offer of FAPE provided in the District's June 11, 2024 IEP. The Parent asserted that the District had not provided sufficient advance time for preparation for the meeting: "As I previously shared, I need at least seven business days to go over documents and as your email notes you made a lot of changes on June 5 and June 10 and did not allow me to participate in those meetings to communicate and give feedback and you're quite off base with a lot of the history."
32. On July 10, 2024, the Parent sent a 12-page email to the Director, again repeating complaints about the District and about the Student's special education. In that email, the Parent stated an intent to request "due process in an attempt to 'stay put' with services and

⁵ Some of the many emails referencing this 10-day notice suggest the Parents' letter might have been sent on June 11 or 12, but there is no disagreement among the parties that the Parents sent such a notice.

not change placement we would like to do so at [High School #2] and with the IEP implemented to fidelity with the July 2023 IEP and BSP and with [the Paraeducator]”.

33. On July 12, 2024, the Parent received notice that the request to transfer the Student to High School #2 had been denied because there was no space available “that meets the conditions of [the Student’s] individualized education program”.
34. On August 26, 2024, the Parent filed a Request for DP Hearing.
35. On September 6, 2024, the District convened a Resolution Session to discuss the Student’s status during the pendency of the DP Hearing and to attempt resolution of the Parent’s disagreements with the District. After the Resolution Session, the District prepared PWN which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Resolution – Stay Put Placement

This PWN provides the actions proposed or refused resulting from the Resolution Meeting, held on 9/4/2024 at 4:00 p.m.

Present: [The Parent, The DD Caseworker, The Director, a District Administrative Assistant]

1. Compensatory Education -

District proposes to provide 16 hours of compensatory education for the 23-24 SY. District and Parents agree that student was suspended for 23 days resulting in compensatory education services being owed for specially designed instruction that was missed during 13 days of suspension.

Family declined discussing compensatory education during Resolution as it did not address their concerns.

2. Separate Day School -

District proposes to explore alternative separate day school options other than [the Public Separate School] that was already offered and resulted in Due Process.

Family declined indicated [*sic*] they disagree with separate day school placement as it will not meet the needs of [the Student].

3. “Stay Put” placement -

District proposes “[S]tay Put” Placement as a result of Due process filing:

- 80% or more - Regular classroom with 1:1 push in adult support
- [The High School] High School
- Implementation of IEP dated July 25, 2023
- Implementation of BSP attached to PWN dated 5/23/2024

Explanation of why the district proposes or refuses to take the action:

1. Compensatory Education

District owes compensatory education for specially designed instruction that would have been provided during 13 days [the Student] was suspended during the 2023-24 SY.

2. Separate Day School

District believes separate day school will meet the special education needs of [the Student]. District proposed to explore other options in an effort to find a mutually agreeable school.

3. “Stay Put” Placement

Parents indicated their belief that [the High School] is ‘unsafe’ for student, but District decided that stay-put placement be carried out at [the High School] for the following reasons:

- District fundamentally believes [the High School] is a safe environment for [the Student] to attend as a “stay put” placement.
- District strives to maintain a safe environment for all students.
- Building Administrators are professional educators familiar with [the Student] and [their] needs.
- Building Staff are familiar with [the Student].
- IEP dated 7/25/23 has been shared and reviewed with [the Student]’s teachers and service providers.
- BSP developed by BCBA in May 2024 and attached to PWN dated 5/23/2024 has been shared and reviewed with [the Student]’s teachers and service providers.
- BCBA consultation, training, and support to school personnel will be provided.
- Adult support will be provided via paraeducator who will implement and support student.
- [The Student] has friends and community at [the High School].
- [The High School] provides continuity of program, staff, and location for the purposes of Stay Put.
- Changing to another location other than [High School] for stay-put placement could result in material change to stay-put placement.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refuses action:

Discussion during Resolution Meeting
Review of School Records

Description of other options considered and why those options were rejected:

2. Separate Day School

“Separate Day School” was decided at June 2024 IEP meeting and was selected among other placement options.

General education placements was rejected at that time because it does not provide the structured environment and supports needed to support [the Student] and enable [them] to make progress.

3. Stay Put Placement

Parent requested that Student's stay-put placement occur at a different location other than [the High School], and specifically at [High School #2]. Parent stated the following reasons why [they] requested to have stay-put at [High School #2]

- [the Student] requested to attend [High School #2]
- Parent indicated there are more services available at [High School #2]
- It would be a fresh start at [High School #2]
- [The Student] has friends and community at [High School #2]

Concerns considered regarding [High School #2]:

- It's a larger school than [the High School]
- It's further from home than [the High School]
- Refer to other reasons noted above under the Explanation section for why District decided to have stay-put at [the High School] to avoid material changes to [the Student]'s program.

Description of the factors relevant to the actions proposed or refused are:

Parents provided the following information during the resolution meeting relevant to the below topics.

1. Compensatory Education -

Parents indicate there are additional requests for compensatory education that they will be making during due process and would be discussing them all at once.

Discussing Compensatory Education during resolution will not resolve the issues at the moment according to the parent.

2. Family expressed that they believe [the Student] requires a general education setting.

3. "Stay Put" Placement

Family expressed that they believe [the Student] was abused and traumatized at [the High School].

The Parent indicated [they believe] that some people at [the High School] do not care.

Family indicated [the Student] would not be attending school until the District makes [the High School] safe or allows [the Student] to attend [High School #2].

OTHER

Need for Trauma Informed practices.

(PWN from Ex D-6 pp 5-6)

36. On September 13, 2024, the Office of Administrative Hearings dismissed the Parent's August 26, 2024 Due Process (DP) hearing request without prejudice. The Parent attempted to file an amended DP request on September 28, 2024 but did not submit it timely.

