

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Central SD 13J  
Case No. 23-054-038

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER

**I. BACKGROUND**

On October 13, 2023, the Oregon Department of Education (the Department) received a written Complaint (Complaint) from a group home provider (Complainant), regarding the special education of a child (Student) who resides within the Central SD 13J (District) and attends a Willamette ESD (ESD) school, OASIS Behavior Intervention Program. The Complainant requested that the Department conduct a special education investigation, as provided by Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On October 24, 2023, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District and the ESD identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 10, 2023.

The ESD submitted a timely *Response* on November 9, 2023, denying the allegations, providing an explanation, and submitting the following documents in support of the District's position.

1. The ESD's Written *Response* to the Complaint
2. 2022-23 Weekly Feedback, including reports for 23 weeks
3. 2023-24 Weekly Feedback, including reports for 2 weeks in October 2023
4. Email Correspondence
5. Behavior Support Plan (from previous school district), 12/1/2021
6. Behavior Support Plan, updated 2/13/2023
7. Safety Plan (from previous school district), 11/21/2022
8. Group Home BSP Notes, 9/18/2023
9. OASIS BSP, 9/6/2023
10. IEP Meetings and Data
11. 32 Incident Reports/Debriefs, 2023-24
12. 30 Incident Reports/Debriefs, 10/2023
13. OASIS Attendance
14. Arrival and Leaving Times, 05/25/2023
15. 2022-23 Absence Call Log
16. Audit Trail Summary Report, 1/2/2022-6/8/2023
17. Audit Trail Summary Report, 10/2023

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

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

18. Prior Written Notice, 02/13/2023
19. Prior Written Notice, 05/24/2023
20. ESD Staff Member Contact Information

The District submitted a timely *Response* on November 10, 2023, denying the allegations, providing an explanation, and submitting the following documents in support of the District's position:

1. The District's Written *Response* to the Complaint
2. DHS Placement Agreement (parent signature page), 3/10/2022
3. Weekly Student Incident Reports, 10/10/2022-10/8/2023
4. Monthly Student Data Summaries, 9/2022-6/2023
5. Monthly Student Goal Sheets, 10/2022-6/2023
6. Meeting Notes, 8/31/2023
7. Student's special education records from the Student's previous school district:
  - a. Notice of Team Meeting, 11/20/2018
  - b. Parent Guardian Consent for Individual Evaluation, 1/7/2019
  - c. Team Meeting Notes, 1/8/2019
  - d. Assessment Report from School Psychologist, 2/19/2019
  - e. Social Communication Assessment-Reevaluation, 2/27/2019
  - f. Autism Evaluation Report, 2/27/2019
  - g. Occupational Therapy Evaluation, 2/27/2019
  - h. Prior Written Notice, 1/07/2019
  - i. Team Meeting Notes (Initial and Three-Year Re-evaluation), 2/28/2019
  - j. Prior Written Notice, 2/28/2019
  - k. Disability Statement—Autism Spectrum Disorder (82) Criteria, 2/28/2019
  - l. Eligibility Summary Statement, 2/28/2019
  - m. IEP Progress Report—Measurable Annual Goals, 12/02/2020
  - n. Notice of Team Meeting, 2/11/2021
  - o. Notice of Team Meeting, 2/25/2021
  - p. Student's IEP, 2/25/2021
  - q. Special Education Placement Determination, 2/25/2021
  - r. Behavior Intervention Plan, 9/5/2019 (Updated 2/25/2021)
  - s. Team Meeting Notes, 2/25/2021
  - t. IEP Amendment, 2/26/2021
  - u. Notice of Team Meeting, 9/30/2021
  - v. Team Meeting Notes, 10/5/2021
  - w. Prior Written Notice, 10/5/2021
8. IEP Amendment, 5/13/2022
  - a. Special Education Notice of Team Meeting, 4/27/2022
  - b. Amendment of Student's IEP, 5/13/2022
  - c. Special Education Placement Determination, 5/13/2022
  - d. Meeting Notes, 5/13/2022
  - e. Prior Notice of Special Education Action, 5/13/2022
9. Annual IEP, 2/13/2023
  - a. Special Education Notice of Team Meeting, 2/1/2023
  - b. Written Agreement between the Parent and the District, undated
  - c. Student's IEP, 2/17/2022
  - d. Student's IEP, 2/13/2023
  - e. Special Education Placement Determination, 2/13/2023
  - f. Prior Notice of Special Education Action, 2/13/2023
  - g. Meeting Notes, 2/13/2023
10. Email Correspondence

11. List of District staff knowledgeable about matters related to the Complaint.

The Complainant did not submit a *Reply* to the District *Response*. However, the Complainant submitted the following documents in support of the allegations in the Complaint:

1. Functional Behavioral Assessment, 11/22/2021
2. OASIS Weekly Feedback Reports, 1/2023
3. IEP, 2/13/2023
4. IEP Meeting Notes, 2/13/2023
5. Function-Based Behavior Support Plan, 12/1/2022 (updated 2/13/2023)
6. Data Summary, 4/2023
7. Risk Identification Tool, 5/4/2023
8. Incident Report Summary, 5/24/2023
9. Incident Reports/Debrief Notes following significant behavioral incidents (31 documents)
10. Email Correspondence from ESD and District
11. ESD Student Handbook, 8/2023

The Complaint Investigator interviewed the Complainant on October 23, 2023. On November 27, 2023, the Complaint Investigator interviewed ESD personnel, and on December 11, 2023, the Complaint Investigator interviewed the District’s Director of Special Programs (“Director”). The District Superintendent was present during the interview of the Director. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from October 14, 2022 to the filing of this Complaint on October 13, 2023.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</b></p> <ol style="list-style-type: none"> <li>1. The Complaint alleges that the District and the ESD violated the IDEA by:               <ol style="list-style-type: none"> <li>a. Removing the Student from school for more than 10 school days, either consecutively or cumulatively, constituting a pattern of exclusion;</li> <li>b. Not conducting a manifestation determination review (MDR) to determine whether the Student’s behavior was a manifestation of the Student’s disability;</li> <li>c. If the behavior was a manifestation of the Student’s disability:                   <ol style="list-style-type: none"> <li>i. Not returning the Student to the placement from which the Student was removed; and</li> </ol> </li> </ol> </li> </ol>	<p><b>Substantiated as to both the District and the ESD</b></p> <p>The District and the ESD failed to convene a manifestation determination review within ten school days of the of the decision to remove the Student from school for disciplinary reasons.</p>

