BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Crook County School District)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 24-054-057

I. BACKGROUND

On September 16, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Crook County School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

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

On September 30, 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 October 14, 2024.

The District submitted a *Response* on October 14, 2024, conceding one allegation, denying the remaining allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

- 1. District's Written Response to Complaint, 10/14/24
- 2. Individualized Education Program (IEP), 3/20/24
- 3. Progress Report, 12/7/23
- 4. Notice of Team Meeting, 1/8/24
- 5. Functional Behavioral Assessment (FBA) Consent Form, 12/5/23
- 6. Special Education Placement Determination, 1/8/24
- 7. Abbreviated School Day Plan, 1/8/24
- 8. Behavior Intervention Plan, 9/6/22, updated 10/6/22, 4/10/23 and 12/2023
- 9. Abbreviated School Day Plan, 3/20/24

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

 $^{^{2}}$ OAR 581-015-2030(12) and 34 CFR \S 300.152(b)

- 10. Abbreviated School Day Plan, 4/18/24
- 11. Occupational Therapy Services/Support Summary, 3/20/24
- 12. Special Education Placement Determination, 1/8/24
- 13. Special Education Placement Determination, 3/20/24
- 14. Special Education Placement Determination, 4/10/23
- 15. IEP Progress Report, 6/4/24
- 16. Meeting Request, 9/10/24
- 17. Meeting Request, 9/13/24
- 18. Confidential Psychoeducational Assessment Report, 3/11/24, updated 9/16/24
- 19. FBA, 3/5/24
- 20. Written Agreement, 1/8/24
- 21. Meeting Minutes, 12/8/23
- 22. Meeting Minutes, 1/8/24
- 23. Meeting Minutes, 3/20/24
- 24. Meeting Minutes, 4/10/23
- 25. IEP Progress Report, 6/4/24
- 26. Meeting Minutes, 9/10/24
- 27. Meeting Request, 9/10/24
- 28. Meeting Minutes, 9/17/24
- 29. Prior Written Notice (PWN), 1/8/24
- 30. Notice of Team Meeting, 2/5/24
- 31. Notice of Team Meeting, 3/1/23
- 32. PWN, 3/20/24
- 33. PWN, 4/10/23
- 34. PWN, 4/18/24
- 35. Emails, 11/29/23 9/16/24
- 36. Text Messages, 9/11/24
- 37. Behavior Notes, 9/3/24 9/23/24
- 38. Student Daily Data Form, no date
- 39. Behavior Data, 9/29/22 6/10/24
- 40. Behavior Graphs, undated
- 41. Student Discipline Profile, 2024-25
- 42. Student Discipline Profile, 2023-24
- 43. Functional Assessment Checklist for Teachers and Staff, 1/18/24
- 44. FBA Student Questions/Interview, 9/17/24
- 45. FBA Teacher/Staff Questions/Interview, 9/23/24
- 46. FBA Parent Questions/Interview, 12/5/23
- 47. List of Staff Members Knowledgeable about the Complaint

The Parent submitted the following documents in support of their Complaint on September 30, 2024:

- 1. Emails, 9/5/24 9/12/24
- 2. Daily Chart, 9/3/24
- 3. Daily Chart, 9/4/24

- 4. Meeting Minutes, 9/10/24
- 5. Parent Notes, 9/3/24 9/12/24
- 6. Parent Notes, 11/14/23 5/17/24
- 7. FBA Parent Questions/Interview, 12/5/23
- 8. Letter from Student's Uncle, no date

The Parent submitted a *Reply* to the District's *Response* on October 18, 2024 along with the following additional document:

1. Text Message, 9/4/24

On October 24, 2024, at the request of the Investigator, the District submitted the following additional document:

1. Early Dismissal Logs, 2023-24 school year

On October 24, 28, and 31, 2024 the Complaint Investigator interviewed District personnel. The Complaint Investigator interviewed the Parent on September 30, 2024 and October 29, 2024. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from September 17, 2023 to the filing of the Complaint on September 16, 2024.

Allegations	Conclusions	
Evaluation and Reevaluation Procedures	Not Contested	
The Complaint alleged that the District violated the IDEA by failing to timely complete an FBA of the Student and review the results at an IEP meeting.	The District does not contest this allegation.	
(OAR 581-015-2110; 34 CFR §§ 300.303 and 300.304)		
When IEPs Must Be in Effect	Not Substantiated	
The Complaint alleged that the District violated the IDEA by not providing special education and related services and	The District materially implemented the SDI in the Student's IEP. Any failure to	

Allegations	Conclusions			
not implementing accommodations in accordance with the Student's IEP.	implement the Student's accommodations as written was not material and, as such, was not a violation of the IDEA.			
(OAR 581-015-2220; 34 CFR § 300.323)				
Discipline	Not Substantiated			
The Complaint alleged that the District violated the IDEA by removing the Student from school for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation review to determine whether the Student's behavior was a manifestation of the Student's disability. If the behavior was a manifestation of the Student's disability, the District failed to return the Student to the placement from which the Student was removed.	There was insufficient evidence that the District removed the Student from school for more than ten (10) school days during either the 2023-24 or 2024-25 school year.			
(OAR 581-015-2225; 34 CFR § 300.324)				
Education Records	Not Substantiated			
The Complaint alleged that the District violated the IDEA by denying the Parent's access to the Student's education records, specifically data regarding the Student's behavior.	The District did not deny the Parent access to any of the Student's education records.			
(OAR 581-015-2300; 34 CFR § 300.501(a))				
Free Appropriate Public Education (FAPE)	Substantiated			
Due to the alleged IDEA violations detailed above, the Complaint alleges that the District failed to provide the Student with a free appropriate public education. (OAR 581-015-2040; 34 CFR § 300.101)	The District denied the Student a FAPE when failed to timely complete an FBA and review it at an IEP meeting.			

REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District:

- Provide the Parent with an expected date when the FBA will be completed, send the Parent a completed FBA, and schedule a meeting to discuss the results.
- Provide the Student with compensatory educational services.