37. On September 20, 2024, the Director sent an email to the Parent stating that Oregon law required school districts to terminate enrollment of students after ten consecutive days of absence. Since the beginning of the 2024-25 school year, the Student had been continuously absent from the High School, which the student had attended in 2023-24 and which was the “stay put” location during pendency of the Parent’s DP hearing. If the Student’s absences continued for 10 school days, they would be unenrolled.
38. The Parent replied on September 21, 2024, asserting that it was “not safe” for the Student to attend the High School “without accommodations set up prior to attending”. The Parent specified several conditions, including reversal of IEP team decisions regarding the Student’s BSP and IEP accommodations. The Parent made several additional demands for responses to previous inquiries.
39. On September 26, 2024, the Director replied to the Parent’s inquiries and demands, as summarized below:
- a. The Stay-Put program and placement remains July 26, 2023 IEP and the High School.
 - b. The Student’s enrollment was withdrawn for non-attendance pursuant to state law on September 24, 2024.
 - c. The Director would arrange transportation for the Student as soon as the Parents notify the District that the Student will attend the High School.
 - d. The District would contract the Parent’s preferred private school for 16 hours of tutoring as compensatory education for SDI lost during the Student’s suspensions in the 2023-24 school year.
 - e. The District would be willing to consider the Parent’s preferred private school as an alternative placement to the public separate school the District had selected.
 - f. The District sought clarification about whether the Parent intended to seek an IEE for the FBA completed on May 23.
 - g. The Parent’s several complaints of disability discrimination and sex-based discrimination and harassment had either already been investigated through the District, the Department, or other state agencies.
40. The Parent replied to the Director on September 28, disputing many statements of fact and rejecting offers in the Director’s email.
41. The Parent filed a second Request for a DP Hearing on October 3, 2024.
42. The District prepared PWN on October 9, 2024 which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Response to Due Process Filing

- 1. “Stay Put” Placement
District proposes “[S]tay Put” Placement as a result of Due process filing on 10/3/2024

- 80% or more - Regular classroom with 1:1 push in adult support
- Enrollment at [the High School]
- Implementation of IEP dated July 25, 2023
- Implementation of BSP attached to PWN dated 5/23/2024
- Communication between school and home during 'Stay Put'

District proposes that the communication system that was in place as of May 2024 remain in place whereby the Assistant Principal communicates weekly by email to the parent providing missing assignments, IEP Goal Progress, answering questions of the parent.

- Review of BSP

District proposes that the IEP from July 2023 and the BSP from May 2024 be reviewed with all relevant staff the day prior to [the Student]'s return to [the High School] for Stay Put.

- Paraeducator Support

District refuses to promise that the same paraeducator that worked with [the Student] during the 2023-24 SY be assigned to [the Student] for stay put. The district is required to provide paraeducator support is indicated in the IEP. However, specific personnel assignment is not an IEP team decision. Rather, assignments of personnel remains a district decision.

- Transportation
- District proposes to provide transportation for Stay Put purposes per the IEP with a required 1 school day prior notice in order to coordinate it.
- Extracurricular Activities

District proposes to consider allowing [the Student]'s attendance at extra curricular [sic] activities such as a school dance if [the Student] is enrolled and attending [the High School] under Stay Put.

2. IEE Request

District refuses to provide an Independent Educational Evaluation (IEE) for a Functional Behavior Assessment (FBA) based on the request provided on 5/22/2024.

3. Records Requests

District proposes that all records requests have been fulfilled at this time[.]

Explanation of why the district proposes or refuses to take the action:

1. "Stay Put" placement

District proposes "Stay Put" Placement as a result of Due process filing on 10/3/2024

- 80% or more - Regular classroom with 1:1 push in adult support - This is the placement indicated on the Placement page of the July 2023 IEP.
- Enrollment at [the High School] the Student was enrolled and attending [the High School] during the 2023-24 school year
- Implementation of IEP dated July 25, 2023 - This is the IEP that was implemented during the 2023-24 school year.

- Implementation of BSP attached to PWN dated 5/23/2024 - This is the most recent implemented BSP.

- Communication between school and home during 'Stay Put'

District proposes that the communication system that was in place as of May 2024 remain in place whereby the Assistant Principal communicates weekly by email to the parent providing missing assignments, IEP Goal Progress, answering questions of the parent. This communication system was in place for 2nd semester of the 2023-24 school year and is part of stay put.

- Review of BSP

District proposes that the IEP from July 2023 and the BSP from May 2024 be reviewed with all relevant staff the day prior to [the Student]'s return to [the High School] for Stay Put. This information was shared with all relevant staff once this school year, however, [the Student] did not attend. District requires a review of the IEP and BSP prior to student attending school.

- Paraeducator Support

District refuses to promise that the same paraeducator that worked with [the Student] during the 2023-24 SY be assigned to [the Student] for stay put. The district is required to provide paraeducator support as indicated in the IEP. However, specific personnel assignment is not an IEP team decision. Rather, assignments of personnel remains a district decision.

- Transportation

District proposes to provide transportation for Stay Put purposes per the IEP with a required 1 school day prior notice in order to coordinate it. District requires 1 school day's notice that the student will be attending in order to coordinate transportation.

- Extracurricular Activities

District proposes to consider allowing [the Student]'s attendance at extra curricular [sic] activities such as a school dance if [the Student] is enrolled and attending [the High School] under Stay Put. Student must be enrolled and attending in order to access extracurricular activities. In addition, discussion regarding expectations and supports needed in order to access these activities would need to occur.

2. IEE Request

District refuses to provide an Independent Educational Evaluation (IEE) for a Functional Behavior Assessment (FBA) based on the request provided on 5/22/2024 as the request was based on a 'DRAFT' FBA sent to the family prior to the meeting held on 5/23/2024 where significant changes were made to the 'DRAFT' FBA/BSP during an IEP meeting. No subsequent requests for an IEE have been provided.

3. Records Requests

District proposes that all records requests have been fulfilled at this time:

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refuses action:

Student's special education records.

Due process complaint.
Emails of requests by parent.

Description of other options considered and why those options were rejected:

[Parentally Placed Private School] as Stay Put
[Parentally Placed Private School] does not meet the requirements of a Stay Put Placement.

Description of the factors relevant to the actions proposed or refused are:

NA

43. On October 11, 2024, the Director sent the Parent an invitation for a virtual Resolution Meeting to be held on October 17. The Resolution Meeting was held as scheduled with the Director and the Parent participating. No recordings, transcripts, or meeting notes were available to the Investigator.

44. The District prepared PWN on October 17, 2024, which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Resolution Meeting Held 10/17/2024

1. District proposes to implement Home Instruction as ‘Stay Put’ as agreed upon during the Resolution meeting held on 10/17/2024.
Specially Designed Instruction as indicated on the 7/25/2023 IEP will be provided through Home Instruction. Provision of home instruction will constitute a waiver of all claims on stay put for the 2024-25 school year.
2. District proposes to enroll [the Student] in an online credit recovery program where [they] can earn HS credits.
3. District refused that [High School #2] be the Stay Put Placement during due process.
4. Parent requested an explanation and copy of ‘placement’ according to the IEP.
Placement according to the 7/25/2023 IEP is 80% or more in the general education setting.
Removal Justification on the 7/25/2023 IEP indicates 5% removal.
Copy of the placement page is attached to this PWN.

