

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Eagle Point School District 9)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-020

I. BACKGROUND

On June 1, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Eagle Point School District 9 (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 in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On June 6, 2023, 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 June 20, 2023.

The District submitted a *Response* on June 20, 2023, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 6/20/23
2. Timeline, 9/16/22 - 6/5/23
3. Communication Log/Timeline, 11/3/21 - 6/21/23
4. Email exchanges amongst District Staff and with the Parent, 8/11/22 – 6/21/23
5. Prior Notice and Consent for Initial Provision of Special Education Services, 12/15/22
6. IEP Progress Report, 4/7/23
7. Parent/Guardian Consent for Individual Evaluation, 3/14/23
8. Individualized Education Program (IEP) Amendment, 3/14/23
9. Evaluation Planning Meeting Notes, 3/14/23
10. SST Meeting Notes, 3/7/23
11. IEP, 12/15/22
12. Special Education Placement Determination, 12/15/22
13. IEP Meeting Notes, 12/15/22
14. Teacher Input Form, 11/22/22
15. Prior Written Notice (PWN), 12/15/22
16. Disability Statement, 12/15/22
17. Eligibility Summary Statement, 12/15/22

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

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

18. Meeting Agenda and Minutes, 6/5/23
19. Behavior Intervention Plan (Revision), 5/18/23
20. Meeting Agenda and Minutes, 5/30/23
21. Draft Behavior Intervention Plan (Revision), 5/18/23
22. Functional Behavior Assessment, 5/24/23
23. IEP Progress Report, 6/15/23
24. PWN, 5/30/23
25. Notice of Team Meeting on 6/5/23, 5/30/23
26. Notice of Team Meeting on 12/15/22, 9/21/22
27. Notice of Referral, 9/21/22
28. Referral, 9/21/22
29. Parent/Guardian Consent for Individual Evaluation, 9/19/22
30. PWN, 1/24/22
31. Simple BAT Behavior Intervention Plan, 5/3/22
32. Simple BAT FBA Form, 4/20/22
33. Behavior Support Plan, 6/3/21
34. Psychoeducational Report, 12/14/22
35. Social Communication Assessment Report, 12/6/22
36. Psychological Report (Private Provider), 7/22/22
37. SST Meeting Notes, 9/16/22
38. Meeting Notes, 5/26/22
39. Meeting Notes, 3/28/22
40. Meeting Notes, 2/25/22
41. Meeting Notes, 2/15/22
42. Meeting Notes, 11/3/21

The District submitted additional documents on July 10 and 11. The District attempted to submit additional documents on July 14; however these were in a format that the Complaint Investigator could not access:

1. Simple BAT Behavior Intervention Plan - Revised, 3/17/23
2. Instructional Assistant Resource Schedule, undated
3. Discipline Summary, 9/15/22 – 6/7/23
4. SLP Schedule, undated

The Parent submitted a *Reply* on June 22, 2023, providing an explanation and rebuttal, and documents in support of the Parent's position. The Parent submitted the following relevant items:

1. *Reply*, 6/22/23
2. Email exchanges between District Staff and the Parent, 3/7/23 – 6/13/23
3. Screen Shot of IEP Progress Reports, 6/21/23
4. Screen Shot of Student's Report Card, 6/22/23
5. AngelSense Deactivation Agreements, undated
6. Private Provider List of Medication Prescriptions, 4/11/23
7. Screen Shot of Message Exchange Between Parent and Teacher, 5/9/23 – 5/11/23

The Parent submitted additional documents on July 9, 2023:

1. Discipline Records, 2/19/20 – 5/18/23

The Complaint Investigator interviewed the Parent on July 3, 2023. From June 28 to July 11, 2023, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these

documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant’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 2, 2022, to the filing of this Complaint on June 1, 2023.

Allegations	Conclusions
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parent alleges that the District violated the IDEA by not appropriately conducting a functional behavior assessment.</p> <p>(OAR 581-015-2110; 34 CFR §300.301)</p>	<p>Not Substantiated</p> <p>The District completed a functional behavioral assessment (FBA) within 60 school days from the time the Parent signed consent for the evaluation. There is no evidence that the FBA was conducted inappropriately.</p>
<p>When IEPs Must Be in Effect</p> <p>The Parent alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP. This includes failing to provide the Parent with appropriate reports on the progress the Student was making toward meeting their annual IEP goals, as required by the Student’s IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>Substantiated</p> <p>The District did not appropriately monitor progress on the Student’s IEP goals. The Student’s IEP progress reports did not include sufficient information to determine whether the Student was making measurable progress.</p> <p>It is unclear to what extent SDI was provided. The evidence indicates the Student’s IEP was not fully implemented.</p>
<p>Review and Revision of IEPs</p> <p>The Parent alleges that the District violated the IDEA by failing to revise the Student’s IEP as appropriate to address the Student’s needs.</p>	<p>Substantiated</p> <p>The Student’s IEP did not contain sufficient information, services, or supports. The District did not revise the Student’s IEP as appropriate to identify and address the Student’s behavior needs, including the failure to add behavior supports that the IEP</p>

<p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p>team agreed the Student needed and were being implemented.</p>
<p>IEP Team Considerations and Special Factors</p> <p>The Parent alleges that the District violated the IDEA by failing to appropriately consider the Student’s behavior and assistive technology needs.</p> <p>(OAR 581-015-2205; 34 CFR §300.324)</p>	<p>Substantiated in Part</p> <p>The District failed to appropriately consider the Student’s behavior needs, resulting in an IEP that did not appropriately identify the Student’s needs or include sufficient services and supports.</p> <p>The District appropriately considered the Student’s assistive technology needs, ultimately determining that the GPS device proposed by the Parent was not necessary for the Student to receive FAPE.</p>
<p>Nonacademic Settings</p> <p>The Parent alleges that the District failed to ensure that the Student participated with children who do not have a disability in nonacademic and extracurricular services and activities to the maximum extent appropriate.</p> <p>(OAR 581-015-2255; 34 CFR §300.117)</p>	<p>Substantiated</p> <p>The Teacher conditioned the Student’s participation in class swimming lessons from May 15-19, 2023 on the Parent’s attendance. The Parent chaperoned during the swimming lessons to help support the Student. The District subsequently corrected the Teacher and made additional adult support available for the June 1, 2023 field trip.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • The goal we have is to require a corrective action plan and improvement plan, to ensure that the school district is held responsible for ALL IEPs in the entire district. Requesting they prove to ODE that they are sending said reports out for every child who has an IEP or 504. Or investigation into the district regarding all IEPs district wide, and how they are reporting progress on measurable goals. • Suggested recommendation is to require training to the school district to ensure the school district is educated on laws regarding discrimination, ensure appropriate aid for children with disabilities and ensure a positive experience for all students on field trips. Require proof of meetings involving any fieldtrips to show that they took all children with special needs into consideration when planning them. • Our overall intention is to hold the District accountable in providing the Free Appropriate Public Education all children deserve. Our goal is to create reform district wide and hold the District accountable for their shortcomings and failures to comply with state and federal laws. Staff needs more training, and periodic monitoring and/or reporting on

special education implementation district wide. They need more support staff to provide services as well.

