

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Klamath Falls City School)
District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-035

I. BACKGROUND

On June 18, 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 Klamath Falls City School District (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 June 25, 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 July 9, 2024.

The District submitted a *Response* on July 1, 2024, denying the allegations, providing an explanation, and submitting documents supporting the District’s position. The District submitted the following relevant items:

1. District’s Written *Response* to Complaint, dated 10/5/21, received 10/14/21
2. Annual IEP, 04/13/23
3. Special Services IEP Abstract, 04/06/23
4. Notice of Team Meeting, 02/28/23
5. Individualized Education Program (IEP), 04/06/23
6. Special Education Placement Determination, 04/06/23
7. Prior Notice of Special Education Action, 04/06/23
8. Written Agreements between the Parent and the District, 04/06/23
9. Special Services Meeting Notes and Summary, 04/06/23
10. Individualized COVID-19 Recovery Services Review, 04/06/23
11. IEP Amendment, 05/24/23
12. Special Services IEP Abstract, 04/06/23 (duplicate)
13. Notice of Team Meeting, 02/28/23 (duplicate)
14. IEP, 05/18/23
15. Written Agreements between the Parent and the District, (duplicate) 04/06/23
16. Special Education Placement Determination, Amendment, 09/28/23

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

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

17. Annual Academic and Functional Goals and Objectives with Notes, no date (original 04/06/23)
18. Services with Notes, undated (original 04/06/23)
19. Behavior Intervention Plan, 09/28/23
20. IEP Amendment, 11/15/23
21. Notice of Team Meeting, 11/09/23
22. Meeting Notes, 11/13/23
23. Prior Written Notice (PWN), 11/13/23
24. Functional Behavioral Assessment Consent Form, 01/24/24
25. PWN, 02/14/24
26. PWN, 11/13/23 (duplicate)
27. Meeting Notes, 10/26/23
28. Mediation Notes, 01/18-02/15/24
29. Student Profile, 08/04/23-02/12/24
30. Handwritten Note, 02/08 no year
31. School Event Flier, 08/24-08/25/23
32. School Event Schedule, 08/24-08/25/23
33. Meeting Reminder, 05/15/23
34. School Staff Contact List, no date
35. Medical Statement to Request Special Meals and/or Accommodations, 08/10/23
36. FAIR Behavior Intervention Plan, 04/04/22
37. Photo, Token Jar, 11/06/23
38. Discipline Summary, 01/18/24
39. Request for Complaint Investigation, 02/12/24
40. Apology Note, no date
41. Screenshot, Plastic Coins, no date

The Parent submitted materials with the Complaint and additional materials on July 15, 2024. The Parent submitted the following relevant items:

1. Complaint Letter, no date
2. Phone Log and Notes, no date

The Complaint Investigator interviewed the Parent on July 23, 2024. From July 23 to July 25, 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 Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 19, 2023, to the filing of this Complaint on June 18, 2024.

Allegations	Conclusions
<p>Placement of a Child</p> <p>The Parent alleged that the District violated the IDEA when the Student was removed from a self-contained program on September 13, 2023, without the Parent’s consent or knowledge, and an IEP meeting was not held.</p> <p>(OAR 581-015-2250; 34 CFR §§ 300.116, 300.327)</p>	<p>Substantiated.</p> <p>The District violated the IDEA when the Student’s placement was changed for 11 days without an IEP meeting and the Parent’s participation in the decision.</p>
<p>When IEPs Must Be in Effect</p> <p>The Parent alleged that the Student’s Teacher was not knowledgeable about the Student’s IEP when, on September 26, 2023, the Teacher “admitted to not reading [the Student’s] IEP.” The Parent also alleged that, after the Student returned to the self-contained classroom on November 27, 2023, the Student’s behavior plan was not followed.</p> <p>(OAR 581-015-2220(3); 34 CFR §300.323)</p>	<p>Substantiated.</p> <p>The District failed to implement the Student’s IEP when it delayed providing the Student with all of the IEP accommodations and modifications for one month, and the Student did not receive specially designed instruction in reading or math for one week.</p>
<p>Free Appropriate Public Education</p> <p>The Parent alleged that the change in placement, the Teacher’s failure to read the Student’s IEP, and the failure to follow the behavior plan resulted in the District denying the Student a free, appropriate public education. (FAPE)</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Substantiated.</p> <p>The Student was removed from the Least Restrictive Environment determined by the IEP team for 11 days, did not receive SDI for a week, and did not have access to a C Pen as required by the IEP for over a month.</p>

REQUESTED CORRECTIVE ACTION
<p>The Parent requested the following corrective action:</p> <ul style="list-style-type: none"> • “Suspend [Teacher’s] teaching license due to violations of IDEA and denying FAPE, [c]ompensatory education in the form of monetary compensation [due] to [the Student] now being home-schooled. Acknowledgment of school and [T]eacher’s wrongdoing.”

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 June 19, 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 twelve years old and during the 2023-24 school year attended a Middle School in the District. At the time the Complaint was filed, the Student was being home-schooled.
2. The Student is eligible for Special Education due to a Specific Learning Disability and Other Health Impairment according to an IEP dated April 6, 2023.
3. The Student has strong communication skills, especially when interacting with adults. The Student has been wiping the lunch tables and "is doing a great job." The Student likes "riding [their] bike/scooter at home, playing with [H]ot [W]heels, Nintendo, and looking up areas on Google Earth on [their] tablet."
4. According to the [1st Quarter] 2023-24 Report Card, the Student received the following grades:
 - a. "Math 6 - C";
 - b. "Language Arts 6 - F";
 - c. "Science 6 - P";
 - d. "Computer Coding 6 - P";
 - e. "PE 6 - A";
 - f. "Social Studies 6 - F"; and
 - g. "Strategic Gaming 6 - P."
5. On April 6, 2023, an IEP meeting was held for the Student with the Parent in attendance. Special Factors noted in the IEP: The Student did "exhibit behavior that impedes [their] learning or the learning of others." Special Factors indicated the Student did have communication needs. The Student needed assistive technology devices or services.

Present Levels of Academic Achievement and Functional Performance stated the Student's strengths were, "[The Student] has strong communication skills where [they engage] easily in conversation, especially with adults. [They don't] hesitate to be a helper and does a great job with the job at hand." The Parent, "suggested to have an arrow and to have moveable blocks on [the Student's] schedule to help [them] be more successful in using it. [They] also requested that [the Student] receive communication services.

The Student's Present Levels of Academic Performance were:

- a. In the area of reading, "[The Student] is showing knowledge of some Phonics & Decoding [*sic*] skills at a pre-1st grade level. [The Student] can read regular short vowel, single syllable words (e.g., mat, hot, [*sic*]) and words that feature common consonant digraphs (e.g., wh, ch) as measured by a Phonics Screener or teacher-created word list given on 04/03/23."
- b. In math, "[The Student] has developed Early Numeracy at a kindergarten grade level. [The Student] has demonstrated fundamental skills such as orally counting up to 10, recognize and write numerals to 5, and add up to 5) [*sic*] as measured by a date tracking sheet 4/5/23."
- c. In social/emotional development, "The setting where the problem behavior most frequently occurs is in the self-contained classroom during whole/small group instruction and one-to-one academic instruction. [The Student] will not make progress or complete assigned work because [they are] avoiding and refusing instruction. For example, when [the Student] is assigned to do math, [they] will verbally say, 'I'm not got [*sic*] to do math.' [The Student] will avoid the work by throwing items, and will kick and hit the teacher."