Explanation of why the district proposes or refuses to take the action:

1. Parent proposed and District agreed to provide Home Instruction as “Stay Put’ during Due Process.
2. During resolution, District offered to find a credit recovery program so that [the Student] could continue earning credit while on home instruction for ... special education services.

3. District continues to believe [the High School] is “stay put” placement. However, parent indicated that it was unsafe for [the Student] to attend and [they] refused to send [the Student] to [the High School]. District disagrees.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refuses action:

IEP
Placement and removal justification
Records review

Description of other options considered and why those options were rejected:

[this section left blank on the PWN]

Description of the factors relevant to the actions proposed or refused are:

Parent indicated that [they] would continue to appeal decisions by the courts until [they] felt like [the Student’s] story had been heard.

[The District has] enrolled [the Student] into our “out of District” school as that is where we enroll home instruction students. This is why “out of District” is indicated on this PWN

45. On October 23, 2024, the Oregon Office of Administrative Hearings granted the District’s Motion Challenging Sufficiency of Request for Hearing and Final Order.
46. On October 26, 2024, the Parent filed a Complaint. The Complaint restated allegations that the Department has addressed in the Final Order for a previous Complaint from this Parent.⁶ In addition, many of the concerns the Parent expressed in the October 26, 2024 Complaint do not allege an IDEA violation. The Complaint includes several allegations of IDEA violations, which form the foundation of the present Complaint and are described in the Allegations and Conclusions table above.
47. On November 5, 2024, the Parent sent an email to the Director, asking for an immediate IEP meeting and outlining specific requests:
 - a. Access to fidgets and supplies
 - b. Transition services
 - c. [A private school program recommended by Psychologist]
 - d. Required Equipment and Reimbursements, including a scientific calculator, a sewing machine, reimbursement for workbooks, food expenses
 - e. A planner
 - f. Reimbursement for piano and guitar lessons
 - g. Placement at High School #2

⁶ In the Matter of Portland Public School District 1J, Case No. 24-054-027

48. On November 6, 2024, the Director replied to the Parent's request for an IEP meeting referencing an attached PWN. The Director stated that the District's offer of FAPE was the June 11, 2024 IEP with placement at a specific Separate Day School, as determined by the IEP team on June 11, 2024. An intake meeting would be needed to plan for the transition from the High School to the Separate Day School. The Director included a list of topics to be address at the intake meeting, including: "Access to Fidgets and Supplies, Transition Services - age 16 and over, Wrap around [sic] meetings and who the District Representative will be in these meetings, FBA - Discuss IEE to be completed within the school setting, Participation in extracurricular activities"

49. The District prepared PWN on November 6, 2024 which states in its entirety:

"DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Provision of FAPE
District proposes implementation of IEP developed June 2024 - Separate Day School Placement.

District proposes setting up intake meeting at [Separate Day School] to transition student ...

District proposes convening an IEP meeting once student is in attendance at [the Separate Day School]

Explanation of why the district proposes or refuses to take the action

Most recent IEP developed is the June 2024 IEP

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:

Review of records.

Description of other options considered and why those options were rejected:

District considered holding an IEP meeting prior to placement at Separate Day School Program.

However, IEP meeting is best held with the team that will be serving the student, which is the team at [the Separate Day School].

Description of the factors relevant to the actions proposed or refused are:

Parent filed due process 2 times in fall 2024 in disagreement with the separate day school placement offer of FAPE.

One due process was dismissed, the other withdrawn by the parent.

(EX D-6 p12)

50. On November 6, 2024, the Parent replied to the Director. The Parent began with a statement: "I extend my sincerest apologies if the withdrawal of [my Due Process Complaint] has led you to believe that I concur with [the Separate Day School]." In this four-page email, the Parent reviewed a litany of concerns and requests, many of which did not implicate the IDEA, reflected misunderstandings of IDEA-mandated procedures, and failed to

acknowledge the decision-making authority of the IEP team. The Parent asked again for an IEP meeting to revisit the June 11, 2024 IEP and placement determination.

51. The District prepared PWN on November 20, 2024 which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Provision of FAPE

1. District refuses to hold an IEP meeting.
2. District refuses enrollment at [High School #2].

Explanation of why the district proposes or refuses to take the action

1. Student is no longer enrolled in PPS due to state requirement to 10 day drop the student for non[-]attendance. There is a current IEP from June 2024. Student is no longer a resident of PPS under [Right to Return] due to non-attendance.
2. Student’s current IEP indicates a separate day school placement. [High School #2] is not a Separate Day school and therefore does not have the services necessary to implement the IEP.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:

Enrollment Record.
June 2024 IEP.

Description of other options considered and why those options were rejected:

NA

Description of the factors relevant to the actions proposed or refused are:

[Right to Return] applies to [High School #2] and [two other District high schools]. However, it requires that the special education services be available for acceptance.

52. On November 20, 2024, the Parent wrote an email to the Director, stating:

“Thank you for your prior written notice refusing to hold an IEP meeting. Does this refusal also extend to an IEP meeting for the purpose of disenrolling my son from special education? . . . [The Director’s] refusal to hold an IEP meeting to disenroll [the Student] is not only obstructive but has left [them] without any access to education, which is unacceptable.”

53. On November 20, 2024, the Parent gave notice revocation of consent for special education for the Student.

54. The District prepared PWN on November 22, 2024 which states in its entirety:

“DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Provision of FAPE

1. Parents have made a written request through email on 11/20/2024 to decline services, which is considered a revocation of consent for special education services. [The District] will discontinue all special education services, related services and supports on beginning 11/22/2024.
2. District offered FAPE of separate day school as indicated in the IEP from June 2024. Parent has declined this placement.
3. District proposes referral to 504 evaluation upon enrollment in a PPS school.

Explanation of why the district proposes or refuses to take the action

Email from family requesting revocation of services.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:

Email from family requesting revocation of services.

Description of other options considered and why those options were rejected:

NA

Description of the factors relevant to the actions proposed or refused are:

Student is currently a resident of the [another school district] and is reapplying through Enrollment and Transfer to PPS under the Right to Return Process in order for the student to attend the family's school of choice.