- Assess staff on proper data tracking procedures and provide staff training on how to implement an IEP/BIP.
- Provide training to special education teacher and principal on how to de-escalate student behaviors and assess their interactions with students.
- Review discipline measures of students with disabilities.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before September 17, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

- 1. The Student is eight years old and is in third grade. The Student currently attends their neighborhood school within the District but attended a magnet school within the District during the Complaint period.
- 2. The Student has a current diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD) and is eligible for special education under the category of Other Health Impairment (OHI).
- 3. An annual IEP meeting was convened for the Student on April 10, 2023 (April 2023 IEP). The April 2023 IEP includes, among other things, goals in the areas of reading and social/emotional/behavior and Specially Designed Instruction (SDI) for 100 minutes per week in reading and 15 minutes per week in social emotional learning, both in the special education setting. In addition, the IEP includes the following accommodations: alternative format for math tests, breaks for self-regulation, extended time on class assignments, visual schedule, wobble legs for classroom, preferential seating, communication from teacher to substitutes regarding tics and anxiety, visual timer, behavior intervention plan (BIP), and access to sensory tools.
- 4. According to the Special Education Placement Determination completed on April 10, 2023, the Student's placement was "80% or more of the day in regular class."
- 5. The Student began the 2023-24 school year with the placement and services designated in the April 2023 IEP.
- 6. According to the Parent and multiple District staff, the Student exhibited behaviors during Fall 2023 that interfered with their learning and the learning of others.
- 7. When interviewed, the Parent reported that, between September and December 2023, they were called regarding the Student's behavior an average of three to four times per week and were asked to pick the Student up from school at least once per week. Overall, the Parent recalled being asked to pick the Student up more than ten times during the 2023-24 school year.

- 8. The Parent provided the Investigator with a list of dates that the school called them to pick the Student up from school before the end of the school day, due to behavior. The Parent's list includes seven dates during the 2023-24 school year when they were asked to pick up the Student. When interviewed, the Parent shared that they created the list based on their personal phone records, but that the list is incomplete as they do not have records of every time they were called to pick up the Student. The Parent shared that, on some occasions, they documented that they picked the Student up due to behavior when signing the Student out of school in the office. On many occasions, however, the Parent was unable to sign the Student out as their priority was managing the Student's behavior.
- 9. The District does not dispute that the Student exhibited disruptive behavior during the 2023-24 school year but disagrees with the number of times that the Parent was called to pick up the Student from school as a result of a behavioral incident. When interviewed, the school principal (Principal) acknowledged that the Parent was asked to pick up the Student from school and estimated that this occurred "five or six times" during the 2023-24 school year. They confirmed that the Parent may not have been able to sign the Student out each time as the Student "had to be nearly carried out by mom or dad." The Student's previous case manager (Previous Case Manager) reported that the Parent was called to pick up the Student "less than ten times."
- 10. A Student Discipline Profile provided by the District includes two disciplinary incidents involving the Student during the 2023-24 school year. The incidents occurred on May 8, 2024 and May 15, 2024 and were described as "Minor" violations that did not result in the Student's removal from school. The Principal shared that, when the Parent was called to pick the Student up early, it was only documented as a disciplinary removal if the Student had harmed another child. The Principal also stated that they believed the Parent wanted to be called if staff were unable to deescalate the Student's behavior and that the Parent did not object to taking the Student home.
- 11. Early Dismissal Logs from the 2023-24 school year detail the occasions when the Parent signed the Student out from school early. According to these logs, the Parent picked up the Student prior to the end of their school day twelve times during the 2023-24 school year. Five of the entries were documented by the Parent as "Appt" on the logs, with the Student returning to school later in the day on three of those occasions. Three of the entries were documented as "Lunch" with the Student returning later in the day each time. Only one entry, on November 14, 2023, had "Behavior" listed as the reason for the Student's dismissal. One other entry, on December 5, 2024, had no reason identified for the Student's dismissal.
- 12. Due to the Student's ongoing behavioral difficulties, the District proposed that it conduct a Functional Behavioral Assessment (FBA) of the Student. When interviewed, the Previous Case Manager recalled that the FBA was proposed so that staff "could figure out how we could support [the Student]." The District provided the Parent with an undated Consent to Evaluate, which the Parent signed on December 5, 2023.
- 13. The District generated an IEP Progress Report, dated December 7, 2023, detailing the Student's progress on their IEP goals from the April 2023 IEP. According to the progress

- report, the Student was not making expected progress on their reading goal but was making adequate progress on their social/emotional/behavioral goal.
- 14. On December 8, 2023, the District convened a meeting with the Parent to discuss the Student's recent behavior (December 2023 Meeting). The Meeting Minutes identify it as a "Staffing Meeting" with the Parents, general education teacher, school psychologist, and the Previous Case Manager in attendance. According to the Meeting Minutes, the Student's BIP was modified and the Parent shared some self-regulation activities for the Student. The Student's General Education Teacher shared that the Student "struggles with transitions" and that "the end of the day (especially writing) can be difficult." The Previous Case Manager indicated that they would have someone assist the Student with transitioning inside from recess and getting a snack. The team decided that the Principal would check in with any substitutes working with the Student to ensure they were aware of the Student's needs.
- 15. The Meeting Minutes from the December 2023 Meeting also reflect that the Team discussed the assessment tools that would be used as part of the agreed-upon FBA. It is noted that the FBA would be completed by the end of January 2024, at which time it would be reviewed and the Student's BIP updated.
- 16. On January 4, 2024, the Parent emailed the Previous Case Manager and shared that they were considering homeschooling the Student. The Parent requested information about what IEP services the Student could receive if homeschooled and asked if there was an online option provided by the District for the Student's grade level.
- 17. The Previous Case Manager replied to the Parent's email on the same date. They responded to the Parent's question about homeschooling and shared a desire to speak with the Parent about options, "including just shortening [the Student's] day."
- 18. An IEP meeting was convened on January 8, 2024 to discuss the Parent's concerns and consider a change of placement for the Student (January 2024 IEP). According to the Meeting Minutes, the Parent reported that the Student was "beginning to say [they] hate[] school/refusing" and had an "inability to regulate," particularly during the second half of the day. The Meeting Minutes indicate that the Parent "has requested a shortened day" with the hope that it would help the Student "reset." The Meeting Minutes go on to describe that the Student would attend school for "core academics" and that a "step up plan" would be developed. After discussing their schedule, it was agreed that the Student would begin attending school from 8:00 a.m. 11:00 a.m. each day, beginning that day. The Meeting Minutes also describe the criteria that would be used to determine if the Student's school day should be increased.
- 19. The Meeting Minutes from the January 2024 IEP also reflect that the Parent discussed the status of the Student's medication and indicated that the Student's doctor planned to consider a possible adjustment to their medication, noting side effects experienced by the Student.
- 20. The Meeting Minutes go on to detail a discussion regarding the pending FBA and identify the Student's "behavior of concern" as "difficulty [with] regulation [and] transitions, refusal to go

to school, [and] lack of cognitive flexibility." It is noted that the staff were not seeing aggression from the Student at school. It is also shared that a Google Form would be used to track data for the Student's BIP.