Allegations	Conclusions
<ul style="list-style-type: none"> <li>ii. Not conducting a functional behavioral assessment and developing or reviewing and revising a behavior intervention plan to address the behavior.</li> <li>d. If the behavior was not a manifestation of the Student’s disability: <ul style="list-style-type: none"> <li>i. Not providing services to the Student in an interim alternative educational setting; and</li> <li>ii. Not conducting a functional behavioral assessment and providing behavior intervention services and modifications designed to address the behavior so that it would not recur.</li> </ul> </li> </ul> <p>(OAR 581-015-2415; 34 CFR §300.530(a)-(f))</p>	
<p><b>Prior Written Notice (PWN)</b></p> <p>The Complaint alleges that the District and the ESD violated the IDEA by not providing prior written notice (PWN) in response to requests from the Complainant or the Parent or at other times when the District proposed or refused to initiate or change the student’s evaluation, placement, or the provision of FAPE.</p> <p>(OAR 581-015-2310(2)(a); 34 CFR §300.503(a))</p>	<p><b>Not Substantiated as to both the District and the ESD</b></p> <p>The District and the ESD complied with all requirements to provide the Complainant and the Parent with PWN.</p>
<p><b>When IEPs Must be in Effect</b></p> <p>The Complaint alleges that the District and the ESD violated the IDEA by not providing special education and related services in accordance with the Student’s IEP. The Student was repeatedly suspended and informally removed from school resulting in non-implementation of the Student’s IEP and consequent loss of educational opportunity.</p> <p>(OAR 581-015-2220(1)(b); 34 CFR §300.323(c)(2))</p>	<p><b>Substantiated as to both the District and the ESD</b></p> <p>Neither the District nor the ESD offered or provided special education services to the Student from May 24, 2023 until the end of the 2022-23 school year.</p> <p>When the Student returned to OASIS in October 2023, the Student was out of the classroom due to behavioral incidents or suspension most of the time, resulting in a material failure to implement the IEP.</p>
<p><b>Review and Revision of IEPs</b></p> <p>The Complaint alleges that the District and the ESD violated the IDEA by not reviewing and revising the</p>	<p><b>Substantiated as to both the District and the ESD</b></p> <p>Neither the District nor the ESD reviewed and revised the</p>

Allegations	Conclusions
<p>Student’s IEP as appropriate to address the Student’s lack of expected progress toward annual behavior goals, resulting in numerous formal and informal removals from school.</p> <p>(OAR 581-015-2225(1)(b); 34 CFR §300.324(b))</p>	<p>Student’s IEP as necessary to ensure that supports and services were in place to allow the Student to access their education and make progress on their IEP goals.</p>
<p><b>Education Records</b></p> <p>The Complaint alleges that the District and the ESD violated the IDEA by denying or delaying the Complainant’s or Parent’s access to the Student’s education records, especially but not limited to those related to the Student’s behavioral incidents and disciplinary consequences, including both formal and informal removals from school.</p> <p>(OAR 581-015-2300; 34 CFR §300.501(a))</p>	<p><b>Not Substantiated as to both the District and the ESD</b></p> <p>The District and the ESD provided the Complainant access to the Student’s educational records as required.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complaint alleges that the District has deprived the Student of the core entitlement of the IDEA, a Free Appropriate Public Education, by not meeting the Student’s unique individual disability related needs for specially designed instruction and accommodations.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Substantiated as to the District</b></p> <p>The District denied the Student a FAPE by failing to provide the special education placement, services, and supports necessary for the Student to access their education and make expected progress on their IEP goals.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<p>The Complainant requested the following corrective action:</p> <ol style="list-style-type: none"> <li>1. As outlined in [the Student’s] IEP, the District will provide adequate compensatory services for [the Student’s] challenges.</li> <li>2. The District and OASIS will return [the Student] to school and engage in services as agreed to at our 5/2023 meeting that ensure appropriate competencies and adequacies to support their behavioral program. [The Student’s] behavior concerns were ultimately the reason for [the] transfer out of district. The solution is securing a proper environment for [the Student], a student with disabilities to get free and appropriate education per [the] IEP.</li> </ol>

**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 October 14, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are

included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is twelve years old and in sixth grade. The Student is eligible for special education as a child with autism spectrum disorder (ASD) and Emotional Behavior Disability (EBD) and had an IEP from first grade through the middle of fourth grade in a neighboring school district.
2. The Student's final IEP from the previous school district is dated February 17, 2022, when the Student was 10 years old and in fourth grade.
3. The IEP includes, in relevant part:
  - a. Concerns of the Parent: The Parent-Caregiver's concern was that the Student likes school and to "be able to take the van home." The IEP indicated that the Parent expressed concerns about the Student's unsafe behaviors, inability to self-regulate in the classroom, and being restrained every year beginning in the 2018-19 school year.
  - b. Present Levels of Academic Performance: This IEP does not include quantitative academic performance data for the 2021-22 school year but includes the following statements:
    - i. [The Student] has not been able to complete district wide assessments. [The Student] is unable to focus or stay on task when presented with technology to use.
    - ii. [The Student] is presently working on place value and money in math. [The Student] is currently working in the 4th grade general education curriculum which is REACH for reading. [The Student] will purposely get questions wrong and or not fully participate in math and reading lessons.
  - c. Present Levels of Developmental and Functional Performance: The IEP describes the Student's unsafe behaviors, suicidal ideation, physical aggression, threats of violence, repeated elopement, and other behaviors that interfered with learning. The IEP notes that, in October 2021, the Student had been moved to a self-contained classroom full time with no interaction with typically developing peers.
  - d. How the Student's disability affects involvement in and progress in the general curriculum: The IEP notes that the Student required a high level of structure and adult support. However, even in the self-contained setting, the Student's dysregulation frequently prevented participation in learning activities.
  - e. Special Factors: The IEP notes that the student "exhibits behavior that impedes his/her learning or the learning of others." The IEP also identifies communication needs as a special factor.
  - f. Measurable Annual Goals: In this IEP, the Student has measurable annual goals and short-term objectives in behavior, pragmatic language, self-management, math, and written language.
  - g. Specially Designed Instruction (SDI): The IEP provides for SDI in written language (150 min/week), behavior (300 min/week), self-management (150 min/week) all in

