

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of) FINDINGS OF FACT,
North Clackamas School District 12 and) CONCLUSIONS, AND
Clackamas Education Service District) CORRECTIVE ACTION
Case no. 24-054-059

I. BACKGROUND

On September 19, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing and attending school in the Clackamas Education Service District (ESD) and North Clackamas SD 12 (District). The District contracts with the ESD to implement the Student’s IEP and provide a free appropriate public education (FAPE) on behalf of the District. The Parent requested that the Department conduct a special education investigation, as provided by Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District and the ESD.

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 September 26, 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 10, 2024.

The District and ESD submitted a *Response* on October 10, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s and ESD’s position.

The District and ESD submitted the following relevant items:

1. District Written *Response*
2. ESD Organizational Chart and NCI certifications for staff and substitutes and resume
3. Welcome back training schedules for 2022-2024
4. New Staff training 2023-24 school year

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

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

5. Readiness Emergency Management Systems (REMS)
<https://rems.ed.gov/?AspxAutoDetectCookieSupport=1>
6. REMS red bucket and contents for emergency preparedness labeled with instructions in case of emergency
7. ESD's School Family Handbook
 - a. Parent signed for receipt of Family Handbook, 2/07/23
 - b. Participation agreement signed by Parent and Student, 2/07/23
8. Oregon Department of Education (ODE) Every Student Belongs Handbook - OAR 581-022-2312
9. ESD End of Year Report 2023-24
10. Documentation of the Student's eligibility for special education services, including documentation of consideration of eligibility categories for Autism, OHI and ED, 12/15/22
11. Student's IEP, 12/15/22
12. Student Confidential Function-Based Behavior Support Plan (BSP), 1/18/23
13. Student School Enrollment Form, 2/02/23
14. IEP/Placement Meeting Agenda for 11/08/2023
15. Student IEP, 11/08/23
16. IEP Meeting Notes for 11/08/23
17. Student Safety Plan, 11/14/23
18. Notes from reentry meeting on 02/19/2024 from incident occurring on 02/13/2024; from reentry on 04/26/2024 from incident occurring on 04/22/2024; from reentry meeting on 03/13/2024 from incident occurring on 03/11/2024; from debrief meeting on 05/01/2024 from incident occurring on 04/26/2024
19. Classroom Photos
20. ESD Police Report Information, 2/15/24
21. Email exchanges between District and ESD staff and Parent, 9/27/23 - 9/20/24
22. Incident reports for 2023-24 school year, 9/6/23 – 6/13/24
 - a. 132 Non Restraint/Seclusion/Suspension Reports
 - b. 8 Restraint/Seclusion/Suspension Reports
 - c. 1 report occurred during transportation to school, 9/6/23
 - d. 2 CESD Biased Incident Report, 10/02/23 & 12/6/23
 - e. 1 NESD Biased Incident Report, 2/5/24
 - f. 1 CESD Re-entry Support Guide, 2/19/24
 - g. 07/26/24 OTIS review with Debrief form date 05/01/24
 - h. 1 Screening Form for Suicide and Non Suicidal Self-Injury, 5/15/24
23. OAR 581-021-0553 School Governance and Student Conduct - Use of Physical Restraint and Seclusion in Public Education Programs
24. Progress Monitoring: Let's Go Learn Scores, 9/29/23 - 5/30/24
25. Progress Monitoring: Specially Designed Instruction (SDI) Tracking Log 2023-24
26. Prior Written Notice (PWN), 8/31/23
27. PWN, 9/12/23
28. PWN, 9/27/23
29. PWN, 11/27/23

30. Notice of meeting (NOM), 1/24/24
31. Special Education Placement Determination Document, 1/30/24
32. Placement Determination with Meeting Notes, 1/30/24
33. PWN, 1/30/24
34. Student's Safety Plan, 5/3/24 - 6/14/24
35. IEP Progress Report, 06/14/2024
36. Goal Summary, 6/13/24
37. Family Feedback Information Sheets 2023-24

The Parent submitted the following documents in support of allegations set forth with the Complaint document:

1. Photos of scratches and bruises that the Parent says they took following incidents during the 2022-23 school year.

The Parent submitted a *Reply* to the District's *Response* on October 21, 2024, providing rebuttal and explanation, including the following:

1. Police Report
2. Clarification that one staff member (S1) is not trained in NCI
3. Resubmitted photos to support allegations outside of the Statute of Limitations (SOL)

The Complaint Investigator interviewed staff members from the ESD on October 24, 2024 and the Parent with the Parent's advocate on October 28, 2024. The Complaint Investigator reviewed and considered all of the 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 20, 2023, to the filing of this Complaint on September 19, 2024.

