

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| In the Matter of Dallas School District 2 |) | |
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| |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS, |
| |) | AND FINAL ORDER |
| |) | Case No. 24-054-020 |

I. BACKGROUND

On April 8, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Dallas School District 2 (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On April 10, 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 23, 2024.

The District submitted a *Response* on April 23, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. Statement of Eligibility for Special Education for Autism Spectrum Disorder, 10/25/23
2. Functional Behavior Assessment and Behavior Support Plan, 04/04/23
3. 2022-23 Report Card, 06/14/23
4. Special Education Notice of Team Meeting, 04/03/23
5. Oregon Standard Individualized Education Program, 04/04/23
6. Annual IEP, Meeting Notes, 04/04/23
7. Functional Behavior Assessment and Behavior Support Plan, 04/04/23
8. Prior Notice of Special Education Action, 04/04/23
9. Speech Services notes, no date
10. Daily Log Notes with class dates and times, no date (ranges from 04/10/23 to 06/09/23)
11. Special Education Notice of Team Meeting, 09/28/23
12. Willamette Education Service District, Occupational Therapy Observation, 10/23/23
13. Autism Spectrum Disorder Re-Evaluation Report, 10/24/23
14. Prior Notice of Special Education Action, 10/25/23
15. Annual Academic and Functional Goals and Objectives Progress Report, Progress Report

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

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

- One, 01/19/24
- 16. Annual Academic and Functional Goals and Objectives Progress Report, Progress Report One, 01/29/24
- 17. Annual Academic and Functional Goals and Objectives Progress Report, Progress Report One, 01/29/24
- 18. Annual Academic and Functional Goals and Objectives Progress Report, Progress Report One, 01/29/24
- 19. Annual Academic and Functional Goals and Objectives Progress Report, Progress Report One, 01/29/24
- 20. Special Factors, 10/25/23
- 21. Present Levels of Academic Achievement and Functional Performance, 10/25/23
- 22. Notice of Proposed Transfer of Special Education Rights, 10/25/23
- 23. Student Progress Report, 11/1/23
- 24. Daily Log Notes with class dates and times, no date (ranges from 04/10/23 to 06/09/23)
- 25. EA Daily Logs, no date
- 26. DCS Behavioral Referral, 02/26/24
- 27. DCS Behavioral Referral, 12/06/23
- 28. Student Grades, 12/11/23
- 29. Report Card, 01/02/24
- 30. Speech Services notes, no date
- 31. DCS Behavioral Referral, 01/03/24
- 32. Meeting Notes, Parent Meeting, 01/23/24
- 33. DCHS Staff Meeting Notes, no date
- 34. DCS Behavioral Referral, 02/16/24
- 35. DCS Behavioral Referral, 02/21/24
- 36. Requesting IEP, 02/26/24
- 37. Parent Letter, 02/27/24
- 38. Graphic, Visuals, no date
- 39. Willamette Education Service District, OT Sensory Profile, 03/01/24
- 40. Letter, Summarize 10 Day Drop and Offer FAPE, 03/13/24
- 41. Updated Meeting Notes for IEP Meeting, no date
- 42. Prior Notice of Special Education Action, 03/21/24
- 43. Progress Report, 04/01/24
- 44. Emails between Parties, 01/17/23-04/08/24

The Parent submitted a *Reply* on April 20, 2024, providing an explanation and rebuttal, and documents in support of the Parents' position, The Parent submitted the following relevant items:

- 1. Report Card, 06/14/23
- 2. Comments and Questions, re: 2022-23 EA Daily Logs, no date
- 3. Comments and Questions regarding 4/23/24 narrative, no date
- 4. Prior Notice of Special Education Action, 10/25/23
- 5. List of Accommodations, 10/25/23
- 6. [Student] Notes, no date
- 7. District SR Ready, no date
- 8. Comments and Questions, re: 2023-24 EA Daily Logs, no date
- 9. EA Daily Logs 2023-24, no date
- 10. District Emails by Month, Comments and Questions, no date
- 11. Meeting Notes, 01/23/24
- 12. DCHS Staff Meeting Notes, no date
- 13. Special Education Notice of Team Meeting, 02/22/24

14. Letter, Request for IEP meeting, 02/26/24
15. Letter, Follow Up to IEP meeting letter, 02/27/24
16. Willamette Education Service District, Occupational Therapy Observation, 10/23/23
17. FAPE Letter, no date
18. Special Education Notice of Team Meeting, 03/19/24
19. Meeting Notes, 03/21/24
20. IEP Meeting Summary, 03/21/24
21. Notes, re: Staff members, no date
22. Prior Notice of Special Education Action, 03/21/24
23. Progress Report, 04/01/24
24. Guardian Letter, 09/16/22
25. Tienet Log for [Student], no date
26. Letter from Dallas School District, 10-day drop, 04/11/24
27. Prior Notice of Special Education Action, 04/11/24
28. Emails between Parties, 01/18/23-04/09/24

The Complaint Investigator interviewed the Parent on April 17, 2024. On April 13, 2024, the Complaint Investigator interviewed District personnel. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent 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 April 9, 2023, to the filing of this Complaint on April 8, 2024.

| Allegations | Conclusions |
|--|--|
| <p>When IEPs Must Be In Effect</p> <p>The Complaint alleged that the District violated the IDEA by not providing the student with special education services, assistive technology, and classroom accommodations.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p> | <p>Not Substantiated.</p> <p>The District provided the Student with access to assistive technology and accommodations. Although the District failed to provide the Student with one hour of speech services, the failure to implement all of the Student’s speech services were not material and, as such, was not a violation of the IDEA.</p> |
| <p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleged that the District failed to provide the Student with a FAPE when it failed to implement the Student’s IEP.</p> | <p>Not Substantiated.</p> <p>Although the District failed to provide the Student with one hour of speech services, this did</p> |

(OAR 581-015-2040; 34 CFR §300.101)

not constitute a denial of a FAPE.

REQUESTED CORRECTIVE ACTION

1. "Order the [D]istrict to provide the services needed to make up for what my child has missed and what will be needed to put my child in the same place they would have been in if the services had been provided."
2. "Provide training to the general education teachers regarding how to implement accommodations in the classroom. Order the [D]istrict to review any grades that may have been impacted by its past actions and provide my child with the opportunity to retake/re-do relevant tests/requirements with the required accommodations within one year."
3. "Provide training to the general education teacher regarding how to implement assistive technology in the classroom to support IEP accommodations."

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before April 9, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student's disability and special education history.