- 21. A Special Education Placement Determination, dated January 8, 2024, was completed as part of the January 2024 IEP. The placement selected for the Student was "40% to 79% of the day in regular class" with a note that the Student "will attend school from 8-11 each day. Data will be collected and placement will be reviewed in 10 weeks to determine if [they are] ready to add time to [their] day."
- 22. The District and the Parent also developed an Abbreviated School Day Plan, dated January 8, 2024, as part of the January 2024 IEP. According to the plan, the Student was to attend school from 8:00 a.m. 11:00 a.m. when they would receive core instruction and special education services. The plan notes that there is an FBA "in process" and that the Student's BIP is attached.
- 23. The Student's BIP is attached to the Abbreviated School Day Plan. The BIP is dated September 6, 2022, with revisions made on October 6, 2022, April 10, 2023, and in December 2023. According to the BIP, the Student's "Behaviors of Concern" are:
 - a. Unable to sustain academic attention for more than five minutes at a time;
 - b. Emotional Escalation Running, throwing objects, acting like a wild animal (barking, growling, crawling), unable to follow direction;
 - c. Transitioning between tasks and locations, difficulty settling into new locations or new tasks.
- 24. The "Recommended Behavior Protocol" in the Student's BIP includes, in relevant part:
 - Teacher will provide classroom accommodations, including "Adult support for transitions";
 - b. The Student will take breaks in the Learning Center if they are unable to regulate withing the classroom;
 - c. The Parent will be contacted if the Student is unable to self-regulate within 10 minutes;
 - d. Administrative support will be provided should the Student's behaviors become unsafe.
- 25. In addition, the BIP contains the following items listed as "Suggestions/Comments":
 - a. "Provide breaks upon request;"
 - b. "Maintain communication with [the Parent];"
 - c. "Collect data daily to determine impacts of medication, accommodations and classroom strategies;"
 - d. "Review data and adjust the behavior plan when necessary."
- 26. The District provided the Parent with a Prior Written Notice (PWN), dated January 8, 2024, detailing the results of the January 2024 IEP. The PWN indicates that, "At the request of [the Parent], Crook County School District will provide a shortened school day for [the Student]."

- The PWN goes on to state that, "The district stands ready to provide a full day of instruction upon the request of the parent."
- 27. According to the Parent, the abbreviated school day was intended to be a temporary solution until the FBA was completed.
- 28. The District convened an annual IEP meeting for the Student on March 20, 2024 (March 20, 2024 IEP). The March 20, 2024 IEP includes, among other things:
 - a. <u>Special Factors</u>: The Student exhibits behavior that impedes their learning and requires assistive technology, specifically "text to speech."
 - b. <u>Strengths of Student</u>: The Student "has good verbal ability and advocates for [themselves]," "is kind and has a good sense of humor," and "is very smart and is a good problem solver."
 - c. <u>Concerns of Parents</u>: "[The Student's] parents are concerned about [their] executive functioning skills and self-regulation. Anxiety at school. [The Student] is feeling comfortable with [their] abbreviated school day and is concerned about increasing [their] day."
 - d. Present Levels of Academic Achievement: On the DIBELS reading assessment, the Student "is currently able to read 19 Correct Words Per Minute with 79% accuracy" which was an improvement from the beginning of the school year. The Student also "demonstrated an increase in Words Read Fluently from 3 to 13." The Student "has a strength in addition but struggles with subtraction." In writing, the Student "has good ideas and can address topics," but "[their] letter formation is difficult including size of letters, orientation on the paper and spacing."
 - e. <u>Present Levels of Functional Performance</u>: "Cognitive testing indicates that [the Student] has well developed verbal and nonverbal abilities." An academic achievement measure administered in September found that "all academic scores except reading were in the average range."
 - f. How the Student's disability affects involvement and progress in the general education curriculum: "[The Student's] struggle with self-regulation has impacted [their] ability to focus and [their] participation in both small group and classroom activities. Behavior data indicates that [they are] beginning to demonstrate more self-regulation since the beginning of March, especially in the past week." The Student "seeks a lot of input" and "needs heavy movement." The Student's "biggest challenge" is "transitioning from recess to academic focus" and "needs to find ways to incorporate physical activities."

g. Goals:

i. Reading: The Student will be able to read 50 Correct Words Per Minute of grade level text with 90 to 95% accuracy as measured by Oral Reading Fluency measure.

- ii. Social/Emotional/Behavioral: (a) The Student will be able to self-regulate within 10 minutes as measured by a daily tracking card; (b) With support, strategies and tools, the Student will be able to transition from physical to academic activities within 5 minutes as measured by daily tracking data.
- iii. Math: Using manipulatives, number charts and a multiplication table, the Student will be able to add and subtract with regrouping, multiply 1×1 up to 12×12 and identify fractions on a number line.
- iv. Writing: Given a graphic organizer, sentence stems and adult support, the Student will be able to write 1-2 paragraphs independently with 70% correct conventions of spelling, punctuation and capitalization.

h. Specially Designed Instruction:

- i. Written Language: 100 minutes weekly in the general/special education classroom;
- ii. Mathematics: 100 minutes weekly in the general/special education classroom;
- iii. Behavior/Social Skills: 15 minutes weekly in the general/special education classroom;
- iv. Reading: 100 minutes weekly in the general/special education classroom.
- i. <u>Accommodations</u>: Chunk large tasks into smaller pieces, wobble legs for chair in classroom, visual schedule, processing time during small group and classroom instruction (extra 10 seconds after being asked a question), visual timer, preferential seating, Behavior Intervention Plan, physical activities for transitions, breaks for self-regulation as outlined in BIP, teacher will communicate information regarding tics to any substitute teacher, access to sensory tools/fidgets (in the general education classroom), alternative to timed math testing, extended time on classroom assignments.
- j. <u>Non-Participation Justification</u>: "[The Student] will be removed from participating with [their] general education peers for 315 minutes per week in order to receive specially designed instruction in reading and social skills."
- 29. According to the Meeting Minutes from the March 20, 2024 IEP, the Student had shown growth in reading since the start of the school year and had improved regulation after a medication change. Staff described "seeing many tics (jumping) after transitions." The Occupational Therapist reviewed their observations and suggested tools for the Student to use at school. Based on that discussion, an accommodation for "physical transition activities" was added to the IEP, as well as new accommodations regarding transitions and processing time. In addition to reviewing the Student's IEP, the Meeting Minutes reflect that the IEP team created a new "abbreviated school day plan" and that the team would "readdress adding in lunch and recess after conferences on 4/18." It is noted that the Student, "is in a restrictive environment placement," but that the IEP team "decided it is the best place for [them] to be right now."
- 30. A Special Education Placement Determination, dated March 20, 2024, was completed as part of the March 2024 IEP. The placement selected for the Student was "40% to 79% of the day in regular class." It is further noted that, "[The Student] will attend school from 8-11 each