- the Student's self-contained setting.
- h. Related Services: The IEP provides for transportation (round trip daily), and speech language pathology services (90 min/month).
  - i. Accommodations: The IEP includes accommodations including, among other things, a safety support plan, a behavior support plan, and adult proximity.
  - j. Supports for School Personnel: The IEP provides consultation with a speech language pathologist (SLP) (60 min/year), a school psychologist (15 min/year), an occupational therapist (OT) (120 min/year), and an autism specialist (60 min/year).
  - k. Non-Participation Justification: The IEP states "The team has determined the student will need to be removed from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids or services." The justification is that the Student requires a high level of structure and adult support to access education due to dysregulation, difficulty being safe, and following directions from adults.
- 4. On March 10, 2022, the Parent signed an agreement with the Department of Human Services Office of Developmental Disabilities to place the Student in a group home located within the attendance area of the District.
  - 5. Upon moving into the District, on or about May 9, 2022, the Director reported that the Student received tutoring, along with another student, in the group home setting. The tutoring was provided for one hour per day by a District special education teacher and was the extent of the educational services that the Student received through the end of the 2021-22 school year.
  - 6. The Director reported that the tutoring services were provided because the Student had a variety of complex needs and the District did not have a program like the one the Student attended in their previous school district. The District wanted time to determine an appropriate placement for the Student. The Director reported that District personnel assumed that the Student would probably be placed at OASIS, a behavior intervention program run by the ESD, and did not want to "move [them] around too much" before a placement was determined.
  - 7. The IEP team met on May 13, 2022 and amended the IEP from the previous district. The amended IEP appears on a District IEP form with the following changes from the February 17, 2022 IEP:
    - a. Updated input obtained from the Parent in April 2022, in addition to describing the Student's personality and interests, stated that the Student:
      - i. Was good with routines once acclimated;
      - ii. Was particular about people and slow to attach to staff;
      - iii. Was adult oriented and not involved with peers;
      - iv. Won't be successful if not attached to the adults;
      - v. Likes options;
      - vi. Needs to know the rules and limitations;
      - vii. Needs consistency across staff and firm limits that don't change;
      - viii. Was a runner who has previously run off campus;
      - ix. Escalates quickly and will try to escape when escalated;
      - x. Was hard to calm down once upset;

- xi. Should be within arm's reach at all times.
- b. Present Level of Academic Performance included a new statement:

“May 2022: [The Student] is working at an instructional 4th grade level in reading and 2nd grade level in math. [The Student]’s handwriting is large, but [the Student] is very willing to write and complete tasks. [The Student] has a more difficult time in reading to perform a task and take information from a book to answer questions. This is something we are working on during our school time.”
- c. Present Level of Functional Performance included a new statement:

“Move in 2022: [The Student] has come to tutoring/school ready to learn all but a couple of days. [The Student] had one incident of running out of ... home during week two of tutoring. [The Student] has needed redirection for coming dressed for school and leaving non-school items where they belong. We switched to tutoring at an alternate district site on May 9th. [The Student] was excited and has come to school ready to learn each day [and] describes [themselves] often in the green or yellow zone when [the Student] arrives as [the Student] is “elated” to be at school. [The Student] likes to have control and can need redirection to be a cooperative learner with ... peers and teachers. We have been working hard on expected and unexpected behavior at school, as well as our own “circle of control”. [The Student] is listening and working on these concepts with a high level of adult support, in a small setting. [The Student] benefits from practice in real and simulated situations when it comes to self-regulation and benefits from a high level of support in a less distracting setting with 2-3 adults and 2 students.”
- d. How the Student’s disability affects involvement and progress in the general education curriculum did not change from the February 17, 2022 IEP.
- e. Special Factors: The team added one special factor, a need for assistive technology.
- f. Measurable Annual Goals:
  - i. Behavior goals and objectives did not change;
  - ii. Self-management goal did not change;
  - iii. Communication goal did not change;
  - iv. Math goal did not change;
  - v. Written language goal did not change;
- g. Specially Designed Instruction (SDI): The same service areas as on the February 17, 2022 IEP, but all SDI service minutes were reduced to 75 min/week.
- h. Related Services: Transportation was removed, and SLP service was reduced to 45 min/week.
- i. Accommodations: Several accommodations were added including prompts to stop and think before answering, separate setting and 1:1 for state assessments, and a health management plan.
- j. Supports for School Personnel:
  - i. SLP consultation did not change;
  - ii. OT consultation did not change;
  - iii. Consultation with licensed school psychologist 15 min/month was deleted;



- iv. Consultation with behavior specialist 15 min/month was added;
  - v. Consultation with autism specialist increased from 60 min/year to 180 min/year.
- k. Non-Participation Justification did not change.
8. A Special Education Placement Determination dated May 13, 2022 indicates that the team considered three placement options: (a) Regular classroom with pullout SDI, (b) Alternate education setting with one to one specially designed instruction in the areas of behavior and social emotional regulation and specially designed instruction in educational goal areas, and (c) specialized behavior program/out of district placement and chose option (b).
  9. The Director reported that the option selected on the Special Education Placement Determination dated May 13<sup>th</sup>, 2022 described the same in-home tutoring services that the Student had received since their arrival in the District.
  10. IEP Meeting Notes dated May 13<sup>th</sup>, 2022 state that the reduction in service minutes in the amended IEP accurately indicate the direct service time but do not include “practice time”. The notes also state that nursing service and health management plan were added as consultation to staff, though this does not appear in the amended IEP.
  11. A PWN dated May 13<sup>th</sup>, 2022 stated that the Student’s IEP team decided to adopt the IEP from the previous school district and “accepted the current placement.” The PWN also states that nursing service and health management plan were added as consultation to staff, though this does not appear in the amended IEP.
  12. On September 2, 2022, the District convened a Placement Meeting for the Student. Team members agreed that the Student should be in a full-day placement with peers. Because the Student had been receiving only intensive 1:1 tutoring in a setting with no peers, the team agreed that a “step up” program was necessary to enable the Student to develop self-regulation skills with a goal of transitioning the Student to a Structured Behavior Program (SBP). The SBP considered by the team was OASIS, an ESD program.
  13. The Director reported that OASIS was selected for the Student because it had many characteristics that were similar to the Student’s placement in their previous school district, it was a smaller setting, and the Student could attend for a full day.
  14. During the 2022-23 school year, the Student’s multiple behavioral incidents led to time outside of class several times, but the OASIS staff believed the Student was responding to the behavior management methods they were using.
  15. On February 13, 2023, the Student’s IEP team met for the annual IEP review and revision. Participating in the IEP meeting were:
    - a. The Case Manager, who is also a behavior intervention teacher;
    - b. A behavior specialist;
    - c. A mental health consultant;
    - d. An autism specialist;
    - e. A speech-language pathologist;
    - f. The Group Home House Manager.
  16. The February 13, 2023 IEP includes, in relevant part, the following:

- a. Special Factors:
  - i. Behavior that impedes the Student's learning or the learning of others;
  - ii. Communication needs; and
  - iii. Need for assistive technology devices or services.
- b. Student's overall strengths, interests, and preferences: The IEP describes the Student as kind, friendly, helpful, bright, fast thinking, with interest in technology and excellent reading skills.
- c. Parent Input: The Parent did not provide input but reportedly had no concerns. The Group Home House Manager reported that the Student "does best with 1:1, leading by example, clear and specific direction, having an agenda and structured routine."
- d. Present Levels of Academic Achievement:
  - i. The Student's Oregon Statewide Assessment scores from May 2022, when the Student was in 4<sup>th</sup> grade, yielded scores placing the Student at level 1 out of 4 on the grade 4 score range in math, English language arts, and writing.
  - ii. I-Ready reading assessment scores from 1/31/23, when the Student was in 5<sup>th</sup> grade, yielded scores placing the Student at grade 1 level, with grade 3 level phonics, grade 1 level vocabulary, grade 1 level literature comprehension, and grade K level informational text comprehension.
  - iii. I-Ready math assessment scores from January 31<sup>st</sup>, 2023 yielded scores placing the student at grade K level.
  - iv. Narrative present levels statements describe the Student as "a bright student who can do quality work when given frequent reminders to take time" and state that "[r]eading is a clear strength" for the Student. A narrative statement of the Student's needs states:

