

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland School District 1J)
and Multnomah Education Service District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 23-054-047

I. BACKGROUND

On December 4, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Portland School District 1J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On December 12, 2023, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 3, 2024.

The ESD submitted a *Response* on January 3, 2024, denying the allegations and citing that the school nurse complied with the medical and health accommodations listed on the IEP. The ESD explained and submitted documents in support of their position. The ESD submitted the following relevant items:

1. Office Visit/Nursing Assessment, 8/23/22
2. Letter Details, Medical Orders, 8/9/22
3. [Medical Office] Fax, 9/21/22
4. Diabetes Treatment Orders for Children at School, 9/29/22
5. Delegation/TAE/Teaching, 8/30/22 [Student], [School], 8/30/22
6. Delegation/TAE/Teaching, 8/30/22
7. Delegated Health Care Log for Diabetes, 2022/23
8. Delegated Health Care Log for Diabetes, 2022/23
9. Delegated Health Care Log for Diabetes, 2022/23
10. Delegated Health Care Log for Diabetes, 2022/23
11. Office Visit, 9/29/23
12. Letter Details, 7/25/23
13. Letter Details, 11/22/23
14. Delegation/TAE/Teaching, 12/18/23
15. Training Log, 12/15/23

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

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

16. Delegation/TAE/Teaching, 8/29/23
17. Training Log, 8/29/23
18. Follow-up on [Student's] IEP, 12/13/23
19. Delegated Health Care Log for Diabetes, 8/29/23
20. Delegated Health Care Log for Diabetes, 9/13/23
21. Delegated Health Care Log for Diabetes, 9/26/23
22. Delegated Health Care Log for Diabetes, 10/3/23
23. Delegated Health Care Log for Diabetes, 10/16/23
24. Delegated Health Care Log for Diabetes, 10/23/23
25. Delegated Health Care Log for Diabetes, 11/30/23
26. Delegated Health Care Log for Diabetes, 12/13/23
27. Department of School Health Services, no date
28. From your school nurse, no date
29. Diabetes Self-Management Continuum, no date
30. Notification of Student Health Status, no date
31. Department of School Health Services, no date
32. School Wide Disaster Information for Diabetes, no date
33. Self-Manager Agreement for Students with Diabetes, no date
34. [ESD] School Health Services Guidelines for Students with Type 1 Diabetes, no date
35. Tips for teachers of students with diabetes, no date
36. Unlicensed assistive personnel signature form: diabetes delegation/TAE/teaching, no date
37. Steps of Delegation, no date
38. Emails from 1/12/23 through 12/14/23

The District submitted a *Response* on January 3, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. [School District] Response to Request for Response, 1/3/24
2. Eligibility Summary Statement, 1/11/23
3. Prior Written Notice of Evaluation, 9/29/22
4. Prior Written Notice of Eligibility, 1/11/23
5. Disability Statement, 1/11/23
6. Parent/Guardian Consent for Evaluation, revised, 9/29/22
7. Parent/Guardian Consent for Evaluation, 9/29/22, signed
8. Academic Evaluation Report, 11/16/22
9. Prior Notice and Consent for Initial Provision, 1/11/23, signed
10. Medical Statement, 10/6/22, signed
11. Eligibility Summary Statement, 1/11/23
12. Psychoeducational Evaluation Report, 1/11/23
13. Individualized Education Program, 1/11/23
14. Section 504 Student Accommodation Plan, 8/29/22, signed
15. Diabetes Treatment Orders for Children at School to Accompany 504 Plan or IEP, 8/9/22
16. IEP Progress Report Measurable Annual Goals, 4/7/23
17. Individualized Education Program Amendment, 5/12/23
18. IEP Progress Report Measurable Annual Goals, 6/5/23
19. Individualized Education Program Amendment, 9/13/23
20. Prior Written Notice, Accommodations Added to IEP, 5/12/23
21. Prior Written Notice, Update Present Levels Per Nurse Recommendations, 9/13/23
22. Prior Written Notice of Eligibility, 1/11/23

23. Parent/Guardian Consent for Individual Evaluation, Parent Permission, 9/29/22
24. Prior Written Notice, Changes to IEP, Nursing Input, Parent Concerns, 9/13/23
25. Prior Notice and Consent for Initial Provision of [Special Education] Services, Eligibility, 1/11/23,
26. Parent/Guardian Consent for Individual Evaluation, Parent Permission, 9/29/22 signed
27. Written Agreement Between the Parent and the District, 5/12/23, signed
28. Prior Written Notice, Accommodations Added to the IEP, 5/12/23
29. Meeting Minutes, IEP Amendment, 9/13/23
30. Meeting Minutes, Evaluation Planning, 9/29/22
31. Meeting Minutes, Eligibility, 1/11/23
32. Notice of Team Meeting, 12/8/22
33. Notice of Team Meeting, 8/25/23
34. Notice of Team Meeting, 9/16/22
35. Exhibit D-4
36. Administrative Directive Health Services Implementation Policy, Amended 6/23
37. Children's Program, Psychoeducational Evaluation, 6/1/21
38. 504 Termination Form, 6/14/23
39. 504 Accommodation Plan, 8/29/22, signed
40. Legacy Health Letter to District, 9/18/23
41. Diabetes Treatment Orders, Valid for 23/24 School Year, 10/26/23
42. "Delegation Process" and "Assignment and Supervision" OAR, Approved 11/14/2019
43. Emails from 1/10/23 through 12/3/23

The Parents submitted a *Reply* on January 10, 2024, and documents in support of the Parents' position. The Parents submitted the following relevant items:

1. Medical Letter, [Student], 9/18/23
2. Diabetes Treatment Orders, [Student], 7/25/23
3. Diabetes Treatment Orders, [Student], no date
4. American Diabetes Association Document, Guidance for the Use of Continuous Glucose Monitoring in the School Setting, no date
5. Dexcom Clarity, [Student's] Daily View, 8/29/23-9/30/23
6. Document, Blood sugar, insulin, fast-acting carbs guideline, no date
7. Document, Routine Management of Blood Sugar-Dexcom Arrow Trend Chart, no date
8. Document, Telephone Encounter, 11/29/23
9. Document, Telephone Encounter, 11/30/23
10. Emails, 10/18/23-12/4/23

The Complaint Investigator interviewed the Parent on January 16, 2024. The Complaint Investigator interviewed District personnel on January 16, 2024, and January 17, 2024. The Complaint Investigator reviewed and considered the listed documents, interviews, and exhibits in reaching the findings of fact and conclusions of the law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from December 5, 2022, to the filing of this Complaint on December 4, 2023.