- d. In fine motor/written language, “[The Student] demonstrates Letter Formation at a 1st grade level. [The Student] can correctly print all 52 upper and lower case letters, excluding common reversals (e, g, b, p, d, q), as measured by a Letter Formation Inventory given on 4/3/23.”

Annual Academic and Functional Goals and Objectives indicated:

- a. In the area of Reading, “By April 2024, given a word list of 20 regularly spelled, one-syllable CVC and VC words, e.g., cat, sad, at, [the Student] will verbally sound out each phoneme and then blend to read 8 out of 10 words aloud, on 2 out of 4 progress monitoring assessments.” Progress will be measured by “Running records/data and observation.” Progress will be reported, including frequency, “Quarterly in writing with report cards.”
- b. In the area of Mathematics, “By April 2024, given an addition or subtraction problem up to 10, [the Student] will verbally state the sum or difference by counting physical objects (or other preferred strategy such as creating a drawing, using fingers, imagining objects, or using related number facts for 2 out of 4 problems in an assessment.” Progress will be measured by “Running records/data and observation.” Progress will be reported, including frequency, “Quarterly in writing with report cards.”
- c. In the area of Written Language, “By April 2024, given 1 spelled one-syllable CVC word with a short vowel and an oral prompt to write the word [they] hear, [the Student] will spell the word in writing, for 4 out of 5 words, on 3 out of 4 progress monitoring assessments.” Progress will be measured by “Running records/data and observation.” Progress will be reported, including frequency, “Quarterly in writing with report cards.”
- d. In the area of Behavior, “By April 2024, when given one verbal/visual direction to do school work, [the Student] will be sitting at a desk, have all materials ready, e.g., workbook, papers, writing utensils, and will begin a task by attending (listening, having a calm voice), and trying (answering questions verbally/written, saying ‘I don’t understand,’ ‘I need a 2-minute break’) with minimal prompting for 1 out of 4 activities.” Progress will be measured by “Running records/data and observation.” Progress will be reported, including frequency, “Quarterly in writing with report cards.”
- e. In Social Emotional, “By April 2024, during a moment of frustration, and when offered a pre-taught calming strategy by a teacher, [the Student] will use the strategy within 30 seconds, for 1 out of 5 moments of frustration.” Progress will be measured by “Running records/data and observation.” Progress will be reported, including frequency, “Quarterly in writing with report cards.”
- f. The Student will take an Alternate Extended Assessment for Statewide Assessments. For district-wide assessment the Student will take an Alternate District Assessment - Data gathered on [the Student’s] IEP goals.
- g. Services included specially designed instruction in the areas of reading, mathematics, and written language for 120 minutes weekly each, in the Special Ed[ucation] Classroom, starting April 7, 2023, and ending April 5, 2024, the LEA was the Provider, and the Person responsible for monitoring was the Sp[ecial] Ed[ucation] Teacher. In addition, specialized instruction in the area of social/emotional, 90 minutes weekly, in the Special Education classroom, starting April 7, 2023, and ending April 5, 2024. The LEA was the Provider, and the Special Education Teacher was responsible for monitoring the Student.
- h. Related Services indicated none was needed at that time.

Supplementary Aids/Services: Accommodations indicated:

- a. “Visual schedule [and] Preferential seating w/opportunity to stand, 20 min[utes]/ Daily”;
- b. “Break tasks into small steps, 60 min[utes]/Weekly”;
- c. “Access text to speech, 50 min[utes]/Weekly”;
- d. “Extended time on assignments, 20 min[utes]/Weekly”;

- e. "Shortened assignments, 60 min[utes]/Weekly";
- f. "Access to [noise-canceling] headphones, 30 min[utes]/Weekly";
- g. "1:1 adult support for fieldtrips [sic], 120 min[utes]/Weekly";
- h. "Speech to text pen, C-Pen, 100 min[utes]/Weekly";
- i. "Positive reward system, 20 min[utes]/Daily";
- j. "Behavior plan, 20 min[utes]/Daily";
- k. "Access to large print, 30 min[utes] Monthly";
- l. "Limit visual stimulation on assignments, i.e., only give ½ or ¼ of a worksheet at a time, 15 min[utes]/Daily"; and
- m. "Modified curriculum in reading, mathematics, written language, social/emotional, 450 min[utes]/Weekly".

All Supplementary Aids/Services: Modifications for the IEP dated April 6, 2023 were to occur in all school settings, with a starting date of April 7, 2023, and an ending date of April 5, 2024. The Provider was the LEA and the Role Responsible for Monitoring was the Special Education Teacher.

Program Modifications/Supports for School Personnel indicated:

- a. "Speech and Language Pathologist (SLP) consult, 60 min[utes]/Yearly, All School Settings, Starting Date-April 7, 2023, Ending Date-April 5, 2024, Provider-LEA, Role Responsible for Monitoring, SLP";
- b. "Occupational Therapist (OT) consult, 180 min[utes]/Yearly, All School Settings, Starting Date-April 7, 2023, Ending Date-April 5, 2024, Provider-LEA, Role Responsible for Monitoring, OT"; and
- c. "Special Education Teacher consults with general education teacher, 15 min[utes]/Quarterly, All School Settings, Starting Date-April 7, 2023, Ending Date-April 5, 2024, Provider-LEA, Role Responsible for Monitoring, Sp[ecial] Ed[ucation] Teacher."

The Non-Participation Justification Statement for the IEP, dated April 6, 2023, stated, "More than 40% of [the Student's] school day will be away from the General Education setting." The explanation justifying the removal was, "[The Student's] educational delays are supported by [their] low scores in the areas of Visual Spatial Index, Working Memory Index, and Processing Speed Index. [The Student] would benefit with 1:1 and small group instruction. [The Student's] disability greatly impacts [their] ability to participate full time in the general education classroom."

- 6. The Special Education Placement Determination for the IEP dated April 6, 2023, indicated, "<40% of day: Regular Class. [The Student's] placement would be in a self-contained classroom." The benefits listed were "[The Student] would be in a more structured and smaller classroom environment, with 1:1 and small group support." Possible harmful effects listed were "[The Student] would have fewer opportunities spending time with [their] typical peers." Modifications and Supplementary Aids & Services considered were, "[The Student] would be provided more adult support and receive specialized instruction at [their] academic level." The Placement selected stated, "This placement was selected because it provides the proper supports for [the Student's] educational needs." The Parent signed the IEP.
- 7. On September 8, 2023, the Student was sent home due to unsafe behavior. On September 11, 2023, the Special Education Teacher emailed the Parent, "I can provide some clarification on what happened on Friday [September 8, 2023]. Overall [the Student] had a very hard time following directions. [They were] defiant and disrespectful to anyone who asked [them] to do anything, including paras [sic], myself, and [the Student's] teachers in gen[eral] ed[ucation]. Any time we asked [them] to do anything ... [the Student] would blatantly refuse. ... Our class

was getting ready to play a game and [the Student] continuously interrupted me while I was trying to give instructions with comments such as 'I am done with you.' ... [The Student] threw a pencil at the other student ... We had to call admin [sic] to come and get [the Student] in order to avoid escalating the conflict between [them] and the other student." According to the Parent Phone Log and Notes, the Student was sent home for throwing scissors. The Parent spoke with the Assistant Principal and according to the Parent, no suspension paperwork was given.