"[The Student] needs specialized instruction in Reading, Writing and Math as outlined in this IEP. [The Student] needs continued encouragement and engaging learning opportunities in order to maintain ... continued effort on academics. [The Student] can become dysregulated, disruptive and physically aggressive .... When agitated it becomes difficult for [the Student] to stay focused on academic tasks and instruction."
- e. Present Level of Functional Performance:
  - i. The IEP includes charts bases on daily behavior tracking sheets that show the Student making progress toward meeting behavior goals;
  - ii. A narrative description of the Student's behavioral progress states that the Student had received 8 incident reports so during the school year through December 2022 and had "spent an average of 48 minutes to get back on track" before returning to class;
  - iii. The IEP includes a narrative description of the Student's needs related to behavior: "[The Student] needs behavior/emotional supports outlined in the IEP to help ... regulate [their] emotions and build self regulation skills. [The Student] can be work avoidant at times and at times is distracted by off task peers. [The Student] frequently rushes through [their] assignments ... which can lead to many mistakes and the need to redo assignments. [The Student] needs continued encouragement and engaging learning opportunities in order to maintain ... continued effort and focus on academics."

- f. How the Student's disability affects involvement and progress in the general education curriculum:

"Due to the nature of [the Student's] disability, [the Student] can have trouble regulating ... emotions when frustrated. These behaviors negatively impact ... ability to maintain involvement and make progress in the general education curriculum."

- g. Annual Academic and Functional Goals and Objectives:

- i. The IEP includes measurable annual goals in reading, writing, and math;
- ii. The IEP includes the following measurable functional annual goals in Communication and Responsible Behavior.

- h. Specially Designed Instruction:

- i. Written Language: 120 min/month;
- ii. Reading: 120 min/month;
- iii. Math: 120 min/month;
- iv. Behavior-Social/Emotional: 80 min/month;
- v. Communication-Social: 40 min/month.

- i. Related Services: Round trip transportation to and from school.

- j. Supplementary Aids/Services; Accommodations

- k. Consultation Supports for School Personnel:

- i. Consultation with speech language pathologist: 60 min/year;
- ii. Consultation with behavior specialist: 120 min/year;
- iii. Consultation with occupational therapist: 120 min/year;
- iv. Consultation with autism specialist: 120 min/year.

- l. Non-Participation Justification:

"[The Student] is currently attending a self-contained behavior intervention program outside of [their] district. [The Student] will be removed from non-disabled peers for 100% of [their] school day. Inclusion with non-disabled peers will be dependent on increasing and consistent appropriate behavior."

"The team agrees that [the Student's] needs are currently best met in a full day placement in a self-contained behavior setting. [The Student] benefits from being in a smaller classroom with specially designed instruction and increased adult support. [The Student] will receive opportunities to mainstream in a general education classroom as appropriate skills are developed and behavior objectives are met."

- m. Extended School Year (ESY): The IEP team decided that the Student did not need ESY services.

17. When asked if eighty minutes per month of SDI in the area of behavior-social/emotional was sufficient to address the Student's needs in that area, the Director replied that the program at OASIS provides a lot of structure and support, so SDI may not rise to the level it would if the Student were in another program. If the Student were "placed in Resource with [the District]," the District would "dramatically increase the SDI . . . maybe ninety minutes per week."

18. A Special Education Placement Determination dated February 13, 2023 indicates the team considered three placement options: neighborhood school with Learning Resource Center supports, a self-contained behavior class within the District, and the ESD's OASIS program. The team selected The OASIS program.
19. When asked where OASIS would fall on the continuum of placement options, the Director explained that it was more restrictive than a District school, but less restrictive than the tutoring the Student previously received because the Student had access to peers at OASIS. When compared to a day treatment setting, the District viewed OASIS as less restrictive because of the "additional components" in day treatment. OASIS was described as having "some mental health supports but operating more as a school setting [than day treatment]."
20. OASIS staff reported no significant behavioral incidents during the first three months of 2023. They believed the Student was making real progress in all areas.
21. IEP progress reports dated April 14, 2023, reported the Student's progress as follows:
  - a. Reading: "Given a 4<sup>th</sup> grade text and having [the Student] read it to me, on two separate trials. When given 10 comprehension questions about the passage, [the Student] was able to answer an average of 50% correctly."
  - b. Writing: "[The Student] was given a writing prompt on 4-13-23. When given a paragraph planner, a paragraph writing checklist and teacher assistance, [the Student] was able to write 5 sentences on the topic. Topic sentence was clear. All sentences had correct punctuation and began with capital letters. 13 letters were capitalized incorrectly, D,L,N,B [sic] and R were always written as capital letters when not appropriate. Sentences were all grammatically correct. 4 words were spelled incorrectly or illegible. Extra letters were added to 2 words. Letter spacing was inconsistent."
  - c. Math: "[The Student] was able to answer 5-word problems with all operations and numbers though the thousands with 80% or higher correct on 1 out of 2 trials when given access to a calculator. 40% and 80% [sic]"
  - d. Communication: "[The Student] was not assessed on this goal during this quarter."
  - e. Responsible behavior: "According to data from daily behavior tracking sheets, [the Student] was able to maintain responsible behavior at the following average Percentages during February and March 2023. N/A indicates the goal was changed and we do not have data for the stated goal during February."
    - i. Take time and effort to do quality work when completing classroom assignments 90% of [the] school day: February, n/a - March, 89.9%;
    - ii. Stay on task 90% of [the] school day: February, 79.47% - March, 87.07%;
    - iii. Transition appropriately 90% of [the] school day: February, n/a - March 90.98%;
    - iv. Respectful behavior: "According to data from daily behavior tracking sheets, [the Student] was able to maintain respectful behavior at the following average Percentages [sic] during February and March 2023. n/a [sic]"

indicates the goal was changed and we do not have data for the stated goal during February.”