Allegations	Conclusions
<p>Content of the IEP</p> <p>The Complaint alleged that the District and the ESD violated the IDEA by not considering and including medical/health management information in the IEP when provided by the Parent.</p> <p>(OAR 581-015-2200; 34 CFR §300.324)</p>	<p>Not Substantiated</p> <p>The District considered the health management information provided by the Parents. The District followed the nursing regulations and the medical orders.</p>
<p>When IEPs Must Be in Effect</p> <p>The Complaint alleged the District and the ESD violated the IDEA by not implementing the medical/health accommodations in the IEP.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>Not Substantiated</p> <p>The District provided “designated adult support” as described in the Student’s IEP.</p>

REQUESTED CORRECTIVE ACTION
<p>The Complainant requested the following corrective action:</p> <ol style="list-style-type: none"> 1. Follow the doctor’s orders and provide staff to implement the requirements of the healthcare plan.

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 before December 5, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student’s disability and special education history.

1. The Student was ten years old, in the 5th grade, and attending an elementary school in the District when the Complaint was filed.
2. The Student was eligible for special education as a child with Other Health Impairment (OHI). The Student’s medical history includes a diagnosis of juvenile diabetes.
3. The Student was described as being excited about learning, good at following directions, and good at self-management. The Student has academic strengths in math and reading.
4. The May 28, 2021, and June 1, 2021, psychoeducational evaluation indicated the following:
 - a. The Student was seven years and nine months old at the time of the evaluation.
 - b. The Student was diagnosed with ADHD when they were five years old. The Student “has a history of difficulty with task completion, inattention, poor impulse control,

- difficulty with transitions, and inattention as well as low frustration tolerance and poor emotion regulation.”
- c. “When [Student] was six years of age, [Student] was diagnosed with juvenile diabetes.”
 - d. The summary and recommendations section listed weaknesses in processing speed and auditory working memory. Cognitive-behavioral interventions and medication were recommended. Accommodations included extended time for tests, breaks, and behavioral interventions to assist in task completion. Attention-training classes and medication management were recommended.
5. The District Administrative Directive, Health Services Implementation Procedures described the Services Provided by the Education Service District to School District Students. “The district may, through resolution services and/or contractual agreements with [ESD] and/or other public health agencies, provide health services to students.” Responsibilities for Health Services were outlined in the document, and “district employees, public health agencies, and educational school districts work together to identify health issues and provide resources to assist students with health concerns.” The document described the maintenance of medical records and other health information.
 6. The documents “Delegation Process” and “Assignment and Supervision” described the responsibilities of registered nurses (RNs) in the delegation, assignment, and supervision process within the healthcare team. The delegation process involves authorizing unregulated assistive persons (UAPs) to perform nursing procedures, with the RN retaining accountability, while assignment and supervision refer to situations where RNs direct and distribute work among licensed nurses and assistive personnel during assigned shifts. The document outlines the standards and responsibilities associated with each process, emphasizing the RN’s duty to ensure patient safety and well-being.
 7. The ESD School Health Services Guidelines for Students with Type I Diabetes described considerations, accommodations, training, food and water, activities, and testing and communication that may be required due to a student’s Type I Diabetes.
 8. The Student’s private health care team provided treatment orders dated August 9, 2022 to support management of the Student’s Type I Diabetes. The treatment orders detailed the authorization and side effects of administering insulin and glucagon. In addition, these orders indicated that the Student “needed support by trained school staff” with “routine blood sugar finger stick or CGM Monitoring, Carbohydrate counting, Insulin dose calculation, [and] Insulin administration.” The orders allowed for a variety of options for collecting the Student’s blood sugar data and described the procedures for treatment of low blood sugar (i.e., severe hypoglycemia, high blood sugar, or ketones), “unless parent/guardian has specified a different regimen in the 504/IEP health plan.” The orders did not require specifics for the Student’s meals and snacks did not require any orders. In addition to the Diabetes Treatment Orders, Disaster Treatment Orders were also described.
 9. The Student’s 504 team met on August 29, 2022 to review the student’s medical information and required accommodations. Meeting records indicate that the Parents, a nurse, a school counselor, and an assistant principal were present for the meeting. A 504 Plan was developed by the team that included the following:
 - a. The Student’s ADHD and Diabetes diagnoses;
 - b. Accommodations required as a result, as follows:
 - i. Talk-to-text

- ii. Preferential seating
 - iii. Access to sensory items
 - iv. Visual schedules
 - v. Extended time
 - vi. Diabetes treatment orders
 - vii. Diabetic support
 - viii. "Access to adult support for all diabetic care."
 - ix. Reminders to visit [the] health room, accompaniment to [the] health room for low blood sugar symptoms
 - x. Access to snacks
 - xi. Extended time for lunch
 - xii. Access to diabetes management supplies, and
 - xiii. The ability to communicate with parents about diabetes care.
- c. The Student's least restrictive environment was identified as the general education setting, with accommodations.

10. A medical statement from October 6, 2022 indicated the Student had a diagnosis of ADHD and had "difficulty with focus + attention, on medication."

11. The Disability Statement dated January 11, 2023 indicated the following evaluation components were completed: a psychoeducational evaluation report by the School Psychologist on January 11, 2023, an academic evaluation report by the Teacher on November 16, 2022, and a medical statement from a physician on October 6, 2022.

12. The Individualized Education Program (IEP) dated January 11, 2023 included the following:

- a. The Parents expressed concerns about the Student's writing, spelling, and executive functioning skills. They emphasized the impact of the Student's diabetes and ADHD diagnoses, as well as the side effects of medication, on these skills. The Parents supported the Student's desire to discontinue medication and were seeking alternative means to manage the symptoms. Additionally, they shared that the Student worried about missing class content while managing their diabetes care routines.
- b. The Student's present level of developmental and functional performance indicated they had a 504 plan to address medical needs related to their diabetes diagnosis. The 504 plan included accommodations for monitoring glucose, administering insulin, providing snacks, accessing restrooms and water, participating in field experiences and extracurriculars, responding to high and low blood sugar episodes, and using a device to log data and notify parents of glucose levels. The IEP team considered factors regarding the Student's diabetes care, including: treating the Student like other students except for medical care, permitting medical absences without penalty, allowing alternate times for academic tests, providing opportunities to make up schoolwork, and maintaining confidentiality. It was noted the 504 Plan would be attached to the IEP to preserve the established accommodations. The evaluation was conducted to determine eligibility in the areas of Other Health Impairment and/or Specific Learning Disability.
- c. The Needs for Aids/Services or Accommodations were described as follows, in part:
 - i. The team determined that the Student would need to be removed from the classroom for Specially Designed Instruction (SDI). The extent of the removal was listed as: "[The Student] may be removed from general education environment for

up to 6% of [their] school day.” The explanation provided was that “[The Student] may require access to a quiet/separate location for explicit instruction in social-emotional and executive functioning skills, as well as 2X a week for [their] writing goals.”

