

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
South Lane School District 45J3

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-044

I. BACKGROUND

On November 21, 2023, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the South Lane School District (District). The Complaint 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 to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On December 7, 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 January 5, 2024.

The District submitted a *Response* on December 14, 2023, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District’s Written *Response* to Complaint, 12/14/23
2. Table of Contents, 12/14/23
3. Statement of Eligibility for Special Education, 1/18/22
4. Psychoeducational Report, 1/17/22
5. Occupational Therapy Evaluation, 1/13/22
6. Medical Statement or Health Assessment, 12/7/21
7. IEP, 3/1/22
8. Special Education Placement Determination, 3/1/22
9. Notice of Team Meeting, 2/27/22
10. Prior Notice of Special Education Action (PWN), 3/1/22
11. IEP Meeting Notes, 3/1/22
12. IEP, 2/23/23
13. Special Education Placement Determination, 2/23/23
14. Notice of Team Meeting, 2/17/23
15. PWN, 2/23/23
16. IEP Meeting Notes, 2/23/23

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

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

17. Goals and Objectives Progress Report, 6/10/22, 12/5/22 and 3/17/23
18. Draft Individual Learning Plan, 4/15/22
19. Eligibility Meeting Notes, 1/18/22
20. Functional Behavior Assessment/Behavior Support Plan, 11/22/21
21. Recess Success Plan, 11/29/21
22. Student Study Team Meeting Summary, 9/28/21
23. Emails between District Staff and Parent, 8/1/22-3/23/23
24. List of Staff Members Knowledgeable about the Complaint, undated

The Parent submitted the following relevant items with their Complaint:

1. Emails between Parent and District Staff, 3/3/23-9/28/23
2. Emails between Parent, District Staff, and Service Coordinator with Direction Service, 2/15/23-3/16/23
3. Emails between Parent and Behavior Consultant with Oregon Behavior Consultation, 3/1/23-3/2/23
4. Emails between Parent and Staff with Creswell Christian Academy, 10/3/23
5. Emails between Parent and Services Coordinator with Lane County Developmental Disabilities Services, 2/27/23-9/29/23
6. I-Ready Diagnostic Growth, 2/1/23
7. Invoice from Creswell Christian Academy, 10/3/23

Parent also submitted the following additional documents on December 6, 2023:

1. Emails between Parent and District Staff, 12/15/22-3/13/23

Parent submitted additional narrative information in support of their 'position via email on January 4, 2023 and January 5, 2023.

The Complaint Investigator interviewed the Parent on December 6, 2023 and January 9, 2024. On January 8, 2024 and January 9, 2024, the Complaint Investigator interviewed District personnel. Interviews were conducted virtually. 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 Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 22, 2022 to the filing of the Complaint on November 21, 2023.

Allegations	Conclusions
<p>Least Restrictive Environment</p> <p>The Complaint alleges that the District violated the IDEA by not educating the Student, to the maximum extent appropriate, with children who are nondisabled.</p> <p>(OAR 581-015-2240; 34 CFR §300.114)</p>	<p>Not Substantiated</p> <p>The Student's special education placement allowed the Student to be educated, to the maximum extent appropriate, with Students who are not disabled.</p>

<p>IEP Content</p> <p>The Complaint alleges that the District violated the IDEA when it failed to include academic goals and specially designed instruction in the areas of math and reading necessary to address the Student’s individual needs in the Student’s IEP. The Complaint also alleges that the District violated the IDEA when it failed to include appropriate services and supports in the Student’s IEP to allow the Student to participate in general education alongside their nondisabled peers.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>Not Substantiated</p> <p>The Student did not require goals or specially designed instruction in the areas of math and reading.</p> <p>The Student’s IEP included appropriate services and supports to allow the Student to participate in general education alongside their nondisabled peers.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleges that the District violated the IDEA by not providing the Student with specially designed instruction and supports that meet the Student’s unique disability-related needs and failing to educate the Student in the least restrictive environment.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Substantiated</p> <p>The District met the substantive obligation to develop an IEP reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances. There was no evidence of procedural violations that resulted in a denial of FAPE.</p>

<p>REQUESTED CORRECTIVE ACTION</p> <p>The Complainant requests that the Department order the District to take the following corrective action:</p> <ol style="list-style-type: none"> 1. We would like [the Student] to return to South Lane School District and attend [neighborhood elementary school] and [the Student] needs to be treated like everyone else and schools need to focus on academics and not behavior. 2. Compensate [Parent] for paying for a private education.
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III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 November 22, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

1. The Student is nine years old and is in the fourth grade. The Student currently attends a private school where they were placed by the Parent.
2. The Student was initially found eligible for special education under the category of Other Health Impairment (OHI) on January 1, 2022, and continues to be eligible under that category. The Student’s IEP indicates eligibility under the category of Emotional Behavior Disability (EBD), but the District Special Services Director (Director), who attended the Student’s initial

eligibility and IEP meetings, reported that this was a clerical error, and that the Student's sole eligibility is OHI.

