

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Central School District 13J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 24-054-014

**I. BACKGROUND**

On March 6, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation (Complaint) from a group home provider (Complainant) regarding the special education of students residing within the Central School District 13J (District). The Complaint alleged that the District systemically violated the IDEA. The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

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

On March 18, 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 April 1, 2024. At the District's request, the Department granted multiple extensions for the provision of requested documents, establishing a *Response* due date of no later than May 10, 2024.

The District submitted a *Response* on April 1, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted additional documents in support of its position on April 5, 2024; April 22, 2024; April 26, 2024; and May 9, 2024. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 4/1/24
2. Table of Contents, 4/1/24
3. District List of Knowledgeable People
4. Special Education Files for Four Representative Students
5. Student Records for Four Students Named in the Complaint, as follows:

Student #1:

6. IEP, 9/23/22
7. Placement Determination, 9/23/22
8. Meeting Minutes, 9/23/22

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

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

9. Prior Written Notice (PWN), 9/23/22
10. PWN, 10/3/22
11. IEP Amendment, 11/14/22
12. Placement Determination, 11/14/22
13. PWN, 1/17/23
14. PWN, 2/6/23
15. PWN, 2/27/23
16. PWN, 4/24/23
17. Psychiatric Evaluation, Polk County Health Services, 5/2/23
18. Medical Note, Polk County Health Services, 7/24/23
19. Annual IEP, 9/19/23
20. Placement Determination, 9/19/23
21. Meeting Minutes, 9/19/23
22. PWN, 9/19/23
23. Informed Consent for Abbreviated Day, 9/19/23
24. Consent to Evaluate, 9/26/23
25. Medical Note, Polk County Health Services, 9/29/23
26. Meeting Minutes, 10/3/23
27. Notice of IEP Meeting, 10/23
28. IEP Amendment, 10/31/23
29. Therapy Notes, Polk County Health Services, 7/2023-10/2023
30. Program Discharge Summary, 10/19/23
31. Abbreviated School Day Informed Consent, 10/31/23
32. Abbreviated School Day Informed Consent to Extend Cadence, 10/31/23
33. Medical Statement, 11/15/23
34. Abbreviated School Day Informed Consent, 12/12/23
35. Abbreviated School Day Informed Consent to Extend Cadence, 12/12/23
36. Occupational Therapy Evaluation, 1/3/24
37. Notice of Meeting, 1/11/24
38. Multidisciplinary Evaluation, 1/22/24
39. Statement of Eligibility, 1/22/24
40. PWN, 1/22/24
41. Progress Report, 1/26/24
42. Events Log
43. Discipline Records
44. Incident Reports
45. Emails

Student #2:

46. Audiology Report, 11/12/15
47. Medical Statement, 2/16/17
48. Autism Spectrum Disorder Evaluation Report, 5/2/17
49. Functional Communication Evaluation, 5/5/17
50. Behavior Assessment Report, 5/17/19
51. File Review/Student Referral, 4/30/20
52. Statement of Eligibility, 4/30/20
53. IEP, 9/29/22
54. IEP, 11/9/22
55. Meeting Minutes, 11/9/22
56. Special Education Placement Determination, 11/9/22
57. Progress Report, 3/22/23
58. Behavior Intervention Plan, 3/23/23

59. IEP, 5/26/23
60. Placement Determination, 5/26/23
61. Meeting Minutes, 5/26/23
62. PWN, 5/26/23
63. IEP, 9/11/23
64. Placement Determination, 9/11/23
65. Meeting Minutes, 9/11/23
66. PWN, 9/11/23
67. Meeting Minutes 10/20/23
68. Behavior Matrix, 11/2023
69. Progress Report, 1/25/24
70. Consent for Evaluation, 2/14/24
71. Events Log
72. Notices of Meetings
73. Discipline Records
74. Incident Reports
75. Emails

Student #3:

76. IEP, 2/1/23
77. Placement Determination, 2/1/23
78. Meeting Minutes, 2/1/23
79. PWN, 2/1/23
80. Notice of Abbreviated School Day, 2/13/23
81. Meeting Minutes, 2/23/23
82. Written Agreement, 3/2023
83. Notice of Meeting, 4/2023
84. Meeting Minutes, 4/13/23
85. Meeting Minutes, 5/11/23
86. Written Agreement, 5/2023
87. Progress Report, 6/12/23
88. Abbreviated School Day Informed Consent, 9/12/23
89. Abbreviated School Day Informed Consent, 10/9/23
90. Abbreviated School Day Informed Consent to Extend Cadence, 10/9/23
91. File Review, 10/16/23
92. Progress Report, 11/7/23
93. Notice of Meeting, 12/23
94. File Review/Student Referral, 12/23
95. Consent to Evaluate, 12/13/23
96. Occupational Therapy Evaluation, 1/2/24
97. IEP, 1/30/24
98. Placement Determination, 1/30/24
99. Meeting Minutes, 1/30/24
100. PWN, 1/30/24
101. Autism Spectrum Disorder Evaluation Report, 2/5/24
102. Vision Screening, 2/2024
103. Meeting Minutes, 2/6/24
104. Statement of Eligibility, 2/6/24
105. Health Management Plan, undated
106. Notices of Team Meetings
107. Events Log
108. Incident/Injury Reports

109. Behavior Logs
110. Emails

Student #4:

111. Psychological Evaluation, 12/7/22
112. Consent for Evaluation, 3/21/23
113. Meeting Minutes, 3/21/23
114. Behavior Intervention Plan, 4/24/23
115. Occupational Therapy Evaluation, 5/17/23
116. PWN, 5/22/23
117. Restraint and Seclusion Reports, 2022-23 School Year
118. Positive Behavior Support Plan, 7/5/23
119. Notice of Referral, 9/6/23
120. PWN/Consent to Evaluate, 9/7/23
121. Meeting Minutes, 9/7/23
122. Medical Statement, 9/7/23
123. Psychoeducational Assessment, 10/2/23
124. Occupational Therapy File Review, 10/2023
125. Statements of Eligibility, 10/9/23
126. PWN 10/9/23
127. Restraint/Seclusion Incident Report, 10/9/23
128. Restraint/Seclusion Incident Report, 10/24/23
129. Withdraw/Transfer Form, 11/2/23
130. Request for Educational Records, 11/17/23
131. Statements of Eligibility, 11/28/23
132. IEP, 11/28/23
133. Meeting Minutes, 11/28/23
134. PWN, 11/28/23
135. Meeting Minutes, 12/7/23
136. PWN, 12/7/23
137. Consent for Evaluation, 12/8/23
138. Health Management Plan, 12/12/23
139. Meeting Minutes, 12/18/23
140. Release of Information, 12/19/23
141. Interim Placement Conduct Protocol, 1/8/24
142. Occupational Therapy Evaluation, 1/24/24
143. PWN, 1/24/24
144. Progress Report, 1/26/24
145. Reading Lexile, 1/24
146. Functional Behavioral Assessment, 3/6/24
147. Behavior Support Plan, 3/6/24
148. IEP, 3/6/24
149. Meeting Minutes, 3/6/24
150. PWN, 3/6/24
151. Informed Consent re Abbreviated Day, 3/6/24
152. Informed Consent to Extent Meeting Cadence, 3/6/24
153. Behavior Support Plan, undated
154. Events Log
155. Emails

At the request of the Investigator, the District submitted the following additional documents related to Student #1 on May 15, 2024 and May 16, 2024:

1. Meeting Minutes from Eligibility Meeting, 1/22/24
2. Functional Behavioral Assessment/BSP, 2023-24 School Year

The Complainant submitted the following relevant items on April 7, 2024 and April 24, 2024, related to the four students named in the Complaint:

1. Email Communication
2. Incident Reports
3. Meeting Notes
4. IEPs and related documents
5. Disciplinary Records
6. Suspension Logs

On May 24, 2024, at the request of the Investigator, the Complainant submitted an updated Suspension Log for the four students named in the Complaint. The Complainant also submitted additional emails in response to questions asked by the Investigator during an interview of the Complainant. The Complainant did not submit a *Reply* to the District's *Response*.

The Complaint Investigator interviewed the Complainant on March 28, 2024 and May 20, 2024. The Complaint Investigator interviewed District personnel on May 10, 13, 14, 15, 16, and 17, 2024. On May 20 and 21, 2024, the Complaint Investigator interviewed the parents of two students named in the Complaint. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

On April 22, 2024, the 60-day Complaint timeline for the Department to issue a Final Order was extended for exceptional circumstances related to the Complaint. The Final Order due date was extended from May 3, 2024 to June 5, 2024. This Order is being issued in accordance with the extension determined necessary.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from March 7, 2023 to the filing of the Complaint on March 6, 2024.

Allegations	Conclusions
<p><b>When IEPs Must Be in Effect</b></p> <p>The Complaint alleged that the District violated the IDEA by delaying the enrollment of students in school when they moved into group homes within the District's boundaries. Once enrolled, the Complaint alleged that the District failed to implement the special education placement and services in accordance with the students' IEPs.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p><b>Substantiated in Part</b></p> <p>Substantiated as to Student #2 from the date that they moved into the District until the end of the 2022-23 school year only.</p> <p>This Student did not receive any special education placement or services from the date that they moved into the</p>

Allegations	Conclusions
	District until June 1, 2023 and then, did not receive a significant amount of the SDI required in their IEP from June 1, 2023 through the end of the 2022-23 school year.
<p><b>Least Restrictive Environment</b></p> <p>The Complaint alleged that the District violated the IDEA by not educating students residing in group homes with their nondisabled peers to the greatest extent appropriate.</p> <p>(OAR 581-015-2240; 34 CFR §300.114)</p>	<p><b>Not Substantiated.</b></p> <p>The District educated each student considered in this investigation with their nondisabled peers to the greatest extent appropriate.</p>
<p><b>Parent Participation</b></p> <p>The Complaint alleged that the District violated the IDEA by changing the special education services and/or placements of students residing in group homes without providing their parents the opportunity to participate in those decisions.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</p>	<p><b>Not Substantiated.</b></p> <p>The District provided Parents with the opportunity to meaningfully participate in educational decisions regarding their students.</p>
<p><b>Prior Written Notice</b></p> <p>The Complaint alleged that the District violated the IDEA when it failed to provide parents of students residing in group homes with prior written notice regarding placement changes.</p> <p>(OAR 581-015-2310(2)(a); 34 CFR §300.503)</p>	<p><b>Not Substantiated.</b></p> <p>The District complied with all requirements to provide the Complainant and Parents with PWN.</p>
<p><b>Discipline</b></p> <p>The Complaint alleged that the District violated the IDEA by removing students residing in group homes for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation determination review to determine whether the students' behavior was manifestation of their disabilities.</p> <p>(OAR 581-015-2215; 34 CFR §300.530)</p>	<p><b>Not Substantiated.</b></p> <p>There is insufficient evidence to conclude that any student subject to the Complaint was removed for more than ten school days during any school year.</p>
<p><b>Review and Revision of IEPs</b></p> <p>The Complaint alleges that the District violated the IDEA by not reviewing and revising the IEPs of students residing in</p>	<p><b>Not Substantiated.</b></p> <p>The District complied with all requirements to review and/or</p>

<b>Allegations</b>	<b>Conclusions</b>
<p>group homes, as appropriate, to address lack of expected progress and behavior concerns.</p> <p>(OAR 581-015-2225(1)(b); 34 CFR §300.324(b))</p>	<p>revise the IEPs of the students involved in this Complaint.</p>
<p><b>Education Records</b></p> <p>The Complaint alleges that the District violated the IDEA by denying or delaying the Complainant’s or parents’ access to the education records of students residing in group homes, specifically those related to behavioral incidents.</p> <p>(OAR 581-015-2300; 34 CFR §300.501(a))</p>	<p><b>Not Substantiated.</b></p> <p>The District provided the Complainant and Parents access to educational records as required.</p>
<p><b>Free Appropriate Public Education</b></p> <p>The Complaint alleges that the District violated the IDEA as it relates to students residing in group homes by, failing to implement their IEPs, failing to place them in the least restrictive environment, failing to review and revise their IEPs as appropriate, failing to allow meaningful parent participation in educational decisions, failing to follow appropriate special education discipline procedures, failing to provide requested educational records, and failing to provide prior written notice of placement changes.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Substantiated in Part.</b></p> <p>Substantiated as to Student #2 from the date that they moved into the District until the end of the 2022-23 school year only.</p> <p>The District denied Student #2 a FAPE by not providing any special education placement or services from the date that they moved into the District until June 1, 2023, and then by not implementing all of the SDI required by their IEP from June 1, 2023 through the end of the 2022-23 school year.</p>

**REQUESTED CORRECTIVE ACTION**

The Complainant requests that the Department order the District to take the following corrective action:

1. It is imperative that these issues are addressed promptly and comprehensively to ensure that all students receive the support and accommodations necessary to access meaningful education the same as their neurotypical peers.