1. The Student is sixteen years old, in the 10th grade, and attends a high school in the District.
2. The Student is eligible for Special Education as a child with Autism Spectrum Disorder (ASD).
3. The Student's strengths are memory, attention to detail, imagination, divergent thinking, and pattern recognition (both mathematical and student behavior). Additionally, the Student's stamina has increased over time.
4. The 2022-23 Report Card for the Student indicated the Student was absent 13 days and present for 147 days. The Student's grades for the second semester were:
 - a. Advisory 9 – P;
 - b. Applied Mathematics – C;
 - c. Digital Media – C;
 - d. Examination of Political Activism – C;
 - e. General Science – C; and
 - f. Independent Study – P.
5. On April 3, 2023, a Special Education Notice of Team Meeting indicated the purpose of the meeting was to review existing information about the Student and to develop or review the IEP and placement for the Student.
6. On April 4, 2023, the Student's IEP was amended.
 - a. Meeting Notes indicated a Functional Behavioral Assessment (FBA) was conducted to understand the triggers and purposes of the Student's challenging behaviors. Strengths identified included pattern recognition, stamina, and enjoyment of following directions

- when working on preferred kits. The Student's interest in Pokémon, reading, and researching games online was noted. Present levels of functioning were addressed, and the team discussed a history of self-harming behaviors (head-hitting, biting) that often occurred due to frustration. Deep pressure and hugs were identified as effective calming techniques. General education teachers recommended strategic peer partnerships and allowing ample response time. In contrast, special education staff highlighted frustration from a canceled Valentine's Day event and noted lagging expressive language skills.
- b. The Grandparent asked about the accommodations and the function of it being listed on the IEP and the BSP. The Special Education Teacher explained the accommodations. The Parent asked to have a heads up when there would be a substitute working with the Student.
7. The FBA, dated April 3, 2023, indicated;
 - a. The Student received a behavioral referral on January 26, 2023, and had a one-day suspension. According to observation data, "due to a snow day on Valentine's Day, [the Student] came in above baseline and said [they were] having a tough morning." The Student had difficulty "expressing concerns, needs, thoughts in words."
 8. The Behavior Support Plan, dated April 4, 2023, indicated the needs of the Student:
 - a. "Communicate transition warnings and change in plan/schedule";
 - b. "Use of visuals (e.g., break cards, health meter, first then schedule, etc.)";
 - c. "Break tasks into smaller chunks";
 - d. "Provide scribe for written tasks";
 - e. "Alternative forms of completing written tasks";
 - f. "Scheduled breaks and breaks as needed";
 - g. "Identify clear expectations of task";
 - h. "Examples of completed projects";
 - i. "Reduce amount of work to show mastery";
 - j. "Access to noise cancelling headphones";
 - k. "Access to quiet workspace";
 - l. "Clear classroom rules and expectations";
 - m. "Offer alternative or preferred activity when [they seem] fixated on a desirable object [sic], tasks, or person that is not available";
 - n. "Processing time";
 - o. "Rephrasing of questions/instruction";
 - p. "Access to fidgets";
 - q. "Announce a plan as to how and when a situation may be resolved ('This will be solved within 10 minutes') to provide reassurance";
 - r. "Communicate expectations in a manner consistent with expectations at home (Reminding [them] to use 'safe body and safe words')"; and
 - s. "Review 'Size of the Problem' resources with [the Student]."
 9. On April 4, 2023, the Prior Notice of Special Education Action indicated, "There was an IEP revision meeting held by Zoom on 4/4/23. The IEP team met to review the Functional Behavior Assessment and Behavior Support Plan. ... The IEP was revised as follows:
 - a. "Special Factors – checked yes for behavior";
 - b. "Present Levels – FBA/BSP information was added"; and
 - c. "Services – accommodations were updated to include FBA/BSP."
 10. According to a Speech Language Therapy Log dated April 13, 2023 through June 8, 2023, the Student attended social interaction therapy. The Student could ask reciprocal questions while engaging in activities with 5 out of 10 opportunities. When the Student was presented

with sentence starters, the Student could express themselves appropriately with 60% accuracy.

11. The 2022-23 Daily Log Comments from the Parent and Grandparent indicated:
 - a. "The tone and tenor of these notes is positive and productive with use of a token chart and positive notes";
 - b. "Reference to special preparation for transitions/changes";
 - c. "Many breaks and regular check-ins with health meter noted";
 - d. "Often provides alternatives and re-direction"; and
 - e. "Changes work space [*sic*] locations."

The Parent and Grandparent asked, "What assistive technology has been used with [the Student] over the last year besides [their] Chromebook? Wouldn't it be helpful to identify workable speech to text tools so that dependence on a scribe wouldn't be necessary in time?"

12. On April 26, 2023, the Humanities Teacher emailed the Grandparent, "When it's NOT time to listen to music [the Student] likes to ask (pretty loudly) for me to play music – often at times that is not appropriate. We have come up with a plan for how [they] should ask for music in class and would love to have that prompted at home. I think it would really help. The plan is in the folder. Let me know what you think or how we can change it/enhance it."
13. On May 4, 2023, the Yoga Teacher/SEL Facilitator emailed Instructional Assistant 1 and Instructional Assistant 2, "I would like to have [Instructional Assistant 2] shadow you to get trained working with [the Student] as [the School's] IA [Instructional Assistant] for times when we need to help cover. [Instructional Assistant 2] will then be with [the Student] from noon until 1:30 at which point I will cover from 1:30-2:00."
14. On May 5, 2023, the Yoga Teacher/SEL Facilitator emailed Instructional Assistant 1, "You will be [the School] IA working with [the Student] on this coming Monday, 5/8, 8:30-noon. [Instructional Assistant 2] will join you to get familiar with [the Student] and how best to assist [them]. [They] will then finish off the day when you depart at noon. There is a red folder that lives in my mailbox in the work room that [Instructional Assistant 4] has put together with materials and helpful information."
15. On May 17, 2023, the Special Education Teacher emailed the Grandparent, "Thanks! Just a reminder that [the Humanities Teacher] will be out tomorrow and Friday. I will also be out tomorrow. ... It's the big push towards getting ready for Exhibition, which means less structure... [*sic*] I anticipate [the Student] needing some extra support these next couple of days."
16. On May 19, 2023, the School Counselor emailed the Grandparent, "I am working with [the Student] today. We are currently at lunch. [The Student] has had a good day working with students this morning on a podcast and taking breaks as needed. I am sending an email, as I won't be at my desk to call. I wanted to share that [the Student] was getting excited during some IXL game time during period 3 and took [their] Chrome book [*sic*] and tapped it on the top of [their] head. [They] put it right down on the desk and we took a break downstairs. [The Student] was ready to go back quickly and was calm through the transition downstairs and in return."
17. On May 23, 2023, the Special Education Records Manager sent an email to the Special Education Teacher, "If we schedule [the Student's] Eligibility [*sic*] meeting before the end of the school year, are we also planning to update [their] annual IEP? That will be a much

more involved meeting I would think. Just for reference. [Their] IEP is due on 10/27, and [their] 60 day timeline is due on 10/26.”