- v. Acceptance of instruction & direction w/o [sic] comment or arguing 90% of [the] school day: February 74.21% - March 84.24% ;
- vi. Appropriate language and tone with peers/staff 90% of [the] school day: February n/a - March 89.13%;
- vii. Use classroom materials appropriately 90% of [the] school day: February 81.32% - March 92.17%;
- viii. Safe behavior: According to data from daily behavior tracking sheets, [the Student] was able to maintain respectful behavior at the following average Percentages [sic] during February and March 2023. N/A indicates the goal was changed and we do not have data for the stated goal during February.
- ix. Choose appropriate calming strategy when frustrated 90% of the time: February 78.95% - March 92.07%;
- x. Keep hands, feet, body & objects to self 90% of [the] school day: February 83.68% - March 98.7%;
- xi. Use classroom materials appropriately 90% of [the] school day: February 81.32% - March 94.35%.

22. The OASIS staff observed alarming changes in the Student’s behavior after spring break. The Student was frequently disruptive, aggressive, demonstrated sexually inappropriate behavior, and was unwilling to participate in instructional activities. They were out of class and required almost continuous behavioral interventions.

23. An IEP team meeting was convened on May 11, 2023, to discuss transportation for the Student. Attending this meeting was the District Special Programs Director, the District Executive Director of Teaching and Learning, a District Nurse, a group home staff member, and an ESD program coordinator. The Team discussed the Student’s inappropriate behavior on school transportation. The group home representative asserted that the behaviors stemmed from the Student’s experience of peer bullying at OASIS. An OASIS behavior coach investigated and reported that the Student denied being bullied.

24. A May 22, 2023 Special Education Notice of Team Meeting stated that an IEP meeting was scheduled for May 24, 2023 for the purpose of reviewing the Student’s IEP and placement.

25. May 24, 2023, an “IEP and Placement Meeting” was convened. Attending were key staff from the District, the ESD, and the group home.

26. The content of the May 24, 2023 IEP included no changes in the Student’s statement of present levels of academic achievement and functional performance, goals, or services.

27. A Special Education Placement Determination (dated 02/13/23 but amended to reflect the May 24, 2023 placement meeting) included a new placement option: Individualized instruction in an alternative environment. None of the placement options were selected.

28. Meeting Notes dated May 24, 2023 include an extensive review of the Student’s increasing

behaviors of concern. Meeting participants from the ESD, the District, and the group home shared information about how the Student's current crisis manifested at the group home and at OASIS. Specific manifestations of the crisis noted included inappropriate behavior, medical problems, and suicidal ideation. OASIS staff asserted that the Student was out of class frequently and unable to access education at that time. Group home staff decided to keep the Student out of school until the end of the 2022-23 school year. District staff stated that compensatory education would be offered once the Student was stabilized. District and ESD staff stated that the Student would have a spot at OASIS after medical issues had been resolved.

29. The Director reported that at the May 24, 2023 meeting, OASIS staff expressed that OASIS was not presently an appropriate setting for the Student and participants discussed how, "medically, [the Student] may not have been in a place to access [their] education." The District reported that the IEP team did not have any input from the Student's medical provider[s] at the time of this meeting. The Director recalled hoping that the group home or Office of Developmental Disabilities would connect the Student with a psychiatrist over the summer.
30. The Director reported that the District desired to look at other placement options for the Student, and wanted to offer some services to the Student at the May 24, 2023 meeting while they looked into other options. Staff from the Group Home, however, shared at the meeting that they believed it would be best to keep the Student at home. The Director acknowledged that, "We probably should have made sure [the Group Home] knew that we were willing to provide [the Student] with services."
31. When asked if any mental health services were considered for the Student at the May 24, 2023 meeting, the Director explained that, "Part of the package with OASIS is that they have a mental health person, so [students] would get those kinds of services," and that they were, "under the impression that the Group Home would be trying to find [the Student] some."
32. OASIS staff reported that no mental health services are provided to students at OASIS.
33. A PWN dated May 24, 2023 states:

"The IEP team met on 5/24/2023 to review [the Student's] incident reports, recent suspension, and placement. [The] group home has chosen to keep [the Student] out of school for the remainder of this school year due to [the] current crisis state. [The Student] will be eligible for compensatory education services through the Central School District. Due to the severity of [the Student's] current medical and behavioral crisis, the team agreed that it is not in [the Student's] best interest to attend the Oasis [sic] Program at this time."
34. The Director reported that, while no placement option was selected on the Placement Determination from the meeting on May 24, 2023, the Director understood from the discussion at the meeting that it was not an option for the Student to continue attending OASIS at that time. OASIS staff expressed that OASIS was not an appropriate setting for the Student in light of the Student's present behaviors. The Director reported that it was the hope of District staff that the Student would be able to return to OASIS the following school year.
35. When asked what the Student's placement would be if the Group Home had decided to return them to school prior to the conclusion of the school year, the Director replied that the IEP team would need to re-meet to determine placement, but that it would likely have been individual tutoring.

36. IEP progress reports dated June 16, 2023 included no progress data related to the Student's academic goals (reading, writing, math, and communication). The IEP progress reports offer only limited data from 4 days of data collection for the Student's behavior goals.
37. On August 31, 2023, a meeting was held to provide an update on the Student's summer and to discuss their readiness to return to school. The meeting was attended by the District Special Programs Director, several representatives from the Group Home, a representative from the Office of Developmental Disabilities, three staff members from OASIS, and the Student (for part of the meeting).
38. The Director reported that this was not an IEP meeting and, consequently, a Prior Written Notice was not generated as a result of the meeting.
39. Meeting Minutes dated August 31, 2023 describe the Student's behavior during the summer and include details of a plan for the Student to return to OASIS for the 2023-24 school year. Staff from OASIS noted that they had not received the psychological evaluations or doctor's reports that they had hoped to receive following the Student's "medical/mental crisis state that was happening at the end of last school year." It was further noted that these reports had been previously requested so that OASIS could be aware of any recommendations from the Student's medical provider(s).
40. The Director reported that it sounded like the Student's summer had gone well, the Student would be receiving WRAP services, and that representatives from the Group Home expressed their belief that the Student could return to OASIS.
41. In September 2023, the Student attended school remotely because construction at OASIS prevented in-school instruction. The Student participated in classes on a Chromebook and with one-on-one assistance, but staff had to mute Zoom so the other students could not hear the Student's inappropriate language.
42. An OASIS Behavior Intervention Teacher prepared a detailed Behavior Support Plan (BSP) dated September 18, 2023. This BSP was created without benefit of a functional behavioral assessment or other data-based assessment but was based on information from OASIS staff observations of the Student.
43. The Student returned to OASIS for in-person instruction in October 2023. This was a difficult month for the Student, with multiple behavioral incidents leading to time outside of class:
  - a. October 2: The Student left class and was verbally abusive and physically aggressive with multiple staff members, using racial epithets and crude sexual language. Out-of-classroom time: 50 minutes.
  - b. October 3: The Student began behaving inappropriately in class and quickly escalated to using racial epithets, physical aggression, and the use of crude sexual language. The Student appeared to lose consciousness for several minutes. Staff called emergency medical services, and the Student was transported to the hospital by ambulance.
  - c. October 4: The Student left the classroom at 9:00 am and then left the area at 9:20, went outside, and tried to climb over the fence. The student engaged in multiple inappropriate behaviors, including: kicking, hitting, spitting, biting, undressing, trying to touch staff's genitalia, and self-injurious actions. Staff briefly restrained the

Student to prevent self-injury. After spending some time in a “reset room”, the Student returned to class for the rest of the day.

