BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland Public School District 1J	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 25-054-040

I. BACKGROUND

On June 4, 2025, the Oregon Department of Education (the Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Portland School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On June 11, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of June 25, 2025. The District requested, and the Department granted, a short extension to submit the response. On June 27, 2025, the District submitted a *Response*, disputing the allegations described in the Complaint. The District submitted the following relevant items:

1. District *Response*, 6/25/2025
2. Notice of Team Meeting, 9/12/2024
3. Meeting Minutes, 9/13/2024
4. Pre-evaluation Meeting minutes, 11/25/2024
5. Prior Written Notice, 11/25/2024
6. Meeting Minutes, 2/20/2025
7. Student IEP, 3/12/2024
8. Comprehensive Function Based Behavior Support Plan (BSP), 4/15/2025
9. Special Education Placement Determination, 3/12/2025
10. Meeting Minutes, 3/12/2025
11. BSP/IEP Review Meeting, 4/15/2025
12. Notice of Team Meeting, 4/21/2025

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

13. Student IEP Amendment, 3/12/2025
14. Meeting Minutes, 4/22/2025
15. Student IEP, 3/12/2025
16. Eligibility Summary Statement, 2/20/2025
17. Meeting Minutes, 9/13/2024
18. Notice of Team Meeting, 10/25/2024
19. Notice of Team Meeting, 10/25/2024
20. Special Education Placement Determination, 3/12/2025
21. Prior Written Notice, 11/25/2024
22. Prior Written Notice, 2/20/2025
23. Meeting Minutes, 3/12/2025
24. Meeting Minutes, 2/20/2025
25. Statement of Eligibility for Special Education, 2/20/2025
26. Notice of Team Meeting, 9/12/2024
27. Parent/Guardian Consent for Individual Evaluation, 11/25/2024
28. Prior Written Notice and Consent for Initial Provision of Special Education Services, 3/12/2025
29. Physicians Letter, 10/1/2024
30. Notice of Team Meeting, 10/15/2024
31. Parent/Guardian Consent for Individual Evaluation, 11/25/2024
32. Notice of Team Meeting, 10/25/2024
33. Occupational Therapy (OT) Assessment, 2/18/2025
34. Sensory Processing Measure, 2nd Ed. (SPM-2), 12/6/2024
35. Psychoeducational Assessment Report Confidential, 2/20/2025
36. Meeting Minutes, 2/20/2025
37. Comprehensive Functional Behavior Assessment (FBA), 10/7/2024
38. Prior Notice and Consent for Initial Provision of Special Education Services, 3/12/2025
39. Pre-Evaluation Meeting Minutes, 11/25/2024
40. Comprehensive Functional Behavior Assessment (FBA), 4/15/2025
41. Behavior Support Plan (BSP), 4/13/2025
42. FIEP Meeting Agenda, 5/21/2025
43. Student Facilitated IEP, 5/21/2025
44. Prior Written Notice, 5/2/2025
45. Parent/Guardian Consent for Individual Evaluation, 11/25/2024
46. Psychoeducational Assessment Report Confidential, 2/20/2025
47. Occupational Therapy (OT) Assessment, 2/18/2025
48. Disability Statement, Other Health Impairment (80), 2/20/2025
49. Eligibility Summary Statement, 2/20/2025
50. Prior Written Notice, 2/20/2025
51. Comprehensive Functional Behavioral Assessment (FBA), 10/7/2024
52. Comprehensive Function Based Behavior Support Plan (BSP), 4/15/2025
53. Prior Notice and Consent for Initial Provision of Special Education Services, 3/12/2025
54. IEP Progress Report, 6/12/2025
55. Student's Physician Progress Notes, 8/14/2024

56. Student's Physician Progress Notes, 9/11/2024
57. Student's Physician Letter, 101/1/2024
58. Correspondence between Parent and District
59. District Calendar, 2024-25
60. Student Attendance Profile, 2024-2025
61. Student Discipline Profile, 2024-2025
62. District Letter of Suspension, 9/25/2024
63. District Letter of Suspension, 11/8/2024
64. District Letter of Suspension, 11/12/2024
65. District Letter of Suspension, 4/17/2024
66. Student IEP Draft Outline, 3/11/2025
67. Behavior Support Plan (BSP), 4/13/2025
68. List of Knowledgeable Staff
69. Evaluation Planning Meeting Agenda, 10/25/2024
70. Facilitated IEP Meeting Notes, 5/21/2025

On July 11, 2025, the Department's Complaint Investigator interviewed the Parent. On July 16, 2025, the Department's Complaint Investigator interviewed the District's Assistant Director for Special Education and the District's Legal Counsel. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 5, 2024, to the filing of this Complaint on June 4, 2025.

Allegations	Conclusions
When IEPs Must Be In Effect It is alleged that the District violated the IDEA when it did not implement the Student's IEP. Specially it is alleged that: a. The District did not implement the behavior supports in the Student's Behavior Support Plan (BSP), as evidenced by an increase in behaviors following the creation of the BSP; b. The District did not implement agreed upon supports discussed in the IEP team meeting, and provided by the Parent; c. The District did not implement certain	**Not Substantiated** The record supports that once the Student's IEP was in place, the District provided the Student with the services and behavior supports in their IEP; the District implemented the supports in the Student's IEP and that the District did provide school/home communication.

Allegations	Conclusions
accommodations agreed upon by the Student's IEP team, as part of a facilitated IEP and subsequent agreement; d. The District did not provide school/home communication as outlined in the Student's IEP. (OAR 581-015-2220; 34 CFR § 300.323, & 300.324)	
Disciplinary Removals of More than 10 School Days (Pattern of Consecutive) It is alleged that the District violated the IDEA when it removed the Student from the educational environment for more than 10 cumulative school days without conducting a manifestation determination. It is alleged that this occurred through a series of suspensions, and requests by school staff for the Parent to remove the Student from the educational environment. (OAR 581-015-2415; 34 CFR §§ 300.504(a)(3), 300.530, 300.531, 300.532, & 300.533; and OAR 581-015-2440; 34 CFR § 300.045 & 343.155)	**Substantiated** The Parent, the Student's Teacher, and other staff expressed concern that the Student was a child with a disability ahead of the District identifying the child as a child with a disability, yet continued to suspend or exclude the Student from the educational environment.
General Evaluation and Reevaluation Procedures It is alleged that the District violated the IDEA when the assessment of the Student was not sufficiently comprehensive to identify all of the Student's special education and related service needs. Specifically, it is alleged that the District's evaluations were not sufficiently broad to include or recognize the characteristics for eligibility under the category of Autism Spectrum Disorder (ASD). (OAR 581-015-2110; 34 CFR §§ 300.504 & 300.305)	**Substantiated** The Parent requested that the District evaluate the Student for special education eligibility under the category of ASD on more than one occasion and District staff reporting concerns for the Student. The District did not evaluate the Student under this category.
Child Find It is alleged that the District violated the IDEA when, following behaviors exhibited by the Student, District staff called the Parent to take the Student home from school, rather than evaluate the Student for as a child with a potential disability, and did not identify, locate, or evaluate	**Substantiated** The District did not evaluate the Student for special education, despite the Parent making such request prior to the Student beginning the 2024-25 school year and

Allegations	Conclusions
the Student as a student with a disability in a timely manner. (OAR 581-015-2080; 34 CFR §§ 300.111, 303.302, & 34 CFR § 301)	District staff reporting concerns for the Student.
Free Appropriate Public Education (Denial of FAPE) It is alleged that the District violated the IDEA when it did not implement the Student's IEP, specifically services, accommodations and specific specially designed instruction noted above. It is further alleged that the Student's evaluations and observations were delayed by the District calling the Parent to take the Student home, thereby limiting the Student' time in school and availability for those evaluations and observations. It is alleged that these actions denied the Student a FAPE. (OAR 581-015-2040; 34 CFR § 300.101)	**Substantiated** The District did not appropriately respond to the Parent's request, made prior to the start of the 2024-25 school year, to evaluate the Student, nor did the District then evaluate the Student. The District did not appropriately respond to the Parent's request to evaluate the Student for ASD, nor evaluate the Student for ASD. These actions delayed the implementation of an IEP for the Student.