Allegations	Conclusions
<p>When IEPs Must Be in Effect</p> <p>The Complaint alleged that the District and ESD violated the IDEA when the District and ESD did not implement the Student’s IEP, including accommodations needed to access the general education curriculum and support the Student’s behavior during the school day. The Complaint also alleged that the District and the ESD failed to review, update, and implement the Student’s Behavior Intervention Plan (BIP), resulting in escalations that the Student received incident reports for and that the Student was improperly restrained, resulting in missed educational opportunities and access to FAPE for the Student.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323) (OAR 581-015-2220; 34 CFR § 300.323) (OAR 581-015-2225; 34 CFR § 300.324(b)(1)(i))</p>	<p>Not Substantiated</p> <p>The Student received the accommodations needed to access the general education curriculum and support their behavior during the school day. The Student has a BSP that was included in the two IEPs in force during the timeline applicable to the investigation. The IEP and BSP were implemented as required.</p>
<p>IEP Team Considerations and Special Factors and Disciplinary Removals</p> <p>During the IEP meeting November 8, 2023, the Parent requested that a Functional Behavioral Assessment (FBA) be conducted and, following discussion, the IEP team decided that an FBA would be conducted after the Student had 4-6 weeks to acclimate to the planned change of placement to a less restrictive environment. On January 30, 2024, the team decided to reverse the decision to change the Student’s placement and the FBA was not conducted.</p> <p>(OAR 581-015-2205; 34 CFR §§ 300.320, 300.324) (OAR 581-015-2405, 2410, 2415, 2420; 34 CFR §§ 300.530, 300.531, 300.532, 300.533, 300.536)</p>	<p>Not Substantiated</p> <p>The IEP Team decided to wait until after the Student acclimated to a planned change of placement to conduct an FBA. The IEP Team did not discuss conducting an FBA when the IEP Team determined that the previous, more restrictive environment in which the Student was placed prior to November 8, 2023 continued to be the Student’s appropriate Least Restrictive Environment (LRE). The IEP Team considered reasons for the Student’s regression but did not discuss conducting an FBA. Regression lasted for two months and then steady progress resumed using the BSP already in place. An FBA was otherwise not required because the procedures for disciplinary removal were not</p>

Allegations	Conclusions
	triggered.
<p>Review and Revision of IEPs</p> <p>The Complaint alleged that the District and ESD failed to revise the Student’s IEP to remove reading and writing goals, and add math and social skills goals following a facilitated IEP meeting.</p> <p>(OAR 581-0015-2225; 34 CFR § 300.324)</p>	<p>Not Substantiated</p> <p>The Student’s IEP Team removed reading and writing goals during the November 8, 2023 IEP meeting and added a math goal and a social skills goal.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleged that due to the failure of the District and ESD to implement the IEP and BIP, the Student lost educational opportunities and access to FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p>Not Substantiated</p> <p>The District and ESD implemented the IEP and BIP as written. There was no loss of educational opportunities for the Student.</p>

Requested Corrective Action
<p>The Complainant requests that the Department order the District to take the following corrective action:</p> <ul style="list-style-type: none"> • Train every staff member in de-escalation and train them on my child’s individual behavior needs specific to [their] behavior support plan (including reviewing [their] BSP). • Develop a new FBA and BSP by a provider who specializes in behavior and is a board-certified behavior analyst (BCBA). Update these documents with parent input that has been shared. • Provide compensatory education for the lost educational opportunities that resulted from my child’s removal from the educational setting and escalations triggered by staff. • Compensatory education for the services in math and social skills we agreed to add to the IEP and the team never provided. • Update the IEP to reflect the agreements made during our IEP meeting. • Evaluate where my child is at currently for academics and update the IEP during a facilitated IEP meeting so we know exactly what is needed and what is not needed.

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 was filed on September 19, 2024. Therefore, this Complaint Investigation did not consider any IDEA violations alleged to have occurred before September 20, 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 issues set forth.