- d. October 5: The Student exhibited behaviors requiring intervention twice on this day, both for extended periods of time. In the morning, the Student laid on the floor of the classroom, wrote on the floor, and attempted to grab, kiss, and bite staff members. Later in the day, the Student ran away from staff outside the building, attacked a staff member, napped, and appeared to sleep.
- e. October 6: On this day, the Student behaved inappropriately from arrival at school until departure with group home staff in the afternoon. Behaviors included repeated episodes of attempting to elude staff members, spitting, grabbing at staff genitalia, disrobing, exposing genitalia, and using crude sexual language. No interventions were successful in deescalating the situation. The Student was suspended from school for the remainder of the school day. Out-of-class time: Entire school day.
- f. Notes regarding the Student’s behavior and the suspension included recommendations for a team meeting to re-evaluate the Student’s present level of need and re-address “what interventions can be adopted to mitigate [the Student’s continued and escalated bx *[sic]*.”
- g. October 9-17: The Student was suspended.
- h. On October 13, 2023, the Complainant filed this Complaint.
- i. October 18: The Student arrived at school in the morning, refused to go inside, and then ran away toward a busy highway. Throughout the day, the Student engaged in repeated inappropriate behaviors, which included: eloping, physical aggression against others, self-injurious actions, threats of self-harm, spitting, exposing genitalia, racist and explicit sexual language, and destruction of property. Out-of-class time: Entire school day.
- j. October 19: The Student did not get to the classroom on this day. Dysregulation all day (eloping, self-injury, exposing self, explicit sexual language, cussing, hitting, spitting, grabbing staff) requiring continuous monitoring and intervention by multiple staff members. Out-of-class time: Entire school day.
- k. October 24: The Student arrived at school but did not go to the classroom and instead completed assessments on a computer in a conference room. In the afternoon, the Student became agitated and engaged in inappropriate behaviors (eloping and spitting). Out-of-class time: Entire school day.
- l. October 25: The Student was dysregulated and engaged in disruptive, physically aggressive behavior off and on all day. Out-of-class time: Entire school day.
- m. October 26: The Student did not want to go to the classroom but instead went to a conference room accompanied by a 1:1 behavior coach. The Student did some school work, listened to music, watched movies, and went for a walk with a staff member. Out-of-class time: Entire school day.
- n. October 27: The Student arrived at school in a good mood and chose to go into the conference room rather than the classroom. (The Student) went into another room without permission and removed some items. A staff member recovered these items



from the Student. The Student's behavior escalated into disrobing, exposing and touching genitalia, disturbing classrooms, attempting to touch staff members' genitalia, and spitting. Later, the Student calmed, returned to the conference room, listened to music, read, did some work, at went home on schedule. Out-of-class time: Entire school day.

#### IV. DISCUSSION

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

The Complaint alleges that the District and the ESD violated the IDEA by removing the Student from school for more than 10 school days, either consecutively or cumulatively, constituting a pattern of exclusion; and not conducting a manifestation determination review (MDR) to determine whether the Student's behavior was a manifestation of the Student's disability.

Under the IDEA, a student with a disability may be removed from their current educational placement for a violation of a student code of conduct for up to ten school days in a school year to the same extent as students without disabilities. School districts may remove a student with a disability from their placement for additional periods of up to ten school days in a school year for disciplinary reasons, so long as the removals do not constitute a pattern of removals. Any disciplinary removal in excess of this constitutes a change of placement.<sup>3</sup>

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a school district must convene a meeting to determine if the student's behavior is a manifestation of their disability. If the conduct is found to be a manifestation of the student's disability, the school district must: (a) conduct a functional behavioral assessment and implement a behavioral intervention plan or, if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and (b) return the student to their previous placement, unless the parent and school district agree to a change of placement as part of the modification of the Student's behavioral intervention plan or other special circumstances apply. If the behavior is not found to be a manifestation of the student's disability, the school district may proceed with disciplinary action to the same extent as it would for a student without a disability.<sup>4</sup>

In this case, the Complainant, the District and the ESD submitted numerous incident reports to the Investigator describing Student's behavior and indicating which incidents resulted in suspension. The *Responses* from the District and the ESD indicate that the Student was suspended for a total of five days during the 2022-23 school year and a total of five and one-half days from the start of the 2023-24 school year through the date the Complaint was filed. There was no evidence provided that the Student was formally suspended in excess of these amounts. While the Student clearly missed significant amounts of instruction due to behavioral incidents, efforts were generally made to return the Student to the classroom rather than suspend the Student. It is unclear whether the Student's time out of class due to ongoing disruptive behavior rose to the level of a disciplinary removal. As of the IEP meeting on May 24, 2023, however, the Student was not permitted to return to school at OASIS.

While Group Home staff decided to keep the Student at home, it was also the understanding of

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<sup>3</sup> OAR 581-015-2405 & 2410; 34 CFR §300.530

<sup>4</sup> OAR 581-015-2415; 34 CFR §300.530(e)-(f)

the District that it was not an option for the Student to return to OASIS for the remainder of the school year. The IEP team considered changing the Student's placement at the May 24, 2023 meeting, but no alternate placement was offered either on the Placement Determination page or in the PWN that followed the meeting. This exclusion from OASIS by the ESD was the result of the Student's escalating behaviors and constitutes a de facto suspension. The ESD was the agency that would not permit the Student to return to OASIS, resulting in an exclusion of the Student from their current placement for greater than ten school days during the 2022-23 school year. When this decision was made, a Manifestation Determination Review (MDR) was required. The District maintained the obligation of enabling the provision of FAPE for the Student.<sup>5</sup> The District was notified each time that the Student was removed from OASIS for disciplinary reasons during the 2022-23 school year. Further, the Director and other District administrators were in attendance at the May 24, 2023 IEP meeting when it was made clear that the Student was being excluded from OASIS. While the District may not have had the ability to require OASIS to serve the Student pending the outcome of the MDR, the District did have the obligation to ensure that the MDR was conducted.

The Department substantiates this allegation as to both the District and the ESD.

### **Prior Written Notice (PWN)**

The Complaint alleges that the District and the ESD violated the IDEA by not providing PWN in response to requests from the Complainant or Parent or at other times when the District proposed or refused to initiate or change the student's evaluation, placement, or the provision of FAPE.

