

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls City Schools)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-010

I. BACKGROUND

On February 12, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Klamath Falls City Schools (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On February 20, 2024, 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 March 5, 2024.

The District submitted a *Response* on March 5, 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. *Response* to ODE Complaint and *Request for Response*, no date
2. Staff who have had involvement with [Student], no date
3. Statement of Eligibility for Special Education (Other Health Impaired 80), 2/3/22
4. Statement of Eligibility for Special Education (Specific Learning Disability 90), 2/3/22
5. Evaluation Report, 2/1/22
6. Occupational Therapy Assessment, 1/24/22
7. Sky Lakes Medical Center office visit, 1/17/22
8. [Elementary] Speech and Language Assessment, 1/7/22
9. Statement of Eligibility for Special Education (Autism Spectrum Disorder 82) 3/29/22
10. [Elementary], 3/29/22
11. Statement of Eligibility for Special Education (Communication Disorder 50), 2/3/22
12. Statement of Eligibility for Special Education (Intellectual Disability 10), 3/29/22
13. Special Services Department, 5/24/23
14. Special Services IEP Abstract, 4/6/23
15. Notice of Team Meeting, 2/28/23

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. Oregon Standard Individualized Education Program, 4/6/23
17. Written Agreements between the Parent and the District, 4/8/23
18. Functional Behavioral Assessment Consent Form, 1/24/24
19. Special Services Department Paperwork Checklist for Annual IEP Amendment (pink), 4/6/23
20. [District] Special Services IEP Abstract, 4/6/23
21. Notice of Team Meeting, 2/28/23
22. Special Education Placement Determination, 4/6/23
23. [District] Prior Notice of Special Education Action, 4/6/23
24. [District] Written Agreements between the Parent and the District, 4/6/23
25. Revisions to IEP Other Than At Annual IEP Meeting, 4/6/23
26. Special Services Meeting Notes and Summary, 4/6/23
27. Individualized COVID-19 Recovery Services Review, 4/6/23
28. Special Education Placement Determination, 4/6/23
29. [District] Annual Academic and Functional Goals and Objectives, 4/6/23
30. Services, 4/6/23
31. Special Services Department Paperwork Checklist for Annual IEP and IEP Amendments (pink), 11/13/23
32. Notice of Team Meeting, 11/9/23
33. [District] Special Services Department Meeting Notes, 11/13/23
34. Prior Written Notice, 11/13/23
35. [District] Annual Academic and Functional Goals and Objectives, 4/6/23
36. Behavior Intervention Plan, 9/28/23
37. FAIR Behavior Intervention Plan, 4/4/22
38. [District] Annual Academic and Functional Goals and Objectives, 4/6/23
39. Prior Written Notice, 2/14/23
40. Special Services Meeting Notes and Summary, 3/12/23
41. Mediation held with agreement obtained, 1/18/24
42. Returned [Parent's] call, 2/9/24
43. Special Services Meeting Notes and Summary, 2/13/23
44. All About Me, no date
45. Dear IEP Team, no date
46. [District] Special Services Department Meeting Notes, 10/26/23
47. Special Services Meeting Notes and Summary, 2/24/23
48. Plan for [Student], 2/13/23
49. Documentation Starts (behavioral charts), 2/14/23
50. Untitled Schedule, no date
51. The Human World, no date
52. Visual Map, no date
53. Aztec Empire, no date
54. Unit 4 Lesson 3, no date
55. Dirty Jobs Worksheet, no date
56. [Student] Social Studies, no date
57. [Student], 2/14/23
58. [District] Attendance History, 3/5/24
59. [Middle School] Daily Attendance Profile, 2023-2024
60. Period Attendance, no date
61. Student, no date
62. Notes from therapist, 2/27/24
63. OI Billing Service Entries, 2/27/24
64. Speech Language Consult Log, 2023-2024
65. Power of Communication, 4/5/23

66. SC Para Training, 4/5/23
67. De-Escalation Strategies, 4/14/23
68. De-Escalation Training with District paras, 4/14/23
69. [Middle School] De-escalation Training for Teachers, 1/25/23
70. De-escalation Strategies, no date
71. Save The Date Back To School Boot Camp, 8/24/23
72. What We Do Matters, no date
73. [Student] consult time - speech language pathologist record, 2/13/23
74. Inclusion -Best Practices, no date
75. I am working for, no date
76. Noise Level Chart, no date
77. Adopted Curriculum/Programs for Special Education Settings, no date
78. First, Then, Next, no date
79. Get Materials, no date
80. [Student] Practice, no date
81. Social Studies-Gen Ed Vocab, no date
82. When [Student] is repeatedly requesting a break, no date
83. Task Checklist, no date
84. [Student], no date
85. Morning Meeting, no date
86. [District] 5th Grade ELA Core Planning and Pacing Guide using Benchmark Advance Curriculum, 11/13/no year
87. [Student] Detailed Skills Report, 2/16/23
88. EasyCBM, 4/3/23
89. Emails, 9/14/22-3/6/24