**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 March 7, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included

solely to provide context necessary to understand the Students' disabilities and special education histories.

In investigating this Complaint, the Investigator reviewed the records of the four students named in the Complaint, who are designated throughout this Order as Students #1-4. In addition, the Investigator reviewed the educational records of four additional students residing in group homes within the boundaries of the District.

### **When IEPs Must Be in Effect**

1. The Complaint alleged that the District has consistently delayed enrolling students in school when they have become residents of the District due to moving into a group home within the District's boundaries. Further, the Complaint alleged that, once the students were enrolled, the District failed to implement the special education placement and services in accordance with the students' IEPs.
2. When interviewed, the Complainant reported that the District often requires "move-in IEPs" for students who have "behavioral struggles and complexities" before they can start school. Additionally, according to the Complainant, the District typically asks that one of its behavior specialists observe these students before they determine a placement. The Complainant further reported that, while the "move-in IEP" is pending, the District often does not implement the IEP from the student's previous school District. In their view, this process often results in an unreasonable delay in students starting school after moving into the District. When asked what the Complainant felt was a reasonable amount of time for a student to start school after moving into the District, the Complainant responded that up to fourteen school days is reasonable and would be consistent with the timelines typically followed by other school districts where the Complainant also operates group homes. The Complainant added that other school districts where their group homes are located do not require "move-in IEPs."
3. In interviews, when asked about "move-in IEPs," the District's Executive Director of Teaching and Learning (T&L Director) explained that a move-in IEP is convened when a student's existing IEP needs to be reviewed or updated. The District explained that this can occur before a student starts school, but that they are also held after a student has started attending school in the District. They shared that, when students with IEPs move into the District, their educational records are reviewed to determine a placement and services that are comparable to those in the student's current IEP. In most cases, the T&L Director noted, students who move in begin attending school and receiving services within one to two days. They noted that the students who move into the District often come from larger school districts with a variety of specialized programs and placements. The District noted, however, that it is relatively small and often does not have a program that is comparable to what a student received in their previous district. When this is the case, and the student has significant needs, the District reported that, it will "create a program to meet the needs of the student." In the meantime, the District will provide services to the student in an alternative location, such as the District Office or a community space. Previously, the District had provided services in the group home, but the group home no longer allows this. Sometimes services are provided in the form of individual tutoring. Occasionally, these services are provided virtually.
4. The T&L Director reported that almost all the students placed in the group homes that are the subject of this Complaint have "very, very high needs and unique programming needs" and "often most of the students wouldn't be able to just be placed in the classroom." When asked about the practice of providing services at alternative locations, rather than at a traditional school campus, the T&L Director responded that, if there is a student with safety concerns, the District does not want to "put them in a situation where students are going to get hurt."



When “going into a class space could be harmful,” services are provided to these students in an alternative location to avoid delaying access to their education.

5. The District’s Director of Special Programs (Director) reported that it is the District’s practice to conduct a “move-in IEP” for every special education student that moves into the District. At this meeting, the IEP team might adopt the previous IEP, make changes, or develop a completely new IEP. Some students who move into the District may start attending school prior to the move-in IEP meeting. If a student has higher needs, however, the District may “hold off on them coming to school” and provide alternative educational services that might include tutoring, online tutoring, or sending work for the student to complete at home. The Director noted that this rarely occurs but is an option if the District does not have a program that is comparable to what the student received in their previous school district. When asked what “tutoring” entails, the Director responded that it is typically provided for one hour per day but could be more or less, depending on the student’s needs.
6. Student #1: The Complainant alleged that, when the Student moved into the District, the District failed to implement the Student’s current IEP. This allegation was prior to the time period of the Complaint and was not considered.
7. Student #2: This Student is eleven years old and in the sixth grade. They currently reside in a group home in the District. The Student has been eligible for special education under the category of Autism Spectrum Disorder since May 5, 2017.
  - a. The Investigator was not able to determine from the evidence the exact date that this Student moved into a group home within the boundaries of the District, but the records suggest that it was on or around the beginning of May 2023.
  - b. On May 2, 2023, a District staff member sent an email to the previous school district of the Student, noting that they had recently moved into the District and requesting that they speak with someone regarding the Student’s needs.
  - c. Between May 2, 2023 and May 12, 2023, there are multiple emails between District staff inquiring as to whether the Student will be starting school in the District or finishing the remainder of the school year in their previous district. The emails note that someone from the District had suggested to the Parent that the Student might be able to remain in their previous school pursuant to the McKinney-Vento Homeless Assistance Act. District staff indicate that they had been unsuccessful in getting an answer from the Parent regarding where the Student would attend school.
  - d. In an interview, the Complainant stated that the group home and the Parent clearly informed the District that the previous district was not willing to serve the Student for the remainder of the school year.
  - e. The IEP that was in effect when the Student moved into the District was dated November 9, 2022, and included the following placement and services:
    - i. Placement in a “Life Skills Classroom” with small group instruction and the opportunity to take a mainstream class.
      - (1) According to the Meeting Minutes from the November 9, 2022 IEP meeting, the IEP team discussed that the Student would be successful with increased access to typical peers and agreed that they would access general education for forty-five minutes per day.

ii. Specially Designed Instruction (SDI)

- (1) Written Language for 100 minutes per week,
- (2) Self-Regulation for 50 minutes per week,
- (3) Mathematics for 100 minutes per week,
- (4) Social Skills for 80 minutes per week, and
- (5) Reading/Language Arts for 100 minutes per week.

iii. Related Services

- (1) Transportation: Round trip by bus, and
- (2) Speech/Language Services for 90 minutes per month.

- f. The District convened a “move-in IEP” meeting for the Student on May 26, 2023. At the time of this meeting, the Student was in fifth grade and had not yet received any educational services from the District. The IEP developed at this meeting included the same goals, specially designed instruction, and related services as the Student’s November 9, 2022 IEP.
- g. According to the Meeting Minutes from the May 26, 2023 meeting, the IEP team considered four placement options. Three of the options included some combination of general education and special education settings. The fourth option was “Individualized instruction in alternative setting with an adult (additional access to online learning activities). This placement was described as “tutoring.” The District staff at the meeting recommended the fourth option and the meeting minutes indicate that the Parent agreed. The notes do not detail any discussion regarding the other placement options.
- h. In an interview, the Complainant stated that the Parent and the group home staff wanted the Student to begin school at an elementary school in the District right away so that the Student could develop connections with their peers. When asked why the group home staff or Parent did not object to the Student receiving “tutoring” at an alternate location, the Complainant explained that placing the Student in a typical school setting for the remainder of the school year was not presented as an option at the IEP meeting.
- i. The Special Education Teacher at the IEP meeting recalled that tutoring was offered as a placement because the District had not received a safety plan or behavior support plan from the Student’s previous school district and needed to develop those before the Student could be placed in a classroom. They also noted that, at the time of the meeting, they were nearing the end of the current school year, and that the Student would be transitioning to the middle school the following year. The Special Education Teacher did not recall that the Parent or any other team member disagreed with the offer of placement.
- j. On June 1, 2023, the District began providing the Student with online tutoring five days per week for one hour each day with the Special Education Teacher. These services continued through the summer until the first week of August. The Student’s IEP during this period included 430 minutes per week of SDI, which exceeded the 300 minutes per week that the Student was seen by the Special Education Teacher.
- k. An IEP amendment meeting was convened for the Student on September 11, 2023 to determine the Student’s placement now that they had transitioned to the middle school. At this meeting, the Student’s placement was changed to “40%-79% in regular class.” The “Nonparticipation Justification” portion of the IEP stated that the Student would participate in four special education classes and three general education classes. According to a Prior

Written Notice of the same date, the Student was enrolled in a full day of school and had a “very deliberate behavior/daily plan that is seeming to be successful at this time.”

8. Student #3:

- a. This Student is eleven years old and in the fifth grade. They resided in a group home in the District during the time period that is relevant to the Complaint. The Student has been eligible for special education under the category of Autism Spectrum Disorder since kindergarten.
- b. This Student moved into the District prior to the time period of the Complaint. As such, whether this Student’s enrollment was delayed was not considered.
- c. The Complaint alleged that the Student’s IEP was not implemented during the 2023-24 school year. When asked which portion of the Student’s IEP had not been implemented, the Complainant clarified that the accommodation regarding the use of a helmet had not been implemented, which resulted in the Student sustaining injuries when they hit their head on hard surfaces at school.
- d. The IEPs that were in effect for this Student during the 2023-24 school year were dated February 1, 2023, and January 30, 2024. Both of these IEPs include the same accommodation of, “Helmet: self-selected and access available – optional.” When asked about the Student’s use of the helmet at the February 1, 2023 meeting, the group home staff shared, “[The Student] manages use. Not forced on if [the Student] does not want it.”
- e. Multiple incident reports and emails from the 2023-24 school year reference occasions when the Student hit their head, some of which resulted in injuries. Many of these incident reports and emails specifically note that the Student was offered the use of their helmet, but that the Student sometimes refused. The Meeting Minutes from the January 30, 2024 IEP also state that the helmet is available, but that the Student chooses not to wear it.
- f. No evidence was provided to establish that the Student’s accommodation regarding the use of a helmet was not implemented.

9. Student #4: The Complainant alleged that, when this Student moved into the District, the District delayed providing a special education placement and services to the Student and, once a placement was provided, failed to implement a full day of instruction in accordance with the Student’s IEP from their previous school district.

