

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School District 1J	)	FINDINGS OF FACT,
	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 25-054-008

I. BACKGROUND

On February 7, 2025, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from an attorney on behalf of the parents (Parents) of a student (Student) residing in the Portland School District 1J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Parents and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On February 11, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 25, 2025.

The District submitted a *Response* on February 20, 2025, denying the allegations, providing an explanation, and submitting documents supporting the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, dated 02/20/25
2. IEP, 06/03/24
3. Meeting Minutes, 06/03/24
4. PWN, 06/03/24
5. Email, re: weekly communication, 08/30-09/02/24
6. Email, re: OT?, 10/09-10/10/24
7. Email, re: OT, 10/14-10/22/24
8. Email, re: no OT all year yet - please help, 10/21-10/23/24

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

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

9. Email, re: schedule, 11/25-12/02/24
10. Email, re: [School] OT, 12/04-12/09/24
11. Email, re: OT as related service for [Student] at [School], 12/06-12/10/24
12. Email, re: no OT all year yet - please help, 10/21-12/16/24
13. Email, re: compensatory minutes for occupational therapy, 12/17/24
14. Email, re: afterschool support..., 12/20/24
15. Email, re: no OT all year yet - please help, 10/21-12/20/24
16. Email, re: no OT all year yet - please help, 10/21-12/27/24
17. Email, re: OT advice for [Student], 01/11-01/14/25
18. OT Contact Notes, 2024-25 School Year
19. PWN, 12/17/24
20. Weekly Schedule, 12/17/24

The Parents submitted a *Reply* on February 27, 2025, providing an explanation and rebuttal and documents in support of the Parents' position. The Parents submitted the following relevant items:

1. Parents' *Reply* to the District's *Response to RFR*, 02/27/25
2. Email, re: OT, 10/14-10/16/24
3. Email, re: no OT all year..., 10/21-12/27/24

The Complaint Investigator interviewed the Parents on March 10, 2025. The Complaint Investigator interviewed District personnel on March 13 and March 18, 2025. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits to reach the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from February 8, 2024, to the filing of this Complaint on February 7, 2025.

Allegations	Conclusions
<p><b>When IEPs Must Be In Effect</b></p> <p>The Complaint alleged that the District failed to provide 195 minutes of occupational therapy (OT) services, as described in the Student's IEP, from the start of the 2024-25 school year through November 2024. Further, the Complaint alleged the District agreed to provide 195 minutes of compensatory education services for the missed</p>	<p><b>Substantiated</b></p> <p>The District acknowledged that 195 minutes of occupational therapy services were not provided to the Student. The District offered compensatory services at times when the</p>

OT services but has not provided the services at a mutually agreed time or at no cost to the Parents.  (OAR 581-015-2220; 34 CFR §300.323)	Student was not missing general education instruction and was at no cost to the Parents.
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REQUESTED CORRECTIVE ACTION
<p>The Parents requested the following corrective action:</p> <ul style="list-style-type: none"> <li>• "The District will contract with and pay for an occupational therapist to provide the [S]tudent's compensatory education hours outside of regularly scheduled school time."</li> <li>• "Parents will not be required to pay for any expenses for compensatory education occupational therapy."</li> </ul>

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before February 8, 2024. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student's disability and special education history.

1. The Student is ten years old and attends an elementary school in the District.
2. The Student is eligible for special education services with disabilities of Other Health Impairment (OHI), Intellectual Disability (ID), Visual Impairment (VI), Speech or Language Impairment (SLI), and Orthopedic Impairment (OI).
3. The Student is described as being open to trying new things and always having a big smile. The Student swings on the tire swing and introduces their friends to their adult helpers. The Student reportedly is very social, works hard in class, responds well to positive behavior supports, and has grown in independence.
4. According to the District's *Response*, it was undisputed that the District owed the Student 195 minutes of occupational therapy (OT) services.
5. In the District's *Response*, the District explained why they believed their proposals were equitable to all parties.
  - a. The District stated that adding 15-20 minutes to each Student's weekly OT session provided continuity of services from the same educational provider. The District noted the regular OT sessions were scheduled during an "intervention block" in the Student's

schedule to minimize any disruption to their core content learning or other special education services.