1. The Student currently attends 8th grade at a middle school in the Education Service District (ESD), where the Student was placed by the District in order to receive a free appropriate public education (FAPE).
2. The Student is eligible for special education services under the category Other Health Impairment (OHI) and has a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).
3. At the beginning of the 2023-24 school year, the Student had an IEP in place. That IEP was developed on December 15, 2022 and adopted by the Student's IEP team, including the Parents, when the Student enrolled in the District on February 2, 2023. The Student has a Confidential Function Based Behavior Support Plan that was developed on January 18, 2023 by the Student's IEP team, including the Parents, in preparation for for the Student's transition to the District. That BSP is included in both IEPs in effect during the time applicable to this Complaint.
4. The Student's IEP goals for December 15, 2022 IEP that was in place at the beginning of the 2023-24 school year are as follows:
 - a. Reading
 - i. By December 2023, given an independent-level literary text and a claim, the Student will (orally or in writing) cite at least 2 pieces of textual evidence to support the given claim (in 3 out of 4) trials.
 - b. Writing
 - i. By December 2023, given an informal writing prompt (e.g. written or verbally) and a paragraph template the Student will write a 5 sentence paragraph that includes a topic sentence that responds to the prompt, 2 relevant examples that explain why they are important to the topic, and a concluding sentence in 4 of 5 informational writing prompts that meet teacher listed criteria (e.g. topic sentence, relevant details, explanation, concluding sentence.)
 - c. Social Skills
 - i. By December 2023, the Student will increase social skills for peer and staff engagement to meet age-appropriate levels by using appropriate talk, pausing before blurting retorting/jumping into conversation paying

attention to body reactions in the moment, and being mindful to being assertive without being aggressive for 4 out of 5 opportunities as measured by teacher observation.

- d. Classroom/School Skills
 - i. By December 2023, the Student will increase their classroom skills for academic engagement to meet age-appropriate levels by keeping their hands to themselves, waiting their turn, raising their hands, and keeping their focus on their tasks for 4 out of 5 opportunities as measured by teacher observation.
5. The Student's IEP team, including the Parent, decided that the IEP would be implemented in the ESD's special school as that was the most appropriate placement to meet the Student's academic and educational needs.
6. The Student began attending the ESD School on February 8, 2023.
7. The Parent requested a meeting at the beginning of the 2023-24 school year. That meeting took place on August 31, 2023. During that meeting, the Parent requested review of the Student's BSP. Through a series of emails between September 7 and September 25, 2023, the ESD communicated with the Parent and the Parent's Advocate in an attempt to determine a date and time to meet. However, this meeting didn't occur until November 8, 2023.
8. During the IEP meeting on November 8, 2023, the team developed a new annual IEP with the assistance of a facilitator assigned by the ODE. The IEP includes evidence of a comprehensive review of the December 12, 2022 IEP, updated Present Levels of Academic Achievement and Functional Performance and goals.
 - a. During the IEP meeting, the Parent shared the following concerns: The Parent has previously shared concerns about the use of physical holds and staff leading to the Student's concerning behaviors. The Parent shared concern that the school is overestimating the Student's abilities and also about school communication and adult relationships. The Parent shared concerns for the Student in the restrictive placement of the ESD School (a separate school) and wants the Student to attend general education classes. The Parent shared both the need for and concerns about transportation and sent additional input after the meeting.
 - b. Present level of development and functional performance states that the Student significantly struggles with impulse control, self-monitoring and emotional control and the Parent shared that hyperactivity, attention, and depression were significant concerns. The Student self-reported that inattention and focus are struggles for them. The school and the Student shared that the Student has significant struggles with emotional regulation, social stress and depression. The Student reports that they like school. The team decided to add a

math goal to the new IEP and to eliminate the reading and writing goals on the previous IEP.