The Parent submitted a *Reply* on March 7, 2024, providing an explanation and rebuttal, and documents in support of the Parents' position. The Parent submitted the following relevant items:

90. Email, re: Did you receive the District Response and Materials, 3/6/24
91. [Middle School] view contact details, 2/8/no year
92. Monday, Tuesday, Thursday, and Friday 6th Grade, no date

The Complaint Investigator interviewed the Parent on March 12, 2024. On March 14, 2024, the Complaint Investigator interviewed District personnel. The Complaint Investigator reviewed and considered all 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 February 13, 2023, to February 12, 2024, the filing of this Complaint on February 12, 2024.

Allegations	Conclusions
<p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA when the general education curriculum was not modified for the Student (the Student was expected to sit quietly while the Teacher taught content that the Student did not understand), IEPs have not been followed, and there is a lack of staff training. In addition, the District failed to keep the Student safe and did not keep track of the Student on February 8, 2024.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>Not Substantiated.</p> <p>The District implemented the Student’s IEP as written and all staff members working with the Student were appropriately trained to meet the Student’s needs.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleged that the District violated the IDEA and denied the Student a FAPE when the Student could not access their education due to staff not implementing the Student’s IEP, excluding the Student from the classroom and the School, and not implementing and the behavior intervention plan.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Substantiated.</p> <p>The District implemented the Student’s IEP and BIP as written. The Student was suspended from the School for three days, and there is no evidence that the Student was otherwise excluded from the Classroom.</p>

<p>REQUESTED CORRECTIVE ACTION</p> <ul style="list-style-type: none"> The Parent requested the Department of Education order the District to take the following corrective action: “Train Staff and fin[d] for IDEA act violations and hold the school accountable for their mismanagement of [special education] students.”
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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 February 13, 2023. 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 twelve years old and attended sixth grade in the District during the Complaint period.
2. The Student, “has strong communication skills where [they engage] easily in conversation, especially with adults.”

3. On January 17, 2022, a medical office visit resulted in progress notes about the Student that included the following impressions:
 - a. "Attention deficit hyperactive disorder, combined presentation";
 - b. "Rule out oppositional defiant disorder";
 - c. "Unspecified anxiety disorder";
 - d. "Specific learning disorder; reading, math [the Student] has an IEP";
 - e. "Unspecified neurodevelopmental disorder. Rule out autism. Neuropsychological testing."

The Student's Treatment Plan included:

- f. "Safety-Suicide risk assessment today is deemed LOW [sic]";
 - g. "Denies SI [sic] or any safety concerns including homicidal intent noted today on implicit and explicit questioning";
 - h. "Denies auditory or visual hallucination at this time. No self-injurious behavior"; and
 - i. "Crisis protocol reviewed with the patient/caregiver. Pt [sic] agrees to honor safety plan... ."
4. On February 3, 2022, the Student was found eligible for special education as a child with an Other Health Impairment (OHI) and a Specific Learning Disability (SLD) in the areas of basic reading skills, reading comprehension, mathematics calculation, and mathematics problem solving. The Student was found ineligible for Communication Disorder.
5. According to an Evaluation Report dated February 3, 2022, recommendations included:
 - a. "Consult with [the Student's] physician regarding assessment of and interventions for [the Student's] inattentive and hyperactive tendencies."
 - b. "Provide a highly structured classroom environment with an expressed set of expectations."
 - c. "Break assignments and projects into smaller segments that [the Student] can complete in one sitting."
 - d. "Consider ways to minimize visual and auditory distractions within the regular classroom setting."
 - e. "It will be important for the team to discuss the need for academic goals and interventions to address [the Student's] weaknesses."
 - f. "Additional cognitive rating scales and the cognitive assessment results should be reviewed."
6. On March 29, 2022, the Student was found ineligible for special education services under Autism Spectrum Disorder and Intellectual Disability (ID). The Speech-Language Pathologist (SLP) included, "A statement to attach to marking disagree on the ID eligibility that was completed on [March 29, 2022,] by the IEP team. Based on a file review, my standardized assessment, therapy information, the partially completed cognitive assessment, teacher report, and personal observations I believe that [the Student] presents with cognitive deficits that are directly impacting [their] success in school. The completion of the ID eligibility with all the information (which the [P]arent revoked before all testing could be completed) I believe would benefit [the Student] long term, as proper identification leads to appropriate services and access to appropriate community resources. This is especially important as [the Student] ages into middle and high school, and beyond."
7. Special Services Meeting Notes and Summary dated February 13, 2023, indicated, "Class behaviors: ... [The Student] is now saying 'shut up' to adults and other kids. [The Elementary

Special Education Teacher] gave examples of what is happening with yelling 'shut up' to peers. [The Student] is mimicking behaviors that is affecting [sic]".