- day. Data will be collected and placement will be reviewed in 10 weeks to determine if [they are] ready to add time to [their] day. Data has been reviewed and the abbreviated day has been extended until April 18th. With continued success lunch and lunch recess will be added after meeting and review on April 19th."
- 31. The District and the Parent also developed an Abbreviated School Day Plan, dated March 20, 2024, as part of the March 20, 2024 IEP. According to the plan, the Student was to attend school from 8:00-11:00 and an increase in time would include lunch and lunch recess. The plan notes that there is an FBA "in progress" and that the Student's medication for ADHD had been increased. The plan also indicated that data will be collected using a Google Form and that the Student's goal is "Regulation within 15 minutes." The Student's BIP is attached to the plan and is the same document attached to the Abbreviated School Day Plan from January 8, 2024.
- 32. The District provided the Parent with PWN, dated March 20, 2024, regarding the outcome of the March 20, 2024 IEP. The PWN indicates that, in addition to reviewing the Student's IEP, "the team reviewed data collected about [their] abbreviated school day and updated [their] abbreviated school day plan with a new review date."
- 33. The District and the Parent met again on April 18, 2024 to review and revise the Student's Abbreviated School Day Plan (April 2024 Meeting). According to the plan, an FBA continued to be "in process." The Student's school day was increased to 8:00 a.m. 11:50 a.m., to include lunch and lunch recess. The period from 11:30 a.m. 11:50 a.m. is identified as "outside or inside student choice." The Abbreviated School Day Plan further describes that the Student's school day would increase to a full day for field trips or special activities. The Abbreviated School Day Plan indicated that the next meeting to review the plan was scheduled for the first week of June.
- 34. The District provided the Parent with PWN, dated April 18, 2024, describing the outcome of the April 2024 Meeting. The PWN states that, "The team met and agreed to increase [the Student's] day from 8-11 to 8-11:50. This will include lunch and recess. [The Student] will be able to choose between outside recess and inside recess in Learning Center. [The Student's] day will be increase to a full day when there are field trips or special activity days. The plan will be reviewed in June in preparation of transition to 3rd grade."
- 35. When interviewed, the Principal recalled that increasing the Student's day to 11:50 a.m. "didn't go really well." They described the cafeteria and lunch recess as overstimulating for the Student and that it was difficult for the Student to eat lunch in a noisy environment.
- 36. When asked what supports they believed the Student would need to return to a full day, the Previous Case Manager shared that the Student "would probably need a more self-contained program with support pushing in to the classroom," adding that the school the Student attended "did not have a self-contained program" and that the Student likely would have needed to change schools. They stated that the Student "would have needed a lot more support in order to be successful," but that the amount of the support the Student needed was largely dependent on whether the Student was taking medication.

- 37. The District generated an IEP Progress Report, dated June 4, 2024, detailing the Student's progress on their IEP goals from the March 2024 IEP. According to the progress report, the Student was making adequate progress on all of their goals, with the exception of their math goal, which was "not yet introduced."
- 38. The Previous Case Manager retired at the end of the 2023-24 school year and the Student was assigned a new case manager (New Case Manager), who was also new to the school, for the 2024-25 school year.
- 39. The District did not convene a meeting in June to discuss the Student's transition to 3rd grade. The Parent shared that they expected to hear from someone from the District prior to the first day of school regarding the Student's transition. When they did not, they approached the New Case Manager at an Open House on August 29, 2024 to discuss a plan for the Student. The Parent reported that they told the New Case Manager that the Student had been on an abbreviated day for six months during the previous school year and the New Case Manager replied that an abbreviated day expires after thirty days, and that the Student would start the year attending for a full day. The Parent explained that the Student would need additional supports if attending for a full day and approached the New Case Manager two additional times at the Open House because they were concerned with the lack of planning related to the Student's transition. In addition, the Parent shared with the New Case Manager that the Student had a medication change over the summer and they were unsure how they would do with a full day at school. The Parent also approached the Principal at the Open House to express concern that the Student did not have the supports in place to attend for a full day. According to the Parent, both the Principal and the New Case Manager replied that they would "see how [the Student] does." The Parent stated that they did not request that the Student attend for a full day and had informed the New Case Manager at the Open House that they were agreeable to continuing the abbreviated day.
- 40. When asked about the Open House, the New Case Manager shared that they did not know prior to that evening that the Student had previously been on an abbreviated day. The New Case Manager had not reviewed the Student's entire special education file prior to the Open House. While they had reviewed information about the Student from the Previous Case Manager, and reviewed the Student's most recent IEP, none of those documents indicated that the Student had been on an abbreviated day. As a result, the New Case Manager felt "blindsided" when the Parent approached them to discuss the Student's abbreviated day. According to the New Case Manager, the Parent stated at the Open House that they wanted the Student to start the school year with a full day. Based on training they had received regarding recent abbreviated school day program legislation, the New Case Manager believed that, if a Parent does not want an abbreviated school day program, the school cannot continue it.
- 41. When asked if the New Case Manager had told the Parent that an abbreviated day "expires after thirty days," the New Case Manager clarified that they informed the Parent that a team must meet every thirty days to review an abbreviated day and, if the Parent wanted to it to continue, they would need to have a meeting so it could be re-established. The New Case Manager indicated that they did not have any other communication with the Parent about

- the Student prior to the first day of school. When asked why more planning had not been done prior to the start of the school year to prepare for the Student, the New Case Manager shared that, in the records they had reviewed to date, they "had seen no red flags . . . that [the Student] would be a major behavior concern."
- 42. One of the Student's general education teachers (General Education Teacher) also recalled speaking with the Parent at the Open House on August 29, 2024. When interviewed, the General Education Teacher stated that the Parent "was very clear" that they wanted the Student to attend for a full day and did not express any concerns at the time regarding the Student transitioning to a full schedule.
- 43. When asked how they ensured that the general education teachers at the School had necessary information about the students on their case load who receive special education, the New Case Manager shared that they have a "shared drive" where the teachers have access to all of the information that they need to know about their students with IEPs. In addition, they provided the teachers with summaries of each student written by the Previous Case Manager and provided teachers with a folder for each student that included their BIP, if they have one, and a list of their IEP accommodations "as a quick reference." In addition, teachers have access to their students' complete IEPs on Synergy, the District's student information system. They confirmed that the Student's new teachers were provided with this information prior to the first day of school.
- 44. The Student started the 2024-25 school year attending for a full school day. The Student was placed in a classroom taught by two different general education teachers who had a "job share," meaning that the teachers alternated the days that they were present at school. Both teachers acknowledged receiving information about the Student's IEP accommodations from the New Case Manager prior to the first day of school. According to interviews with multiple District staff, and behavior notes maintained by the District (Behavior Notes), the Student had a successful first day of school. The Behavior Notes reflect that the Student "stayed in the classroom for about 80% of [their] day with little support" and that "support was provided during transitions and extra support at recess."
- 45. Beginning with the second day of the school year, however, the Student's behavior deteriorated, and the Student had difficulty participating in the general education setting. In the Behavior Notes, the District documented seven incidents of disruptive behavior by the Student between September 4, 2024 and September 10, 2024 as follows:
 - a. September 4, 2024: "[The Student] had a good morning. By the afternoon [they were] being disruptive in the classroom." The Student was "removed from the classroom and allowed to take a break in the resource room." They returned to class, but later "blew out of class" and "proceeded to crawl and yell down the hallway to class". "After 20 minutes of trying multiple different re-regulation strategies," staff "called mom" who "took [the Student] home at approximately 1:00 p.m."
 - b. September 4, 2024: The Student was "continually making farting noises" during whole group instruction. "Several redirections were given" before the class transitioned to individual work time when "the farting noises decreased."