- Our goal is to have an audit school-wide of all special needs areas, to ensure that students are getting the FAPE they need and deserve, and long-term accountability of the District.

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 June 1, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is nine years old and recently completed the third grade.
2. The Student is currently eligible for special education services under the category of Autism Spectrum Disorder (ASD).
3. The Student's medical history includes diagnoses of Autism Spectrum Disorder, Attention-Deficit/Hyperactivity Disorder, and Unspecified Depressive Disorder.
4. "In June 2021, [a District school psychologist] prepared a Behavior Support Plan (BSP) as a general education intervention for [the Student] prior to [the Student] becoming eligible for special education instruction and supports but after [the Student] was referred to the Student Support Team (SST) because of behavioral concerns."
5. The June 3, 2021 BSP listed the target behavior as physical aggression. "During unstructured times like recess, [the Student] appears to struggle more. [The Student] struggles to interact in socially appropriate ways and will at times become aggressive."
6. Between November 3, 2021 and May 26, 2022, the District convened five meetings to discuss the Student's behavior.³ At each meeting the team discussed behavior concerns and interventions that were currently being implemented.
7. During the 2021-22 school year the Student received multiple referrals and in-school suspensions for behavior incidents, primarily for physical aggression and non-compliance.
8. The District's November 3, 2021 meeting notes stated, "IEP- 13 categories to qualify for – aggression is not one of them... More of a behavior need versus an academic need... [a school psychologist] suggests that we go to the route of a Behavior plan or evaluation of 504."
9. The Parent reported that at these meetings, the District stated that the Student's issues were behavioral and not academic, and it could not evaluate the Student for special education services or a 504 plan unless the Student had a medical diagnosis.
10. On March 28, 2022, the District convened a meeting to discuss the Student's behavior issues. The meeting notes included the following:

³ November 3, 2021; February 15, 2022; February 25, 2022; March 28, 2022; and May 26, 2022.

- a. Develop a new BIP based on (1) “Blurting in a rude and disruptive/disrespectful way (has minimized)”; (2) “Defiance/Noncompliance”; (3) “Shut down behaviors.”
 - b. Continue intervention strategies (behavior chart/prizes, self-determined breaks, seating in front of class/near teacher, positive reinforcement/praise, noise cancelling headphones, and daily check in with parents).
11. “On April 20, 2022 (i.e., while [the Student] was a general education student), [a District school psychologist] prepared a Simple Behavioral Assessment Team (BAT) Functional Behavioral Assessment (FBA) as a general education intervention for [the Student’s] behaviors.”
12. A May 3, 2022 Simple BAT Behavior Intervention Plan (May 2022 BIP) included the following:
- a. Problem behavior: “[The Student] would like to be on [their] Ipad all day rather than engage in classroom instruction or classroom work... [The Student] also blurts out, can be verbally aggressive to peers, and refuses to complete work.”
 - b. Replacement behavior: “Be able to follow the school guidelines (safe, respectful and responsible).”
 - c. Method of teaching replacement behavior: direct instruction, social skills training, anger management, modeling, behavior contract, and decision-making lesson.
 - d. Who will teach the replacement behavior: “Staff” and “Staff/Parents.”
 - e. Accommodations (17): including frequent prompts, reprimand the student privately, frequent breaks, avoid strong criticism, avoid power struggles, provide cooling off period, and “supervise free time (in the classroom and at home),” among others.
 - f. Interventions (5): “Frequent check-ins with the teacher to ensure [the Student] understands the behavior expectations required, especially before an unstructured period”; opportunity to earn preferred activity for appropriate behavior; opportunity to earn reward based on weekly behavior chart; desk closer to teacher; and “Buddy classroom or Room 14⁴ for breaks.”
 - g. Method of measuring progress: direct observation, daily behavior sheet, weekly behavior sheet, and number of discipline referrals.
 - h. Length of behavior plan: six weeks.
13. The District meeting notes for a May 26, 2022 meeting included the following:
- a. “Plans for upcoming year: Continue use of positive reinforcements. Use structured loving tone of voice (instead of stern). Check in throughout the day 1:1. Provide stability and structure throughout the day....”
 - b. “Dr. did provide diagnosis of aspergers... Parents waiting for paperwork from dr. Parents will contact [someone from the District] when documentation is ready to set up a 504 meeting.”

⁴ The District reported that “Room 14” is a room in the school that is used for discipline (e.g., detention) as well as breaks.

14. The Parent obtained a private autism evaluation of the Student, resulting in a July 22, 2022 Psychological Evaluation Report. The report included the following:
 - a. "Presenting problems included hyperactivity, impulsivity, inattention, physical aggression, argumentativeness, difficulty establishing and maintaining friendships, emotional dysregulation, difficulty processing sensory information, obsessive thinking, repetitive behaviors, lack of imaginary play, social communication problems, and poor social reciprocity."
 - b. "Parents reportedly have requested a 504 plan, but at this time, the school has not provided a 504 or special education evaluation."
 - c. Diagnostic Impressions: Autism Spectrum Disorder without intellectual or language impairments; Attention-Deficit/Hyperactivity Disorder, combined presentation, moderate; and Unspecified Depressive Disorder.
 - d. Recommendations: "Teach [the Student] more adaptive coping skills related to anxiety... ... avoid punishment and rather provide reassurance that [they] can handle situations... Allow access to an area for self-regulation needs with access to calming supports and activities... Teach and reinforce self-regulation strategies... reduce anxiety/stress inducing stimuli in all school settings."
 - e. "This information should be shared with [the Student's] school team to assist in addressing [their] behavioral needs at school through appropriate programming and services, which will require a special education evaluation."
15. On August 11, 2022, the Student's other parent [Parent 2] emailed the District a copy of the July 22, 2022 report, noting that the report stated "a 504 may not be appropriate for [the Student] so we are needing to get [them] an IEP."
16. On August 30, 2022, the Parent emailed the District, writing, "[W]e are again writing to formally request that [the Student] be evaluated for special education services... Maintaining a simple behavioral plan is not acceptable, and does not provide [the Student] with the support [they] need to be successful in [their] education."
17. During the 2022-23 school year the Student received 39 behavior referrals. The incidents involved physical aggression (hitting/punching/slapping/pushing other students), defiance, non-compliance, work refusal, and inappropriate language. The incidents primarily resulted in detention, conferences, and in-school suspensions. Three incidents resulted in out of school suspensions.
18. The Student's third grade teacher [the Teacher] reported having a copy of the Student's May 2022 BIP and implementing the BIP throughout the entire school year. When asked which interventions the Teacher implemented, the Teacher stated: check-ins throughout the day, behavior chart, visual cues to keep the Student engaged and prevent them from blurting out, help with self-regulation, allow the Student to take breaks when needed, preferential seating near the teacher, and shorten assignments when possible.
19. On September 16, 2022, the District convened an evaluation planning meeting. At the meeting it was determined that the Student should be evaluated for special education services.

