

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Gladstone School District 115

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-021

I. BACKGROUND

On June 6, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Gladstone School District 115 (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parents 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 12, 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 26, 2023. On June 23, 2023, the Parent agreed to pause the investigation while the parties attended mediation. On October 2, 2023, the parties determined that the issues could not be resolved through the mediation process, and the investigation resumed.

The District submitted a *Response* on October 5, 2023, denying the allegations, providing an explanation, and submitting a portion of the requested documents in support of the District's position. The Investigator requested that the District submit all relevant materials, and the District submitted additional materials on October 27, 2023. The District submitted the following relevant items:

1. Occupational Therapy Update, 10/3/22
2. Preschool Observation, 5/18/22
3. Email, re: behavior goal, 6/7/22
4. Email, re: today 9/12, 9/12/22
5. Email, re: re-enrollment at [School], 12/2/22
6. Discipline Referral, 9/8/22
7. Discipline Referral, 9/9/22
8. District Center for Children Daily Attendance, 8/9/22-11/4/22
9. Document, Email Correspondence, 2022-2023
10. District School District Contact List, no date
11. Individualized Education Program, 2/2/22

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

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

12. Summary of Present Levels of Academic Achievement and Functional Performance
2/2/22
13. Special Factors for IEP Development, 2/2/22
14. Statewide Assessments, 2/2/22
15. Measurable Annual Goals, 2/2/22
16. Service Summary, 2/2/22
17. Special Education Placement Determination, 6/6/22
18. Education Placement Discussion, 6/6/22
19. Prior Written Notice, 6/6/22
20. Notice of Team Meeting, 5/20/22
21. Meeting Notes, 6/6/22
22. Prior Written Notice, 6/10/22
23. Prior Written Notice, 8/10/22
24. Prior Written Notice, 8/22/22
25. Progress Monitoring: Data Collection, 9/14/22
26. Progress Monitoring: Data Collection, 9/12/22
27. IEP Meeting Agenda, 9/26/22
28. Notice of Team Meeting, 9/16/22
29. Individualized Education Program, 9/26/22
30. Summary of Present Levels of Academic Achievement and Functional Performance,
9/26/22
31. Special Factors for IEP Development, 9/26/22
32. Measurable Annual Goals, 9/26/22
33. Service Summary, 9/26/22
34. District Contact List, no date
35. Prior Written Notice, 6/6/22
36. Individualized Education Program, 2/2/22
37. Summary of Present Levels of Academic Achievement and Functional Performance,
2/2/22
38. Special Factors for IEP Development, 2/2/22
39. Required Testing and Assessment, 2/2/22
40. Measurable Annual Goals, 2/2/22
41. Service Summary, 2/2/22
42. Special Education Placement Determination, 6/6/22, docusigned
43. Educational Placement Discussion, 6/6/22
44. Meeting Notes, 6/6/22
45. Individualized Family Service Plan (IFSP) 4/27/22
46. Individualized Family Service Plan (IFSP) 2/2/22
47. Individualized Family Service Plan Participants, 4/27/22 (cont)
48. Individualized Family Service Plan Developmental Information, 4/27/22 (cont)
49. Individualized Family Service Plan Transition from Early Intervention, 4/27/22
50. Individualized Family Service Plan Placement Decision 4/27/22
51. Occupational Therapy Evaluation Report, 3/4/22
52. Statement of Eligibility for Special Education [Developmental Delay], 2/1/21
53. Autism Spectrum Disorder Evaluation Report, 11/8/18
54. Meeting Notes, 6/6/22
55. Pediatric Occupational Therapy, 5/19/22
56. Special Education Placement Determination 6/6/22
57. Progress Monitoring: Data Collection Tracking 9/12/22
58. Prior Written Notice, 8/10/22
59. Prior Written Notice, 8/22/22
60. Prior Written Notice, 6/6/22

61. Prior Written Notice, 6/10/22
62. Email, re: Regarding our conversation on October 27, I would like to provide further details, no date
63. Draft Agenda-[Student] IEP meeting, 10/3/22
64. Agenda [Student] IEP meeting, 9/26/22
65. Meeting Notes, 9/26/22
66. Notice of Team Meeting, 9/16/22
67. Prior Written Notice, 10/4/22
68. Prior Written Notice, 10/7/22
69. Parent Guardian Consent for Individual Evaluation, 9/26/22
70. Individualized Education Program, 9/26/22
71. Emails 6/7/22-12/2/22

The Parent submitted a *Reply* on October 13, 2022, providing an explanation and rebuttal and documents in support of the Parents' position, as well as additional documents submitted on November 1, 2023. The Parent submitted the following relevant items:

1. School District - Case #23-054-021, no date
2. How to Authenticate This Official PDF Transcript, no date
3. Oregon State University Transcript, 11/2/21
4. Text Message, no date
5. Email, re: do we want to respond?, 8/22/22
6. Email, re: passing this along, 2/16/23
7. Document [Parent summary], no date
8. IEP Team considerations and Special Factors, no date
9. Photos, re: body parts, no date
10. Email, re: educational records: meeting notes/incident report, 11/11/22
11. Email, re: availability for a meeting tomorrow - Friday, December 16, 2022, 12/15/22
12. Email, re: IEP meeting request, 8/19/22
13. Email, re: re-enrollment at [School], 12/2/22
14. Email, re: work ready, 10/28/22
15. Email, re: educational records: meeting notes/incident report, 11/11/22, duplicate
16. Email, re: parent request of ESD staff at IEP meeting, 6/14/22
17. Daily Attendance Profile, 2022-2023
18. Email, re: behavior goal, 6/7/22
19. Email, re: today 9/12, 9/12/22
20. Email, re: attendance profile, 10/10/22

The Complaint Investigator interviewed District personnel on October 27, 2023. On October 25, 2023, the Complaint Investigator interviewed the Parent. 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 Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 7, 2022, to the filing of this Complaint on June 6, 2023.

Allegations	Conclusions
<p>IEP Team</p> <p>The Complaint alleged that the District violated the IDEA when the Student’s pre-school teacher did not attend the June 6, 2022 IEP meeting; and a qualified District representative did not attend the September 26, 2022 IEP meeting.</p> <p>(OAR 581-015-2210, OAR 581-015-2805(3); 34 CFR §300.321)</p>	<p>Not Substantiated</p> <p>The District met with ECSE staff to prepare the development of the Student’s IEP. A qualified District representative attended the September 26, 2022 IEP meeting.</p>
<p>Content of IEP</p> <p>The Complaint alleged that the District violated the IDEA when the Student’s June 6, 2022, IEP failed to include data that supported a change in services, current or relevant academic goals, mutually agreeable behavior goal, occupational therapy, speech, and classroom observation information provided by the Parents, accurate information about the Student’s math skills, appropriate service levels for OT, and an adequate amount of direct support from an instructional assistant trained in working with students with autism. Further, the Complaint alleges the IEP failed to include homebound instruction after the Student experienced traumatic events at school.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>Not Substantiated</p> <ol style="list-style-type: none"> 1. The IEP included recent data, 2. The IEP included IEP goals aligned with the Student’s present levels of performance, 3. The IEP included a behavior goal that the District requested additional feedback from the Parent to complete, who requested it be completed in a future IEP meeting, 4. The IEP included information about the Student’s speech needs and goals, and information and some recommendation from the Private OT, 5. The IEP included information from the most recent IFSP, and the District agreed to make revisions to the IEP once data was collected, 6. The IEP included OT as a related service, and consultation to school staff from an OT, and 7. The IEP included consultation to school staff by an autism specialist, and the

	<p>paraprofessionals received training on implementing the Student's IEP.</p>
<p>Special Education Placement in the Least Restrictive Environment (LRE)</p> <p>The Complaint alleged that the District violated the IDEA by not providing the Student with the appropriate special education placement in the least restrictive environment when the Student's placement was changed from a 1:4 to a 1:12 adult-to-student ratio. Further, the Complaint alleges that the District failed to consider the Parent's request for an outside placement and also refused a request for a homebound instruction placement.</p> <p>(OAR 581-015-2240, OAR 581-015-2250; 34 CFR §§ 300.116, 300.224)</p>	<p>Not Substantiated</p> <p>The District implemented the Student's IEP in the LRE. The District was not required to provide special education services in a religious private school.</p>
<p>Review and Revision of IEPs</p> <p>The Complaint alleged that the District violated the IDEA when it refused multiple times to meet with the Parents and failed to respond to the Parent's requests for IEP meetings.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p>Not Substantiated</p> <p>In the fall of 2022, the District scheduled an IEP meeting at the Parent's request. The District made multiple attempts to reschedule IEP meetings with the Parent.</p>
<p>Prior Written Notice (PWN)</p> <p>The Complaint alleged that the District violated the IDEA by not providing the Parent with PWN when the District refused the Parents' request for an outside placement and homebound instruction.</p> <p>(OAR 581-015-2310; 34 CFR §300.421)</p>	<p>Not Substantiated</p> <p>The District issued multiple PWNs regarding the Parent's requests for an outside placement. The IEP team had not convened to consider the Parent's request for homebound instruction. Therefore, a PWN was not required.</p>
<p>Lists of Records-Access to Records</p> <p>The Complaint alleged that the District violated the IDEA when it failed to provide the Parent with an accurate list of the types and locations of information being maintained on the Student by the District and any outside agencies that the District had contracted with to provide services or consultations within 45 calendar days.</p> <p>(OAR 581-015-2300, 34 CFR §§ 300.613, 300.616)</p>	<p>Not Substantiated</p> <p>The District provided the Parent two opportunities to inspect the Student's original educational records in their possession.</p>
<p>When IEPs Must Be In Effect</p>	<p>Not Substantiated</p>

<p>The Complaint alleged that the District violated the IDEA when it failed to implement a bathroom schedule or pre-warning for transitions, which were accommodations described in the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>The Student was provided access to bathroom breaks and support for transitions.</p>
<p>Independent Educational Evaluation (IEE)</p> <p>The Complaint alleged that the District violated the IDEA when it failed to provide an IEE when requested by the Parents.</p> <p>(OAR 581-015-2305; 34 CFR §300.502)</p>	<p>Substantiated</p> <p>The District unreasonably delayed the initiation of the Parent's requested IEE.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<p>The Parents requested that the Department order the District to take the following corrective action:</p> <ol style="list-style-type: none"> 1. Require District appropriate District Staff to receive the training, <i>Education in Autism-Autism Core Concepts</i> at Portland State University; 2. Reimbursement/pay for private tutoring; 3. Pay for speech services; 4. Reimbursement/pay for OT; and 5. Report any IDEA violations committed by District staff to the Teacher Standards and Practices Commission.

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 7, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student's disability and special education history.