13. On February 27, 2023, the Parents indicated their desire for the Student to transition to independent diabetes care by middle school. They also stated that “we feel [the Student] will continue to benefit from an adult assisting with [the Student’s] care while at school during the 23/24 school year.” The Parents asked if the District would be including diabetes care in the IEP.
14. The amended IEP dated May 12, 2023 stated:
 - a. “District Support Staff approved the carryover of 504 plan to the IEP in order to support [the Student’s] special education needs, including adult support.”
 - b. Supplementary aids and services were listed:
 - i. “Designated Adult Support to support the medical protocol (attached to the IEP and listed in present levels)” was to be provided by the Special Educator and General Education Teacher, school-wide, for 375 minutes per day, starting on May 12, 2023, and ending on January 10, 2024.
 - ii. When the medical protocol was in effect, testing accommodations were to be provided by the Special Educator and the General Education Teacher, school-wide, during testing, starting on May 12, 2023, and ending on January 10, 2024.
15. The Prior Written Notice (PWN) from May 12, 2023, described the actions proposed or refused by the District, which included adding the following accommodations to the IEP and discontinuing the 504 Plan:
 - a. “Designated Adult Support to support the medical protocol (375 minutes per day)”;
 - b. “Medical protocol (attached to IEP)”;
 - c. “Testing supports.”
16. On May 12, 2023, a “Written Agreement Between the Parent and the District,” signed by both parties on May 24, 2023, indicated, “The District and Parent agree that an IEP meeting is not necessary to revise the student’s IEP between annual IEP meetings. Date IEP revised: 05/12/2023.” It is noted that the “IEP revision must be completed as an amendment to the IEP,” and the “District must give the Parent Prior Notice of Special Education Action describing the IEP change.”
17. On June 14, 2023, a 504 Termination Form was generated. The Former Case Manager and one of the Parents was present, and it was determined that the 504 Plan was no longer needed as the Student had an IEP. Neither party signed the form.
18. On July 25, 2023, a document titled “Diabetes Treatment Orders for Children at School to accompany 504 Plan or IEP,” valid for the 2023-24 school year, indicated:
 - a. “Student will need support by trained school staff [with]”;
 - i. “Routine blood sugar finger stick or CGM Monitoring”;
 - ii. “Carbohydrate counting.”

These options were described as follows: “If the Student does not have a CGM, finger stick blood sugar should be obtained before meals for signs/symptoms of high/low blood sugar and other as outlined in the 504/IEP/health plan. If the Student has a CGM, the reading can be used for treatment decisions when under 400 mg/dl. If the CGM is above 400 mg/dl and/or

the Student is unwell (showing symptoms), a finger stick blood sugar is required before treatment. The CGM data should be obtained before meals and other, [sic] as outlined in the 504/IEP/health plan.”

19. In an August 21, 2023 email exchange between the Principal and District staff, there was a question as to whether an educational assistant (EA) would be continuing to work with the Student for their diabetic needs. The Program Administrator responded that the EA “should be coming from the [special education] department.”
20. In an email exchange on August 22, 2023, the District Representative responded to other District personnel that “[The Student] at [School] had an EA for diabetes and was on a 504. Student is now on an IEP, and there is currently no person in the School Management Team (SMT) as it was not previously paid for by [special education]. It is written as ‘Designated Adult Support to support the medical protocol’ in the IEP. This EA monitored glucose levels on an app and administered glucose through that app. If needed, a finger prick was administered. However, I know that there are no more para’s [sic] available. I’ve advised the team to hold an IEP and to see if the School Health Assistant (SHA) could do this role, as it seemed more restrictive with a designated para. Can an SHA do this? Or do we need a designated para?”
21. In emails dated June 2, 2023 and August 22, 2023, the Parents described the importance of having the EA continue to support the Student with [their] diabetes management and expressed their hope that the EA that had previously worked with the Student would continue to do so even though the Student would have an IEP rather than a 504 Plan. The Principal responded to the Parents with information about the new Program Administrator and the Paraprofessional who would be supporting the Student for the upcoming school year. The Principal also mentioned that reverting from an IEP to a 504 would not guarantee a full-day EA to support the Student, nor would it guarantee who would serve in that role.
22. On August 28, 2023, the Nursing Supervisor shared information with the Nurse about reasonable accommodations, student safety, and high/low sugar symptoms.
23. On August 29, 2023, the Nurse generated a Nursing Plan for the Student that described the delegated nursing tasks to be completed on the Student’s behalf. The plan was for “Medication Administration Omnipod Insulin Mgmt and included procedures for Insulin Bolus Delivery. [sic]” Under this plan, this procedure was able to be delegated for no more than one year from the date of the plan, and that delegation was “only for use by designated Unlicensed Assistive Personnel (UAP).” The plan also noted specifically that, “UAP CANNOT TAKE DIRECTION FROM PARENTS OR HEALTH CARE PROVIDERS. [sic]” Two UAPs were trained to perform these delegated procedures.
24. On August 30, 2023, the Parents emailed the School and described their belief that the School was out of compliance with the Student’s IEP. The Parents cited language from the IEP and stated, “Today there were ‘several missed occasions to prompt [the Student] to use snacks to prevent and/or reduce the severity of low blood sugar. The EA was not with [the Student] to assist, and we had to text message [the Student] to prompt [their] treatment. The EA was not involved until after [the Student] was already low. This resulted in two trips to the health room and missed recess.” The Parents also stated that the Student was not prompted to use a certain mode in their pump during PE.