Due to revocation of special education services:

1. Your child will be returned to general education as a nondisabled student. No special education services, related services or supports will be provided.
2. Your child's special education records will remain in your child's file.
3. You may refer your child for special education services at any time. If you refer your child for services, the district will hold an evaluation planning meeting to decide what evaluation, if any, is needed, and to get written parental consent. District staff may also refer your child for an evaluation.
4. The student will have access to educational programs and assistance available to nondisabled students in the general education setting.
5. The district is not required to and will not be providing a free appropriate public education, conduct a three-year reevaluation, or hold annual IEP meetings[.]
6. The procedural safeguards in the Notice of Procedural Safeguards will not apply.
7. Regular discipline rules apply. The school is not required to hold a manifestation determination meeting before implementing suspensions or expulsions."

55. After the August 26, 2024 DP was dismissed, the Parent filed a state complaint on the same issues on October 26, 2024, then filed another state complaint on November 21, 2024. In

order to ensure that all of the Parent's concerns were investigated, the two complaints were combined into the current Complaint. This Complaint added allegations that:

- a. The District refused to convene an IEP meeting at the Parent's request, although the Parent objected to the June 11, 2024 IEP and placement determination.
- b. The District refused to convene an IEP meeting to discuss disenrollment from special education.⁷
- c. The District did not schedule a third mediation session as the IEP required.
- d. The District did not provide adequate details in PWNs.
- e. The District did not provide the Student access to extracurricular activities.

56. On December 16, 2024, the District submitted its *Response* to this Complaint, offering a "full general denial" of all allegations and specific responses to each allegation.

57. On December 28, 2024, the Parent submitted a *Reply* to the District's *Response* that included:

- a. A 58-page narrative *Reply*. This document includes a minute-by-minute description of the June 10-11 FIEP meeting, interspersed with multiple repetitions of past grievances and disagreements with IEP team decisions, and repetition of objection to participating in the FIEP from a separate room.
- b. A 110-page "Timeline of Facts". This document is a narrative describing the Parent's interactions with the District and the Department from June 8, 2021 to December 15, 2024. It does not add any unaddressed allegations of IDEA violations.
- c. A 21-page document from the Paraeducator, describing their experience as the Student's 1:1 paraeducator. In this document, the Paraeducator stated that they were "new to being a paraeducator" and unfamiliar with IEPs. The Paraeducator described receiving the Student's IEP early in the 2023-24 school year and, soon thereafter, meeting with the Vice-Principal to review the IEP accommodations and clarify the Paraeducator's responsibilities in implementing accommodations. The Paraeducator found much of the language in the IEP confusing but stated: "I found the freeform 'Concerns of the parent(s)' section to be the most insightful, and I read it many times". The Paraeducator expressed dissatisfaction at the data collection methods provided by High School staff and preference for the system the Paraeducator developed. The Paraeducator expressed opinions about the Student's IEP goals and whether the High School staff was appropriately implementing the Student's IEP accommodations. The Paraeducator also opined at length about the appropriateness of suspensions for the Student's misconduct and stated, "I perceived that [the Student] was suspended for things that other students actually could have gotten away with".

⁷ The Parent also wanted to the IEP meeting to discuss several concerns that do not implicate the IDEA and thus are not addressed in this special education complaint investigation.

IV. DISCUSSION

Parent Participation

The Complaint alleged that the District violated the IDEA by preventing meaningful parent participation during the Complaint period beginning on May 9th and continuing through the remainder of the Complaint period. Specifically, the Parent alleged that the District violated the parent participation provisions of the IDEA by:

- a. Excluding the Parent from the FBA conducted during May, 2024;
- b. Excluding the Parent from the FIEP meeting on June 10 and 11, 2023;
- c. Excluding persons that Parent selected for their knowledge and expertise about the Student from FIEP;
- d. Not providing accommodations the Parent needed in order to participate in the June 10 and 11 FIEP; and
- e. Predetermining Placement in advance of the June 10 and 11th FIEP.

The right to parent participation is one of the core principles of the Individuals with Disabilities Education Act (IDEA). Parents are members of their children's IEP teams,⁸ and The Office of Special Education Programs (OSEP) at the US Department of Education, has long interpreted the parent role as "equal participants along with school personnel, in developing, reviewing, and revising the IEP."⁹ The US Supreme Court has repeatedly emphasized the critical role of the parents as IEP team members.¹⁰

Parents of children with disabilities are entitled to participate in numerous special education decision-making processes. Parents have the right to participate in meetings related to the identification, evaluation, IEP, and educational placement of their child, and the provision of a free appropriate public education (FAPE) to their child.¹¹ In addition to being members of their children's IEP teams, parents have the right to add other persons who "have knowledge or special expertise about the child" as team members.¹²

In this Complaint, all of the parent participation allegations that the District prevented parent participation in this complaint relate to the three facilitated meetings on May 23, June 10, and June 11, 2024. None of the documentation provided by either the District or the Parent supports these allegations.

The Parent was present and vocal at the May 23rd IEP meeting held for the purpose of completing an FBA and developing or revising a BSP based on the information from the FBA.

⁸ OAR 581-015-2210(1)(a); 34 CFR § 300.321(a)(1)

⁹ 34 CFR Appendix A to Part 300 (1999)

¹⁰ See e.g., Bd. of Educ. v. Rowley, 458 U.S. 176 (1982); Schaffer v. Weast, 546 U.S. 49 (2005); Endrew F v. Douglas County School Dist. RE-1, 580 US 386 (2017)

¹¹ OAR 581-015-2190(1); 34 CFR § 300.501(1)

¹² OAR 581-015-2210(1)(g)(A); 34 CFR § 300.321(a)(6)

The Parent objected to some components of the FBA and to the forms the District used for conducting and formalizing the FBA and BSP. The IDEA does not prescribe any specific model for an FBA nor any specific forms. Though not required to do so, the District accommodated the Parent's request to transfer the FBA and BSP to Microsoft Word format. The Parent was insistent that the BSP include all the content of an earlier BSP, but IEP team as a whole did not agree and chose to create a BSP based on the FBA.

The Parent was also present at the June 10-11, 2024 FIEP meeting, at the same location as other team members but in an adjacent room. The Parent demanded to be in the same room as the other team members as a disability accommodation, but the District refused because the Parent's well-documented communication style was combative, accusatory, and intimidating to other IEP team members. The District designed a caucus style meeting that offered in-person and remote participation opportunities to all team members while ensuring that the meetings could proceed efficiently without repeated disruptions, interruptions, and threats. The Parent had access to real time meeting minutes and had continuous opportunities to contribute to the IEP team deliberations through the Facilitator and the Parent's Counsel.