- a. This Student is eleven years old and in the fifth grade. They currently reside in a group home in the District. The Student has been eligible for special education under the categories of Emotional Behavior Disability and Other Health Impairment since October 9, 2023.
- b. On March 21, 2023, a previous school district convened an evaluation planning meeting to determine if the Student should be evaluated for initial special education eligibility. The evaluation planning team proposed a comprehensive evaluation of the Student in the areas of academic achievement, behavior, and fine motor skills, as well as conducting observations and securing a medical statement. The Parent signed consent to the evaluation on or about that same date.
- c. Shortly after the evaluation planning meeting, the Student moved to a second school district. That district completed the majority of the evaluation components but did not finish

the evaluation before the Student moved to a third school district. Once the Student enrolled in the third district, the Parent agreed to extend the timeline for completion of the evaluation and determination of eligibility.

- d. The third district completed the evaluation of the Student and convened an eligibility meeting on October 9, 2023. At this meeting, the evaluations were reviewed and the Student was found eligible for special education under the categories of Emotional Behavior Disability and Other Health Impairment.
- e. On November 2, 2023, before an initial IEP was developed for the Student, the Student was withdrawn from the third district.
- f. According to the Complainant, the Student moved into a group home in the District on November 3, 2023. In an interview, the Complainant was unable to identify the date that the group home notified the District that the Student had moved within its boundaries. The Student's Parents emailed school registration paperwork to the group home on November 9, 2023. An internal email between group home staff on November 14, 2023 asked, "Team, have we taken action on this?" in reference to the Student's registration in school. One of the group home staff members responded that they intended to deliver the forms to one of the District elementary schools that afternoon. Subsequent emails between group home staff indicate that the registration paperwork was taken to the incorrect elementary school, but that staff intended to deliver it to the correct school the following day.
- g. The T&L Director reported that the District was not aware of the Student's move to the group home until sometime during the week of November 13, 2023, which was the week before Thanksgiving.
- h. On November 16, 2023, the Regional Director for the group home agency sent an email to several District staff members, including the Director of Special Education ("Director"), with contact information for the District Students residing in each of the agency's four group homes located within the District's boundaries. This Student was not included in that list.
- i. On November 16, 2023, the Director sent an email to District staff members notifying them that the Student would be enrolling, but that they did not yet have any additional information regarding the Student.
- j. The group home sent a calendar invite to the District for a "Microsoft Teams meeting" regarding "[Student] School Conversation" on November 17, 2023. On that same date, the Regional Director for the group home sent an email to District staff stating, "I don't have the full IEP from [the Student's] old schools as [they were] still in the process of developing [their] IEP . . . but here is the consent for [their] IEP and assessments I believe." The email went on to state that the previous school district "has [the Student's] most recent IEP information."
- k. On November 17, 2023, the Special Education Teacher at the school where the Student had registered emailed the Director, "When the group home registered [the Student, their staff] said [they are] starting the 27<sup>th</sup>? Is that correct? I would need to have a move-in meeting prior to that." The Director responded, "The student is not starting on the 27<sup>th</sup>." They explained that the District had met with group home staff that morning and had informed the group home that "a move-in meeting needed to occur" and that "the student also has a higher level of need, so we need to determine staffing levels and support."

- l. The T&L Director shared that, after learning that the Student had moved into the District, they called the school psychologist from the Student's previous school to inquire as to the status of the Student's IEP as they had not yet received the Student's educational records. The psychologist informed the T&L Director that the evaluation of the Student had been completed, but that an eligibility determination had not yet been made.
- m. On the afternoon of Friday, November 17, 2023, the school psychologist from the Student's previous school emailed a copy of the Student's special education evaluation report to the District stating, "Attached is the psych report for the Student that you will be serving. This will get you started and you can reach out and our district office will mail you the rest. Please reach out for more information from me after the break. We are back in a week."
- n. The District sent a request for the Student's educational records from their previous school on November 17, 2023.
- o. On November 20, 2023, the Special Education Teacher emailed the Director asking about the status of the Student's eligibility and the Director responded, "We just were notified that the student's eligibility meeting was on a "Wednesday" and [the Student] was moved the Monday prior. We will need to hold an eligibility meeting."
- p. November 20-21, 2023 were non-student days in the District and the District was closed for the Thanksgiving holiday from November 22-24, 2023, with a return to school on November 27, 2023.
- q. On November 28, 2023, the District convened an eligibility meeting for the Student. According to the T&L Director, the District had not yet received the Student's educational records from their previous District and did not know that the Student had already been found eligible for special education. When interviewed, both the Student's Parent and the Complainant reported that they informed the District that the Student had already been found eligible. The Parent shared that the District administrators were "dismissive of the information we provided."
- r. At the November 28, 2023 eligibility meeting, the District reviewed the results of the evaluations completed by the Student's previous school districts and determined that the Student was eligible for special education under the categories of Emotional Behavior Disability (EBD) and Other Health Impairment (OHI).
- s. At the conclusion of the November 28, 2023 eligibility meeting, as reflected in the Meeting Minutes, the Parents asked about the special education program at the Student's home elementary school and expressed that "a general education class is not appropriate for [the Student]." The team discussed the Student's "need to start at small, safe spot" and the District mentioned the possibility of providing services at the District office. The District informed the Parents that it had thirty days to complete an IEP for the Student but would convene an IEP meeting sooner than that. Meetings to develop the Student's IEP were scheduled for later that same day, and on December 7, 2023. One of the District's behavior specialists (Behavior Specialist) indicated that they would contact the group home to arrange a "meet and greet" of the Student some time that week.
- t. An initial IEP meeting was convened for the Student on November 28, 2023. At this meeting, according to the Meeting Minutes, the T&L Director explained the IEP process and the Special Education Teacher entered some information from the eligibility meeting into the IEP.

- u. On December 1, 2023, the Assistant Director of Special Programs for the District sent an email to the Parents and group home staff noting that the Behavior Specialist had met with the Student at the group home the previous day. The email stated that District staff were reviewing the Student's educational records and working to create "school-based Behavior Support plans." The email went on to explain, "In order to ensure safety and assist in [the Student's] successful transition into school, we need to ensure that all of [their] identified environmental modifications are met and trained to staff." The email includes a request that District staff come into the group home to work with the Student Monday through Friday from 11:30-12:00, beginning December 4, 2023.
- v. On December 1, 2023, in response to the Assistant Director's email, the Complainant sent an email to the T&L Director, Director and the Parent. In the email, the Complainant describes an "unethical delay in wanting to delay [the Student's] school entry" and objects to the involvement of the Behavior Specialist in the Student's education due to the Behavioral Specialist's previous employment by the group home. The Complainant goes on to state, "We will not be honoring visitors to our program due to the nature of prolonging entry to [the Student's] right to free and appropriate education."
- w. On December 4, 2023, the T&L Director sent an email to the Complainant and Parents acknowledging the Complainant's concerns regarding delaying the Student's start in school. The email explains, "Our specialists requested to have more time with [the Student] in the home to get to know [them] better so they can develop appropriate plans and train staff." The email reiterates the District's request to meet with the Student at the group home Monday through Friday from 11:30-12:00.
- x. On December 4, 2023, in response to the email from the T&L Director, the Complainant emailed the District and offered to bring the Student to the District Office on the dates and times requested by the District. The District accepted this proposal, and the Student began receiving educational services at the District Office for thirty minutes per day on December 6, 2023.
- y. The District convened a second meeting to develop the Student's initial IEP on December 7, 2023. At the beginning of the meeting, the T&L Director informed the team that "we will be meeting again next week because we will most likely not finish today." At this meeting, the IEP team developed present levels of performance, drafted goals and objectives, and determined specially designed instruction and related services. The team then discussed an appropriate placement for the Student. The District noted that there was only one week left of school until Winter Break and proposed increasing the Student's time at the District Office to one hour per day and then increasing the time again after Winter Break. The Parents disagreed and requested that the Student's day be increased to a half day the following week. They expressed concern that the Student would "get used to not being in school." The Complainant agreed with the Parents and expressed their opinion that the Student should be in school for a full day after Winter Break.
- z. The District continued to advocate for the Student to increase their time more slowly, explaining that the Student's previous school district had shared that the push for the Student to be in school for a full a day had created problems and may have contributed to the Student being unsuccessful at school. There continued to be disagreement regarding the Student's placement, at which point the T&L Director stated that "this does not feel collaborative" and ended the meeting at 5:00 p.m.
- aa. On December 11, 2023, the District sent the Parents a Prior Notice and Consent for Initial Provision of Special Education Services (PWN), which was dated November 28, 2023.

The PWN indicated that the Student had been found eligible for special education and would receive services as reflected in their IEP dated 11/28/23. The PWN went on to note that the IEP team had considered providing special education services to the Student at their home elementary school that that, “at this time [the Student] needs a more restrictive learning environment. The Parent signed the PWN, consenting to the initial provision of special education services to the Student, on the same date.

bb. On December 18, 2023 the District convened a third IEP meeting to continue developing the Student’s initial IEP. At this meeting, the IEP team reviewed Supplementary Aids and Services for the Student and discussed placement options. The District determined that the Student’s special education placement would be an “Alternative education setting with one-to-one specially designed instruction in the areas of behavior and social emotional regulation; access to academic content.”

10. A review of four additional student records included only one student who moved into the District during the time period of the Complaint. This Student moved into the District on September 22, 2023 and a new IEP was developed for the Student on October 3, 2023. The Student began attending school the following day.

### **Least Restrictive Environment**

11. The Complainant alleged that the District has failed to educate students who reside in group homes within the boundaries of the District with their nondisabled peers, to the greatest extent appropriate. Specifically, the Complainant alleged that “[the District’s] practices have resulted in the unnecessary segregation of [the Students] and the provision of unequal educational opportunities.” For example, the District “often fails to provide access to facilities common in general education settings, including [the Students] being made to enter through the back doors of these locations away from their peers.”

12. Student #1: The Complainant alleged that this Student’s educational placement includes just one and a half hours per day at school “with half of the time integrated with other students and the remaining half spent in a separate room with a 1:1 aide.” Further, “while the District continues to propose segregating [the Student] from [their] peers for all learning activities, [the group home] and [the Student’s] Guardian continue to contest this approach.”

a. This Student is fourteen years old and currently resides in a group home in the District, where they are enrolled in the eighth grade. The Student has diagnoses of Fetal Alcohol Syndrome, Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, Generalized Anxiety Disorder, and an Intellectual Disability, and has a history of behavior challenges including property destruction, physical aggression, and using weapons. The Student is eligible for special education under the category Intellectual Disability and Other Health Impairment.

b. This Student’s first IEP meeting in the District, upon moving into a group home within District boundaries, was on September 23, 2022. It was noted in this meeting that the Student had not attended in the school setting in their previous district since prior to the pandemic. The IEP team determined that the Student would begin one-to-one tutoring at school for one hour each day to help the Student transition back into a school setting. The IEP team agreed to meet again in two weeks to review placement.

c. On October 3, 2022, the District sent the Parent a Prior Written Notice indicating that the Student had a serious behavior incident at school and that “[The Parent] shared that [the

Parent] believes online school for [the Student] would be best and that the team can start online school until the team has a new placement meeting.”