REQUESTED CORRECTIVE ACTION

The Parent requests that the District:

- Immediately implement the Student's IEP and BSP with consistency and fidelity, including proper documentation and accommodations;
- Resolve gaps in communications ensuring regular and detailed updates are provided to the Parent as previously agreed upon by the Student's IEP team;
- Provide staff necessary to ensure the Student's sensory and behavioral needs are met in the classroom without exclusions, or disruption of FAPE;
- Transfer the Student to a more appropriate school program, with a focus on finding a program that meet's the Student's needs, and considered LRE; and
- Provide compensatory education services to address lost instruction time, inadequate implementation of IEP and BSP supports, and the academic and emotional harm experienced by the Student.

III. FINDINGS OF FACT

1. The Student is 6 years of age and attended kindergarten in a District elementary school. The Student started school during the 2024-25 school year. During the school year, the District found the Student eligible for special education under the eligibility category of Other Health Impairment (OHI).

2. The Student is active, has a great sense of humor, enjoys dancing, playing with friends during recess, and likes to display their knowledge.

3. The Student displays some elopement and unsafe behaviors, for which they have a Behavior Support Plan (BSP). The Student shows potential for more academic achievement, often tending not to participate academically, but actively engaging and socializing with peers outside of structured activities. The Student showed some struggle cooperating with peers and staff when asked to participate in a preferred activity.

4. On July 30, 2024, the Parent sent a message to the Student's Principal inquiring about "that IEP email thread we discussed earlier…". The Principal responded with the contact person for the Parent to contact.

5. On July 30, 2024, the Parent, and the District exchanged emails regarding the Student's possible needs, behavior, and interventions to assist the Student.

6. On August 3, 2024, the Parent sent an email to the District reporting "countless incident reports" involving the Student's rough play with classmates in preschool and looking for ways to support the Student in kindergarten. The Parent shared information about the Student's behaviors and needs in the classroom.

7. On August 7, 2024, in response to the Parent sharing information about the Student's needs with the District, the District reported to building staff that the Student "must go through the [Student Intervention Team] [(]SIT[)] process before referring to [special education]."

8. On August 25, 2024, the Parent sent an email to the District stating that the family had received the: "[Attention-Deficit/Hyperactivity] [(]ADHD[)] diagnosis. What are the next steps to begin an IEP to support [the Student's] equitable access to [their] education?"

9. On August 26, 2024, the Principal, writing to the Student's Classroom Teacher, noted that "when [the Student's] mom requested 'an IEP'…that they 'suggested [the Parent] work with [their] pediatrician' and that the Parent reported that the physician requested data from the Student's teachers."

10. On August 26, 2024, the District internally discussed scheduling an evaluation planning

meeting in response to the Parent's request that the District evaluate the Student for eligibility for special education.

11. On September 3, 2024, the Parent sent a message to the Student's Principal inquiring, about the proper person for them to direct their concerns regarding "beginning the IEP process for [the Student]."

12. On September 9, 2024, the District's School Psychologist sent an email to the Parent reporting the District's intent to start the SIT referral and ensure that the Student receive more targeted intervention support for eight complete weeks. The Parent responded, "I have been under the impression that [the Student] is in [*sic*] the IEP process this entire time, and I requested an IEP in July during Early Kindergarten Transition (EKT) which is when this IEP process started…I requested an IEP in writing to…school personnel during EKT in July, and we have been in contact about this since…"

13. On September 9, 2024, the District, responding to the Parent's email of the same day wrote that the District "made a SIT referral and that will start the process for [the Student] to receive a more targeted intervention support for about 8 complete weeks. We will track data and meet again after 8 weeks to discuss the results…just to confirm [the Student] does not have an IEP nor [are they] in the IEP process. When we talk to [them] at SIT … then we can input Tier 2 and Tier 3 type of supports. We do this because [the Student] has had only 5 days at school and we don't want to push students directly to the IEP process without going through the three Tiers of intervention."

14. On September 9, 2024, the Parent, responding to the District's email of the same day, requested IEP support for the Student and expressed concerns that an incident that occurred at school that day was evidence that the Student required additional support to be successful.

15. On September 10, 2024, the School Psychologist and the Principal exchanged emails about the Parent's request for an IEP for the Student, writing that on July 30, 2024, they had previously observed, "[e]specially given this is within the setting of about 10 students with 2-3 staff available to support at all times, [the Parent] is concerned and requested an IEP for [the Student]. I suggested [the Parent] talk to [their] pediatrician, but [they] already [have] a request from that person and other specialists [they've] worked with, that [the Parent] gather information from [the Student's] teachers."

16. On September 10, 2024, the Principal sent a message to the Parent reporting that the Student needed "some encouragement to follow direction, [they are] needing help with returning to [their] class after a hitting incident in PE." The Principal requested some assistance from the Parent with strategies for redirecting the student and repairing harm with the classmate.

17. On September 11, 2024, the Principal sent an email to the Parent reporting on the

Student's behavior the prior day. The Principal noted that the School will call the Parent to address the Student's behavior and hopefully have the Student hear the Parent's "voice encouraging [them] to listen and response [*sic*] to [District staff] that can often help to re-set students. We do see that [the Student] is needing additional support and we are providing as much as we can at this point in the process in particular: structure, choice, teaching and re-teaching cycle, visuals, alternative, and more as we build relationships with [the Student] too. We are following [the District's] and overall federal special education processes as they are written, although you've actually been scheduled for a pre-evaluation meeting sooner than would usually happen: usually we would implement a 6-8 week cycle of intervention before scheduling a pre-observation meeting."

18. On September 12, 2024, the District sent the Parent a Notice of Team Meeting for a September 13, 2024 meeting to review information about the Student to decide whether to evaluate the Student for special education.

19. On September 12, 2024, the Parent sent an email to the District making observations about the Student's state of mind, contrasting neurotypical and neurodivergent mindsets, and highlighting the Student's ADHD diagnosis.

20. On September 13, 2024, the District convened a meeting to consider medical information provided by the Parent and the Parent's concerns. During the meeting, it was discussed that the Student had a diagnosis of ADHD and that the Student's pediatrician suspected Autism Spectrum Disorder (ASD). The team discussed that the Student had only begun school so there was insufficient data to move forward with a special education evaluation. The team offered to implement an intervention and to reconvene with information from that data in eight weeks, to better determine whether to move forward with an evaluation for an IEP or Section 504 plan.

21. Following the meeting earlier that day, the Parent sent an email to the District recapping the meeting and providing an outline of their concerns. The first point listed by the Parent was, "SIT process 8 weeks before full evaluation due to the mandated process…" The Parent reiterated the various supports for the Student discussed at the meeting. The Parent also raised concerns regarding the impact of suspensions on neurodivergent children.

22. On September 20, 2024, the Parent and the District exchanged messages with the District regarding some strategies used at home for reinforcing positive behaviors with the Student. In response, the Student's Teacher shared that on the same day the Student "hit/pushed" them. The Teacher described that they were body blocking the Student at the time from engaging with another classmate. The Teacher described the Student's dysregulation that day. The District completed a disciplinary referral for the Student for physical harms toward a peer, inappropriate physical contact, and defiance. The District suspended the Student for one day for this incident.

23. On September 24, 2024, the Principal called the Parent in the morning to report that the Student was running about the building, and that staff were unable to assist the Student in regulating their behavior. The Principal requested that the Parent come to pick the student up from school. The District completed a disciplinary referral for the Student for leaving class without permission, disruptive conduct, and minor property damage. The District suspended the Student for one day for this incident.

24. On September 27, 2024, the District completed a disciplinary referral for the Student for disruptive conduct, minor property damage, and leaving class without permission. As a result of this behavior, the District suspended the Student for three days.

