

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Dallas School)
District 2 and the Oregon)
Department of Education)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-016

I. BACKGROUND

On February 27, 2018, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation (Complaint) from the parent (Complainant) of a student (Student) residing in the Dallas School District (District) and an attorney (Complainant, collectively Complainants) representing a statewide advocacy group. The Complainants requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030, alleging violations of the Individuals with Disabilities Education Act (IDEA) on the part of the District and the Department. The Department confirmed receipt of the Complaint and forwarded the request to the District on March 2, 2018.

Under state and federal law, the Department must investigate written complaints that allege violations of the IDEA and issue an order within sixty days of receipt of the Complaint. This timeline may be extended if the Complainant(s) and the respondents agree to an extension to engage in mediation or local resolution, or for extenuating circumstances. The Complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.¹ Based on the date the Department received the Complaint, the relevant period for this Complaint is February 28, 2017 through February 27, 2018.²

On March 13, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District and to the Department, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 28, 2018. The District and Department asked for and received a 10-day extension due to the complex and systemic³ nature of the Complaint. On May 22, 2018, the issue date for this Order was extended once more, to June 4, 2018, due to a family medical emergency experienced by Department staff responsible for the order's issuance. The Department notified the Complainants and the District of the extension.

On April 9, 2018, the District submitted the following materials for the Investigator to review:

- IEP, 10/20/16
- IEP Amendment, 9/19/17
- IEP, 10/12/17
- IEP Amendment, 11/21/17
- Notice of Team Meeting, edited version for 10/20/16 meeting
- Notice of Team Meeting and Meeting Minutes for 1/10/17 meeting

¹ OAR 581-015-2030(5).

² Complainants requested the Department extend the investigation period further back based on improper conduct by the District. The Investigator did not find such wrongdoing. As such, the investigation period will reach back one year, to February 28, 2017.

³ Two other parents filed similar complaints against both the District and the Department, as coordinated by an attorney representing a statewide advocacy group. Each of the four complainants requested the complaints be handled in a systemic manner.

Notice of Team Meeting and Meeting Minutes for 6/6/17 meeting
Notice of Team Meeting and Meeting Minutes for 8/28/17 meeting
Notice of Team Meeting for 9/19/2017 meeting
Notice of Team Meeting for 10/12/17 meeting
Notice of Team Meeting and Parent Meeting Minutes for 10/30/17 meeting
Notice of Team Meeting for 11/21/17 meeting
Prior Written Notice, 10/20/16
Prior Written Notice, 9/19/17
Prior Written Notice, 10/12/17
Prior Written Notice, 11/1/17
Prior Written Notice, 11/21/17
2016-2017 - Discipline Referrals
2017-2018 - Discipline Referrals
2017-2018 Daily Schedule
2016-2017 Attendance Records
2017-2018 Attendance Records
Eligibility documentation
Evaluation documentation (all before the 2016-17 school year)
2015-2016 Progress Reports
2016-2017 Progress Reports
Transportation Requests
2015-2016 Emails
2016-2017 Emails
2017-2018 Emails
2017-2018 Staff/Parent Notebook Log
10/28/2015 Diploma Options Letter - Grades 5-11
10/14/2016 Observation Note
2016-2017 Behavior Charts
2017-2018 Behavior Charts
Functional Behavior Assessments/ Behavior Supports, 11/21/17
2015-2016 Events Logs
2016-2017 Events Log
2017-2018 Events Log
Abbreviated School Day Notice, 11/21/17

The Investigator determined that on-site interviews were necessary. On April 16, 2018, the Investigator interviewed the Parent and the Parent's Attorney. On April 18, 2018, the Investigator interviewed two Special Education Case Managers, the Principal, two Assistant Principals, the Autism Specialist, and the Special Education Director.

On April 30, 2018, the Investigator interviewed the Department's Assistant Superintendent, Special Education Legal Specialist, and IDEA General Supervision Specialist.

The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this Order.

II. ALLEGATIONS AND CONCLUSIONS:

The Department has jurisdiction to resolve this Complaint.⁴ The Complainants' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV.