3. During the 2021-22 school year, when initially found eligible for special education, the Student attended a different elementary school within the District, pursuant to an intra-district transfer requested by the Parent.
4. The District's initial psychoeducational evaluation of the Student was completed on January 17, 2022 (January 2022 Evaluation) and evaluated the Student's needs in the areas of academics, behavior, and executive functioning. The evaluation also included a review of the Student's educational history, medical background, and observations by District staff. The results of the evaluation included, but were not limited to, the following:
 - a. The Student was adopted and had lived with their adoptive family since 2017. While under the care of their biological parents, the Student was exposed to neglect, domestic violence, and possibly physical and/or sexual abuse.
 - b. A previous cognitive evaluation found the Student to have average cognitive skills.
 - c. The Student has received medical diagnoses of Fetal Alcohol Syndrome (FAS), Attention Deficit-Hyperactivity Disorder (ADHD), and Post Traumatic Stress Disorder (PTSD).
 - d. According to the results of the Woodcock-Johnson, Tests of Achievement-4th Edition (WJ-4 ACH), administered by the District on January 7, 2022, the Student demonstrated overall average skills in the areas of reading, math, and writing. The Student's composite scores were as follows:
 - i. Reading: standard score of 98, which is within the average range.
 - ii. Math: standard score of 84, which is within the low average range.
 - iii. Writing: standard score of 102, which is within the average range.
 - e. Within the math subtests of the WJ-4 ACH, the Student demonstrated low average mathematical calculation skills with a standard score of 88 but scored in the "low" range on the applied problems subtest, with a standard score of 78. No other academic subtests were reported as being below the low average range.
 - f. A history of behavior challenges was detailed in the January 2022 Evaluation. The Student's past reported behavior included, among other things, disruptive behavior, aggression towards peers, noncompliance, and spitting. Behaviors at the time of the report included difficulty remaining seated and staying on task, blurting and screaming during class, difficulty keeping hands to themselves, and sexualized behaviors. The Student's disciplinary history for the 2021-22 school year was reported to include, "eleven major referrals: one for property damage, four for aggression, one for defiance, two for harassment, two for bullying, and one for disruption."
 - g. The report noted that the Student was currently "on a recess success plan," and that a Functional Behavioral Assessment (FBA) was conducted in conjunction with the January 2022 Evaluation.

- h. According to the results of the Behavioral Assessment System for Children-3rd Edition (BASC), completed by the Student's 2nd grade general education teacher, the Student demonstrated clinically significant concerns in the areas of hyperactivity, aggression, conduct problems, attention problems, adaptability, bullying and executive functioning. Moderate concerns were noted for learning problems, atypicality, social skills, leadership, study skills, anger control, emotional self-control, and resiliency.
 - i. The BASC results from the Parent included clinically significant concerns in the areas of hyperactivity, aggression, conduct problems, atypicality, activities of daily living, anger control, bullying, emotional self-control, and executive functioning. Moderate concerns were noted in the areas of depression, attention problems, adaptability, social skills, leadership, functional communication, negative emotionality, and resiliency.
 - j. On the Behavior Rating Inventory of Executive Functioning-2nd Edition (BRIEF), the Student's teacher reported clinically significant concerns for the Student's ability to inhibit impulsive responses, initiate problem solving or activity, and check their own work.
 - k. On the BRIEF, the Parent reported clinically significant concerns for the Student's ability to inhibit impulsive responses, monitor their own behavior, adjust to changes in routine or task demands, modulate emotions, initiate problem solving or activity, sustain working memory, plan and organize problem solving approaches, and check their own work.
5. As noted in the January 2022 Evaluation, the District completed a Functional Behavior Assessment/Behavior Support Plan (FBA/BSP) in conjunction with the Student's initial evaluation. The report is dated November 22, 2021, and indicates that two months of data were gathered in completion of the evaluation. "Behaviors of Concern" for the Student were identified as: a) Eloping from the designated area of supervision, b) Verbal and physical aggression toward peers, c) Impulsive verbal outbursts, and d) Inability to establish body control. The report indicated that the primary function of these behaviors was to gain peer and/or adult attention. Additionally, "staff believe [the Student] engages in aggressive behaviors to release pent up frustration with peers and staff when [the Student] can't express [their] feelings verbally."
6. The FBA/BSP goes on to detail desired "replacement behaviors" for the Student and lists the interventions that had already been put into place, as well as suggested additional interventions, to support the Student with their behavioral challenges. It is noted that the effectiveness of these interventions would be evaluated regularly and adjusted as needed. Among the recommended interventions were collaborative problem solving, visual schedule and "feelings chart," built in breaks in schedule, calming strategies, scheduled time with preferred adults, warning of upcoming transitions and schedule changes, and designated "safe spaces" on campus where the Student can take breaks.
7. When conducting observations as part of the FBA/BSP, the District behavior specialist (Behavior Specialist) reported that there was an educational assistant (EA) in the Student's classroom who was assigned to support two other students. Due to the Student's behaviors, the EA spent most of their time attending to the Student rather than supporting the students to which the EA was assigned. The Behavior Specialist observed that the Student, "could not sit still," was "up around [their] desk at all times," and "constantly . . . saying inappropriate things." The Behavior Specialist observed that the Student's behavior made it difficult for the classroom teacher to teach.

8. The District completed an Occupational Therapy Evaluation of the Student on January 13, 2022. The results of that evaluation included, among other information:
 - a. Developmental Test of Visual Motor Integration (VMI): average visual-motor skills.
 - b. Sensory Processing Measure showed “Definite Dysfunction” in the school setting in the areas of hearing and body awareness. More specifically, the Student was reported to have “difficulty with [their] voice control, speaking too loudly, makes excessive noises during class time and transitions that become disruptive to the class.”
9. The Student’s initial IEP in the District was created on March 1, 2022 (March 2022 IEP). The March 2022 IEP included, among other things:
 - a. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others.
 - b. Input from Parents: The Parents were concerned that the Student’s academic skills had “gone downhill” during the current school year. They were concerned about how academics would be addressed in the Student’s new placement and that the Student may “pick up” behaviors from other students in the behavior support classroom.
 - c. Present Levels of Academic Achievement:
 - i. According to the most recent “DIBELS benchmark completed Winter 2022,” the Student “read 54 correct words per minute” and “did better than 46 out of 100 peers on reading fluency and reading comprehension.”
 - ii. Needs: “Although [the Student]’s academic skills are low average to average when compared to peers, [the Student] has difficulty completing work in the general education classroom without one on one adult assistance.”
 - d. Present Levels of Functional Performance:
 - i. The Student “has difficulty remaining seated and staying on task. [The Student] often blurts, screams, and yells during class . . . has difficulty keeping [their] hands and feet to [themselves] and is very impulsive.” The Student “frequently engages in episodes of non-compliance, verbal and physical aggressive behaviors towards peers, property destruction, elopement . . . and impulsive behavior . . . which has limited [the Student’s] ability to access instruction, school routines and hindered [the Student’s] social development.”
 - ii. The Student “receives extra adult support in the classroom and during recess.” The Student “frequently seeks adult attention and benefits from frequent praise.” The Student’s “behaviors reduce when [the Student] is in a quiet environment with small adult to student ratio.”
 - iii. “[The Student] struggles to stay focused and to regulate [their] impulsive behavior when participating in the general education milieu. [The Student] has demonstrated the ability to attend more closely to instruction, be able to complete more academic tasks, and refrain from engaging in socially maladjusted behavior when [the Student] is in a smaller group setting in a quiet low stimuli environment with access to more individual support.”