1. The Student was six years old and was enrolled in the District's public school kindergarten on August 29, 2022.
2. The Student was eligible for special education as a child with an Autism Spectrum Disorder (ASD).
3. Before enrollment at the School, the Student attended an early childhood preschool and received special education services through an Individualized Family Service Plan (IFSP). On March 11, 2022, the District met with the Early Childhood Special Education Providers to discuss the Student's transition to kindergarten.
4. The transition to kindergarten IEP, dated February 2, 2022 included:
 - a. Parent concerns:

- i. “[Student’s] [Parent] indicates that the current Early Childhood classroom is a very restrictive environment. [Student] has received special education with only special education peers since 4/2021. In March 2021 [Student] was in a private preschool where [Student] interacted with typically developing peers. From 4/2021 until now [Student] has been in a very restrictive environment, particularly given the nature of [Student] disability. [Parent] stated that he needs to relate to typically developing peers. She wants him to have access to typically developing peers. She is also concerned that [Student] was denied FAPE in [Student’s] ECSE program (3-5 year old) - [Student] did not receive any special education services. In Fall 2020 Zoom services were offered but [Parent] does not believe these services are appropriate for a child with [Student’s] profile. [Parent] also thinks that [Student’s] service providers wearing masks (12/2021) inhibited [Student’s] ability to engage with service providers. [Student] has strong academic skills and because of this [Parent] does not support a placement for [Student] where [Student] is put in a restrictive environment. [Parent] wants [Student] around typically developing peers. [Parent] is frustrated that the school district has not shared what placement that are available to [Student] prior to this meeting.”
- b. The Student’s present level of academic performance:
 - i. “[Student] can count from one to ten and enjoys books and reading time;
 - ii. [Student] can recognize [their] name and other people’s names;
 - iii. [Student] is able to tell a story with up to six details and can properly sequence a story; and
 - iv. [Student] knows at least eight colors and five shapes.”
- c. The annual IEP goals and baseline statements included:
 - i. “By February 2023, [Student] will verbally count to 100 and will identify numbers one through 20 when given a prompt to count or when shown a visual representation of numbers with 100% accuracy. [Student] is counting to twenty but skips 16, 17 or 18. [Student] is identifying numbers to 10.”
 - ii. “By February 2023, When given visual supports and reinforcement, [Student] will complete a three-step routine (e.g., hang up backpack, hang up coat, transition to desk/work table) with 80% accuracy. [Student] is currently completing an arrival routine about 35% of the time. [Student] does not independently participate in a cleanup routine more than about 10% of the time, 30% of the time with adult support. [Student] does not independently transition from class to recess but [Student] does participate in small group activities (particularly those [Student] enjoys).”
 - iii. “By February 2023, When presented with a problem (non-preferred task, frustrating situation, criticism/correction), [Student] will accurately determine the appropriate emotional response (take a break, talk with teacher, take a deep breath, calming corner, etc.) and return to task at hand within 5 minutes in 4 out of 5 trials as measured by teacher charted data. [Student] adjusts [their] own actions about 20% of the time based on peer response or interaction. [Student] engages in an action/activity with a peer about 40% of the time with adult support. [Student] remains engaged with a peer about 30% of the time.”
 - iv. “By February 2023, [Student] will use words to navigate social problems with peers or adults by identifying the problem, the feelings that might be felt, and offering a solution to the problem in 70% of opportunities as measured by SLP data. [Student] looks and states how a peer/adult is feeling about 70% of the time. [Student] states what the problem may be about 53% of the time and

- offers a possible solution about 26% of the time.”
- v. “By February 2023, [Student] will demonstrate joint attention when an adult is giving [Student] directions or asking [Student] questions in 70% of opportunities as measured by SLP data. [Student] responds well to a physical touch and visual cue prior to being asked a question. When given this prompt [Student] responds to the adult at least 85% of the time. [Student] responds to the direction/question about 25% of the time. [Student] follows the direction about 10% of the time.”
- d. The Service Summary included specially designed instruction (SDI) and related services:
 - i. 60 minutes weekly of SDI in Behavior provided by the Special Education Teacher;
 - ii. 30 minutes of SDI weekly in Communication Skills provided by the Speech Language Pathologist;
 - iii. 40 minutes SDI weekly in Academic Readiness Skills provided by the Special Education Teacher;
 - iv. 30 minutes monthly of related services in Occupational Therapy provided by the District Occupational Therapist;
 - v. 30 minutes of Transportation daily provided by the Bus Driver; and
 - vi. The services were to begin on August 29, 2022, and end on February 1, 2023.
 - e. The Supports for School Personnel included 60 minutes per year of consultation to school staff by an Occupational Therapist and 120 minutes per year of consultation to school staff by an Autism Specialist. These supports were to begin on August 29, 2022, and end on February 1, 2023.
 - f. Except for transportation, the anticipated location for services was “Schoolwide.” The Service Summary indicated that the following accommodations and modifications would be provided in the schoolwide setting:
 - i. Bathroom schedule (15 minutes per week);
 - ii. Visual prompts for activities/tasks (15 minutes per week);
 - iii. Seated in [*sic*] near an adult (15 minutes per week);
 - iv. First/then language and visual for non-preferred activities (30 minutes per week);
 - v. Daily visual schedule (30 minutes per week);
 - vi. Prewarning for transitions and use of transition timers (30 minutes per week);
 - vii. Paraprofessional support for assistance with following visual schedule and routines (225 minutes per week); and
 - viii. Paraprofessional support for transitions (150 minutes per week).
 - g. The Statement of Nonparticipation Justification reflected that the Student would be removed from the general education classroom to receive specially designed instruction (SDI) and related services in Speech: “The team determined that special education services will be a combination of in class and out of class as indicated in the service minutes.” The explanation and justification for the team’s decision indicated: “The team has determined that [Student] will be removed from the general education setting in order to work on [their] specially designed instruction and Speech goals.” (D55)
5. On April 22, 2022, the Student’s IFSP was revised. Meeting participants included Subcontractor Representative 1, Subcontractor Representative 2, the Parent, the Early

Childhood Special Education (ECSE) Specialist/Service Coordinator, the Evaluator, and the District Representative/Special Education Coordinator.

- a. The special education and related services were to be provided in the community preschool setting and at the ECSE program site.
- b. The Developmental Information page and progress monitoring data included the Student's strengths and abilities. The Student's cognitive abilities included:
 - i. Solving common problems;
 - ii. Matching and sorting on basis of physical attribute;
 - iii. Counting 1-20, and as high as ninety-nine; "still skips over 16, 17, or 18";
 - iv. Counting at least ten objects;
 - v. Identifying and labeling numbers 1-10;
 - vi. Identifying R, S, and L 100% of the time;
 - vii. Identifying letter E 10% of the time;
 - viii. Recognizing their name;
 - ix. Recognizing other names;
 - x. Enjoying books and shared reading times;
 - xi. Understanding the sequence of a story;
 - xii. Telling stories with five to six details;
 - xiii. Showing a desire for social attention;
 - xiv. Demonstrating an understanding of eight colors; and
 - xv. Demonstrating an understanding of five shapes.
- c. The Student's adaptive skills included:
 - i. Sticking with preferred activities;
 - ii. Greeting family and familiar adults; and
 - iii. Initiating interactions with preferred adults.
- d. The Student's social or emotional skills included:
 - i. Showing a desire for social attention;
 - ii. Communicating likes and dislikes.
 - iii. Participating in established routines;
 - iv. Sharing and turn-taking with peers (with support);
 - v. Attending to adult-led group (emergent);
 - vi. Shows independent behaviors;
 - vii. Meeting observable physical needs in socially appropriate ways;
 - viii. Establishing and maintaining proximity with peers;
 - ix. Participating in established social routines;
 - x. Responding appropriately to a familiar adult's affect;
 - xi. Initiating and maintaining interaction with a preferred adult;
 - xii. Engaging in several turn-taking games with classmates for up to 15 minutes at time (School);
 - xiii. Attending to a series of different activities for about 45 minutes (Parent);
 - xiv. With support, sharing and turn-taking with peers; and
 - xv. Communicating likes and dislikes.
- e. Regarding the Student's receptive language, the IFSP indicated: "According to the standardized testing, skills in the area of receptive language were within the typical range compared to children of the same age." The Student's expressive and receptive communication skills included:
 - i. Understanding 1-step routine directions;

- ii. Understanding and following many 2-step directions;
 - iii. Following novel directions (emergent);
 - iv. Varying voice to impart meaning;
 - v. Using words, phrases, or sentences:
 - To express anticipated outcomes;
 - To describe pretend objects, events; or people;
 - To make commands to and requests of others;
 - To obtain information;
 - To ask questions for clarification; and
 - To respond to contingent questions;
- f. Regarding the Student's fine motor skills, The IFSP indicated: "According to the standardized testing, [Student's] skills in this area are within typical age range at this time." The Student's fine motor skills included:
- i. Turning pages of a book;
 - ii. Using an immature grasp with writing utensils such as Crayola marker;
 - iii. Allowing hand-over-hand repositioning from an adult;
 - iv. Unzipping coat;
 - v. Making directional lines (emerging);
 - vi. Grasping writing utensils (immature);
 - vii. Opening lunch box;
 - viii. Closing lunch containers; and
 - ix. Using two hands to manipulate objects; each hand performs different movements.
- g. The Student's gross motor skills were not indicated as an area of concern. The Student's skills included:
- i. Avoiding obstacles while running;
 - ii. Alternating feet walking up- and downstairs;
 - iii. Jumping forward;
 - iv. Kicking balls; and
 - v. Throwing balls.
- h. The IFSP Goals and Objectives included cognitive, adaptive, and social emotional goals. The ECSE providers completed progress monitoring on each goal area on March 30, 2022; the progress monitoring data were reflected on the revised IFSP dated April 22, 2022.
- i. The Student's cognitive goal and short-term objectives consisted of:
- i. Count to ten using 1:1 correspondence (goal met per criteria);
 - a. Progress monitoring notes indicated: "Though [Student] is counting to 20, [Student] still skips over 16, 17, or 18."
 - ii. Identify or label numbers 1-10 (goal met per criteria);
 - iii. Identify and/or label letters of their name.
 - a. Progress monitoring notes indicated: "[Student] is identifying letters R, S, and L 100% of the time. [Student] is not yet identifying the letters U and E. 10% of the time [Student] will get E."
 - iv. Show an understanding of quantitative concepts (goal met per criteria);
 - a. Progress monitoring notes indicated: "[Student] knows how many more [they need] to get to ten after counting to 6. 'I need three more cars'".
 - v. Provided name example (traceable, dot-dot, highlighted), [Student] will trace [their] name using a tripod grasp. Student] made progress sufficient to meet