25. On September 27, 2024, the Parent spoke with the District about potentially transferring the Student to a different school and inquired about an IEP for the Student.

26. On October 1, 2024, the Student's Physician produced a letter to the District urging educational assessment and intervention to address the Student's, "significant academic underperformance" and "disruptive behaviors that interfere with school activities and learning, negative behaviors resulting in recurrent school discipline, and negative behavior resulting on recurrent removal/suspension from school participation." The Physician suggested that the District evaluate the Student for Specific Learning Disability. The Physician's letter noted that the Student was evaluated by a developmental specialist in September, concluding that the Student did not meet the criteria for diagnosis for autism spectrum disorder.

27. On October 3, 2024, the Parent sent an email to the District asking to be connected with the Special Education Director.

28. On October 4, 2024, the Principal called the Parent and requested that the Parent come to pick the student up from school.

29. On October 7, 2024, the Principal called the Parent and requested that the Parent come to the school due to the Student's behavior.

30. On October 7, 2024, the District completed a Comprehensive Functional Behavior Assessment (FBA) for the Student. The FBA noted that the Student displayed behaviors obstructing their learning when they are sensory seeking, during transitions, when negative behaviors are the focus, and when spending an extended period on specific topics. The FBA included observed antecedent behaviors and hypotheses regarding the Student's underlying needs.

31. On October 7, 2024, the Parent sent an email to the District reporting the Student's September 11, 2024, ADHD diagnosis, noting that the Student demonstrated unsafe behaviors in class that resulted in the Student being unable to "remain in a general

education setting for full day and" that the Student "has had several informal removals and suspensions including [their] dire need for special education support." The Parent requested an expedited evaluation of the Student. As part of this email the Parent wrote, "I am requesting [the Student] be given a comprehensive assessment including but not limited to the areas of social /emotional, academic, recreational therapy, behavioral, occupational therapy, sensory integration, speech, psycho-educational, adaptive physical education and an education evaluation for Autism Spectrum Disorder (ASD)."

32. On October 8, 2024, the District's Assistant Director of Special Education sent an email to staff at the Student's school which read, "You're doing all the right things. I have been in contact with [the Parent] and shared about Child Find and the SIT process. And shared that the [School] team is following protocol. Interventions and an FBA are first before eval[uation] especially since [the Student] was diagnosed in Sept[ember] and no other interventions had been tried. I also asked if [the Student] attended preschool or if this was [their] first school experience. And if [their] physician had recommended outside therapies like behavior therapy, OT, or parent classes. I also shared that no additional [special education] resources would be provided while [the Student] remains a [general education] student. And that the team would have 60 school days to assess if that was determined to be appropriate."

33. On October 8, 2024, the Student's Principal sent an email to the Parent explaining their rationale for requesting the Parent come to school when the Student was dysregulated. The Principal wrote in relevant part, "I did suggest to you that we could try a strategy that has worked for some other students in my experience, of you coming to school for at least 2-3 or 4 days or mornings as relevant, in a row, as long as [the Student] could sustain success, to support [them] so that [they] would see [they] can be successful staying and keeping others safe with [their] body and staying with the class, thus re-setting patterns to positive. I'm sorry you got the impression it was required: it most definitely is not. It was me attempting to help interrupt the pattern I described above because I don't want to have to suspend [the Student]. I did make it clear I could have to, otherwise, because of the pattern we are unfortunately in at this moment…".

34. On October 9, 2024, the District, responding to the Parent's October 7, 2024, email, acknowledged the Parent's request for a special education and 504 evaluation, and asked their availability for an evaluation planning meeting.

35. On October 14, 2024, the Principal called the Parent and requested that the Parent come to the school due to the Student's behavior.

36. On October 15, 2024, the District began implementing a Behavior Support Plan (BSP) for the Student.

37. On October 15, 2024, the District sent the Parent a Notice of Team Meeting for an

October 25, 2024, to determine if the Student should be evaluated for special education eligibility.

38. On October 24, 2024, the District completed a disciplinary referral for the Student for a physical attack and harm toward a peer, disruptive conduct, and intimidation. As a result of this behavior the District suspended the Student for three days.

39. On October 25, 2024, the District held an evaluation planning meeting for the Student. During the meeting the team decided not to evaluate the Student until 10 weeks of data was collected on the Student's BSP.

40. On October 25, 2024, the District sent the Parent a Notice of Team Meeting for a meeting to review existing information about the Student to determine if they are eligible for special education. The meeting was scheduled for February 20, 2025.

41. On October 25, 2024, the Principal called the Parent and requested that the Parent come to the school due to the Student's behavior.

42. On October 27, 2024, the School Psychologist sent an email to the Principal inquiring about the "exclusionary and disciplinary" practices around the Student. The School Psychologist noted that the Student had not had their BSP in place for very long, and that the Student would not, "get more services, support, or instruction via [special education] than [they get] now, but want to understand better if [they] will be disciplined for impulsive behavior related to ADHD by exclusion? Does [the Student] have any protections related to having a known medical diagnosis, or is that not applicable now because we don't have enough information about [them], yet? Would a 504 for ADHD provide any protection in that realm? [The Parent] is going to keep trying to lengthen [the Student's] school days to give [them] access to FAPE as [the Parent] understands it, which will put [the Student] in more situations with one teacher and a full class. Is there any guidance available for how to help [them] not be excluded or cause harm…[the Student] accrues a lot of shame and wants to further withdraw with each incident, so if there is guidance for how to be preventative and responsive (in addition to the BSP, which is dependent on additional staff support that doesn't exist, as the day lengthens), please weigh in."

43. On October 28, 2024, the Principal, responding to the School Psychologist, noted that staff decided in part not to find the Student eligible for special education because they were a kindergartener and needed "time to acclimate." The Principal noted that the evaluation process would continue.

44. On October 28, 2024, the School Psychologist sent an email to the Principal documenting their opinion that the Student should be evaluated for special education.

45. On October 28, 2024, the District continued internal discussions around protections

from exclusions and suspensions due to disability and discussed implementing a 504 plan for the Student. The District also observed that, without additional adult support, the Student's impulsive behaviors often led to physical encounters with peers. As part of this discussion, the Principal noted that the Student does not stay in class without "one-to-one support." The Student's Teacher reported on October 27, 2024 that the Student had been "eloping consistently…" and "didn't even realize [the Student] was gone several times until [they] were brought back to the classroom." As part of these conversations Staff noted that the Student exhibited ASD tendencies.

46. On November 2, 2024, the Student's Principal sent an email to the School Psychologist raising child find concerns and writing that, "given there is a suspected disability, the student not accessing learning and is interfering with the learning of other students." The Principal inquired whether the team could begin to evaluate the Student without the 10 weeks of data discussed at the October 25, 2024 evaluation planning meeting.

47. On November 4, 2024, the Assistant Director of Special Education, sent an email to the Principal, observing that the District's SIT, "is an integral part of Child Find"… and the importance of attempting Tier 1, 2, and 3, interventions before "moving to Special Education evaluation."

48. On November 4, 2024, the School Psychologist sent an email to the Assistant Director of Special Education, observing that "the parent requested an evaluation in July, prior to [the Student] starting kindergarten. As a response to that request, [the Student] was added to the SIT calendar and the first meeting took place on 9/12[/24]. The team held an eval[uation] planning meeting with [the Parent] on 9/13[/24] to discuss an evaluation, the SIT process, and explain the intervention plan." During the meeting, the District obtained signed consent for an FBA. As part of that email the School Psychologist noted that the Student's BSP was implemented on October 15, 2024, and the Student was then showing "little to no progress."

49. On November 4, 2024, the District exchanged emails between the School Psychologist, Learning Center Teacher, Speech Language Pathologist, and Occupational Therapist, working with the Student, regarding its child find responsibilities relevant to the Student. The District discussed revisiting evaluating the Student in the near term including forgoing the SIT process and holding an evaluation planning meeting sooner.