- iv. Needs: “[The Student] has needs in the area of impulse control and focus, academic engagement and work completion, being safe with [their] body and materials, following directions given by an adult, and staying in [the] expected area.”
 - e. How the student’s disability affects involvement and progress in the general education curriculum: “[The Student]’s disability affects involvement and progress in the general education curriculum because [the Student] requires specialized behavioral instruction, a high level of reinforcement of appropriate behavior, and a low stimuli environment to make both academic and behavioral progress. [The Student’s] behavior impacts [their] ability to demonstrate appropriate skills and learn new skills.”
 - f. Goals: One goal in the area of Behavior/Social Skills addressing the Student’s need to “stay on task . . . follow directions . . . completing expected activity/work task in the expected time allotment, displaying a safe body at all times, and using positive and respectful words and actions around peers and staff.”
 - g. Specially Designed Instruction (SDI): Behavior for 75 minutes weekly.
 - h. Related Services: Daily transportation.
 - i. Accommodations: bathroom supervision, increased frequency of positive reinforcement/ positive interactions, limited transitions, individual daily schedule, adult supported organization of materials, structured movement/sensory breaks, accommodations to test setting, break large projects into shorter goals, reduce amount of work, leave class early for smooth transitions, preferential seating, schedule change as needed to support behavioral stamina and learning, snacks, positive reward schedule, quiet/safe place to self-compose or decompress, reteach desired behavior, warning for changes/transitions, immediate feedback, and repeat/clarification of directions.
 - j. Supports for School Personnel: Behavior consultation for 180 minutes per year.
 - k. Non-Participation Justification: “[The Student] is removed from regular education for approximately 80% or more of the day.” Explanation: “[The Student] needs a specialized educational program which includes more intensive behavior support than [sic] a general education placement. The bulk of [the Student’s] time at school will be spent with other students in the program who are all on IEPs. [The Student] will be included in general education activities as [the Student] develops more effective emotional regulation and social skills.”
10. According to the Special Education Placement Determination completed on March 1, 2022, the Student’s IEP team considered placement in a “General education classroom with resource room behavior support,” and “Placement in specialized behavior support program or classroom.” The general education placement was rejected because it “doesn’t provide adequate specialized instruction . . . [has] insufficient behavior support . . . [and] insufficient academic support.” The latter placement was selected because it “maximizes academic and social benefits to student . . . [and] provides the least restrictive environment relative to student needs.”
11. The Meeting Minutes from the March 2022 IEP indicate that, “All parts of the IEP were discussed and agreed upon by the team.” Regarding placement, “Parents were informed of the different alt [sic] placements that were available to [the Student] and decided that the

[behavior support classroom] would be the best fit and that was the placement option that the team decided on.”

12. The Meeting Minutes further set forth a plan for transitioning the Student to the new placement, where the Student would “spend part of [the] day in the [behavior support classroom] and part of [the] day in a general education classroom . . . [with Educational Assistant (EA)] support.”
13. The Student’s special education teacher and case manager (Case Manager) is the “lead teacher” in the behavior support classroom. The Case Manager explained that the behavior support classroom is the District’s K-5 behavior support classroom and is the only specialized program with a focus on behavior support in the District at the elementary level.
14. The Director reported that placement in a specialized program was selected for the Student at the IEP meeting because general education behavioral supports had been implemented prior to the Student’s special education eligibility and had not been successful. The Director recalled that, at the time of the Student’s initial eligibility, the Student was having “behavior escalations” that included “a lot of sexualized behavior . . . some pretty big physical behaviors . . . and impulsive behaviors like blurting and screaming.”
15. The Director described the behavior support classroom as a “flexible placement” that “generally starts as a fairly self-contained placement with students receiving all of their academic instruction and behavior support in that self-contained classroom.” The Director explained that “It’s a level-based system so, as students get proficiency and success, they are essentially pushed out and they are either getting their academic instruction in a resource room setting or in a [general education] classroom.” The Director shared that the adult-to-student ratio in the placement is approximately one adult to two or three students. When students go into the general education setting, they have one-to-one support, “and then that’s gradually faded . . . it’s different for each student.”
16. When asked why the Student required a specialized program placement to implement an IEP which included just one goal and 75 minutes per week of SDI, the Director replied that, “It was really [the Student’s] externalizing behaviors, and the level of disruption it was causing to the [general education] class.” Further, due to the Student’s young age, “and the type of language [the Student] was using in classes for other kids to listen to . . . the really highly sexualized behaviors that were going on, required that separate setting.”
17. When selecting a placement for the Student, the Case Manager shared that, aside from needing SDI, the Student required a more structured environment than could be provided in a general education or resource room setting. The Case Manager believed that the Student required more of a “wrap around approach” to their educational program, which could be provided by the placement in the behavior support classroom.
18. The Behavior Specialist also attended the March 2022 IEP meeting and reported that the Student, “was so triggered by any kind of classroom . . . stimulation, or peer attention.” The Behavior Specialist recalled that “the team felt like [the Student] really needed to step back into a placement that was a little bit more stripped down of sensory overload, [with] less [sic] kids.” The Behavior Specialist described the behavior support classroom as having “maybe seven to ten students” with “diffused light . . . quiet music . . . individual kind of desks . . . so they have their own little workspace that’s free of other students or any other kind of stimulus.”
19. The Behavior Specialist shared that the behavior support classroom program was designed to “teach [the Student] some skills on how to be successful in a classroom.” The Behavior

Specialist also recalled that the Student initially spent more time in the general education setting with EA support than was typical of a student starting in behavior support classroom because the IEP team thought the Student could be successful and because “[the Student’s] academics were such that it was appropriate to do that.”