- d. On November 14, 2022, the Student’s IEP team met to amend their IEP. The present levels section of the amendment noted that the Student began one-to-one instruction in the school setting on September 28, 2022. The Student “had 2 very good days of completing class work and behavior. On [their] 3<sup>rd</sup> day [the Student] physically attacked [their] teacher and the behaviors continues [sic] with a police office in the room . . .”. Since that incident, with parent agreement, the Student’s tutoring had been occurring online. Behaviors observed during online instruction included “physical altercations with [their] group home staff” and “incidences of running from instruction.” At this meeting, the Student’s SDI was reduced to ten minutes per week in each of the following areas: reading, writing, math, behavior, and life skills. Additionally, the team added “Modified Schedule . . . 1 hour daily” to the Student’s IEP. This change was included in the accommodations section of the IEP.
- e. According to a Special Education Placement Determination dated November 14, 2022, the Student’s placement was “Less than 40% in the gen ed [sic] setting with individualized instruction in alternative setting with 1:1 person tutoring.”
- f. On January 17, 2023 and February 6, 2023, the Student’s IEP team met to review the Student’s progress and plan for increasing their time at school. The Student began attending school two days per week for one class period in January and increased to three days per week in February. According to a PWN dated February 27, 2023, the Student was making progress in the school setting and their schedule would increase to five days per week at school for one hour each day.
- g. The District Behavioral Specialist assigned to the Student’s school sent emails to the school principal and other District staff on April 18, 2023 and April 20, 2023 advocating against increasing the Student’s schedule at that time because the Student “was showing difficulty in maintaining regulation during [their] current time.” The Behavioral Specialist expressed a need to “build up a school BSP and Safety plan so that we are providing the support that [the Student] needs and have a protocol for staff to follow when behaviors increase.” The Behavioral Specialist indicated that they would schedule a meeting with staff to develop the behavior and safety plans.
- h. When the Behavioral Specialist was asked why they advocated against increasing the length of the Student’s day, they shared that the Student was demonstrating behaviors that showed they were “reaching their max.” They explained that the Student would “shut down,” “start fidgeting,” and “be clear [they were] done.” If staff attempted to continue with instruction during these times, the Student would engage in behaviors such as “ripping up paper, turning desks, breaking pencils” and attempting to leave the classroom. Sometimes the behavior would include physical aggression towards others.
- i. Despite the reservations of the Behavioral Specialist, a PWN dated April 24, 2023 states that the District increased the Student’s time at school by thirty minutes so that they were attending from 9:00 a.m. -10:30 a.m. each day. According to the PWN, “[The Student’s] team believes that addition a ½ hour at this time with [the Student] attending the ILC class will be in [their] best interest.”
- j. When interviewed, the Special Education Teacher from the Student’s school shared that “ILC” class was the school’s “Intensive Learning Center.” It was designed to serve students with cognitive difficulties, but who were “higher functioning than basic life skills.”



The Special Education Teacher indicated that the Student did not attend the ILC during the 2023-24 school year, but instead attended another special education program at the school called Segway.

- k. According to the Director, the Segway program was a class created for the 2022-23 school year that was designed to serve students with behavior challenges. The Segway program was discontinued at the end of the 2022-23 school year, however, and the Student transitioned to the ILC at the start of the 2023-24 school year.
- l. On September 8, 2023, the Special Education Teacher called the Parent to introduce themselves as the Student's new case manager. During this phone call, the Special Education Teacher confirmed that the Student would be attending for 90 minutes per day. The Parent shared their excitement that the Student was able to attend for that long.
- m. When the Student transitioned into the ILC at the beginning of the 2023-24 school year, they had frequent behavioral incidents that included physical aggression towards staff, flipping tables, and property destruction.
- n. The Student's annual IEP meeting was held on September 19, 2023. In addition to developing goals and objectives, the IEP team increased the Student's SDI to fifteen minutes per week in each of the following areas: reading, writing, math, behavior and life skills. The IEP team also added "Behavior Plan" to the Student's accommodations. When asked why a behavior plan was not previously included in the Student's IEP, District staff reported that it had not been listed on the IEP from the Student's previous district and needed to be added to the accommodations. When interviewed, however, multiple District staff who worked with the Student reported that the Student had consistently had a behavior support plan during the time period of the complaint, even when it was not listed as an accommodation on their IEP.
- o. At the September 19, 2023 meeting, as reflected in the meeting minutes, the IEP team also discussed the Student's placement. District staff expressed concern that the Student was not successful in their current placement and that the ILC might be "too overwhelming." There was a discussion of possibly returning the Student to a one-to-one learning environment without access to peers. Staff from the group home acknowledged that the Student benefits from, and prefers, one-to-one instruction, but worried that decreasing their access to peers could be detrimental. The Regional Director of the group home expressed that the Student could benefit from both settings. The District suggested that a "hybrid setting between the two placement options" with the Student starting the day in a two-to-one learning environment and spending the rest of their day in the ILC. The meeting concluded before a placement had been determined and the team agreed to reconvene to continue the placement discussion.
- p. During an interview, when asked whether the amount of SDI was sufficient to meet the Student's needs, the Special Education Teacher expressed that the amount was appropriate given the Student's limited ability to receive instruction before engaging in behaviors. If staff attempted to prolong instruction, the Student would stand up and leave or attempt to tip the table over. When asked about what was done to increase the length of the Student's school day, the Special Education Teacher shared that they attempted different reinforcement systems, tried adding movement breaks, created a "cozy corner" for the Student to take breaks, attempted different schedules, and tried working with the Student in different areas of the school.

- q. During September 2023, the Student continued to have behavioral incidents that included physical aggression, pushing over desks, throwing things, and property destruction. At the Student's evaluation planning meeting on September 19, 2023, the District proposed a Functional Behavioral Assessment as part of the Student's three-year reevaluation.
- r. The Student's IEP meeting was continued on October 3, 2023, at which time placement was discussed further. There was disagreement between District and group home staff regarding the appropriateness of a "personal learning environment" for the Student, without access to peers. The Parent expressed that they wanted the Student to be around peers, but also felt the Student "may be overwhelmed by the number of peers in the classroom." After further discussion regarding the benefits of each setting, the District offered the Student a "combination of settings between the personal learning environment with access to the specialized classroom for times that [the Student] is successful."
- s. According to a Special Education Placement Determination dated September 19, 2023, the Student's placement was changed to "Personal learning environment in the school setting with a focus on safety and behavior with access to a specialized education classroom with a focus on communication, behavior and daily living skills."
- t. In an interview, the Student's Special Education Teacher indicated that the Student had not been successful in the ILC classroom. When asked about the placement discussion at the September 19 and October 3, 2023 IEP Meetings, the Special Education Teacher recalled discussing that there may have been other students in the class who were triggering the Student's behavior. Both of the group home staff members interviewed shared that the Student did better with one-to-one attention and the placement change was meant to provide that level of support. The Special Education Teacher recalled that the Parent agreed with the placement change due to the increase in behaviors the Student was demonstrating.
- u. The Student's IEP team met again on October 31, 2023 to review the Student's placement on an abbreviated school day program. The meeting minutes noted that the Student had not had any behavior referrals or suspensions since the previous meeting and that District staff had developed a "crisis cycle profile" for the Student, which "has helped the team to intervene in the crisis cycle sooner." The District secured the Parent's consent to continue the Student's abbreviated school day program and the team agreed to meet again in approximately six weeks to further review the Student's abbreviated school day program.
- v. An IEP meeting was convened for the Student on December 12, 2023 to review the Student's abbreviated school day program and to review the Functional Behavioral Assessment completed by the District. While the District did not include meeting minutes in its *Response*, the Complainant provided written notes completed by group home staff which confirm that an FBA was reviewed on this date. The notes also reflect the Student was "doing well with 1:1 setting and group setting divided." As reflected by an Informed Consent for Abbreviated Day form of the same date, the Parent continued to provide informed and written consent for the Student to be placed on an abbreviated school day program.
- w. On January 22, 2024, the IEP team met to review the Student's three-year reevaluations and abbreviated school day program placement. The team determined that the Student continued to qualify for special education as a Student with an Intellectual Disability and Other Health Impairment. At this meeting, the Student's Parent again provided informed and written consent for the Student to continue placement on an abbreviated school day program.

- x. For the second semester of the 2023-24 school year, which started on January 30, 2024, the Student moved into a new class at the middle school called the FLEX Program. Similar to the discontinued Segway program, the FLEX Program was designed to meet the needs of students with significant behavior challenges. According to the Director, it has a small number of students, reduced distractions, highly skilled staff, and three small workspaces attached to each other where students receive instruction according to their individual schedules. The Director indicated that the move to the FLEX Program was a classroom change for the Student, and not a placement change, as the Student's access to general education remained the same.
- y. Multiple District staff reported that the Student has been successful since moving from the ILC to the hybrid placement, and ultimately into the FLEX program. The Special Education Teacher shared that the Student has had fewer "escalations" of behavior, and the assistant principal of the middle school could not recall receiving any behavior referrals for the Student since December 2023.
- z. In an interview, the Student's Parent reported being pleased with the Student's progress in the District. The Parent shared that the District was the best school district that the Student had attended and that the Parent was in agreement with the placement decisions made for the Student during the time period of the Complaint.

13. Student #2:

- a. As detailed in the section above, this Student moved into the District on or around May 2, 2023. The Student's IEP from their previous school district included placement in a "Life Skills Classroom" with small group instruction, access to general education for forty-five minutes per day, and the opportunity to take a mainstream class.
- b. At a "move-in IEP" meeting on May 26, 2023, the District changed the Student's placement to "Individualized instruction in alternative settings." To implement this placement, the District provided the Student with one-to-one tutoring online, which the Student accessed from their home. The Student had no access to peers from the time they moved into the District until the start of the 2023-24 school year.
- c. Since the start of the 2023-24 school year, and for the remainder of the time period of the Complaint, the Student has been placed in a special education class at a comprehensive middle school in the District with three of seven class periods in the general education setting. According to the Student's September 11, 2023 Special Education Placement Determination, the previously selected placement of "Individualized instruction in alternative settings" was rejected as "Too restrictive at this time."

14. Student #3: The Complainant alleged that, during the time period of the complaint, the District failed to offer this Student placement in the least restrictive environment.

- a. This Student moved into a group home within the boundaries of the District on or around January 2023.
- b. A "move-in IEP" meeting was convened for the Student on February 1, 2023. At this meeting, the team discussed an appropriate placement for the Student. In the Student's previous school district, they were placed in a special education classroom for 100% of the school day with no access to typical peers. As reflected in the meeting minutes, the Student's Parent shared that "[The Student] always had a one-on-one at school. [The Student] was never with the rest of the class but had [their] own space." The Student's

previous teacher, who also attended the meeting, explained that the class was in a portable building with “two cubby-type areas.” “[The Student] had one to [themselves]. Needs some kind of enclosed space that feels like [theirs].” The previous school had attempted to integrate the Student with typical peers during recess and lunch but was unsuccessful doing so, as the setting did not provide enough support for the Student’s behavior needs.