- b. The District explained that the high-cost range across the District for OT providers was approximately \$75/hour. The District stated that reimbursing the Parents at the rate the District would incur to deliver the services the Student missed would put the Student in the same position they would have been in had the District provided the services in the first place.
6. During an interview with the Complaint Investigator, the District's Assistant Director of Special Education explained the District had two options available for offering compensatory services: additional service minutes provided by existing staff and parent-retained therapists. They stated these options were offered to the Parents.
7. The Student's IEP, dated June 3, 2024, indicated the Student would receive 150 minutes of OT services per quarter, provided by the Occupational Therapist in the general education area, from June 3, 2024 through June 2, 2025.
8. Meeting Minutes, dated June 3, 2024, summarized the IEP meeting and included:
  - a. Notes from the previous occupational therapist about the Student's progress.
  - b. A continuation of the IEP meeting was scheduled for June 10, 2024. The previous occupational therapist did not attend the follow-up meeting.
9. On August 30, 2024, the Case Manager notified the Parents via email that the previous occupational therapist had not returned to the District, that the District was in the process of hiring someone new, and said, "... I have made sure that all of [the Student's] accommodations are in place in [their] new classroom."
  - a. One of the Parents replied the next day and acknowledged the update.
10. On October 14, 2024, one of the Parents emailed the Case Manager and asked for an update on the Student's OT services; the Case Manager did not have new information. One of the Parents then emailed the Attorney for the Parents on October 16, 2024 and stated they learned there had been no occupational therapist at the School and no OT communications on the Student's weekly log. On October 22, 2024, the Assistant Director of Special Education emailed the Teacher on Special Assignment and said, "I've reached out to a few OTs to see if they are willing to help out for extended hours. If no one is able to, we would write a PWN and offer comp hours."
11. On October 21, 2024, the Attorney for the Parents emailed the District's Attorney regarding the Student's missing OT services and requested information on when they would begin and how to address compensatory education. The District's Attorney responded on October 23, 2024, acknowledged the previous OT's departure, and said, "Once a new OT is in place and serving students, the District will be contacting the families of affected students regarding compensatory services."

The following day, the Attorney for the Parents sought a timeline for the new OT's start at the School. On November 12, 2024, the District's Attorney shared with the Attorney for the Parents that the new Occupational Therapist had started the previous week. On November 17, 2024, and again on November 26, 2024, the Attorney for the Parents followed up with the District's Attorney, asking when the Student would receive OT services and when compensatory education could be discussed. The District's Attorney replied on November 26, 2024 and stated they had not yet received information from their client.

12. The Assistant Director of Special Education emailed the new Occupational Therapist on December 2, 2024 and asked if they could provide an additional 15 minutes per week to help make up for the Student's lost minutes, to which the Occupational Therapist agreed.
13. The Occupational Therapist emailed the Assistant Director of Special Education on December 6, 2024 and said, "I started OT services for [the Student] this week Wednesday 12/4, and I now have a plan on my calendar to work with [them] weekly on Wednesday mornings at 9:15 [a.m]. This will be 30 minutes for 10 weeks, including time for the compensatory services."
  - a. On December 10, 2024, after an email exchange between the Occupational Therapist and the Assistant Director of Special Education, the Occupational Therapist stated they would continue with a plan of 30 minutes of weekly services on Wednesdays for 13 weeks.
  - b. The Assistant Director of Special Education stated the plan was to provide 15 minutes of compensatory services for 13 weeks, which would go through the remainder of the quarter.
14. On December 17, 2024, the Assistant Director of Special Education emailed the Parents and introduced them to the new Occupational Therapist. They explained the Occupational Therapist would provide the compensatory service minutes in-person by adding extra time to the Student's sessions each week. The Assistant Director of Special Education attached a PWN detailing the compensatory services to the email.
  - a. In separate responses, both of the Parents acknowledged the email. One of the Parents stated they would review the PWN.
15. The Assistant Director of Special Education stated that once the Occupational Therapist agreed to offer services in person, they crafted the PWN. They stated the District's view at that time was that the Parents agreed to the plan in the PWN.
16. A PWN dated December 17, 2024 indicated:
  - a. The Student was without an occupational therapist from August 27, 2024 through December 4, 2024, and the District offered 195 minutes of compensatory services to address the missed services.
  - b. "The District proposes providing these services through the new OT, who will deliver additional services each week to ensure the 195 compensatory minutes are met."
  - c. "Due to the OT vacancy, the [D]istrict recognizes its obligation to provide compensatory services to address the missed minutes ... ."