8. The Special Education Teacher emailed the Assistant Principal on September 13, 2023, "It has become clear that we need some supports for [the Student]. We are seeing some very concerning behaviors regarding targeting students aggressively, both verbally and physically. Today this escalated to physical aggression towards staff. We are hoping to establish some replacement behaviors for [the Student] so that [they] can be successful in class so I am reaching out for some input and support."
9. According to the Parent, on September 13, 2023, "[The Student] was removed from GOALS classroom by [the Special Education Teacher] and fully mainstreamed. This change in placement went against [their] IEP and was made without my knowledge or consent. [The Special Education Teacher] couldn't handle [their] behaviors."
10. On September 13, 2023, the Special Education Teacher emailed the Assistant Principal, "As we discussed, lets [sic] move [the Student] out of all of my classes and get [them] 100% mainstreamed for now. I will pull [them] out 2-3 times/week to meet [their] services."
11. According to the Parent Phone Log and Notes document on September 14, 2023, "The Student told the Parent that [the Student] got lost at [S]chool. [They] attended PE twice because [they] didn't know where to go. This was confirmed by attendance and by other students. [The Parent] [s]ent [an] email about [the Student] being lost and [their] change in placement without my consent, requested urgent IEP meeting."
12. On September 15, 2023, according to the Parent Phone Log and Notes document, the Parent "came to school early to discuss losing my child and the placement change. I spoke with the [P]rincipal. [They were] more concerned that [the Student] could attend an extra class and not be noticed rather than losing my special needs child."
13. On September 25, 2023, the Parent requested a copy of the Student's IEP from the Special Education Teacher. On September 26, 2023, the Special Education Teacher responded to the Parent, "I am working on getting this to you. With our new system, IEPs are not readily available electronically and the physical copy that I have appears to be missing some pages. I have reached out to the D[istrict] O[ffice] for a copy from them."
14. An IEP meeting reminder was emailed to the Parent on September 28, 2023. The "IEP meeting to discuss [P]arent concerns for [the Student] in gen[eral] ed[ucation] classes and adjust IEP to fit new schedule."
15. On September 28, 2023, an IEP meeting was held. The IEP amendment indicated a new reading goal for comprehension was added. The new reading goal was, "By April 2024, after a read-aloud of an illustrated, instructional level, informational text and given (2) sentence frames about main ideas, [the Student] will verbally state 2 main ideas by completing the sentence frames, for 3 out of 4 texts." The Student's special education placement was also amended to "Regular class with support, the Student would participate in general education full time with special education consultation/support." The Parent signed the amended IEP. The accommodation for preferential seating, with an option to stand, was removed.

According to the Parent notes regarding attending the IEP on September 28, 2023, it was “a meeting to go over the possibility of moving to general education. [The Student] would need to have pull-out services for [their] SDI. I signed a paper that I attended the meeting and one for the change to [their] IEP goals. No change of placement paperwork was signed.”

16. A Behavior Intervention Plan (BIP) dated September 28, 2023 indicated during daily classes/routines, “The Desired Behavior-Student will respond appropriately or ask for a break, attention, or help. [-] Consequence/Outcome [-] Will earn reinforcement plus verbal praise and attention.” The behavior of concern noted for the Student was, “Student will escalate to physical aggression and inappropriate physical contact.” The function of the behavior of concern was “Escape from demand or location. Attention from adults.” To prevent the behavior of concern, because the Student is “academically low and classwork must be at a level [the Student] can be successful and understand”, intervention strategies listed were:
 - a. “Visual supports and schedules.”
 - b. “Visual break cards.”
 - c. “Clear and consistent schedule and routine.”
 - d. “Warnings prior to something being different.”
 - e. “Don’t use: stop, no, or direct demands.”
17. On October 6, 2023, according to the Parent Log and Notes document, the Student was sent home for “hitting after the Para[professional] took away [their] fidget. ... I asked [the Special Education Teacher] if they were following [their] FBA [sic] and I was told yes.”
18. On October 7, 2023, the Parent emailed the Special Education Teacher, “After talking to [the Student] it seems like there [are a] few factors that contributed to Friday’s incident. The fidget, overstimulation and hyper fixation. It also seems like some things were lost in translation with [the Student’s] IEP when [they were] switched from general education to self contained back to general education. All of this can be easily fixed. [The Student’s] [IEP] is supposed to include fidgets and scheduled breaks totaling 30 minutes a day. ... As I have said in previous emails, communication is key for behavioral management. I would like this email added to [the Student’s] [IEP] file as [their] overstimulation and hyperfixation are part of [their] disability and requires proper behavioral management from adults.”
19. On October 10, 2023, the Parent emailed the Special Education Teacher, “I would like documentation that [the Student] is being seen for [their IEP] service hours. Was [the Student] receiving services before [they were] officially removed from self contained, the 10 days leading up to the meeting? According to [the Student], [they were] only pulled out once last week for reading and no math. There hasn’t been a pull out yet this week. ... So far it seems like [the Student] is not receiving [their] FAPE/IDEA, and is simply being babysat.” According to the Parent Phone Log and Note document the Parent “requested an IEP meeting and documentation of SDI hours.” According to the Parent, “Both requests were denied.”

The Special Education Teacher emailed the Parent in response on October 11, 2023, “[The Student] is correct, I have not had a chance to pull [the Student] out for reading or math this week. A staff member had a death in the family so I have not been able to leave my classroom because I am running [their] small-group. However, general education teachers are able to meet and provide service minutes in their classes through differentiated instruction and implementation of accommodations. ... My goal is to pull [the Student] out twice a week for about 20 minutes. If you would me [sic] to create a running document to keep track of when I pull [them] out, I can do that.”