29. On May 31, 2023, the Grandparent emailed the Special Education Teacher, “The last two years have ended on a rough note with [the Student] - certainly, less structure can lead to this.....[sic]. Can there be a proactive plan for the last day of school? [The Student] was very wound up today, and I think the year ending is part of it. (I’ll forward [the Humanities Teacher’s] email and my response, as I’m not sure if you were in the address window.) [They] could still be accountable and present for things like clean up, but I was thinking a visual schedule for the day including breaks to your office for a game or IXL might be helpful to move the day along.”
30. On June 7, 2023, the Humanities Teacher emailed the Parent and the Grandparent that Instructional Assistant 4 would change positions, and the Instructional Assistant 4 wanted to share the change with the Student.
31. Student Logs/Notes dated from April 10, 2023 through June 9, 2023, demonstrated that a log was completed for the last day of school on June 9, 2023. The Student Logs/Notes indicated that some accommodations were implemented each day, such as IXL games breaks, working in an alternate location, working in a quieter setting, being allowed to make “big body movements,” going outside for movement breaks, used the Token Chart, and voicing when they thought they needed a break.
32. On September 7, 2023, the Special Education Teacher emailed the Grandparent, “I did want to let you know that yesterday when working on a small group activity, [the Student] let [the Humanities Teacher] know that [they] didn’t want to work with another student in [their] group. [The Humanities Teacher] discussed why.”
33. On September 13, 2023, the Grandparent emailed the Special Education Teacher, “Today, [the Student] came out the side door. I asked [them] where the [Instructional Assistant 2] was and [they] said [they] didn’t know. [The Student] wanted to leave on [their] own. I was on the run, so I called to let the [Instructional Assistant 2] know that I had [them] and that [they] were safe. I wonder, were [they] looking for [the Student]? I love that [they] want to be independent! However, [their] propensity to be distracted, confused and generally taken advantage of means that we need a plan.”

The Special Education Teacher replied to the Grandparent, “I’m sorry about the confusion. I was in a meeting yesterday afternoon, but I saw your email and we got your message. We have a staff meeting this afternoon and I will make sure we come up with a plan so this doesn’t happen in the future!”

34. On September 15, 2023, the Autism Specialist emailed the Special Education Teacher, “[Could] you check to see if the gen[eral] ed[ucation] teachers are done with eligibility forms for [the Student]? When do you want to sit down and go over the form? What is [the Student’s] schedule? I want to go do observations. Have you received any paperwork from family?”
35. On September 18, 2023, the Special Education Records Manager emailed the Grandparent, “It is time to schedule [the Student’s] Eligibility and IEP meeting. Would you be available for an [Z]oom meeting on Thursday, 10/19 at 3 pm? [sic].”
36. On September 20, 2023, the Executive Director emailed the Special Education Teacher and the Humanities Teacher, “I just wanted to check in and let you know that while the [Instructional Assistant 2] was gone at a medical training, [the Student] was found outside of

[the English Teacher's] room yesterday. [The Student] asked to go find a snack and was found in the curriculum library by [the Humanities Teacher]. [The Student] was agitated and hungry, so [the Humanities Teacher] took [them] back to [their] room to do [their] work. [The English Teacher] was aware that [the Student] had gone to find a snack. Is it possible to send [them] with an afternoon snack? ... I will continue to work with staff to ensure [the Student's] goals and needs are being met."

37. On September 20, 2023, the Grandparent emailed the Special Education Teacher, "The IEP is a month away, and I need help connecting the random dots I've gleaned from [the Student] before then. ... pick up is going well, but I think I should know 'the plan.'" The Grandparent wanted more information about the afternoon pick-up protocol. The Student shared that no one helped them in English or guidance regarding English assignments, and the Grandparent wanted to know more about the Student's day.
38. The Humanities Teacher emailed the Grandparent on September 21, 2023, "As we were leaving the classroom and walking out [*sic*] we headed downstairs and [the Student] turned left toward the playground exit instead of right toward the lobby. I told the other students to wait up front in the lobby and followed [the Student]. [The Student] wasn't redirected ([they] are a steady mover when [they] are in motion) until after we were already outside and I told [them] that [they] needed to stay with me and not get ahead of me for the rest of the class. [The Student] said[,] 'I was lost ...', but [they] were not at all. I tried to help [them] to see that [they] made a wrong turn and that I was right there with [them] ... but [they] were never lost. ... I wanted you to be aware in case [they] talk about being lost at some point today."
39. On September 25, 2023, the Special Education Teacher emailed the Grandparent, "You are correct. [Instructional Assistant 2] is supporting other students during fifth period. We were working on the hiring and training process of a new staff member that is now in [the Student's] 5th period class. This is the new coworker [the Student] is talking about. Our end of the day plan is that this IA connects [the Student] to the staff on gate duty at the end of the day and they make sure [the Student] gets out safely for pick-up." The Special Education Teacher indicated that the Instructional Assistant 2 was with the Student in English and the Social Studies Teacher's class.
40. A Special Education Notice of Team Meeting dated September 28, 2023, indicated a meeting was proposed to review existing information and whether the Student "Continues to be eligible for special education." The notice also indicated that an IEP will be developed, and placement for the Student will be determined. Additionally, transition services and the review of the anticipated date of graduation will be discussed.
41. On October 2, 2023, the Grandparent emailed the Special Education Teacher, "I've attached [the Student's] OT evaluation from last June. It says that [the Student] goes 2xs / week, but [they] actually go once a week."
49. On October 20, 2023, the Special Education Teacher emailed the Speech Language Pathologist, "Yes. I do case manage the [School] as well. ... [The Student] will need one on one, [they] have Autism and will need in person support during [their] sessions, which we will need to create a plan for."
50. According to an Occupational Therapy Observation dated October 23, 2023, the Student "continued to engage in vestibular movement. ... At one point, [the Student's] teacher asked [them] to sit down. [They] did so and continued [their] movements while seated, rotating [their] head/body, rocking forward/backward in [their] chair, or arching/pushing against the back of [their] chair. Throughout the video, [the Student] sought out sensory input by

moving/stretching [their] body, touching or picking at [their] skin under [their] shirt, or vocalizing quietly. Though [the Student] was in constant motion, [they] were attending to the video.”

51. On October 24, 2023, the Speech Language Pathologist emailed the Special Education Teacher, “I was going through goals and see that the goals are primarily being measured in the classroom/classroom data and wasn’t 100% on what goal I should target. I wanted to get your input on adding a specific goal to be measured by SLP data.”
52. In an email sent from the Speech Language Pathologist to the Special Education Teacher on October 24, 2023, the Speech Language Pathologist proposed the following goal, “By the end of the IEP with minimal adult cuing, when given scenarios of social conflicts, [the Student] will demonstrate problem[-]solving skills by identifying the problem and generating possible solutions and supports to the situation in 4/5 opportunities as measured by data collection.”
53. According to an Autism Spectrum Disorder Re-Evaluation Report dated October 24, 2023, “The Social Language Development Test-Adolescent (SLDT-A-NU) was attempted with [the Student]. However, [the Student] was not able to participate and understand the questions/situations that were asked.” The Student was given the Childhood Autism Rating Scale-High Functioning (CARS-HF) and received a “T-score of 44.5. This places [the Student] in the area of severe symptoms of autism spectrum disorder.”
54. According to an Autism Spectrum Disorder Re-Evaluation Report dated October 24, 2023, the Summary/Educational Impact indicated, “Based upon [the Student’s] overall profile of development, [the Student] presented with many behavioral characteristics often associated with, but not necessarily exclusive to an Autism Spectrum Disorder. For example, [the Student] struggles with social communication and expressing [themselves]. These characteristics can impact [their] ability to interact with [their] peers and be a team player for group work.”
55. On October 25, 2023, a Statement of Eligibility For Special Education Autism Spectrum Disorder indicated the team reviewed existing information, including information from the Parent. The Autism Consultant conducted three observations of the Student’s behavior. The Student was given a functional communication assessment, the SLDT-NU, and ized autism identification tool. The Student exhibited deficits in the following areas:
 - a. Social-emotional reciprocity;
 - b. Nonverbal communicative behaviors used for social interaction;
 - c. Developing, maintaining, and understanding;
 - d. Stereotyped or repetitive motor movements, use of objects, or speech;
 - e. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior;
 - f. Highly restricted, fixated interests that are abnormal in intensity or focus; and
 - g. Hyper-or-hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment.
56. A Prior Notice of Special Education Action dated October 25, 2023, indicated there was an eligibility and IEP meeting for the Student. The Student’s IEP team reviewed the criteria for Autism Spectrum Disorder. The Student was found eligible for special education in the category of Autism Spectrum Disorder. The Student will continue to receive Special Education services. Services will include specially designed instruction in writing, transition, communication, and social skills. Placement was determined as 80% or more in general education for the LRE. The District’s proposal was to change the provision of a free appropriate public education (includes IEP) for the Student. The present levels have changed for the Student and “a new IEP was developed to reflect [their] new present levels.”