50. On November 4, 2024, one of the District's School Psychologists, reviewed the Student's attendance and suspension data and documented in an email to other District staff that the Student had, "10 days [where they were] picked up early due to being unsafe ([the Student] would have been suspended if [the Parent] hadn't picked [the Student] up (pick up times range from 10:45 to 1:45)." The School Psychologist went on to note that "the BSP team and [the Parent] are intentionally (and informally) abbreviating [the Student's] school day while [the Student] continues to build [their] classroom skills and increase [their] tolerance. I think it is important to acknowledge both that [the Student]

is getting less time to practice these skills and [their] behaviors are having a negative impact on [their] attendance."

51. On November 6, 2024, the District completed a disciplinary referral for the Student for intimidation, disruptive conduct, inappropriate physical contact, harm toward peers, and threat of harm toward peers. As a result of this behavior, the District suspended the Student for 5.75 days.

52. On November 6, 2024, the School Psychologist reported that the team discontinued the first round of intervention for the Student after collecting seven days of data because the Student, "started going home early regularly and was no longer attending specials (the previous focused intervention time). In the first three weeks of implementing the BSP the student's attendance has to be 75%. I think it is important to acknowledge both that [the Student's] behaviors are negatively impacting [their] attendance and that [the Student] is getting less opportunity to practice building appropriate classroom skills." The School Psychologist inquired whether the Student's then current level of attendance contributed to the District's determination about implementing the BSP with fidelity and the quality of the data gathered.

53. On November 7, 2024, the Principal called the Parent and requested that the Parent come to the school due to the Student's behavior.

54. On November 8, 2024, the District documented a behavior incident where the Student was unsafe or significantly disruptive to the learning environment. The District suspended the Student for this behavior. The suspension began November 8, 2024, with the Student permitted to return to school on November 12, 2024.

55. On November 8, 2024, the School Psychologist sent an email to the Assistant Director of Special Education that the Student's suspension of that day put the Student, "at 8.5 days of exclusions (now 3.5 days of suspension and 10 early dismissals (each 0.5 days) when the school asked [the Parent] to take [them] home early due to unsafe behaviors. [The Principal] was informed that we need to hold a manifestation determination meeting (if [the Student] is suspended again and hits the 10 days threshold)…". The School Psychologist further inquired about the requirements of a manifestation determination, and how the Student's behaviors and exclusion from school impacted the intervention/evaluation process.

56. On November 8, 2024, the Assistant Director of Special Education, responding to the School Psychologist, noted that since the Student was not yet found eligible for special education, manifestation determination meetings "are not a process to engage in."

57. On November 12, 2024, the Principal called the Parent and requested that the Parent come to the school for the Student's re-entry meeting. The Principal also noted that the Student was physically aggressive with a classmate. The Parent messaged the Principal,

observing that the District needed to stop suspending the Student so that the Student could be in class for IEP evaluations. The Parent also noted that, "you have already caused a significant delay in [the Student's] evaluation process which was called out in the meeting because you were having me pick him up early every single day."

58. On November 12, 2024, the District completed a disciplinary referral for the Student for minor property damage, insubordination/defiance, and disruptive conduct. The District suspended the Student for two- and one-half days for this behavior.

59. On November 12, 2024, the School Counselor sent an email to other school staff documenting that the "plan for a while" involved the School calling the Parent to check in, allowing the Student to speak with the Parent, and at times having the Parent take the Student home for the day. The School Counselor noted that these occasions were not documented as behavior referrals.

60. On November 12, 2024 and November 13, 2024, the School Psychologist sent an email to other staff observing the Student's suspension that day and their opinion that it was time to open an evaluation for the Student.

61. On November 15, 2024, the Student's Teacher sent an email to the School Psychologist and Principal expressing concern about the Student eloping often and the lack of direct support for the Student. The Teacher noted that the Student often eloped overtly and covertly, and that adults were often unaware that the Student had left the classroom, or that addressing the issue required "stopping teaching for an extended time…"

62. On November 18, 2024, the Student's Teacher sent an email to the School Psychologist and Principal expressing concern that the Student required but did not have a one-on-one aide after the lunch hour and that it was a safety concern.

63. On November 20, 2024, the School Psychologist sent an email to the Student's Speech Language Pathologist regarding the overlap between ADHD and Autism.

64. On November 25, 2024, the Student's evaluation planning team met to discuss the Student's needs. The team discussed that by the time of the meeting, the Student was exhibiting less elopement than previously exhibited and that the Student had an outside diagnosis of ADHD from their Physician. The team decided to send rating scales to the Parent and teachers, conduct observations, and complete a file review.

    The same day, the District sent the Parent a Prior Written Notice (PWN), informing the Parent that the evaluation planning team had decided to collect additional data on the Student ahead of determining the Student's eligibility for special education. The team determined that it would utilize rating scales, observation, and school history. The District also sent the Parent a Consent for Individual Evaluation form to obtain the Parent's consent to evaluate the Student for special education services. The consent

noted that the Student displayed behavior concerns related to their ADHD that may impact their ability to access their general education curriculum.

65. On January 13, 2025, the District completed a disciplinary referral for the Student for physical harm toward a peer.

66. On January 31, 2025, School Psychologist 2 sent an email to the School Psychologist ahead of the Student's eligibility and IEP team meetings, reporting that the Student showed progress with staying in their classroom, while observing that they had direct adult support during this time. The Student was then receiving many sequential 1:1 movement breaks and supports in the morning.

67. On February 6, 2025, the Student's Teacher messaged the Parent that the Student was then, "staying in class, mostly not participating in academic activities—but [they are] sitting more and not eloping." The Teacher described that the Student is very physical with classmates, including rough play not enough to hurt or injure classmates, but unwelcome. The Teacher went on to write that some of this rough play is developmentally appropriate.

68. On February 18, 2025, the District completed an Occupational Therapy (OT) Assessment for the Student. The evaluation concluded that OT was recommended for a variety of services for the Student including regular heavy work opportunities, trial fidgets, regular sensory movement breaks, trial use of joint compression, and finding ways to include the Student in classroom jobs.

69. On February 18, 2025, the District completed a disciplinary referral for the Student for disruptive conduct, fighting, and inappropriate physical contact.

70. On February 19, 2025, the Parent sent an email to the District indicating that the Student's Physician had diagnosed the Student with ADHD and that, while the Student was not evaluated for autism at that time, the Student had an appointment in April for an autism screening. The Parent indicated that, with the email, they had attached their own form for tracking the Student's days, and the Physician's statement. The Parent also included their observations and the results of discussions with the Student's Physician regarding the impact of positive and negative reinforcement on the Student.

71. On February 20, 2025, the District completed a Psychoeducational Assessment Report, for the Student. The report noted that the Student was referred for a special education evaluation by the Parent and the School's SIT. The Assessment included the Social Skills Improvement System (SSIS) and Social-Emotional Learning (SEL), and Comprehensive Executive Function Inventory (CEFI).

72. On February 20, 2025, the Student's evaluation planning team met to determine the Student's eligibility for special education. The team discussed the Student's needs and

whether the Student met criteria for eligibility under OHI. The Student's IEP team found the Student eligible for special education under the category of Other Health Impairment (OHI). The District sent the Parent PWN documenting that the Student had "demonstrated behaviors consistent with [their] ADHD diagnosis that are impeding [their] learning in the classroom. Evaluation results confirm[ed] a need for special education services."

73. During the meeting the Parent reported that for the first few months of the school year, the Student attended school for 30-60 minutes per day, which is recorded as a half-day of attendance. The Parent noted that the Student was not actually present for a half-day. The Parent reported that due to the Student's behavior, they attended 50% of classes.

74. The District then sent the Parent a PWN documenting the Evaluation Planning Team finding the Student eligible for special education in the category of OHI. The team determined that the Student's behaviors, consistent with their ADHD diagnosis, impede their learning in the classroom, thereby necessitating special education.