While the implementation of the caucus style meetings was imperfect, opportunities for the Parent to engage collaboratively with the rest of the IEP team member were available throughout the FIEP meetings. The Facilitator shuttled from room to room to convey information between the parties. During some of this time, the Parent's attorney communicated with the Parent and with the IEP team on behalf of the Parent. At any time during the meetings, the Parent could have participated in IEP team deliberations but was instead focused on writing additional parent concerns and demanding to be admitted to the room where other team members were present. The fact that the Parent did not choose to participate from the adjacent room in constructive discussion with the rest of the IEP team does not demonstrate District obstruction of parent participation rights.

The District also invited the Wraparound team¹³ to the FBA-BSP and FIEP meetings, so they could offer their knowledge or special expertise about the Student. They were free to attend either in person or remotely. The documents and meeting recordings provided to the Complaint Investigator did not indicate how many Wraparound team members participated or contributed to the deliberations about the Student's IEP in the at the FIEP meeting. However, nothing in these materials suggest any District effort to prevent Wraparound team members from participating in the FIEP.

Finally, the Parent alleges that the District predetermined the Student's placement. The District circulated draft 3 of the Student's IEP at the beginning of the June 10-11, 2024 meeting. The Parent objected to the draft including the placement option of a public separate school. The IDEA is silent on the issue of draft IEPs and Placement Determination forms. Draft documents can form a flexible foundation that the IEP team may revise as necessary or appropriate.

¹³ The Department notes that, while the IDEA grants parents the right to invite other persons who have knowledge or special expertise about a student to IEP meetings, it does not impose upon school districts the burden of inviting the parents' chosen individuals or ensuring that they attend. In this case, the District went beyond its duty by inviting persons that the Parent requested and accommodating their participation.

However, school districts presenting draft IEPs must remain open to recommendations from all IEP team members, including parents, for revision to the draft. In this case, the District scheduled 4 hours on June 10, 2024 and 4 hours on June 11, 2024 for the FIEP meeting. The recordings and transcripts from these meetings demonstrate that the Parent was repeatedly asked to offer input but, for most of the available time, the Parent chose not to participate.

The draft IEP presented to the IEP team on June 10, 2024 included the revisions the team had made at the May 23, 2024 FBA-BSP meeting and additions to the Student's present levels of academic achievement and functional performance based on input from the private psychologist's May 29, 2024 psychoeducational evaluation report. After reviewing and revising the Student's IEP, the IEP team moved on to the IEP draft placement determinations. The team reviewed three placement options in light of the Student's experiences in the 2023-24 school year and the Student's present levels, needs, services, and accommodations as reflected in the June 11, 2024 IEP and selected a placement that the IEP team, with the exception of the Parent, deemed necessary for the provision of FAPE. The Parent's disagreement with the IEP team decision does not demonstrate the chosen placement was predetermined, and the documentary records demonstrates the IEP team's deliberative decision making in accordance with the IDEA.

The Department does not substantiate this allegation.

IEP Team

The Complaint alleged that the District violated the IDEA by excluding the Student from the IEP team beginning on May 9, 2024 and continuing through the remainder of the Complaint period.

The IDEA provides that a group of people, the IEP team, develop the IEP for a student with a disability. An IEP team includes:¹⁴

- a. One or both of the student's parents;
- b. The student, where appropriate;
- c. At least one of the student's regular education teachers, if the student is or may be participating in the regular education environment;
- d. At least one of the Student's special education teachers or special education providers;
- e. A representative of the school district, who is:
 - Qualified to provide, or supervise the provision of, specially designed instruction;
 - Knowledgeable about the general education curriculum;
 - Knowledgeable about district resources; and
 - Authorized to commit district resources and ensure that services set out in the IEP will be provided.
- f. A person who can interpret the instructional implications of evaluation results;

¹⁴ OAR 581-015-2210(1); 34 CFR § 300.321(a)

- g. Other individuals who have knowledge or special expertise regarding the student and who are invited by either the parent(s) or the school district;
- h. Transition services participants.

In this case, there is no disagreement among the parties about who should be on the IEP team. The District included numerous staff members who met IDEA requirements. The Parent invited several people whom the Parent determined had knowledge or special expertise regarding the Student. The disagreement is about whether the District should have ensured that the Student could attend the FIEP meetings on May 23, June 10, and June 11, 2024.

If a purpose of an IEP meeting will be consideration of postsecondary goals for the student and transition services needed to help the student reach those goals, the school district must invite the student. If the student does not attend the meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.¹⁵ The IEP team must address transition planning no later than the first IEP to be in effect when the Student turns 16, or as early as age 14 or younger, if determined appropriate by the IEP team (including parent(s)).¹⁶

In this case, the Student would turn 16 when the June 11, 2024 IEP was in effect, so the District should have invited the Student, and the IEP team should have considered the Student's measurable postsecondary goals based on age appropriate transition assessments and transition services needs. The Parent asked that the FIEP meetings be held at the High School so the Student could drop into the meeting when convenient. The District determined that the meetings would be disruptive to the learning environment at the high school and arranged for meeting space at the District office.

Nothing in the IDEA requires a District to hold IEP meetings at a Student's school to facilitate a student's drop-in participation. Though the District office was not the Parent's preferred location for the FIEPs, it was not unreasonable for the District to choose a location that was that was more suitable for a complicated meeting with multiple attendees and at least two meeting rooms. However, the District failed to invite the Student to attend the FIEPs. The location of the meeting did not limit the Student's opportunity to participate. If the District had extended an invitation, the Student could have traveled to the District office, could have joined the meeting remotely by videoconference means, or could have chosen not to attend, just as other non-mandatory IEP team members did. But the District did not invite the Student to attend the FIEP meetings.

The Department substantiates this allegation.

¹⁵ OAR 581-015-2210(2); 34 CFR § 300.321(b)

¹⁶ OAR 581-015-2200(2)(a). 34 CFR § 300.320(b)

Placement and Least Restrictive Environment (LRE)

The Complaint alleged that the District violated the IDEA by not following the requirements of federal and state regulations for placement and LRE.

The IDEA provides that students with disabilities must “to the maximum extent appropriate” be educated with their typically developing peers and may be removed from the regular education environment only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.”¹⁷

The IDEA does not define LRE as the regular classroom but instead requires school districts to make available a continuum of alternative placements, ranging from instruction in regular classes to instruction in hospitals or institutions.¹⁸ Districts must make available supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.¹⁹

Placement of a student with a disability is an individualized decision made by a team that includes the parents and other persons knowledgeable about the student, the meaning of evaluation date, and the placement options.²⁰ The team must make the placement decision consistent with IDEA LRE provisions.²¹

The IDEA provides that placement of a student with a disability must be:

- a. Determined at least once each year;
- b. Based on the student’s current IEP; and
- c. As close as possible to the student’s home.