8. On February 13, 2023, the Elementary Special Education Teacher sent an email to the Parent which indicated, "I did add the emotions chart and [the Student] will see the school counselor once a week."
9. On February 13, 2023, SLP consultation records indicated, "Team meeting to discuss behavior, planning, accommodations – 60 min. During meeting [T]eam and [P]arent discussed visual schedules."
10. On February 14, 2023, the Parent emailed the Elementary Special Education Teacher and stated, "I just wanted to let you know that [the Student] doesn't have an oral 'tic' at home and the 'shut up' stopped as soon as we left the classroom. [They] did miss swim lessons because [they] continued during the meeting and wouldn't listen to me."
11. Behavioral charts dated February 14, 2023 through April 28, 2023, indicated the Student:
 - a. "Had Unsafe Hands and Feet, 3 or fewer times a day, 16 out of 46 days";
 - b. "Had Unsafe Hands and Feet, 4-6 times a day, 8 out of 46 days";
 - c. "Had Unsafe Hands and Feet, 7 or more times a day, 6 out of 46 days";
 - d. "Uncooperative with [their] School Work, 3 or fewer times a day, 7 out of 46 days";
 - e. "Uncooperative with [their] School Work, 4-6 times a day, 10 out of 46 days"; and
 - f. "Uncooperative with [their] School Work, 7 or more times a day, 13 out of 46 days."
12. On February 16, 2023, a Lexia Detailed Skills Report indicated, "Core 5 Level 1, 94% (49 out of 57 units)."
13. On February 21, 2023, the Elementary Special Education Teacher emailed the Principal and staff members, "At one of our recent meetings with [the Parent], it was recommended that I use a reading curriculum called Lexia. [The Staff Member] graciously save [sic] me [their] last seat. I've been using Lexia every day with [the Student], and [they are] successfully sitting close to 30 minutes daily doing the lessons. ... is there a possibility to renew the subscription?"
14. A Daily Attendance Profile from February 7, 2023 through June 15, 2023 indicated the Student was absent 2.5 days and did not have a tardy period reported. According to a Period Attendance Profile for the 2023-2024 school year, the Student was enrolled for 91 days and the following was recorded:
 - a. "(O)ut-of-School Susp [sic] – 3 days";
 - b. "(V)erified by [P]arent – 4 days";
 - c. "(X) Excused Absence – 7 days"; and
 - d. "Total Days Absent-14 (15.38%)."
15. On February 24, 2023, the Parent sent an email to the Principal that stated, "I am not sure of the exact details of what happened yesterday, but [the Student] did say that [they] hit [the Special Education Teacher]. [The Student] also said that [they] earned time on Google Earth. Unsafe hands and refusals 7 + times with a referral and [they] earned Google Earth? [They] lost their tablet for a week for the behavior yesterday."
16. On February 24, 2023, Special Services Meeting Notes and Summary indicated, "[T]oday was a better day. [The Student] hit a staff person once because students were not able to play

outside. Nobody hurt. ... [The Student] reported to [the Parent] that [they] got mad and hit [the Elementary Special Education Teacher], therefore [they] lost [their] tablet at home.”

17. On February 28, 2023, a Notice of Team Meeting indicated the meeting’s purpose was to “Develop or review an individualized education program (IEP) and placement for your child. The development of the IEP will be based on information from a variety of sources including the most recent evaluation, progress reports, test results, and information from you.”
18. On March 1, 2023, the Parent sent an email to the Elementary Special Education Teacher that indicated, “[The Student] had a doctor’s appointment today. [Their] doctor is concerned that [they are] depressed, which is unusual for [them]. I think it’s showing up as anger at [S]chool and [the Student] being quite [sic] at home.” During interviews with the Complaint Investigator, the Parent reported that these concerns from the doctor were not a diagnosis.
19. On March 6, 2023, the Elementary Special Education Teacher sent an email to the Principal which indicated that the Student received a discipline referral for using profanity. The Parent was not contacted.”
20. On March 13, 2023, the Parent sent an email to the Elementary Special Education Teacher that indicated, “[The Student] will actually be starting the new medication tomorrow. It might make [them] sleepy. It will take 14 LONG days to titrate. Hopefully we will see positive results sooner.”
21. On March 21, 2023, the Elementary Special Education Teacher sent an email to the Parent that indicated, “I wanted to make you aware about what has been going on with band. We continue to take [the Student] to band twice a week but with no success. ... [They have] only attended four times. The other times [they] refuse or will physically hit support staff when asked to go.”
22. An EasyCBM Progress Report dated April 3, 2023, indicated:
 - a. “[Passage Reading Fluency] PRF - 0% Winter”;
 - b. “Vocab - 17%”;
 - c. “[Proficient Reading] PR - 11% Winter”; and
 - d. “Risk - Some”. The score went from High Risk in the Fall to Some Risk in the Winter.
23. On April 5, 2023, paraprofessionals from the District attended a training regarding “Language and Communication with students.”
24. On April 6, 2023, an IEP meeting was held for the Student. Special Factors indicated:
 - a. The Student does exhibit behaviors that impede his/her learning or the learning of others;
 - b. The Student does have communication needs; and
 - c. The Student does need assistive technology devices or services.
25. On April 6, 2023, an IEP indicated overall strengths, interests, and preferences, “[The Student] transferred from [an Elementary School] to the [Self-Contained GOALS Classroom] with a special education eligibility Specific Learning Disability (SLD) [February 2, 2022] and Other Health Impairment (OHI).” Strengths included, “strong communication skills where [the Student] engages easily in conversation, especially with adults. [The Student] doesn’t hesitate to be a helper and does a great job with the job at hand. Currently, [the Student’s] been wiping the lunch tables and is doing a great job.” Preferences were, “[The Student] prefers to wear comfortable clothing that would include sweat pants [sic], t-shirt and a jacket. During class