20. When asked about the Student’s need for EA support in the general education setting, the Behavior Specialist shared their opinion that the Student, “needs someone with [them] all the time as [the Student] is just a kid that needs someone to be sort of [their] restrictor plate in terms of [their] impulsivity.”
21. The Parent and District staff disagreed on whether the Student required special education services in for academics. The Parent had concerns in the areas of reading and math, but District staff did not believe that the Student’s needs in those areas required specially designed instruction (SDI).
22. When asked if it was the District’s practice to include an academic goal in an IEP for a student who received standardized academic scores similar to what the Student had received in the January 2022 Evaluation, the Director explained that there wasn’t a formal practice but, once a student scores “below the tenth percentile,” the District would typically add an academic goal. The Student had achieved the following percentile scores on the WJ-4 ACH: Reading Composite (45th percentile), Math Composite (15th percentile), and Writing Composite (55th percentile). The Director indicated that the Student’s academic skills were not discrepant from many students in general education.
23. The Student’s placement in the behavior support classroom began after Spring Break of the 2021-22 school year. The Case Manager recalled that the Student was able to spend more time in the general education classroom than indicated on the March 2022 IEP, depending on the day and the Student’s ability to remain regulated in class.
24. The Student began third grade at the behavior support classroom for the 2022-23 school year with the supports detailed in the March 2022 IEP. While the Non-Participation Justification section of the IEP indicated that the Student would spend 20% or less of the school day in the general education setting, the Student’s third grade general education teacher (Teacher) reported that the Student spent 90-95% of the day in the general education classroom from the start of the school year until the Student was withdrawn in March 2023. The Teacher recalled that the Student only went to the behavior support classroom for approximately five minutes per day for a sensory break after recess or PE.
25. The Case Manager reported that, during the 2022-23 school year, the Student was removed for scheduled sensory breaks with an EA in a separate room that was used as a break space for students and had a trampoline. One of these scheduled breaks was in the morning when the EA would review the Student’s schedule for the day. The Case Manager recalled that the Student had approximately two other sensory breaks scheduled during the day outside of the classroom.
26. When asked why the Student was spending more time in general education than was indicated on the IEP, the Case Manager explained that the behavior support classroom was designed to be flexible and respond to students’ individual needs “in that moment.” The amount of time that the Student spent in the general education setting was based on the Student’s performance and ability to access instruction in the general education setting, without disrupting the learning of other students.

27. On December 15, 2022, the Parent sent an email to the Teacher with questions surrounding the Student's skills and requesting that schoolwork be sent home. With regard to math, the Parent stated, "You said [the Student] was in an advanced math and [they don't] know any multiplication facts yet, and [the Student] tells me [they are] in division? How can that be? Anyhow, we began on twos and are working on [their] basic math facts."
28. The Teacher responded to the Parent in an email dated December 15, 2022, in which they clarified that the Student "isn't in an 'advanced group' [for math], but instead an 'on grade-level' group." The Teacher shared that, "we introduced division and its relationship with multiplication. I do not think they dive deep into division until 4th and 5th grade." The Teacher explained that currently the class was working on "finding area with multiplication" and that "overall, [the Student] is still showing grade-level thinking on these problems." The Teacher agreed that "[the Student] (and all the kids) do not have their math facts down."
29. An i-Ready Diagnostic Growth report, dated February 1, 2023, and provided by the Parent, indicated the following results for the Student in the area of math:
- | | |
|------------------------------------|---------|
| a. Overall: | Grade 2 |
| b. Number and Operations: | Grade 2 |
| c. Algebra and Algebraic Thinking: | Grade 2 |
| d. Measurement and Data: | Grade 2 |
| e. Geometry: | Grade 1 |

The domains that fell within the "Grade 2" range were marked with the color yellow, indicating that they were "One Grade Level Below". The domain that fell within the "Grade 1" range was marked with the color orange, indicating that it was "Two Grade Levels Below".

30. The Teacher reported that the District used i-Ready as its math curriculum, and that i-Ready was also used for math intervention services. When asked about the Student's February 2023 i-Ready scores, the Teacher indicated that the Student's scores were in a similar range as the other students in the class. The Teacher shared that this class had started kindergarten during the COVID-19 school closures and that it was not uncommon for the students to score in the "yellow" range on i-Ready. In regard to the Student's score in Geometry, the Teacher reported that Geometry was the last math unit covered during the school year and that, in February, the Teacher would not be concerned by a lower score in that area. The Teacher also cautioned that there is a "margin of error" for any assessment measure, and that the i-Ready scores might not give the entire picture of a student's abilities.
31. The Teacher reported that, "Academically, [the Student] was more or less on track with what we expected for third graders." The Teacher further shared that the Student "was a very capable kid . . . definitely could access all the content that we had, and . . . was able to follow along, ask questions, and answer questions." The Teacher recalled that the Student made consistent growth in both math and reading.
32. The Teacher was aware that the Parent was not happy with the Student's special education services and recalled first discussing these concerns at a parent-teacher conference. The Teacher described a "disconnect" between what the Parent was "concerned about and asking for, versus what as written in the IEP." Specifically, the Parent requested additional math instruction, but the Student did not have math services in their IEP. The Teacher reported sharing with the Parent that all students school-wide received daily intervention services for thirty minutes each in reading and math.