In selecting a student’s LRE, the team must consider any potential harmful effect on the student or on the quality of services.²² The placement decision follows IEP development and must be based on a student’s completed IEP. Unless the IEP requires some other arrangement, the student is to be educated in the school that they would attend if nondisabled.²³ A student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.²⁴

While the IDEA clearly evinces a strong preference for teaching students with disabilities in the regular classroom, the law does not require placement of every student with a disability in the regular classroom. As with all other special education decisions, placement must be based on

¹⁷ OAR 581-015-2240; 34 CFR § 300.114

¹⁸ OAR 581-015-2245(1); 34 CFR § 300.115(a) and (b)(1)

¹⁹ OAR 581-015-2245(2); 34 CFR § 300.115(c)

²⁰ OAR 581-015-2250(1); 34 CFR § 300.116(a)(1)

²¹ OAR 581-015-2250(1)(b); 34 CFR § 300.116(a)(2)

²² OAR 581-015-2250(4); 34 CFR § 300.116(d)

²³ OAR 581-015-2250(3); 34 CFR § 300.116(c)

²⁴ OAR 581-015-2250(5); 34 CFR § 300.116(e)

the unique needs of each student with a disability, and it must be a placement in which the student can receive FAPE.

In *Sacramento City USD v. Rachel H.*,²⁵ the 9th Circuit Court of Appeals established a four-factor balancing test to determine whether placement of a student with a disability in a regular classroom is the student's LRE:

- a. The educational benefit to the student;
- b. The non-academic benefits to the student;
- c. The effect of the student on the teacher and the other students; and
- d. The cost of regular classroom placement.

In *Sacramento City USD*, the Court gave great weight to the first three factors. The student in that case was a full member of the class, participated in all class activities, and received substantial academic benefits with the assistance of curriculum modifications and a part-time aide. The student also gained nonacademic benefits, including social and communication skills and increased confidence. The Court observed that the student was not disruptive and did not require so much of the teacher's time as to disadvantage other students. Finally, the court considered the relative costs of the student's regular classroom placement with specialized support and an alternative, more restrictive placement and determined that the cost of regular classroom placement would unduly burden the school district's funds or adversely affect services available to other students. *Sacramento City USD* is the precedent regarding placement and LRE that is binding on all school districts in the 9th Circuit.²⁶

None of the documents or meeting recordings submitted as evidence in this Complaint support the allegation that the District violated IDEA procedures for determining the Student's placement. On June 11, 2024, following review and revision of the Student's IEP, the IEP team reviewed placement, following the *Sacramento City USD* criteria. The IEP team noted that the Student had gained non-academic social benefits from regular classroom placement. However, the Student received little or no academic benefit in the second semester of the 2023-24 school year despite receiving a wide range of specialized supports and accommodations. Furthermore, the Student's behaviors were frequently disruptive, taking an outsized share of staff time and disadvantaging other students. The IEP team considered three placement options and determined that the least restrictive environment in which the Student could receive FAPE was a public separate school, which could provide the academic (individualized and/or small group academic instruction at the Student's instructional level) and non-academic (intensive behavioral, social-emotional, and mental health) supports that the Student needed. The documents and meeting recordings that the District and Parent provided demonstrate careful attention to required IDEA procedures and the *Sacramento City USD* decisional criteria.

The Department does not substantiate this allegation.

²⁵ 14 F.3d 1398 (9th Cir. 1994)

²⁶ See, e.g., *D.R. v. Redondo Beach Unif. Sch. Dist.*, 56 F.4th 636 (9th Cir. 2022)

Prior Written Notice (PWN)

The Complaint alleged that the District failed to provide Prior Written Notice (PWN) of its decisions.²⁷

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability. 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 to understand exactly what considerations led to those decisions.

In this case, the District was conscientious, giving meticulously detailed PWNs to the Parents for every major district proposal or refusal related to the Student's special education beginning with the May 23, 2024 PWN regarding the decisions from the FBA and BSP and continuing through November 21, 2024, when the Parent filed this Complaint. However, the PWNs for the June 12, 2024 and October 17, 2024 IEP meetings did not include a description of other options considered. The Department notes that, during the Complaint period, the Parent asked for some things that did not implicate the IDEA, but school districts are not required to provide PWN in those circumstances.

The Department substantiates this allegation in part.

When IEPs Must Be In Effect

The Complaint alleged that the District violated the IDEA by failing to ensure that the Student's 1:1 paraeducator was fully informed of their responsibilities for IEP implementation during the 2023-24 school year.

²⁷ The Department addressed the Parent's allegations of missing or inadequate PWNs during the period May 8, 2023-May 7, 2024 in an earlier complaint investigation (24-054-027).

The IDEA provides that school districts must:

- a. Ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider and other service provider who is responsible for its implementation; and
- b. Inform each teacher and provider described in (3)(a) of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.²⁸

The Paraeducator's 21-page document is a first-person account of the Paraeducator's experiences as the Student's 1:1 aide. It indicates unambiguously that the District gave the Paraeducator access to the Student's IEP and that the Paraeducator's supervisors provided guidance about the Paraeducator's specific responsibilities in implementing the Student's IEP. The IDEA does not require more. A paraeducator is not a licensed educator but is a non-specialist, non-licensed staff member whose work is supervised and directed by a teacher, specialist, or administrator. The Department does not doubt the sincerity of the Paraeducator's critiques, but they are not relevant to the legal analysis of the appropriateness of the Student's IEP or its implementation.

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Complaint alleged that the District violated the IDEA by repeatedly refusing the Parent's request to convene IEP meetings.

The IDEA requires that school districts review and revise a student's IEP at least once every 365 days or more frequently²⁹ to address:

- a. Any lack of expected progress toward IEP goals or in the general curriculum;
- b. The results of any reevaluation;
- c. Information about the child provided to, or by, the parents;
- d. The child's anticipated needs; or
- e. Other matters.