57. An Annual Academic and Functional Goals and Objectives Progress Report, dated October 25, 2023, indicated the Student was “progressing” in social communication skills, social skills including non-verbal communication, problem-solving, and transition skills.
58. On October 25, 2023, an IEP meeting took place with all required team members, including the Parent and Grandparent in attendance. The IEP Team considered that the Student does exhibit behavior that impedes their learning or the learning of others, does have communication needs, and does need assistive technology devices and services.
59. According to an IEP dated October 25, 2023, the Student’s present levels of academic achievement indicated strengths in “memory, observation, attention to detail, divergent thinking, and sense of fun. [The Student] is demonstrating social communication and interaction skills which are increasing greatly and fluidity during social group time, and other school settings.” The Student was reading at grade level.

The Specially Designed Instruction to start on October 26, 2023 and end October 23, 2024 included:

- a. Social Skills - 90 minutes per month in all school sites;
- b. Social Communication - 60 minutes per month in all school sites, including virtual therapy;
- c. Written Language - 90 minutes per month in all school sites; and
- d. Transition - 60 minutes per month in all school sites.

All accommodations started on October 26, 2023, and ended on October 23, 2024. The anticipated location was at all school sites, and the general education teacher was responsible for all accommodations.

Accommodations included:

- a. “Visuals”;
- b. “Breaks”;
- c. “Extra time”;
- d. “Tests read aloud”;
- e. “Text to speech”;
- f. “Small group setting”;
- g. “Notes or notes outline”;
- h. “Use physical prompting when giving/reading directions”;
- i. “Written directions”;
- j. “Simplified directions”;
- k. “Sensory tools”;
- l. “Noise[-]canceling headphones”;
- m. “Whiteboard or paper to ‘car park’ questions”;
- n. “Print online materials without distracting ads/pictures”;
- o. “Concrete verbal praise and reward for completion of expectations”;
- p. “Testing accommodations with adult support”;
- q. “Flexible seating”;
- r. “Sensory movement tools”;
- s. “Flexible schedule”;
- t. “Reduced work to show mastery”; and
- u. “Behavior Support Plan.”

60. According to an IEP dated October 25, 2023, in the area of writing, the Student “has strong ideas and has appropriate sentence structure. [The Student] is able to convey [their] thoughts on a topic. [The Student] is able to fill in the blank notes, complete a paragraph on tone and

mood, with adult support, [the Student] was able to write 7 sentences, and [the Student] was currently working on a claim. [The Student] is working on putting information in [their] own words and pulling information from articles.” A writing sample was scored with the “grades 3-5 ODE writing rubric” indicated the Student scored:

- a. “Ideas-4”;
- b. “Organization-3”;
- c. “Word Choice-3.5”;
- d. “Sentence Fluency-3”; and
- e. “Conventions-4”.

61. According to an IEP dated October 25, 2023, the proposed goal for the Student in writing is, “Given specially designed instruction, [the Student] will increase [their] writing skills by completing the following objectives in 4 out of 5 trials by 10/23/24.”

- a. “Objective 1: [The Student] will increase [their] note-taking skills by independently completing fill in the blank notes in 4 out of 5 trials.”
- b. “Objective 2: [The Student] will write three paragraph compositions on a preferred topic that have an introductory paragraph, supporting paragraph with simple facts, details or explanations, and a concluding paragraph that summarizes the points that would receive scores of meets or nearly meets when scored with the State Adopted Writing Rubric.”

62. According to an IEP dated October 25, 2023, in math, the Student is completing grade-level math work. The Student completed “an IXL assessment and received a score of 460-590. A score of 600 represents the average sixth[-]grade math abilities.”

63. According to an IEP dated October 25, 2023, Parent input indicated, “[The Student] has made lots of progress in math understanding. Is the FBA working? Modified/standard diploma and peer engagement.”

64. According to Student Notes, at the October 25, 2023, re-eligibility and IEP meeting, the Grandparent’s documented concerns were “expressed concerns regarding [the Student’s] difficulty transferring information into [their] own words. Expressed that [the Student] needs things narrowed down for where the answer is. Fill in the blank notes are difficult for [the Student]. Grandparent suggested using sentence frames for non-preferred topics. [The Grandparent] provided wording used at home for breaks when [the Student] becomes frustrated: ‘I need you to take a break for a few minutes’ or ‘When this gets to zero it’s time for you to take a break.’”

65. According to Speech Logs with a date range of October 25, 2023, through February 6, 2024, the Student received three 30-minute sessions of speech therapy, one session the SLP was unavailable, two sessions were missed because of school closures, and the Student was absent five times. There was no indication in the logs whether the one session missed due to the unavailability of the SLP was made up.

66. On November 1, 2023, the Student’s Progress Report indicated the Student was absent for one day. The Student received the following grades:

- a. Geometry – C – 78%;
- b. World History – D – 63%;
- c. Biology – B – 84%;
- d. English II – C – 78%;
- e. Digital Media Art – A – 100%; and
- f. Advisory 10 – P – 100%.

67. On November 27, 2023, the Special Education Teacher emailed the Grandparent a consent

for evaluation for the Occupational Therapist to “complete the sensory profile assessment we discussed at the Student’s IEP meeting.”