33. When asked about the Student's behavior in class, the Teacher shared that "there were definitely issues that were reflected in [the Student's] IEP." The Student needed, "reminders to sit down or not to blurt out or say inappropriate things . . . to be nice to other kids and not to cause problems." In the Teacher's opinion, the behavior supports that the Student received in the general education classroom, including the EA support, were appropriate to meet the Student's needs.
34. In addition to concerns about the Student's academic progress, the Parent reported that the Student was "segregated" from the rest of the general education class. When dropping the Student off at school in the morning, and when attending a parent-teacher conference, the Parent observed that the Student was assigned to a separate desk with just the EA and sometimes another student with a disability who receives special education services. The Parent shared that the Student's desk faced the wall while the other desks in the classroom faced forward. The Parent couldn't recall if the class had individual desks or tables but reported that the Student's seating area was smaller than that of the other students in the class.
35. In addition to concerns with the seating arrangement, the Parent reported that the Student was walked separately from the other students for special events and at dismissal. Additionally, the Student was not permitted to sit in the classroom library area like other students in the class until the Parent raised this as a concern at the February 2023 IEP meeting.
36. The Teacher reported that, if it was a time when students were permitted to move about the classroom and sit on the carpet or in the library, the Student was given the same opportunity. If any student engaged in disrespectful behavior during these times, including the Student, the Teacher returned them to their desk.
37. The Teacher also reported that the class spent approximately twenty minutes per day doing independent reading and that a group of five students were selected at random, using an application on the Teacher's phone, to sit in the class library area during that time. The Teacher confirmed that Student was included in the selection process and was given the same opportunity as other students to sit in the library area.
38. In regard to seating arrangements, the Teacher shared that the classroom was set up with "table groups" with four students each and that the Student sat at a table group with other students. The EA also sat at the same table group as the Student. Some, but not all, of the other students in the Student's table group qualified for special education and the students in each table group were rotated throughout the year.
39. The Case Manager regularly visited the Student's general education classroom and reported that each student had an individual desk, but that the desks were often arranged in groups of two or three. The Case Manager recalled that the Student was typically seated with one or two other students, and that there was room in the seating arrangement for the EA.
40. The Case Manager further reported that the Student's desk was placed in different locations throughout the year to determine the seating location that best allowed the Student to access instruction. This was consistent with the Student's IEP accommodation for "preferential seating." For most of the year, the Student's desk was in the front of the classroom to allow easy access to the Teacher. In addition, the Student's desk was placed near the door so the Student could leave the classroom for breaks without having to walk across the classroom. The Case Manager also recalled that the Student was assigned to different "table groups" during the year and did not always sit with the same peers.

41. The Student's next annual IEP meeting was convened on February 23, 2023 (February 2023 IEP). The February 2023 IEP included, but was not limited to, the following information:

- a. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others.
- b. Input from Parents: The Parent is concerned about the Student's math performance, including struggles with subtraction, and "would like to see less of a focus on behavior and more of a focus on academics, especially math."
- c. Present Levels of Academic Achievement:
 - i. Reading: At the most recent DIBELS benchmark, the Student "read 76 words correctly which is at the 34thile for the district." The Student was further noted to be "eager and successful in participating with the class and sharing [their] ideas on the reading topic."
 - ii. Math: "[The Student] is near grade level for math, per the iReady Diagnostic data. At the last benchmark, [the Student's] composite score was 416." The Student was noted to receive "daily individualized math fact fluency practice and grade-level content instruction."
 - iii. Writing: "With additional adult support . . . [the Student] is able to extract information from texts and apply it to questions." The Student uses complete sentences and conventions, reports accurate information, and has legible writing.
 - iv. The Student's "current level of academic performance is within the typical range and does not indicate that [they] would qualify for an IEP goal and services in the area of academics." The Student's behavior impacts their ability to both learn and demonstrate academic skills.
- d. Present Levels of Functional Performance:
 - i. Summary of Data (percentage of opportunities):
 - (1) On task, working quietly – 75%
 - (2) Complete the expected task/activity in the given time – 91%
 - (3) Demonstrate safe choices with body and materials – 88%
 - (4) Follow directions – 70%
 - (5) Respectful words/tone and actions – 79%
 - (6) Overall demonstration of school-appropriate behaviors – 80%. "[T]his is an increase in all areas except respectful words/tone and actions, which dropped from 87% on the progress data from the beginning of December."
 - ii. The Student made progress in staying seated in class and making safe choices. Impulse control and sustained attention continue to be "very challenging" for the Student. The Student "receives a significant level of

additional adult support” and “requires an almost constant level of prompts” to engage in academics.