20. On October 11, 2023, the Parent emailed the Special Education Teacher, “[The Student’s] conference is at 5 pm tomorrow. My concerns are:
- “Fidgets are still being taken away in [the Teacher’s] class. Fidgets were on [their] last [IEP] and should still be on it.”
 - “Color folder system not implemented. [The Student] has lost yet another binder. Can the color folder system be started and [the Student’s] spiral notebook for each class along with pencils be kept in each room for [them]. I will supply a pencil box for each room and [whatever] notebook that is missing.”
 - “What accommodations are being made in each classroom? [The Student] still has missing assignments in almost every class.”
 - “How will [the Student] be meeting [their] [IEP] reading, writing, social skills, and math goals in the general education classes?”
 - “How will your up coming [sic] medical leave effect [sic] [the Student’s] 2x a week pull out for reading? Will the [downstairs] Special Education Teacher] be able to take [the Student’s] case while you’re gone?”
21. According to the Parent Phone Log and Notes document, at Parent-Teacher conferences, “[The] Social Studies Teacher stated that [they are] not modifying [the Student’s] work because [the Student] won’t do any work to show [them] what [the Student] can do. This isn’t how an IEP works. I also met with [the Special Education Teacher] and asked for another IEP meeting because [the Student] was clearly still struggling. We asked that [the Student] be moved back into self[-]contained for at least reading and math. [The Special Education Teacher] said [they] would try to pull [them] out more.”
22. On October 16, 2023, the Special Education Teacher emailed the Assistant Principal and the IEP Team, “We need to get a meeting scheduled to talk about [the Student’s] behavior, possibly conducting an FBA and creating a BSP.” The Behavior Analyst emailed the Special Services Administrator inviting them to attend a meeting for the Student. The Special Services Administrator shared, “[The Student] does have an FBA from our school psych[ologist] from just before [COVID] I believe. I was not allowed to write [the Student’s] FBA if I am remembering right ... I believe [P]arent requested the school psych[ologist] do it. ... but I could be getting kids mixed up.”
23. On October 16, 2023, the Special Education Teacher emailed the Special Services Administrator, “[The Parent] is frustrated that [the Student] is failing and when I tried to explain to [the Parent] that [the Student’s] behavior is interfering with [their] grades and learning, [the Parent] suggested [the Student] come back into the self-contained class for English and Math. I am willing to try this, but I do not foresee it working out well considering that the reason we had [the Student’s] schedule changed in the first place was the repeated bullying of my other students [by the Student].”
24. On October 17, 2023, the Parent emailed the Special Education Teacher, “[The Student] had a doctor’s appointment today for [their] [ADHD] medications. [Their] doctor said that [their] behaviors are due to stress and anxiety due to lack of support. After [their] doctor talked to [the Student] and then to me [the Doctor] made two recommendations.”:
- “[Their] first recommendation was to remove [the Student] promptly from [the School] and move [the Student] to another school, or home school. This would be the last resort for us.”
 - “[The Doctor’s] second recommendation was to up [sic] [the Student] back into a hybrid self contained if possible. Hybrid meaning [they] would be in there for support with [their] math, reading and 1:1 (or para[professional] support) support for [their] other classes. [They] do not need life skills. I know that we talked about changing [their IEP]

at our parent teacher conference and starting in the self contained room in November, this [sic] needs to happen [as soon as possible]." ...

"I'm not sure if I will send [the Student] to school until proper placement can be achieved. It breaks my heart that [the Student] is acting out because [they are] stressed and anxious. Especially since [the Student] is hitting just to get sent home. ... At the last [IEP, the Student] was removed from self-contained, I was under the impression that [the Student] had support and would be successfully mainstreamed. That's not the case. [The Student] can learn and is worth educating. [The Student] can be successful with the proper supports in place."

The Special Education Teacher responded to the Parent on October 18, 2023, "The plan for [the Student] until we can have a meeting is to keep [them] in [their] current classes with the supports (accommodations and modifications) that are documented in [their] IEP. I agree that [the Student] needs more support to be successful, but with the behaviors that [they] exhibited in my classroom, I cannot bring [the Student] back into my classroom without a plan in place."

In response to the Special Education Teacher's email to the Parent dated October 18, 2023, regarding keeping the Student in their current classes with supports, the Parent emailed the Special Education Teacher, "Okay, so let's start following [the Student's] IEP then. [They] need specialized instruction in [m]ath, reading and written language 120/90 minutes weekly. Specialized instruction in [s]ocial emotional 90 minutes weekly. How will this be addressed?" "Break tasks into small steps, access to text to speech/speech to text. Extended time on assignments (20m[inutes] daily), shortened assignments. Limit visual stimulation on assignments give 1/2 to 1/4 sheet. (Make sure [their] Social Studies teacher knows this part.)"

"... Positive reward system, 20 minutes daily. What is the system? Is [the Student] aware of the system? Is the reward too hard for [the Student] to achieve? Behavior Plan. What is the Plan? Have you read [their] FBA and are you following it? Modified curriculum for reading, math, writing and social emotional on top of specialized instruction. How is that being accomplished? Has the OT seen [the Student] yet to advise on [their] poor writing skills"?

25. On October 18, 2023, the Special Services Director emailed the Principal, "Agreed - we need a team meeting prior to meeting with family. We need to consider the supports that were in place last year and what the [T]eam feels appropriate. I want to be sure we follow the process for PASS [Behavior Classroom], including increasing resource support, more adult supervision, etc. [The Behavior Analyst] may have some feedback. [The Student] went from full support last year to minimal support. I think [the Parent] has some legitimate concerns. We can certainly consider information from the physician, but we are not obligated to follow the orders."

According to the Parent Phone Log and Notes document, on October 18, 2023, the Parent indicated, "I received an email from [the Special Education Teacher] that stated until [their] IEP meeting [they] will only do what is on [their] IEP and nothing more. I knew at this point [the Special Education Teacher] had never read [their] IEP or [their] FBA."

26. According to the Parent Phone Log and Notes on October 19, 2023, the Parent received a phone call from the Special Education Teacher. "They had seen [the Student] for [their] SDI and [their] reading goal was too easy. [They] asked me if [they could] change it. I said [they] could. [They] also told me that [the] OT came today to evaluate [the Student's] handwriting (part of [their] IEP and over a month late)."

27. On October 23, 2023, the Parent emailed the Special Education Teacher, "[The Student] said that [they] got punched in the stomach during 'Map' class. ... Was [their] FAIR [Outside

Provider Plan]/BIP plan being used to prevent this? If the plan was used, what steps were taken? ... Why wasn't I called?" The Parent emailed the Special Education Teacher a second time on the same day, "Attached is the bruise that was left on [the Student's] stomach. A school has two jobs. One to educate the [sic] second is to keep children safe. I will be in the office first thing in the morning."

28. On October 24, 2023, the Principal emailed the Parent, "It sounds like I missed you this morning. When [the Student] was upset in the class and was in the office calming down, [they] did not mention anything about being hit by the other student. What [the Student] told me ... is that [the Student] and the other student got mad at each other and started yelling at each other. We went down and had [the Student] take a break with [the School Counselor] until [they were] ready to go back. [The Student] did a great job of calming down and working through it with [the Counselor]."

According to the Parent Phone Log and Notes, "The School called, [I] spoke with the [P]rincipal. [The Student] was being suspended for hitting a boy in social studies. I refused to take [them] home and offered to go to class with [the Student]."

29. Meeting Notes dated October 26, 2023 indicated the Parent requested the Student receive preferential seating, close to an adult, "but do not let the Student stand." The notes indicated that a prompt that worked for the Student was, "What do you need for this class?" The Student wants frequent breaks. **(D80-D82)** According to the Parent Log and Notes document, the Parent indicated they had a small meeting. "A CPEN (this part of [the Student's] IEP and over a month late) was brought to the [S]chool for [the Student]. In the meeting [the Special Education Teacher] asked to see my copy of [the Student's] FBA because [they] hadn't seen it before. ... I asked about getting a 1:1 or Para[professional] support and I was told no."

30. On November 5, 2023, the Parent emailed the Principal, "I also want to know about the PASS program and why [the Student] isn't in it."