- c. The Student is in a self-contained classroom with about 4 other students with one teacher and up to 4 support staff. The classroom is highly structured with a scheduled work time each period, a predictable turn-in routine, and breaks available every period. The Student has an area inside and outside the classroom where they can take space if they need a regulation break before returning to work.
- d. Daily support in the program includes a review of expected behaviors at each transition, repetitive and rehearsed routines, checks for understanding, natural behavioral consequences, role modeling, and reparation/reflection.
- e. In order to make progress, the Student is supported with immediate adult intervention, high level academic engagement, predictable routines and clear boundaries with immediate feedback, positive affirmation when prosocial, immediate response to all bias and sexualized language and behaviors that include education and repair. The Student is beginning to be able to respond to multiple prompts/redirections to stop.
- f. The Student is self-reflecting about strong emotions like distress, denial, shame, and regret.
- g. The Student is becoming self-aware of how they feel.
- h. The Student can identify some things that are difficult for them. They have begun to identify their own triggers and limitations and are learning the skills to be able to focus on self and stop the concerning behavior with multiple redirections and environmental removal. When the Student is struggling, they can stop the behavior after multiple redirections with adult guidance and boundaries without escalation. Consequences have included "travel" restrictions in the school setting due to bias incidents, inappropriate topics, and not responding to unfamiliar adult redirections.
- i. The Student is beginning to use options to support themselves in regulation. At this time, the Student uses adult directed breaks with co-regulation.
- j. The Student is responding without physical aggression to adult statements of expectations. The Student may posture with their body and language, but does back down when given time or the adult steps away and there is a staff switch. When the Student is stuck, removing the Student from the situation and going to the MPR room is effective. The classroom team has developed short direct redirection statements that are heard by the Student such as: "stay in your lane," "goals are prosocial," "topic check," "that was unexpected," etc....
- k. The ESD school uses a behavior tracking system based on a scale of 0-5. Data is taken about hourly in each of the three categories of safety, respect, and responsibility. Nine (9) targeted behaviors are tracked throughout the day by staff. The scores are reported as monthly percentages. The Student began on February 8, 2023 at the ESD school. The Student's 6th grade Spring term was characterized by limited time in the classroom. Data is shared as a 6th grade

average based on 40 days (February-May), and the 7th grade for the most current months (September & October).

- I. 6th grade (February - May: 40 days)
 - i. Responsibility
 - 1. Ignore peer distraction and focus on self with two directions: 58%
 - 2. Advocate for self: 71%
 - 3. Remains on task during scheduled activities: 66%
 - ii. Respect
 - 1. Gain attention from staff and peers appropriately: 62%
 - 2. Appropriate language and tone with staff and peers: 60%
 - 3. Listen and follow staff directions with two redirections: 62%
 - iii. Safe
 - 1. Keep hands, feet and body to self: 75%
 - 2. Stays with class: 72%
 - 3. Uses options or space place as needed: 27%
- m. 7th grade - the Student has had a growth filled start to the 7th grade
 - i. Responsibility
 - 1. Ignore peer distraction and focus on self: September 59%; October 74%
 - 2. Remain on-task during scheduled activity: September 64%; October 80%
 - 3. Appropriate response to statement/redirection of expectations: September 60%; October 79%
 - ii. Respect
 - 1. Gain attention appropriately: September 53%; October 74%
 - 2. Comments and gesture appropriate to time and place: September 51%; October 70%
 - 3. Follow staff directions: September 60%; October 83%
 - iii. Safety
 - 1. Keep hands, feet, body and objects to self: September 85%; October 94%
 - 2. Advocate for needs in a prosocial way: September 67%; October 81%
 - iv. Discipline Data
 - 1. During 6th grade (February -May 2023) 40 school days - Student received 26 incident reports.
 - 2. During first 2 months of 7th grade, Student received 38 incident reports. These included involved six instances of danger to self/others, three violent acts, one instance of property damage, 35 classroom disruptions, one instance of student injury and one room clear.
 - 3. Incident reports are rooted in less structured times (transition, lunch, group events, classroom wait time) generally after statements of expectations or in response to tangents on

provocative topics. The concerning behaviors seen when dysregulated cluster with aggressive posturing (lunging, fist making, throwing items) or repeated retorts that involve mocking and mimicking gestures/noises (groans, animal sounds, exposure, middle finger, stroking) and public statements characterized with slurs and profanity with bias towards ethnicity, race, disability, gender, sexual orientation, and historic atrocities.

4. During transportation there have been self, peer, and parent reported incidents of drug possession and sexualized actions.
5. During 6th grade February - May 2023: 40 school days, the Student was placed in holds on six different occasions.
6. During 6th grade February-May 2023: 40 school days, the Student was out of class on adult initiated breaks four times for a total of 5 hours and 19 minutes.
7. During the first two months of 7th grade (2023-24 school year) the Student was out of class on adult initiated breaks 11 times for a total of 6 hours and 19 minutes.
8. During the first 2 months of 7th grade (2023-24 school year) the Student was not out of class on student initiated breaks.

v. Attendance

1. During the 2022-23 school year, the Student's attendance was 60%. The Student attended 40 out of 66 days and was suspended for 6 days.
2. During the first two months of 7th grade (2023-24 school year), the Student's attendance was 95%. The Student attended 37 out of 39 days.

vi. The Student has a BSP. During 6th grade (2022-23 school year), the Student had a safety plan that had a 3 week step-up plan focusing on relationships and regulation.