25. On September 1, 2023, the Parents provided a copy of the meal plan used for the Student last school year and the email message from the Nursing Supervisor that indicated an accommodation could be added: "EA will prompt the student to put the pump into activity mode when needed..."
26. On September 1, 2023, the Program Administrator recommended changing student schedules so the Student and another student who also needed the support of a paraprofessional could be in the same class.
27. On September 7, 2023, the Parents sent an email to the District that summarized their perspective of a team discussion that took place the previous week discussing the Student's IEP, support minutes, staffing, and self-advocacy: "Thank you for speaking with us on the phone last week. From our conversation, we understand that:
- [District Staff] is working to advocate for staffing, as allocations are made at the district level.
 - [Student's] IEP currently states 375 min [sic] of adult support per day.
 - [EA] is currently scheduled to be with [the Student] during PE.
 - You understand our goal is to keep [the Student] is [sic] general education (in the classroom) as much as possible so [the Student] does not miss instruction time. This supports the ADHD related IEP goals gaining in writing skills, spelling skills, etc. It also ensures [Student] would not miss [their] special education support minutes such as writing group, etc.
 - We both agree that self-advocacy is good and that goals to help [Student] move toward independence are welcomed. We recognize [Student] needs extra support in developing the executive function [sic] skills required to manage type 1 diabetes. Until [Student] can gain these skills, Adult support is needed.
 - We will discuss nurse minutes for help moving toward independence at the IEP meeting.
 - That you would touch base with [the Nurse] around the goals of keeping [the Student] in the classroom and
 - Access to diabetes care wherever [the Student] is located and is comfortable receiving that care.

Thus far this week, [the Student's] diabetes care has been occurring in the health room only. We would like there to be a plan to transition to care anywhere in school. [The Student] carries diabetes supplies with [them], and I have also provided a small bag to the school that contains medical supplies - making it possible to care for [the Student's] needs in any location. This system worked very well last school year with our prior EA."

28. On September 29, 2023, the Nurse completed a Diabetic Nursing Assessment that included communicating with the Parents. The Student's self-management skills, blood sugar, ketone monitoring, and medications were documented in the assessment. Blood sugar and ketone monitoring were to be checked in the "Health room."
29. In an interview with the Complaint Investigator, one of the Parents indicated their understanding was that the practice of managing the Student's diabetes would occur in the classroom, as stated in the 504 Plan that was "transferred to the IEP." The Parent indicated that the Student left the classroom nine times in the first six weeks of class to manage their diabetes.

30. On September 11, 2023, to address the needs of students, the Principal alerted the District that: “The para [sic] is scheduled with the student multiple times a day – we will need to move the student into a different class to increase access to the para [sic].”
31. On September 13, 2023, the Assistant Principal notified the Principal that, depending on the outcome of the meeting, the Student would shift classes the following day.
32. On September 13, 2023, the Case Manager described the New Educational Assistant’s schedule and noted that “[They] will also respond as necessary throughout the day when monitoring indicates and need for [their] support, as per the doctor’s orders and [the Nurse’s] training.”
33. The amended IEP dated September 13, 2023 indicated:
 - a. The Parents were concerned that the Student was “receiving all [their] diabetes care in the nurses [sic] office and not in the gen. ed [sic] environment.” Parents “are concerned that [the Student] is not receiving [their] adult support minutes and that para schedule is not being implemented.” Parents are concerned “about [their Student’s] privacy rights.”
 - b. The draft of the statement of present levels of academic achievement and functional performance indicated that the Student “has been supported by a 1:1 educational assistant in the previous school year to assist with blood glucose monitoring, carbohydrate counting, and insulin administration. [Student’s] DTO (Diabetic Treatment Orders) this school year...indicate that [the Student] will need support for routine blood sugar finger stick or CGM (continuous glucose monitoring) and carbohydrate counting.” It was recommended “to change the para [sic] support to 2:1 and begin teaching this student to gradually move towards increasing independence with [their] diabetes care, in preparation for middle school next year. The nurse will work with the student to train [them] with carbohydrate (carb) counting and entering the carb amount into the insulin pump. The student will begin to calculate the cabs [sic] and show their calculation to the para [sic] or backup caregivers. After receiving training from the nurse, the student will begin to enter the carbs into the insulin pump with the para [sic] or backup caregiver verifying the accuracy.” There was a description of the procedures that staff were trained to follow. It was noted that the “Nursing recommendation for this student [is] 2:1 para [sic] for this school year while working with [the Student] to promote increased independence in diabetic care to prepare for middle school next year.”
 - c. Supports for school personnel listed RN Care Coordination provided by MESD by the Nurse for 1600 minutes per year starting on September 13, 2023, and ending on January 10, 2024.
34. On September 13, 2023, a PWN indicated the District updated “present levels, parent concerns, and service page as per nurse recommendations.” Items used as a basis for this action included “Nursing protocols via [ESD] [and] prior evaluation reports.” “Leaving [the] IEP as written is rejected as [the] district needs to comply with nursing protocols.”
35. A second PWN from September 13, 2023, indicated that the “IEP team has concluded that [the Student] necessitates the services detailed in the attached IEP. The district is suggesting the following during the meeting scheduled for September 13, 2023”:
 - a. “An allocation of 1600 minutes for nurse consultation to facilitate staff training and provide additional support”; and that
 - b. “The nursing staff will collaborate to identify practical services in accordance with

medical orders.”

The basis of this proposed action was the “Results of current IEP team discussion, nursing consult, and input from parent concerns.” It was noted that “All service options were considered by the IEP Team, and those detailed on the IEP were agreed to by the Team.”

36. The Parents acknowledged that they received the PWN noting the changes and then contacted the School. They objected to the removal of care being provided in the classroom and the removal of other accommodations.
37. Meeting Minutes from the September 13, 2023 IEP amendment meeting indicated the following participants were present for the meeting: both Parents, the District Representative, the School Psychologist [General Education Teacher], the Building Administrator, the Case Manager, the School Nurse, the Nursing Supervisor, and a family advocate.
 - a. It is noted that the Parents hope to “address IEP as currently written (they believe [the] district is out of compliance).”
 - b. The notes indicated that: “Nurses present[ed a] draft of present levels. Nurses state there is a protocol through [ESD] that guides the creation of an IEP with medical supports. [The Case Manager] states a nurse did not oversee the carryover of supports from the 504 to the IEP during the amendment to [Student’s] IEP this past May. [The District Representative] states that the IEP is in compliance because there is an adult who monitors [the Student’s] glucose levels throughout the day and is adhering to the medical protocol.” I nurses indicated that “The orders cannot have a supplementary document that is not directly within the [Doctor’s Orders]. The orders must be ‘reasonable’ which is dependent on the nurses [sic] ability – what they are willing to do under their licensure, also assessing the ability of the EA and paras. [sic] The[y] believe the current mix of documents is unreasonable and not delegable.” The notes indicated that the Parents want the nursing team to “look at the current orders, and tell [the] family what they are confused by or what is reasonable or not reasonable. They want the working document to be consistent between family and school and aligned with doctors [sic] orders.” The Parents want the IEP team to “align the staffing and expectation for when para [sic] needs to be with [Student] (such as 15 minutes prior to snacks/meals). The family wants indicators for when the monitoring is happening. After the doctor’s orders are clear and reasonable for nurses to delegate/work with, the team will be [sic] to build a plan for [Student] to work towards independence by addressing executive function.”
 - c. Supports for school [personnel] were described as: “Nurses advise that 1600 of [sic] nurse consult minutes to be added for staff training and other supports.”
38. On September 14, 2023, the Parents shared notes from the Student’s medical record that described a conversation from the previous day between the Nurse and the Student’s “health care team”: “School RN [the Nurse] calls the clinic to ask questions about the school orders to understand that 504 plan vs. the doctors [sic] orders. [The Nurse] is wondering if [the Parent] can add low BG treatments into the 504 plan. The School RN states that [the Parent] edited to [sic] school orders and changed the low GFB treatments on the orders, and [the Nurse] had questions about this. Let the RN know that our school orders do state that parent/guardian can add additional or different low BG treatment strategies in their health plan at school. Sent the following email to [the Nurse] the School RN with attached trend arrow