31. The Parent emailed the Principal on November 6, 2023, sharing, "I went to social studies this afternoon with [the Student]. My concerns/observations are that [the Student's] back is facing the board in social studies which is not preferred seating per [their IEP]. Could [the Student] trade places with one of the other boys? One at the table was sleeping the whole time, the other was playing with [their] shirt and not working. The Para[professional] did a great job of writing down the word for [the Student] and having [them] copy."

The Parent emailed the Principal a second time the same day, "Attached is [the Student's] report card. [They have] failed ELA and Social studies. The Social Studies [T]eacher told us at the conference that [they] wouldn't modify [the Student's] curriculum, proof [sic] is in the grade. I have asked both of these teachers about expectations at parent teacher conferences. I have sent emails to [the Student's] teachers and we have had [IEP] meetings, which [their] social studies teacher failed to show. Not modifying the curriculum is not following [their] [IEP]. Expect behaviors if your [sic] not following the curriculum."

32. On November 6, 2023, the Principal emailed the Special Services Director, "[The Student's Parent] is stating that we are not modifying [the Student's] curriculum. Before I respond to this [Parent], I want to make sure we are modifying [their] work and that we are following [their] IEP. I know [the Student] does little to no work completion which is what I'll argue with the [Parent]. But I want to make sure we are modifying."

33. On November 7, 2023, the Principal responded to the Parent, "After checking with [the Teacher], [the Student] does have curriculum that is being modified. [Their] notes are modified

and at [their] level. The reason behind the grade is that [the Student] is not completing the work. ... The Teacher has provided support and one-on-one support with the Student but again, [the Student] refuses to work and digs [their] heels in. We cannot grade [the Student] on work [they are] not doing. [The Teacher] will continue to modify and work with [the Student]. ... Because the Student is on an IEP does not necessarily mean [the Student] will pass all [their] classes. ... I believe a meeting is scheduled or being scheduled for an immediate meeting to help address your concern(s)."

The Parent emailed the Principal in response, "What are the educational expectations for a student with . . . [the Student's] documented IQ in [their IEP] file[?] Remember [the Student] is supposed to be in self contained. Are [their] expectations higher than those in the self contained program? Does [the Student] need [their] work modified more to increase [their] willingness to do work? If work is too hard [they] will not attempt it. Too many demands and [they] will [shut down]."

34. On November 7, 2023, the Social Studies Teacher emailed the Parent, "I have moved [the Student's] seat so [their] back is not to the board and will be making further changes to [the Student's] seating assignment," in response to an email sent to them by the Parent regarding the Student's IEP accommodation.
35. A Notice of Team Meeting dated November 9, 2023 indicated an IEP amendment was requested. In addition, the Team was to "Discuss [PASS] option for behavioral support."
36. Meeting Notes dated November 13, 2023 indicated the Parent wanted information about the PASS Program. The Teacher explained the program. The notes indicated the Student was "cognitively too low to benefit from [the] program, would not be a good fit." The Team discussed moving the Student back into the self-contained classroom for two periods for better academic and behavioral support. The Student would still be in the general education setting for 5 out of 7 periods.
37. A PWN dated November 13, 2023, indicated, "[The Parent] requested [a] meeting to discuss [the] PASS program. [The] program was rejected at this time due to [the Student's] cognitive level and [their] ability to understand the processes involved. ... [The Student] will return to self-contained for two periods a day for more academic and behavior support."
38. On November 13, 2023, the Parent emailed the Special Education Teacher, "We would like [the Student] to start back in the GOALS room after Thanksgiving break. The transition is going to be rough on [the Student] either way, the sooner the better."
39. The Special Services Director emailed the Assistant Principal on November 13, 2023, "All, I cannot attend today. Be sure to follow the IEP - [the Student's] placement is GOALS. There was not a team discussion to move to gen[eral] ed[ucation]. Please review the IEP and behavior supports, and look at staffing. I can be available by text."
40. On December 12, 2023, the Parent emailed the School, "[The Student] is in the self-[c]ontained classroom for 1st, 2nd, and 7th period. The plan was that [the Student] attend reading in the morning and math 7th period. It sounds like [the Student] is doing reading and math 1st and 2nd period which is great! It seems like things start falling apart 7th period with [the Student] and another student. The less exposure [the Student has] with that other student the better as [the Student] has started saying the 'F' word at home and flipping people off. This is not the kind of behavior that is modeled in our home."

41. On January 11, 2024, the Social Studies Teacher emailed the Parent that the Student had an “A” grade in their class and “I am modifying for [the Student] and if [they are] asked to do anything in class for a grade [they do] it with an aide and I give [them] credit on what [they] complete[.]. My expectation is that [the Student] participates to the best of [their] ability in my class and completes what [they] can with help.”
42. On January 24, 2024, the Parent signed a Functional Behavioral Assessment Consent Form.
43. On February 2, 2024, Special Education Teacher 2 emailed the Principal, “I have been working diligently to make sure that all things having to do with [the Student] are documented, put into place, and that we are following protocol the way it was set up. It seems that there has been some sort of miscommunication along the way. I am hoping to either clarify some pieces or have clarification from you on when, how, and why things have changed. [The Student] is to have a set schedule. It is not to change randomly. [The Student] is only supposed to be in the self-contained classroom for 1st, 2nd, 4th, and 7th. [The Student] needs to be in the general education classroom for the other part of the day. [The Student] should have para[professional] support in those classes. ... If any of this has changed, I need to be made aware so I can have all pieces properly documented.”
44. A posted note message dated February 8, without a year, indicated the Parent called the School to report an unsafe situation at the School and the Student would no longer attend the School. (**D93**) According to the Parent Phone Log and Notes document on February 8, 2024, “[The Assistant Principal] called at 2:50 to tell me that there was an incident in the downstairs [student] bathroom and [the Student] was exposing [themselves]. Other [students] had witnessed it. [The Student] should have been upstairs in the self contained classroom at this time. I picked [the Student] up, and we enrolled in homeschool.”
45. When the Complaint Investigator interviewed the Principal, the Principal shared that, when asked about the incident regarding [the Student] possibly getting hit by another student and having a bruise on [their] stomach, the Principal said they did not personally investigate the incident. The Assistant Principal may have according to the Principal. The Principal recalled hearing about the bruise but never seeing it. The Student initially claimed another student caused it. The Principal said the matter was investigated but didn’t know the outcome or whether the other student was disciplined.

The Parent’s concern was that a Substitute Teacher witnessed both incidents, reported them, and even sent a photo of the bruise, but the School claimed not to have seen it and took no action, while the Student was suspended for retaliating the following day. The Principal shared that, according to an email chain, the Assistant Principal stated that the Student didn’t say anything about being hit by another student and that the Student and another student got mad at each other and yelled at each other.

During the interview, the Principal was asked about the last incident before the Parent withdrew the Student from the School when the Student was away from their assigned classroom and was in a bathroom where the Student exposed themselves. The Principal shared that, during a passing period, the Student went into the bathroom and exposed themselves while some boys were in the bathroom. The Principal said the students came out quickly and let an adult know. The Vice Principal investigated that incident. The Principal shared that the administration investigates every alleged complaint to make sure their students are safe.