20. Although the Student received three diagnoses, the Parent reported that the District did not want to discuss the Student's ADHD or depression, the team only wanted to discuss the ASD diagnosis.
21. The Parent signed a Consent for Individual Evaluation on September 19, 2022, which included assessments in the following areas: observation of learning environment, psychoeducational assessment, social/emotional assessment, adaptive behavior, autism spectrum rating scales, and social responsiveness scale.
22. On September 21, 2022, the District issued a Referral for special education which stated, "data supported pursuing a special education eligibility based on [the Student's] inability to make progress with behaviors, and academic performance." Behavior concerns listed included "Behavior interferes with the learning of others" and "Interactions with other students are inappropriate."
23. On September 21, 2022, the District issued a meeting notice for a meeting on December 15, 2022.
24. A November 2022 Teacher Input Form included the following:
 - a. "Behavioral Performance: Overall [the Student] is well behaved, but struggles with organization, blurting, and completing work [the Student] does not want to do."
 - b. "Social Interaction: [The Student] can struggle to get along with other students, but [the Student] is showing growth in this area since the beginning of the year."
 - c. "Suggestions for Accommodations: organization support, preferential seating at the front by the teacher, frequent checks for understanding, gain attention before speaking, extra time to compete [*sic*] tests, quiet space for breaks, daily behavior plan."
25. A December 14, 2022 District Psychoeducational Report stated, "[The Student] demonstrates good academic abilities on testing and is generally considered smart. [The Student] does struggle with appropriate behaviors due to [their] disability of Autism Spectrum Disorder that are at levels that can impact [their] education especial [*sic*] in the areas of social and emotional functioning."
26. On December 15, 2022, the District convened a meeting to determine the Student's eligibility and develop an IEP. At the meeting, the Student was found eligible for special education services under the category of ASD.
27. The December 15, 2022 IEP (December 2022 IEP) included the following, among other things:
 - a. Strengths of Student: "[The Student] benefits from consistency, and structure. If those elements are missing [the Student] will become agitated, or anxious. [The Student] also benefits from staff prompting regarding tasks, and activities" and "from reminders regarding expectations, or rules."
 - b. The Student "will begin being supported with [their] organizational skills in the general education setting. [The Student's] academic abilities are at, or above grade level, but can fluctuate. This is primarily due to behavior, or motivation as opposed to lacking academic skills."

- c. Present Levels: “[The Student’s] functional, and adaptive skills are adequate to effectively support [them] within age-appropriate activities, and task... [The Student] is able to interact appropriately with [their] peers...”

“[The Student] struggled with appropriate social reciprocity... inconsistent response to other’s initiation, reduced ability to time appropriate interactions...”

- d. How the Student’s disability affects involvement and progress in the general education curriculum: “[The Student’s] disability can present a challenge operating within the general education setting. With the newly provided behavior supports in the general education setting it should help [the Student] develop some skills to become more independent. At the present, [the Student] will benefit from direct support in the classroom to help [them] with organization, and focus. [The Student] will also have classroom accommodations in place to help support [them] also.”
- e. Special Factors: the Student’s behavior impedes their learning or that of others (Explanation: “IEP goal written in the IEP”) and the Student has communication needs (Explanation: “Goal written in IEP for social communication”).
- f. Goals: Two goals in the area of Study/Organizational Skills (raising hand and waiting to be called on before talking; completing tasks/activities by exhibiting on-task behaviors).

Three goals in the area of Communication (improve social communication skills with rules of conversation and age appropriate vocal characteristics; improve “Theory of Mind” (“considering the thoughts and beliefs of others and predicting how they might respond”)).

Progress on IEP goals to be reported in November, January, April, and June; will be included with report cards.

- g. Specially Designed Instruction (SDI): Study/Organizational Skills (120 minutes per month) and Communication Skills (630 minutes per year).
- h. Accommodations: break large tasks into smaller pieces, gain attention prior to instruction, “General Education Teacher created success plan,” extended time for assessment completion, checks for understanding, visual aids with instruction, and preferred seating.
- i. Supports for School Personnel: SLP consult (20 minutes per year) and Autism consult (60 minutes per year).
- j. Nonparticipation Justification: removal from the regular classroom setting for “630 minutes per year to receive special designed instruction in social communication skills.”

28. The December 15, 2022 District IEP Meeting Notes included the following:

- a. The District school psychologist that evaluated the Student (the School Psychologist) stated, “[The Student] showed me some really good thinking skills, there is a lot of intelligence there, that is why [the Student] has probably slid by this far without an IEP...”
- b. Instruction for study/organizational skills will be push-in; for speech the Student will be pulled out of the classroom to work with other students.

- c. The Parent expressed concern that “[the Student] needs an aid [*sic*] with [them] when [they] go to the bus, [the Student] takes off, can [they] have this? Teacher reassured [the Parent] that [the Teacher] will walk [the Student] to the bus.”

29. The December 2022 IEP present levels consisted primarily of information from a social communication evaluation. It is unclear why the IEP did not include information about the Student’s aggressive and defiant behavior, the Student’s discipline record, or positive behavior interventions that were helpful and being implemented at the time. The IEP did not mention the Student’s BIP.

30. The District issued a PWN dated December 15, 2022, stating the Student “demonstrated the need for special education support within the educational setting to be successful.” This was based on based on current educational-based, behavioral, and communication assessments, as well as staff, parent, and outside specialist input. “The team considered the behavioral, and social emotional needs of the student.”

31. The District provided a January 27, 2023 IEP Progress Report for the Student. It did not contain any measurable progress information. The progress code for each of the six goals was listed as “3” (“Adequate progress has been made towards the goal. It appears that the goal will be met by the next IEP review”). The comment sections were either left blank or stated the Student was new to the goal area “and will continue to develop.”

The sections for baseline data either stated “this skill is developing” or listed the lagging skill to be address (e.g., “demonstrates deficits in [their] social communication across people and settings”) but did not contain any measurable data.

32. A February 27, 2023 email from the Student’s initial case manager (the Special Education Teacher) to the Principal stated, “... [The Parent] also let me know [they] hadn’t received [the Student’s] IEP paperwork and was entitled to that. I apologized regarding the paperwork, and sent it to [them]... Now though, [the Parent is] claiming to be unhappy about [the Student’s] current BIP that [the School Psychologist] created.”

33. The Parent reported they did not receive a copy of the Student’s December 2022 IEP until February 27, 2023.

34. In a February 27, 2023 email to the Special Education Teacher, the Parent expressed concerns about the Student’s behavior and requested a new FBA and BIP. In response, the Special Education Teacher scheduled a meeting for the IEP team to discuss the Parent’s concerns.

35. At the end of February 2023, the Student was transferred to a new case manager (the Case Manager) because the Special Education Teacher’s caseload was too full.

36. The Parent reported talking with the school P.E. Teacher in January or February, 2023, who told the Parent that they were not aware that the Student had an IEP or behavior plan.