n. IEP goals

- i. Previous goal #1: By December 2023, the Student will increase their classroom/school skills for academic engagement to meet age-appropriate levels by keeping their hands to themselves, waiting their turn, raising their hands, and keeping their focus on their tasks for 4 out of 5 opportunities as measured by teacher observation. Baseline: 2 of 5 opportunities.
 1. Present level: Goal not met - based on most current 2 months of data average 75%.
- ii. Previous goal #2: Given executive functioning and social communication support, the Student will self-advocate 50% of the time as recorded on their daily behavior tracker for 2 consecutive months. Baseline: New goal added on March 9, 2023.
 1. Goal met. The Student advocates for needs in a prosocial way 67/81% for 2 consecutive most recent months.

- iii. Previous goal #3: By December 2023, the Student will increase their social skills for peer and staff engagement to meet age-appropriate levels by using appropriate talk, pausing before blurting retorting/jumping into the conversation paying attention to their body reactions at the moment and being mindful to be assertive without being aggressive for 4 out of 5 opportunities as measured by teacher observation. Baseline: Presently 2 out of 5 observed opportunities.
 - 1. Goal not met. Based on most current 2 months of data average 64%.
 - iv. New goal #1: Given options and encouragement, the Student will demonstrate prosocial behaviors and self-management in meeting expectations to be safe, respectful, and responsible at school averaging 80% of the time as defined and recorded on a daily behavior tracking sheet for the most current 3 months.
 - v. New goal #2: Given space and time when the Student is amped up and self-advocates for themselves, the Student will recognize a need for a break and self-select, initiate a break 50% of the time.
 - vi. New goal #3: Given immediate staff response, the Student will have fewer than 10 incident reports that involve sexualized language/behaviors and/or bias language/behaviors across the most current 3 months.
 - vii. New goal #4: Given specially designed instruction and practice in all domains, the Student will improve their math level in the domains of Numbers and Operations, Measurement, Data Analysis, Geometry, and Algebra to the end 6th grade levels assessed on classroom measures such as Let's Go Learn.
 - viii. The Student will receive services from the Social Skills Specialist as a related service for 180 minutes per month as indicated on the November 8, 2023 IEP.
 - o. Special Factors
 - i. The Student exhibits behavior that impeded their learning or the learning of others. The team has considered and set in place the use of Positive Behavioral Intervention Strategies (PBIS), collaborative problem solving, therapeutic coaching, movement breaks, and support from social skills specialists. The Student also has a BSP, goals, and services to address the behavior.
9. On November 8, 2023, the IEP team, including the Parent, determined that the Student was making social, emotional and behavioral progress and planned to move the Student to a less restrictive placement at the Transitional Learning Center (TLC) with the goal for the change to take place in conjunction with the next semester break. The Meeting Notes state that the IEP team will conduct a new FBA and develop a new BSP after the Student has had four to six (4-6) weeks to acclimate to the new placement.

10. A Safety Plan was developed on November 14, 2023. The Safety Plan was reviewed on December 14, 2023, January 19, 2024, February 6, 2024, and April 4, 2024. The Safety Plan was not reviewed in March due to Spring Break. This Safety Plan was closed on April 4, 2024, with the team noting that there had been no self-harm or suicidal ideation since January 19, 2024. The Meeting Notes on April 4, 2024 also state that there are other behavior concerns regarding biased remarks and sexualized behavior and that a new Safety Plan will be created and a FBA/BSP will be conducted. There is no evidence that the District or ESD scheduled an FBA before the end of the school year. However, the Student's goal summary dated June 13, 2024 shows that the Student made steady progress with the current BIP from March through June, 2024 after having two months of regression during January and February, 2024.
11. PWN for the IEP developed on November 8, 2023 was provided on November 27, 2023.
 - a. Notice included the following:
 - i. Added math goal and services;
 - ii. Added short term objectives to behavioral goals;
 - iii. Removed reading and writing goals and services;
 - iv. Recategorized social skills to behavior for goal and services;
 - v. Increased service time for behavioral supports;
 - vi. Added related service from social skills specialist;
 - vii. Added yes for the special factor for assistive technology; and
 - viii. Based on the Student's progress, the team planned to transition the Student to a less restrictive placement in a Transitional Learning Center (TLC).
12. On January 24, 2024, the ESD provided a Notice of Meeting for a meeting to take place on January 30, 2024. At this meeting, the IEP team reconsidered the November 8, 2023 decision to change the Student's placement to a less restrictive placement in the District's TLC. PWN was provided on January 30, 2024 stating the proposal to remain in the current placement at the ESD special school. The PWN does not mention any discussion of pursuing an FBA or revising the BSP in light of the decision to remain in the current placement.
13. The Student's IEP team met again on January 30, 2024 to discuss placement options for the Student. The team changed their November 7, 2024 decision to change the Student's placement to a less restrictive placement at the TLC and, instead, decided to continue the Student's placement in the ESD School due to the Student's behavioral regression.
14. The ESD uses two forms to record incidents.
 - a. Incidents that do not involve restraint are recorded on a form titled Non-Restraint/Seclusion/Suspension (IR) (referred to as the short form). The Student has approximately 133 IRs during the 2023-24 school year, including three on February 12, 2024 and three on February 13, 2024.