- d. The compensatory services would be scheduled in coordination with the occupational therapist to minimize disruption to the Student's regular schedule.
  - e. The PWN did not include start or end dates for the compensatory services.
17. The Assistant Director of Special Education stated the intervention block was deemed the least disruptive option because it had less pull-out time and did not interfere with general education instruction. The Assistant Director of Special Education stated they did not get a response from the Parents that they did not want the compensatory services provided during the intervention block.
18. One of the Parents stated the District's proposal for compensatory services was only communicated to them via email, but was not discussed at a meeting for the Student. One of the Parents indicated there was no communication about how frequently or for how many minutes the Student would be pulled out to make up the 195 minutes of missed services.
19. The District materials contained a copy of the Student's weekly schedule, revised on December 17, 2024. The schedule indicated that on Wednesdays:
- a. The Student had SEL from 8 a.m. - 8:20 a.m.
  - b. The Student had their first ELA period from 8:20 a.m. - 9:20 a.m.
  - c. The Student had OT Services from 9:15 a.m. - 9:50 a.m. in a second ELA block.
  - d. The Student had Writing in the Learning Center from 9:50 a.m. - 10:20 a.m.
20. The District materials contained an Occupational Therapy Contact Note Log for the Student for the 2024-25 school year. The document indicated the Occupational Therapist worked with the Student once a week from December 4, 2024 through February 5, 2025, and included detailed notes on what the Student did. The total amount of documented time was 265 minutes. The log did not indicate how much of this time was p compensatory services.
- a. The previous Occupational Therapist's logs had detailed notes, which included meeting times and contact with the Parents. Their sessions generally last anywhere from 15-45 minutes.
21. The District's Attorney explained that the exact duration of OT sessions varied, ranging from 30 to 40 minutes, making it difficult to give a precise total of how many compensatory minutes were provided during the intervention block. They also noted that the Student's regular occupational therapy sessions typically lasted 15 to 20 minutes.

The District's Attorney stated it was their understanding that the Occupational Therapist doubled the OT sessions to 30-45 minutes when they also provided the compensatory service minutes. They also explained they instructed the Occupational Therapist on February 19, 2025 to stop combining the time when they realized it may not have been what the family wanted.

22. During an email exchange on December 18, 2024, the Attorney for the Parents informed the District's Attorney that the Parents preferred to have the compensatory services provided outside the school day to avoid disrupting the Student's classes and were open to spreading the sessions over time. The District's Attorney responded the same day, stating it depended on the willingness of School staff to work outside their contracted hours. The Parents' Attorney proposed hiring a private OT, with the District covering the cost.
- On December 20, 2024, the Occupational Therapist emailed the Assistant Director of Special Education and stated they wanted to maintain their current schedule because they had to leave their calendar open for IEP meetings after school. That day, the District's Attorney informed the Parents' Attorney via email that the School declined to provide services before or after school and would instead offer services during the school day or a reimbursement of up to \$80/hour for a private occupational therapist.
  - On December 24, 2024, the Attorney for the Parents inquired about the process if a provider could not be found within the \$80/hour limit. On December 27, 2024, the District's Attorney clarified that the Parents would cover any excess cost.
23. The Assistant Director of Special Education had the impression there had been miscommunication because there were contradictory statements made in emails between them and the Parents and then between the two attorneys and the Parents.
24. One of the Parents said, "... they did end up pulling [the Student] out of [their] regular class to start giving [them] the compensatory services against our desires." One of the Parents said, "... we don't have a good plan for how to get [them] the extra minutes that [are] covered by the [District]."
25. According to one of the Parents, since filing the Complaint, they have not found an outside occupational therapist, have not paid for a provider, and have not been told by the District how many compensatory service minutes the Student has received.
26. One of the Parents described their search for an occupational therapist and stated that the average cost for a provider is \$180-\$200/hour. They stated they had looked into about three or four options. One of the Parents explained that in their research, they did not find that most occupational therapists distinguished between offering educational or medical-based services. One of the Parents indicated they searched for providers around Portland and also considered an in-home provider. They stated that the in-home service was more expensive, but both options cost more than \$80/hour.
27. On February 7, 2025, the Parents filed this Complaint.

#### **IV. DISCUSSION**

##### **When IEPs Must Be In Effect**

The Parents alleged that the District failed to provide 195 minutes of occupational therapy services per the Student's IEP at the beginning of the 2024-25 school year. The Parents further alleged that the District agreed to provide compensatory occupational therapy services but did not offer services at a mutually agreeable time or at no cost to the Parents.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.<sup>3</sup> Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation, and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports.<sup>4</sup>

The District does not contest that they failed to provide 195 minutes of occupational therapy services as described in the Student's IEP. The District stated that adding 15-20 minutes to the Student's weekly OT sessions provided continuity of services. Sessions were scheduled during the Student's intervention block to minimize disruptions. However, it is not possible to determine how many minutes of compensatory services were actually provided.

The Department substantiates this allegation.

#### **V. CORRECTIVE ACTION<sup>5</sup>**

*In the Matter of Portland School District 1J  
Case No. 025-054-008*

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

<b>Action Required</b>	<b>Submissions</b>	<b>As Soon As Possible But No Later Than Due Date</b>
1. The District must offer to provide the Student with 195 minutes of Compensatory Education to make up for	The District shall submit the following:	

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<sup>3</sup> OAR 581-015-2220(1)

<sup>4</sup> OAR 581-015-2220(3)

<sup>5</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).





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).)