37. On March 7, 2023, the District convened an IEP meeting to “to discuss behavioral concerns and previous FBA/BSP.”

38. The March 7, 2023 meeting notes included the following, among other things:

- a. The Parent expressed concern that school staff were not aware or familiar with the Student’s IEP or behavior plan.

- b. The Parent expressed concern that behavior supports were not in the Student's IEP. The Teacher reported that "[the Student] is still getting them in the classroom."
- c. The Parent expressed concern about elopement. "[The Student] has to have a safety plan, [they] cannot be unattended." The Parent reported that the family was working with the county disability services to get a tracking device for the Student.
- d. The school Disciplinarian recommended that the Student continue to have room 14 as "a place for [the Student] to calm down; when [the Student] needs a break." The Disciplinarian reported implementing 1:1 check-ins with the Student.
- e. The team agreed to have the School Psychologist "clean up [the Student's] prior BIP and then we can add it to [their] IEP as an accommodation."
- f. The Parent stated they wanted to add accommodations to the IEP "for unstructured times" (e.g., "Immediate coaching" needs to be in the IEP; any request to talk to the Disciplinarian should be granted immediately).
- g. "[The Assistant Principal] will work on communication with recess duty [instructional assistants (IAs)] to get a 'go to person'" and also look at getting an escort to and from the bus. The School Psychologist will "update BIP, incorporate parent's wishes/concerns, observations."
- h. Action items for "Escorting" included: (1) "When [the Student is] upset, cannot be out of line of sight of adults"; (2) "Needs to be under adult supervision"; (3) "Bus, long distances, office"; and (4) "Bathroom – buddy situation."

39. On March 7, 2023, the Parent sent a follow-up email after the meeting District staff which included the following:

- a. "... for [the Student's] safety, [they] will have an escort walking [the Student] to and from the bus, and any areas [the Student] needs to walk to, so [they] are not alone and given opportunity to elope."
- b. "Disciplinary accommodations will be set in place in [the Student's] IEP to reduce education time lost for infractions occurring on unstructured time... [The Student] will also continue to be allowed a quiet place to go when feeling overwhelmed or overly emotional."
- c. "All IA's [sic] will be informed of [the Student's] specific IEP needs and behaviors prior to working with [the Student] ... Discipline will be in the form of prevention, and immediate social-emotional learning.

40. The Parent reported that at the March 7, 2023 meeting, the IEP team also agreed that the GPS watch to be provided by the county (AngelSense device) was a good idea.

41. The Disciplinarian was the Student's primary trusted adult at the school. The Disciplinarian volunteered to support the Student and independently initiated behavior strategies before the Student's initial eligibility (e.g., daily check-ins to encourage the Student to have good days; periodic checking-ins in and out of the classroom; assisting staff during behavior incidents, and offering the Student breaks when escalated). The Disciplinarian reported that often the Student was unwilling to follow directions from any adult except the Disciplinarian. The

Disciplinarian reported not knowing the specifics of the Student's IEP, only the parts of the plan that they were involved in.

42. On March 14, 2023, the District convened a "FBA/BIP Follow up Evaluation Planning Meeting."
43. The March 14, 2023 District meeting notes included the following:
 - a. The team agreed to conduct an FBA. The School Psychologist stated that the District had 45 days to complete the FBA.
 - b. The team determined that the Student would have multiple "go to" IAs assigned rather than a specific IA, which would allow the Student to build relationships with multiple adults.
 - c. The Parent asked if the BIP had been updated and was told that the School Psychologist would "make updates following this meeting..."
 - d. The IEP team agreed to add the BIP as an accommodation to the IEP and to increase the autism consultation minutes from 60 to 120 minutes per year.
44. The March 14, 2023 IEP Amendment (March 2023 IEP Amendment) included the following changes, in relevant part:
 - a. Present Levels: added "Due to the number of referrals for discipline, the team decided it would be helpful to have a Functional Behavioral Analysis and Behavior Intervention Plan. The current one will be updated by the school psychologist. Parent's [sic] signed consent for a new FBA and BIP on 3/14/23."
 - b. One accommodation was added, "FBA and BIP are followed and in place by all staff members."
45. The March 2023 IEP Amendment did not mention any additional IA support, escorts from the bus or in the school, access to breaks/quiet space, access to a trusted adult, disciplinary accommodations, or other items discussed at the March 7 and 14, 2023 IEP meetings.
46. When asked why none of the accommodations that the team agreed to implement were added to the IEP, the Case Manager stated they assumed those were being put in the FBA, and the FBA was put in the IEP.
47. It is unclear why the District initially told the Parent that the FBA needed to be completed within 45 school days. In later communication with the Parent, the District stated that the FBA needed to be completed within 60 school days.
48. In a March 14, 2023 email to school staff, the Assistant Principal wrote, "We are working on a support plan for [the Student]... We are wanting a 'go-to' person for [the Student] during unstructured time, like at recess. This person will continue to or start to build a relationship with [the Student], remind [them] of positive expectations, and do 'real time' redirections in a positive way. A person [the Student] can go to to talk about things, and help during frustrational times."
49. The District provided a copy of a revised version of the May 3, 2022 BIP, dated March 17, 2023 (March 2023 revised BIP). It added the following information to the existing BIP, among other things:

- a. Physical aggression and elopement were added to the problem behaviors. “[The Student] has made great strides and struggles less in the [sic] classroom. Instead [the Student] is struggling with unstructured times... [They] can get physically and verbally aggressive as well as elope.”
- b. Interventions: “[The Student] will transition between the classroom and other locations with assistance from adults. This is especially important for end of day transitions and non-preferred transitions. The school will provide assistance for these transitions. For recess and P.E. instructional assistants will check in with [the Student] and build rapport with the intent that [the Student] build trusted relationships with 2 or more adults who [they] can go to for additional support during difficult times. The school will endeavor to provide consistent I.A. support personnel for [the Student] as appropriate to ensure that [the Student] has a trusted adult available consistently.”
- c. Additional interventions included IA check-ins with Student, offer breaks when escalated, positive reinforcement, and remind the Student to practice safe behavior and find an adult when struggling.

50. In a March 17, 2023 email to the Parent, the Case Manager wrote, “Please review and sign [the Student’s] amendment IEP. I have added information about the FBA/BIP in the present level, the special factors page, and in the accommodations section. I have also included the current FBA/BIP in the IEP for teacher and staff to see. [The School Psychologist] will be updating the current FBA/BIP within 60 school days.”

The Parent responded on March 21, 2023, writing, “I don’t see the actual amendments, only the page to sign... Does it include the punishment matrix that discipline for occurrences on unstructured time will not result in punishment during structured class time? And immediate social emotional learning will be the first line of intervention? IE recess aids [sic] will use these techniques immediately during an incident?”

- 51. The Parent reported that they never received a response to the March 21, 2023 email or explanation why things the Parent thought the team agreed to were not added to the IEP.
- 52. In a March 17, 2023 email to the Assistant Principal, the Case Manager stated, “Yes I sent the amendment IEP for parents to sign and I attached the FBA/BIP for them to review. I also sent home the hard copy of the IEP amendment and FBA/BIP home with [the Student] on Wednesday.”