- iii. The Student “is easily distracted by the stimuli in the environment” which “makes it difficult for [the Student] to focus and demonstrate sustained attention.” The Student also engages in “attention-seeking behaviors” including making loud and offensive sounds, making offensive comments, and physical contact such as poking, shoving, kicking, tripping, or invading the space of peers.
- iv. The Student “often engages in disrespectful communication” with adults when given corrective feedback about their behavior. This may include “walking off, arguing, blaming others, mocking the adult, or refusing to engage in problem-solving.”
- v. Needs: “[The Student] has needs in the areas of focus and on-task behavior, completing [their] expected work/activity in the given time frame, organization, independent work skills, safety with [their] body and materials, following directions, and using respectful communication/language (both verbal and non-verbal) with peers.”
- e. How the student’s disability affects involvement and progress in the general education curriculum: “[The Student]’s behaviors impact [their] ability to learn new academic and social skills. [The Student’s] disability affects involvement and progress in the general education curriculum because [the Student] requires specialized behavior instruction, a high level of reinforcement of appropriate behavior, sensory breaks, and frequent redirection and prompting in order to make both academic and behavioral progress.”
- f. Goals: One goal in the area of Behavior/Social Skills addressing the Student’s need to increase their level of school-appropriate behavior “with a criteria of 95%” over a two-week period by, “Displaying safety with [their] body and materials; following directions right away, completing the expected activity/task in the given time allotment, staying focused on the expected activity/task, and using respectful words and actions with peers and staff.”
- g. SDI: In the area of Behavior for 75 minutes weekly.
- h. Related Services: Daily transportation.
- i. Accommodations: scheduled bathroom breaks/bathroom supervision, increased frequency of positive reinforcement/positive interactions, limited transitions/transition support, individual daily schedule, adult supported organization of materials, structured movement/sensory breaks, accommodations to test setting, break large projects into shorter goals, preferential seating, schedule change as needed to support behavioral stamina and learning, snacks, positive reward schedule, quiet/safe place to self-compose or decompress, reteach desired behavior, warning for changes/transitions, immediate feedback, and repeat/clarification of directions, sensory supports, gain attention before providing instructions and check for understanding, graphic organizers/copy of notes, and visuals.

The accommodations of “reduce amount of work” and “leave class early for smooth transitions,” which were included in the March 2022 IEP, were not included in the February 2023 IEP.

- j. Supplementary Aids/Services: Side-by-side copying as needed for writing to support behavioral stamina and learning.
 - k. Supports for School Personnel: Behavior consultation for 180 minutes per year.
 - l. Non-Participation Justification: “[The Student] is removed from regular education for approximately 15% of the day.” Explanation: “[The Student] benefits from a specialized educational program that includes more intensive behavior support, sensory breaks, and specialized instruction that is not available in the general education environment. Time spent in the general education setting will be increased as [the Student] demonstrates progress toward [their] IEP goals in a less structured setting.”
42. According to the Special Education Placement Determination completed on February 23, 2023, the Student’s IEP team considered placement in a “General education classroom with resource room behavior support” and a “Specialized behavior support program with mainstream opportunities available.” The general education classroom was rejected because it “doesn’t provide adequate specialized instruction . . . [has] insufficient behavior support . . . [and] insufficient academic support.” The latter placement was selected because it “Maximizes academic and social benefits to student . . . [and] provides the least restrictive environment relative to student needs.”
 43. The Meeting Minutes from the February 2023 IEP detail the Student’s strengths, but also the behavioral difficulties that the Student continued to have at school, including behavior with peers that included “burp in face, shove/kick/poke, yank hood, invade personal space [and] put others down at recess.” It was noted that the Student continued to need “a significant level of additional adult support” but that the family was “interested in rolling these supports back.”
 44. The February 2023 Meeting Minutes also detail a discussion regarding the Student’s report to the Parent that they were not permitted to sit in the classroom library area. The Teacher shared the “random student picker” that was used to determine which students could sit in a particular spot in the reading area. The Teacher confirmed that the Student was able to access the book area.
 45. As reflected in the February 2023 Meeting Minutes, it was determined that the IEP team would continue the Student’s current placement and services and “maintain support until success has been achieved and look for ways to roll back additional adult support based on demonstration of success.” When the Parent asked how long the Student would continue to need support from the “[behavior support classroom],” it was discussed that the IEP team would “continue to look for opportunities for student independence based on demonstration of safe, respectful, and responsible behaviors.”
 46. The Teacher, who was in attendance at the February 2023 IEP meeting, recalled that the IEP team agreed that it was necessary to continue the Student’s special education placement and services, but modified the behavior goal to “reflect growing independence . . . and gradual release of adult supervision.” The Teacher agreed that, because of their behavioral needs, the Student required EA support in the general education classroom so that “all the kids could meet their goals . . . without me . . . working too much with just one kid.”
 47. When asked about the EA support that the Student received, the Teacher shared that there were “a handful” of students in the class who had IEPs, some of which were also in the behavior support classroom, and that there was an EA assigned to the classroom to support all of those students. The EA would work with all of the students placed in the behavior support classroom, and not exclusively with the Student. Among the duties of the EA was to “support

with transitions around the school and with task initiation on classwork.” The EA would often “walk around with a white board and answer questions that other kids might have” while the Teacher was working with groups of students.

48. In regard to the students placed in the behavior support classroom, including the Student, the Teacher reported that the EA would consult the students’ individual schedules and make sure they were being followed, and be mindful that necessary supports were in place for particular activities. For instance, if the class was going to recess, the EA would make sure the students had their coats or snacks and “go over any rules that might need to be reviewed.”

49. The District provided progress reports detailing the Student’s progress on their IEP goals from both the March 2022 and February 2023 IEPs. Those progress reports included the following data:

a. June 10, 2022

- i. On task working quietly – 72%
- ii. Complete expected activity on time – 96%
- iii. Be safe with body/materials – 80%
- iv. Follow directions – 71%
- v. Use respectful words/actions – 89%

b. December 5, 2022

- i. On task working quietly – 73%
- ii. Complete expected activity on time – 90%
- iii. Be safe with body/materials – 85%
- iv. Follow directions – 65%
- v. Use respectful words/actions – 87%

c. March 17, 2023

- i. On task working quietly – 73%
- ii. Complete expected activity on time – 93%
- iii. Be safe with body/materials – 91%
- iv. Follow directions – 71%
- v. Use respectful words/actions – 79%

50. When asked about the variability in the Student’s Progress Reports, the Case Manager explained that the percentages listed do not illustrate the amount of support the Student was receiving at the time. For instance, at the time of the June 2022 progress report, the Student was spending more time in the behavior classroom and received more adult support than at the time of the March 17, 2023 Progress Report. Percentages that remained the same, or even decreased over time, did not necessarily indicate a lack of progress. The data in the Progress Reports shows that the Student was able to maintain a similar level of success even as the time spent in general education increased, indicating progress.