- goal).
- a. Progress monitoring notes indicated: "Student benefits from adult support, positioning pen/marker, someone sitting with [them] until the completion of [their name]. [Student] does complete [their] name when these supports are provided. [Student] is completing this up to criteria when presented to it by an adult... [Student] needs support when holding [their] pen/marker."
- j. The Student's adaptive goal and short-term objectives consisted of:
- i. [Student] will independently transition between activities and participate in classroom routines:
 - a. Complete arrival routine (ex: hang up coat and backpack):
 - Progress monitoring notes indicated: Not yet according to criteria. [Student] is completing this 35% of the time. [Student] needs adult support getting [their] backpack and coat from [their] cubby [Student] benefits from visual supports when providing verbal directions."
 - b. Clean up toys when requested;
 - Progress monitoring notes indicated: "Not yet according to criteria. [Student] is completing this task 10% of the time. When provided with adult support [Student] is completing this task 30% of the time, [they] benefit from wait time, as well as visual + verbal directions. When cleaning up [their] lunch for example, [Student] completes the task about 75% of the time with adult support, redirection, and verbal directions."
 - c. Transition smoothly between activities (ex: line up to go to the playground):
 - Progress monitoring notes indicated: Not yet according to criteria. [Student] is completing this task 20% of the time.... [Student] is able to transition more smoothly when offered a map describing the route that [they] will take, or when using written directions, 1st, then, next. When offered visual supports [Student] is completing task up to criteria, but not yet independently."
 - d. Come to and participate in small group activities such as art or snack (ex: by answering questions, singing songs, completing a project):
 - Progress monitoring notes indicated: "[Student] is completing this up to criteria, especially when the activity is something [Student] really enjoys. Specific songs, and art will [Student] really interested, while others [Student] finds less interest in;"
 - e. Transition smoothly between activities (ex: line up to go to the playground):
 - Within 5 minutes of transition cue:
 - Within 3 minutes of transition cue:
 - At the transition cue:
 - i. Progress monitoring notes indicated: "a b and c [sic]. Not yet according to criteria. [Student] continues to struggle when it is time to transition back into the school. [Student] is not yet completing this task. [Student] benefits from adult supports, hand over hand supports as well as visual supports and verbal directions, as well as redirections."
 - f. Come to and participate in adult led activities (such as art or circle):

- Progress monitoring notes indicated: “Goal met. [Student] benefits from the use of an adaptive chair. [Student] is not yet attending art activities without adult hand over hand supports. [Student] has an easier time participating in activities when [Student] finds them to be of interest...”
- k. The Student’s adaptive goal and short-term objectives consisted of:
 - i. Inside when [Student] is provided with motivating activities, structured to facilitate interaction with a partner, [Student] will:
 - a. Orient to partner using proximity and eye gaze;
 - b. Reference partner and activity by looking back and forth between partner and materials;
 - c. Anticipate and adjust [Student’s] own actions in response to partner’s actions; and
 - d. Repeat action/activity 2-3 times.
 - l. The placement determination selected was a community preschool. The reasons noted were, “[Student] is currently attending a community preschool. Team agrees that the community setting will continue to provide numerous opportunities to work on [Student’s] Individualized Family Service Plan goals and objectives and would best meet [Student’s] developmental needs at this time.”
6. On May 20, 2022, a Notice of Team Meeting was generated for an IEP meeting scheduled to take place on May 23, 2022. The purpose of the meeting was to “...[d]evelop or review an individualized education program (IEP) and placement for [the] child. The development of the IEP will be based on information from a variety of sources, including the most recent evaluation, progress reports, test results, and information from [Parent].” An additional purpose of the meeting was identified as: “Transition from IFSP to IEP, Discuss Kindergarten.”
 7. According to the Private Occupational Therapist’s May 19, 2022, Summary and Recommendations, the Student began working with the Private Occupational Therapist in September 2018. “[Student] began private daycare in the summer of 2019, and there was a slowing in [their] development and an increase in behaviors that demonstrated dysregulation and difficulty with focus.” Increased occupational therapy services and “parent focus increased intervention” resulted in “more appropriate development...”. When the pandemic resulted in more time at home, the Student’s “behaviors and engagement again shifted, [Student] became easily upset [and] less responsive to verbal engagement...”.
 8. According to the Private Occupational Therapist’s May 19, 2022 Summary and Recommendations, the recommended goals included:
 - a. With support and structure visually and verbally presented, [Student] will remain on task to the end of a given task;
 - b. [Student] will follow the structure and routine of a classroom, given the support for understanding when to follow and when to transition; and
 - c. [Student] will decrease [their] avoidant behaviors and increase [their] sense of competence and recognition of success.”
 9. On June 6, 2022, the team held an IEP meeting to address the Student’s transition from Early Childhood Special Education (ECSE) to Kindergarten. The Meeting Notes reflected the attendance of meeting participants: the Parent, the Principal, the District Occupational Therapist, the General Education Teacher, the Special Education Teacher, The Speech Language Pathologist, the Private Occupational Therapist, and the DHS Designee.
 - a. The District’s IEP meeting notes reflected that the purpose of the meeting was to discuss the transition from ECSE to school age special education and review the draft

- IEP and services. “[Director of Special Services] shared a transition document (RS ECSE Information Share) which was a summary of the transition form from preschool (ECSE) to kindergarten.”
- b. During the IEP meeting, the Parent expressed a strong preference for the Student to have access to typically developing peers. The Parent shared that the Student needed to work on peer relationships and how to relate in a “sound way to peers.” The Parent also pointed out that since April 2021, the Student’s placement had been “very restrictive”; the Student had not received special education services with nondisabled students since March 2021. “I feel [Student] has very strong academic skills. And so, I do not...think it...appropriate to have a...placement where...[Student]...is put...in a very restrictive environment.”
 - c. The District’s IEP meeting notes indicated that the Parent objected to the drafted math goal because “[Student] can already count to one hundred and can identify numbers up to twenty.” The Parent questioned whether anyone from the District had conducted a formal observation of the Student. The Director of Special Services responded that the goal was based on the Student’s current IFSP and information provided to the District by the Student’s ECSE provider. “When we met with [ECSE Special Education Teacher], [they] reported counting to 20, but [Student] skips 16, 17, and 18.” The Director of Special Services added that they “had [informally] observed the Student multiple times.”
 - d. The Parent stated they could provide the team with a written observation of the Student. The Director of Special Services indicated the District did not have a written observation; they compared the transition to kindergarten process to an out-of-state transfer meeting. “So, we take that IEP...and we do a transfer of comparable services. So that’s similar to what we’re doing right now, moving it from an IFSP to an IEP.”
 - e. The Director of Special Services stated that the Student was working on the letters in [their] name. The Parent asserted that the information was outdated; the Student could already spell their name. The Parent added that “part of the writing an [sic] IEP is making sure that...information is current and accurate” and that the “goal of counting to 100, that’s not special education, that’s what every kindergartener... should be focusing on. So, it isn’t really specially designed instructions [sic] that’s unique to [Student].”
 - f. The Director of Special Services explained that the Student “will get it [SDI] in gen ed [sic] with [their] teacher.” “And [Student] may need...some more specially designed instruction that [Student] would receive in a gen ed [sic] classroom for that skill...Like I said, once we start working with [Student], we can certainly update that goal, amend [Student’s] IEP.”
 - g. According to the District IEP Meeting Notes, the Private Occupational Therapist reported that the Student’s avoidant behaviors were “very impactful.” The Private Occupational Therapist proposed a goal to decrease avoidant behaviors and increase “[Student’s]...recognition of success in District with support...” The Special Education Coordinator proposed that the academic readiness goal could address work avoidance through an objective around following multi-step directions.
 - h. Based on the Service Summary, the Student would receive 30 minutes each week of Occupational Therapy as a related service. The Special Education Coordinator explained that in the District, “OT is working as a supportive service; the Occupational Therapist would be “supporting these goals, not providing specially designed instruction.” The Occupational Therapist added, “That doesn’t mean we can’t create a goal... [for] maybe the special ed [sic] teacher or...support for any other related service people...[O]ur proposition is that there’ll be 30 minutes every month supporting these SDI...supports.”
 - i. The Parent stated that 30 minutes per week was inadequate. “The help [Student]

- needs are...direct instruction, explicit instruction that if...the person providing the services sees that [Student's] struggling...then that person can come on site. I want that to be a specialist who is trained in that particular help...And what you're proposing right now feels like [Student's] just gonna be plopped in there...with thirty minutes consult. That's not enough. So, I'm adamantly saying that [Student] needs direct service each and every week...maybe 45 minutes, 3 times a week..."
- j. The Special Education Coordinator clarified that occupational therapy is a related service and noted, inaccurately, "It's a related service, which then makes it direct instruction."
 - k. The Parent expressed frustration that the District had not shared the placement options that were available to the Student. "And it feels like that...was done purposefully to bring me to this meeting and blindside me.... I believe it was February's meeting of this year, I asked... [Special Education Coordinator] ...what are some typical placements that kids...like [Student's] learning profile get. And they absolutely refused. And [Director of Special Services] has refused. I even asked...the Assistant Superintendent on Monday, asking for those options."
 - l. The Director of Special Services informed the Parent, "I cannot predetermine placement, that's what IEP teams do." The Parent stated that the lack of communication about placement options in advance of the IEP felt as though placement was predetermined because the District "met prior to this meeting and drafted this IEP." The Parent pointed out, "And I wasn't included in that process...We need... to be very clear that there are no spontaneous, um, placement options that are being generated at this meeting."
 - m. The Director of Special Services proposed the Student: "spend time in [their] regular kindergarten classroom with support provided within the classroom." The Director of Special Services indicated that the Student would receive special education services from the Autism Specialist, the Special Education Teacher, the Speech Language Pathologist, the Occupational Therapist, and paraprofessionals who are designated for special education. "[Student] may be removed from the classroom to get some...individualized support, or small group for specific skills training....[W]e will meet, uh, at the school at least once a year....But...if [Student] is not making progress, I would recommend that we meet earlier." (**Director of Special Services, P8, 17:33**)
 - n. During interviews, the Parent was asked how they knew that the private school was the best placement for the Student. The Parent stated that the Student needed: "a very peaceful, structured, quiet environment." Based on the Parent's observation of the District's jumpstart class, the District class was "very chaotic....[and] very loud. It...didn't feel like the teacher had a really good handle on ...the kids' behavior."
 - o. The Parent recalled that: "the only other [placement] option they gave me was a ...self-contained classroom and...I visited that. And [Student's] intellect and [their] abilities are so far beyond that." The Parent reflected, "That [District] placement was the wrong placement for [Student] and [Student] was...traumatized and we're still working through that."
 - p. The Special Education Placement Determination indicated the placement "was based on the child's IEP dated February 2, 2022, the most recent evaluations..., and [i]nformation provided by the ECSE service providers and progress notes from within the ECSE program."
 - i. The Parent did not agree with the placement determination.
 - ii. The Parent recalled that the Director of Special Services claimed that the ESCE provider: "made it very well known to us that [Student] can be, will be successful at the District's Center for Children and Families."