- c. The District discussed the option of creating a space within one of the special education classrooms at an elementary school for the Student or creating a “personal learning environment” outside of the classroom. Staff from the group home expressed that “individualized instruction will work best right now given how [they] can escalate based on other children around [them],” and shared that the Student “reacts a lot to sounds from other kids (more than anything else).” The District program specialist indicated that “prep work” would be needed before an appropriate space could be created for the Student in an existing classroom and suggested that instruction be provided in another District space “in the meantime.” According to the meeting minutes, the Parent expressed agreement to this proposal. The IEP team determined that the Student’s placement would be “Personalized learning space moving towards personalized learning space at [the elementary school].”
- d. A Special Education Placement Determination dated February 1, 2023 indicates that the Student’s placement would be “Individualized instruction in alternative setting (personal learning environment).”
- e. On February 23, 2023, another IEP meeting was held for the Student. Since the February 1, 2023 meeting, the District had been sending schoolwork to the group home for the Student to complete (at the request of the Parent since services had not yet started), but the group home reported that the Student “will push it away.” The District described the space that had been set up for the Student at a District building known as “the Annex.” The Annex is an administrative building, not a school setting. Staff from the group home questioned why the Student needed to be served in an off-site classroom when they had not required that in their previous school district and expressed concern that “if [the Student] started at the Annex, it would be challenging to integrate [them] back into the classroom setting.” The Parent confirmed that the Student was “never completely separated in [their] own room at [their] previous school. [They] could still hear the noise from other classes, [the Student] was just always divided from the rest of the class.”
- f. Despite concerns raised by the group home and Parents, the District determined that the Student would receive services at the Annex. The District suggested that the Student begin attending at the Annex “starting with 2-3 hours per day, and then moving up from there.” The Parent shared that the Student had been on an abbreviated school day program at their previous school and had attended for five hours per day. The District agreed that the Student would start with four hours per day of instruction.
- g. Staff from the group home asked if OASIS, an outside program operated by the Willamette Education Services District (WESD), would be an option for the Student. The District offered to consider OASIS as a placement for the Student in the fall. Staff from the group home requested a follow-up meeting to discuss moving the Student to a regular school. The District suggested monthly meetings and scheduled the next meetings for April 13, 2023 and May 11, 2023.
- h. The Student began receiving educational services at the Annex on or around February 27, 2023. The District Autism Specialist, who set up the Student’s program at the Annex,

recalled that the Annex was selected because it was an available space that did not have a lot of noise that might trigger the Student's behavior. The Autism Specialist reported that they spent "countless hours" putting together an individualized program for the Student and described the services provided to the Student as "excellent." Another one of the District autism consultants who worked with the Student described the program that was created for the Student at the Annex as a "model program" and "all the things we would want to give a student with autism." The Special Education Teacher that worked with the Student at the Annex shared that, while there were no other students present, they attempted to structure the Student's day like a typical classroom. They had a schedule that included "circle time" and used the same curriculum used in the District's Basic Life Skills (BLS) class. The Special Education Teacher reported playing recordings of classroom sounds on their phone in an attempt to get the Student acclimated to being in a school setting.

- i. The Student's IEP team met on April 13, 2023 to discuss the Student's placement and services. According to the meeting minutes, the team reviewed the Student's daily schedule and behavioral triggers. It was noted that the team was scheduled to meet again on May 11, 2023 "to go over more behavior data and create a step-up plan." The team discussed increasing the Student's day to five hours of instruction, or to start instruction in the school setting. The District determined that "we need to get to know [the Student] more, and figure out what really triggers [them] before making this new adjustment."
- j. The Student's IEP team met again on May 11, 2023. According to the meeting minutes, the Student's behaviors had decreased dramatically, and that Student had nearly stopped engaging in physical aggression towards staff. The District expressed interest in transitioning the Student to the elementary school. It was agreed that the District would get a space ready for the Student and let the Parent and group home know the transition date to the new location.
- k. Shortly after the May 11, 2023 meeting, the Student transitioned to one of the District elementary schools. While at the elementary school, the Student continued to have a "personal learning environment" that was separate from other peers. The same staff that worked with the Student at the Annex continued to work with the Student at the elementary school and attempted to follow the same schedule that had been implemented at the Annex.
- l. According to staff working with the Student, they experienced an increase in behaviors when they moved to the elementary school. The school was described as having outdoor corridors, which increased the noise around the Student's learning space. The learning space that was available to the Student also did not have direct access to either a bathroom or the BLS classroom where the staff hoped to eventually transition the Student. This caused concerns regarding the safety of the Student and others as the Student had difficulty transitioning from place to place on the school campus.
- m. The District reported progress on the Student's IEP goals on June 12, 2023. According to these progress reports, the Student had made significant progress on all of their IEP goals since they entered the District. During interviews, multiple District reported that the Student made significant progress, particularly in the area of communication. For example, staff shared that the Student did not have a communication system when they moved to the District, but successfully began using the Picture Exchange Communication System (PECS) during their time at the Annex.

- n. Due to some of the challenges presented by the physical space at the elementary school, an administrative decision was made to move the Student to a “personal learning environment” at the high school at the start of the 2023-24 school year.
- o. The District Autism Specialist who set up the Student’s program at both the Annex and the elementary school also set up their program at the high school. They reported that the Student’s learning space at the high school was preferable to the elementary school because it was much quieter, and it had direct access to the BLS class where the IEP team eventually wanted to transition the Student. When asked why a fifth grader was placed at the high school, the Autism Specialist explained that both middle school and high school students who are in the BLS program attend school at the high school. Students in the program are in grades 6-12. The intent of having BLS students at the high school, rather than the middle school, is so they experience fewer transitions between schools. Given that the goal was to transition the Student into the BLS program, combined with the concerns about the physical space at the elementary school, the Autism Specialist thought it was appropriate to serve the Student at the high school.
- p. The Student’s learning space at the high school was directly next to the BLS classroom and, while the Student did not regularly participate with the other students, the Student did have access to the classroom and was exposed to the classroom noise. On occasion, when they were able to tolerate it, the Student visited the BLS classroom and received their PE instruction in the BLS classroom.
- q. According to the Autism Specialist, the Student continued to make progress at the high school with academics, functional skills, and “expanded [their] communication considerably.” The Student, however, had a difficult time tolerating the “unpredictable noises” from other students in the BLS classroom. As the school year progressed, there was an increase in the Student’s behaviors which included hitting their head, biting, and scratching staff.
- r. The Student had several significant behavioral incidents in November 2023. According to District incident reports, on November 1, 2023, the Student became physically aggressive towards staff and repeatedly hit their head against the classroom door, causing the glass in the door to break. The Student then cut their hand on the glass. On November 9, 2023, the Student engaged in self-injurious behavior by hitting their head repeatedly on hard surfaces in the classroom. On November 14, 2023, when being asked to complete a vacuuming task, the Student became physically aggressive towards staff and hit their head multiple times on the floor and other hard surfaces in the classroom.
- s. After the incident on Tuesday, November 14, 2023, the Director informed the Parent and the group home that the Student could not return to school for the remainder of the week so that the classroom could be modified to make it a safer environment for the Student. The Director offered to look at other placement options for the Student that may be outside of the District.
- t. On November 16, 2023, the Complainant emailed the Director, acknowledging that the District was exploring other placement options for the Student, stating, “it is of strong importance that I advocate that one of the choices [is] not OASIS.”
- u. On November 21, 2023, the Director emailed the Parent indicating that they were “not having much luck with possible placements in other Districts,” but that OASIS was still an option. The Director also informed the Parent that, “As before, [the Student] does have [their] current placement at [the high school] and I would be happy to talk about measures

we are taking to keep [them] safe.” The following day, the Parent responded, “We are going to have to talk and figure something for after the break . . . OASIS is not an option that I would consider.”

- v. After the Thanksgiving break, the District offered the Parent an opportunity to view the safety modifications that had been made to the Student’s classroom. The Parent requested that they be permitted to visit during school hours. When the District indicated that the visit would need to take place when other students were not there, the Parent declined to visit the classroom.
  - w. When the Parent declined to return the Student to the high school, it was determined that the Student would return to receiving services at the Annex while other placement options were explored.
  - x. In an email to the District dated December 1, 2023, the Regional Director of the group home expressed frustration that returning the Student to the Annex had not been considered previously. “[The Student’s] guardian along with [the group home] team collectively suggested the annex when we found out about [the high school] in the beginning! [The Student] had success at the annex. We were told this was not an option many times. If this was an option all along, I’m concerned as to why we were told we could not go that route in the beginning. I feel as if the issue we are facing now could have been avoided all along.”
  - y. On January 30, 2024, the Student’s IEP team met for the annual review of their IEP. According to the meeting minutes, the Student had been exhibiting less self-harming behaviors since returning to the Annex. In a discussion regarding the Student’s progress, it was shared that the Student had made good progress on their goals. For example, since November, the Student had increased the number of sight words they recognized from five words to 29 words, could recognize more colors, was adding and subtracting, and could recognize their name. The Director asked if the team needed to consider a different placement for the Student. The Parent shared that the Student was doing well in the current setting. The IEP team agreed that the Student would continue to be placed at the Annex.
  - z. The Student continued to receive educational services at the Annex until they withdrew from the District on March 22, 2024.
15. **Student #4:** The Complainant alleged that the District has segregated this Student from their peers and failed to educate them in the least restrictive environment.
- a. The Student has a significant history of trauma and several disabling conditions that impact their ability to access their education. According to a December 7, 2022 private psychological evaluation arranged by the Parent, the Student has suffered years of abuse and has been diagnosed with Attention Deficit Hyperactivity Disorder, Fetal Alcohol Syndrome, Pediatric Autoimmune Neuropsychiatric Disorder (PANDAS), Sensory Processing Disorder, Oppositional Defiant Disorder, Reactive Attachment Disorder, and Childhood Acute Neuropsychiatric Syndrome (CANS) level 3. At the time of the evaluation, the Student “had a significant escalation of [their] behavior and is no longer able to be contained in [their] home or school setting.” The report goes on to describe that “[The Student’s] mother has been living with [them] in a hotel for over 45 days because [they are] a threat of harm to the other children in the home, animals in the home, and [their] parents.” According to the report, “On December 17, [the Student] assaulted [their] mother

so badly that police were called to the hotel and they took [the Student] to the hospital. That is where [the Student] was residing when this report was finalized.”

- b. The December 7, 2022 psychological evaluation included testing of the Student’s cognitive, adaptive, executive functioning, and sensory processing abilities, as well as a clinical psychosocial interview, a mental status examination, and review of records. According to the results of the evaluation, the Student demonstrated borderline cognitive abilities and adaptive skills in the low range. The evaluator diagnosed the Student with, among other things, Neurodevelopmental Disorder associated with prenatal exposure to alcohol and meth; Moderate Intellectual Disability; ADHD Combined presentation, severe; and Other Specified Bipolar and Related Disorder. When summarizing the Student’s behavior during the clinical interview, the evaluator noted, “This examiner has spent over 24 years assessing and treating prenatally exposed youth ages 2-18 and [the Student] is in the top 10 of the most challenging to work with.”
- c. On or around April 2023 through August 2023, the Student resided in a Department of Developmental Services Stabilization and Crisis Unit (SACU). While there, the SACU developed a Positive Behavior Support Plan (BSP) dated July 5, 2023, and revised on August 9, 2023 and September 14, 2023. According to the BSP, the Student demonstrated the following challenging behaviors:
  - i. Unsafe vehicle behavior.
  - ii. Physical aggression: throws objects at others, hits, kicks, bites, claws, scratches, pulls hair. Multiple instances per month. Medium intensity, moderate severity.
  - iii. Self-Injury: bangs feet against walls and floors, pounds on self, chews on computer cords, bites self, hits self, causing injury bruises, redness, open wounds. Tries to get items [they] are allergic to, climb very high trees in the night, will jump in river, stick things in electrical outlet. Low to moderate intensity, potential for moderate/high severity. Multiple instances per month.
  - iv. Property destruction.
  - v. Leaving supervised settings.
  - vi. Ingesting non-edible objects.
  - vii. Refusing medical care.
  - viii. Extreme food or liquid seeking behavior.
  - ix. Harm to animals.
  - x. Use of objects as weapons.
  - xi. Unsafe social behavior; verbal aggression and poor boundaries.
  - xii. Suicidal ideation/gestures and attempts: suicidal gestures of putting towel around [their] neck, intentionally attempted to jump in front of cars. Not reported while at SACU, but will track for 90 days.
  - xiii. Other: intrusiveness, impulsiveness, will howl and act like a dog, will undress in public, crawl around in public settings, unusual or concerning comments, difficulty regulating emotions.
- d. At the start of the 2023-24 school year, the Student resided in another group home operated by the same group home agency. The school district where that home is located convened a meeting on September 7, 2023 to discuss where the Student would receive educational services while the evaluation for special education was in process. The District proposed starting the Student for half days and then increasing time in school each week for one hour. It was determined that the Student would attend the regular elementary school in the morning from 8:55 a.m. - 10:30 a.m. and then attend a program in another building called the “Step Up” program, described as a “Social Emotional Learning Program,” from 10:45 a.m. - 1:05 p.m.