68. The 2023-24 Daily Logs indicated the Parent and Grandparent requested evidence that “supported accommodations before November 27, 2023....The record begins with an SLP entry. Is this when speech started? The record reflects mostly verbal input being directed at [the Student] and even doing work for [them], e.g., writing complete sentences for [them]. Any ‘ughs’ noted in the record speak to this. Do those helping [the Student] view [them] as not capable, or is it easier for them to just do it? This strategy creates learned dependence. It was not used in 9th grade.”
69. Educational Assistant (EA) Daily Logs dated from November 27, 2023 through March 4, 2024, indicated the following accommodations being used with the Student:
- a. When the Student was writing a script, the EA did the typing;
 - b. The EA turned the Student’s answers into complete sentences;
 - c. The EA changed the page format;
 - d. When the Student asked for help, the EA copied information between pages;
 - e. The EA helped the Student with text manipulation;
 - f. The EA helped to organize files into a folder;
 - g. The EA would type for the Student when needed;
 - h. The EA would sometimes do all the writing for the Student’s practice assignments;
 - i. The EA repeated directions;
 - j. The EA would do the scribing for notebook work;
 - k. The EA would give breaks to the Student, outside, 20-minute break using IXL, 10 minutes for computer games, and 30 minutes in the library; and
 - l. The EA created a draft visual schedule for the Student.
70. On November 30, 2023, the Special Education Teacher emailed the Special Education Records Manager, “The PWN is complete.” The Prior Written Notice (PWN) stated the Student “will take State Assessments, but the State Assessment says no. [The Student] will not take them until after [their] next IEP meeting.”
71. A behavioral referral dated December 6, 2023, indicated that the Student disrupted the educational environment, exhibited disorderly conduct, and used profanity in the classroom. “[The Student] became upset (without escalation) and threw [their] water bottle across the room. The bottle impacted with the wall (very close to another student’s head) leaving an indentation in the wall.” This was recorded as a “Level 3 Behavior Referral” On the District’s Behavior Matrix, infractions are rated on a scale from 1 (least severe) to 3 (most severe).
72. A Student Transcript dated December 11, 2023, indicated the “Diploma Type: Standard.” T3 indicated the Student received the following grades:
- a. Applied Mathematics – C;
 - b. Digital Media – C;
 - c. General Science – C;
 - d. Examination of Political Activism – C; and
 - e. Advisory 9 – P.
73. On December 12, 2023, the Grandparent emailed the Humanities Teacher about the Student’s project, “Ditto-busy for sure and a sign of growth!”
74. On December 14, 2023, the Grandparent emailed the Special Education Teacher, “I also wanted to write a private email to you to request that [the Instructional Assistant 3] be given a copy of [the Student’s] accommodations. I’m still not convinced that [the Student] is getting

information visually, specifically a visual schedule.” The Grandparent expressed concern over Instructional Assistant 3’s use of their phone when the Student greeted them. The Grandparent suggested coaching to help Instructional Assistant 3 in their new role.

75. On December 14, 2023, the Grandparent emailed the Special Education Teacher, “Is this Communication Log working? I sent a message on the 27th about the 8th being the last day for [the Student] to prep for Exhibition, but two teachers didn’t know and one acknowledged no time to check emails ... Could [the Student] have been better prepared for Exhibition? Is there a better way to communicate?”
76. According to a “District Emails by Month - Comments and Questions” document dated December 14, 2023:
 - a. “Multiple emails - First explicit concerns expressed.”
 - b. “First behavior outburst, throwing [their] water bottle.”
 - c. “Asked about communication log working, grades and need for consistent accommodations.”
77. On December 17, 2023, the Grandparent emailed the Special Education Teacher and the Humanities Teacher, “I noted [the Student’s] grades that [the Social Studies Teacher] scored [the Student’s] weighted Exhibition so low that it looks like [they] had 2 D’s – not passing – in two classes. In one class, the Exhibition earned 152/300 points, and in the other, it earned 76/150 points. My concerns are these – Did the last two days being absent make [them] less prepared? ... Secondly, little things mean a lot. How did [they] earn 0/5 with an exit ticket in one class? Did [they] perform incorrectly, or did [they] leave without giving the ticket? Where was the assistant?”
78. On January 2, 2024, the Student’s Report Card indicated the following grades:
 - a. Advisory 10 – P;
 - b. Biology – C;
 - c. Digital Media Art – A;
 - d. English II – C;
 - e. Geometry – F; and
 - f. World History – D.
79. According to a Speech Therapy Log dated January 2, 2024, the Student could recall information with 90% accuracy when working on a problem-solving goal. In another speech session, the Student was able to participate in viewing images and “identifying feelings, what they may be thinking, and what clues they observed.”
80. A Behavioral Referral dated January 3, 2024, indicated the Student was “disrupting the educational environment” in the classroom. The Student “had an outburst after thinking that [they] did not get to see [their] car challenge. [The Student] then swiped [their] car (really [their] partner’s car) off the table and breaking [sic] the project.” The documented outcome was a warning to the Student.
81. On January 5, 2024, Instructional Assistant 3 emailed the Special Education Teacher, “Here is the schedule that we came up with for [the Student] this term. I was told to send it to you so that you could make a visual schedule for [the Student].”
82. On January 11, 2024, the Humanities Teacher emailed the Grandparent, “One issue I am seeing is when the communication log is updated, it does not automatically notify us. ... Regarding your questions regarding [their] accommodations and grades, I have spoken to the staff and they are all aware of the accommodations and are implementing them. [The Social

Studies Teacher] is mentored by myself and the Executive Director, so we have reviewed [their] lessons and ensured that the accommodations were implemented. For Exhibition, [the Math Teacher] and [the Social Studies Teacher] assessed the projects together.”

83. On January 11, 2024, the Special Education Records Manager emailed the Occupational Therapist, “I have scheduled a Parent meeting for [the Student] on 1/23. Do you think [their] Sensory Profile will be complete by then? If not, we have a tentative date set for March 6, but I was hoping to save the team some time.”
84. On January 11, 2024, the Grandparent emailed the Special Education Teacher, “I did send you emails to you [sic] on Dec. 17 and Jan. 3 – both after the initial concerns expressed on Dec. 14. A parent meeting is a good idea. [The Student] is falling through the cracks, as demonstrated by [their] grades and [their] performance at Exhibition. My contention is that [they] have had inconsistent support for [their] accommodations after the first [School] assistant found another position. I think it’s important that [their] teachers know [the Student’s] accommodations as well as any assistant in any case and implement them.”
85. On January 11, 2024, the Grandparent emailed the Humanities Teacher, “I would like to review the process for the [E]xhibition. Before Thanksgiving break, I received an email from [the Math/Science Teacher] to [the Student] with a list of to-do’s. This was curious to me, because there was (and continues to be) nothing in [their] backpack for me to begin to help [them] with. Of course, I checked [their] documents in ‘classroom’ ... [the Student’s] outcomes were not satisfactory, so how was [the Student] supported?”
86. On January 19, 2024, the Special Education Teacher emailed the Autism Consultant, “I’m working on a visual schedule for [the Student]. I was wondering if you guys had templates or a good way to format one? What I’m trying isn’t working. Also, do you guys have like a bank of visuals that I could use to put in it?”
99. Meeting Notes from a January 23, 2023 “parent meeting” indicated a concern that the Student’s work around Exhibition Night had lowered expectations. Concerns regarding inconsistent support were brought up. General Education Teachers shared that the Student wasn’t graded on their presentation, only evaluated when in the classroom and when the Student had extra supports. The Grandparent and Parent felt the accommodations were not being used with the Student. The Special Education Teacher had to leave, so a substitute teacher provided SDI. The Grandparent and Parent felt the visuals were not being used, which was an accommodation.
100. Staff meeting notes for February 5, 2024, indicated the Student was discussed regarding behaviors and supports.
101. On February 8, 2024, the Special Education Teacher emailed the Grandparent, “We will make sure [sic] add in extra sensory support breaks where needed.”
102. According to Daily Logs dated February 14, 2024, “No more computers out on desk unless being used for assignments. Computer needs to be put into backpack unless needed for use in the classroom. Cannot have free reign on using computer-needs to be on task.” The Parent and Grandparent asked, “All students and supported w/ accommodations[?]”
103. A Behavioral Referral dated February 16, 2024, indicated the Student received a Level 1 Behavioral Referral because the Student:
 - a. Disrupted the educational environment;
 - b. Defied authority and was insubordinate; and

c. Demonstrated disorderly conduct and used profanity.