- c. September 5, 2024: The Student caused "significant disruption during Dibels [sic] and threatened a classmate." The Student "spanked another student during recess" and the Parent was contacted. Staff were able to "get [the Student] somewhat re-regulated and [they] finished the day at school."
- d. September 6, 2024: The Student was not at school and was excused by the Parent due to illness.
- e. September 9, 2024: The Student "kicked a student in the shin leaving a mark," "refused to return to class after break," and "tried to run out the front door." The Student then "ran into our supply closet and [the School Counselor] was able to get [them] more regulated but [they] would not return to either the classroom or the resource room." The Parent was called, and the Parent suggested they "come and shadow for the remainder of the day."
- f. September 10, 2024: The Student "was taking pencils and trying to stab peers with them." When the pencils were removed, the Student attempted to "ram a material holder bin into [their] peers." The Student was "loud and crazy" and "would not deescalate no matter what strategy or method [the staff member] would try." The Student was "shooting Legos at other people acting as they were a weapon," "bolted out" of the classroom and "began to throw Jenga blocks . . . and cars" at staff. The staff member who completed this entry also wrote, "I have worked with [the Student] for 3 years now and have never seen such impulsive behavior that I had seen the first two weeks of school. Prior to this year I was successful in getting [the Student] to re-regulate within 15-20 minutes at max, but the first two weeks of school nothing that I did or tried helped."
- g. September 10, 2024: The Student "was climbing on the table and twerking/spanking [themselves]."
- 46. On September 5, 2024, the Parent sent an email to the Principal and the New Case Manager with suggestions for implementing the Student's accommodations and ideas for addressing the Student's behavior. In addition, the Parent requested that the New Case Manager follow up on the FBA since it had not yet been completed, stating that "an FBA will give us crucial insight we need to create a BIP that better fits [the Student's] needs."
- 47. At the request of the Parent, the District convened a meeting on September 10, 2024, which was designated on the Notice of Meeting and the Meeting Minutes as a "Staffing" meeting (September 10, 2024 Meeting). According to the Meeting Minutes, the Student's IEP team met to discuss "current supports for [the Student] in the classroom" and the Parent's concern "that accommodations are not being met."
- 48. According to the Meeting Minutes from the September 10, 2024 Meeting, school staff shared that the Student is most dysregulated in the afternoons and that recess can increase their behaviors. The Parent mentioned that the Student needs adult support for transitions, and the "conversation turned to different school placement due to lack of school resources." The Meeting Minutes reflect that there was a discussion regarding concerns about the "outdoor complex and safety" and that the Parent "expressed preference" for the Student's

neighborhood school (Home School). While the Student remained at the current school, it was agreed that a visual schedule and sticker chart would be implemented and a plan for lunch recess was developed where the Student would spend ten minutes outside and ten minutes in the resource room to assist with the transition. The Meeting Minutes also note that the Parent expressed concern that the FBA that they had consented to in December 2023 had not yet been completed.

- 49. When asked to explain why the Parent believed that the Student's accommodations were not being implemented, the Parent shared with the Investigator that it was based on the Student's report and on the Parent's personal observation. The Parent reported the following regarding implementation of the Student's IEP between the start of the 2024-25 school year and the September 10, 2024, Meeting:
 - a. During the September 10, 2024 Meeting, the New Case Manager informed the Parent that they had a case load of twenty-six students, did not have the staff or resources to accommodate the Student, and was unable to provide the support that the Student required.
 - b. The Parent did not believe that the District was collecting behavior data and providing it to the Parent in accordance with the Student's BIP. During the 2023-24 school year, the Parent received daily reports from the Previous Case Manager regarding the Student's behavior. During the 2024-25 school year, the Parent received only two daily reports, dated September 3 and 4, 2024. According to the Parent, the New Case Manager informed them that they would begin sending a behavior report home with the Student at the end of each week, rather than daily, but that this did not occur. When asked if the Parent requested specific records that were not provided, the Parent stated they had not but that they had expected to receive the behavior data.
 - c. The Parent does not believe the Student received the SDI in their IEP because the Parent was informed by the New Case Manager that they would not remove students for their SDI until the third week of school because "that's when groups start."
 - d. When the Parent accompanied the Student to class on September 9, 2024, they observed that many of the Student's accommodations were not implemented. For instance, the Student did not have an individual visual schedule, the Student was expected to complete a lengthy vocabulary assignment without the assignment being broken into smaller parts, the Student did not have a visual timer or access to sensory tools or fidgets, and the "wobble legs" had just been placed on the Student's chair that day.
- 50. District staff described how the Student's accommodations were implemented as follows:
 - a. Chunking large tasks into larger pieces: According to both the New Case Manager and the General Education Teachers, if the class was given an assignment, the Student would only be asked to do a small portion, such as one or two problems. The New Case Manager noted that, when the Parent accompanied the Student to class on September 9, 2024, the Parent sat next to the Student, acting as their scribe, and "chunked the assignment" for them. The Case Manager explained that the Parent was providing the same support that

they typically provided and, had the Parent not been with the Student, either they or one of the general education teachers would have shortened the assignment. One of the general education teachers confirmed that the day the Parent was with the Student in class, "[the Parent] was scribing with [the Student] so I didn't intervene. Otherwise, I wouldn't have given [the Student] the whole lesson because it was a lot of writing for [them]."

- b. Wobble legs for chair in classroom: Both the New Case Manager and one of the General Education Teachers reported that wobble legs were placed on the Student's chair in the general education classroom on the second day of school. The New Case Manager noted that the Student had successfully participated in class on the first day of school and had not needed the wobble legs on that day.
- c. Visual Schedule and Visual Timer: According to the New Case Manager and both General Education Teachers, these tools were near the Student, and visible to them, at the front of the class. The Student utilized the same schedule and the same visual timer as the other students in the class. Both General Education Teachers described the visual schedule at the front of the classroom and described the use of a visual timer called "Turtle Time" that is used for the whole class to show students how much time is left for a particular task. When the Parent asked for the Student to have an individual schedule on their desk, one was provided the next day. The individual schedule had icons with Velcro that the Student could move once items were completed.
- d. Physical Activities for transitions: The New Case Manager acknowledged that they did not understand exactly what was required for that accommodation as they had not been part of the IEP when it was adopted. Nevertheless, the Student would move five-gallon buckets filled with rocks and would "run the lines outside."
- e. Sensory tools and fidgets: The Case Manager stated that the Student had a box of sensory tools and fidgets. The box had been placed in the general education classroom but, since the Student was spending most of their time outside of class, it was moved to the resource room. Both of the General Education Teachers shared that the Student had a "sensory pillow" on their chair and other sensory items in the general education classroom, but that they were placed in the resource room because the Student would throw them. One of the General Education Teachers shared that headphones were provided to the Student the second week of school because the cafeteria was too loud for the Student.
- f. Speech-to-text: While listed on the "Special Factors" page of the Student's IEP, speech-to-text was not listed as one of the Student's accommodations. When asked, both general education teachers reported that, at that point in the school year, they had not assigned any lengthy writing assignments for which speech-to-text would have been appropriate. Further, the Student had near-constant adult support that scribed for the Student during assignments that required writing.
- 51. When interviewed, District staff described how the Student's Behavior Intervention Plan was implemented as follows:

- a. Adult support for transitions: The New Case Manager reported that one of their instructional assistants went with the Student to their "specials" period on the first day of school and, after that, the Student had adult support with them for the entirety of the school day. One of the General Education Teachers reported that they would assist the Student in walking to specials and that either the New Case Manager or the Principal would assist the Student in transitioning from lunch to recess and when coming in from recess, including "giving [the Student] a countdown" of how much time remained. The Principal shared that either they or the New Case Manager would "give [the Student] a heads up when the whistle would blow to prepare [them] for it" and would accompany the Student in the line to return to the building.
- b. Afternoon snack in the learning center: Given that the Student spent most of their day in the learning center, the New Case Manager or an instructional assistant walked the Student to the general education classroom during snack time and the Student was provided with a snack.
- c. Data Collection: The New Case Manager developed a "tracking card" for the Student and designed it based on the time of day so that they could see what areas of the day were most frustrating for the Student. They had a practice of sending home students' tracking cards in a sealed envelope each Friday but indicated that the Student never attended on a Friday. The New Case Manager recalled sending two tracking cards home on the following Mondays before the Student stopped attending. The New Case Manager also noted that the Student's IEP did not require them to send data home. One of the General Education Teachers shared that there was a "behavior log" where they and other staff would track the Student's behavior during the day.
- d. When asked if the Behavior Intervention Plan appropriately addressed the Student's behavior, the New Case Manager expressed that it may have been appropriate for the Student when they attended for an abbreviated day with medication, but not when the Student is unmedicated and attending for a full day.
- 52. When asked about the provision of SDI at the start of the school year, both the New Case Manager and the Principal confirmed that, at that school, students do not receive "pull-out" SDI until general education students start attending academic instruction groups called "Acceleration," which typically takes place around the third week of school. It is during this "Acceleration" time that Students with pull-out SDI are removed for instruction. Prior to the start of pull-out SDI, however, Students with IEPs receive push-in support and small group instruction in the general education setting in their areas of need. The Principal reported that, for the 2024-25 school year, Acceleration groups started on September 16, 2024.
- 53. The New Case Manager shared that, during the first two weeks of the school year, the Student was supported by either them or one of their instructional assistants for approximately 90% of the school day. This time was spent either supporting the Student in the general education classroom or attempting to provide academic instruction to the Student in the resource room. Given the amount of time that the Student spent with them working on transitions and self-regulation, the New Case Manager reported that the Student received the Behavior/Social

Skills SDI required by their IEP. The New Case Manager attempted to implement the Student's Reading, Written Language, and Math SDI when the Student was in the resource room, but the Student's behavior prevented them from engaging in academics for more than a few minutes at a time.

- 54. When asked about their ability to implement the Student's IEP, the New Case Manager clarified that they had implemented the Student's IEP during the time that the Student attended the school. They had only been able to provide the support required to implement the Student's IEP, however, because they had not yet started providing pull-out SDI to the other students on their caseload. Once those services began, they did not believe they would be able to continue implementing the Student's IEP.
- 55. The New Case Manager also noted that the school the Student attended is a magnet school and does not have the same staffing or resources as the neighborhood schools in the District. For instance, the school has one special education teacher compared to the four or five special education teachers at the other elementary schools in the District. During the September 10, 2024 Meeting, the New Case Manager recalled suggesting that the Student attend the Home School because it had "tons of resources and support" and "great teachers highly trained in behavior."
- 56. The magnet school also does not have "cool down rooms" for students to take breaks while the neighborhood schools have separate rooms with sensory tools. They described the Student's behavior during breaks as "very aggressive" in that the Student would be "ripping things off the walls and climbing on tables." Once the New Case Manager started providing small group SDI to other students in the resource room, there wouldn't be a location for the Student to take those breaks. Further, once they were providing scheduled SDI, the New Case Manager and their instructional assistants would not be available to provide the level of support that they had been providing to the Student thus far.
- 57. In addition to concerns regarding the school's ability to provide the support that the Student needs, both the New Case Manager and the Principal noted that the school has direct access to a busy street from two different points of exit, which presents a safety concern as the Student had attempted to run from the building.
- 58. When asked, one of the General Education Teachers shared that they did not believe that the amount of support that the Student was receiving would be sustainable at that school for the entire year. They shared that the school is an older building and does not have the space for the Student to take breaks. They also described the school's location on a busy street, recalling that the Student, "tried to run out of the front door one day and multiple staff were blocking them. It was terrifying." They reported speaking with the Student's general education teacher from the previous school year to learn some strategies for addressing the Student's behavior. The previous teacher told them that the Student had only been in the general education classroom for twenty to thirty minutes per day the year prior, so they were not able to provide many suggestions. The General Education Teacher expressed that it was appropriate for the Student to transfer to the Home School.