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>6</sup> PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

In this case, the ESD submitted to the Complaint Investigator two PWNs, one for each related to the February 2023 and May 2023 IEP meeting. The ESD also provided numerous incident reports describing the Student's inappropriate behaviors and the OASIS staff responses. While those incident reports were not on forms with the title Prior Written Notice, they provided the

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<sup>5</sup> OAR 581-015-2040(1)

<sup>6</sup> OAR 581-015-2310; 34 CFR §300.503(a).

Parent and the Group Home Manager with ongoing information about decisions and rationales for those decisions.

The Department does not substantiate this allegation as to either the District or the ESD.

### **When IEPs Must be in Effect**

The IDEA requires that an IEP be in effect at the beginning of a school year, and a school district must provide special education and related services in accordance with the IEP.<sup>7</sup> A District must ensure that the IEP of a student with a disability is available to all staff members who are responsible for implementing the IEP and that each staff member is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications and supports that must be provided for, or on behalf of, the student in accordance with the IEP.<sup>8</sup>

“A material failure to implement an IEP violates the IDEA” and such a failure “occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”<sup>9</sup>

In this case, the Student was out of class and receiving almost none of the services described in the IEP from Spring Break 2023 until May 24, 2023 when it was decided that the Student would not attend at OASIS for the remainder of the school year. Further, when the IEP team met on May 24, 2023, it was undisputed that the Student was not permitted to attend OASIS, but no alternative placement was made. The Placement Determination indicated that, while several placements were considered, none were selected. The PWN generated after the May 24, 2023 meeting stated that, “the team agreed that it is not in [the Student’s] best interest to attend the Oasis [*sic*] Program at this time,” but did not propose any alternative placement options. Consequently, the Student did not have a special education placement available at all from May 24, 2023 until the end of the 2022-23 school year.

When school resumed in the fall of 2023, the Student reportedly received some special education services remotely at the group home for much of September. When the Student returned to OASIS in October, the Student was out of the classroom due to behavioral incidents or suspension most of the time, resulting in a material failure to implement the IEP.

The Department substantiates this allegation as to both the District and the ESD.

### **Review and Revision of IEPs**

The Complaint alleged that the District violated the IDEA by not reviewing and revising the Student’s IEP when the Student did not make expected progress toward their IEP goals.

The IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to determine whether a student with a disability is achieving their IEP goals, and to revise the IEP as appropriate.<sup>10</sup> The requirement for the IEP team to review and revise an IEP is not limited to once per year. The IEP team must review and revise a student’s IEP at any time to address:

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<sup>7</sup> OAR 581-015-2220(1); 34 CFR §300.323(a)

<sup>8</sup> OAR 581-015-2220(3); 34 CFR §300.323(d)

<sup>9</sup> *Van Duyn v. Baker Sch. Dist.* 5*J*, 502 F.3d 811 and 822 (9th Cir. 2007)

<sup>10</sup> OAR 581-015-2225(1); 34 CFR §300.324(b)

1. A lack of expected progress toward the annual goals and in the general education curriculum;
2. The results of any reevaluation;
3. Information about the student provided to, or by, the student's parents;
4. The student's anticipated needs; or
5. Other matters.<sup>11</sup>

In May 2022, the District adopted the Student's IEP from their former school district with no changes other than updating parent input and present levels of academic and functional performance, significantly reducing specially designed instruction, and adding accommodations. The District reviewed the Student's IEP three times during the Complaint period, in February 2023 and twice in May 2023. At the Student's annual IEP review in February 2023, the Student's present levels of academic achievement included test scores showing that the Student's reading and math proficiency were well below grade level, falling primarily at the kindergarten and first grade level. Added to this IEP were goals in the areas of Reading and Math and 120 minutes per month of SDI in each of those academic areas. The SDI in the area of Behavior-Social/Emotional, a significant area of need, was reduced from 75 minutes per week to 80 minutes per month. This reduction decreased further the 300 minutes per week of SDI that was included for Behavior in the Student's annual IEP from February 2022.

The Student's IEP was reviewed twice in May 2023, primarily to discuss the Student's increased behavior. With the exception of a change to the Placement Determination, there were no amendments made to the IEP. At this time, it was clear that the Student was not making expected progress towards their IEP goals and there was mounting evidence that the Student's behavior and social/emotional needs prevented them from accessing their education. Nevertheless, the Student's goals were not revised, accommodations (including behavior supports) were not amended, and no additional SDI was offered. While a BSP was written, this was based upon staff observations as an FBA was not conducted. The circumstances at this time clearly required review and revision of the IEP to address the Student's changing needs.

While members of the IEP team met informally to discuss the Student's re-entry to school in August 2023, this was not an IEP meeting and no amendments were made to the IEP at this time. Given that the Student had been unable to attend school at the conclusion of the 2022-2023 school year because of their behavior and social/emotional needs, the IEP should have been reviewed and revised as necessary, based on appropriate evaluation data, to ensure that supports and services were in place to allow the Student to access their education and make progress on their IEP goals. Without additional supports in place, the Student's return to OASIS in the fall of 2023 was not successful.

The Department substantiates this allegation as to both the District and the ESD.

## **Education Records**

The Complainant alleged that the District and the ESD violated the IDEA by denying or delaying the Complainant's or Parent's access to the Student's educational records including, but not limited to, those related to the Student's behavioral incidents and disciplinary consequences. This includes records related to both formal and informal removals of the Student from school.

The IDEA incorporates by reference the requirements of the Family Educational Rights and Privacy Act (FERPA).<sup>12</sup> These provisions provide that a school district must, without delay,

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<sup>11</sup> OAR 581-015-2225(1)(b)(A)-(E)

<sup>12</sup> OAR 581-015-2300; 34 CFR §300.501(a); 34 CFR §§99.1 to 99.38

comply with parental requests to inspect and review records related to a student's identification, evaluation, placement, and the provision of a free appropriate public education.<sup>13</sup>

The District invited the Complainant and Parent to all IEP meetings and provided copies of, or access to, all documents related to the Student's special education. The District and the ESD also provided detailed incident reports documenting times the Student was removed from class, including both informal removals due to disruptive behavior and formal suspensions. Notably, the Complainant produced copies of those records and shared them with the Complaint Investigator. There was no evidence provided that the District or the ESD withheld educational records from either the Complainant or the Parent.

The Department does not substantiate this allegation as to either the District or the ESD.

### **Free Appropriate Public Education (FAPE)**

The Complaint alleges that the District and the ESD have deprived the Student of the core entitlement of the IDEA, a free appropriate public education ("FAPE"), by not meeting the Student's unique individual disability-related needs for specially designed instruction, related services, and accommodations.

As an initial matter, the Complainant filed this Complaint against both the District and the ESD. While both the District and the ESD are subject to the requirements of the IDEA, the District is the agency that is ultimately responsible for enabling the provision of a FAPE to the Student.<sup>14</sup> Thus, the following discussion considers this allegation in light of the District's responsibility to the Student only.