<p>1. Parent Participation – General</p> <p>The Complainants allege that the District violated the IDEA when it denied the Parent the opportunity to understand and participate in the proceedings at several IEP meetings by:</p> <ul style="list-style-type: none"> a) Pre-determining the Student's educational placement to be a continued reduced school day program, thus depriving the Parent of the opportunity to participate in making the placement decision; b) Directing the Parent to sign the Placement document even though the Parent gave input that the decision was inappropriate for the Student; and c) Not providing to the Parent the incident reports of many serious behavioral incidents in which the Student was involved. The Parent and the Advocate allege that District Team members used these reports to make decisions about the Student's IEP or placement. Because the District had not provided the Parent with copies of all of these incident reports, the Parent was unable to fully participate in the decision-making at the meetings. <p>(34 C.F.R. §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)</p>	<p>Substantiated</p> <p>On September 19, 2017, the District decided to place the Student on an abbreviated school day without providing the Parent a meaningful opportunity to participate in IEP Team decision-making. The Department substantiates this allegation against the District.</p>
<p>2. Prior Written Notice</p> <p>The Parent and the Advocate allege the District violated the IDEA when it failed to provide the Parent with Prior Written Notice after it changed placement and/or refused the Parent's request to change placement.</p>	<p>Not Substantiated</p> <p>The purpose of a Prior Written Notice is to allow the parent to consider what the District is proposing or refusing to do, and then to decide how to respond to the District. The District provided the Parent with such notices within a reasonable time. The Department does not substantiate this allegation against the District.</p>

⁴ 34 CFR §§ 300.151-153; OAR 581-015-2030.

	(34 C.F.R. §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)	
3.	<p>Placements and Least Restrictive Environment</p> <p>The Parent and the Advocate allege that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a) Did not consider a full continuum of placements as possibilities when the District decided to shorten the Student's school day. Instead, the District considered a narrow range of placements; b) Told the Parent the District could not consider other placements due to budget and staff constraints. <p>(34 C.F.R. §§ 300.114, 300.115, 300.116, 300.327; OAR 581-015-2240)</p>	<p>Substantiated</p> <p>The District considered two placements for the Student when the Student entered high school. Thereafter, the District abbreviated the Student's school day without considering less restrictive alternative placement options. The Department substantiates this allegation against the District.</p>
4.	<p>Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</p> <p>The Parent and the Advocate allege that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a) Changed the Student's educational placement by removing the Student from school for more than 10 school days (pattern or consecutive) without determining whether the Student's behavior that caused the removals was a manifestation of the Student's disability. <p>(34 C.F.R. §§ 300.504, 300.530; OAR 581-015-2415)</p>	<p>Not Substantiated</p> <p>The Student was not removed from school for disciplinary reasons in an amount that required the District to conduct a manifestation determination review. The Department does not substantiate this allegation against the District.</p>
5.	<p>Free Appropriate Public Education (FAPE)</p> <p>The Parent and the Advocate allege that the cumulative result of the allegations listed above in this complaint resulted in a denial of FAPE to the Student.</p> <p>(34 C.F.R. § 300.101; OAR 581-015-2040)</p>	<p>Substantiated</p> <p>Due to procedural errors that led to substantive violations, the Student was denied a FAPE. The Department substantiates this allegation against the District.</p>