- 59. On September 11, 2024, as detailed in the Behavior Notes, the Principal "attempted to implement the shortened recess during the lunch recess (10 outside, 10 inside)" as discussed during the September 10, 2024 Meeting. The Student "refused and continued to play and run away." The Principal "shadowed and intervened anytime [the Student] started to put hands on others."
- 60. On September 12, 2024, the School Counselor wrote in the Behavior Notes that they sat with the Student in class and attempted to assist them with classwork. "[The Student] engaged briefly and I scribed [their] writing. [Their] engagement lasted around three minutes and [they] promptly started making loud smacking noises with [their] mouth during class discussion." The School Counselor asked if the Student needed a break. "[The Student] ignored [the] question and continued making the noises." "After about five minutes of continuously smacking [their] lips together [they] got up and left for [the New Case Manager's] room."
- 61. Later, on September 12 2024, the Student "wrapped [their] arms around [another student] and lifted [them] off the floor," was "making car noises and driving the large file folder and pencil tub into [their] deskmates," and "tried to follow students to drive into them." The Student would not follow staff redirection until the Case Manager removed the Student from the classroom.
- 62. On September 12, 2024, the Student had a significant behavioral incident at recess during which they "scratched another student leaving marks on the neck" and "threatened to kill [them]." As explained in the Behavior Notes, since this was the third time that the Student had harmed another student, they received an in-school suspension for two hours and spent the remainder of the day in the resource room. According to the Parent, they did not receive any documentation regarding the Student's suspension, although they did not specifically request it.
- 63. When interviewed, the Parent reported speaking to the Case Manager after the September 12, 2024 incident regarding behavioral interventions that had been attempted with the Student. According to the Parent, the New Case Manager informed them that they had attempted to bring the Student in from recess after ten minutes, as agreed at the last meeting, but that the Student refused. The New Case Manager told the Parent that they had not implemented transitional supports referenced in the Student's BIP and offered to put a timer in the Student's pocket at recess the following day.
- 64. The New Case Manager denied that they had suggested putting a timer in the Student's pocket at recess and stated that was something the Parent had suggested. The New Case Manager did not believe this was an appropriate intervention for the Student. Instead, the New Case Manager described how, on September 12, 2024, they had attempted to bring the Student inside from recess after ten minutes, but that the Student refused to come in. They attempted to provide an incentive to come into the building, but the Student continue to refuse. They remained outside with the Student until the Student engaged in physical aggression against another student.

- 65. The Parent sent an email to the Principal, the Case Manager, and the Director on the evening of September 12, 2024 expressing concern with sending the Student back to school because they did not believe that the school was able to implement the Student's special education accommodations and supports. The Parent relayed their understanding that the Student had not been provided with the transitional support required by their IEP in the time leading up to the behavioral incident at recess that day. In addition, the Parent shared that they had tried to contact the Home School to request a tour and asked if there was an update on when the next meeting would be held to discuss the Student's placement. The Parent also inquired as to the status of the FBA, adding that they "think a clearer BIP would be helpful for consistency but we also need data." According to the Parent, no staff from the school responded to the concerns the Parent presented in their email and the Student did not return to the school.
- 66. On September 13, 2024, the Director responded to the Parent's email stating that they were working with the School Psychologist to update the FBA and that they would "have staff set up a meeting as soon as we can to determine next steps for your [child]."
- 67. The District sent a Meeting Request to the Parent, dated September 13, 2024, inviting the Parent to a "Staffing" scheduled for September 17, 2024 at the Home School.
- 68. On September 16, 2024, the Parent sent an email to the Director in which they reported that the school "has yet to communicate to me at all and [the Student] refused to go to school on Friday due to how [they have] been treated and not given supports. I will not take [them] back to [the school]." The Parent also shared their belief that the Case Manager "has completely mis-handled [the Student's] services" and that "even after the meeting the school has yet to implement or follow [the Student's] IEP and BIP."
- 69. On September 16, 2024, the Parent filed this Complaint.
- 70. On September 17, 2024, the District and the Parent convened a "Staffing" meeting for the Student at the Home School (September 17, 2024 Meeting). The Meeting Minutes reflect that the Parent was given a tour of the Home School and shared concerns about how the Student's accommodations were implemented at the previous school. The Parent also shared information regarding the Student's outside services and prescribed medications. Regarding the FBA, the District indicated that it needed new observations and consent to complete the assessment. The School Psychologist expressed that they wanted to give the Student "time to settle in" at the Home School prior to conducting observations. The Meeting Minutes conclude by detailing a proposed schedule for the Student at the Home School, including that the Student would be picked up at 12:30.
- 71. When interviewed by the Investigator, the Parent reported that the School Psychologist provided them with a copy of a Functional Behavior Assessment report during the September 17, 2024 Meeting, but that it included inaccurate information, appeared to be incomplete, and was not reviewed during the meeting.
- 72. The Student began attending the Home School on September 23, 2024.

IV. DISCUSSION

Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA by failing to timely complete an agreedupon special education evaluation of the Student and review the results at an IEP meeting.

The District stated in its *Response* that is does not contest the allegation.

When IEPs Must Be in Effect

The Parent alleged that the District violated the IDEA by not providing special education and related services, specifically SDI, and not implementing accommodations in accordance with the Student's IEP during the 2024-25 school year only.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.³ The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.⁴ "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."⁵

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability. "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction: 1) to address the child's unique needs resulting from the disability; and 2) ensuring the child's access to the general education curriculum.⁶

A district violates the IDEA when it materially fails to implement an IEP.⁷ "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."⁸

The Student's IEP in effect at the start of the 2024-25 school year includes SDI in the areas of Written Language, Math, Reading and Behavior/Social Skills. The location designated for the provision of the Student's SDI is both the General Education and Special Education classroom. The Student attended school for eight school days during the 2024-25 school year before the Complaint was filed. During this time, aside from the first day of school, the Student spent approximately 90% of the school day receiving individual support from either the New Case Manager or one of their instructional assistants. The New Case Manager credibly reported that they implemented the Behavior/Social Skills SDI and implemented the Student's academic SDI

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

⁴ OAR 581-015-2220; 34 CFR § 300.323

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

⁶ OAR 581-015-2000(37); 34 CFR § 300.39(b)(3)

⁷ Van Duyn v. Baker Sch. Dist. 5J, 502 F3d 811, 822 (9th Cir. 2007)

⁸ Id.

to the extent the Student was able to participate. It is problematic that the school has a practice of not providing pull-out SDI, even if required by a student's IEP, until the third week of school when general education intervention groups begin. The Student's IEP, however, does not require that all SDI be provided in a separate setting. The evidence supports that the Student's SDI was materially implemented during the time period relevant to the Complaint.

Regarding implementation of the Student's accommodations, both General Education Teachers and the New Case Manager provided credible and consistent descriptions of how the accommodations were implemented. All three staff members described the visual schedule a at the front of the classroom and the visual "turtle time" timer used with the whole class. While the Parent may have preferred that the Student have their own visual schedule and/or timer, the IEP does not require that the Student be provided with something different than what was used for the whole class. Nevertheless, when the Parent requested an individual schedule on the Student's desk, one was provided the next day.

The evidence also supports that the Student's BIP, including the provision of "adult support for transitions," was implemented as written. Adult support was provided during the Student's transitions to and from their "specials" periods, and either the New Case Manager or the Principal provided support during the transition from recess back into the building. While the behavioral strategies in the Student's BIP may not have been successful each time they were implemented, this could reasonably be explained by any number of factors, including unfamiliar staff, the Student's transition from an abbreviated day to a full day, a change in medication, or that the BIP did not appropriately address the Student's behavior. The evidence provided by the District supports that the BIP was generally implemented as written.