- b. Incidents that involve restraint are recorded on a form titled Restraint/Seclusion/Suspension (IRR) (referred to as the long form). Details on the form describe whether the form was used to document Restraint or Seclusion or Suspension or a combination of Restraint, Seclusion or Suspension. The Student has eight IRR forms completed during the 2023-24 school year, including one on February 13, 2024. The form does not indicate that the Student was restrained but was suspended for four (4) days with a re-entry meeting on February 19, 2024. There is also an IRR dated February 14, 2024 when the Student was suspended. The Parent alleges that the Student was restrained on February 15, 2024. There is no evidence that the Student was restrained on February 15, 2024 or at any time during February 2024.
 - c. The Parent and the ESD both agree that the Parent filed a complaint with the Office of Training, Investigations and Safety (OTIS) which has investigated the Parent's concerns. IRRs indicate that Restraint was used on the Student on April 4, 2024 and on April 26, 2024.
 - d. IRRs show that the Student was suspended on February 13, 2024 for 2 days, on February 22, 2024 for 1 day; on March 11, 2024 for 1 day; May 10, 2024 for one-half day; and June 13, 2024 for one-half day. The ESD School reported that the Student was also on in-school suspension on February 14, 2024, in lieu of out-of-school suspension in order to accommodate the Parent's schedule (resulting in 1 day of disciplinary removal).
15. On February 14, 2024, a staff member filed a police report against the Student. That report is dated February 15, 2024. The report states that the staff member responded to the Student making inappropriate sexual comments and inappropriately touching the staff (including bumping into the staff's chest and touching the staff's face and head) by pushing them away and redirecting them. The Student's Parent declined to allow the investigating officer to speak with the Student. The Student was referred to juvenile court with charges of harassment.
16. The Parent identified one staff member (S1) who interacted with the Student and was not trained in NCI. The ESD did not dispute this claim and stated that the staff member was new, had a great deal of experience in de-escalation strategies and had not yet received NCI training.
17. S1 is a certified registered behavior technician. S1 was a contracted staff member who began working for the ESD on April 28, 2024. S1 received training specific to the ESD's programs before working with any students. S1 was not trained in NCI and, therefore, did not have physical contact with students during incidents.
18. A Safety Plan was developed for the Student on May 3, 2024 and closed on June 14, 2024. The plan is explained in the Family Handbook and is not part of the Student's IEP.

19. The ESD has procedures to be followed during a safety emergency with the goal of keeping all students and staff safe, including alternate toileting procedures when the bathroom is unavailable. The ESD had a safety emergency on June 13, 2024 that resulted in the school being on a “safety hold”. This safety hold resulted in the bathroom being unavailable. During the emergency hold, the Student stated that they had to use the restroom. The District does not deny this, but informed the student that only the alternate toileting procedures were available due to the emergency. Despite the emergency, the Student left the classroom and went into the hallway. The Student did not proceed to the restroom and instead, contributed to the commotion in the hallway and disrupted the emergency responders. The Student received an IRR including a ½ day suspension.

IV. DISCUSSION

When IEPs Must Be in Effect

The Complaint alleged that the District and ESD violated the IDEA when the District and ESD did not implement the Student’s IEP, including accommodations needed to access the general education curriculum and support the Student’s behavior during the school day. The Complaint also alleged that the District and the ESD failed to review, update, and implement the Student’s Behavior Intervention Plan (BIP), resulting in escalations that the Student received incident reports for and that the Student was improperly restrained, resulting in missed educational opportunities and access to FAPE for the Student.