- e. In early November 2023, the Student moved from another group home into the current group home, which has a higher level of support and a more secure setting. In an interview, the Complainant reported that the move occurred due to significant behavior concerns at the previous home and at school. According to the Complainant, the first home was located near the Student's Parents. The Student became fixated on going to their Parents' home and began exhibiting increased behaviors as a result. The Complainant explained that the Student was moved to the group home located in the District solely because that is where there was space available, and not because of the security level of the home.
- f. In interviews, District staff reported that it is their understanding that the Student moved into the second group home because of significant safety concerns. The Behavior Specialist described the particular home that the Student moved into as being a "higher level home," meaning that it was a "more stripped-down environment" with additional safety measures, specifically around "lockdown procedures."
- g. As discussed in the section above, the District determined that the Student was eligible for special education on November 28, 2023 and an initial IEP was developed for the Student over several meetings between the eligibility determination and December 18, 2023. The IEP team began discussing the Student's special education placement at a meeting on December 7, 2023. In the meeting minutes, it was noted that the Student had begun to receive services from the Behavior Specialist and instructional assistants in a portable building at the District Office for thirty minutes per day "so they can get to know [them] and [their] needs." The Parent shared that they want the Student's "environmental situation to be similar to what [they have been] used to in the past." The IEP team discussed increasing the Student's time at the District Office and there was disagreement over how quickly the time should be increased. The District suggested a slow increase while the group home and the Parents advocated for a more rapid increase. District staff expressed concern about the safety of the Student and others if they rushed the Student's entry into school, with the T&L Director stating that they "will not put anyone at risk (staff or students)."
- h. When asked why the District did not initially place the Student at a typical elementary school, the Behavior Specialist cited safety concerns for both the Student and other students. The Student was described as being historically unsafe around other children and adults. According to the Behavior Specialist, the Student's previous school district informed them that, prior to the move, the Student had a behavioral incident that required police to respond. During the incident, the Student reportedly attacked a police officer and tried to take their gun. The Behavior Specialist explained that, with the level of "risk-seeking behaviors" the Student was exhibiting, even one behavioral incident at school could be "catastrophic." In addition to safety concerns, the Behavior Specialist also recalled that the Student had concerns about going to school on a typical campus and was "worried it would be too much."
- i. On December 8, 2023, the District sent the Parents a Prior Notice about Evaluation/Consent for Evaluation that proposed to conduct a Functional Behavioral Assessment (FBA) and Occupational Therapy assessment of the Student. The Parent signed consent to the evaluation on January 5, 2024.
- j. The Parent sent an email to the District on December 10, 2023 requesting "an immediate out-of-district transfer to a behavioral school." The Parent stated, "We feel it is in [the Student's] best interest to be in an environment that already has long-standing and pre-established modifications for those with significant disabilities – for [the Student's] safety

and others.” The T&L Director responded the following day and asked if there were specific programs the Parent would like the District to consider. The Parent responded that they “would prefer to look into OASIS or BIC.”

- k. On December 18, 2023, the Student’s IEP team met again to determine the Student’s special education placement. There was a discussion regarding the Parent’s previous request for an outside placement, namely OASIS or BIC. Staff from the group home shared that BIC would be preferred, as the Student had previously attended there and had been successful. It was explained that BIC is a specialized program, with a focus on behavior and mental health, in one of the Student’s previous school districts. The District shared that they had reached out to the school district that operates the BIC program but that they did not currently have space for an out-of-district student. The District shared that OASIS was still an option and that they could look into Polk Adolescent Day Treatment Center (PADTC), but that the Student may not be old enough to attend. The District had contacted another facility with both day treatment and residential programs, but was told that they were only accepting students with medical referrals. The Parent shared that they “loves PADTC and would want to refer when [the Student] is 12.”
- l. The IEP team discussed increasing the Student’s time at the District Office after winter break. The Student’s previous school district had communicated that the Student’s transition to a full day had been too fast previously, which they believed had led to an increase in behaviors. The Family Advocate, who was in attendance at the meeting, also cautioned against increasing the Student’s day too quickly. It was determined that a “step-up plan” would be written to add additional time to the Student’s day. The Student’s time would increase by ninety minutes after winter break, two hours after two weeks, and three hours by the end of January. In the meantime, the District would send paperwork to the Parent so that applications could be submitted to OASIS and PADTC.
- m. According to a December 18, 2023 Special Education Placement Determination, the Student’s placement would be an “Alternative education setting with one-to-one specially designed instruction.” An additional placement, “Evaluation of alternative program focused on behavior and mental health (such as a day treatment program or behavior program (OASIS, BIC)), was rejected but it was noted that, “The school district will initiate contact with outside agencies and submit applications for program that provides a high level of mental and behavioral health programming.”
- n. On December 19, 2023, the District sent releases of information to the Parents so that applications could be submitted for the Student to OASIS and PADTC. The Parent signed the releases on the same date.
- o. On January 8, 2024, the District began preparing an application for the Student for OASIS. The application was submitted on January 25, 2024. On February 5, 2024, the Special Education Coordinator from OASIS requested to observe the Student, which was scheduled for February 14, 2014. Following the observation, the Special Education Coordinator from OASIS emailed the District stating, “It is difficult to know if this would be an appropriate placement for [the Student]. While I was there, [they] did pretty well listening to [their] teacher. I’m not sure how that would go in a classroom with other students who have significant behavioral difficulties.” The OASIS staff member also asked if the Student would continue on an abbreviated school day program at OASIS and if the Student would attend with a one-to-one assistant.
- p. On February 6, 2024, the Student’s Special Education Teacher emailed a progress report to the Parents. The email indicated that the Student was doing well overall, but that the

Student was demonstrating defiance as the length of their day increased. The Special Education Teacher shared that they had not seen any physical aggression from the Student.

- q. On February 26, 2024, March 4, 2024, and March 6, 2024, the District emailed OASIS inquiring into the status of the Student's application. The District indicated that it "had purchased an extra spot for this student" at OASIS and needed a response regarding the Student's enrollment. On March 6, 2024, OASIS confirmed that it would not accept the Student into its program. Explaining its denial of the Student, OASIS stated that "the level of support [the Student] needs would not be a fit for the program."
- r. The District completed its FBA of the Student on March 6, 2024. According to the FBA report, between January and March 2024, "[The Student] has had a lot of success." The report noted that the Student had increased their school day from one to four hours, had "participated in lots of high rigor academic learning," "made lots of meaningful relationship bonds and connections with teachers and staff," and "experienced zero severe or safety concern behavior incidences." The challenging behaviors that the Student exhibited in their school setting at the District Office were described as: 1) Food and Liquid-Seeking Behavior, 2) Difficulty Regulating Emotions, 3) Unusual Comments, and 4) Non-Edible Objects in Mouth (chewing on pen or pencil). The FBA pointed out that District staff had not observed the significant behavior challenges that had been described in the Student's records.
- s. The District reviewed the results of the FBA at an IEP meeting on March 6, 2024. According to the meeting minutes, District staff expressed that the Student was "doing well and thriving." Staff from the group home shared that the Student was "thriving at home as well." At the time of the meeting, the Student was receiving educational services at the District Office for four hours per day. A meeting was scheduled for the following month to discuss the Student's placement.
- t. The Behavior Specialist shared that, based on the results of the FBA, the IEP team began transitioning the Student to spend time at the regular elementary school. It is unclear from the evidence when the Student began spending part of their day at the elementary school. The Behavior Specialist indicated that the transition has gone well, although there have been some increased behaviors. The Behavior Specialist reported that, in addition to a personal learning space, the Student is accessing some general education and spending time in the resource room.
- u. The same Special Education Teacher provides services to the Student at both the District Office and the elementary school. When the Student started at the District Office, the Special Education Teacher worked with the Student directly and also provided curriculum to other staff working with them. At the time of the interview, the Student was attending school at the District Office from 8:30 a.m. - 12:15 p.m. and at the elementary school from 12:15 p.m. to 2:00 p.m. each day. While at the elementary school, the Student spends time with other students in the resource room and has recently started attending recess with their peers. During the transition to the elementary school, the Student has exhibited increased behaviors that included work refusal, defiance, running around the classroom, and writing profanity on the board. The Student did not exhibit physical aggression during the transition. When asked to describe the progress the Student has made since starting school in the District, the Special Education Teacher reported that the Student was close to meeting the IEP goals that had been adopted in December and that the IEP team planned to meet again in June to revise the Student's IEP.

- v. The Behavior Specialist indicated that they communicate with the Student's Parents and that the Parents have seemed happy with the Student's educational program. They recalled receiving a "heartfelt thank you note" from the Parent and described how the Parents have visited the Student's program and "darn near cried about how grateful they are," and that they have expressed that they can't believe how successful the Student has been.
  - w. In an interview, the Student's Parent expressed dissatisfaction with the Student's time in the District. While they "loved" the Student's teachers and services providers, they did not feel like District administrators considered their input in meetings. They do not believe the Student is doing well at the elementary school and have significant concerns about the Student's transition to middle school. They would like the Student placed in a program outside of the District and expressed frustration that the District had not located an outside placement that would accept the Student. When asked what type of program they would like for the Student if an outside placement could not be located, the Parent replied that they would like the Student to continue with the current placement, but for a full day and "with the right staff." When asked why they consented to an abbreviated school day program if they did not agree it was appropriate for the Student, the Parent replied that they agreed to things because they were afraid to speak up in meetings.
16. A review of four additional student files showed that the District generally places students residing in group homes with their typical peers to the maximum extent appropriate.
- a. One Student moved into the District in 2022 having been placed by their previous district in an outside placement with no access to typical peers. During the time period of the complaint, the Student had been moved to a lesser restrictive setting: a placement in general education for more than 40% of their day with special education services in the resource room.
  - b. Another Student moved into the District in 2023, having been placed by their previous district on an abbreviated school day program in a self-contained special education classroom. During the time period of the complaint, this Student was placed in general education with pull-out supports in a special education setting. While the Student was initially placed on an abbreviated school day program, the Student's time at school increased steadily and the Student was scheduled to attend for a full day beginning March 12, 2024.
  - c. A third Student was placed in general education during the 2022-23 school year with removal from typical peers for 120 minutes per week. At the time the Complaint was filed, the Student was placed in the District's adult transition program.
  - d. A fourth Student was placed at OASIS at the start of the 2023-24 school year with no access to typical peers. In October 2023, at the request of the Student's Parent, this Student's placement was changed to a comprehensive middle school setting with more than 40% of their day in general education. At the time of the Complaint, the Student was placed in a 1:1 environment at the District Office as an interim alternative education setting due to an incident where the Student caused serious bodily injury.
17. The Complainant also alleged that the District excluded students residing in group homes from facilities available to general education students, "including being made to enter through the back doors of these locations away from their peers." In an interview, the Complainant alleged that the District requested that every one of the group home students, at every school in the District, be dropped off at the back door. No evidence was provided to support this

allegation. To the contrary, numerous records provided by both the Complainant and the District demonstrate that students from the group home regularly enter school buildings from the same entrance as other students. In interviews, the District explained that students in one of the special education classrooms at the high school are dropped off at a different location from some other students because their classroom has its own entrance from the outside. The students in this classroom are dropped off near this entrance so that they do not have to walk across the entire campus to reach their classroom. One of the Students named in the Complaint was placed in that program during part of the time period of the complaint.