time, [the Student] will continuously pick at [their] socks where [they] will unravel them to the point of having to throw them away. [The Student] prefers to be a part of adult attention and willingly will give advice when regarding [their] peers.”

26. The IEP dated April 6, 2023, indicated the following:

- a. “Specialized instruction in Reading, 120 min/ Weekly, [in] the Special Ed Classroom, starting 04/07/23, ending 04/05/24, the Provider [is the] LEA, the Role Responsible for Monitoring [is the Special Education] Teacher”;
- b. “Specialized Instruction in Mathematics, 120 min/Weekly, [in] the Special Ed Classroom, starting 04/07/23, ending 04/05/24, the Provider [is the] LEA, the Role Responsible for Monitoring [is the Special Education] Teacher”;
- c. “Specialized instruction in Written Language, 120 min/ Weekly, [in] the Special Ed Classroom, starting 04/07/23, ending 04/05/24, the Provider [is the] LEA, the Role Responsible for Monitoring [is the Special Education] Teacher”; and
- d. “Specialized instruction in Social/Emotional, 90 min/ Weekly, [in] the Special Ed Classroom, starting 04/07/23, ending 04/05/24, the Provider [is the] LEA, the Role Responsible for Monitoring [is the Special Education] Teacher.”
- e. “Related Services: Transportation, 20 min/ 2x/Day, Anticipated Location – home to school/school to home, starting date, 09/05/23, ending date, 04/05/24. The Provider [is the] LEA. The Role Responsible for Monitoring [is the Special Education] Teacher”.

27. The IEP dated April 6, 2023 indicated the following Supplementary Aids/Services; Accommodations:

- a. “Visual schedule, 20 min/Daily, All School Settings, Starting 04/07/23, Ending 4/5/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- b. “Preferential seating w/opportunity to stand, 20 min/Daily, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- c. “Break tasks into small steps, 60 min/Weekly, All School Settings, Starting 04/07/23, Ending 4/5/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- d. “Access text to speech, 50 min/Weekly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- e. “Extended time on assignments, 20 min/Daily, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- f. “Shortened assignments, 60 min/Weekly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- g. “Access to noise cancelling headphones, 30 min/Weekly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- h. “1:1 adult support for fieldtrips, 120 min/Yearly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- i. “Speech to text pen, C-Pen, 100 min/Weekly, All School Setting, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- j. “Positive reward system, 20 min/Daily, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- k. “Behavior Plan, 20 min/Daily, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role - [Special Education] Teacher”;
- l. “Access to large print, 30 min/Monthly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”;
- m. “Limit visual stimulation on assignments i.e. only give ½ or ¼ of a worksheet at a time, 15 min/Daily, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher”; and