At the beginning of each school year, a school district must have, in effect, an IEP for each child with a disability within the district’s jurisdiction.³ The Complaint alleged that the District and ESD failed to implement the Student’s IEP and BSP when the ESD failed to follow an appropriate restraint protocol and utilize staff trained in the use of restraint protocol. The Student’s IEP does not address the use of restraints. The Complaint also alleged that the District and ESD failed to follow the Student’s IEP and BSP when the Student was not allowed to leave the classroom during a lockdown emergency situation. Accommodations listed in the Student’s IEP provide that the Student is encouraged to self-select leaving the room to go to another place in order to regulate their emotions, that staff will prompt the Student to leave the room for the same purpose, or that staff may clear the classroom of other students. In this situation, the Student requested to leave the classroom to use the restroom, not to go to another space to regulate their emotions. The Student walked out of the classroom when they were told that they could not leave due to the emergency. Staff attempted to get the Student to return to the classroom for their safety and the Student escalated in the hallway.

³ OAR 581-015-2220

The evidence in the record indicates that the Student's IEP, including the BSP, were regularly implemented and that interventions listed as accommodations on the Student's IEP were provided.

The Complaint also alleged that the number of incident reports developed for the Student demonstrates that the IEP and BSP were not implemented appropriately. The Student's IEP includes an accommodation for the Student to have access to space out of the classroom as needed for breaks during the day. The Student's IEP includes a goal for the Student to recognize a need for a break and self-select to initiate a break 50% of the time.

Upon enrollment for each student, the ESD provides a Family Handbook explaining the program in detail as well as a handbook with a comprehensive description of the school's program including detailed descriptions of discipline information and incident reports. On February 7, 2023, the Parent and Student both signed and dated the form acknowledging and providing consent to participate in the program. This information is about the program and is not part of the Student's IEP.

The nature of the ESD School program anticipates time out of class as needed to implement students' programs in a more individualized, private space as the students learn skills and strategies to be more successful in the classroom. Individualized strategies and accommodations for working with this Student are listed on the Student's IEP and are implemented through the program whether inside or outside of the classroom. Other strategies and educational methodologies and therapeutic strategies utilized and infused into the entirety of each day are explained in the Family Handbook that the Student and Parent received and acknowledged upon enrollment. The Student had approximately 135 IRs that provide details and data of these incidents, including whether and under what circumstances the Student left the classroom during the incident. The Student had eight IRRs that included 6 1/2 days of suspension. IRs and IRRs include data showing that the Student's IEP and BSP were implemented. The IRs and IRRs keep detailed data that is useful as part of progress monitoring and school staff meet regularly to review and revise as necessary.

The Complaint alleged that the District and ESD failed to properly implement the Student's IEP and BSP when, following an incident on February 13, 2024, a written report to an outside agency stated that a staff member pushed the Student to prevent them from inappropriately touching the staff member. The School's incident report did not indicate that the Student was pushed and the ESD did not have access to the outside report until it was provided by the Parent during this investigation. The staff member was not available to interview about the alleged pushing.

The IDEA specifically allows school districts to refer students with disabilities to law enforcement and juvenile authorities notwithstanding their disability status.⁴ The IRR states

⁴ 34 CFR § 300.535

that the Student received a multi-day suspension as a result of the incident. The Student's IEP does not include any information about potential criminal charges.

Following the incidents on February 13, 2024, the Parent objected to the staff member who filed charges with law enforcement continuing to work in the Student's classroom. The District did not reassign the staff member until the staff member requested a transfer two months later. The IDEA does not grant parents the authority to determine which staff members will work with their students.

The Department does not substantiate this allegation.

IEP Team Considerations and Special Factors and Disciplinary Removals

During the IEP meeting November 8, 2023, the Parent requested that a Functional Behavioral Assessment (FBA) be conducted and, following discussion, the IEP team decided that an FBA would be conducted after the Student had 4-6 weeks to acclimate to the planned change of placement to a less restrictive environment. On January 30, 2024, the team decided to reverse the decision to change the Student's placement and the FBA was not conducted.

In developing, reviewing and revising the child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.⁵ The summaries of the Student's present levels of academic achievement and functional performance for both IEPs in effect during the 2023-24 school year, the time relevant for this Complaint, provide very detailed descriptions of the IEP team's considerations including information supporting the consideration of special factors. During each IEP meeting, the team determined that the Student does exhibit behavior that impedes their learning or the learning of others. The Student has IEP goals and a BSP developed to address these needs.