There were some discrepancies with how some of the accommodations in the Student's IEP were implemented. Specifically, the Student had a box of sensory tools that was moved from the general education classroom to the resource room, the Student received afternoon snack in the general education classroom rather than the resource room, the Student was not offered speech-to-text, a large assignment was not chunked into smaller portions on the day the Parent accompanied the Student to class, and wobble legs were not provided until the second day of school. These differences in how some accommodations were written and how they were implemented were minor, particularly given the short time period at issue. Further, in light of the severity of the Student's behavior, it is unlikely that these discrepancies significantly impacted the Student's ability to access their education. Accordingly, the failure to implement some accommodations precisely as written was not a material failure to implement the IEP.

The Department does not substantiate this allegation.

Discipline

The Parent alleged that the District violated the IDEA by removing the Student from school for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation review to determine whether the Student's behavior was a manifestation of the Student's disability. If the behavior was a manifestation of

the Student's disability, the District failed to return the Student to the placement from which the Student was removed.

Under the IDEA and Oregon Revised Statutes, a student with a disability may be removed from their current educational placement for a violation of a student code of conduct for up to ten school days in a school year to the same extent as students without disabilities. School districts may remove a student with a disability from their placement for additional periods of up to ten school days in a school year for disciplinary reasons, so long as the removals do not constitute a pattern of removals. Any disciplinary removal in excess of this constitutes a change of placement.⁹

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a school district must convene a meeting to determine if the student's behavior is a manifestation of their disability. If the conduct is found to be a manifestation of the student's disability, the school district must: a) return the student to their previous placement, unless the parent and school district agree to a change of placement or other special circumstances apply, and either b) conduct a functional behavior assessment and implement a behavior intervention plan, or c) review an existing behavior intervention plan and modify it to address the behavior. If the behavior is not found to be a manifestation of the student's disability, the school district may proceed with disciplinary action to the same extent as it would for a student without a disability.¹⁰

District staff acknowledged that the Parent was asked to pick the Student up from school on multiple occasions during the 2023-24 school year, and that most of these instances were not documented as disciplinary removals. There is disagreement between the Parent and the District, however, as to how many days the Student was excluded from school as a result of their behavior. There was insufficient evidence provided to demonstrate that the Student was removed for more than ten days, such that a manifestation determination would have been required. The Parent did not allege that the Student was removed for more than ten days during the 2024-25 school year.

The Department does not substantiate this allegation.

Education Records

The Parent alleged that the District violated the IDEA by denying the Parent access to the Student's education records, specifically data regarding the Student's behavior.

The IDEA incorporates by reference the requirements of the Family Educational Rights and Privacy Act (FERPA). ¹¹ These provisions provide that a school district must comply with parental requests to inspect and review their child's education records without unnecessary delay. ¹² In Oregon, this means that education records requested by a parent must be provided before any

⁹ OAR 581-015-2405 & 2410; 34 CFR § 300.530

¹⁰ OAR 581-015-2415; 34 CFR § 300.530(e)-(f)

¹¹ OAR 581-015-2300; 34 CFR § 300.501(a); 34 CFR §§ 99.1 to 99.38

¹² OAR 581-015-2300(2); 34 CFR § 300.501(a)

meeting regarding an IEP, and in no case more than ten business days after the request has been made. AS OAR 581-015-2205 adopts the provisions of FERPA, "education records" are defined as those records that are (1) directly related to a student; and (2) maintained by an educational agency. This does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. The term "maintain" has been interpreted as covering records that are "kept in a filing cabinet in a records room at the school or on a permanent secure database."

The Parent takes issue with the District's failure to provide them with the Student's behavior data and with documentation of the Student's in-school suspension on September 12, 2024. While the Parent may have been provided with daily behavior reports by the Previous Case Manager, there is no requirement in the Student's IEP that the Parent be provided with any amount of behavior data with any particular frequency. The Student's BIP includes a suggestion that data be collected daily and that staff maintain communication with the Parent, but does not mandate that the Parent receive behavior data. The Parent acknowledged that they had requested any specific educational records that the District failed to provide, but instead had an expectation that they would receive these documents because they had in the past.

The Department does not substantiate this allegation.

Free Appropriate Public Education

Due to the alleged IDEA violations detailed above, the Parent alleged that the District failed to provide the Student with a FAPE.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible. The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP. 17

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. 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. 19

¹³ OAR 581-015-2300(3)(a)

¹⁴ OAR 581-015-2300(1); 34 CFR § 99.3

¹⁵ Owasso Indep. Sch. Dist. No. 1-011 v. Falvo, 536 U.S. 426 (2002)

¹⁶ OAR 581-015-2040(1); 34 CFR § 300.101(a)

¹⁷ OAR 581-015-2040; 34 CFR § 300.17

¹⁸ Endrew F., 137 S.Ct. at 999

¹⁹ W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992)

The District stipulated to a procedural violation that an FBA was not completed and reviewed at an IEP meeting within sixty (60) school days of receiving parent consent. The Parent signed consent for the FBA on December 5, 2023, and it still had not been completed more than nine months later when the Parent filed this Complaint. While the Student had a BIP (last updated in December 2023) as part of their IEP, it was unsuccessful in addressing the Student's behavior, which is why an FBA was proposed. The Student was then placed on an abbreviated school day because of their unmanaged behavior, with each of the Abbreviated School Day Plans developed by the District noting that an FBA was pending. As explained by the Parent, the abbreviated day was intended to be temporary until the FBA was completed. The Student remained on an abbreviated day for six months, however, without any revision to their BIP. When the Student returned to a full school day, the District continued to implement an outdated BIP that District staff, including the New Case Manager, acknowledged was not adequate to address the Student's behavioral needs. This resulted in the Student's inability to access the general education setting, including removals from the classroom. These factors caused the Student to experience a loss of educational benefit and opportunity resulting in a denial of FAPE.

The Department substantiates this allegation.

V. CORRECTIVE ACTION

In the Matter of Crook County School District Case No. 024-054-057

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

Ac	tion Required	Submissions	Due As Soon As Possible But Not Later Than
1.	The District will expedite completion of the agreed-upon FBA, review it at an IEP meeting, and revise the Student's BIP	Completed FBA Report and updated BIP.	February 15, 2025
	based on the results of the FBA.	Evidence that the FBA was reviewed at an IEP meeting with the Parent.	March 1, 2025

2.	The District will convene an IEP meeting for the Student to determine appropriate compensatory education services for the denial of FAPE.	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent. Evidence showing that	March 1, 2025 August 1, 2025
		compensatory services were provided.	
3.	The District will develop and conduct training for all staff responsible for evaluating students in special education on the District's responsibility to complete evaluations and review the results at an IEP meeting within sixty (60)	Training agenda/materials to ODE District Support Specialist for review/approval. Sign-in sheet from	January 15, 2025 April 15, 2025
	school days of receiving parent consent.	training.	

Dated: this 14 Day of November 2024

Ramonda Olaloye

Ramonda Olaloye

Assistant Superintendent

Office of Enhancing Student Opportunities

E-mailing Date: November 14, 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).)