health plan information that has been used in the past.” Trend arrows provide real-time data from the CGM system on the direction and speed of glucose level changes, showing whether glucose levels are rising or falling, and how quickly these changes are occurring.

39. On September 14, 2023, the Nursing Supervisor emailed the Parents: “[The Nurse] and I are in the process of reviewing current orders as agreed in the IEP review meeting, and now will look at your family’s edited version of [sic] blood sugar management template that Legacy provided.”
40. On September 15, 2023, the Nurse emailed the Case Manager about the need for an adjustment to the New Educational Assistant’s schedule. The Nurse commented on one of the physician’s orders regarding insulin and the need to bring the Student to the Health Office at a certain time for diabetes management. The Nurse described witnessing the Student become distracted during the process, and they stated: “It is my Nursing judgment that as a matter of safety, [the Student] needs to go to the Health Office to perform this process. I feel it is unsafe for this student to do this process in the classroom, hall, etc., where far more distractions are tempting to draw [their] attention away from [their] medication administration.”
41. On September 18, 2023, the Student’s Medical Doctor sent a letter to the District stating that the Student has Type 1 Diabetes, ADHD, is ten years old, and can’t be responsible or independent for the Student’s diabetes management. The Student also needs an adult to double-check carbohydrate counting and to remind the Student to look when alarms go off. The Student tends to ignore alarms and will need attention when the alarms happen to prevent a hypoglycemic episode. “[The Student] would greatly benefit from having adult supervision while in [S]chool in the form of an Aide given [the Student’s] young age and inability to independently care for [their] diabetes.”
42. On September 18, 2023, the Nursing Supervisor shared their concerns regarding a revised care chart provided by the Parent. “It’s our opinion (and that of [Nurse Contact] - my supervisor) that this chart is unreasonable. We don’t follow trends (arrows) or change settings within the pump to accommodate activity levels. We follow clinician orders. I know that in [their] IEP, [the Student] has a designated support person (either 1:1 or 2:1), but they could not continually monitor [the Student’s] pump/meter. These are also things that I would not want added into the IEP. At the suggestion of [the Nurse Contact], I’m including [District Staff]. I believe the district has a philosophy on what we consider ‘reasonable’ accommodations for students with diabetes when they have a 504.”
43. In an interview, the Nurse and Nursing Supervisor described the following:
 - a. The District does not use trend arrows; the use of trend arrows is not required to keep a student safe; and
 - b. Under Division 47 and the Nursing Act, the use of trend arrows is not required. It is not a safe practice to delegate to a UAP and would require a nursing assessment because a medical tool is being interpreted.
44. When asked how diabetes could be managed safely without the use of CGM trend arrows, the nursing staff shared the following:
 - a. The July 2023 orders were standard; low is anything below 80;
 - b. The August orders did not require trend arrows;

- c. Attend to the alarms on the pump; and
 - d. Staff were trained to follow the orders; the CGM was reviewed by the UAP, and logs were reviewed monthly.
45. In an interview, the Parents acknowledged that the nurses are not required to use arrow trends for the Student to be safe at school.
46. On September 19, 2023, the Case Manager emailed the Nurses and the District with information regarding the number of minutes the New Educational Assistant was supporting the Student: 125 minutes per day. They also asked several questions seeking input regarding language for the IEP.
47. On September 19, 2023, the Parents provided the District with a letter from the Physician and asked if there was clarity around the “physician orders and parent provided CGM monitoring and treatment plan.” The Parent indicated that the other Parent would be emailing the Student’s schedule and would be requesting a copy of the Student’s school schedule with specific information included. The Parents requested ‘push in’ monitoring of the Student’s diabetes, a copy of the meeting notes, a prior notice of Special Education action, and a follow-up IEP meeting.
48. On September 19, 2023, the Parents emailed the Case Manager: “As we concluded, we discussed alignment on where, when, and why [New Educational Assistant] or another designated staff member would be supporting [Student]. Regardless of the minutes, 1:1 vs 2:1 terminology, we hope that we can agree on the use of a “Push-In” approach to diabetes management.” The Parents also submitted a proposal for the EA/Para protocol, which included times and locations for supervising snack and carb count, blood sugar monitoring, lunch carb count, and responding to blood sugar down-trending.
49. In an interview, the Special Education Program Administrator indicated that the Parents wanted consistent monitoring of the trend arrows and the provision of a specific amount of carbs, which was outside of the medical protocol. The Special Education Program Administrator stated that these requests may have been considered an alternative parent regimen, but it is not something that could be delegated.
50. The Parents had the understanding that “designated adult support” meant that the Student had a paraprofessional to provide the support for the 375 minutes per day. Instead, the support person only worked with the student periodically. The Parents indicated they were not informed that the support would change when transitioning from a 504 plan to an IEP. On September 9, 2023, they were told that support was available “as needed.”
51. According to the Nurse and the Nursing Supervisor, “designated adult support” meant that someone was available to respond and provide diabetes management as needed.
52. The Special Education Program Administrator indicated that “designated adult support’ is support for one or more students, and in the Student’s case, was to assist with the medical protocols. They indicated that the Parents were used to an EA being in the classroom with the Student, as opposed to a support person performing the same role but not stationed in the

classroom. This support person was trained to monitor the device and the Student's health needs, and one had been assigned to the Student.