10. The Parent indicated they did not have open communication from the District.

11. On June 6, 2022, a Prior Written Notice (PWN) was generated and indicated:
 - a. The PWN identified "Provision of FAPE" as the action proposed or refused by the district. "[District] met with [Student's Parent] ...as well other IEP team members to review the Individualized Education Plan [*sic*] (IEP) that was written for [Student] based on [Student's] Individualized Family Service Plan (IFSP)." The (PWN) reflected that the IEP "will be implemented, as written, when [Student] starts kindergarten at the [School] in the Fall of 2022."
 - b. The PWN described each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action: "Early Childhood Special Education Evaluation Report (1/27/2000), Autism Spectrum Disorder Evaluation Report (11/6/2018), Occupational Therapy Evaluation Report (3/4/2002), meeting between ECSE service providers and school district special education staff (March, 2022), and most recent IFSP (4/27/2022).
 - c. "[Student's Parent] is in disagreement with the placement offered for [Student] and [Parent] would prefer that [Student] attend the [Private School] ..."
 - d. Early Childhood Special Education Evaluation Report (1/27/2000) [*sic*], Autism Spectrum Disorder Evaluation Report (11/6/2018), Occupational Therapy Evaluation Report (3/4/2002), meeting between ECSE service providers and school district special education staff (March 2022), and most recent IFSP (4/27/2022).
12. On June 6, 2022, a Special Education Placement Determination was generated.
 - a. The document reflected that the team consisted of the Parent, the Autism Specialist, the Special Education Coordinator/District Representative, the Kindergarten Teacher, the Principal, the Special Education Teacher, and the Speech Language Pathologist. The Director of Special Services served as the District Representative and the Special Education Coordinator served as the Special Education Teacher.
 - b. The Special Education Placement Determination indicated that the team considered two placement options for the Student: "80% or more in the regular classroom and 40% to 79% of the day in the regular classroom. The team selected 80% or more in the regular classroom: "[Student] would spend the majority of [their] school day in a general education kindergarten classroom with special education support provided within the classroom as well as pull-out support for identified areas of need."
 - c. The Special Education Placement Determination indicated that the team considered modifications/supplementary aids and services. The team identified: "Adult support within the classroom, particularly in times of transition and movement from activity to activity. Special education support that may happen outside of the general education classroom with opportunities for practicing skills with adult support within the general education classroom. Also, all accommodations listed in [Student's] IEP." The rationale for the placement selection was: "This placement at the [School] meets the needs of the student at this time."
 - d. The Special Education Placement Determination indicated, "This placement is based on the child's current IEP dated 2/2/2022."
13. During interviews, the Parent was asked whether the Parent's placement preference [private school] was considered by the District. The Parent indicated that the District told them, "You know, the kids who come from that program (ECSE Program) have been very successful here." The Parent recalled that the Student's unique needs were not addressed."
14. During interviews, the Parent indicated that during the June, 6 2022 IEP, the District did not discuss whether they were able or required to provide an IEP in a private school.

15. On June 6, 2022, the Parent emailed the Director of Special Services: "I would like to request an independent evaluation for [Student]. I do not believe that Gladstone School District and the team has a clear picture of [Student's] current skills level and needs are."
16. On June 7, 2022, the Director of Special Services emailed the Parent and the Student's Private Occupational Therapist to follow up on a behavior goal that was discussed at the Student's June 6, 2022 IEP. The Director of Special Services wrote, "Please provide input on this behavior goal. Let me know if this captures what we talked about?"
17. The Parent requested an IEP meeting on June 7, 2022 and June, 9, 2022.
18. On June 9, 2022, the Parent declined to electronically sign the documents from the June 6, 2022, IEP meeting.
19. On June 10, 2022, the Director of Special Services responded to the Parent's request for an Independent Educational Evaluation, a new IEP meeting, and the request to observe the [Classroom] at the [School]. The Director of Special Services asserted the district needed more information about the specific areas of concern: "Again, the district is more than willing to grant an IEE request, but we need to know more about the scope and type of evaluation. We also need to know if your request is based on some disagreement you have with an assessment performed by the ESD or the District."
20. The Director of Special Services responded to the Parent's request to hold an IEP meeting: "As you are aware, we held an IEP on June 6, 2022, in which the IEP team determined the program and services at the [School]. We have noted your objection in the meeting minutes and the Prior Written Notice. [District] staff collaborated with the Early Childhood teacher prior to the meeting on June 6. I have attached a Prior Written Notice regarding the district's denial to hold another IEP. The district is willing to meet once we have had an opportunity to work with [Student] in the kindergarten classroom and gather data regarding [Student's] progress in that setting. Meeting mere days after our June 6 meeting, however, would be premature."
21. On June 13, 2022, the Parent requested copies of observations the Parent was told were conducted by District staff.
22. On June 14, 2022, the Parent responded to the Director of Special Services' June 10, 2022 email, which requested input on the behavior goal. The Parent wrote, "I would prefer that this discussion and development of an IEP goal take place in an IEP meeting. I request that we have an IEP meeting and include [ECSE Special Education Teacher] in this discussion."
23. On June 14, 2022, the Assistant Director of Early Childhood Special Education emailed the Director of Special Services to inform them that the Parent: "would like to request an IEP meeting with the District in which [Parent] would like [Early Childhood Service Coordinator] and Pre-School Teacher to attend.
24. On June 14, 2022, the Parent emailed the Director of Special Services and listed multiple alleged violations that took place at the June 6, 2022, IEP. The Parent stated that they were not consulted when the team determined placement, placement had been predetermined, and the Parent's interest in a private placement was not considered. Other allegations included a failure to write appropriate, measurable goals, and a failure to properly assess the Student's academic and functional needs. The Parent also claimed they were not allowed to contribute meaningfully to the meeting and did not receive a copy of the 'Oregon Parental Rights'.

25. The Director of Special Services asserted that District gathered multiple information sources of data before the Student's IEP was held: "We did conduct formal observations, however, our Learning Specialist at [School] has observed [Student] in the Early Childhood classroom several times and numerous times on the playground. As I emailed earlier today, [District] zoomed [sic] with Early Childhood staff currently working with Student on March 13th. I also attended meetings with you and the Early Childhood staff on March 11 and March 30."

26. On August 5, 2022 the Parent communicated they had additional information about the Student: "I have outside information about [Student] that I would like to provide to the team prior to the start of school. I also requested an independent evaluation in June, and have not received information about that being scheduled." On August 8, 2022, the District responded to the Parent referencing the June 10th response regarding the IEE request: "As I mentioned to you in my email dated June 6, 2022, 'It's unclear to the district what the scope and specific areas you are requesting an IEE.' Your email response stated, 'Yes, I want an IEE.' Again, the District is more than willing to grant an IEE request, but we need to know more about the scope and type of evaluation. We also need to know if your request is based on some disagreement you have with an assessment performed by the ESD or the District."

On August 9, 2022, the Parent emailed the District describing they really wanted an IEP meeting. The Parent inquired: "Also, is that IEP finalized? In comparing the meeting video with the IEP you sent me, I identified some errors. For example, I told the team that [Student] already can count to 100, but that goal still ended up on the IEP. [Student] has been able to count to 100 sense [sic] May. Also, some of the accommodations that the team agreed on are omitted.

27. On August 10, 2022, a PWN was generated by the District that described the actions proposed or refused:

- a. "[Parent], [Student's] [Parent], requested another IEP within one week. [Parent] stated [they] wanted an opportunity to see how [Student] does during the [District] Kindergarden [sic] summer school. [Parent] also stated that the IEP, held on June 6th, had errors in accommodations discussed and the goal of counting numbers."
- b. "[District] is more than willing to hold an IEP once the District has an opportunity to work with [Student] and gather data regarding [Student's] progress in the least restrictive environment."
- c. "The District will hold another IEP once [the District has] an opportunity to implement the IEP held on June 6th."
- d. "[Parent] stated in an email dated August 5, 2022, 'I (Parent) am seeking an outside placement at [Desired School] which is a private school in [District] boundaries. I (Parent) am requesting that the [District] pay for this and support [Student's] needs as a part of FAPE.' [Parent] stated during the zoom [sic] meeting held August 9, 2022 that [Parent] believes [Desired School] is a better placement due to smaller class sizes in their kindergarten classrooms."

28. On August 19, 2022, the Parent emailed the Director of Special Services and the Principal to request a PWN: "outlining why the district refused to conduct a formal written observation and collect data on [Student]." The Parent also indicated they had new information to share; the Parent requested that an IEP meeting take place before school: "to ensure that adequate support/programming is in place for [Student] when [Student] starts school."

29. On August 22, 2022, the Director of Special Services emailed a response to the Parent's request for an IEP: "I will be sending you another Prior Written Notice this morning. The [School Case Manager] will be contacting you to schedule an IEP meeting the week of

September 14th. We will work with you to find a mutually convenient time.”

30. On August 22, 2022, the District generated a PWN that described the actions proposed or refused by the District:
 - a. “I also requested that [District] complete an observation as well, and the District never responded to that request and did not complete an observation. Please send me a written prior notice of action outlining why the district refused to conduct a formal written observation and collect data on [Student].” “This is the third Prior Written Notice regarding your request to hold another IEP before school starts. [District] is more than willing to hold an IEP once the District has an opportunity to work with [Student] and gather data regarding [Student’s] progress in the least restrictive environment. The special education case manager at the [School] will contact you and schedule a mutually agreeable time to meet. [Director of Special Services], emailed [Parent] on Monday, August 22, 2022 with a tentative IEP meeting date the week of September 14th.”
 - b. The Parent shared that they were looking for an outside placement at [Desired School] and requested the [District] pay for that placement.
31. On August 22, 2022, the Parent emailed a response to the Director of Special Services. “I am asking you to carefully consider the impact that this has on [Student] and [Student’s] access to education. I am concerned for [Student’s] safety and well-being. I observed staff on Thursday grabbing [Student’s] wrist and trying to restrain [them]. I want an IEP before school.” The Parent described feeling as though they were not regarded as a partner in the IEP process.
32. On August 23, 2022, the Director of Special Services advised the Parent, “We are more than willing to schedule an IEP the week of September 14th. Our teachers are currently preparing classrooms and attending district professional development meetings.”
33. The Student began kindergarten at the School on August 29, 2022; the Teacher emailed the Parents to share that the Student had a good first day and remembered routines from the summer camp.
34. On September 1, 2022, the Teacher and the Autism Specialist communicated about the Student and the Teacher described the Student as: “Right now [Student] is the most needy. [Student] is being physical with the other students and staff.
35. On September 8, 2022, the Student received a discipline referral for physical aggression. The referral notes indicated, “[Student] grabbed a child by the neck with both hands and squeezed. Peer was not provoking [Student].”
36. On September 9, 2022, the Student received a discipline referral for physical aggression. The referral notes indicated, “[Student] grabbed a child by the neck with both hands while children were sitting at the carpet. Peer was not provoking [Student]. A staff member picked up [Student] to remove [Student] from the carpet.”
37. On September 9, 2022, the Student received another discipline referral for physical aggression. The referral notes indicated, “[Student] grabbed a child by the neck outside. [Student] squeezed the child’s neck with both hands. Peer was not provoking [Student]. A staff member removed [Student’s] hands from the child.”
38. On September 12, 2022, the Parent emailed the Student’s classroom teacher and expressed

concern about the Student: "I am keeping track of the regression I see in [Student] since [they] started school. I noticed that [Student] wet [their] pants today which is unusual for [Student]. When did this occur?" The Parent inquired what level of support the Student had needed from a 1:1 assistant and whether the Student's level of need for support had increased.