- n. "Modified curriculum in reading, mathematics, written language, social/emotional, 450 min/Weekly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher."
28. The IEP dated April 6, 2023 indicated that the Supports for School Personnel were:
- "Speech and Language Pathologist (SLP) consult, 60 min/Yearly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – SLP";
 - "Occupational Therapist (OT) consult, 180 min/Yearly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – OT"; and
 - "Special Education Teacher consult with general education teacher, 15 min/Quarterly, All School Settings, Starting 04/07/23, Ending 04/05/24, Provider LEA, Responsible Role – [Special Education] Teacher."
29. The Non-Participation Justification statement in the April 6, 2023 IEP indicated, "the extent the child will not participate with nondisabled children in the regular classroom and in the extracurricular and other nonacademic activities – More than 40% of [the Student's] school day will be away from the General Education Setting." The provided explanation justifying the removal indicated, "[The Student's] educational delays are supported by [their] low scores in the areas of Visual Spatial Index, Working Memory Index, and Processing Speed Index. [The Student] would benefit with 1:1 and small group instruction. [The Student's] disability greatly impacts [their] ability to participate full time in the general education classroom."
30. A Prior Notice of Special Education Action (PWN), dated April 6, 2023, indicated the proposed action was, "The IEP team must meet once a year to discuss and update [the Student's] IEP to meet [their] educational needs." The action was based on "IEP dated 04/22/22, data, observation, and IEP team input." Other factors considered were, "[The Parent] requested that [the Student] receive communication services. 4/10/23 [The Parent] called and said that [they had] decided NOT to have [the Student] tested for Speech. [They] requested that [the Student] be tested for Dyslexia although we as a district DO NOT assess for Dyslexia."
31. According to a Written Agreement between the Parent and the District dated April 6, 2023, "Revisions To IEP Other Than At Annual IEP Meeting' ... The District and the Parent agree that the IEP meeting is not necessary to revise the [S]tudent's IEP between annual meetings. Date revised: 04/06/23." The Parent signed the Written Agreement on April 6, 2023.
32. According to Special Services Meeting Notes and Summary dated April 6, 2023, the Parent indicated:
- "[The Parent] says [the Student] is reading street signs, between 1st and 2nd grade at home[.]"
 - "[The Parent] says [the Student] likes money math, [they need] to have meaning."
 - "[The Parent] has returned [them] to Tater [T]ots to work on speech therapy of R/L sounds so that [they] can talk to [their] chromebook."
 - "[The Parent] wants to know if [the Student] is making progress, which is the right place because [they are] still not making progress."
 - "[The Parent] says the psych assessment shows that [they have] lower cognition and gets more support – in the SC classroom there is more opportunity for areas to be successful."
 - "[The Parent] feels like [the Student] is making progress with behavior in the classroom."
 - "Behavior impedes [their] learning"; and
 - "Placement - agreed to continue placement of ... [self-contained] classroom."

33. On May 18, 2023, a PWN indicated, “[The Parent] has requested that [the Student] ride the school bus starting 09/05/23.” During interviews with the Complaint Investigator, the Parent reported the Student had not previously accessed the District-offered transportation by the choice of the Parent.
34. According to a Progress Towards Goal statement dated June 15, 2023, in the area of reading, “[The Student] has been given instruction to work on CVC words and is cooperative when the assignment does not feel too overwhelming, meaning the assignment presented to [them] must be half a sheet or only 2 to 3 questions exposed. With this, and when [the Student’s] in a calm mood, [they display] knowledge of approximately 70% of CVC words offered. I have observed [the Student] in other situations, to randomly read words i.e. from the TV that are more difficult than CVC words. What [the Student] has taught me, is [their] learning is connected to intentional life situations and [they lose] interest with school work that [is] presented to [them] through worksheets.”
35. According to a Progress Towards Goal statement dated June 15, 2023, in the area of mathematics, “[The Student] has been given direct instruction in math supporting [their] addition and subtraction skills using numbers up to ten. ... [they are] more cooperative when an assignment doesn’t feel too overwhelming meaning the assignment presented to [them] should only have 2 to 3 questions at a time. With this, and when [the Student’s] in a calm mood, [they display] knowledge of addition/subtraction up to 5 approximately 65% of the time. ... [their] learning is connected to intentional life situations where [they seem] to lose interest with schoolwork that’s presented to [them] through worksheets.”
36. According to a Progress Towards Goal statement dated June 15, 2023, in the area of written language, “[The Student] is provided direct instruction in writing although this area is when [they are] more resistant and behaviors increase. With that said, overall, behaviors have decreased and [they are] accepting some direction. [The Student] has been given a sentence and needs to choose a word from the word bank to put into the blank to complete the sentence. i.e. The rabbit _____ on the box. Word Bank: green, top, sits, red. [The Student] would need to independently choose (sits) and write it in the blank. This seems to be difficult for [the Student] and actively [*sic*] seeks 1:1 support.”
37. According to a Progress Towards Goal statement dated June 15, 2023, in the area of Behavior, “In the last 2 months, [the Student] has increased [their] compliance, following directions and has made better choices when frustrated or upset. Thank you [the Parent] for your continued support and communication during this trying time. I believe it’s paid off.”
38. According to a Progress Towards Goal statement dated June 15, 2023, in the area of social-emotional, “In the last 2 months, [the Student] has increased managing [their] behavior. This would look like; when given a direction, [they] would accept it and would follow through on the direction. In the past, [the Student] displayed defiance by refusing the direction. [They would] yell, scream, rip up items and even would escalate to the point of hitting/kicking adults. This all has decreased significantly. [The Student] continues to have support with the reward sticker chart, although I’ve felt at times [they’ve] lost interest in [their] reward. [The Student] would choose [their] reward to be computer time looking at Google Earth. We continue to have the emotional chart available for [the Student]. Thank you [the Parent] for your resources you’ve offered us in supporting [the Student] and your continued communication. Great job [the Student]!!”
39. The District held a two-day “Back To School Boot Camp” training on August 24, 2023. The Agenda included:

- a. "Explicit Instruction";
 - b. "Specially Designed Instruction";
 - c. "Revised Evaluation and Eligibility";
 - d. "Supervising Paras";
 - e. "IEP Start to Finish";
 - f. "Mock IEP"; and
 - g. "Curriculum Update."
40. According to a BIP dated September 28, 2023, "[the Student] will escalate to physical aggression and inappropriate physical contact for attention and escape." The Student will be redirected for expectations or behaviors and be "taught skills to appropriately ask for attention, help, or a break."
41. According to an IEP Amendment dated September 29, 2023, a new reading goal for comprehension indicated, "By April 2024, after a read-aloud of an illustrated, instructional level, informational text and given (2) sentence frames about main ideas, [the Student] will verbally state 2 main ideas by completing the sentence frames, for 3 out of 4 texts."
42. According to an IEP Amendment dated September 29, 2023, Services page, Specially Designed Instruction had the following changes:
- a. "Specialized Instruction in Reading - 40 minutes";
 - b. "Specialized Instruction in Mathematics - 40 minutes"; and
 - c. "Specialized Instruction in Written Language – 40 minutes."
43. On October 24, 2023, the Middle School Case Manager sent out an email to all school staff that stated, "With grade prep quickly approaching, I wanted to send out a reminder that students on modified curriculum are graded on Pass/Fail basis."
44. On October 26, 2023, Special Services Department Meeting Notes about the ' Student's behavior indicated:
- a. "Scripted Responses will be provided to gen ed [sic] teachers."
 - b. "Praise students that ignore acting out behaviors."
 - c. "Schedule changes."
 - d. "[The Parent] wants to be called if behavior lasts longer than one period. [The Parent] doesn't want [them] to go home."
45. On November 3, 2023, a Progress Towards Goal statement for reading indicated, "[The Student] has met this goal. It was discussed at [their] IEP amendment meeting that we will be changing this goal to reflect [the Student's] capabilities with reading and foster growth. Currently, [the Student] is working on increasing reading fluency with second-grade level passages."
46. On November 3, 2023, a Progress Towards Goal statement for mathematics indicated, "Based on student work samples, [the Student] is progressing well with this goal. [They are] able to complete both addition and subtraction problems with adult prompting. We will continue to work on building independence for this goal as well as increasing stamina for work tolerance."
47. On November 3, 2023, a Progress Towards Goal statement for written language indicated, "Based on student works [sic] samples, [the Student] can spell simple CVC words with adult prompting for sounding out the word and sequencing the letters. [The Student] will ask how

to spell the word, but if [they are] prompted to sound it out, [they] will. We will continue to work on this skill for more complex sounds and blends such as th, ch, and sh.”

48. On November 3, 2023, a Progress Towards Goal statement for behavior indicated, “Behavior has been a struggle for [the Student] so far this year. With a new [S]chool and new expectations, this is to be expected. [The Student] was struggling to complete work in class and was targeting students. We met as a team and were able to implement several strategies to help [the Student] be more successful.”
49. On November 3, 2023, a Progress Towards Goal statement for social emotional indicated, “Since [the Student] has been at [the Middle School], we have struggled in identifying an effective calming strategy for [them] when [they are] frustrated. So far we have utilized taking walks, accessing the turning lane, and fidget toys (which often become a distraction to [the Student] and prevent [them] from returning to task). However, [the Student] struggles to advocate for these things before [they get] too upset. We will work on practicing this skill in class as well as during scheduled breaks.”
50. On November 9, 2023, a Notice of Team Meeting indicated, “The purpose of this meeting is to Amend IEP, Other – Discuss pass option for behavioral support.”
51. On November 13, 2023, Special Services Department Meeting Notes indicated:
 - a. “[The Parent] wanted info about PASS Program”;
 - b. “[The Teacher] explained program”;
 - c. “[The Student] cognitively too low to benefit from Program, would not be a good fit”;
 - d. “Discussed moving [the Student] back in[to] self[-] contained classroom for 2 periods for better academic and behavior support”; and
 - e. “ELA & Voc./life skills - [The Student] will still be in gen ed [*sic*] setting for 5/7 periods.”
52. On November 13, 2023, a PWN indicated actions proposed were, “Team met to discuss additional behavior supports for [the Student]. [The Student] will be returning to the self-contained classroom for two class periods and spending the remainder of the time in the general education setting. PASS support was discussed for [the Student], but it was determined that PASS was not an appropriate support for [the Student] at this time.” The explanation for the proposed action was, “[The Parent] requested meeting to discuss PASS program. Program was rejected at this time due to [the Student’s] cognitive level and [their] ability to understand the processes involved. ... [The Student] will return to self-contained for two periods a day for more academic and behavior support.”
53. On January 8, 2024, the Middle School Case Manager sent an email to the Special Services Administrator that stated, “I think I have the SDI figured out:
 - a. “Prior to 11/13/23, [the Student’s] SDI was to be”;
 - b. “120 minutes/week in Reading (averaging 24 minutes per day)”;
 - c. “120 minutes/week in Math”; and
 - d. “120 minutes/week in Writing.”
54. On January 24, 2024, the Parent signed consent for a Functional Behavioral Assessment.
55. In February 2023, the Parent submitted a Parent Input Letter to the Student’s IEP Team which indicated the following:
 - a. “We are concerned that [the Student] did not receive an opportunity to be educated alongside [their] typical developing peers with proper supports before being placed in the most restrictive environment. [They are] missing out on all of [their] Gen Ed [*sic*]