104. A behavioral referral dated February 21, 2024, indicated that the Student had received a referral for disrupting the educational environment in the classroom. “[The Student] (and the class) was asked to begin silent reading of the novel they are reading in ELA class. [The Student], in protest, threw [their] pop-it (Fidget) across the room.” This was recorded as a Level 1 behavioral incident.
105. On February 22, 2024, a Special Education Notice of Team Meeting indicated the purpose of the meeting was to review existing information about the Student, and “develop an IEP, consider transition needs, and review anticipated date of graduation for the Student.”
106. On February 26, 2024, the Humanities Teacher emailed the Grandparent, “There was one other incident that took place and I had sent an email out on Friday. It was not punching ... [The Student] was elevated today and started to stomp so I walked [them] out to the playground....We took [them] out to let [them] stomp on the ‘cushy’ playground materials outside....[The Student] came up to me and stomped on my foot....[They] were not trying to hurt me at all.”
107. On February 26, 2024, the Parent emailed the Registrar, “[The Grandparent] and I would like to request an IEP meeting immediately. [The Grandparent] met with you before Christmas and again at the end of January. We know [the Student’s] IEP is not being implemented in multiple areas and hasn’t been for months now which is a violation of the IEP contract. There is clear evidence of such given the lack of daily notes for [their] ideas, either typed or scribed. ... there is no evidence of [their] outputs or anyone supporting [them] as in the past. There is nothing that shows [their] work is being structured or assisted as put forth in the IEP.”
108. On February 27, 2024, the Parent wrote a letter to the Staff, “I wrote the above yesterday, before [the Grandparent] came to school today to observe [the Student] in hopes to give some direction to whomever may be working along side [sic] [them] to provide the services outlined in the IEP. I am beyond heartbroken. I learned from [the Grandparent] that in multiple classes [the Student] is being sat ALONE with few supports – handouts or outlines – and being DENIED any means to not only socialize, but type ideas and answers and work on course work via a computer.”
109. On February 27, 2024, the Special Education Teacher emailed a copy of a visual schedule for the Student to the Math/Science Teacher.
110. On February 29, 2024, the Occupational Therapist emailed the Grandparent, “Upon reading your email, I understand that [the Student] is not attending school until an IEP meeting is held. Because of this, I’m not able to follow through with completing the questionnaire with [the Student]. I reconfigured the testing through Q-Global in order to send you the following link to the computer version of the Adolescent/Adult Sensory Profile.”
111. On February 29, 2024 according to a Service Summary page, the Student would receive specially designed instruction for articulation 90 minutes monthly by the SLP.
112. An Occupational Therapy Assessment Report dated March 1, 2024, indicated, “[The Student] exhibits a number of sensory processing behaviors that are unique to [them] and different from many of [their] peers/acquaintances. These sensory differences may set [them] apart from [their] peers and may impact [their] ability for social engagement. They also impact [their] ability to independently perform various activities of daily living.”

113. On March 3, 2024, the Grandparent emailed the Special Education Teacher, "Upon our return home and learning about [the Student's] behaviors at school, I wondered, 'Why wasn't the Behavior Support Plan referenced? Does it need review? Modification? The assignment of a Level 2 consequence without other follow up didn't make sense. ... I agreed that an IEP meeting was needed for this purpose."
114. On March 13, 2024, the Registrar emailed the Humanities Teacher, "I've withdrawn [the Student] from our enrollment due to 10 days of consecutive absences."
115. On March 13, 2024, the School District sent a 10-day drop letter to the Parent. The letter stated the District had provided FAPE to the Student. Still, it could not provide "the agreed upon services and support as listed on [their] IEP due to this lack of attendance. ... You are entitled to, at any time, request that services be reinstated for your child. We stand Ready, Willing, and Able [*sic*] to offer a free, appropriate, public education with special education and related services to your child at that time."
116. On March 19, 2024, the Humanities Teacher emailed the Grandparent, "Thank you for reaching out regarding [the Student's] re-enrollment and inquiring about how this might affect the upcoming IEP meeting scheduled for Thursday at 2:30 PM. *To proceed with the IEP meeting, [the Student] does need to be re-enrolled....*at this time, we will restart the 10 days over with the receipt of your email (3/18) so [the Student] is enrolled and we will be able to proceed with the IEP without a hiccup on the 21st (*emphasis original*).
117. On March 19, 2024, a Special Education Notice of Team Meeting indicated the purpose of the meeting was to develop or review the IEP, consider the transition needs of the Student, and review the anticipated date of graduation.
118. On March 20, 2024, the Grandparent emailed the Special Education Records Manager, "[S]ince [the Student's] goals are about communication. It [*sic*] sound[s] like we may have to schedule another meeting to continue another time."
119. On March 21, 2024, the Updated Meeting Notes for the IEP Meeting indicated that the Student needed to be physically at school for a half day. The notes stated the Student needed support at school and the Parent planned to attend school with the Student until all concerns were resolved in writing, "either changes to the IEP or prior notices with explanations as to why actions are denied." It was suggested at the meeting that the Parent's volunteer clearance was, perhaps, "insufficient to allow [P]arent to accompany [the Student] to school. ... Otherwise, [the Student] will be accompanied to school by the [G]randparent."
120. According to a Statement of General Concern presented by the Parent and the Grandparent regarding the March 21, 2024, IEP meeting, "The overarching concern is that [the Student's] Free and Appropriate Public Education is not being provided because [their] IEP is not being implemented. Everything in the IEP is critical for [the Student's] success in school. Since last spring to Feb. 27, 2024, [the Student] has fallen behind. How does [the Student] get the right support in place to make progress given that our 'trust' in you to implement [their] IEP has been broken? [The Student] is even more behind given the [S]chool's failure to provide FAPE."
121. The Parent and Grandparent requested a DDS Caseworker be added to information and meetings about the Student. The DDS Caseworker was at the IEP meeting on March 21, 2024.
122. On March 21, 2024, a Prior Notice of Special Education Action indicated, "[The District] proposes moving forward with an IEP meeting, facilitated by the Oregon Department of

Education. Accompanying this Notice is the ODE Facilitated IEP Meeting Request paperwork. ... In the meantime, [the District] stands ready to implement [the Student's] most recent IEP, which is the 10/25/23 IEP." Other factors considered by the team were "[the Student] being dropped previously for not attending for at least ten consecutive days." At the IEP meeting, the family indicated their intent to keep [the Student] at home for the time being, but returning [them] to school once every ten days so that [the Student] will not be dropped from enrollment." The Grandparent will attend with the Student on the days the Student attends school.