<p>6. State General Supervision</p> <p>The Parent and the Advocate allege the Oregon Department of Education (Department) violated the IDEA when it:</p> <ul style="list-style-type: none"> a) Did not provide the necessary supervision and monitoring to ensure that this Student and others in the District received FAPE; even though this Student evidences behavioral and other challenges in the school setting; and, b) Did not provide access to a comprehensive educational system of supports and services so that the District could provide FAPE to this Student and others. <p>(34 C.F.R. § 300.101; OAR 581-015-2015)</p>	<p>Not Substantiated</p> <p>The Department fulfilled its monitoring and supervision responsibilities to the District. The Department had no notice that this Student was being denied a FAPE.</p> <p>The Department does not substantiate the allegation that it did not provide appropriate general supervision to the District.</p>
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<p>Complainants' Requested Corrective Action</p> <p>To adequately compensate the Student for the many days of instruction and services the Student has lost, the Department should:</p> <ul style="list-style-type: none"> a. Order that the District provide compensatory education that, pursuant to the relevant holding of <i>Endrew F. v. Douglas County School District</i>, 137 S. Ct. 988 (2017), will restore the Student to the position the Student would have been in had the Student received full school days of appropriate education and services while a student in the District; b. Order that the District hire a knowledgeable independent educational expert from a list of suitable experts to be provided by the Department to assess the amount and form of compensatory education that would achieve the result specified in requested remedy # 1.a.; c. Issue a finding that it (the Department) has failed to meet its responsibility under 34 C.F.R. 300.101 to create and oversee a comprehensive educational system capable of ensuring that students with disabilities and serious behavioral problems receive a FAPE when they reside in rural districts far from behavioral experts and suitable day treatment programs. <p>2. Pursuant to C.F.R 300.149 et. seq., complainants additionally request that ODE create a network of behavioral support experts sufficient to serve all rural students with severe behavioral issues that cannot be addressed by local resources or programs, such that those experts will be available for up to one semester and numerous enough to be available within two weeks of establishing that the needs of a particular student qualified for network services. In requesting this relief, complainants note that 300.151 provides that:</p> <p>“(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA</p>

has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address –

- a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and,
- b. Appropriate future provision of services for all children with disabilities.”

III. FINDINGS OF FACT

1. The Student is fifteen years old and is eligible for special education services as a student with Autism Spectrum Disorder (ASD), established on October 27, 2015. The Student resides in the District and attends ninth grade at a District high school.
2. The Student's October 20, 2016 Individualized Education Program (IEP) notes the Student has needs in the areas of behavior, communication, and assistive technology. The Team agreed the Student exhibited “behavior that impedes [the Student's] learning or the learning of others.” The IEP Team developed goals in the areas of Reading, Written Language, Mathematics, Behavior and Social Skills. The IEP Team noted the Student was working a few years below grade level in Reading, Writing and Math, and had difficulty completing grade level work without accommodations and modifications.
3. The Student's Behavior goal was dedicated toward the Student improving behaviors in the areas of responding to adults and peers. The Student's Social Skills goal was focused on tolerating others, respecting personal space, taking turns, and transitioning from preferred to non-preferred activities.
4. To be successful in general education elective classes, the IEP Team concluded the Student required adult support and modified curriculum, assignments and tests. In addition, the Student needed pass/no pass grading, small group instruction, and access to a word processor and calculator. The Team noted the Student might scream, use profanity, or hit others when frustrated.
5. The IEP Team decided the Student would receive 100 minutes of weekly specially designed instruction (SDI) in behavior and social skills, to be delivered at “All School Sites.” The Student would also receive, in the Developmental Learning Center (DLC),⁵ 100 minutes weekly SDI in each of the following areas: Math, Reading, and Written Language. The Student needed access to headphones, sensory breaks, a visual schedule, a private work area, a behavior plan, and positive reward schedule in addition to other accommodations described above. The Team decided the Student would not participate with nondisabled students in the regular classroom and other nonacademic environments for 500 minutes per week. The Team described the Student's placement as “[l]ess than 40% of the day in the general education setting.”

⁵ In the DLC, individualized instructional programs and teaching techniques are used to address moderate to severe learning and physical disabilities or special social/behavioral cultural, and language needs of the students. Features of the DLC include visual systems for work completion, reduced class size, and additional adult support.