39. On September 12, 2022, the Classroom Teacher responded to the Parent's September 12, 2022 email: "[Student] is doing well in class. [Student] had an accident around 9:00 o'clock [sic]. We do not have bathrooms in our classrooms which is a transition from preschool. We will work to create a bathroom schedule for [Student] to help remind [them] to go. Our IA and special education teacher support [Student] during [their] transitions throughout the day."

The Parent replied on September 14, 2022: "I am very concerned about [Student]. I have seen multiple signs of distress and regression at the start of the kindergarten jumpstart and beyond." The Parent also responded: "Yes, please get that bathroom schedule going. It's listed on the IEP, and I thought it had already been going."

40. According to the Parent, on September 13, 2022, the Student stopped attending school, and the Parent requested homebound instruction from the District: "...I told them that...I wouldn't be sending [Student] back until this was settled. And they sent me work through November 2nd." Homebound instruction was not provided; the District sent home "packet work....basically all the work that [Student] was doing, that the other kids were doing."

41. The Parent expressed concern about the Student's safety at school, which influenced the Parent's decision to stop bringing the Student to school: "I believe...that someone was threatening [Student] at their school. And it seemed like the best course of action...was to regroup and not just send [Student] directly back to the situation."

42. The Parent also indicated that: "at one point in time...[Student] told [Parent]...the teacher put [Student] in jail." The Parent stated, "And so, I think there were issues of seclusion...that they never told me of."

43. On September 14, 2022, the Parent emailed the Teacher alleging that the: "[Student] was restrained on Friday and I did not learn about it until yesterday. Over the weekend [Student] had seven accidents where [they] wet [their] pants (that is not typical of [Student] at all). Yesterday when I dropped [Student] off, [Student] was reluctant and out of sorts. [Student] ignored you and didn't engage (again, this is not typical behavior for [Student]). When I asked you about it you said [Student] was doing really well in class and the behavior [ignoring you] was not typical and that it was likely due to a change in [Student's] routine for that morning."

44. According to the Private Occupational Therapist, between September 13, 2022, and September 14, 2022, the Student demonstrated decreased focus and increased escalation during therapy sessions. The Student: "requires one-to-one direct instruction and behavioral support to develop skills for meeting new learning expectations and for transitions into non-preferred activities. And for developing social thinking and social interactional skills, [Student] will make progress in a small group instructional setting."

45. In the September 14, 2022, email to the Teacher, the Parent asked how much 1:1 support the Student received each day, how many: "incidents of running around does [Student] do daily", and how many times "is [Student] hitting on other kids or touching them?" The Parent also asked if the Student had been excluded, even temporarily. "It was very troubling to have [Student] say [they] did not want to be alone."

46. During interviews, the Parent indicated that the Instructional Assistant (IA) who restrained the Student was under investigation for abusing the Student; following the investigation, the IA remained employed with the District and still assigned to the Student's classroom. The Parent alleged that the District: "made no mention of a way to help [them] be able to send [Student] there without the Instructional Assistant be[ing] around [Student]."
47. On September 14, 2022, the Parent referenced the June 6, 2022 IEP meeting: "...both [Private OT] and I expressed extreme concern over the lack of support and the setting in general ed w/ [sic] a large class size, and here we are."
48. According to the Student's Daily Attendance Profile, the Student was absent from September 15, 2022, through October 7, 2022. On September 19, 2022, District notes indicated: "Will not return until things worked out per mom." The Student's leave date was recorded as November 4, 2022.
49. On September 16, 2022, the Notice of Team Meeting generated for the September 26, 2022 meeting, indicated that the Director of Special Services would serve as the District Representative.
50. On September 16, 2022, the Parent requested a facilitated IEP meeting.
51. On September 21, 2022, the Parent requested to pick up work for the Student.
52. On September 22, 2022, the Parent requested the Student's schedule, including breaks. On September 23, 2022, the School shared the bathroom break schedule with the Parent. Five bathroom breaks were listed at the following times:
- 8:30-9:00
 - 10:30-11:15
 - 12:10-12:25
 - 1:45-1:55
 - 2:25-2:55
53. In the IEP Meeting Notes from September 26, 2022, the Parent stated: "that the IEP meeting has been initiated because the level of support is not being met. Stated [sic] that academic goals (math goal counting to 100) has been met, but is not sure why the goal persists on current IEP." After discussion on a variety of topics it was noted that a staff member stopped the conversation for a time check and questioned if the meeting should continue or be reconvened." Then the Parent stated: "...[Student] needs Home Bound services as recommended by MD. Stated [sic] that [Parent] is not going to send [Student] back to school at [School] due to legal issues (the restraint)." The following conversation was noted:
- [District]: Stated that the meeting should adjourn as it is close to the end of the set meeting time.
- [Advocate]: What does the district need to put into place to facilitate Home Bound?
Who will be conducting the FBA?
- [District]: The School Psychologist.
- [Advocate]: Who will be implementing the Behavior Plan?
- [District]: Discussed the process of setting up a Behavior Plan, and that all staff members that work with [Student] will support the plan.
- [Advocate]: What are we going to do about supporting Home Bound?

[District]: That is all going to be part of the IEP process.

[Advocate]: [Student] has a medical note.

[District]: "The medical note does not direct the service" [sic] All education support is conducted through the IEP process.

[Staff]: It sounds like some of this information is documented that we can send through email. Provided a suggestion for moving forward. To agree to hold a follow-up meeting to provide time for additional information to be collected.

[District]: "I will get back to [Parent] when I have talked to my colleagues and gathered more information."

[Advocate]: "Please make a note that we have asked the District their policy regarding Home Bound. Note that there are no staff members at this meeting that can answer these questions or facilitate the answers to the questions we are asked [sic]."

[Staff]: Recommended team look at their schedules to reschedule follow-up meeting.

[Parent]: Recommended that we lean [sic] the team down to only pertinent members.

[District]: Stated: "We can have only required participants at the next meeting Principal, Gen Ed [sic] teacher, Special Ed [sic] teacher, and Administrator." Asked, "Will a two o'clock meeting work out?"

[Team]: Agreed.

[Staff]: Stated that they will attempt to be present in person to the meeting. Provided a brief summary of the meeting.

[Advocate]: "When will the information regarding Home Bound be provided to [Parent]?"

[District]: "Tomorrow by the end of the day."

[Parent]: Requested that a copy of the Zoom meeting be provided.

Meeting Adjourned.

54. The unsigned Parent Guardian Consent for Individual Evaluation dated September 26, 2022, listed that the evaluation will include an FBA: "Formal and informal techniques for assessing [Student's] behavior and their function."
55. On September 27, 2022, a staff member emailed the Parent: "I have put together another packet and [Staff] is sending it in the mail."
56. On September 28, 2022, the Parent emailed the District regarding the doctor's note and homebound instruction: "At Monday's meeting, I provided the team with a doctor's note for [Student] to receive homebound instruction. You stated that you were not able to make a decision. Under IDEA, when teams convene, there must be a district representative at the meeting who can make decisions on behalf of the District. I thought that was you. I am asking for homebound instruction for [Student], again. At Monday's meeting, you agreed to provide me with the District's homebound policy by Tuesday. It is now Wednesday afternoon, and I have to receive it [sic]."

The District responded: "Our IEP was adjourned. This will be a team decision when we reconvene on Monday." The Parent requested the following: "Could you please provide me with a prior written notice of why you refused homebound on Monday, 9/26 when we had a team assembled for an IEP meeting? And I still need the District homebound policy."

57. On September 29, 2022, the Parent confirmed they were fine with the goals and would be attending in person. The Parent requested that the District identify who will be serving in the role of District Representative for the meeting.
58. On September 30, 2022, the District shared attached the Home Tutoring policy to an email: "This is the board policy related to homebound. This policy applies to temporary conditions or medical issues that may cause a student to be out of school. We have an offer of FAPE that [Student] has been able to access. Moreover, this is a state board policy and it cannot trump the federal IDEA requirement that changes in placement (which a change in home tutoring would be) be made by the IEP team. We can discuss more when we get to the placement section on Monday.
59. According to the Private Occupational Therapist's Occupational Therapy Update dated October 3, 2022, the Student regularly received weekly one-hour sessions with the Private Occupational Therapist. They mentioned that observations of [Student] were shared at the last meeting and that an updated note would be sent. The update was attached.
60. On October 3, 2022, a draft Agenda for an IEP meeting noted that consent for an FBA was discussed and the Parent requested the following:
- a. Homebound instruction;
 - b. Speech services;
 - c. OT services;
 - d. Extended School Year services;
 - e. A 1:1 classroom aide after Homebound instruction; and
 - f. Weekly consultation from Autism Specialist with family.
61. On October 3, 2022, the District attached and sent the updated draft IEP to the Parent. An IEP meeting was held later that day but the IEP was not completed.
62. The October 4, 2022, PWN described options that were considered and rejected:
- a. The Parent proposed the IEP should include a class size limitation; the District rejected adding that to the IEP.
 - b. "[Student] will have an IEP goal that addresses [Student's] avoidance for non-preferred tasks and frustrating situations and communication goals as well as a need for visual supports will be documented within the IEP."
 - c. "Once the functional behavior assessment has been conducted, the IEP team will develop a Behavior Support Plan. The positive reinforcement plan will assist members in building to replace or reduce the behaviors that are impeding [Student's] progress in the general education curriculum."
63. On October 5, 2022, the District alerted the Parent that their attorney would attend the IEP meeting scheduled for October 6. On October 6, 2022, the Parent responded regarding the presence of an attorney at the scheduled IEP meeting: "Less than 24-hour notice of the district attorney being in attendance as an IEP member is not satisfactory. Unfortunately, due to this lack of notice, we will need to reschedule this IEP meeting."
64. On October 5, 2022, the District and School staff communicated about the Parent retrieving a packet of work for the Student.
65. On October 6, 2022, the Parent emailed the School and shared that they have been helping

[Student] with the work. They requested to pick up more work and have [Student] stop by the school to say hello.