75. On March 4, 2025, the District completed a disciplinary referral for the Student for physical attack or harm toward a peer, inappropriate physical contact, and disruptive conduct.

76. On March 6, 2025, the Parent sent a message to the Student's Teacher asking what hours of the school day are the hardest for the Student. The Teacher responded that the Student struggles in the morning particularly before and after transitions. The Teacher reported that the Student also struggles with morning literacy class, transitions, and can be distracting and struggle to make calming choices when they are not interested in the topic of instruction.

77. On March 12, 2025, the Student's IEP team met to formulate the Student's initial IEP. The team determined the Student's educational placement, placing the Student 80% or more of the time in the general education environment.

78. The Student's March 12, 2025, IEP included specially designed instruction (SDI) in Social and Emotional Skills, Classroom and School Skills, Reading, Study and Organizational Skills.

79. The Student's Social and Emotional Skills goals included that, in a moment of frustration, and when offered a pre-taught calming strategy by a teacher, the Student will use the strategy withing two minutes, in four out of five moments of frustration. If distracted by those things in a moderate way, the Student would self-regulate with some prompting, within 2-10 minutes, but might need to keep going through cycles of elevation, prompting, and self-regulation. If the Student is moderately-to-very interested in what in what is going on in class, they will self-regulate with very little prompting in less than

a minute. If the Student is very dysregulated, it takes them up to 40 minutes or beyond to be ready to rejoin the class and to be ready to learn. When they leave the designated area when they are dysregulated, they require adult support to return in all opportunities. The Student would receive 75 minutes of SDI weekly for this goal.

80. The Student's Classroom/School Skills goal included that by, "3/11/2026, given a familiar academic task (e.g. trou [*sic*] our reading strategy, turn-and-talk with partner, develop science prediction), [the Student] will independently remain on-task (i.e. actively working on the task, minimal disruption to self/others, asking relevant questions of peers/teacher), for 5 minutes…or until the task is completed as direct [*sic*], for 3 our [*sic*] of 5 academic tasks." The Student would receive 225 minutes of SDI weekly for this goal.

81. The Student's Reading goal included that by, "3/11/2026, given a word list of 10 regularly spelled, one-syllable CVC words (e.g. car, sad, rug) and letter-sound anchor chart, [the Student] will verbally sound out each phoneme (e.g. tapping strategy) and then blend to read 8 out of 10 words aloud, on 1 out of 2 progress monitoring assessments." The Student would receive 30 minutes of SDI weekly for this goal.

82. The Student's Study/Organizational Skills goal included that by, "3/11/2026, upon finishing an activity that requires materials from the desk (e.g. pens, notebook, eraser…), [the Student] will independently return all items nearly back to their designated spot in the desk within 2 minutes of completing the activity for 8 our of 10 activities." The Student would receive 25 minutes of SDI weekly for this goal.

83. The Student's March 12, 2025 IEP also included 240 minutes of Occupational Therapy per year, and 30 minutes of Psychological Services per week.

84. The Student's March 12, 2025, IEP also included a variety of aids, services, and accommodations such as access to: a break space in class; a break space outside the classroom; a feelings chart; noise reducing headphones; sensory limiting opportunities; and, sensory regulation tools/strategies. Accommodations included: accommodating the need for excessive movement in the classroom; adult support for evacuations and school-wide assemblies; adult support for field trips; adult support in solving conflicts; adult support to prompt to re-check assignments and tests work; allowance for extra time to self-regulate when dysregulated; allow for multiple bathroom and water breaks; alternative medium for writing tasks; behavior support plan; and, checks for understanding when given directions. Additional accommodations include, "chunk up" tasks/assignments; create novelty when possible with incentives reward and breaks; first-then approach; flexible and preferential seating for desks and carpet spots; heavy work opportunities; home-school communications; ignore minor misbehavior; meaningful jobs and leadership opportunities; model academic and behavioral expectations; morning check-ins; offer choices; positive descriptive behavior encouragement; positive behavior incentives; positive praise; pre-screened and pre-taught fidgets; prompts to make a positive choice; prompts to use sensory items; and,

provide 2-3 choices for alternate activity. Additional accommodations included: provide natural consequences; provide verbal and visual sentence frames to support communication; provide visuals for problem solving conflicts; reduce work; reduced writing tasks; reminders and modeling of expectations; reminders to have a safe body and to stay in the expected area; scheduled sensory breaks; send unfinished work home; social stories; timers; use declarative language rather than directive when possible; use humor as often as possible; use physical proximity for teaching expectations; verbally and role-play reflect back to Student their behavior an model expectations; visual checklist for cleaning desk; visual checklist for task completion; visual daily schedule; visual list of self-regulation strategies; warning and visuals for changes in schedule; and, written plan for guest teachers to include accommodations and behavior plan.

85. The Student's March 12, 2025, IEP included 20 minutes per quarter of support to school personnel including special education consultation for general education teachers.

86. On March 12, 2025, the District sent the Parent PWN indicating that the Student demonstrated a need for special education and that the District would begin implementing the March 12, 2025, IEP.

87. On March 13, 2025, the District completed a disciplinary referral for the Student for physical attacks and harm caused to a peer. This incident resulted in an out of school suspension of one day.

88. On March 14, 2025, the Principal called the Parent for them to come to the school for a re-entry meeting for the Student.

89. On April 13, 2025, the Parent sent an email to the District with a document attached entitled, "Required and Immediate Supports for BSP [Student] April 2025." The Parent requested that the District include the accommodations into the Student's BSP.

90. On April 15, 2025, the Student's IEP team created a Comprehensive Function Based Behavior Support Plan (BSP) for the Student. The BSP addresses behaviors observed in the educational environment including elopement, hitting of peers, throwing items at school, and pulling items from shelves. The BSP included suggested replacement behaviors, observed antecedent behaviors, and response to unexpected behaviors.

91. On April 15, 2025, the Student's IEP team met to review the Student's BSP. During that meeting, staff observed that the Student's behaviors had decreased, while noting that, at the time of the meeting, the Student's BSP had only been in place for a few weeks given the intervening spring break. The District reported that the Student was accessing self-regulation tools 75% of the time. The Student's BSP was amended to include antecedent behaviors. The team also agreed to meet again to update the Student's IEP.

92. On April 16, 2025, the District, responding to the Parent's April 13, 2025, email, indicated that the District was completing the Student's BSP that day and that the Parent's list of interventions and supports were provided to the Student's team for their reference.

93. On April 16, 2025, the Principal sent an email to School Psychologist 3, reporting their opinion that the Student did require 1:1 support given that the Student was then, "not accessing learning nearly enough of the time…"

94. On April 17, 2025, the Principal called the Parent and requested that the Parent come to pick the Student up from school due to the Student's behavior. The District completed a disciplinary referral for the Student for insubordinate/defiance/disobedience, disruptive conduct, and threat of fear of harm.

95. On April 17, 2025, the Parent, responding to the Principal, indicated that they would not participate in a re-entry meeting, "until the suspension and the behaviors leading to it are properly reviewed in light of the failure to implement [the Student's] IEP and BSP effectively." The Parent requested a manifestation determination and "full discussion of how the IEP and BSP can be more effectively implemented to support [the Student's] emotional and educational needs." The Parent requested a Manifestation Determination Meeting, finalizing the time for an IEP team meeting, and a "pause on all formal and informal removals from school including disciplinary threats, until the MDR and IEP meetings are completed and documented[, and] support[s] are re-evaluated and correctly implemented."

96. On April 18, 2025, the District suspended the Student as the result of incidents that day involving disruptive conduct, insubordination/defiance/disobedience, and threats of causing fear of harm. The District suspended the Student for one day.

97. On April 18, 2025, the Principal sent an email to School Psychologist 3, and others in the District observing that, had the Parent picked the Student up from school, the District would have needed to suspend the Student. The Principal further recounted a conversation with the Parent who reportedly questioned whether the Student's ongoing behaviors were the result of the District not appropriately implementing the Student's IEP accommodations.