6. During the Student's eighth grade year, the Student attended classes at the middle school in the morning, ate lunch, then was transported to the high school for the afternoon. At the high school, the Student participated in a variety of activities such as vocational skills, sensory room, reading, and writing. The IEP Team decided on this schedule to prepare the Student for attending high school the following year.
7. On May 9, 2017, the District suspended the Student from school for one day after repeatedly hitting District staff. On May 17, 2017, the District suspended the Student for one day for hitting a student. On May 31, 2017, the District suspended the Student from the high school portion of the Student's schedule for hitting a staff member and attempting to hit another student.
8. On May 17, 2017, the District middle school Case Manager updated the Student's Behavior Support Plan (BSP). The Team added the intervention that the "Student will be suspended when [] hits another student". The Case Manager noted on the BSP that the Parent had given permission for this intervention to be added to the Student's BSP.
9. On June 2, 2017, the Parent informed the District that the Student would no longer attend the high school portion of the Student's schedule because the Parents believed the high school could not "handle" the Student.
10. The Parent requested an IEP Team Meeting, and the Team convened on June 6, 2017. The Parent, Special Education Director, Principal, Assistant Principal, Autism Specialist and high school Case Manager all attended the meeting. The Parent again commented that the family did not think the high school was a good place for the Student. The Team discussed involving county Developmental Disability services, and having a physician evaluate the Student for medication. The Parent asked what other options were available, and the Director noted that the next step was home tutoring. The Team discussed the possibility of the Student having one hour of instruction at the high school and one hour of instruction in the community. The Team reached no conclusions, but the Parent stated the Student would not attend the high school program for the remainder of the 2016-2017 school year.
11. The IEP Team met again on August 28, 2017. In attendance were the Parent, a friend of the Parent, the Principal, Counselor, Special Education Director, Principal, Assistant Principal, and General Education Teacher.
12. The Parent expressed concerns over the Student's upcoming high school placement and asked for a different placement. The District representative at the IEP Team Meeting stated that the available options in the District were the high school or tutoring at home for one hour per day. The Team discussed possibilities for the Student's schedule, and eventually agreed the Student would start high school with a full day schedule, but the District gave assurances that the Parent could pull the Student out of school at any time for home schooling.
13. The Student was suspended on September 8, 2017 and September 15, 2017 for aggressive behavior, including hitting staff and peers, and threatening a peer. Each disciplinary removal was recorded as a half-day suspension.
14. On September 14, 2017, the District circulated an IEP Team Meeting notice for a meeting to take place on September 19, 2017 at 8:30 a.m.
15. On September 19, 2017, District staff convened for the 8:30 a.m. IEP Team Meeting. The District called the Parent at 8:33 a.m. and left a message. Seven minutes later, the District

called the Parent again and left another message. After leaving a second message at 8:40 a.m., District staff began the meeting without the Parent in attendance.

16. The District decided that the Student would be placed on an abbreviated school day schedule and ended the meeting. The District did not change the Student's SDI, nor any of the Student's goals or accommodations or modifications. The District noted in the Nonparticipation Justification section of the IEP that the Student would attend school for three hours per day, would have instruction offered in a small classroom within the building, and would be removed from the regular school setting as "we support [the Student's] behaviors." The IEP notes that the District considered three placements: less than 40% of the day in the general education setting, 40-79% of the day in the general education setting, and homebound instruction. The District selected the less than 40% of the day in the general education setting.
17. At 8:55 a.m., the Parent called into the meeting. After introductions, the District informed the Parent that the Student would be placed on an abbreviated school day between 8:30 a.m. and 11:30 a.m., and that the District would set up bussing.
18. On September 19, 2017, the District gave the Parent a Prior Written Notice (PWN) stating the Student's abbreviated school day would begin on September 20, 2017. The PWN notes that the Student was not successful on a full day schedule, and the only other option considered was tutoring because an abbreviated school day schedule "is meeting [the Student's] academic, social and special education services." The PWN further states that another Team Meeting would be convened in a few weeks to see how the Student was doing on the reduced day schedule.
19. On September 21, 2017, the District suspended the Student for a full day for hitting staff multiple times.
20. The IEP Team met again on October 12, 2017. The Parent requested an alternative to the District suspending the Student when the Student hits staff and peers. The Team made no changes to the content of the Student's IEP and reaffirmed the placement decision of less than 40% of the day in the general education setting. The Team agreed again the Student would not spend any time in the general education setting but would receive instruction in a small classroom within the school.
21. The Team updated the Students' Behavior Support Plan (BSP), adding a classroom assistant as a person responsible for implementing the BSP and including the adult response of asking the Student what is wrong, making eye contact and saying to the Student "I see you are frustrated, how can I help?"
22. On October 17, 2017, the District suspended the Student for one full day for hitting two staff members and attempting to hit a peer.
23. On October 26, 2017, the Parent signed consent for the District to reevaluate the Student by conducting additional observations for an updated functional behavioral assessment (FBA) and BSP.
24. The IEP Team met again on October 30, 2017. The Parent attended the meeting with an Advocate. The Director told the Parent the District had submitted the Student's file for consideration of placement at a behavior intervention program and a day treatment program,

but that both placements concluded the Student was not eligible for their respective programs.