46. During interviews with the Complaint Investigator, the Social Studies Teacher indicated that a visual schedule located outside their classroom, preferential seating with the opportunity to

stand, breaking tasks into small steps, access to text-to-speech, extended time for assignments, shortened assignments, and noise-canceling headphones, were accommodations listed on the IEP that they used in the Social Studies classroom. The C Pen for speech-to-text was not used in the Social Studies classroom. The Social Studies Teacher shared that the Parent requested the Student get extra help in the classroom so a paraprofessional came in and worked with the Student and two other students.

47. The Social Studies Teacher reported that during the first quarter, there was a trial-and-error period with the BIP to figure out what accommodation would work best to help with behavior. As the year progressed, the Student's behavior became more aggressive. They were asked to use sentence strips to address the Student with a directive of what the Student would do first and then what the Student would do next. Then the Parent asked them to give the Student little coins if the Student would sit in class. If the Student sat, they would get a coin. If they got out a pencil, they got a coin. It was not successful, according to the Social Studies Teacher. The Student was allowed to see the School Counselor on certain days, and that worked well for the Student.
48. During interviews, the Special Education Teacher reported, "I know that we did meet just in general to talk about behavior with the [B]ehavior [S]pecialist and the [P]rincipal and I don't think [the Parent] was there for this one. ...

I know we also did meet with [the Parent] pretty shortly after. It was either the same day or the next day and [the Parent] provided ... something from the [C]ounty. They call it something different, but it's basically a behavior support plan for [the Student] that the [C]ounty had given [the Parent] that [they] wanted us to implement." The Special Education Teacher shared that it was called, "The Fair Plan."

49. When asked if the general education teachers had access to the Student's IEP, the Special Education Teacher shared, "[S]o initially when [the Student] started, [they were] in my class when we decided to make the transition into general ed[ucation]. I sent out an email to all of [the Student's] teachers letting them know that [they were going to] be in their class. And then at our PLC time on Wednesdays, I went around and kind of just discussed in person with the teachers what I knew about [the Student] and what kind of things that they could probably expect to see and, you know, just to kind of see if they had any questions for me and provide any support to them before [they] went into their class. And then we also have, like, a shared document that we as special education teachers have all of our students kind of listed with their accommodations that we share with all the gen[eral] ed[ucation] teachers so that, even if they don't have their full physical IEP, they at least have all of their accommodations and who to reach out to for as like case manager if they have any questions."
50. "I would send emails to the teachers as well just to kind of update them on any changes that were happening." When asked to describe their classroom, the Special Education Teacher stated, "I teach a self-contained program. So it's got students that range from completely non-verbal, non-ambulatory to students that are almost would be able to kind of maintain in a general ed[ucation] setting, but just academically aren't quite there, if that makes sense. So I've got a wide range of students with a lot of very big behaviors."

"So we have a lot of stuff in my classroom to kind of help support and a lot of other supports like a sensory room and other sensory items like fidgets and flexible seating and built-in breaks, things like that. Lots of visual schedules all over the place. So yeah, and I think I had in the fall, I had four paraprofessionals] and then myself in the classroom as well."

51. The Complaint Investigator asked the Special Education Teacher to share the Student's schedule at the beginning of the year. The Special Education Teacher responded, "So I believe at the very beginning of the year [they] had me as a teacher for ... a life skills class first thing in the morning and then English. After that [the Student] had one class. ... I know [the Student] had me as a teacher for the majority of the morning and then has some general ed[ucation] classes in the afternoon with peers from my class. So my students ... were kind of like grouped into little cohorts that would go out into gen[eral] ed[ucation] classes with a pair like altogether. ... And then in the afternoon [the Student] had some gen[eral] ed[ucation] classes with [their] peers."

When asked how the Student's schedule corresponded to the Student's placement, the Special Education Teacher stated, "So when [the Student] started, I believe [the Student] was ... I think it was less than 40% in general education. And then we adjusted [the Student's] placement to [sic] 40 to 70%." The Special Education Teacher shared the amount of time in general education was increased. When asked what the reason for that was, the Special Education Teacher responded, "Him being in my classroom was escalating behaviors between [them] and another student that has some aggressive and violent behaviors. ... And once [the Student] realized that [they] could easily get a rise out of this student, that was kind of the first thing that [the Student] did every single day. And it got to a point where it was a safety concern for [the Student], my other students, and pretty much everybody in the classroom. I called [the Parent] and talked with [them] after school. And then I also talked with our Vice Principal and our Counselor that we needed to adjust [the Student's] schedule because it was not safe having [them] in my classroom."

52. The Complaint Investigator told the Special Education Teacher that one of the allegations that the Parent had made was that the Student's schedule changed back into a general education setting before the placement meeting occurred. The Special Education Teacher replied, "Yeah, so I did call [the Parent] ... and I kind of told [the Parent] about what was happening in our classroom and that my suggestion would be to move [the Student] into more gen[eral] ed[ucation] classes. And [the Parent] said that, yep, that was fine. [The Parent] thought that was a great idea. ... [The Parent] didn't think [the Student] needed to be in a life skills class anyways."

"The next day is when I talked with our Principal or Vice Principal and Counselor and told them about that we needed to change [the Student's] schedule and kind of what classes [the Student] would need in order for us to continue to be able to provide support. Yeah. And so we made the schedule change and then we had a meeting scheduled for going over the placement." When asked how long of a time there was between the schedule change and the placement meeting the Special Education Teacher indicated, "Around a week probably." When asked if the Student's classes actually changed before or after the meeting, the Special Education Teacher replied, "Before."

53. When asked about the Parent stating that the Special Education Teacher did not have a complete copy of the IEP dated September 26, 2023, and pages were missing, the Special Education Teacher replied, "Oh yeah, that was just because the copy that was sent over from the previous teacher was missing pages, but that wasn't like, I wasn't saying that I didn't have access to it. I was just kind of making an anecdote that it was funny that the, the [paper] copy that I got was confusing and it took me a couple minutes to realize why it made no sense was because there were pages missing, but I still had access to [the Student's] full IEP [electronically]."

54. The Special Education Teacher shared during interviews regarding the changes made to the IEP reading goal that the Special Education Teacher provided the Student with work at the

IEP reading goal level regarding sight words. The Student read over 30 sight words so when they met about placement, the Special Education Teacher proposed to change the reading goal to a more appropriate goal for the Student. The Special Education Teacher stated the IEP reading goal was changed to include reading comprehension at the IEP meeting.

When asked if a PWN was issued for the District's refusal to provide one-on-one paraprofessional support that was requested by the Parent on October 26, 2023, the Special Education Teacher said they did not believe it was issued.

55. The Parent was asked about their understanding of why the Student may not have been in the self-contained program. The Parent indicated, "My understanding is that [the Special Education Teacher] was overwhelmed and it was just easier to remove [the Student] than to deal with the own [sic] conflict in [the Special Education Teacher's] classroom. Because even when we put [the Student] back in, [they were] still, so [the Special Education Teacher] had gone on maternity leave in November, shortly after that November 13th meeting and they threw a substitute in who was barely more qualified than [the Special Education Teacher] and there was still like a lot of conflict between like [the Student] and the other kids in the classroom. So instead of managing those other kids, [the Student] would be removed."