66. On October 6, 2022, the Director of Special Services alerted a staff member that a notice would be sent to the Parent tomorrow to inform them that the District stands ready to provide special education when the Parent chose to return the Student to school. They did not plan to drop the Student from enrollment until the IEP had been completed.
67. The October 7, 2022 PWN described the actions proposed by the District:
 - a. "Special education services will not be provided to [Student]";
 - b. "[Student] has not attended school since September 13, 2022"; and
 - c. "[Student's] family has attended two meetings that were established to review [their] Individualized Education Plan [sic] (IEP) and placement. Parent cancelled this last IEP review date due to district attorney being in attendance. The district is waiting for parent to mutually agree on scheduling our adjourned IEP meeting with facilitation with ODE."
68. On October 10, 2022, the Director of Special Services emailed the Parent: "[School] has provided a Prior Written Notice (see attached) that it is ready to provide a free appropriate public education if [Student] returns to the District. We are waiting to receive possible dates when you are available to finish our second adjourned IEP facilitation with ODE."
69. On October 11, 2022, the Parent emailed the Director of Special Services: "I did not cancel a meeting. I asked for it to be rescheduled because the District did not provide me with enough notice that an attorney would be attending on behalf of the District nor what [their] role was. This is part of procedural safeguards to which I am entitled under law. I'm trying to find another time to meet."
70. On October 17, 2022, the Parent emailed the District to let them know they would be available to inspect educational records tomorrow.
71. On October 18, 2022, a staff member emailed the Parent: "[Student's] weekly work packet is ready to be picked up if you would like to stop by and pick it up."
72. On October 25, 2022, the Teacher emailed the Parent with data that was collected over the eight-day period in September when the Student attended the School. The Teacher indicated that the data was connected to the Student's IEP goals. According to the Teacher, the Student could: "accurately determine the appropriate emotional response and return to the task at hand within 5 minutes" one out of five times; the Student could: "complete a 3-step routine with 80% accuracy" on average three out of five times; and the Student could: "count to 100 and identify numbers 1 through 20" five out of five times. The Teacher stated: "This is what led to the removal of the academic data because [Student] was so successful."
73. The Teacher further provided the Parent with information about a functional behavioral assessment and the support the Student received from an IA during days the Student attended the School. "Our request to conduct a functional behavior [sic] assessment would address the frequency and duration of the behaviors you are referring to. The additional IA support was put in place the first week of school. We increased the classroom support to be

across the entire day.”

74. On October 14, 2022, the Parent requested to inspect [Student’s] records and cited: “Under, 34 CFR [-] [sic] 300.616 – List of types and locations of information, I am requesting that you identify the types and location of information that is being maintained on [Student] by [District] and any outside agencies that [District] has contracted with to provide services or consultations. I am also requesting an opportunity to inspect this information before any IEP meeting.”
75. On October 18, 2022, School staff emailed the Parent to notify them that a packet of work was available for pick up.
76. On October 28, 2022, the Special Education Teacher emailed the Parent to inform them that the work the Parent had requested for the Student was ready for pickup.
77. On October 31, 2022, the Director of Special Services responded to [Outside Agency]: “We have not dropped [Student] due to complaints filed by [Parent] and our inability to complete the IEP.”
78. On November 2, 2022, the Parent reviewed the Student’s confidential file. The Parent asserted that the following documents were missing:
 - a. The IEP dated June 6, 2022;
 - b. Original meeting notes from a debrief meeting; and
 - c. Staff statements.
79. On November 4, 2022, the Parent emailed the District: “[Director of Special Services] said that you would provide the work for this week. Additionally, I request that you not drop [Student]. I presented a team with a statement from [Student’s] Pediatrician on 9/26/2022 almost 6 weeks ago. The District has not provided me with a prior written notice explaining why [Student] cannot receive homebound when [Student’s] medical doctor says that is what [Student] needs. I have been providing the services for him on behalf of the District in the meantime.”
80. On November 4, 2022, the District described the enrollment and homework situation: “It is my understanding that [Director of Special Services] shared with you on Wednesday afternoon that [Student] is now dropped from our enrollment. As a result, [Teacher] will not be providing more work for [Student] to complete at home. We wish for [Student] to be back at [School] with [their] peers to participate fully in Kindergarten.”
81. On November 7, 2022, the District responded to the Parent: “We have responded to this request several times (we did not conduct formal observations) [sic] [School] held a zoom [sic] meeting with [School] staff and several informal observations by [School] staff.”
82. On November 11, 2022, the Parent emailed the Director of Special Services and expressed thanks for showing the Parent the Student’s records. The Parent added, “I was disappointed to learn that there were two incidents that happened prior to the 12:45 9/9 incident that I was not informed of. I hope the district is not trying to cover up an incident of physical abuse. Upon my inspection of [Student’s] record, I did notice that ‘meeting notes’ from the debrief meeting and the incident report were not in either file locations. Where do those reside? I’d like to inspect the original papers.”
83. On November 14, 2022, the Director of Special Services responded to the Parent’s request

to view the meeting notes and the incident report. "The Seclusion/Restraint Report and Seclusion & Restraint Debriefing form are Ad Hoc. documents in Synergy. The Prior Written Notices will be provided when we have had an opportunity to complete the IEP and offer FAPE." The Parent responded, "Those are handwritten documents, and I want to look at the originals. Do not delete or destroy those or additional records, including videos."

84. On November 15, 2022, the Director of Special Services informed the Parent that the requested debriefing documentation had been provided to District Personnel; however, the documentation provided to the Parent "is the same as in Synergy." The Parent asked: "Does [District Personnel] have the originals? I want to look at the original documents."

85. On December 2, 2022, the District emailed the Parent and explained Oregon attendance law and the process for reenrolling students after a ten-day unenrollment.

86. On December 2, 2022, the District emailed the Parent regarding the Parent's request for a Prior Written Notice: "As a follow-up regarding [Student's] IEP, the district has a record of sending the Prior Written Notice on October 10, 2022, in an email from... [Director of Special Services]. [They are] still waiting to receive possible dates when you are available to finish the IEP facilitation."

87. On December 7, 2022, the District emailed the Parent to explain the enrollment process: "When a student has missed 10 consecutive days of school, we are required by law to 10-day drop the student. For the student to return to classes (Re-enroll) our process is for the parent/guardian to review and verify demographic information we have on file. Then meeting with the principal [*sic*]. This meeting should take place in a reasonable amount of time such as within 24 hours or less."

The email also inquired about the completion of the IEP for the Student: "...have you reached out to [Director of Special Services] to complete the IEP for [Student]?" The District suggested: "Please reach out to [Director of Special Services] to reschedule the IEP facilitation."

88. On December 8, 2022, the Parent responded to the District's email: "We would have really liked to continue with the IEP, but the district has halted the progress by refusing to have a debrief meeting and not allowing full access to educational records. It's difficult to be regarded as an important part of the IEP team when the district withholds information and denies access. I can do a file review tomorrow and would like to see the ORIGINAL restraint documents, the ORIGINAL incident forms filled out by [Educational Assistant], I also want copies of the written statements that staff wrote after the incident."

89. On December 8, 2022, the District notified the Parent that a meeting was scheduled for December 9, 2022, with the Assistant Superintendent. "[Assistant Superintendent] will have the original documents you mentioned at the meeting."

90. On December 8, 2022, the Parent emailed the District and stated, "The 10-day drop was actually September 27; we presented a request for homebound instruction on September 26 during an IEP meeting and [the Director of Special Services] was unsure of [their] authority. I have been facilitating homebound instruction with district provided materials for [Student] while we wait patiently for the district to respond to the request. Please note: we received no Prior Written Notice."

91. On December 15, 2022, the Executive Assistant to the Superintendent emailed the Parent to

schedule an appointment for the Parent to review records with the Assistant Superintendent. The Assistant Superintendent was to provide:

- a. "Staff statements regarding the restraint on 9/9/2022 you requested in an email RE: information requested December 8;
- b. Original behavior documents for you to view; and
- c. Step 2 – Administrator complaint (part 2) [Administrator} review."

92. On December 16, 2022, the Assistant Superintendent met with the Parent and provided access to the Student's records. During the interview with the Complaint Investigator, the Parent alleged that the records were incomplete. "[Assistant Superintendent] had some of the original documents and a fake document that I had never seen before. It was supposedly the original meeting notes, but it was not a document I had ever seen before....I would later learn from the Office of Student Privacy that the district no longer had the original document in their possession." The Parent also alleged, "The district has failed to include the December 9, 2022 meeting that they invited me to attend and promised to have the original documents for my inspection. When I attended the meeting with [Principal] and [Assistant Superintendent], they did not have the documents. [Assistant Superintendent] said [they] did not have the documents and did not know where they were."
93. On January 6, 2023, the Parent informed the District that they are required to: "...provide me access to [Student's] education requires [sic] PRIOR to an IEP meeting."
94. On January 17, 2023, the Director of Special Services emailed the Parent regarding scheduling an IEP meeting and reminding the Parent they met to review the educational records in November and inquiring if they wanted to review them again.
95. On January 18, 2023, the Parent requested to schedule a time to inspect [Student's] educational records. The Parent also shared: "When I inspected the educational records on November 2, 2022, there were records missing." The Parent also stated that: "...under FERPA parents are allowed to inspect records within 45 days. We are now day 96 [sic]".
96. On January 21, 2023, the Director of Special Services emailed the Parent and asked which additional records the Parent would like to review as the [Student's] cumulative file and special education records had already been inspected.
97. On January 20, 2023, the Parent requested to "...inspect [Student's] original education records please-Prior to the debrief and lep [sic] meeting."
98. On January 23, 2023, the Parent emailed a request to inspect records: "Under FERPA I am requesting to inspect my [Student's] educational records including, but not only the following: Original meeting notes from the debrief meeting that you conducted without me. The original staff staff [sic] statements. And the IEP from 6/6/2022."
99. On January 23, 2023, the Parent shared that they talked with the Office of Student Privacy and was informed that the District no longer had the document and that the original meeting notes were destroyed.
100. On February 3, 2023, the Parent forwarded the original request to inspect records to the District and added: "This is the forward of my original request. The district has delayed giving

me access to [Student's] educational records." The following day, the District responded: "It is my understanding that you have been in to inspect [Student's] records and that your complaint is that you believe there are additional documents that the District says do not exist, is that correct?" Parent confirmed.