53. On September 20, 2023, the Nurse noted in the Delegated Health Care Log that "...carb (2 gummies) [sic] Because [the Student's] guardian told [the Student] to. I was attempting to follow [the] Dr.'s orders and give 10g carb for BGL 480. The Student stated [the Student] was going to take what [their Parent] said to take, not me."
54. On September 27, 2023, the Case Manager inquired if the New Educational Assistant needed to be scheduled with the Student for PE.
55. On September 28, 2023, the Nursing Supervisor emailed the Parents: "Thank you for your continued patience as we examined your proposed treatment plan/activity plan for [Student]. As I mentioned, I have had several RNs look it over to help determine if this is a reasonable accommodation while [Student] is at school. This review included our Senior School Health Services Administrator, who was previously our State of Oregon School Nurse Consultant, [two] supervisors, a complex needs nurse, our lead RN, and our building nurse. Our determination is that your additional instructions, along with the standard Diabetic Treatment Orders, are too cumbersome to delegate to a lay person [sic]. [A]nd are therefore unreasonable. We are able to continue to follow the standard provider's orders which [sic] do not include following trends of the pump or adjusting settings for activities. We are still willing to meet with you and [Student's] diabetes clinic should you feel that this would be helpful."
56. On September 28, 2023, the Parents emailed the Case Manager regarding a drop in the Student's blood sugar level that day and the New Educational Assistant's response to this incident. The Parents also provided a copy of an email they received from the Nursing Supervisor: "Here is a copy of an email we got from [the Nursing Supervisor] today. It states that at this time, the school is not going to delegate [the] CGM trend chart to [the New Educational Assistant]. So you are correct, today if [the] [New Educational Assistant] saw that it was happening and went to contact [the Nurse] to determine what to do, then [they] followed [their] current directives. However, I am not clear what [the Nurse] will legally be able to recommend to [the New Educational Assistant] if [the ESD] is refusing to follow the plan we provided since this scenario is not outlined the [sic] the medical orders. From a safety perspective, minutes matter when dropping that quickly. Within 10 min [sic] of 1:06 pm, [the Student] would have been 60 without quick response. In 15 min [the Student] would be 20-40, weak, loosing [sic] the ability to talk, losing consciousness [sic]. We maintain that waiting to find a phone, get feedback from [the Nurse] and then give [the Student] sugar is unsafe. [The Student] can have a seizure. Until this is resolved we feel that we have [to] manage [the Student] via text to keep [the Student] safe, or not send [the Student] to school."
57. On September 29, 2023, the Nursing Supervisor emailed the Parents regarding the current doctor's orders and the challenges that they face when the treatment orders differ from the directions given to the Student by the Parents. They also described their challenge with the administration of the Focalin and suggested a procedure to mitigate the challenge. On that same day, the Parents emailed requesting a copy of [the Student's] "case management plan/individual health plan. I learned today that one has not been completed. Even if subject to change upon further collaboration or a change in DMMP [Diabetes Medical Management Plan], [the Student] should have had a formal plan in place weeks ago."

58. On October 9, 2023, the Nursing Supervisor emailed the Parents to summarize the review of the doctor's orders, the reasonability of the orders, and the hopes of the family. The Nursing Supervisor detailed their version of the issues that still need to be addressed.
59. On October 17, 2023, the Parents replied to the Nursing Supervisor with three goals they hope to realize: "1. Agree on a low treatment plan that can be delegated." "2. Agree on methods to use CGM trends and CGM alarms to prevent lows." "3. [The Student] can input [their] sugar manually, without using the CGM button." The Parents also referenced "Student Cooperation and Self Advocacy" and ADHD medication.
60. On October 18, 2023, the Teacher shared concerns regarding the Student's absences, work, health, and conflict with peers.
61. On October 18, 2023, the Parents sent an email to the District requesting a PWN with an explanation of differences in the regimen in the 504/IEP/health plan. They also reiterated the three goals that the Parents wanted to discuss with the District nurses:
 - a. Agree on a low treatment plan that can be delegated. As per orders, the Parents are allowed to supply an alternative treatment regimen;
 - b. Agree on methods to use CGM trends and CGM alarms to prevent lows; and
 - c. The Student can input their blood sugar manually without using the CGM button.
62. In an interview, the Parents defined "alternative treatment regimen" as a meaningful collaboration that works for the Student that would, ideally, include the use of trend arrows and would include patient-specific needs.
63. In an interview, nursing staff described that the "alternative treatment regimen" must be safe and applicable to student needs and that parents can modify the plan if it is within the parameters of the order.
64. On October 19, 2023, the Parents provided the activity mode guide via email, noting that "I would like it added to the IEP document." The Case Manager responded: "We are not able to attach the medical orders or other non-PPS documents to the IEP. We also need to meet [the Student's] medical needs in the manner dictated by the school nurses, and services will be provided in a manner that they find reasonable/appropriate. We always strive to ensure [the Student] misses as little instruction as possible, [sic] and work to catch [the Student] up as the situation requires. I hope you had a productive meeting with [the Teacher] [sic] and I will make sure to check in with [the Teacher] about any areas of concern we can collaborate on."
65. The Parents acknowledged that the medical orders did not include a pump adjustment for PE. According to the Parents, the School stated they needed that action specifically dictated in the medical orders, as it was not up to staff or parent discretion. The Parents were concerned because most of the Student's lows occurred in PE. The Parents indicated that they believed this occurred because the Student was not getting support.
66. The Nurse described that the goal for diabetes management was to move toward independence and that the Principal recommended that management be taught in a quiet, calm space before moving to a larger, distracting space like that of a classroom.
67. On October 23, 2023, the Nursing Supervisor indicated that they would communicate with the Parents and that the Case Manager should not add the Parent's request to the IEP: "We've told [the Parent] we are not going to be going in and adjusting the pump to activity mode."