- class time. [They] could have made progress on [their] goals with proper support in place. We disagree with [their] current placement.”; and
- b. We are also concerned that [they] will miss out on learning about the subjects that [they love] and in turn will lose [their] love of learning for science and social studies.”
56. A “Speech Language Consult Log 23-24” indicated on February 5, 2024, “I spoke with [the Student] for about 10 minutes in preparation for [their] IEP meeting on 2/6/24. [They seemed] to have good functional communication skills, and I do not see any need for direct services with [them]. I also followed up afterward with [Staff Member] for about 5 minutes and [they] had no specific concerns about [their] communication.”
57. District Staff attended an Inclusion-Best Practice Training, no date indicated.
58. According to a Unit 4 Lesson 1 Social Studies guide sheet, it was noted that “Social Studies – Modified for [the Student] ([T]eacher had multiples, I am only adding one).”
59. Adopted Curriculum/ Programs for Special Education Settings included:
- a. “Lexia”;
 - b. “STAR Program”;
 - c. “LINKS Curriculum”;
 - d. “Touch Math”;
 - e. “Mountain Math.”
60. “On February 8, 2024, at approximately 2:29, the Student was moving between classes during a passing period. [The] Student entered the restroom. Three male students exited the restroom and reported to the School Resource Officer (SRO) that [the] Student had exposed [themselves]. [The] Student exited the restroom and SRO ... approached [the] Student and took [the] Student to the school office. [The] Assistant Principal ... called [the] parent to inform [them] of the incident. [The] District neither asked for nor required the Student to be removed from the school premises and [the] District did not exclude or suspend. At 2:57 p.m., [the] District office staff received a call from [the Parent] stating that there was an unsafe situation at [the School] and that the Student would “no longer be attending there.” During interviews with the Complaint Investigator, the Parent reported that the Student was not excluded from the School due to this incident.
61. A note dated February 8, no year, indicated, “[The Parent] Unsafe situation at [the School]. [The Student] w/no [sic] longer be attending there.”
62. On February 12, 2024, the Parent filed this Complaint.
63. During interviews with the Complaint Investigator, the Parent reported that they believed the Student’s BIP was not followed at the Middle School because the Student’s behaviors were not occurring at home, and these behaviors had not been previously present when the BIP was used. The Parent reported that they had concerns with how several of the accommodations in the BIP and IEP were being implemented, including preferential seating, the visual schedule, the positive reward system, the removal of fidgets, scheduled breaks, and the use of commands such as ‘No, stop or direct demands.’ The Parent further expressed concern with the lack of staff training in the area of Autism. The Parent reported that the Student had a medical diagnosis of Autism, but the Student was found ineligible for school-age eligibility in the category of Autism. The Parent shared that they believed the curriculum was not modified for the Student because of an email from the Social Studies Teacher. The

Parent has not seen the Student's school work as none has been provided even when requested.

64. During interviews with the Complaint Investigator, the Elementary Special Education Teacher described the modified curriculum in the area of reading that was attempted with the Student including Reading Milestones, Reading Mastery, and Lexia. The instruction was provided in a small group setting or 1:1. The Elementary Special Education Teacher further shared that the Student's lack of progress in reading was due to work avoidance. The Elementary Special Education Teacher described in detail the modified instruction provided to the Student for reading, math, writing, and social-emotional learning. The BIP and IEP accommodations were also utilized. The Elementary Special Education Teacher reported that the IEP Team met four times to review and revise the Student's program between January 19, 2023, through April 7, 2023.
65. During interviews with the Complaint Investigator, the Middle School Special Education Teacher described the SDI they provided for reading, writing, math, and social-emotional learning before going on leave in mid-November 2023. In the fall of 2023, the Student attended three of seven class periods in general education classes. The Middle School Special Education Teacher reported various positive reinforcement systems were used with the Student including token boards, coins, rewards, and time earned with preferred staff. They also shared that the School staff used scripted sentences with the Student to minimize attention given to the inappropriate behaviors. Sometimes the fidgets were removed when the Student used them in harmful ways. The curriculum was modified for the Student in the general education classrooms when the paraprofessionals in the classes would take notes for the Student, read materials to the Student, adjust questions, provide small group instruction, and use the first and second-grade large print materials provided by the Middle School Special Education Teacher.