101. On February 9, 2023, the District emailed the Parent: "The District stands ready to enroll. Based on your response, it sounds like you are choosing not to enroll [Student]."
102. On February 21, 2023, the Parent emailed the Superintendent stating their intent to enroll the Student. The Parent shared: "At the time of removal on November 2, 2022 [Student] was homebound and I was facilitating [their] education on behalf of the District with District-approved materials. Nothing has changed regarding the verification form we filled out in December when we tried to enroll."
103. On February 23, 2023, the Superintendent responded: "We stand ready to move forward with the IEP process. [Student] is very welcome to return to school."
104. On February 24, 2023, the Parent emailed the Superintendent: "Is [Student] currently enrolled as a student in [School]?"
105. On March 10, 2023, the District attempted to schedule a meeting with the Parent, but the Parent was unable to attend.
106. On June 5, 2023, the Parent filed this Complaint.

IV. DISCUSSION

IEP Team

The Complaint alleged that the District violated the IDEA when the Student's pre-school teacher did not attend the June 6, 2022 IEP meeting; and a qualified district representative did not attend the September 26, 2022 IEP meeting.

School districts must ensure that the IEP team for each child with a disability includes a representative of the school district, who may also be another member of the team, who is qualified to provide or supervise the provision of specially designed instruction, knowledgeable about the general education curriculum, knowledgeable about district resources, and authorized to commit district resources and ensure that services set out in the IEP will be provided.³ The school district and contractor or subcontractor must hold a meeting during the year before the child is eligible to enter public school for a child eligible for school-age special education services to develop an IEP that is in effect at the beginning of the school year.⁴

³ OAR 581-015-2210(1a)(1c)

⁴ OAR 581-015-2805(3)(b)(B)

The District met with the Early Childhood Special Education providers in March of 2022 to discuss the Student's transition to kindergarten. In April of 2022 the IFSP for the Student was revised; meeting participants included subcontractors, the Parent, ECSE program, Evaluator, and the District Representative. In May of 2022, a Notice of Team Meeting was generated for an IEP meeting in late May of 2022 and stated that the development of the IEP utilized information from a variety of sources. The June 6, 2022 Placement Determination indicated that the decision was made based on recent evaluations and information, including progress notes, provided by the ECSE program. At the June 6, 2022 IEP meeting, the District shared a document that summarized the ECSE transition document.

A PWN for the June 6, 2022, IEP meeting described that the IEP was written based on the IFSP; the evaluations utilized were described and included an ECSE Evaluation Report and the meeting between the District and the ECSE in March of 2022. The Parent disagreed with the placement options and determination. The District reiterated its stance regarding the placement of the Student and cited collaboration with the ECSE Teacher prior to the IEP meeting. On June 14, 2022, the Parent requested an IEP meeting that included the ECSE Teacher. The District asserted that it conducted observations in the Early Childhood classroom and the playground and began working with the ECSE in March of 2022 to discuss the transition of the Student to kindergarten. While it is acknowledged that a representative from the ECSE was not present at the June 6, 2022 IEP meeting, collaboration on the Student's transition began in March 2022 and information from the ECSE Teacher and program was utilized to create the IEP.

For the September 26, 2022, IEP meeting, the Notice of Team Meeting indicated that the Student Services Director would be serving as the District Representative. The meeting notes indicated that, toward the end of the time allotted for the meeting, a time check was called. It was not noted whether it was decided to continue or reconvene, at which point the Parent inquired about home instruction. It was further noted that the District stated that the meeting should adjourn as it was near the meeting time. The Parent Advocate continued to ask questions, and the District answered them. On the issue of home instruction, the District mentioned that it would be a part of the IEP process, and the IEP team makes that determination. The team agreed to hold a follow-up meeting at which point the Parent Advocate stated that there was no one present who could answer the questions regarding home instruction. The team agreed on a follow-up meeting.

The Parent emailed the District several days later and reiterated that the District Representative had not made a decision regarding home instruction and that the District had agreed to provide the policy to the Parent the following day. The Parent stated they had not received the policy. The District responded that the meeting was adjourned and the team would make a decision when the IEP meeting was reconvened. The Parent requested a PWN describing the refusal of homebound instruction. On September 29, 2022, the Parent requested information as to whom would be serving in the role of District Representative at the upcoming meeting. On September 30, 2022, the District responded with the home instruction policy and noted that a decision to change the Student's placement to home instruction would need to be made by the IEP team.

The Director of Special Services served as the District Representative during the September 26, 2022 meeting. The IEP being developed in this meeting was not completed by the time the IEP meeting adjourned. As such, the IEP team had not yet made a placement determination, despite addressing some questions from the Parent and Parent Advocate regarding home

instruction. Rather, it was determined that the IEP team would discuss placement as a part of the continued IEP process and a follow-up meeting was scheduled. There is no evidence that the District Representative at the September 26, 2022 IEP meeting was not qualified to act in this role.

The Department does not substantiate this allegation.

Content of IEP

The Complaint alleged that the District violated the IDEA when the Student's June 6, 2022, IEP failed to include data that supported a change in services; current or relevant academic goals; a mutually agreeable behavior goal; OT, speech, and classroom observation information provided by the Parents; accurate information about the Student's math skills; appropriate service levels for OT; and an adequate amount of direct support from an instructional assistant trained in working with students with autism. Further, the Complaint alleged the IEP failed to include homebound instruction after the Student experienced traumatic events at school.

The individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. It must also include a statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives or benchmarks) designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. The IEP must also include information on how the child's progress toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be measured and provided to the parent. Each IEP must also include a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child.⁵

Also required to be included is a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities. The IEP must identify the extent to which the child will be educated and participate with other children with disabilities and children without disabilities; the projected dates for initiation of services and modifications; and the anticipated frequency, amount, location, and duration of the services and modifications.⁶

Further, an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities is required. Also required is a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment. A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption. If the IEP team determines that the child must take the alternate assessment instead of the

⁵ OAR 581-015-2205(1)(a-b)(A)(B)(C)(d)

⁶ OAR 581-015-2200(d)(A)(B)(C)(e)

regular Statewide or a district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment is appropriate for the child.⁷

The present level of academic performance that was included in the Student's transition to kindergarten IEP (February 2022) indicated the Student could count from one to ten. By April 2022, the Student's present level of academic performance in the IFSP indicated the student could count from 1-20, as high as 99, but skipped over 16, 17, or 18. In May of 2022, a meeting was scheduled to develop an IEP based on information from a variety of sources, including the Parent. During the IEP meeting on June 6, 2022, the Parent objected to the math goal citing that the student could count up to 100; the District referenced the information provided by the ECSE program indicating that the student skipped numbers in that sequence. The Parent objected to the math goal again in August of 2022, and the District reiterated their stance citing the information provided by the ECSE program and a willingness to hold another IEP meeting after they had a chance to implement the June 6th IEP. In the September 2022 IEP, the Parent shared that the math goal had already been achieved, and in October 2022, the Teacher reported the student met the math goal.

In addition to the math academic goal, the transition to kindergarten IEP (February 2022) included four other IEP goals that were aligned with the present levels of performance as described in the IEP. The April 2022 IFSP included progress monitoring information related to goals. Specifically, the progress notes indicated that the Student could not identify the letters U and E consistently. In the June 6, 2022, IEP meeting, the District stated the Student was working on the letters in their name; the Parent asserted that the Student could spell their name. On June 7, 2022, the District emailed the Parent and the private OT regarding a drafted behavior goal. The Parent requested to discuss the goal in an IEP meeting. On June 14, 2022, the Parent emailed the District alleging the District failed to write appropriate goals. The district responded that they gathered information from the ECSE program prior to the meeting. The August 10, 2022, PWN listed Parent's concerns about the math goal, not the other academic goals. On September 26, 2022, the Parent referenced the math goal, not the other goals. On September 29, 2022, the Parent indicated consensus with the goals. On October 25, 2022, the Teacher shared data with the Parent regarding an appropriate emotional response, a three-step routine, and counting to 100.

In the April 2022 IFSP, there were several adaptive goals listed around transition: arrival, cleaning up, transition between classes and activities, participating in small-group activities, and participating in adult-led activities. Another adaptive goal was listed around structured interaction with a partner. The meeting notes from the June 6, 2022, meeting indicated that the Parent objected to the math goal and asserted the Student could already spell their name. The record does not indicate objections to other goals. On June 7, 2022, the District emailed the Parent and the Private OT regarding a drafted behavior goal. The Parent requested to discuss the goal in an IEP meeting.

The transition to kindergarten IEP (February 2022) listed 30 minutes of Occupational Therapy to be provided by the District's Occupational Therapist as a related service and 60 minutes per year of consultation by the OT to school staff. The District's Occupational Therapist crafted goal recommendations on May 19, 2022, around on-task behavior, structure and routine, and decreasing avoidant behaviors. Both the District OT and the Private OT were present at the June 6, 2022, meeting. The Private OT shared that the Student's avoidant behaviors were impactful and proposed a goal to be supported by SDI. In response, the District incorrectly shared that the District OT would not provide SDI as occupational therapy was a related service.

⁷ OAR 581-015-2200(1)

Occupational therapy can be provided as SDI when the IEP team determines that a student's individual needs require it in order to enable the provision of FAPE. In those instances, the district must ensure that occupational therapy is provided in line with the child's needs. The District further incorrectly noted that, as a related service, the services would be direct instruction. Related services can be provided as direct instruction but are not necessarily direct instruction. The District OT proposed 30 minutes of a related service. The PWN from the June 6, 2022, IEP meeting described the reports used for the basis of proposed or refused action and cited the use of an Occupational Therapy Evaluation Report. On June 7, 2022, the District reached out to the Parent and the Private Occupational Therapist to request confirmation that a drafted behavior goal aligned with the IEP team's discussion about the goal, and the Parent requested an IEP meeting to discuss the goal. The Private OT shared that between September 13, 2022, and September 14, 2022, the Student demonstrated decreased focus and increased escalation during therapy. The Private OT recommended one-on-one direct instruction and support and suggested that the Student would make progress in a smaller instructional setting.

The transition to kindergarten IEP (February 2022) included paraprofessional support as an accommodation for the Student. The IEP also included consultation to school staff by an Autism Specialist. The Paraprofessional Support Assistant assigned to work with the Student received supervision and training by the Learning Specialist and consultation from the Autism Specialist and Occupational Therapist. At the adjournment of the September 26, 2022, IEP meeting, the District agreed to discuss the Parent's request for homebound instruction at the next IEP meeting. The District made several attempts to reschedule an IEP meeting with the Parent. The Parent declined to commit to attending another IEP meeting until other conditions regarding the review of educational records had been met.

The Department does not substantiate this allegation.

Special Education Placement in the Least Restrictive Environment (LRE)

The Complaint alleged that the District violated the IDEA by not providing the Student with the appropriate special education placement in the least restrictive environment when the Student's placement was changed from a 1:4 to a 1:12 adult-to-student ratio. Further, the Complaint alleged that the District failed to consider the Parent's request for an outside placement and also refused a request for a homebound instruction placement.