When asked where the Student was removed, the Parent shared the Student went to the office. The Parent believed that the Student spent most of the time in the office and the Parent didn't think it was recorded every time the Student went to the office. When asked if it was called in-school suspension, the Parent said they thought it was a couple of times. The Parent added, "At one point I was like, because they were reinforcing this bad behavior by removing [them] from the classroom and just like sending [them] into the office for [them] to play or whatever. And at one point I had brought a book in ... [they are] gonna be reading, not just sitting and talking to other people."

When asked to discuss their concerns regarding the Fair Plan and the FBA, the Parent shared that it was never being followed. "There was an incident in early October where [the Student] got suspended because the para[professional] took away a fidget and then the Student decided that [they were] going to hit someone because [they] had nothing to do." "So I had questioned, like, are you following [their] plan? [Are they] getting breaks? [Are they] getting, you know, [their] fidgets? And then [the Special Education Teacher] had replied like [the Student's Special Education Teacher's] only gonna do what's on [their] IEP and [their] [F]air [P]lan. And at that point I knew that [they'd] never looked at [them]. ... Like [they] had never even seen the FBA, we were missing stuff like [they're] supposed to have a C Pen for reading that wasn't, didn't show up until October 26th. The OT hadn't seen [the Student] to help [them] type or assess [their] handwriting until the [sic] October. So those are the things that should have been done in the beginning of September when [the Student] started, not a month later."

When asked to talk about the unsafe situation at school for [the Student] that caused the Parent to no longer have [them] attend the school, the Parent replied, "That was February 7th or 8th. ... I got a phone call and, so, during that time, that was right after we did our facilitated IEP and the [Facilitator] was there observing. ... it was ... the last period of the day [and they] had just left. So [the Student] would've been with a para[professional] and another student from downstairs to upstairs and [the Student] would've been upstairs at that time. I got a phone call saying that [the Student] was downstairs in the boys' bathroom and [they] had exposed [themselves] in front of a group of boys and they ran out to get the security officer and they said [the Student's] not in trouble."

56. The Parent was asked during interviews to talk about the accommodations that were not being provided in the classroom. The Parent shared that the Student was not given preferential

seating. The Parent stated that the Student was in the back of all the classrooms. The Parent shared that the team developed that accommodation, which meant the Student would sit up front in the first two rows close to the teacher. The Parent shared that they knew the Student was in the back of the classroom because the Parent attended class with the Student.

The Parent shared the Special Education Teacher stated that preferential seating meant the Student got to sit where they wanted. The Parent could understand the Student sitting in the back of the class if there was a paraprofessional with them. The Parent shared that the new team was not part of the discussion regarding preferential seating, but it was on the Student's IEP.

Additionally, the Parent shared that the IEP stated to provide a 10 to 1 [praise to] correction ratio. The Parent said that was not being followed because the Student would do something the teacher didn't like and was sent out. The Student's fidgets were being taken away. The Parent stated the Student had no scheduled breaks and no visual supports. Classwork was at the Student's level, but the Social Studies Teacher wouldn't modify the work, and there were no visual supports for multiple-step directions. The Parent also shared the Student didn't have headphones and that their work was not reduced to half a page.

The Parent also shared the District changed the Student's lunch period from 6th grade lunch to 8th-grade lunch because the Student was being completely mainstreamed. The Parent said they checked the schedule online which indicated the Student had been removed from the self-contained classroom. The Parent shared they sent an email that said they had illegally removed the Student. Then, the Student got lost at school and went to P.E. twice on September 14, 2023.

The Parent shared the Student was in all general education classes "... without my permission, from September 13th to the 28th before [they] notified me." The Parent shared they were notified of the change in the meeting on September 28, 2023. The Parent shared that the schedule with five out of [seven] periods in general education classrooms started after November 27, 2023. The Student was not supported in the general education classrooms until January 1, 2024, when the Student had paraprofessional support for all four classes.

57. On June 18, 2024, the Parent filed this Complaint.

IV. DISCUSSION

Placement of the Child

The Parent alleged that the District violated the IDEA when the Student was removed from a self-contained program on September 13, 2023, without the Parent's consent or knowledge, and an IEP meeting was not held.

The educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The educational placement of a child with a disability is made in conformity with the Least Restrictive Environment (LRE) provisions, is based on the child's current IEP, is determined at least once every 365 days, and is as close as possible to the child's home.³

³ OAR 581-015-2250(1)

The alternative placements are available to the extent necessary to implement the IEP for each child with a disability. Unless the child's IEP requires some other arrangement, the child is educated in the school that they would attend if not disabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services which they need, and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.⁴

The key issues revolved around whether the Student was removed from the self-contained program on September 13, 2023 without the Student's placement being changed by the IEP team. The Special Education Placement Determination for the IEP dated April 6, 2023 indicated, "<40% of day: Regular Class. [The Student's] placement would be in a self-contained classroom. ... [The Student] would be in a more structured and smaller classroom environment, with 1:1 and small group support. ... "[The Student] would be provided more adult support and receive specialized instruction at [their] academic level. ... This placement was selected because it provides the proper supports for [the Student's] educational needs."

On September 11, 2023, the Special Education Teacher emailed the Parent to detail the Student's difficulties on Friday, September 8, 2023. The Special Education Teacher proposed changing the Student's schedule to include more general education classes. The Parent agreed with this change, expressing the belief that the Student didn't need to be in a life skills class. The Special Education Teacher then communicated this change to the School Administration and Counselor, leading to the Student's schedule being adjusted before a placement meeting was held. On September 13, 2023, the Student's course schedule changed, and the Student started attending all general education classes, despite a placement that indicated they would be in general education for less than 40 percent of the school day. Eleven days later, on September 28, 2023, an IEP meeting was held to revise the IEP including the Student's special education placement to full-time placement in general education with support.

The Student's schedule was changed by the District which resulted in a change in the Student's special education placement and the Parent verbally agreed to the change in the Student's schedule. The District acknowledged that the Student's schedule was changed to the general education setting full-time without a signed written agreement or before a change of placement meeting occurred.

The Department substantiates this allegation.

When IEPs Must Be In Effect

The Parent alleged that the Student's Teacher was not knowledgeable about the Student's IEP when, on September 26, 2023, the Teacher "admitted to not reading [the Student's] IEP." The Parent also alleged that after the Student returned to the self-contained classroom on November 27, 2023, Student's behavior plan was not followed.

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.⁵ Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider and other service providers who are responsible for its implementation. Each

⁴ OAR 581-015-2250(2-5)

⁵ OAR 581-015-2220(1)(2)

school district must inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.⁶

When questioned about the Parent's claim that the Special Education Teacher lacked a complete copy of the IEP dated September 26, 2023, the Special Education Teacher clarified that the copy received from the previous teacher was indeed missing physical pages. However, they emphasized that this did not hinder their access to the full IEP as they also had electronic access. The Special Education Teacher described the situation as an anecdote, where the initial confusion stemmed from the missing pages but, ultimately, did not impede their ability to access the complete document.

When asked about general education teachers' access to the Student's IEP, the Special Education Teacher explained that upon the Student's transition into general education, they had emailed all the Student's teachers informing them of the change. During weekly PLC meetings, the Special Education Teacher personally discussed the Student's needs and potential behaviors with each teacher, addressing any questions or concerns they might have. The Special Education Teacher also mentioned a shared document containing a list of accommodations for all special education students, ensuring that general education teachers had access to essential information even without the full IEP. This document also included contact information for case managers in case of further questions.