123. On April 1, 2024, a Progress Report indicated the Student received an 'F' in Geometry and a 'P' in Advisory 10. No other grades were recorded.
124. On April 4, 2024, the Parent and the Grandparent sent a letter to the District that indicated, "This letter is to document the 'forced choice' presented by [the District]. It is our desire to keep [the Student] enrolled at school, as long as the IEP can be properly modified and/or actually followed (as far as last Spring 2023)...we did not trust to leave [the Student] alone at school without support, since the IEP contract has not been followed since Sept. 2023 with concerns expressed in meetings, (10-25-24 and 1-13-24)." The Parent and Grandparent offered to help the Student in class and work at school in an alternative space so as not to disrupt staff and students. "Alas, [the Student] was denied under these terms and we have been informed by the Director's letter ... the [S]chool will now drop [them] from enrollment. This means the [S]chool doesn't have to schedule another IEP meeting in order to work towards following the IEP previously set forth, or to provide a free, and free, appropriate and sefe [sic] education."
125. According to the Student's transcript, the Student had attempted 3.875 credits and earned 3.375 credits during the 2023-24 school year. The Student was absent 32.1 % of the time during the 2023-24 school year.
126. According to a "Misc. Notes/Questions Re: 24-054-020" document created by the Parent and Grandparent, "No complaints re: 9th grade year – docs in Ninth Grade file are examples of IEP and the ability to provide FAPE. The discrepancy between 9th and 10th grade work in the files demonstrates that [the Student] is being treated differently this year. Why? Is this a maintenance of effort issue? ... Do teachers understand that accommodations on an IEP are not just recommendations? ... Where is the evidence of specialized instruction to support [their] writing goal? What is the evidence that this is being done?"
127. On April 8, 2024, the Grandparent emailed the Special Education Teacher, "[The Parent] and I are not interested in a facilitated meeting. Please use emails for any further communications," in response to a phone message from the Special Education Teacher.
128. On April 8, 2024, the Parent and Grandparent filed this Complaint.
129. On April 9, 2024, the Grandparent emailed the Special Education Teacher, "Without consistent implementation of the required supports and accommodations outline[d] in [the Student's] IEP, [they] are prevented from accessing a Free and Appropriate Public Education. While it is important that [the Student's] enrollment at [the School] be preserved, we are hesitant to return [them] to classes without evidence that they are prepared to provide all the accommodations as required per [their] IEP. ... In the interim, we ask that you provide written reassurance that [the Student] will not be unenrolled at [the School] while we are working through this situation. Please respond via email."
130. On April 11, 2024, the Director of Special Education sent a 10-day drop letter to the Parent

and Grandparent, letting them know the Student had been absent for ten consecutive school days, and as of April 11, 2024, the Student would be dropped from the District roll.

131. On April 11, 2024, a PWN indicated a proposal to change the “provision of a free appropriate public education (includes IEP)” for the Student. The action was proposed because, “[The Student] is not attending school. The school is unable to provide services if the [S]tudent is not here. The team has agreed that [the Student] is eligible for services and requires them to benefit from [their] education. [The District] moved forward and scheduled an IEP revision for May 10, 2024, from 9:15 to 11:15 a.m. to address [P]arent concerns. [The District] stands ready to implement [the Student’s] most recent IEP, dated 10/25/23 IEP.”
132. During interviews with the Complaint Investigator, the Director of Special Education described the School the Student attended as a public charter school located within the District. During the Student’s middle school years, the Charter School was focused on homeschooling with enrichment classes offered on campus at the Charter School. Once entering high school, the Student attended all classes on-site. The Director of Special Education reported that abstract math concepts like Geometry were more challenging for the Student, and they struggled to express their work. The Director of Special Education shared accommodations the Student had access to, including “sensory breaks with lots of movement, provided lecture notes, and speech-to-text.”

In February 2024, the Parent was out of town, and the Student was staying with a caregiver. During this time, the Student was not using their Chromebook appropriately and would try to play video games instead of listening to the lessons. Due to this, a new rule was established that limited the Student’s access to the Chromebook for worktime only. The instructional assistant kept the Chromebook when the Student was to be listening to the teachers. Finally, the Director of Special Education provided a distinction between the homeschool program in middle school, the Student’s ninth-grade year, and the on-campus program during 10th grade. The Student’s 10th-grade school experience included more students on campus and less 1:1 support in comparison to a 1:1 home school program.

During interviews with the Complaint Investigator, the Special Education Teacher described the Student’s visual schedule. At first, the schedule listed each class, and this was not the correct format to support the Student. The visual schedule was adjusted in November or December of 2023 to include a breakdown of all the tasks that needed to be completed for each class. The communication log was digital last year, and the Team moved to a paper/pencil version to make notifications easier. The BIP was reviewed with the teaching staff at the beginning of the school year, and two other times throughout the school year. Teaching staff also had electronic access to the Student’s IEP. The Special Education Teacher recalled the Student having access to the Chromebook and speech-to-text through Google Classroom; the Student used this tool frequently. Additional accommodations that were provided to the Student included offering or directing to take breaks, verbal reminders, and choice menu boards.

133. During interviews with the Complaint Investigator, the Charter School Director described the accommodations provided to the Student, including visuals on the Student’s desk, use of a Chromebook, teachers and assistants working directly with the Student, notes being provided, scheduled breaks, speech-to-text, and a quiet space for quiet reading time. The Charter School Director noted that the Student did not always prefer speech-to-text, and a scribe was also provided. Information, including checklists and rubrics for the projects or exhibitions, were available to all parents through Google Classroom. The Charter School Director recalled the Parent also receiving this information directly on a couple of occasions. The classroom teachers all had access to hardcopies and electronic versions of the Student’s IEP, and the

IEP was reviewed at the beginning of the year with all of the Student's teachers. The Charter School Director described the differences in the Student's educational programming over time as the Student attended the home school program for three years. Last year and this year, the Student attended the School full-time on campus, and there were more students enrolled, as the class sizes grew as the School added a new grade level each year.

134. During interviews with the Complaint Investigator, the Parent shared that the previous school year, the Student did well, and communication and support from the Charter School were provided. The 2023-24 school year presented challenges, and the Parent believed the communication with the Charter School and the support provided to the Student were not sufficient to meet the student's needs. The Parent reported that the Student needed support during the transition between school breaks, especially in summer. The Student also required supervision for situational awareness and stranger danger support during school drop-off and pick-up. The Parent did not receive communication about classroom assignment expectations, and the Student fell behind. The classwork the Parent did see included no indication that the work had been simplified, that the Student had access to a computer, or that a scribe had been provided.

The Parent shared that they wanted the adult support that was to be provided to be flexible and based on when the Student needed the support. It was not their expectation that the adult sit with the Student all the time. The Parent thought the visual schedules that were provided were either too open-ended or too elementary and did not meet the Student's needs. The Parent also stated that the accommodations needed to be provided to the Student on the "horizontal plane and not the vertical plane."