As the Case Manager reported sending a copy of the FBA/BIP home with the Student on March 15, 2023, before the BIP had been revised by the School Psychologist, this particular copy could not have been the March 17, 2023 revised version of the BIP.

- 53. Witnesses reported the following about the March 2023 revised BIP:
 - a. The School Psychologist reported updating the BIP with new information about elopement concerns and IA support and sending the March 2023 revision to the Case Manager. The School Psychologist could not speak to whether the Case Manager sent it to the Parent. The School Psychologist reported that this was the BIP that was implemented through the end of the school year. The School Psychologist reported occasionally checking in on the Student and from what they saw, the BIP was being implemented.

- b. The Case Manager reported adding the March 17, 2023 revision date to the existing May 2023 BIP but did not make any changes to the document because they thought that would be done with the new FBA and BIP process. The Case Manager did not know which version of the BIP was sent to the Parent or which version school staff had.
 - c. The Parent reported receiving what was supposed to be a revised BIP. The date on the document had been changed to March 2023, but nothing else in the document had been revised.
54. The Case Manager stated they were responsible for providing school staff with updated IEPs and BIPs. When asked if they provided copies of the Student's March 2023 IEP Amendment and the March 2023 revised BIP to staff that work with the Student, the Case Manager stated they only gave a copy to their IA. The Case Manager thought that everyone who needed a copy was at the March meetings and knew about the updated documents. The Case Manager did not provide these documents to any other staff, such as specials teachers or other IAs that worked with the Student, but noted that school staff had access to these documents in the District's computer system.
55. It is unclear which version(s) of the BIP was sent to the Parent in March 2023. It is unclear who at the school received copies of the updated BIP and amended IEP, and which versions were implemented by school staff.
56. The District issued an April 7, 2023 IEP Progress Report. It did not contain any measurable progress information. The only information listed for five of the six goals was a progress code (progress code 3). The comment section for every goal was left blank. One goal did not include an entry for April at all.
57. The Parent provided the Investigator with a list of medications prescribed by the Student's pediatrician dated April 11, 2023, issued by the Pediatrician's office. The list included "GPS Tracking watch."
58. On April 20, 2023, "[The Disciplinarian] completed Risk assessment screening tool based on a comment [the Student] 'wanted to die.' Scale rated [the Student] as 'low.'..."
59. In an April 20, 2023 email to the Case Manager, the Parent wrote, "We got the assistive device for [the Student], to help in elopement emergencies, and also for mental duress situations... We want it added in [the Student's] IEP that this assistive device will be allowed.... Do we need to have an entire meeting to add this, or can it be amended into the IEP and us sign virtually?"
- The Case Manager responded to the Parent on April 21, 2023, stating, "I can put this in [the Student's] IEP on the service summary page under accommodations. We don't need to hold a meeting, I will have everyone virtually sign it."
60. On April 21, 2023, the Case Manager emailed the Special Education Teacher and the Principal, stating they were going to add the AngelSense device to the Student's IEP. The Principal responded, "Please do not add anything to the IEP at this point. I am following up with our director and asking for legal counsel."
61. In a May 1, 2023 email to the Principal, the Case Manager asked if they could "go ahead and amend [the Student's] IEP or not."

The Principal's May 8, 2023 response stated, "Please do not amend [the Student's] IEP – I have consulted with our district and our attorney. You do not have my support to amend [their] IEP. This needs to be a team decision. Please schedule an IEP meeting for us to discuss this..."

The Principal also wrote, "Know that the primary purpose will be to make sure you first run the request for an AngelSense device by the IEP team to make sure that we've appropriately considered whether it is a piece of assistive technology or an accommodation that is necessary for the [Student] to receive FAPE."

62. On May 9, 2023, the Disciplinarian completed another risk assessment based on the Student stating that they wanted to hurt themselves. The result was "high risk." The Student was referred to county mental health services.

63. On May 9, 2023 the Teacher sent a message to the Parent and Parent 2 about upcoming field trips (class swimming lessons in May and a hike on June 1, 2023), which stated:

"Okay I just want to make sure that either one of you joins us on both field trips because I cannot trust [the Student] to listen to my directions when we are out in the world... Also we will be starting swimming next week... If neither of you can attend I cannot have [the Student] come on the field trip."

64. The Parent reported attending class swimming lessons with the Student on May 15, 16, 18, and 19, 2023.

65. On May 16, 2023, the District convened an IEP meeting.

66. The District's May 16, 2023 meeting notes included the following, in relevant part:

a. The purpose of the meeting was listed as, "to determine if the AngleSense [*sic*] device is needed to access FAPE, and if an IEP Amendment is necessary."

b. Parent: "[The Student] does not feel safe in certain situations when adults won't listen. [The Student] is coming home saying, 'I want to kill myself.'"

c. Parent 2: "the teacher stated that mom or dad needs to attend the field trip because [the Teacher] doesn't feel safe or [the Student] can't go."

Teacher response: "That is my fault because I honestly don't feel safe taking [the Student]."

d. "Parent concerns/Actions: Behavior Plan not updated, a year past due – follow up with [the School Psychologist]... IEP not updated from March meeting, Team to review IEP."

e. "Follow up meeting scheduled 5/30/23 @ 7:00 am."

67. The Principal reported first becoming aware of the field trip issue at the May 16, 2023 meeting, stating that they subsequently corrected the Teacher and shared that the District always has additional adult support for field trips when needed and a parent is never required to attend.

68. Witnesses reported the following about the AngelSense device discussions:

- a. The Principal reported that the team discussed the device and determined that it was not needed for the Student to access their education.
 - b. The School Psychologist could not recall that any specific agreements were made but reported that no one ever said the Student needed it and the team never agreed to add it to the IEP.
 - c. The Disciplinarian remembered the Parent asking for it, but not that the team ever said it was something the Student needed.
69. The Parent reported being told at the May 16, 2023 meeting that the Student was not being pulled out of the classroom for SDI, and the Case Manager stated that a resource room aide goes into the Student's classroom and observes the Student.

The Parent reported hearing from the Student that they went to speech on Wednesdays but did not know anything about the delivery of SDI for study/organizational skills. The Parent reported asking the District for more information and documentation of SDI delivery, but the District never provided anything.

70. The Case Manager reported they sent the resource room IA into the classroom to help support the Student. The IA would help the Student with their classroom assignments and support the Student with behaviors such as work refusal. When the IA returned to the resource room, they would talk about how the Student was doing.

When asked if the IA worked with the Student on their IEP goals, the Case Manager stated yes, if the Student was willing to do the work but a lot of times that was a struggle. The IA did not record any progress data on the goals.