68. On October 23, 2023, the Nursing Supervisor reiterated, "We follow [the Students'] current clinician orders for treatment while at school. The orders don't state you can provide an alternative treatment plan to us." The Nursing Supervisor mentioned: "We do not follow pump trends nor do we change settings within the pump."
69. On October 24, 2023, the Case Manager shared: "The [Parent] still is texting (yesterday morning [the Parent] texted [the Student] and advised [the Student] to take 3 gummies), despite [the New Educational Assistant's] awareness of the situation. As [New Educational Assistant] went to give [the Student] the gummies as per the protocol, [the Student] informed [the New Educational Assistant] [the Student] had just taken 3. Not sure what to do about this, but it seems clear that we don't want this interference as I assume we would be liable if [the Student] double dosed."
70. On October 26, 2023, updated medical orders indicated, "a default treatment of low blood sugars (unless [P]arent/guardian has specified a different regimen in the 504/IEP/health plan):
For blood sugar less than 100mg/dl:
a. If CGM<100 with single or double down arrow, give 8 g carbs;
b. For CGM readings less than 80mg/dL;
i. Confirm with finger poke;
1. If BG 75-80, give 4 grams fast-acting carbohydrate;
2. If BG 65-74, give 8 grams fast-acting carbohydrate; and
3. If BG is less than 65, give 15 grams fast-acting carbohydrate;
ii. If CGM is less than 80 mg/dL 15 minutes after carbohydrate treatment, recheck blood sugar as a finger stick;
iii. If less than 80 mg/dL, repeat treatment as above;
iv. If less than 80 mg/dL after THREE treatments, continue treatment, call [the] contact person. If unable to reach [the] contact person, call [the] diabetes provider; and
v. Once blood sugar is above 80, can resume normal activities."
71. On November 3, 2023, the Parents requested a meeting before November 13, 2023, "to have the accommodations from [the Student's] 504 plan be listed on the IEP in the accommodations section." The Parents listed their requests and asked for a PWN to document the decisions that were made.
72. On November 21, 2023, the Parents emailed the District inquiring about the updated medical orders and to confirm that they have been reviewed and training has been completed.
73. On November 27, 2023, the Parents and the Case Manager confirmed the annual IEP date for January 10, 2024.
74. On November 29, 2023, "MyChart" documentation from the Student's medical record documented that "an RD and the School RN [the School Nurse] called to report being unable to follow arrow trends in the doctor's orders per current Nurse District Guidelines. The School Nurse shared that the aide in the school who [sic] works with the Student for ADHD and that the aide is split between 2 students and incapable of following the guidelines that state a one-to-one nurse for the Student. The School Nurse shared that they do not have a problem following the protocol, but the District is not allowing it." Further discussion indicated that it was "perfectly legal to delegate" the doctor's orders to follow arrow trends.

75. On November 29, 2023, the Nurse recommended that the Assistant Principal attend diabetes training in December. The Nurse offered to review the Student's orders with the Assistant Principal so that they would "be set for the remainder of this school year."

76. On November 29, 2023, the Parents requested a meeting before the January 10, 2024 IEP meeting to discuss concerns. The IEP team agreed to meet on December 6, 2023.

77. On November 29, 2023, the Nurse described the desire to consult with Nurse 2 about the Student. In response to an inquiry about consulting with [Nurse 2] on [Student], on November 29, 2023, [Nurse 2] informed the Nursing Supervisor that: "As far as trend arrows go, there was recently a statement put out by the ADA regarding school management and the use of trend arrows. The premise of using trend arrows is to take advantage of the [CGM] technology but to use the trend arrows at 'routine dosing times' [sic] This is the statement and I think highlights how trend arrows can inform practice but within certain limitations." "The use of trend arrows and other advanced CGM features like predictive low glucose alerts should be clearly enumerated in the DMMP." The following is enumerated in the DMMP:

"For some children with type 1 diabetes, their management plan may include dose adjustments based on trend arrows at routine dosing times. Frequent interventions based on the CGM data/trend arrows are not considered best practice and it may impact learning and the student's stress level. Concerns related to this should be discussed with the child's diabetes care provider.' "So, [they are] partially correct that the ADA does support the use of trend arrows but within limitations. The problem I (personally) have with this statement from the ADA is that it does not take into consideration delegation laws that vary by state and the different school health-related care models."

"We [ESD] have a setup that does not as easily allow for this type of care as we are limited by the NPA." Additionally, "It does seem really particular but I do see some students who are very sensitive to low blood sugar treatments and chasing sugar/insulin all day is a chore and I suspect this family prefers tight control. Implementing this as long as it is provided as a written instruction to the SHA is doable and could avoid some pesky highs that get the parent riled up. I actually have two type one students with this low blood sugar regimen and it is very easy for the EA to follow. I did not implement it myself but have seen it be followed accurately and safely."

[Nurse 2] described the activity mode feature and then shared that: "I feel strongly that the thing that needs to be clear to parents in situations like this is how important it is for us (RNs) to have written instructions for things that are delegatable/teachable.... It can't be subject to every whim since that involves [judgment/decision] making. I guess what I might advocate for is finding reasonable and safe ways to say yes when we are able to do so but being sure to highlight the difference between clear teachable/delegatable [sic] instructions and parent[-]directed care or care that requires clinical decision making."

78. The nursing staff described that the Student's standard orders do not include the activity mode and that staff are not instructed on how to manipulate the device. It was suggested that this accommodation was not reasonable because of safety issues and delegating to non-licensed staff.

79. On November 30, 2023, the Nursing Supervisor updated the Nurse, confirming that “[Nurse Employer] is holding firm that we do not follow trend arrows.” It was noted that “After that, you can call and ask for clarification of the orders- (minus the trend arrows) so that we clear up the microdosing. IE: [sic] why are we giving 8 grams for less than 100 but only 4 or 6 grams for less than 80? Do we add the additional 8 grams (when less than 100) to the other grams [sic] etc. Also [sic] the orders will need to clear up that for lows, we treat between 8-15 grams (if they still want that), but they are actually going below that number if we follow their chart (if they really want us to treat down to 4 grams, then it should say, treat between 4-15 grams of carbs).”
80. On November 30, 2023, the Case Manager indicated that there was collaboration between program administration, the nursing team, and the family to finalize wording on accommodations. The Parent’s recent request should be addressed with a response outlining what can be provided for the Student’s needs. There is an update to the medical orders, and the team will need to clarify contradictory information.
81. In an email exchange that began on December 1, 2023, and continued through December 4, 2023, the Special Education Program Administrator and the Parents discussed the upcoming IEP. The Special Education Program Administrator stated: “We are currently still seeking guidance on the most recent doctor’s order and since we have a meeting on Dec. 6th for the IEP, we will add this topic to the meeting agenda.” The Parents responded: “Please consider reviewing the 504 accommodation requests and this case with your equivalent position within the 504 department in PPS. The majority are standard accommodations that have previously been put in place by the counselor at our school and did not require nursing input. Of course, some accommodations would be made in collaboration with the nursing team – such as the specific plan to prevent low blood sugar related to high activity levels in PE. Currently, the nursing team is failing to implement the medical protocol as outlined by [Student’s] physician on 10/26/23, when the orders were updated. This in turn [sic] means the team is failing to implement the IEP.”
82. When asked about “failing to implement the IEP,” the Parents shared that they were referring to the part that says: “unless otherwise specified by the parents.” In full, regarding this provision, the October 26, 2023 updated medical orders noted that the default treatment for low blood sugar was to be followed “unless [P]arent/guardian has specified a different regimen in the 504/IEP/health plan.”
83. On December 4, 2023, the Nurse’s Contact sent an email to the Parents, which stated, “Our decision to not allow the use of CGM trend arrows is not written into our policies or protocols. This decision is based on both the Oregon Nurse Practice Act in respect to nursing delegation and reasonable accommodation standards in 504/IEP guidelines.
- [School Health Services] (SHS) believes that the complexity that comes with including trend arrows makes it so our Registered Nurses (RNs) can’t safely delegate diabetes management to an unlicensed/unregulated assistive person (UAP). In addition, the use of trend arrows could be considered part of a nursing assessment, which we cannot delegate to UAPs...I am confident that we can keep your child safe and effectively learning without the use of trend arrows.”
84. On December 4, 2023, the Parents filed this Complaint.
85. The Special Education Program Administrator shared that since the Complaint was filed, the District has updated the accommodations for the Student and changed nurses.