### **Parent Participation/Prior Written Notice**

18. The Complainant alleged that the District makes alterations to students' special education services and, in some cases, changes their placements without providing their parents with the opportunity to participate in those decisions. Further, the Complainant alleged that the District did not provide the parents with prior written notice of placement changes.
19. **Student #3:** The Complainant alleged that the District changed this Student's placement when the Student was "rerouted by the district with no input from the IEP team, resulting in [their] transfer to the district annex," and that the Student's placement was later changed to the high school without notifying the parent.
  - a. During the entire time period of the Complaint, the Student's placement was "Individualized instruction in alternative setting (personal learning environment)." Initially, this placement was implemented at the Annex. In May 2023, the location of the Student's placement was changed to the elementary school, but the general structure of the Student's program and the amount of access that the Student had to typical peers remained unchanged. The Student's parent and staff from the group home were active participants in the meetings held to discuss both the initial placement and the change of the location to the elementary school.
  - b. At the start of the 2023-24 school year, as discussed in the section above, the location of the Student's placement was changed to the high school. During interviews, District staff acknowledged that the decision to change the Student's location was made outside of the IEP process and that the District could have more timely communicated the location change to the parent and the group home. Nevertheless, the District maintains that the move from the elementary school to the high school was a location change and not a placement change. The general structure of the Student's program and the amount of access to typical peers was the same at the high school as it had been at both the Annex and the elementary school.
  - c. Review of other students' records shows that the District made significant effort to involve parents and group home staff in decisions regarding the placement and special education services of students residing in group homes in the District. While there may have been disagreements with the District, parents and group home staff were active participants in decisions regarding the educational services and placements of the students who are subject to this Complaint. Additionally, a review of records showed that the District regularly sent PWN's to parents after decisions were made regarding students' special education placement and services.

### **Discipline**

20. The Complainant alleged that the District violated the following discipline procedures regarding students residing in group homes in the District:

- a. Removing students for greater than ten days without convening a Manifestation Determination Review (MDR) meeting;
- b. Removing students for partial days without counting it as a disciplinary removal;
- c. Regularly asking group home staff to pick students up from school without counting the removal as a suspension.

21. The Complainant provided the Complaint Investigator with a list of dates that had been documented by group home staff as suspensions for each of the four students named in the Complaint, as well as a fifth student who was not named in the Complaint, during the 2023-24 school year. The document provided by the Complainant included the following total removals for each of the students:

- a. Student #1: 8 days,
- b. Student #2: 13 days,
- c. Student #3: 19 days,
- d. Student #4: 0 days, and
- e. Additional student not named in the complaint: 7 days.

22. Student #2:

- a. Four of the dates that the Complainant listed as dates that the Student was suspended were not school days, including Christmas Eve, December 2, 2023 (which was a Saturday), and two dates in January when there was no school due to District-wide professional development activities.
- b. The Complainant's documentation lists December 1, 2023 as a date that the Student was suspended from school. A detailed Incident Report from that date describes a significant behavioral incident that occurred that day, beginning at 2:55 p.m. As this was the end of the school day, staff from the group home arrived to pick the Student up from school as the behavioral incident progressed. The Student left with group home staff at 3:40 p.m., after the conclusion of the school day. There was no evidence provided that the Student was removed from school for any portion of this day.
- c. When interviewed, the Complainant was asked why there were dates on the list of suspensions that were not school days. The Complainant responded that they would review the dates and provide clarification. The Complainant subsequently provided the Complaint Investigator with an updated list of suspension dates. While some of the original dates had been removed, the updated list still included multiple dates when school was not in session.

23. Student #3:

- a. The Complainant alleged that this Student was suspended 19 days during the 2023-24 school year. One of the dates listed on both the original and updated lists provided by the Complainant, October 14, 2023, was a Saturday. On two of the dates, November 1, 2023 and November 14, 2023, group home staff were called to pick the Student up due to injury. On November 1, 2023, the group home was contacted after the Student hit their head repeatedly and cut their hand on broken glass. On November 14, 2023, the Student again hit their head repeatedly and the school nurse recommended that the Student be evaluated by a doctor. Neither of these dates were documented as suspensions by the District.

- b. As discussed in the sections above, the Student was excluded from school on November 15-17, 2023 so that the District could make safety modifications to the Student's learning space. In interviews, District staff indicated that these dates would be counted as removals for purposes of determining if an MDR meeting was required.
  - c. The Complainant included eight days between November 17, 2023 and December 6, 2023 when they alleged the Student was suspended from school. There was no evidence provided that the Student was suspended on those dates. While the District was exploring other placement options for the Student during that time, the Director informed the parent in writing on November 21, 2023 that the Student could return to their placement at the high school.
24. In a previous investigation related to a separate complaint, the Department found that the District failed to follow appropriate disciplinary procedures for group home resident that was not named in the current Complaint. Corrective actions were ordered to address those findings. Aside from those findings, a review of the evidence in this investigation generally showed that the District appropriately counted days of removal for purpose of determining if an MDR meeting is required.

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

25. The Complainant alleged that that the District failed to review and revise students' IEPs to address concerns raised by the group home or when students did not make expected progress on their IEP goals.
- a. Student #1: During the time period of the Complaint, this Student's IEP team met at least five times to review the Student's IEP and make any necessary revisions to the Student's IEP. During this time, the IEP team worked to increase the Student's time at school and adjusted the Student's placement to address behavioral concerns. In addition to these meetings, as detailed in the sections above, the District conducted an updated FBA of the Student, developed an updated behavior support plan and created a "crisis cycle profile" to address the Student's behavior.
  - b. Student #2: During the time period of the Complaint, the Student's IEP team met at least three times to review and revise the Student's IEP. In addition, the District made efforts to address concerns regarding the Student's behavior by drafting a "Behavior Matrix" in November 2023 and proposing an FBA on January 24, 2024.
  - c. Student #3: During the time period of the Complaint, this Student's IEP team met at least four times to review and revise the Student's IEP. During this time, the District changed the Student's location in an attempt to increase the Student's exposure to typical peers, updated the Student's BSP to address behavioral concerns, explored placement options outside of the District, and proposed an FBA.
  - d. Student #4: Between November 28, 2023, when this Student was found eligible for special education, and the date that this Complaint was filed, the Student's IEP team met at least four times to develop, review, and/or revise the Student's IEP. In addition, the District completed an FBA of the Student to address behavior concerns, developed a behavior support plan, and attempted to find an outside placement to meet the Student's needs.
  - e. A review of four additional student files showed that the District frequently held IEP meetings to address the concerns of parent and group home staff, made revisions to students' IEPs as needed, and proposed evaluations to address students' behavior needs.

## **Education Records**

26. The Complainant alleged that the District failed to provide copies of incident reports related to students' suspensions and removals from school.
27. In interviews, District staff reported that it was District practice to mail incident reports home to parents. When the group home indicated that they were either not receiving the incident reports, or that they were taking too long to arrive in the mail, the District agreed to email incident reports to the group home staff.
28. In the Complaint, the Complainant specifically alleged that incident reports had not been provided for Student #1. Documents provided by the Complainant, however, included several incident reports related to this Student. According to the meeting minutes from this Student's October 3, 2023 IEP meeting, the Complainant asked that incident reports be sent in a timely manner and another group home staff member at the meeting stated that the incident reports had been emailed to them.
29. The Complainant also provided incident reports related to other students named in the Complaint. In addition, emails from the District show that incident reports were regularly emailed to staff from the group home. While it cannot be confirmed that every incident report was sent to the group home, there is no evidence that the District withheld any education records that were requested by either the group home or parents.

## **IV. DISCUSSION**

### **When IEPs Must Be In Effect**

The Complainant alleged that the District violated the IDEA by delaying enrollment of students in school when they have moved into a group home within District boundaries. Further, once enrolled, the Complainant alleged that the District violated the IDEA by failing to implement the special education and services in accordance with the students' IEPs.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.<sup>3</sup> The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.<sup>4</sup> "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."<sup>5</sup> A district violates the IDEA when it materially fails to implement an IEP.<sup>6</sup> "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."<sup>7</sup>

When a student with an active IEP transfers to a new school district in the same state within the same school year, the new school district must provide FAPE to the student, that includes services comparable to those described in the IEP from the previous district, until the new district either: (a) adopts the student's IEP from the previous school district; or (b) develops, adopts, and implements a new IEP for the student.<sup>8</sup>

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<sup>3</sup> OAR 581-015-2220(1)(a); 34 CFR § 300.323(c)

<sup>4</sup> OAR 581-015-2220; 34 CFR § 300.323

<sup>5</sup> Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)

<sup>6</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811 (9<sup>th</sup> Cir. 2007) ("Van Duyn")

<sup>7</sup> *Id.*

<sup>8</sup> OAR 581-015-2230(1)(a)-(b); 34 CFR § 300.323(e)



School districts must conduct an evaluation of a student before determining that a student has a disability that meets eligibility requirements for special education.<sup>9</sup> Once a student is determined to be eligible for special education, a school district must hold an IEP meeting to develop the student's initial IEP within thirty days.<sup>10</sup> An IEP must be in effect before a district provides special education and related services to a student.<sup>11</sup>

Student #2:

The Student moved into the District on or around the beginning of May 2023 with an IEP from another school district in Oregon. The Student's IEP included placement in a "Life Skills Classroom" with small group instruction and the opportunity to take a mainstream class. The Student's IEP included 430 minutes per week of SDI and indicated that they would access general education for forty-five minutes per day.

The District did not offer the Student a comparable placement when they moved in, or otherwise implement the Student's existing IEP. At the Student's "move-in" IEP meeting on May 26, 2023, the District changed the Student's placement to one hour per day of online tutoring. Based on the meeting minutes and interviews, it does not appear that there was any discussion at the meeting about the possibility of the Student attending school in a special education classroom at the elementary school.