25. The Team discussed various ways to extend the Student's school day. The Advocate asked the District to conduct a manifestation determination review because of the Student's disciplinary removal history. The Parent had kept the Student home for five days to avoid any more suspensions. Other members of the IEP Team noted there was no need yet for a manifestation determination review, as the Student had not yet been suspended for more than ten days. The Advocate asked if the District could provide 2:1 educational assistant support for the Student. The District replied that it had tried a 2:1 level of support and it made no difference in the Student's behavior. The Team also discussed a referral for Developmental Disability Eligibility. The Parent expressed some interest in pursuing these options. The Parent signed consent for a new functional behavioral assessment to be conducted. The Team made no changes to the Student's IEP or to the Student's abbreviated school day schedule.
26. On November 1, 2017, the District sent the Parent a Prior Written Notice (PWN) in response to a letter the Parent had sent to the District on October 20, 2017. In the letter, the Parent requested the Student be returned to a full day schedule by November 6, 2017. In the PWN, the District states that it refuses to return the Student to a full school day, referencing the three placement options considered during the October 12, 2017 IEP Meeting. The District noted that, "Team and Parent agreed and signed paperwork".
27. The IEP team met again on November 21, 2017. The District provided the Parent with a PWN stating that the District refused to hold a manifestation determination review because the Student had not been suspended for more than ten days. Also, the District provided the Parent with its Abbreviated School Day Notice and Acknowledgement form. The Parent refused to sign the form on advice from the Parent's Advocate and based upon the Parent's disagreement with the Student's abbreviated school day schedule.
28. The IEP team rewrote the Student's behavior goal to focus on developing "coping skills" to manage work completion, self and emotional regulation, self-control and monitoring, non-compliance and following directions and peer interactions/social skills, and social emotional problem solving. The IEP team expanded the Student's FBA by identifying more setting events, antecedents, behaviors and functional consequences. The IEP team also added some adult responses to identified behaviors in the BSP. District staff explained some new data tracking systems being used with the Student. The Parent signed the IEP and added a statement noting disagreement with the abbreviated school day schedule. The Parent did not sign the BSP.
29. On December 1, 2017, the Student was suspended for hitting a staff member twice.
30. Between September 5, 2017 and February 27, 2018, the District suspended the Student for a total of four days.⁶ On seven other days, the District's records indicate the Student spent time in Detention—sometimes for a lunch period or 20 minutes and sometimes for "the rest of the day." The Parent kept the Student at home for several days during this period, typically on school days after the District suspended the Student.

⁶ The District originally recorded multiple disciplinary removals as half-day suspensions. After a discussion with the Investigator about the amount of time the Student was removed for discipline while on an abbreviated school day schedule, the District revised its records to reflect the removals as full-day suspensions.

31. For 22 days between November 27, 2017 and January 10, 2018, the District tracked the Student's behavior. For each day in attendance, the District rated the Student every 10-15 minutes on whether the Student was focused, on-task, demonstrated safe hands and feet, a quiet voice, no running, following schedule and was productive (0 points given). Data from this tracking indicates the Student was less than productive and safe 32% of the time. Of these, the Student was ranked as aggressive and unsafe only .04% of the time. During 50% of the time when the Student was marked as unproductive, and the Student was disruptive, using profanity, and targeting peers or staff with aggressive language.
32. After September 20, 2017—when the District placed the Student on an abbreviated school day schedule—the Student's school day schedule increased incrementally on four different occasions, albeit not to a full day of instruction.
33. The Abbreviated School Day Notice and Acknowledgement form was developed after the passage of Oregon Senate Bill 263. Effective July 1, 2017, Senate Bill 263 set forth requirements relating to the placement of students on abbreviated school day programs. On or about September 17, 2017, the Department issued Executive Numbered Memo 004-2017-18 outlining SB 263 and included a sample acknowledgement form. The form notes that if a student has an IEP, the District may only place the student on an abbreviated school day after the IEP Team has: (1) Determined that the student should be placed on an abbreviated school day program based on the student's needs; (2) Provided the student's parents with an opportunity to meaningfully participate in a meeting to discuss the placement; (3) Documented in the IEP the reasons why the student was placed on an abbreviated school day; and (4) Documented that the team considered at least one option that includes appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school.
34. The Department carries out monitoring and supervision of District compliance with the IDEA. The Department completes its monitoring and supervision in part through the System Performance Review & Improvement System (SPR&I). This includes review of District performance across various indicators, as well as District review and reporting of individual student IEP files. The District satisfactorily completed its SPR&I review process for the 2016-2017 school year by the deadline established by the Department. The Student's file was not among those selected for District procedural compliance review.
35. Complainants filed this Complaint on February 27, 2018.