School districts must ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability. Each school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.⁸ In determining the appropriate LRE within that continuum, the IDEA requires that education in special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁹

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options,

⁸ 34 CFR § 300.115(a)

⁹ OAR 581-015-2240

is made in conformity with the LRE provisions, is based on the child's current IEP, is determined at least once every 365 days, and is as close as possible to the child's home.¹⁰

The alternative placements under Alternative Placements and Supplementary Aids and Services are available to the extent necessary to implement the IEP for each child with a disability. Unless the child's IEP requires some other arrangement, the child must be educated in the school that they would attend if not disabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services needed, and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.¹¹

The Student's April 2022 IFSP was implemented in a community preschool setting. The June 6, 2022, placement determination, based on the IEP developed for transition to kindergarten, was the general education classroom with special education services provided within the classroom and outside the classroom for identified areas of need. There were more students in the general education kindergarten as compared to the community preschool. However, both classrooms were general education settings. The Parent requested that the District pay for a placement in a religious private school. The District provided the Parent with PWN that the District's offer of FAPE and the IEP would be implemented in the general education kindergarten classroom in the District.

The PWN noted the Parent's disagreement with this decision as their preference was for the private school placement. During interviews, the Parent reported the private school placement was the most appropriate due to the smaller class size, a peaceful environment, and the school being parent-friendly with good communication regarding the Student's sibling who attended the Private School. School districts may, but are not required to, provide special education and related services to parentally-placed private school children on the premises of private, including religious, schools, to the extent consistent with law.¹² If a child with a disability is enrolled by a parent in private school and will receive special education or related services from a public agency, the public agency must initiate and conduct meetings to develop, review, and revise a services plan for the child in accordance with OAR 581-015-2200 with respect to the services provided.¹³

The Parent's request for home instruction was to be discussed and decided upon at a future IEP meeting. The Parent did not make themselves available to attend an IEP meeting to consider their request for home instruction; at the time the Complaint had been filed, an IEP meeting to consider this request and other Parent concerns had not been reconvened. Further, amendments to an IEP, such as changing the Student's placement to home instruction, would require either an IEP meeting or both the District and the Parent providing written agreement to make changes to the IEP without holding an IEP meeting.¹⁴

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Complaint alleged that the District violated the IDEA when it refused multiple times to meet with the Parent and failed to respond to the Parent's requests for IEP meetings.

¹⁰ OAR 581-015-2250(1)

¹¹ OAR 581-015-2250(2-5)

¹² OAR 581-015-2455(7)

¹³ OAR 581-015-2460(1a)

¹⁴ OAR 581-015-2225(3a)

For annual reviews of the IEP, each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved. The IEP must be revised, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate. Revisions may also be needed based on the results of any reevaluation, information about the child provided by the parents, the child's anticipated needs, and other matters. The school district and parent may enter into a written agreement to amend or modify the IEP between annual IEP Team meetings. In doing so, the parent of a child with a disability and the school district may develop a written document to amend or modify the current IEP. If changes are made via written agreement, the district must ensure that the child's IEP team is informed of these changes. Amendments to the IEP can only be included in the written document or the IEP team can choose to redraft the entire IEP. If amendments are included only in the written document, upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.¹⁵

The transition to kindergarten IEP meeting occurred on June 6, 2022. The Parent requested additional IEP meetings on multiple occasions in June and August 2022, citing concerns, new information, and errors in the previous IEP meeting. The District responded on August 10, 2022, acknowledging the Parent's request and concern about errors in the previous IEP. The District expressed their willingness to schedule a new IEP once they had implemented the IEP and collected the necessary data. Following this, the Parent requested another IEP meeting on August 19, 2022, with new information to share. The District then informed the Parent on August 22, 2022, that they would schedule an IEP meeting for the week of September 14th, and on August 23, 2022, reiterated their willingness to hold the meeting in September.

An IEP meeting occurred on September 26, 2022, and another IEP meeting was scheduled for October 6, 2022. On October 5, 2022, the District notified the Parent that the District's Legal Counsel would attend the IEP meeting. The Parent requested that the meeting be rescheduled due to the short notice provided about the attendance of the District's Legal Counsel. The District contacted the Parent on October 10, 2022, requesting dates for the IEP meeting, and the Parent replied that they were trying to find a suitable date. In early December, the District reiterated its need for acceptable dates. On December 7, 2022, the District sent another reminder about rescheduling the IEP. On December 8, 2022, the Parent claimed that the District halted the IEP process, citing issues related to a debrief meeting and full disclosure of educational records. The District made additional attempts to schedule a meeting in January 2023 and March 2023.

The Department does not substantiate this allegation.

Prior Written Notice (PWN)

The Complaint alleged that the District violated the IDEA by not providing the Parent with PWN when the District refused the Parents' request for an outside placement and homebound instruction.

¹⁵ OAR 581-015-2225

Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. The content of the prior written notice must include a description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action. Each PWN must also include a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained and sources for parents to contact to obtain assistance in understanding their procedural safeguards. In addition, the PWN must include a description of other options that the IEP Team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal.¹⁶

The Parent made multiple requests for the District to consider the religious private school as the Student's special education placement. On June 6, 2022, August 10, 2022, and August 22, 2022, the District provided the Parent with PWNs that described the District's decision to implement the Student's IEP and placement as written and that the Parent disagreed with the decision because they wanted the Student to be placed at the Private School. The District's PWN should have included information about the District's limited obligations to provide special education and related services in religious private schools. The District was not able find a mutually agreeable time with the Parent to reconvene the IEP team to consider the Parent's request for homebound instruction. Therefore, a PWN regarding this decision would have been premature.

The Department does not substantiate this allegation.

Lists of Records-Access to Records

The Complaint alleged that the District violated the IDEA when it failed to provide the Parent with an accurate list of the types and locations of information being maintained on the Student by the District and any outside agencies that the District has contracted with to provide services or consultations within forty-five calendar days.

This provision includes all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. The program, district, agency, or contractor must comply with a parent's request to inspect and review records without unnecessary delay and for children over the age of three before any meeting regarding an IEP/IFSP, or any due process hearing or resolution session related to a due process hearing, and in no case more than 45 days after the request has been made.¹⁷

The Parent requested to inspect the Student's educational records and did so with a District representative on October 14, 2022. The Parent acknowledged in an email that they had reviewed the educational records. In December 2022, the Parent requested to inspect certain original educational records. On December 16, 2022, the Parent with a District representative and inspected the Student's educational records. In a debriefing meeting from a restraint incident, the District took handwritten notes during discussion, which were then entered into the required form. When the electronic form was completed, the notes used to complete the form

¹⁷ OAR581-015-2300(2)(a-b)(3)(b)

were destroyed. At some point, the Parent was made aware of the fact that the original handwritten notes were no longer in the District's possession. The Parent made five additional requests between January 6, 2023 and February 3, 2023 to review the notes in question. These notes were not maintained by the District nor were they placed in the Student's educational record and are therefore not protected under FERPA. In multiple emails, District staff informed the Parent that the Parent had previously reviewed the Student's educational file on two separate occasions.

The Department does not substantiate this allegation.

When IEPs Must Be In Effect

The Complaint alleged that the District violated the IDEA when it failed to implement a bathroom schedule or pre-warning for transitions, which are accommodations described in the Student's IEP.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. School districts must conduct meetings to develop initial IEPs within thirty calendar days of any determination that a child is a child with a disability who needs special education. 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 the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service providers who is responsible for its implementation and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.¹⁸

The Parent and Teacher discussed the Student's need for a bathroom schedule. The Parent has asserted that because the Teacher indicated bathroom use was not in the Student's [visual] schedule and that the Student had had bathroom accidents at school, the accommodation was not provided before the communication exchange. During interviews, the Teacher and Case Manager described that the Student had frequent opportunities to use the bathroom throughout the day, received prompts to use the restroom, and that it was not uncommon for new kindergarten students to have accidents at school as they were acclimating to a new environment and schedule. The Teacher also described support they provided during transitions and the use of visual schedules.

The Department does not substantiate this allegation.

Independent Educational Evaluation (IEE)

The Complaint alleged that the District violated the IDEA when it failed to provide an IEE when requested by the Parents.

A parent of a child with a disability or suspected disability has the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the school district. "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the

¹⁸ OAR581-015-2220

education of the child. “Public expense” means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. If a parent requests an IEE at public expense, the school district must provide information to parents about where an IEE may be obtained and the applicable school district criteria.¹⁹

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an IEE. A school district may not impose conditions or timelines related to obtaining an IEE at public expense. The school district must provide parents an opportunity to demonstrate that unique circumstances justify an IEE that does not meet the district’s criteria.²⁰

If the parent requests an IEE, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. The school district may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation. If the parent obtains an IEE at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district if it meets the district’s criteria in any decision made with respect to the provision of a free appropriate public education to the child and may be presented by any party as evidence at a due process hearing.²¹

In June 2022, the Parent requested an IEE. On June 10, 2022, the District responded with a request for information on the specific area of concern, and an acknowledgement that the District would provide an IEE. The Parent did not respond until August 5, 2022, and did not provide the area of concern. On August 8, 2022, the District responded that an IEE would be granted once the District knew the scope and type of evaluation and the District also inquired about whether the Parent disagreed with an evaluation that was conducted by the ESD or the District. There is no evidence that the District provided the Parent with information about where an IEE could be obtained and the school district criteria applicable for IEEs. Further, the District may request additional information from the Parent about their reasons for the disagreement, but the Parent is not required to provide this information. The District unreasonably delayed providing the Parent with information about an IEE at public expense when the initiation of the IEE was dependent on the Parent providing the District with additional information about their areas of disagreement.

The Department substantiates this allegation.

V. CORRECTIVE ACTION²²
In the Matter of Gladstone School District 115
Case No. 023-054-021

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

¹⁹ OAR581-015-2305(1-2)

²⁰ OAR581-015-2305(3)

²¹ OAR581-015-2305(4)

²² 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)).

Action Required	Submissions	As Soon As Possible But No Later Than
1. The District must provide the Parent with information on how to obtain an IEE at public expense, and the IEE criteria used by the District.	The District shall submit the following to ODE: Evidence that information about how to obtain an IEE at public expense has been provided to the Parent.	November 22, 2023
2. The District must review and, if necessary, revise its IEE policy and procedures to ensure alignment with the requirements under the IDEA.	Revisions (if necessary) provided to ODE.	February 15, 2024
3. The District must ensure that all District staff responsible for implementing IEE policies and practices receive ODE approved training.	Training agenda/materials to ODE for review/approval. Sign-in sheet for training.	January 15, 2024 March 15, 2024

Dated: this 9th Day of November 2023



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: November 9, 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).)