Following the June 10-11, 2024 FIEP meetings, the Parent several times asked for an IEP meeting. The Parent did not cite any of the circumstances indicated in the IDEA. The Parent had refused to send the Student to school, so there was no opportunity for the Student to make progress toward goals. There was not reevaluation after the June 11, 2024 IEP. The Parent's information, reflected abundantly in the IEP, and the Student's anticipated needs remained as identified in the June 11, 2024 IEP.

²⁸ OAR 581-015-2220(3); 34 CFR § 300.323(d)

²⁹ OAR 581-015-2225(1); 34 CFR § 300.324(b)

In each request for a new IEP meeting, the Parent insisted on numerous conditions, many of which involved assurance that the meeting would include all participants in one room and that the revised IEP would include the Parent's preferred accommodations and placement rather than the decisions of the IEP team. The Parent's conditional requests for IEP meetings conflict with the IDEA's detailed procedures for special education decision-making by the IEP team.

Absent any of the circumstances for which the IDEA provides the option of an IEP review and revision, the IDEA does not provide for repetitions of IEP meetings. While IEP team consensus is ideal, it is not always achievable. Sometimes parents disagree with the other members of the IEP team, but the IDEA requires the district to provide FAPE even when parents disagree. In such cases, the District must provide PWN, and parents may pursue their objections through any of the dispute resolution mechanisms that the IDEA provides, including special education complaint investigation, mediation (voluntary on the part of parents and districts), or DP hearing.

The Department does not substantiate this allegation.

Non-academic Services

The Complaint alleged that the District violated the IDEA by denying the Student's access to a variety of extracurricular and co-curricular activities (e.g., band, sports, outdoor school).

The IDEA requires school districts to provide extracurricular services and activities to students with disabilities, and to provide whatever supplementary aids and services determined appropriate and necessary by the child's IEP team to afford the students an equal opportunity for participation in those services and activities.³⁰

In May 2024, the Student in this Complaint repeatedly appeared on school campuses to attend extracurricular activities several times during periods of disciplinary suspensions. In Fall 2024, the Student sought to participate in extracurricular activities at High School #2. At that time, the Student had been unenrolled from the District for non-attendance pursuant to state law. The IDEA does not require school districts to provide access to extracurricular activities during times of exclusionary discipline or when the Student is not enrolled in the district.

The Department does not substantiate this allegation.

Independent Educational Evaluation (IEE)

The Parent alleged that the District refused an IEE that the Parent requested on May 22, 2024 because of disagreement with the District's functional behavior assessment (FBA).

³⁰ OAR 581-015-2070(1); 34 CFR § 300.107(a)

Parents have the right to an IEE at public expense if they disagree with an evaluation obtained by the district.³¹ “Public expense” means that the school district must either pay the full cost of the evaluation or ensure that the evaluation is otherwise provided at no cost to the parent.³²

When a parent seeks an IEE, the school district must provide information about where they may obtain an IEE and the school district criteria applicable to IEEs. If a parent seeks an IEE at public expense, the district must “without unnecessary delay” either: (a) initiate a due process hearing to show that its evaluation was appropriate, or (b) ensure that an IEE is provided at public expense unless the district can prove at a due process hearing that the parents’ IEE did not meet district criteria.³³

The first prerequisite to an IEE at public expense is a completed school district evaluation. In this case, the May 22, 2024 request for an IEE followed the Parent’s receipt of a draft FBA that the IEP team was to complete on the following day. The FBA and revised BSP were completed on May 23, 2024. While the Parent complained that the District had not agreed to the May 22, 2024 request for an IEE, the Parent did not at any time request an IEE because of disagreement with the completed FBA.

The Department does not substantiate this allegation.

Access to Student Educational Records

The Complaint alleged that the District violated the IDEA by denying access to the Student’s educational records.

The IDEA provides that the parents of children with disabilities have an opportunity to inspect and review all educational records with respect to the identification, evaluation, placement, and provision of a free appropriate public education of their children.³⁴ School districts must provide access without unnecessary delay and must provide copies of records before any IEP meeting, DP Hearing, or resolution session, and in no case more than 10 business days after the request has been made.³⁵

The Parent requested access to the Student’s educational records on September 19, 2023. The District acknowledged receipt of the request on that same day and on September 25, 2023, notified the Parent that the records were available on a USB drive. Receipt of student educational records 6 days after the request was well within the IDEA timeline and thus did not violate the IDEA.

The Parent also sought access to and copies of District emails. School district emails, like other public agency emails, are public records. Public records requests are governed by state law, and

³¹ OAR 581-015-2305; 34 CFR § 300.502(b)(1)

³² OAR 581-015-2305(b); 34 CFR § 300.502(a)(3)(ii)

³³ OAR 581-015-2305(4) and 34 CFR § 300.502(b)(2)

³⁴ OAR 581-015-2300; 34 CFR § 300.501

³⁵ OAR 581-015-2300(3)(b); 34 CFR § 300.613(a)

the IDEA right to access educational records is inapplicable. This Complaint investigation cannot address the Parent's concerns about difficulties in accessing copies of District emails.

The Department does not substantiate this allegation.

Pre-hearing Conference, Notice of Hearing and Hearing Rights (Child's Status During Proceedings)

The Parent alleged that the District has violated the IDEA by not complying with the stay-put requirement during the pendency of the Parent's DP complaint proceedings.

The IDEA provides that, during the pendency of a DP hearing, the student has a right to remain in the present educational placement unless some other contingencies apply.³⁶

- a. The district and the parent agree otherwise;
- b. If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;
- c. The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury;
- d. The administrative law judge orders a change in placement to an interim alternative educational setting due to the substantial likelihood of injurious behavior; or
- e. The school district implements a disciplinary removal to an interim alternative educational setting for a student whose behavior is found not to be a manifestation of the student's disability.

None of the alternatives to the Student's right to remain in the present placement applies in this case. The present educational placement, and thus the stay-put placement, was the IEP in effect during the 2023-24 school year. The Parent refused to send the Student to the High School and sought District agreement to transfer the Student to High School #2, but the Parent's transfer request was refused. Ultimately, the District and the Parent agreed that the stay-put location would be home instruction and an online credit recovery program.

The Department does not substantiate this allegation.

Consent

The Complaint alleged that the District has violated the IDEA by not complying with IDEA provisions related to parental revocation of consent for special education.