51. The Teacher agreed that the Student made progress on their behavior goal throughout the 2022-23 year but stated that the Student still required a significant amount of support with behavior. The Teacher recalled that the Student demonstrated increased independence throughout the year and required fewer reminders from adults regarding school-appropriate

behavior. As the school year progressed, the Teacher and special education staff made consistent attempts to fade the amount of adult support that the Student received.

52. The Case Manager noted that one of the ways that adult support was reduced was the removal of the accommodation for “leave class early for smooth transitions” in the February 2023 IEP. The accommodation was included in the initial IEP because the Student had difficulty maintaining school-appropriate behavior in large groups of students. The accommodation was implemented by having the Student transition separately to activities such as recess or lunch, and at dismissal time. By the time of the February 2023 IEP, the Student’s ability to transition with the rest of the class had increased so that accommodation was no longer required.
53. In regard to the behavior goal in the Student’s February 2023 IEP, the Parent believed that the criteria of 95% to meet the components of the goal was too high and that the Student should not have to achieve 95% success on the goal in order to be given more independence in the general education setting.
54. When asked about the appropriateness of the 95% criteria, the Behavior Specialist explained that it would be appropriate for the portions of the goal that addressed “safety” but for the remainder of the skills, such as “following directions right away” or “staying focused on the expected activity/task,” it was “pretty unrealistic” and would not be expected of a typical general education student. The Behavior Specialist, while acknowledging that they did not attend the February 2023 IEP meeting, thought the goal “might have been written a little bit differently with the lower criteria.”
55. When asked about the criteria on the behavior goal, the Teacher reported that the behaviors noted in the goal were student expectations that begin in preschool and kindergarten. By third grade, students without disabilities would be expected to demonstrate those school-appropriate behaviors 90% to 100% of the time. The Teacher recalled that when selecting that criteria, the IEP team discussed if the Student could achieve that goal with the current level of adult support, then the amount of support could be reduced.
56. The Student’s Parents sent an email to several District staff members, including the Case Manager and Teacher, on March 3, 2023. In the email, the Parents shared that they were “not happy with the outcome of the [February 2023] IEP meeting and believe [the Student] is being segregated and needs to be integrated with class peers during class time.” The Parents expressed that the Student “should be treated like all the other kiddos in the classroom and be able to sit with them” and that the EA “should be moving around to help [the Student] if [the Student] needs it.” The Parents requested that the IEP be written in such a way that the Student “doesn’t have to sit in the front of the class with an adult and [one] other segregated student.” The email goes on to detail dissatisfaction with the Student’s February 2023 IEP goal and the criteria that the Student achieve 95% accuracy on the goal, stating that, “Last year [the] goal was with 80% accuracy and now [the Student] met that goal and you want 95% before [the Student] can be on [their] own?” The email goes on to note that the Student “is so excited that you are now randomly picking [them] to sit in the class library . . . and that [the Student] sat on a bean bag.”
57. The Parent sent a separate email to the Director on March 3, 2023, in which the Parent expressed dissatisfaction with the Student’s educational program and asked the Director to “please see what you can do.” The Parent stated that, “The school has focused so much on behavior that academics are now suffering and the Plan [sic] s the same. [The Student] sits up at the front of the class and [they want] to sit by students at times.”

58. On March 6, 2023, the Case Manager sent an email to the Parents thanking them for sharing their concerns and offering to schedule another IEP meeting to have further discussion regarding supports for the Student.
59. On March 14, 2023, the Case Manager sent another email to the Parents offering an IEP meeting on March 17, 2023 for “a follow-up conversation around support for [the Student].”
60. On March 14, 2023, the Parent emailed a reply to the Case Manager declining the offer for another IEP meeting. The Parent shared that they were considering returning the Student to the private school that the Student previously attended. The Parent requested that the Case Manager “just write the IEP where [the Student] is going to get more time working on math and you integrate [the Student] with other kids during the day.”
61. The Parent reported that they declined the offer of an additional meeting because the Parent had already expressed their concerns at the February 2023 IEP meeting and that nothing changed. The Parent believed that an additional meeting would be a “waste of time.”
62. The Parent sent an email to several District staff members, including the Case Manager and Teacher, on March 23, 2023. In the email, the Parent shared that the Student had been accepted at the private school and that the Student’s last day attending the behavior support classroom would be March 24, 2023.
63. The Student has not returned to a District school since March 24, 2023, and is currently enrolled at the private school.
64. Other than as reflected in the requested corrective action in the Complaint, the Parent did not request that the District place the Student at a private school or indicate an intent to seek reimbursement for the Student’s placement at the private school.
65. In September 2023, the Parent reported that they attempted to enroll the Student at the Student’s neighborhood school within the District.
66. An email dated September 28, 2023, from the Office Manager at the school of residence shared that the Parent could “come by today and pick up registration paperwork.” The email went on to state that, “Our principal . . . wanted to look at [the Student’s] file to ensure we had all the necessary resources to service [the Student] here at [neighborhood school] before starting [them].”
67. The Director reported that, when the Parent attempted to enroll the Student at the neighborhood school, the District determined that a placement meeting would need to be held to determine if the Student’s IEP could be implemented at the neighborhood school, or if the Student’s placement would need to continue at the behavior classroom.
68. The Parent reported that they submitted enrollment materials for the Student to attend the neighborhood school in September 2023. A special education teacher from the District contacted the Parent and offered a placement meeting to determine if the Student could be appropriately served there. The Parent believed that the placement meeting would result in a decision to continue the Student’s placement at the behavior classroom. Additionally, the Parent wished for the Student to start school right away rather than wait for a placement meeting. For that reason, the Parent declined to have a placement meeting.
69. On November 21, 2023, the Parent filed this Complaint.