School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement. A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if the removal will be for more than 10 consecutive school days or the child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must hold a manifestation determination meeting, including the parent, and determine whether the child's behavior is a manifestation of the student's

⁵ OAR 581-15-2205

disability. The district shall conduct an FBA unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or, if the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.⁶

The Student's IEP and BSP state that the Student will learn to self-select going to another space away from the classroom as a strategy to manage emotions and dysregulation. IRs are used to document a wide variety of occurrences that do not involve restraint/seclusion or suspension, including, but not limited to, noncompliance with a staff request, not following classroom rules, using inappropriate language, inappropriate gesturing, emotional outbursts, and property damage. These IRs provide progress monitoring data and significant detail such as staff present during the incident, strategies utilized to support the Student through the encounter, and how the Student responded to the strategies.

IRRs are used to document occurrences where restraint/seclusion or suspension took place. The IRR documents provide substantial detail including specifying whether restraint or suspension occurred. ESD staff interviewed stated that seclusion is not used as a strategy for any students and seclusion is not alleged in this Complaint. IRRs show that the Student was suspended for a total of 6 1/2 days during the 2023-24 school year. There were two occasions when the Student was placed in a restraint – once for five minutes and another for 12 minutes. The Student was not suspended as a result of these incidents. The Student received therapeutic support and guidance in accordance with the IEP and BSP, and was not removed for disciplinary purposes during these incidents other than those resulting in suspension.

The Parent requested a review of the BSP at the beginning of the 2023-24 school year. The IEP Team was not able to settle upon a mutually agreeable time and date for a meeting until November 8, 2023 when the IEP team also scheduled the annual review of the Student's IEP. Based on the Student's progress, the IEP Team decided to change the Student's placement from the ESD School to a less restrictive placement in the District's TCU at the transition between semesters. Based on the placement decision, the team resolved to give the Student 4-6 weeks to acclimate to the new placement and then conduct a new FBA and consider changes to the BSP.

In January 2024, the Student's behavior regressed to the degree that the IEP team, including the Parent, decided that the Student should remain in the current placement with the ESD. The team, including the Parent, did not discuss the need to conduct a FBA during the meeting in January 2024; however, notes, emails, adjustments to the IEP, and PWN all document that the team considered information such as the Student's anxiety about the transfer and some changes at home as they resolved to reverse the decision to change the Student's placement and continue with the current placement at the ESD School.

The Department does not substantiate this allegation.

⁶ OAR 581-15-2405, 2410, 2415 and 2420

Review and Revision of IEPs

The Complaint alleged that the District and ESD failed to revise the Student's IEP to remove reading and writing goals, and add math goals and social skills following a facilitated IEP meeting.

Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days to determine whether the annual goals for the child are being achieved and revise the IEP, as appropriate according to the requirements of the IDEA and OAR 581-015-2225.

The November 8, 2023 IEP meeting included a comprehensive review of the IEP. The new IEP removed the writing and reading goals that were part of the previous IEP and a new math goal was added. The IEP team revised the Student's behavior goals and added a related service from a social skills specialist. Notably, due to the Student's progress, the IEP team, including the Parent, decided that the Student was ready to transition their placement from the ESD to a less restrictive placement at the District's TCU.

On January 30, 2024, the IEP Team met to address regression of the Student's social/emotional/behavior. The Team discussed possible reasons for the regression, including changes in the home environment and the Student's anxiety about the upcoming change in placement. The Team, including the Parent, decided to reverse the decision to change the Student's placement to the District's TCU and maintain the Student's placement with the ESD School. Progress monitoring data showed that the Student's regression ceased and the Student experienced steady progress from March until the end of the school year.

The Department does not substantiate this allegation.

Free Appropriate Public Education

The Complaint alleged that due to the failure of the District and ESD to implement the IEP and BIP, the Student lost educational opportunities and access to 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.⁷ 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.⁸

⁷ OAR 581-015-2040(1); 34 CFR § 300.101(a)

⁸ OAR 581-015-2040; 34 CFR § 300.17

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.⁹ 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.¹⁰

In this instance the evidence indicates that the District fully implemented the Student's IEP and BIP.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION

*In the North Clackamas School District and Clackamas Education Service District
Case No. 24-054-059*

The Department does not order corrective action in this matter.

Dated: November 18th, 2024



Ramonda Olalaye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: November 18th, 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).)

⁹ *Andrew F.*, 137 S.Ct. at 999

¹⁰ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)