98. On April 18, 2025, the Teacher sent an email to District staff observing that the Student received, "SEL and behavior support above and beyond what students regularly receive (with or without an IEP). I don't have the numbers but [the Student] has not been removed/suspended from class much. And, the only times [they have] been removed is due to constant (not consistent, constant) eloping and potential harm to self and others."

99. On April 18, 2025, the Teacher sent a further email estimating that the Student was then

at five suspensions. The Teacher also noted that the Student, "was out 2.5 days because [they] requested a meeting before [the Student] returned; the additional 1.5 days aren't coded suspension even though it was related."

100. On April 18, 2025, the Assistant Director of Special Education, responding to the Parent, indicated that the Student began special education services on March 26, 2025 and had been suspended for 6.25 days, with most of those suspensions preceding the Student's entry to special education. The Assistant Director of Special Education invited the Parent to enumerate the specific accommodations, services, or supports the Parent believed the school was not implementing in advance of the upcoming IEP team meeting.

101. On April 21, 2025, the Parent sent an email to the District listing their concerns about the Student's IEP and reiterating their request for a manifestation determination meeting. The Parent also noted that, "…the school records indicate a total of 6.25 day of formal exclusion, this figure grossly underrepresents the actual instruction time [the Student] has lost…less than ten days into the school year, the school established a harmful and discriminatory practice of calling me to remove [the Student] early—every single day. For weeks on end, stretching well beyond the halfway point in October, [the Student] was allowed only 30 to 60 minutes of instruction per day before being informally removed—without proper documentation or accountability. This became a daily routine—not an exception—and these frequent removals were never documented as formal exclusions."

102. On April 21, 2025, the District completed a disciplinary referral for the Student for threats of harm to a peer, harassment or bullying, abusive or profane language, and inappropriate physical contact.

103. On April 21,2025, the Assistant Director of Special Education sent an email to the Parent, indicating that the upcoming meeting scheduled for April 22, 2025, would be a manifestation determination and would include a conversation about how the School would prevent suspensions in the future.

104. On April 22, 2025, the Student's IEP team met to review the Student's progress. The Student's teachers reported that the Student had recently shown progress and was aware of classroom expectations. While the Student showed regression in some behaviors, staff reported that the Student was amendable to redirection. The Parent reported that the Student feels excluded from school due to suspensions, and expressed concern about intellectual delays. The team discussed the addition of a 1:1 aide for the Student stating that adult support may need to be provided to assist the Student in making accommodations accessible.

105. On April 28, 2025, the District completed a disciplinary referral for the Student for minor property damage.

106. On May 2, 2025, the District sent the Parent a PWN documenting the District's rejection of the Parent's May 1, 2025, email request for a facilitated manifestation determination meeting.

107. On May 19, 2025, the District completed a disciplinary referral for the Student for aggression toward a classmate and not wanting to apologize.

108. On May 21, 2025, the Student's IEP team met for a facilitated IEP team meeting. The team reviewed the Student's progress, supports, how well the behavior interventions were working, and various concerns the Parent had for the Student's education. The team did not make changes to the Student's IEP during this meeting but rather discussed and clarified the content of the IEP.

109. On June 4, 2025, the Parent filed this Complaint.

110. On June 12, 2025, the District produced an IEP progress report for the Student. The progress report indicated that the Student was making progress toward their Social and Emotional Skills goal and was expected to meet the goal by the next IEP review. The Student was making similar progress toward their Classroom School Skills, Reading, and Study and Organizational Skills goals.

111. On July 11, 2025, the Department's Complaint Investigator interviewed the Parent. The Parent reported having requested an IEP for the Student prior to the Student beginning kindergarten. The Parent reported that the District had explained that the Student had to go through the SIT process before being referred for an evaluation for special education. The Parent noted that, despite several requests for an IEP, or for the District to evaluate the Student, the District had not provided a PWN in response. The Parent reported having requested that the District assess the Student for ASD, and having not received a response to those requests.

112. The Parent reported that the District had called them nearly daily to remove the Student from school. The Parent observed that the greatly diminished the Student's time in the classroom and their access to the educational environment. The Parent did not agree with the District's estimate of the number of days the Student was sent home.

113. The Parent reported that behavior incidents occurring in the spring of 2025 were the result of the District not implementing the Student's IEP and BSP supports appropriately. The Parent also expressed concern that the District had not implemented their suggestions for the Student's IEP, as communicated in their April 13, 2025 email.

114. The Parent reported that they met with the Teacher on Special Assignment (TOSA) ahead of the Student's March 12, 2025, IEP team meeting. The Parent explained understanding that all of the suggestions they provided at the meeting with the TOSA would be incorporated into the Student's IEP. The Parent noted their surprise when,

after the IEP team meeting, all of the various supports and suggestions were not made part of the IEP. This led the Parent to request a follow-up meeting, which was held on May 21, 2025.

115. On June 16, 2025, the Department's Complaint investigator Interviewed the District's Assistant Director of Special Education. The District reported that the Student's IEP team met on April 22, 2025. As part of that meeting the Student's IEP was not revised, rather the team discussed the Student's progress and implementation of the BSP supports.

116. The Assistant Director of Special Education reported that the District and Parent engaged in a facilitated IEP meeting, in part to review the supports in the Student's BSP. As part of that May 21, 2025 IEP team meeting, the team reviewed all the Student's supports. By the time the meeting was held, the team observed that the Student was no longer eloping from the classroom, the Student was then always supervised, there were no more suspensions, and no calls to the Parent for them to take the Student home from school.

117. The District reported that their own count of suspensions and occasions when school staff asked the Parent to take the Student home were collected from the Student's teacher and added to the present levels section of the Student's IEP. The District counted 6.5 days of suspensions for the Student, with the majority of that time occurring before the Student's IEP was in place. The Student was last suspended March 13, 2025 and March 25, 2025, with the other suspensions occurring in the fall of 2024. The Student's IEP and BSP was implemented on March 12, 2025.

118. The District reported awareness that the Parent had requested an IEP for the Student during the summer before the Student entered kindergarten. The Assistant Director of Special Education saw this information after the fact as part of a forwarded email chain. They reported that information relevant to the Student's needs, or the School's interest in evaluating the Student did not arise until November of 2024. The District noted that despite the Parent's request for an IEP, the District had no data regarding the Student's needs or the Student's potential performance in a kindergarten classroom. At the November 2025 evaluation planning meeting the team decided to move forward with an evaluation of the Student.

119. The District reported that, while the Parent had requested the Student be evaluated for ASD, the District had no data to support that as a possible area of eligibility for the Student. The District observed that there was no data from the preschool teacher to support concern for ASD, and that the Student's own Physician had not conducted an autism evaluation. Rather the student was diagnosed with ADHD, which matched the behaviors observed at school. These behaviors included inappropriate interactions with peers, eloping from the classroom, and other impulsive behaviors. The Student also displayed other emotional concerns related to issues in the family. The District noted that the Student was making progress with turn taking and, during the kindergarten

year, had not seen signs of ASD, thereby limiting the evaluation to OHI.

120. The District explained that the school team would often contact the Parent when the Student was dysregulated to calm the Student. When the Principal asked that Parent to remove the Student from school due to behaviors, the District coded that as a suspension. The District reported that, on other occasions the Parent was called to the school to help calm the Student, and the Parent would choose to take the Student home. The District reported that these responses to the Student's behavior were akin to an informal abbreviated school day. The Parent was often on campus and so would respond to help try to calm the Student or see if they could continue for a full day. The District noted that in these interactions it is unclear how many times the staff may have requested the Parent take the Student home, or the Parent opted to take the Student home. The District further reported that the goal was to assist the Student with acclimating to kindergarten.