The Middle School Special Education Teacher further described the Student refusing to complete any school work when the Student would refuse, elope, tear up work, or become aggressive to 'avoid the work.' The teachers used color-coded, visual schedules with the Student at the end of each class to denote the next class for the Student. This teacher also reported that the Student struggled to acclimate to the middle school structure.

76. The Middle School Case Manager reported to the Complaint Investigator during interviews that the Parent requested the Student attend an elective course that required changes to the Student's schedule. These changes did not result in a change of placement or SDI. The Student was not successful with the changes and the schedule reverted to the original classes. The Middle School Case Manager shared that the 'functional ELA and math' classes in the self-contained program were at the Student's instructional level and that the Social Studies Teacher was willing to modify materials for the Student, but was unsure if the Student would accept the modified materials. The Middle School Special Education Teacher described the modified curriculum they saw when observing the Student in the general education classes, 'modified assignments, using shorter words, visuals, larger fonts, paraprofessionals providing support for assignments in a small group within the gen ed [sic] setting.' The FBA was not completed as the Student withdrew from school.
77. The Elementary General Education Teacher reported during an interview with the Complaint Investigator that the Student attended read-aloud, lunch, recess, library, music, PE, band, science, social studies, and art in the general education class. The Student only required 1:1 support during band. Social studies projects were modified for the Student; modifications were not needed for science. The Elementary General Education Teacher was able to describe in

detail how the Student's BIP and IEP accommodations were implemented in the general education setting.

78. The Social Studies Teacher reported during an interview with the Complaint Investigator that the Student's classwork was modified when the Student was provided with completed notes or notes that required a single 'fill in the blank.' The Student received support from paraprofessionals in the class who would fill in notes, break up tasks, read materials, and provide instruction at the Student's level during small group instruction. The Social Studies Teacher was able to describe in detail the use of visual schedules, preferential seating, token and coin reward systems, and the Student earning rewards.

IV. DISCUSSION

When IEPs Must Be In Effect

The Parent alleged that the District violated the IDEA when the general education curriculum was not modified for the Student (the Student was expected to sit quietly while the Teacher taught over their head), IEPs have not been followed, and there was a lack of staff training. In addition, the District failed to keep the Student safe and did not keep track of the Student on February 8, 2023.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.³

As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider and other service provider who is responsible for its implementation. Each school district must inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.⁴

The Student's IEP required a modified curriculum for reading, math, writing, and social-emotional learning. The Student received a modified curriculum in these areas at the elementary and middle schools through the District's use of modified materials, paraprofessional support, and various supports noted in the Student's IEP. These modifications were also provided in the general and special education settings. IEP progress reports and meeting notes indicated that the Student was receiving a modified curriculum. The Student received their social-emotional learning services from the special education teachers and the school counselors. IEP progress reports documented several strategies from the IEP and BIP that were offered to the Student including walks, fidget toys, and breaks. The Parent reported that the Student had a medical diagnosis of Autism, and the School staff needed to be trained in this area to meet the Student's needs. The investigative record showed that a medical assessment suggested that Autism be ruled out. On March 29, 2022, the Student was found ineligible for school-age eligibility for Autism.

³ OAR 581-015-2220(1)

⁴ OAR 581-015-2220(2)(b)(3)

The IEPs during the Complaint period included consultation as a support to personnel. Consultation records indicated that planning for behavior, accommodations, and visual schedules was conducted. The District's records indicated that the staff working with the Student attended training appropriate to supporting the needs of the Student. The Parent asserted that the Student's IEP was not followed when the Student did not have adult support during an incident that took place on February 8, 2024. The Student's IEP dated April 6, 2023, included a provision for 1:1 adult support during field trips. The District reported that the Student was transitioning between classes and engaged in inappropriate behavior in the restroom. The Student did not receive a disciplinary consequence and was not excluded from the School as a result of this incident. Later that day, the Parent informed the School that the Student would not be returning to the School. There is no evidence that the District failed to implement the Student's IEP during the Complaint Period.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District violated the IDEA and denied the Student a FAPE when the Student could not access their education due to staff not following the Student's IEP. Additionally, the Student was excluded from the classroom and the School and the behavior intervention plan was not followed.

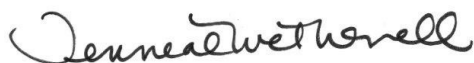
Except for age limitations and exceptions to FAPE, school districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible pursuant to Interdistrict Transfer Agreement, or open enrollment under. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.⁵

An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year. The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school, additional disciplinary removals of up to 10 school days each (no pattern), and protections for children not yet eligible for special education.⁶

As discussed in the previous section, the Student's IEP and BIP were implemented as written. The Student's attendance records indicated they were suspended out of school for three school days. There was no other evidence of removals from the classroom that would constitute a failure to implement the Student's IEP.

The Department does not substantiate this allegation.

Dated: this 12th Day of April 2024



⁵ OAR 581-015-2040(1)

⁶ OAR 581-015-2040(2)(3)

Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: April 12th, 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).)