The Student received no services from the District until June 1, 2023. When the Student did start receiving services, the District only provided five hours per week of instruction, which was not sufficient to meet the minutes of SDI in the Student's IEP.

Student #4: This Student did not have an IEP when they moved into the District. Accordingly, the District did not violate the IDEA when it did not provide the Student with a special education placement upon their arrival in the District. Regarding any delay in developing an IEP for the Student, the District provided credible evidence that it was not aware that the Student had already been found eligible for special education by their previous school district. The District moved quickly to establish the Student's eligibility for special education and developed an IEP for the Student within thirty days, as required by law.

There was no other evidence provided to establish that the District delayed enrollment of other students residing in group homes, or otherwise failed to implement their IEPs.

The Department substantiates this allegation as to Student #2, only, from the date that they moved into the District until the end of the 2022-23 school year, only.

**Least Restrictive Environment**

The Complainant alleged that the District violated the IDEA by not educating students residing in group homes with their nondisabled peers to the greatest extent appropriate.

School districts must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have a disability. The IDEA requires that education in special classes, separate schooling, or other removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that

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<sup>9</sup> OAR 581-015-2105(1)(a)-(d)

<sup>10</sup> OAR 581-015-2220(2)(a); 34 CFR §300.323(c)

<sup>11</sup> OAR 581-015-2250(1)(c); 34 CFR §300.116(b)(2)

education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>12</sup> This mandate is referred to as the requirement that a student be placed in the Least Restrictive Environment (LRE).

Each school district must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of placements must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Further, the continuum of placements must allow for the provision of supplementary aids and services to be provided in conjunction placement in a regular classroom.<sup>13</sup>

The educational placement of a student with a disability shall be determined by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data and the placement options. The decision regarding placement must be based on the student's IEP, determined at least once per year, and be as close as possible to the student's home. Unless the student's IEP requires some other arrangement, the student must be educated in the school that they would attend if not disabled.<sup>14</sup>

In considering the LRE for a student, placement teams may apply a four-factor balancing test which considers: 1) the educational benefit to the student of placement in a regular education setting, 2) the non-academic benefit to the student of such a placement, 3) the impact of the placement on the teacher and the other students in the regular education setting, and 4) the costs associated with the placement.<sup>15</sup>

In this case the District has demonstrated that it has a continuum of alternative placement options available to meet the needs of students with disabilities, although it may not have the same array of options that exist in some its larger neighboring school districts. As a result, when considering placements for students eligible for special education who move in from other school districts, the District has taken an individual, and sometimes nontraditional, approach to meeting their needs. As seen in this case, that may include the use of facilities that are not on regular school campuses and that do not allow access to typical peers. During portions of the time period of this Complaint, both Student #3 and Student #4 were placed in highly restrictive settings that did not allow them access to typical peers. These placements were made by these students' IEP teams, after much discussion that included the Parents and group home staff. When considering the four factors from *Sacramento City Sch. Dist. Bd. Of Educ. V. Holland* referenced above, the evidence reviewed in this investigation shows that these were appropriate placements for these two students at the time. Furthermore, after these placements were implemented, the District convened each of these students' IEP teams regularly to discuss increasing their access to typical peers and each of these students were ultimately transitioned to less restrictive settings.

The evidence does not support that the District failed to place the other students named in the complaint, or systemically fails to place other students residing in group homes, in the least restrictive environment.

The Department does not substantiate this allegation.

### **Parent Participation/Prior Written Notice**

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<sup>12</sup> OAR 581-15-2240; 34 CFR §300.114

<sup>13</sup> OAR 581-015-2245; 34 CFR §300.115

<sup>14</sup> OAR 581-015-2250; 34 CFR §300.116

<sup>15</sup> *Sacramento City Sch. Dist. Bd. Of Educ. V. Holland*, 14 F.3d 1398 (9<sup>th</sup> Cir. 1994)

The Complainant alleged that the District makes alterations to students' special education services and, in some cases, changes their placements without providing their parent's the opportunity to participate in those decisions. Further, the Complainant alleged that the District did not provide the parents with prior written notice of placement changes.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>16</sup> School districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.<sup>17</sup> "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."<sup>18</sup>

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>19</sup> PWN must be both specific and explanatory, including:

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

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

### Student #3:

This student experienced several changes of location during their time in the District. The Complainant specifically objected to the Student's move from the elementary school to the high school as neither the Parent nor the group home were notified of the change before it was implemented. The District, however, demonstrated that this was a change of location rather than a change of placement. In May 2023, the location of the Student's placement was changed to the elementary school, but the general structure of the Student's program and the amount of access that the Student had to typical peers remained unchanged. While there was acknowledgment that communication of the decision could have been timelier, a change of location does not require an IEP meeting, parent input, or a prior written notice.

In regard to other students named in the Complaint, the evidence presented showed that the District consistently considered Parent input when making decisions regarding the students'

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<sup>16</sup> OAR 581-015-2190(1); 34 CFR §300.501(b)

<sup>17</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

<sup>18</sup> Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)

<sup>19</sup> OAR 581-015-2310; 34 CFR §300.503(a).

special education placement and services and regularly sent PWNs to parents regarding those decisions.

The Department does not substantiate this allegation.

### **Discipline**

The Complaint alleged that the District violated the IDEA by removing students residing in group homes for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation determination review to determine whether the students' behavior was manifestation of their disabilities.

Under the IDEA and Oregon State law, a student with a disability may be removed from their current educational placement for a violation of a student code of conduct for up to ten school days in a school year to the same extent as students without disabilities. School districts (including Education Service Districts) may remove a student with a disability from their placement for additional periods of up to ten school days in a school year for disciplinary reasons, so long as the removals do not constitute a pattern of removals. Any disciplinary removal in excess of this constitutes a change of placement.<sup>20</sup>

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a school district must convene a meeting to determine if the student's behavior is a manifestation of their disability. If the conduct is found to be a manifestation of the student's disability, the school district must: a) return the student to their previous placement, unless the parent and school district agree to a change of placement as part of the implementation of the student's behavior intervention plan or other special circumstances apply, and either b) conduct a functional behavior assessment and implement a behavior intervention plan, or c) review an existing behavior intervention plan and modify it to address the behavior. If the behavior is not found to be a manifestation of the student's disability, the school district may proceed with disciplinary action to the same extent as it would for a student without a disability.<sup>21</sup>

The discipline records provided by the District showed that none of the students named in the Complaint were removed from school for more than ten days in any school year during the time period of the Complaint. Accordingly, there was no requirement that the District convene a manifestation determination review meeting. The Investigator determined that the evidence provided by the Complainant regarding additional days of removal was not credible and, thus, was given limited consideration.

The Department does not substantiate this allegation.

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

The Complaint alleges that the District violated the IDEA by not reviewing and revising the IEPs of students residing in group homes, as appropriate, to address lack of expected progress and behavior concerns.

The IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to: (a) determine whether a student with a disability is achieving their IEP goals, and (b) to

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<sup>20</sup> OAR 581-015-2405 & 2410; 34 CFR §300.530

<sup>21</sup> OAR 581-015-2415; 34 CFR §300.530(e)-(f)

revise the IEP as appropriate.<sup>22</sup> The requirement for the IEP team to review and revise an IEP is not limited to once per year. The IEP team must review and revise a student's IEP at any time to address:

1. A lack of expected progress toward the annual goals and in the general education curriculum;
2. The results of any reevaluation;
3. Information about the student provided to, or by, the student's parents;
4. The student's anticipated needs; or
5. Other matters.<sup>23</sup>

In this case, the IEP teams for each of the Students named in the Complaint met multiple times during the past year. Additionally, to address behavior concerns, the District conducted FBAs and/or updated the student's behavior support plans as needed.

The Department does not substantiate this allegation.

### **Education Records**

The Complaint alleges that the District violated the IDEA by denying or delaying the Complainant's or parents' access to the education records of students residing in group homes, specifically those related to behavioral incidents.

The IDEA incorporates by reference the requirements of the Family Educational Rights and Privacy Act (FERPA).<sup>24</sup> These provisions provide that a school district must, without delay, comply with parental requests to inspect and review records related to a student's identification, evaluation, placement, and the provision of a free appropriate public education.<sup>25</sup>

In this case, the District submitted evidence that it had provided incident reports to the group home when requested. When the group home indicated that these incident reports were not being received, the District changed its practice and began emailing incident reports to the group home, rather than sending them by mail. While the Complainant alleged that the District consistently refused to provide incident reports, the Complainant provided many incident reports to the Investigator that had been received from the District. There was no evidence provided that the District withheld educational records from either the Complainant or the Parents.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education**

The Complainant alleged that that the District violated the IDEA as it relates to students residing in group homes by, failing to implement their IEPs, failing to place them in the least restrictive environment, failing to review and revise their IEPs as appropriate, failing to allow meaningful parent participation in educational decisions, failing to follow appropriate special education discipline procedures, failing to provide requested educational records, and failing to provide prior written notice of placement changes.

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<sup>22</sup> OAR 581-015-2225(1); 34 CFR §300.324(b)

<sup>23</sup> OAR 581-015-2225(1)(b)(A)-(E)

<sup>24</sup> OAR 581-015-2300; 34 CFR §300.501(a); 34 CFR §§99.1 to 99.38

<sup>25</sup> OAR 581-015-2300(2); 34 CFR §300.501(a)

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.<sup>26</sup> The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.<sup>27</sup>

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>28</sup> Not all procedural violations amount to a denial of FAPE. A school district’s procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents’ opportunity to participate in the development of the IEP.<sup>29</sup>

In this case, the only IDEA violation that was found to occur was a procedural violation in that the District did not implement Student #2’s IEP. This Student did not receive any special education services from the date that they moved into the District until June 1, 2023 and then, did not receive a significant amount of SDI in their IEP from June 1, 2023 through the end of the 2022-23 school year.

The Department substantiates this allegation as to Student #2 only, from the date that they moved into the District until the end of the 2022-23 school year, only.

**V. CORRECTIVE ACTION**  
*In the Matter of Central School District 13J*  
*Case No. 024-054-014*

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

Action Required	Submissions	Due Date
1. The District will convene an IEP meeting for Student #2 to determine appropriate compensatory education services for the time that the Student’s IEP was not implemented from the date the Student moved into the District through the end of the 2022-23 school year.	A written plan for delivery of Compensatory Education developed at an IEP meeting with the Parent.  Evidence showing that compensatory services were provided.	<b>June 30, 2024</b>  <b>June 1, 2025</b>

<sup>26</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

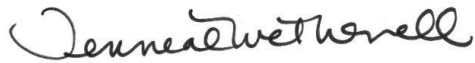
<sup>27</sup> OAR 581-015-2040; 34 CFR §300.17

<sup>28</sup> *Andrew F.*, 137 S.Ct. at 999

<sup>29</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

<p>2. The District will develop and conduct training for all staff responsible for implementing IEPs on the District's responsibility to implement the IEPs of students eligible for special education when they move into the District.</p>	<p>Training agenda/materials to ODE for review/approval.</p> <p>Sign-in sheet from training.</p>	<p><b>August 15, 2024</b></p> <p><b>October 1, 2024</b></p>
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Dated: this 5th Day of June 2024




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Tenneal Wetherell  
 Chief of Staff  
 Oregon Department of Education

E-mailing Date: June 5th, 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).)