121. The District reported that, once the school team moved to evaluate the Student, the team met all relevant deadlines, including holding the eligibility meeting within 60 days and having an IEP in place within 30 days after determining eligibility, with the Student's IEP in place by March 2025. The Student's IEP team held meetings in April and May to review the Student's IEP.

122. The District also reported that a TOSA was assigned to work with the Parent ahead of the Student's IEP team meeting to discuss supports and accommodations the Student might require. The District reported the results of that meeting were discussed at the Student's March 12, 2025, IEP team meeting.

IV. DISCUSSION

When IEPs Must Be In Effect

It was alleged that the District violated the IDEA when it did not implement the Student's IEP. Specifically it is alleged that: the District did not implement the behavior supports in the Student's Behavior Support Plan (BSP), as evidenced by an increase in behaviors following the creation of the BSP; the District did not implement agreed upon supports discussed in the IEP team meeting, and provided by the Parent; the District did not implement certain accommodations agreed upon by the Student's IEP team, as part of a facilitated IEP, and subsequent agreement; and, the District did not provide school/home communication as outlined in the Student's IEP.

At the beginning of each school year, a district must have an IEP in effect for each child with a disability within the district's jurisdiction. The district must provide special education and related services to the child in accordance with that IEP. As soon as possible following the

development of the IEP, special education and related services must be made available to the child in accordance with that child's IEP. In addition, the district must ensure that the IEP is accessible to each regular education teacher, special education teacher, and related services provider responsible for its implementation. Each teacher and service provider responsible for implementing the IEP must be informed of their specific responsibilities therein.[3]

The Student exhibited a variety of behaviors that obstructed their education during the 2024-25 school year. These include eloping from the classroom, and behavior dysregulation, among others. The Student's IEP team developed and began implementing the Student's IEP and BSP on March 12, 2025. On April 15, 2025, the Student's IEP team met to review the BSP. At that time, the Student was showing progress toward decreasing those behaviors that obstructed the Student's access to their education. During interviews with the District, the District observed that, following the implementation of the BSP, the Student received two suspensions soon after its implementation, and none thereafter. The District also noted that, with the implementation of the BSP, the Parent was no longer called to the School to remove the Student.

There is no information in the record to support that the District did not implement the Student's IEP supports. The Parent reported having shared additional suggestions with the TOSA ahead of the Student's March 12, 2025, IEP team meeting, which were not made part of the Student's IEP. As part of this process the Parent reported that these deficiencies in the IEP led them to request a follow-up IEP team meeting, which was held in May.

During the April 14, 2025, IEP team meeting the Parent raised concerns about the availability of certain calming tools in the classroom. The District reported that, on one occasion, the Student's IEP and BSP were not implemented during a peer conflict moment to avoid property damage. During the meeting the team discussed the Student's BSP and IEP support and the Student's positive improvement since its implementation. The record does not evidence a lack of implementation of the IEP or BSP. Furthermore, the record does not include concerns about a lack of school/home communication.

The Department does not substantiate this allegation.

Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

It was alleged that the District violated the IDEA when it removed the Student from the educational environment for more than 10 cumulative school days, without conducting a manifestation determination. It is alleged that this occurred through a series of suspensions, and requests by school staff for the Parent to remove the Student from the educational environment.

[3] OAR 581-015-2220(1)—(3)

A school district may remove a child with a disability, who violated a code of student conduct, from the child's current educational placement to an appropriate interim alternative educational setting, or suspension, for up to ten school days in a school year, to the same extent as children without disabilities. During this time, school districts are not required to provide access to special education, or the general curriculum except to the extent to which the general curriculum is made available to similarly situated nondisabled peers. School districts are also not required to determine whether the child's behavior resulting from disciplinary removal is a manifestation of the child's disability.[4] A disciplinary removal is considered a change in educational placement if the removal will be for more than 10 consecutive days, or the child will be removed for more than 10 cumulative days from their current educational placement in a school year. Within 10 school days of any decision to change the placement to a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior was a manifestation of the student's disability.[5] A district has knowledge that a child is or may be a child with a disability, and is therefore protected by the disciplinary provisions of the IDEA, if, before the behavior that precipitated the disciplinary action occurred the parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services. A district also has this knowledge if the Student's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child.[6]

The Parent reported concern with the number of days the Student was formally suspended and informally sent home, due to behaviors exhibited at school. On November 8, 2025, the District estimated that the Student was then at 8.5 days of exclusions, 3.5 days of suspension and 10 early dismissals. The 10 early dismissals were counted as half days, because on those occasions the school asked the Parent to take the Student home. On April 18, 2025, the District calculated the Student's suspensions at 6.25 days, with many of the days preceding the Student's February 20, 2025, special education eligibility determination. Even if, by April 18, 2025, the Parent had only been called for the 10 early dismissals the District noted by November 8, 2025, between the 6.25 days of suspension and the 10 early dismissals, the Student had exceeded the number of days of suspension necessary to conduct a manifestation determination review. However, the Parent reported having been called to the School nearly daily during the fall semester to take the Student home from school. The District reported that the school and the Parent had an informal agreement around an abbreviated school day for the Student.

Prior to the Student beginning the 2024-25 school year, and within the first few months of school, the Parent request the District identify the Student as a child with a disability. The Parent specifically made these requests to the Student's Principal. On numerous occasions District staff, including the Student's Teacher, expressed concern to the Principal, School Psychologists and others, that the Student was a child with a disability and should be evaluated.

[4] OAR 581-015-2410(1)
[5] OAR 581-015-2415(1)—(3)
[6] OAR 581-015-2440(1)—(2)

Despite these requests, even after the Student was determined eligible for special education, the District continued to suspend the Student or exclude them from the educational environment due to their behavior without conducting a functional behavior assessment or manifestation determination.

The Department substantiates this allegation.

General Evaluation and Reevaluation Procedures

It was alleged that the District violated the IDEA when the assessment of the Student, conducted by the District, was not sufficiently comprehensive to identify all the Student's special education and related services needs. Specially, it is alleged that the District's evaluations were not sufficiently broad to include or recognize the characteristics for eligibility under the category of ASD.

In conducting evaluations, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. This assessment data should include information provided by the parent. The school district should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. Assessment tools should be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Districts must ensure that assessments and other evaluation materials used are appropriately selected and administered, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of the assessments. Assessment and evaluation materials should include those tailored to assess specific areas of educational need. Children should be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. Districts must ensure that the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs.[7]

For students suspected of having ASD, a comprehensive evaluation must be conducted. The comprehensive evaluation must include a developmental history, information from the parent, observations, a social communication assessment, a Standardized Autism Identification Tool, and a medical examination, among other sources of reference. Additional assessments may also be administered to determine a student's needs. A medical diagnosis of ASD is not required to determine eligibility.[8] A parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.[9]

[7] OAR 581-015-2110(3)—(4)
[8] OAR 581-015-2130(2)—(3)
[9] OAR 581-015-2105(2)

On September 13, 2024, the District convened a meeting to consider the Student's eligibility for special education or a 504 plan. During the meeting, the Parent reported that the Student's physician had diagnosed the Student with ADHD, and suspected ASD, but had not yet made a diagnosis. At the meeting, the team determined to reconvene in eight weeks to review the Student's progress. October 7, 2024, the Parent requested the District evaluate the Student for ASD. Following the meeting, and prior to the conclusion of the eight-week period within which the Student's progress was observed, the District convened a meeting and decided to evaluate the Student for behavior concerns related to their ADHD diagnosis. On February 20, 2025, the District found the Student eligible under the category of OHI.

The District reported that the Student was not evaluated for ASD because the behavior exhibited, such as eloping from class, and other impulsive behaviors most closely matched behaviors associated with ADHD, coupled with the Student's medical diagnosis. The District also observed that the Student's physician had delayed evaluating the Student for ASD. The District further noted that the Student showed significant positive improvement following the implementation of the Student's IEP and BSP. The record includes concerns from the Student's teacher regarding ASD. On October 1, 2024, the Student's Physician produced a letter suggesting the District evaluate the Student for Specific Learning Disability.