71. The Teacher confirmed that the IA pushed into the classroom, reporting that the IA helped the Student with whatever the class was working on.
72. The District provided a screen shot of an undated schedule for the IA, indicating that the IA was with the Student in the general education classroom for twenty minutes in the morning, four days a week. This was listed on the schedule as "Social Skills/In class support for [the Student]." There is no information indicating to what extent the IA worked with the Student on their IEP goals.
73. The District reported that a District SLP provided speech services to the Student for 30 minutes on most Wednesdays, from January 4 to June 7, 2023.
74. Although requested, the District did not provide service logs, progress data, or other record of SDI delivery for either study/organizational skills or communication skills.
75. On May 16, 2023, the Parent sent an email to the team "as a follow up to our meeting we had this morning."
- a. The Student needs the GPS watch while at school. "This device is imperative to [the Student's] safety and emotional well-being. We have [the Student's] medical providers note requesting it, and it is provided by [the county] disability services as an assistive device. [The Student] has elopement issues, which have not been updated on the IEP even though we discussed it March 7th, and [the Student] has now stated [they] could simply walk off campus if [they] want... [Their] emotional distress has increased to the

point of saying [they] want to die, and having to be pulled from school to be evaluated by [the County] Mental Health. This lifeline is imperative to [their] safety and wellbeing.”

- b. The Student’s IEP does not reflect the changes discussed by the team.
- c. The Student should be granted access to speak to the Disciplinarian at [the Student’s] request immediately, as the “safe and trusted adult for [the Student] to go to in the event of a meltdown or emotional escalation.” The Student reported to the Parent that their requests to see the Disciplinarian have been denied by school staff. “This needs to be added into [their] IEP...”
- d. “For progress period ending 1/27/23 and 4/7/23 no documentation was received or completed addressing the measurable annual goals as required by [the Student’s IEP].”

76. On May 16, 2023, the Case Manager called and emailed the Parent to ask (1) whether the team could move up the meeting scheduled for May 30, 2023 because of the FBA evaluation timeline, or (2) if the Parent would sign permission to extend the evaluation timeline. The Parent said no to both options.

77. The District drafted a Behavior Intervention Plan (BIP) dated May 18, 2023, which included the following information:

- a. “Reason for referral/revisions: [The Student] has demonstrated difficulty with initiation and maintenance of [their] school work and assignments. [The Student] becomes defiant, off-task, and unwilling to complete assignments... difficulty with unstructured times and has been observed to become aggressive with peers during perceived social conflict. [The Student] has a history of elopement and has made statements to other that [the Student] knows ‘how to leave campus.’”
- b. “[The Student] requires extra assistance in the following areas: social/emotional learning, behavioral regulation when [the Student] becomes upset or escalated, handling change in routines/expectations, handling mistakes/corrections to academic work, and problem solving during perceived peer conflict.”
- c. Target Behaviors: (1) work refusal (can result in “Yelling/Screaming, trying to leave the workspace/area, work refusal”), (2) aggression (can result in “Physical contact in the form of physical aggression (hitting, pushing, shoving)”), and (3) elopement (“Starts with Arguing, yelling, screaming, locating exits, making statements to leave.” Results in “Leaving physical space/boundary without adult permission/acknowledgement.”)
- d. Staff responsible for the target behaviors was listed as “all staff that come into interaction with [the Student].”
- e. “With the use of visual supports, behavioral priming, checking in/out, SEL tools and supports, behavioral regulation checks, parent/school communications, and debriefing tools and methodologies, [the Student] will be able to access [their] academic environment with more independence and success.”

78. Although the BIP is dated May 18, 2023, the FBA and BIP were not discussed by the Student’s IEP team until June 5, 2023 and were not implemented during the 2022-23 school year. The School Psychologist reported that the March 2023 revised BIP was implemented through the end of the 2022-23 school year.

79. The Parent reported being told on May 19, 2023 that the District agreed to let the Disciplinarian go on the upcoming June 1, 2023 hiking field trip, so the Parent ~~could~~ but did not have to attend. Ultimately, the Student did not attend the field trip because they did not want to go.

80. On May 24, 2023, the School Psychologist completed the FBA, which included the following information:

- a. Behaviors that interfere with school success and frequency: work refusal (2-5 times daily, 10-30 minutes), aggression (1-2 times daily, 10-30 minutes), and elopement (“1 confirmed instance, but talk about it is increasing lately”).
- b. Function/consequence of these behaviors: to (1) gain control/justice/revenge; (2) escape tasks/people/environment; and (3) avoid external stimuli.
- c. “Work refusal is a communication of [the Student’s] frustration with the task and not understanding why [the Student] needs to do it. Aggression is a function of [their] frustration with peers. Elopement seems to be a function of being frustrated with the school environment in general.
- d. Possible Contributing Setting Events: included “[The Student] has been struggling over the last few years with maintaining appropriate behavior in and out of the classroom... Across settings [the Student] demonstrates significant struggles with emotional and behavioral regulation, though most acutely in unstructured times and with the most growth inside the classroom setting. When [the Student] begins to get frustrated, [the Student] struggles to independently self-regulate which leads to behavioral regulation struggles. Due to this [the Student] has had multiple referrals this school year.”
- e. Replacement Behavior: “Our goal is for [the Student] to engage in self-regulation strategies successfully. [The Student] will be more successful in the classroom when [the Student] is able to self-regulate and seek out appropriate support independently.”

81. On May 30, 2023, the District convened an IEP meeting. At the beginning of the meeting, the Parent stated that they were going to record the meeting. The District stated that as it did not receive any prior notice of the intent to record the meeting, it was not prepared to make its own recording that day and the meeting needed to be rescheduled. The meeting was rescheduled for June 5, 2023.

82. In a May 30, 2023 email to school staff, the Case Manager wrote, “Just so that you are aware, [the Student] should always be escorted by an adult anywhere on campus. This is due to [their] elopement issues (parents fear that [the Student] will walk off campus) and [the Student] knows that [they] can walk out the gate and no alarm will go off. If [the Student] is in the office please make sure there is an adult with [them]. Call me or [the Assistant Principal] and we will escort [the Student] to class.”

The Principal responded to the Case Manager’s email, asking for more information about the need for adult escorts. The Case Manager replied, “This is from the meeting we had in March... [P]arents were worried about [the Student] just leaving campus anytime [the Student] wants. I thought for sure it was decided than an adult would be with [the Student] at all times.”

The Principal replied, “Thank you... I found the notes of the exact meeting it was discussed in.... SST on 3/7.”

83. In a May 31, 2023 email to the Autism Consultant, the Parent expressed concern about the

new FBA. "I feel the FBA provided is sorely lacking. It reports nothing of actual time spent observing [the Student]. It doesn't state anything about [their] suicidal ideations, having multiple risk assessments done in school and through [county mental health department] ..."

84. The Autism Consultant emailed District staff on May 31, 2023, writing, "[The Parent] is concerned there is not enough information in the document. I let [the Parent] know that FBAs are universal- meaning that they range from different providers and what information is commonly found in those FBAs. I also let [the Parent] know that we can speak to [the Parent's] concerns next week and add any information that the team agrees would be beneficial to add to the document."