IV. DISCUSSION

Least Restrictive Environment

The Parent alleged that the District violated the IDEA by not educating the Student, to the maximum extent appropriate, with children who are nondisabled.

School districts must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have a disability. The IDEA requires that education in special classes, separate schooling, or other removal of students with disabilities from the regular education 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.³ This mandate is referred to as the requirement that a student be placed in the Least Restrictive Environment (LRE).

Each school district must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Further, the continuum of placements must allow for the provision of supplementary aids and services to be provided in conjunction with placement in a regular classroom.⁴

The educational placement of a student with a disability shall be determined by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the available placement options. The decision regarding placement must be based on the student's IEP, determined at least once per year, and be as close as possible to the student's home. Unless the student's IEP requires some other arrangement, the student must be educated in the school that they would attend if not disabled.⁵

In considering the LRE for a student, placement teams may apply a four-factor balancing test which considers: 1) the educational benefit to the student of placement in a regular education setting, 2) the non-academic benefit to the student of such a placement, 3) the impact of the placement on the teacher and the other students in the regular education setting, and 4) the costs associated with the placement.⁶

The only placement decision that is subject to this investigation is the placement decision made at the February 2023 IEP Meeting. At this meeting, the IEP team considered multiple placements along the continuum of placement options, including general education with resource room support and the specialized behavior classroom. The IEP team determined that the Student's needs could not be met in general education with resource room support and that the Student required the behavioral supports that were available with the specialized behavior classroom placement. As a result of this placement, which included the support of an EA, the Student was able to spend upwards of 85% of the school day in the general education setting alongside nondisabled peers.

While the Parent may not have preferred that the Student was supported by an EA, or that the Student be seated in the front of the class at the same table grouping as the EA, the present levels of the IEP make clear that the Student required these supports to access their education.

³ OAR 581-15-2240; 34 CFR §300.114

⁴ OAR 581-015-2245; 34 CFR §300.115

⁵ OAR 581-015-2250; 34 CFR §300.116

⁶ *Sacramento City Sch. Dist. Bd. Of Educ. V. Holland*, 14 F.3d 1398 (9th Cir. 1994)

Indeed, the success of these special education supports in maximizing the Student's time in the general education setting is evidenced by the fact that the Student's time in the general education setting increased dramatically from what was offered at the time of the March 2022 IEP.

When the Student was in the general education setting, the Student was not removed from peers who were not disabled to any greater extent than required by the accommodations in the Student's IEP. Subject to general behavioral expectations of the classroom, the Student was permitted to access the same areas of the classroom that were available to the students without disabilities. While the Student's seating arrangement was impacted by the need for support of an EA and an accommodation for preferential seating, the Student was seated with other students in the class. As the year progressed, and the Student demonstrated increased independence, additional opportunities for access to the general education setting were made available, including the removal of the accommodation that the Student "leave class early for smooth transitions."

The Department does not substantiate this allegation.

IEP Content

The Parent alleged that the District violated the IDEA when it failed to include academic goals and specially designed instruction in the areas of math and reading necessary to address the Student's individual needs in the Student's IEP. The Parent also alleged that the District violated the IDEA when it failed to include appropriate services and supports in the Student's IEP to allow the Student to participate in general education alongside their peers without disabilities.

When developing a student's IEP, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. It must also include measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. The IEP must also include information on how the student's progress toward meeting the annual goals will be measured and provided to the parents. Finally, each IEP must include a statement of the specific special education and related services and supplementary aides and services to be provided to the student, or on behalf of the student.⁷

The specific special education, related services, and supports to be provided must enable the student to: 1) advance appropriately toward attaining their annual goals, 2) be involved and make progress in the general education curriculum, and 3) be educated and participate with other students with and without disabilities.⁸ The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁹ In considering this standard, "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."¹⁰

The February 2023 IEP included a statement of the Student's present levels of academic achievement and functional performance. As reflected in those present levels, the Student did not have academic needs, including in Reading or Math, that required specially designed instruction. Accordingly, the District was not required to include IEP goals or services in the area

⁷ OAR 581-015-2205(1); 34 CFR §300.320

⁸ OAR 581-2200(1)(d); 34 CFR §300.320(a)(4)

⁹ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

¹⁰ *Id.* at 1000

of academics. The Student's grade level, or near grade level, academic performance was further evidenced by standardized assessment completed as part of the January 2022 Evaluation, curricular measures such as the DIBELS and i-Ready, and teacher observation.

As discussed in the section above, the Student's IEP also included behavioral supports that allowed the Student to participate in general education alongside their peers without disabilities. The data presented in the present levels of functional performance section of the IEP illustrate why the Student required both the supports of the behavior support classroom placement and the accommodations listed in the IEP. It is these behavioral supports, including preferential seating and EA support, that allowed the Student to spend the vast majority of the school day in the general education setting.

The Department does not substantiate this allegation.

Free Appropriate Public Education

The Parent alleged that the District violated the IDEA by not providing the Student with specially designed instruction and supports that meet the Student's unique disability-related needs and failing to educate the Student in the least restrictive environment.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.¹¹ 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 IEP.¹²

In order to determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.¹³ Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.¹⁴

In this case, the District met the substantive obligation to develop an IEP reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. Further, there was no evidence of procedural violations that resulted in a denial of FAPE.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION *In the Matter of South Lane School District 45J3* *Case No. 023-054-044*

The Department does not order corrective action in this matter.

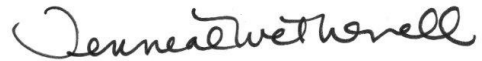
Dated: this 18th Day of January 2024

¹¹ OAR 581-015-2040(1); 34 CFR §300.101(a)

¹² OAR 581-015-2040; 34 CFR §300.17

¹³ *Andrew F.*, 137 S.Ct. at 999

¹⁴ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: January 18, 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).)