IV. DISCUSSION

When IEP's Must Be In Effect

The Complainant alleged that the District violated the IDEA by not providing special education services, assistive technology, and classroom accommodations to the Student.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.³

A district violates the IDEA when it materially fails to implement an IEP. "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." As further explained by the court in *Van Duyn*:

"The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For

³ OAR 581-015-2220(1)(2b)(3)

instance, if the child is not provided the reading instruction called for and there is a shortfall in the child's reading achievement, that would certainly tend to that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material."⁴

The key issues revolved around whether the Student received special education services, assistive technology, and classroom accommodations according to the IEP. The Student qualified for special education under Autism Spectrum Disorder. On April 4, 2023, an IEP revision meeting was held via Zoom. The purpose of this meeting was to review the Functional Behavior Assessment (FBA) and Behavior Support Plan (BSP). Following this review, the IEP team revised the IEP in several key areas. The team indicated "yes" for behavior under Special Factors, added FBA/BSP information to the Present Levels section, and updated accommodations within the Services section.

An Annual Academic and Functional Goals and Objectives Progress Report from October 25, 2023, noted that the Student was making progress in various areas, including social communication skills, social skills (including nonverbal communication), problem-solving skills, and transition skills. Speech logs from October 25, 2023 to February 6, 2024, indicated that the Student received 90 minutes of speech services, and the Student should have received 150 minutes of services during this timeframe. The quantity of services provided is not necessarily a violation when examining whether a failure to implement a student's IEP is material. A student's progress is another factor that can be considered. In this case, however, the Student stopped attending the School toward the end of February 2024, and the Student was officially withdrawn from the School on March 14, 2024.

The Parent and Grandparent expressed no concerns regarding the Student's 9th-grade year, citing documents in the Ninth Grade File as evidence of the School's ability to provide a FAPE. However, they noted a discrepancy between the Student's 9th and 10th-grade work, suggesting a change in the Student's treatment. They questioned the reasons behind this change and whether it constituted a maintenance of effort issue. Additionally, they inquired about the general education teachers' understanding of IEP accommodations and requested evidence of specialized instruction to support the Student's writing goal.

The Parent and the Grandparent requested documentation supporting the need for accommodations implemented before November 27, 2023. Based on the earliest entry from an SLP, the Grandparent raised questions about when speech therapy began. According to the Daily Log, the Grandparent noted a pattern of instructors primarily providing verbal instruction and completing tasks for the student, including writing sentences for the Student by the IAs. The Grandparent questioned whether this approach fostered dependence, contrasting it with strategies used in 9th grade. The concern was raised by the Grandparent that those assisting the Student may have underestimated their capabilities or opted for convenience over fostering independence.

Meeting Notes from the January 23, 2023 Parent Meeting indicated the Grandparent had a concern that the Student's work around Exhibition Night had lowered expectations. Concerns regarding inconsistent support were also raised by the Grandparent. General education teachers shared that the student wasn't graded on their presentation and was only evaluated when in the classroom and when receiving extra supports. The Grandparent and Parent expressed that the accommodations were not being utilized with the Student. The Special

⁴ *Van Duyn v. Baker Sch. District*, 5J, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")

Education Teacher had to leave, resulting in a substitute teacher for SDI. The Grandparent and Parent felt that the visuals, a listed accommodation, were not being used.

On April 4, 2023, the Student's IEP was amended. The Grandparent asked about the accommodations and the function of it being listed on the IEP and the BSP. The Special Education Teacher explained the accommodations. The Parent asked to be notified in advance when there would be a substitute working with the Student. A review of Student Logs/Notes from April 10, 2023 to June 9, 2023, confirmed a log entry for the last day of school. The logs indicated various daily accommodations were implemented, including breaks for IXL games, working in alternate or quieter settings, opportunities for "big body movements," outdoor movement breaks, use of a token chart, and the Student's self-advocacy in requesting breaks when needed.

In December 2023, the Grandparent communicated with the Special Education Teacher the concerns the family had about the Student receiving a visual schedule and the training the staff supporting the Student had received. On January 11, 2024, the Humanities Teacher emailed the Grandparent to address concerns regarding communication and accommodation implementation. The Humanities Teacher acknowledged an issue with communication log updates not automatically notifying staff. They assured the Grandparent that all staff were aware of the Student's accommodations and implementing them, citing collaboration with the Social Studies Teacher on lesson reviews and joint assessment of Exhibition projects with the Math Teacher. The Grandparent agreed to a Parent Meeting and expressed concern that the Student was falling through the cracks due to inconsistent support for their accommodations following the departure of the first Instructional Assistant. They emphasized the importance of all teachers and assistants being aware of and implementing the Student's accommodations. Daily Logs dated February 14, 2024, indicated a new policy restricting computer use to assigned tasks, requiring students to store computers in backpacks when not in use. The Parent and Grandparent questioned whether this policy applied to all students, including those with accommodations.

During interviews with the Complaint Investigator, the Charter School Director described the accommodations provided to the Student. These included visuals on the Student's desk, use of a Chromebook, direct support from teachers and assistants, provision of notes, scheduled breaks, speech-to-text, and a quiet space for reading. It was noted that the Student did not always prefer speech-to-text and was also provided a scribe. Information such as checklists and rubrics were available to all parents through Google Classroom, and the Charter School Director recalled the Parent also receiving this information directly. All classroom teachers had access to the Student's IEP, which was reviewed at the beginning of the year. The Director explained the changes in the Student's educational programming over time, noting the Student's attendance in the home school program for three years and then full-time attendance at the School with increased class sizes due to an increase in the student body.

During interviews with the Complaint Investigator, the Director of Special Education revealed that the Student attended a public charter school within the District. Throughout the Student's middle school years, the Charter School primarily focused on homeschooling, supplementing with enrichment classes offered on campus. Upon entering high school, the Student transitioned to attending all classes on-site. The Director of Special Education noted that the Student faced challenges with abstract math concepts such as Geometry and had difficulty expressing their work. To address this, the Student was provided with accommodations like sensory breaks with movement, lecture notes, and speech-to-text technology. The Student did have access to the Chromebook during worktime, but due to the device being a distraction for the Student not when the Student was to be listening to the classroom instruction.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Complainant alleged that the District failed to provide the Student a FAPE when the District failed to implement the Student’s IEP.

School districts must provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible. “School-age children” are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year. An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year.⁵

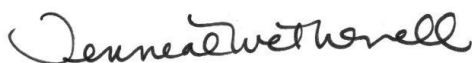
As determined in the analysis of whether the District implemented the Student’s IEP, the District did provide the Student with access to assistive technology and accommodations, and the District’s failure to provide the Student with 60 minutes of speech services was not a material failure to implement the IEP. The Student was not enrolled in the School during the IEP progress reporting period in April 2024, and no progress report was available to review to determine whether the lack of one hour of speech services denied the Student a FAPE.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION
In the Dallas School District
Case No. 24-054-020

The Department does not order corrective action in this matter.

Dated: this 7th Day of June 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: June 7th, 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).)

⁵ OAR 581-015-2040(1)(2)