85. On May 31, 2023 the Parent sent an email to the team, which included the following:

- a. The Parent received the Student's records requested but "did not see any documents on the actual dates/times [the Student] was provided services outlined in [their] IEP... I respectfully request those documents as well."
- b. "The FBA doesn't provide a collection of direct observation data, a key component to an FBA. It also doesn't include anything about [the Student's] emotional distress or recent suicidal thoughts and ideations. It doesn't include [their] defiance towards staff outside the classroom, and doesn't show observations during unstructured times, one of [their] largest areas of concern."

86. On June 1, 2023, the Parent filed this Complaint.

87. On June 5, 2023, the District convened an IEP meeting "to finalize and adopt the Student's updated FBA/BIP."

88. In a June 6, 2023 email to the Case Manager, the Principal wrote, "Please check your records and let me know when the Gen Ed FBA/BIP with revisions was sent to [the Parent]" following the meeting on 3/7/23."

The Case Manager responded, "So looking back at my notes, I wrote on the Gen Ed Behavior Support Plan the date March 7th, but I did not write the revisions on the Gen Ed Support Plan because [the Student's] parents signed permission for [the School Psychologist] and [the Autism Specialist/consultant] to do an actual Sped FBA and BIP. I thought that they would write all of what we talked about on the 7th into their FBA/BIP. I apologize if I did this wrong, but being that we originally started out with a Gen Ed Behavior plan and changed to a SPED FBA/BIP I didn't think I would need to write on the Gen Ed plan."

89. In a June 6, 2023 email to the Parent, the Director stated, "The IEP team did not identify a need for the AngelSense device to be used at school."

90. In a June 6, 2023 email to the Director and District team members, Parent 2 wrote, "The watch issue was raised in the 3-7-23 meeting in which it was discussed and thought to be a good idea. It was further noted that the device had been ordered and believed by the staff there that it was an accomidation [*sic*] that could be helpful for all parties... Further we had sent the request to [the Case Manager] who even mentioned that it could be added. The IEP team never had the opportunity to discuss [*sic*] the watch and the capabilities because you single-handedly denied it as an IEP option."

91. The June 15, 2023 IEP progress reports were the first that contained any specific information, including comments on how the Student was doing on their IEP goals. However, the

information was generally not measurable and did not relate back to the goal criteria. One comment noted some regression “as [the Student’s] behaviors have increased across all school settings.”

IV. DISCUSSION

General Evaluation and Reevaluation Procedures

The Parent alleges that the District violated the IDEA by not appropriately conducting a functional behavior assessment.

A reevaluation must occur if the educational or related service needs of a student warrant a reevaluation, or if the student’s parents or teacher requests a reevaluation.⁵ An evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility, continuing eligibility, or the student’s educational needs.⁶ A district must conduct an FBA and develop, review, or revise a behavior intervention plan within 45 school days of receiving parental consent if the student has an IEP and has placed themselves, other students, or staff at imminent risk of serious bodily injury as a result of the student’s behavior.⁷

A functional behavior assessment (FBA) is an individual assessment of a student that results in a hypothesis about the function of a student’s behavior and, as appropriate, recommendations for a behavior intervention plan.⁸

The Parent signed consent for the District to conduct an FBA on March 14, 2023. Although the District initially told the Parent that the FBA needed to be completed within 45 school days, this requirement did not apply as the Student did not exhibit behavior that placed themselves or anyone else in imminent risk of serious bodily injury. The FBA was completed on May 24, 2023, and the District was ready to discuss the FBA and draft BIP at the May 30, 2023. That meeting was rescheduled to June 5, 2023, 50 school days after the Parent signed consent. At the June 5, 2023 meeting the IEP team reviewed the FBA, and finalized and adopted the BIP. The District completed the FBA and convened a meeting to review the FBA and BIP within 60 school days of when the Parent signed consent.

The May 24, 2023 FBA included three behaviors that interfered with the Student’s ability to access their education; work refusal, aggression, and elopement. The FBA included data on the frequency and duration of the behaviors, as well as a hypothesis of the function of each behavior. The FBA recommended addressing the Student’s deficits in self-regulatory skills so the Student could engage in self-regulation strategies, seek out appropriate support independently, and be more successful in the classroom. There is no evidence in the record that the FBA was conducted inappropriately.

The Department does not substantiate this allegation.

When IEPs Must Be in Effect

The Parent alleges that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP. This includes failing to provide the

⁵ OAR 581-015-2105(4); 34 CFR § 300.303(a)

⁶ OAR 581-015-2110(5)(b); 34 CFR §300.301(d)

⁷ OAR 581-015-2181(2)

⁸ OAR 581-015-2181(1)(c)

Parent with appropriate reports on the progress the Student was making toward meeting their annual IEP goals, as required by the Student's IEP.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.⁹ As soon as possible after the development of the IEP, the services included therein must be made available to the student.¹⁰ The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports in accordance with the IEP.¹¹ "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."¹²

"IEP Teams must implement policies, procedures, and practices relating to... how a child's progress towards meeting annual goals will be measured and reported," to ensure that the district offers "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹³ "Parents must be able to use the IEP to monitor and enforce the services their child is to receive."¹⁴ "IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child's progress."¹⁵

The December 2022 IEP (and the March 2023 amendment) stated that progress on the Student's IEP goals would be reported in November, January, April, and June. As the Student's initial eligibility occurred on December 15, 2022, only the January and April reporting periods occurred during the complaint period. The January 27, 2023 and April 7, 2023 IEP progress reports did not contain measurable progress information. Every goal was given the same progress code, claiming that adequate progress had been made. No information was provided to indicate what the selected progress code was based on. The reports did not contain any information that demonstrated whether the Student made progress on their IEP goals.

It is uncertain to what extent the Student's SDI was provided. The District provided undated schedules for the SLP and an IA. Witnesses reported that the Student went to the SLP once a week for 30 minutes, and an IA helped the Student in the classroom four days a week for 20 minutes. The District did not maintain any services logs, progress data, or other record of SDI provided. The Case Manager and the Teacher reported that the IA helped the Student with whatever work the class was doing. The Case Manager reported that the IA struggled to get the Student to work on their IEP goals. The IA did not take any data or record the Student's progress. The Case Manager reported that the Student's IEP progress reports were based on discussions with the IA. The evidence available indicates that the Student likely received general instruction and support in the classroom rather than explicit SDI in study/organizational skills. At best, the Student's IEP services were partially implemented. The failure to provide accurate progress reports and specific SDI was a material failure to implement the Student's IEP.

The Department substantiates this allegation.

Review and Revision of IEPs

⁹ OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

¹⁰ OAR 581-015-2220(2)(b); 34 CFR §300.323(c)(2)

¹¹ OAR 581-015-2220; 34 CFR §300.323

¹² Questions and Answers on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

¹³ *Id.*

¹⁴ *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017)

¹⁵ Q&A on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

The Parent alleges that the District violated the IDEA by failing to revise the Student's IEP as appropriate to address the Student's needs.