The IDEA requires that school districts obtain informed consent from parents for initial evaluation for special education eligibility, for initial provision of special education services, for

³⁶ OAR 581-015-2360(5)(a); 34 CFR § 300.518

reevaluation, and to access public benefits or insurance.³⁷ Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, agrees in writing to the implementation of the activity, and understands that consent is voluntary and may be revoked at any time.³⁸ The parents of a student with a disability who receives special education services may revoke consent for special education and also may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.³⁹ If a parent revokes consent for special education in writing, the school district must cease special education services for the student and must give PWN to the parent about the cessation.⁴⁰ When a parent has revoked consent for special education, the school district is not required to convene an IEP meeting or develop an IEP for further provision of special education and related services.⁴¹

In this case, the Parent requested an IEP meeting to revoke consent for special education. The IDEA does not require a district to convene an IEP meeting to discuss a Parent's decision to revoke consent. Revocation of consent requires only that the Parent provide written notice of that intent.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District has violated the IDEA entitlement to a FAPE during the period May 8 to November 21, 2024.⁴²

The IDEA mandates that school districts must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the district is responsible. The IDEA defines FAPE as special education and related services that:⁴³

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the [state educational agency];
- c. Include an appropriate preschool, elementary school, or secondary school education; and
- d. Are provided in conformity with an individualized education program (IEP).⁴⁴

The IDEA does not include a standard for determining whether a school district has provided FAPE. However, in 1982, the US Supreme Court articulated a two-prong FAPE test that includes procedural and substantive elements:

³⁷ OAR 581-015-2090(3)-581-015-2090(6); 34 CFR § 300.9

³⁸ OAR 581-015-2000(5); 34 CFR §300.9

³⁹ OAR 581-015-2090(7)(B)

⁴⁰ OAR 581-015-2090(4)(e); 34 CFR §300.300(b)(4)(i)

⁴¹ 34 CFR §300.300(b)(4)(iv)

⁴² The Department addressed allegations of denial of FAPE for this Student in an earlier complaint investigation (24-054-027).

⁴³ 34 CFR §300.17

⁴⁴ OAR 581-015-2040

- a. Procedural: Did the school district comply with IDEA procedural requirements, and
- b. Substantive: Was the IEP reasonably calculated to enable the child to receive educational benefit?⁴⁵

Not all procedural violations amount to a denial of FAPE. However, a district's procedural violation(s) deny FAPE to a student if they result in loss of educational opportunity or if they seriously infringe the parents' opportunity to participate in IEP development.⁴⁶ If procedural violations alone constitute a denial of FAPE, it is unnecessary to address the second prong of the FAPE inquiry.⁴⁷

In this case, the District diligently followed IDEA procedural requirements. The District made a procedural error by not inviting the Student to the May 23, 2024 and June 10-11, 2024 FIEP meetings. While this was a procedural error, it did not amount to a denial of FAPE because it did not result in a loss of educational opportunity.

If a school district demonstrates that it observed IDEA's procedural requirements, the question remains whether the IEP is substantively adequate. When this is the case, it is necessary to determine whether the IEP enabled the student to benefit.

In this case, it is impossible to determine whether the June 11, 2024 IEP, including the May 23 BSP enabled the Student to benefit. The Parent has refused to send the Student to school since the development of the BSP and the IEP. The District has had no opportunity to implement the June 11, 2024 IEP. After the Parent filed DP hearing requests, the Parent refused to send the Student to the stay-put placement in which the previous IEP would have been in effect. The only clear loss of educational benefit to the student in the period May 8, 2024 to November 21, 2024 resulted from the Parent's refusal to send the Student to school.

The Department does not substantiate this allegation.

Additional Finding Content of IEP (Transition)

The IDEA requires that an IEP must include, not later than the first IEP to be in effect when the student turns 16:

- a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
- b. The transition services (including courses of study) needed to assist the student in reaching those goals.⁴⁸

⁴⁵ Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982)

⁴⁶ W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992)

⁴⁷ Id.

⁴⁸ OAR 581-015-2200(2); 34 CFR §300.320(b)

Transition services means a “coordinated set of activities” that:

- a. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student’s movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- b. Is based on the individual student’s needs, taking into account the student’s preferences and interests; and
- c. Includes:
 - Instruction;
 - Related services;
 - Community experiences;
 - The development of employment and other post school adult living objectives; and
 - If appropriate, acquisition of daily living skills and functional vocational evaluation; and
- d. May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.⁴⁹

In this case, the Student’s IEP mentions transition briefly, but without substance. The Student’s IEP includes:

- a. No measurable postsecondary goals
- b. No age-appropriate transition assessment, although the IEP indicated that “Further interview or assessment can be completed” at some unspecified time.
- c. No discernible coordinated set of transition activities
- d. No instruction or related services identified as relating to transition

The Student’s IEP includes a *Summary of Present Levels of Performance for Transition Planning*, which lists the Student’s interest in becoming a lawyer or chef and notes that both occupational goals require post-secondary education or training. The Summary also indicates that achieving the goals requires academic perseverance, the ability to make responsible decisions, and self-regulation.

The Student’s IEP also includes *A Summary of Age-Appropriate Transition Planning*, which includes the following non-measurable and non-annual post-secondary goals:

- a. Training: The Student will obtain a standard diploma to work toward higher training opportunities post high school.
- b. Education: The Student will explore training opportunities post high school.

⁴⁹ OAR 581-015-2000(29); 34 CFR § 300.43

- c. Employment: The Student will participate in gainful employment post high school.
- d. Independent Living Skills: The Student will live independently post high school.

These goals are vague and generic, reflecting no attention to the Student's individual transition-planning needs. They do not include any high school coursework that the Student would need to move toward the occupational goals that the IEP identified.

The Transition Services section of the Student's IEP included spaces for School Year, Courses, and Coordinated Activities, but those spaces were left blank.

The Department is aware that the Student's suspensions and voluntary absences made it difficult for the IEP team to delve deeply into transition planning. Perhaps if the District had invited the Student to the June 10-11, 2024 FIEP, the IEP team could have at least begun a compliant transition planning process.

V. CORRECTIVE ACTION⁵⁰

*In the Matter of Portland School District 1J
Case No. 24-054-062*

Action Required	Submissions	Due As Soon As Possible But No Later Than
The District must ensure that all District staff responsible for serving secondary-level students with disabilities receive training in IDEA transition planning requirements, including the obligation to invite Students to their IEP meetings when transition planning is on the agenda. The District must also ensure that all District staff responsible for writing PWNs receive training for appropriately completing all required areas of the document.	Training agenda and materials to ODE District Support Specialist for review and approval.	September 15, 2025
	Sign-in sheet for training.	November 1, 2025

Dated: this 15 Day of July 2025

⁵⁰ 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))

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: July 15, 2025

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)).