School districts must provide a FAPE to all eligible students with disabilities for whom the district is responsible. The IDEA defines FAPE as special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the state educational agency;
3. Include an appropriate preschool, elementary school, or secondary school education; and
4. Are provided in conformity with an individualized education program (IEP).<sup>15</sup>

The IDEA does not include a standard for determining whether a school district has provided a FAPE. In a 1982 decision, *Hendrick Hudson Central Sch. Dist. v. Rowley*,<sup>16</sup> the U.S. Supreme Court articulated a two-prong test for determining FAPE: (1) Procedural: Did the school district comply with the procedural requirements of the IDEA, and (2) Substantive: Was the IEP reasonably calculated to enable the student to receive educational benefit?<sup>17</sup>

Not all procedural violations amount to a denial of FAPE. A school district's procedural violation(s) deny FAPE to a student if they result in loss of educational opportunity or if they seriously infringe on the parents' opportunity to participate in the IEP development.<sup>18</sup> If

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<sup>13</sup> OAR 581-015-2300(2); 34 CFR §300.501(a)

<sup>14</sup> OAR 581-015-2040(1)

<sup>15</sup> OAR 581-015-2040; 34 CFR §300.17

<sup>16</sup> 458 U.S. 176 (1982)

<sup>17</sup> *Id.* at 202

<sup>18</sup> *W.G. v Bd of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

procedural violations alone constitute a denial of FAPE, it is unnecessary to address the second prong of the FAPE inquiry.<sup>19</sup>

If a school district demonstrates that it observed the IDEA's procedural requirements, the question remains whether the IEP is substantively adequate. In this circumstance, it is necessary to determine whether the IEP enabled the student to benefit from their education. The IDEA does not include a standard for assessing the adequacy of benefit.

In a 2017 decision, the U.S. Supreme Court clarified a substantive standard for educational benefit.<sup>20</sup> The Court held that, "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," and added that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act."<sup>21</sup> The Court emphatically rejected the "merely more than *de minimis* standard that prevailed in some U.S. Circuit Courts and elaborated that, "[a]n IEP must be appropriately ambitious and provide every child with an opportunity to meet challenging objectives."

In this case, the District included the Complainant and the Parent in all special education decision making, as the IDEA requires. The District failed, however, to develop an IEP that adequately addresses the Student's unique needs. The District failed to develop, implement, and revise as needed an IEP that would enable the Student to make progress in light of the Student's circumstances. The Student's behaviors were so extreme that the Student spent less and less time engaged in their education as their time in the District progressed. The Student failed to make expected, or any discernible, progress during the period of placement at OASIS. The District responded to that lack of progress by reducing SDI and excluding the Student from school rather than considering what other placement, services, or other special education supports might improve the outcome for the Student and revising the IEP as appropriate.

The Department substantiates this allegation as to the District.

### **Additional Findings**

#### Evaluation and Reevaluation Requirements

School districts must conduct a reevaluation when the educational or related services needs of the child warrant a reevaluation.<sup>22</sup> School districts must also conduct an evaluation or reevaluation before determining that a child is a child with a disability, that a child continues to have a disability, or when changing the child's eligibility.

The Student's IEP was reviewed twice in May 2023, primarily to discuss the Student's increased behavior since returning from spring break. The Student's behavior was preventing them from accessing their education, which the District and ESD attempted to address by developing a BSP. However, prior to developing the BSP, neither the District nor the ESD sought consent for a reevaluation for a Functional Behavioral Assessment in order to enable the appropriate development of a BSP.

The School District and ESD needed to ensure that adequate assessment tools and strategies that provided relevant information to determine the educational needs of the child were provided, and failed to do so.

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<sup>19</sup> *Id* at 1485

<sup>20</sup> *Andrew F. v. Douglas County Sch. Dist.* RE-1, 137 S.Ct. 988 (2017)

<sup>21</sup> *Id* at 1000

<sup>22</sup> OAR 581-015-2105; 34 CFR §300.303(a)(1)

### Unilateral Placement on an Abbreviated School Day Program

In completing this investigation, ODE has also determined that cause to believe<sup>23</sup> exists that the School District and ESD unilaterally placed the Student on an Abbreviated School Day Program in violation of Senate Bill 819 (2023). Accordingly, ODE is also opening an investigation into that matter. An additional Order related to that matter will be entered separately following the conclusion of the investigation.

### **V. CORRECTIVE ACTION<sup>24</sup>**

In the Matter of Willamette ESD and Central SD 13J  
Case No. 23-054-038

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

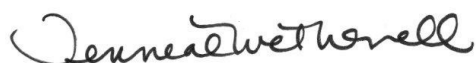
<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
1. The District must convene an evaluation planning meeting and develop a Consent to Evaluate the Student in all areas of suspected disability. The Consent to Evaluate shall include a Functional Behavioral Assessment.	The District shall submit the following:  A completed Consent to Evaluate and meeting minutes reflecting the discussion at the evaluation planning meeting.	<b>February 15, 2024</b>
2. The District must convene an IEP meeting to review the completed evaluations referenced above and revise the Student's IEP. This meeting shall include a discussion of the full continuum of placement options available to the Student and the selection of an appropriate placement where the Student can make progress on their IEP goals.	The District shall submit the following:  Evidence showing that an IEP meeting was convened with the Parent and that the required components were discussed.	<b>February 28, 2024</b>
3. The District must convene an IEP meeting to determine appropriate compensatory education services for the Student due to missed instructional time from October 14, 2022 to October 13, 2023. Should the District and Parent not be able to agree on the Compensatory Education required, either Party can request ODE to determine the amount following the completion of the IEP.	The District shall submit the following:  Completed plan for delivery of Compensatory Education developed in IEP meeting with the Parent.	<b>February 28, 2024</b>

<sup>23</sup> 'Cause to believe' means that there is an objectively reasonable belief, given all of the circumstances and based on specific and articulable facts, that a school district is not in compliance with sections 2(7) and 3(5) of SB 819.

<sup>24</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

	Evidence showing compensatory services were provided.	<b>January 1, 2025</b>
4. The District and the ESD must ensure that all District and ESD staff responsible for reviewing, revising, developing, and implementing IEPs for this Student (both currently and during the 2022-23 school year) receive training in each of the following areas: <ul style="list-style-type: none"> <li>• When a Manifestation Determination meeting is required and how to calculate days of removal for disciplinary purposes;</li> <li>• Review and Revision of IEPs; and</li> <li>• The requirement to consider a continuum of placement options for students with disabilities.</li> </ul>	Training agenda/materials to ODE for review/approval.  Sign-in sheet for training.	<b>March 15, 2024</b>  <b>June 15, 2024</b>

Dated: this 1<sup>st</sup> Day of February 2024




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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: February 1, 2024

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).)