The IEP Team must revise a student's IEP, as appropriate, to address: (1) any lack of expected progress towards the annual goals and the general education curriculum; (2) the results of any reevaluation conducted; (3) information about the student provided to, or by, the parents; (4) the student's anticipated needs; or (5) other matters.¹⁶ Measurable annual goals must be designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the student's disability.¹⁷

IEP teams must consider and, if necessary to provide FAPE, include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers."¹⁸ "For a child whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate... the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child."¹⁹

The Student had a general education behavior plan in place since 2021. A new BIP was developed in May 2022, and reportedly implemented throughout the 2022-23 school year. The District held numerous meetings to discuss the Student's behavior, in which positive behavior interventions were identified that were effective in helping the Student. It is unclear why the December 2022 IEP did not contain any information about the Student's BIP, discipline history and aggressive behavior towards peers, or accommodations for the behavior interventions that were being successfully implemented at the time.

Not all agreements made by the IEP team at IEP meetings were incorporated into the Student's IEP. At the March 7, March 14, and May 16, 2023 IEP meetings, the team determined that the Student would be provided with adult escorts to/from the bus and during transitions within the school; additional adult support at recess; access to breaks; and access to the Disciplinarian or other trusted adult when needed. These were never added to the IEP. It is unclear whether they were all added to the BIP instead. Although the team identified the need for the Student to learn self-regulation skills, the only behavior related goals in the IEP were for on task behavior and raising a hand before speaking in the classroom.

The IEP team made one revision to the IEP. On March 14, 2023 the IEP was amended to add "FBA/BIP" as an accommodation. On March 17, 2023, the May 2022 BIP was updated to include IA support and other interventions that had been discussed by the team. However, it is not known if or when school staff were provided with the updated IEP or BIP.

The Student struggled with behaviors that interfered with their ability to access SDI and the general education curriculum. The IEP did not appropriately identify the Student's behavior needs. The IEP team had a duty to review and revise the Student's IEP to accurately reflect the Student's present levels, disability related needs, and supports already being implemented.

The Department substantiates this allegation.

¹⁶ OAR 581-015-2225(1)(b); 34 CFR §300.324(b)(1)(ii)

¹⁷ OAR 581-015-2200(1)(b); 34 CFR §300.320(a)

¹⁸ Q&A on *U.S. Supreme Court Case Decision Andrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

¹⁹ Questions and Answers on Discipline Procedures, 52 IDELR 231 (OSERS 2009)

IEP Team Considerations and Special Factors

The Parent alleges that the District violated the IDEA by failing to appropriately consider the Student's behavior and assistive technology needs.

In developing, reviewing, and revising a student's IEP, the IEP team must consider the strengths of the student; the concerns of the parents for enhancing the education of the student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.²⁰ The IEP team must also consider special factors, including the communication needs of the student and whether the student needs assistive technology devices and services.²¹ For a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior. If, in considering these special factors, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) for the student to receive free appropriate public education (FAPE), the IEP team must include a statement to that effect in the student's IEP.²²

The goal in making IEP decisions is for the team to reach a consensus.²³ Nonetheless, the school district is responsible for ensuring that the individual student receive FAPE.²⁴ When consensus is not possible, the district must determine what services are necessary to provide FAPE.²⁵

As discussed above, the IEP team did not appropriately consider the Student's behavior needs or include sufficient supports and services into the Student's IEP to meet the Student's behavior related needs.

The Parent requested that the AngelSense device be added to the Student's IEP as an assistive technology device. The Parent stated that the device was necessary for the Student's safety and emotional well-being. The record reflects that the IEP team specifically discussed whether the Student needed the device to receive FAPE at the May 16, 2023 IEP meeting. The IEP team considered the device and determined that it was not necessary. Although the Parent disagreed with this conclusion, the District had the authority to make the decision.

The Department substantiates this allegation in part.

Nonacademic Settings

The Parent alleges that the District failed to ensure that the Student participated with children who do not have a disability in nonacademic and extracurricular services and activities to the maximum extent appropriate.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, districts must ensure that each child with a disability participates with children who do not have a disability in the extracurricular services and activities to the maximum extent

²⁰ OAR 581-015-2205(1); 34 CFR §300.324(a)

²¹ OAR 581-015-2205(2); 34 CFR §300.324(a)

²² OAR 581-015-2205(4)

²³ Letter to Richards (OSEP 1/7/2010)

²⁴ *Id.*

²⁵ *Id.*

appropriate to the needs of that child.²⁶ Districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to afford children with disabilities an equal opportunity for participation in those services and activities.²⁷ If a student needs a specific support or service to afford the student an equal opportunity to participate, the support or service should be addressed in the Student's IEP.²⁸

The District does not dispute that the Teacher told the Parent the Student could not attend the swimming and hiking field trips if one of the Student's parents did not come. The District stated this was a misunderstanding on the part of the Teacher, which was brought to the District's attention at the May 16, 2023 IEP meeting. The District reported that the Teacher was then (1) informed that the Student's participation in field trips cannot be conditioned on a parent's attendance and (2) notified that the District will provide additional adult support for field trips when needed.

Although initially told by the Teacher on May 9, 2023 that the Parent would have to attend the June 1, 2023 hiking field trip, the District resolved the situation when it determined that the Disciplinarian would attend the field trip and notified the Parent that they were not required to attend. Ultimately, the Parent decided to allow the Student to skip the June 1, 2023 field trip. However, the Parent did chaperone class swimming lessons from May 15 to May 19, 2023 after being told that they were required to attend.

The Department substantiates this allegation.

V. CORRECTIVE ACTION²⁹
In the Matter of Eagle Point School District 9
Case No. 23-054-020

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

Action Required	Submissions	Due Date
<p>1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to Student's IEP. The Compensatory Education to be offered to the Parent shall include at least:</p> <ul style="list-style-type: none"> • 13 hours of organizational/study skills; and • 2 hours of communication skills. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver this SDI.³⁰</p>	<p>The District shall submit the following to the Legal Specialist:</p> <p>Completed plan for delivery of Compensatory Education developed in IEP meeting with Parent;</p> <p>Evidence showing compensatory education was provided.</p>	<p style="text-align: center;">October 15, 2023</p> <p style="text-align: center;">July 1, 2024</p>

²⁶ OAR 581-015-2255; 34 CFR §300.107

²⁷ OAR 581-015-2070; 34 CFR §300.117

²⁸ *Tillamook Sch. Dist. 9*, 65 IDELR 119 (SEA OR 2015) (citing *Independent Sch. Dist. No. 12, Centennial v. Minnesota Dep't of Educ.*, 55 IDELR 140 (Minn. 2010))

²⁹ 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)).

³⁰ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email

<p>2. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this Student receive training in each of the following areas:</p> <ul style="list-style-type: none"> • IEP Implementation; • Progress Monitoring; • Review and Revision of IEPs; • IEP Team Considerations and Special Factors; and • Nonacademic Settings and Services. 	<p>Training agenda/materials to Legal Specialist for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>November 15, 2023</p> <p>December 15, 2023</p>
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Dated: this 31st Day of July 2023

Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: July 31, 2023

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).)