The Parent expressed concerns about evaluating the Student for ASD, as did the Student's Teacher. Despite these concerns, and information from the Student's Physician indicating concerns beyond ADHD, the District limited the Student's evaluation to OHI, based on the Student's behavior at school and their ADHD diagnosis. The Student was therefore not evaluated in all areas of suspected disability.

The Department substantiates this allegation.

Child Find

It was alleged that the District violated the IDEA when, following behaviors exhibited by the Student, District staff called the Parent to take the Student home from school, rather than evaluate the Student for as a child with a potential disability, and did not identify, locate, or evaluate the Student as a student with a disability in a timely manner.

School districts must identify, locate, and evaluate all children with disabilities for whom they are responsible. Districts must ensure this responsibility is carried out no matter the severity of the disability, and for all children who need early intervention, early childhood special education, or special education services. This requirement includes children who are suspected of having a disability even though they are advancing from grade to grade.[10]

[10] OAR 581-015-2080(2)

Prior to the Student beginning kindergarten, and as early as July 30, 2024, the Parent requested an IEP for the Student. On August 25, 2024, the Parent asked the District to evaluate the Student for special education. On September 3, 2024, the Parent again requested an IEP for the Student. On September 9, 2024, the Parent sent the District an email expressing their understanding that the District was beginning the process to develop an IEP for the Student. On September 13, 2024, the District convened a meeting to discuss whether to refer the Student for a special education evaluation. The team determined to gather more information about the Student rather than refer the Student for evaluation at that time. The District's Assistant Director of Special Education that the evaluation team was, "doing all the right things. … [T]he [School] team is following protocol. Interventions and an FBA are first before eval[uation]."

The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention.[11] However, States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.[12] IDEA's regulations[13] allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability. Rather, the LEA must seek informed parental consent to conduct the evaluation[14]. If, however, the LEA does not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision.[15]

During the fall of 2024, the District suspended the Student for behaviors exhibited at school. The District estimated that the Student was suspended or removed from school for 8.5 days. The Parent estimated that the Student was removed a much higher rate due to them being called to the school to take the Student home. On November 4, 2024, the District's School Psychologist estimated that the Student was picked up from school more than 10 days for being unsafe. On November 12, 2024, the Parent sent an email to the District observing that they received a call daily from the school to take the Student home. As part of interviews in this matter the District reported that the school and Parent had an informal agreement for an abbreviated school day for the Student. The record shows that throughout much of the fall of 2024, staff continued to express concerns about the Student eloping from class, behaviors exhibited by the Student, and the Student's exclusion from school. On November 25, 2024, the Student's evaluation planning team decided to move forward with an evaluation of the

[11] 34 CFR § 300.307(a)(2)
[12] OSEP 11-07
[13] 34 CFR § 300.301(b)
[14] 34 CFR § 300.9
[15] 34 CFR § 300.503(a) and (b)

Student. On February 20, 2025, the evaluation planning team found the Student eligible for special education under the category OHI.

The Parent requested that the District evaluate the Student prior to the Student entering kindergarten. The Parent reiterated that concern in August and September. During the fall of 2024, District staff expressed concern about the Student's behaviors, elopements, and exclusion from school due to their behaviors. However, despite these requests and concerns, the District did not move to evaluate the Student until November 2024, noting instead that "we don't want to push students directly to the IEP process without going through the three Tiers of intervention".

The Department substantiates this allegation.

Free Appropriate Public Education (Denial of FAPE)

It is alleged that the District violated the IDEA when it did not implement the Student's IEP, specifically services, accommodations, and specific specially designed instruction noted above. It is further alleged that the Student's evaluations and observations were delayed by the District calling the Parent to take the Student home, thereby limiting the Student's time in school and availability for those evaluations and observations. It is alleged that these actions denied the Student a FAPE.

School districts must provide FAPE to all school-age children with disabilities for whom the district is responsible.[16] Procedural violations may only lead to finding that a child did not receive a FAPE if they: "(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child, or (III) caused a deprivation of educational benefits."[17] In determining whether a student was denied a FAPE, courts review a district's compliance with both the procedural and substantive components of the Student's education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IEP, and whether the school district met the substantive requirements to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.[18]

As observed above, the District did not respond to the Parent's request to evaluate the Student for special education, received prior to the start of the 2024-25 school year and reiterated during the fall of 2024. The District did not document these refusals to evaluate the Student with PWNs. When the District did respond, despite concerns from the Parent and school staff indicating that the Student may be in need of special education, they denied the evaluation

[16] OAR 581-015-2040
[17] 20 USC § 1415(f)(3)(E)(ii)
[18] *Endrew F.*, 137 S.Ct. at 999.

process so that the Student could continue participating in general education interventions through the SIT process. The District acknowledged that there was an informal system of abbreviating the Student's school day due to the Student' behaviors which led to numerous school removals, sometimes documented as a suspension and sometimes informal removals.. The actions resulted in the Student missing school during the fall of 2024.

The Department substantiates this allegation.

Additional Finding - Prior Written Notice

As part of this complaint investigation, the Parent reported having requested that the District evaluate the Student for special education on numerous occasions. The Parent also reported having asked the District to consider ASD as an eligibility category for the Student. The Parent reported that the District did not provide a PWN in response to these requests.

PWN must be given to the parent of a child within a reasonable time before a district proposes to initiate or change, the identification, evaluation, educational placement, or provision of a free appropriate public education to a child. PWN must also be provided when a district refuses to initiate or change, the identification, evaluation, educational placement, or provision of a free appropriate public education to a child.[19]

The record reflects that, as early as July 30, 2024, ahead of the Student beginning kindergarten, the Parent requested an IEP for the Student. On August 25, 2024, the Parent's request for an IEP for the Student was discussed among school staff members. On September 3, 2024, the Parent reiterated the request, asking to whom they should direct their concern for "beginning the IEP process for [the Student]." The District did not begin evaluating the Student following these requests from the Parent, nor did the District send the Parent a PWN documenting the refusal to initiate the identification of the Student as a child with a disability.

On September 13, 2024, the District convened a meeting to consider evaluating the Student. At the meeting the Parent suggested that the District evaluate the Student for ADHD and ASD. The District determined that the school would pursue the SIT process before evaluating the Student. On October 7, 2024, the Parent sent an email to the District requesting that the Student "be given a comprehensive assessment including but not limited to the areas of social/emotional, academic, recreational therapy, behavioral, occupational therapy, sensory integration, speech, psycho-educational, adaptive physical education and an education evaluation for Autism Spectrum Disorder (ASD)." On February 19, 2025, the Parent sent an email communicating additional concerns for the Student's eligibility determination, including concerns for ASD. The District did not provide the Parent with a PWN documenting the District's refusal to evaluate the Student for ASD following any of these requests.

[19] OAR 581-015-2310(1)—(3)

VII. CORRECTIVE ACTION

In the Portland Public School District
Case No. 25-054-040

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

Action Required	Submissions	Due Date
The District must ensure that school's staff are trained on: a. Responding to Parent requests for special education evaluations. This training should include appropriately responding and issuing PWN to parents; and b. The child find process, especially related to not delaying/denying child find to complete general education intervention processes.	Training agenda/materials to ODE District Support Specialist for review/approval. Sign-in sheet for training.	November 15, 2025 December 1, 2025
Convene an IEP team meeting to determine the impact of on the District's failure to provide a FAPE for the Student, amend the Student's IEP appropriately in response, and determine the appropriate compensatory education as a result. If the District and Parent cannot agree on an appropriate plan for compensatory education, either party can ask for the Department to make this determination.	IEP team meeting agenda. Meeting minutes, subsequent PWN, and plan for provision of compensatory education. Proof of compensatory education provided .	November 15, 2025 December 1, 2025 July 1, 2026

Dated: this 1 Day of August 2025



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Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

Emailing Date: August 1, 2025

Appeal Rights: Partied 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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)