A BIP dated September 28, 2023 outlined strategies to address the Student's behaviors of concern, which included escalating to physical aggression and inappropriate contact. The plan identified these behaviors as stemming from a desire to escape demands or gain attention. To prevent these behaviors, the plan emphasized the use of visual supports and schedules, visual break cards, a clear and consistent routine, warnings before changes, and avoiding direct commands or negative language. The plan also highlighted the need for academic modifications to ensure the Student's success and understanding in class.

On October 10, 2023, the Parent emailed the Special Education Teacher, requesting documentation that the Student's IEP service hours had been provided and expressing concern that the Student needed to receive their mandated services, particularly pull-out sessions for reading and math. The Special Education Teacher acknowledged that special education pull-out services had not occurred for one week. The Special Education Teacher assured the Parent that general education teachers were providing service minutes through differentiated instruction and accommodations in their classes, with a goal of pulling the Student out twice a week for 20 minutes each time. The Special Education Teacher also offered to create a tracking document for the pull-out sessions. Differentiating instruction is a method used to make instruction more effective for all learners. Providing differentiated instruction within a general education context is not equivalent to providing SDI required by a student's IEP, planned specifically in light of their circumstances, to address their disability-related needs. "Specially designed instruction means adapting, as appropriate to the needs of an eligible child ... the content, methodology, or delivery of instruction—(a) To address the unique needs of the child that result from the child's disability; and (b) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children" (OAR 581-015-2000(37)).

The Parent expressed concerns that the Student's BIP plan was not followed. The Special Education Teacher reported having the Student's BIP in response to a Parent email, but the Parent questioned its implementation, citing an incident where the Student was suspended for

⁶ OAR 581-015-2220(3)

reacting to having a fidget taken away. The Student's IEP that was in effect during the Complaint period, dated April 7, 2023, did not include the provision of fidgets. The Parent further noted the late provision of a C Pen for reading and a delayed occupational therapy assessment for typing and handwriting. The investigative record indicated the C Pen was not provided to the Student until October 26, 2023.

During interviews, the Parent expressed concerns about unmet accommodations in the classroom, specifically preferential seating. The Parent stated that the Student was consistently seated in the back of all classrooms, contrary to the IEP accommodation for seating in the first two rows near the teacher. The Parent's knowledge of the Student's seating was based on attending classes with them. The Parent also mentioned a misunderstanding with the Special Education Teacher regarding the definition of preferential seating, with the Special Education Teacher interpreting it as the Student choosing their seat. The Parent stated that the new team was not involved in the original discussion about preferential seating, but the accommodation remained on the Student's IEP.

On November 7, 2023, the Social Studies Teacher emailed the Parent, confirming the Student's seating had been adjusted. During interviews, the Social Studies Teacher described a process of trial and error during the first quarter, regarding the Student's supports as they sought accommodations to manage the Student's behavior. The Student's work was frequently modified in their class, and visuals were used with the Student. According to the Social Studies Teacher, the Parent expressed that they told the Student "no" too often and that the Student wanted to leave the classroom. The Parent seemed to believe that modifications made by the Social Studies Teacher were insufficient to meet the Student's needs. Over time, the Student's behavior became increasingly aggressive. Strategies such as sentence strips with directives and offering coins for positive behaviors were implemented, but the Social Studies Teacher noted these were unsuccessful. However, allowing the Student to see the School Counselor on certain days proved effective.

On November 7, 2023, the Principal communicated with the Parent that the Student was receiving modified curriculum, and the Student's grades were based on effort and work completion.

The Department substantiates this allegation.

Free Appropriate Public Education

The Parent alleged that the change in placement, the Teacher's failure to read the Student's IEP, and the failure to follow the behavior plan resulted in the District denying the Student a FAPE.

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 reached 21 years of age on or before September 1st 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. The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school, including additional disciplinary removals of up to 10 school days each, when they do not represent a pattern of removals, and protections for children not yet eligible for special education.⁷

⁷ OAR 581-015-2040(1-3)

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.⁸ 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.⁹

In the current matter, On September 8, 2023, the Student was sent home due to unsafe behavior. On September 11, 2023, the S Special Education Teacher emailed the Parent about their "suggestion" to move the Student into general education. While the Parent appeared amenable to the possibility, no written agreement was entered into and no placement meeting was held. Regardless, the next day, Special Education Teacher worked with the "[P]rincipal or [V]ice [P]rincipal and [C]ounselor . . . to change [the Student's] schedule." When the Student was struggling with behaviors of concern in "a more structured and smaller classroom environment, with 1:1 and small group support", the District responded by unilaterally changing the Student's placement to general education, where the Student was provided with differentiated instruction and accommodations. This change occurred well before the IEP team came together to discuss the possibility and, even then, the Parties disagree as to whether it was actually discussed, or whether the District unilaterally changed the Student's placement as a result of the meeting. Regardless, it is clear that the District unilaterally changed the Student's placement prior to the meeting where the record indicates it was changed. As a result, for 11 days, the Student was moved from a self-contained setting (i.e., <40% of day: Regular Class) that the IEP team had determined was necessary for provision of "the proper supports for the Student's educational needs", to a general education setting that did not meet the student's needs as described in their IEP.

The Parent asserted that the Student's BIP was not followed when a fidget was taken away from the Student. However, the Student's use of fidgets was not included in the April 6, 2023 IEP nor was it included in the Behavior Intervention Plan dated September 28, 2023. There was a concern as to whether the Teacher had failed to read the IEP as pages were missing from a printed copy. However, the Special Education Teacher had access to the full IEP and shared it with general education teachers through emails and during PLC time. Regardless of having access to the full IEP, the IEP was not appropriately implemented for 11 days while the Student was removed from the least restrictive environment determined necessary by their IEP team. Separately, SDI was not provided for one week. The Student was also not provided with a C Pen, which was required to support their writing, for over a month.

The Department substantiates this allegation.

V. CORRECTIVE ACTION¹⁰
In the Matter of Klamath Falls City School District
Case No. 021-054-035

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

⁸ *Andrew F.*, 137 S.Ct. at 999

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

¹⁰ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

Action Required	Submissions	As Soon As Possible But No Later Than Due Date
<p>1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to Student's IEP. The Compensatory Education to be offered to the Parent shall include at least:</p> <ul style="list-style-type: none"> ● 2.5 hours of specially designed instruction in reading; ● 2.5 hours of specially designed instruction in math; ● 1.5 hours of specially designed instruction to address social/emotional concerns. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver this SDI.</p>	<p>The District shall submit the following:</p> <p>Completed plan for delivery of Compensatory Education Developed in an IEP meeting with Parent</p> <p>Evidence showing compensatory education was provided.</p>	<p>October 15, 2024</p> <p>August 1, 2025</p>
<p>2. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this Student receive training in each of the following areas:</p> <ul style="list-style-type: none"> ● IEP Review/Revision ● IEP Implementation ● Placement Determinations ● Parent Participation 	<p>Training agenda/materials to ODE for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>November 15, 2024</p> <p>March 15, 2025</p>

Dated: this 16th Day of August 2024

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: August 16, 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).)