86. On both December 13, 2023, and December 14, 2023, notes in the Delegated Health Care Log indicated that the Parents instructed the Student to take tabs or gummies prior to a blood sugar test or treatment.
87. On December 13, 2023, the Parents described to the Nurse Supervisor 2 a low sugar event for the Student in PE and their communication to the Student to prompt taking glucose tabs to remedy.
88. On December 13, 2023, the Nursing Supervisor shared questions regarding the Parents directing care, doctor's orders, finger pokes, and snacks. Another RN responded with more questions about the treatment decision and a missing data point.
89. On December 14, 2023, the Nurse and the Parents exchanged emails regarding an incident in the classroom when the Parents directed care and the Student refused to listen to the EA.
90. A Nursing Plan was created for the Student on December 18, 2023, after the Complaint was filed. The plan specified procedures and indicated that "The UAP must provide care as written by the health care provider (HCP) in the Diabetes Treatment Orders (DTOs) and as instructed by RN." The plan described the tasks for which the Student requires supervision: "CGM monitoring, Checking blood sugar, Ketone testing, Carbohydrate counting, Documentation, Other: Reminders on PE days to be aware of blood sugar and act according to [the] parent provided plan." Two UAPs are listed for diabetes and glucagon (one of whom was trained on December 15, 2023), and the location of supplies was provided. The insulin delivery system and glucose monitor were listed with the time and location necessary to check blood sugar.

The Diabetes Action Plan described following the "DTOs per RN training/teaching/delegation for intervention of low and high blood sugar levels. Designated UAP should go to [the] student's location to provide diabetic care including treatment of high/low blood sugar." Details about the causes and signs of low and high blood sugar were documented, as was information about carbohydrate counting and insulin calculation. The following information was documented: timing and administration of insulin and glucagon, blood sugar testing by glucometer, and CGM.

IV. DISCUSSION

Content of the IEP

The Parents alleged that the District and ESD violated the IDEA by not considering and including medical/health management information in the IEP when provided by the Parents.

The Individualized Education Program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, specific special education and related services, program modifications, or supports for school personnel. Projected dates for initiation of services and modifications must be included. The IEP must also ensure that the child advances appropriately toward attaining annual goals, progresses in the general education

curriculum, and is able to participate in extracurricular and nonacademic activities to the maximum extent appropriate.³

This allegation was centered around the Parents concerns about the School's compliance with the Student's IEP and the Diabetes Treatment Orders. The medical orders included provisions for monitoring glucose levels, administering insulin, and addressing low and high blood sugar. The Parents believed that the use of CGM trend arrows was crucial for effective diabetes management and wanted that requirement incorporated into the IEP.

The District stated that it did not use trend arrows for diabetes management, the use of trend arrows was not standard practice, and the use of trend arrows was not considered necessary for student safety. The nursing staff emphasized safety, adherence to medical orders, and nursing delegation regulations as the reasons for not providing this accommodation. The Parents acknowledged that using the trend arrows was not a requirement to keep the Student safe but that it helped prevent trending low blood sugar events.

The District's position of not providing an accommodation for the use of CGM trend arrows was based on safety considerations, nursing delegation regulations, doctor orders, and adherence to standard health plan protocols. The District's refusal to use the CGM trend arrows does not violate the content of an IEP requirement by IDEA, and the District provided the Parents with PWN about this decision on September 13, 2023.

The Department does not substantiate this allegation.

When IEPs Must Be in Effect

The Complaint alleged the District and ESD violated the IDEA by not implementing the medical/health accommodations in the IEP.

Each school year, school districts must have an Individualized Education Program (IEP) for every child with a disability. Special education and related services must be provided according to the IEP. For initial IEPs, a meeting must be conducted within 30 days of determining the child's need for special education, and services should be made available promptly. School districts must ensure that the IEP is accessible to relevant educators and inform them of their responsibilities for implementing the IEP, including specific accommodations and supports.

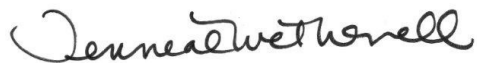
The key issue revolved around the varying interpretations of "designated adult support" for the Student who qualified for an IEP due to ADHD and OHI. The August 2022 504 Plan described "access to adult support for all diabetic care." In January 2023, the Student transitioned from a 504 Plan to an IEP that retained the previous 504 Plan's accommodations, one of which described the need for adult support for the management of the Student's diabetes. The amended IEP in May of 2023 described the supplementary aids and services of "designated adult support, school-wide, for 375 minutes per day" to aid in the medical protocols for the Student. Both the July 2023 and the October 2023 Treatment Orders indicated that the "Student will need support by trained school staff" with carb counting and blood sugar monitoring. Challenges emerged in the fall of the 2023-24 school year when the Parents sought continuous adult support for diabetes management while the District aimed to transition the Student toward increased independent management of their diabetes and offered support as needed.

³ OAR 581-015-2200

The amended IEP from September 2023 included updated nursing recommendations of a 2:1 paraeducator and working with the Student to foster independent management of their diabetes. The Parents acknowledged the receipt of the PWN dated September 13, 2023 that described these adjustments to the IEP. The District complied with the Student's IEP by providing designated adult support in accordance with the documented medical protocol and the descriptions on the IEP. The allocation of 1600 minutes for nurse consultation underscored the District's commitment to staff training and additional assistance. To address some of the Parents concerns, the District adjusted the Student's classes so that two students could access the same assistant. After the Complaint was filed, the Student's accommodations were updated, and there was a change in nurses. The services provided to the Student were consistent with the supplementary aids and services described in the IEP.

The Department does not substantiate this allegation.

Dated: this 2nd Day of February 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

Emailing Date: February 2nd, 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).)