IV. DISCUSSION

A. Parent Participation – General

The Complainants allege that the District violated the IDEA when it denied the Parent the opportunity to understand and participate in IEP Team Meetings. More specifically, the Complainants allege the District predetermined the Student's placement on an abbreviated school day, directed the Parent to execute placement documents despite Parent opposition,⁷ and failed to provide the Parent with sufficient information about the Student's behavior.

⁷ There is no evidence that any District staff "directed" the Parent to sign the placement document. The Parent agrees with this.

A school district must “provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement” of the student, as well as the provision of a free appropriate public education (FAPE).⁸ If neither parent can attend an IEP or placement team meeting, the school district “must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.”⁹ A meeting may be conducted without a parent in attendance if the school district is unable to convince the parent that they should attend.¹⁰ Furthermore, a school district fails to comply with the requirements under the IDEA when it engages in predetermination—independently developing an IEP, then presenting it to parents without parent input and participation.¹¹

Several IEP team meetings convened during the Complaint period. In many, the Parent and/or the Parent’s Advocate were provided an opportunity to ask questions, seek clarification, and provide input. However, this was not the case at the September 19, 2017 IEP team meeting. District staff convened for the scheduled 8:30 a.m. IEP team meeting. The District called the Parent at 8:33 a.m. and 8:40 a.m., leaving messages both times. Approximately ten minutes after the scheduled start time, the District began the meeting without the Parent in attendance. The District changed the Student’s placement to an abbreviated school day, then promptly ended the meeting. When the Parent called in at 8:55 a.m.—25 minutes after the meeting’s scheduled start time—the District informed the Parent that it had decided to abbreviate the Student’s school day to a three-hour schedule, which would begin the following day. The Parent did not meaningfully participate in the placement decision-making.

Additionally, the District did not provide the Parent with complete information about the Student’s behaviors. The District states that its policy is to provide parents with notices of suspensions in writing. However, the Parent received only two of the Student’s suspension notices and did not receive many of the descriptions of the Student’s aggressive behavior until the Parent received the investigation record related to this Complaint.

On September 19, 2017, the District convened an IEP Team Meeting and determined placement without the input or presence of the Parent. Once the Parent joined the IEP Team Meeting, the District informed the Parent of the District’s decision to place the Student on an abbreviated school day. At this meeting, the Parent was not part of the decision-making process, and was not equipped with complete information. The Department substantiates this allegation.

B. Prior Written Notice

The Complainants allege the District violated the IDEA when it failed to provide the Parent with Prior Written Notice (PWN) after it changed placement and/or refused the Parent’s request to change placement.¹²

If a school district proposes to change or refuse to change the evaluation, educational placement, or provision of FAPE to a child, within a reasonable time before implementing such changes, the school district must provide the student’s parents with a PWN.¹³ The PWN must contain specific information, including a description of the action the school district proposes, why the school

⁸ 34 C.F.R. § 300.327; OAR 581-015-2190.

⁹ 34 C.F.R. § 300.322(c); OAR 581-015-2195(2).

¹⁰ 34 C.F.R. § 300.322; OAR 581-015-2195(3).

¹¹ *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

¹² The Parent asked the District to let the Student attend a full day of school.

¹³ 34 C.F.R. § 300.503; OAR 581-015-2310.

district proposes that action, how the school district arrived at its decision, and other options considered.¹⁴

Here, the District sent the Parent PWNs after IEP team meetings, on September 19, 2017 after the District's decided to abbreviate the Student's school day, on November 1, 2017 in response to an October 20, 2017 letter from the Complainant asking that the Student be returned to a full day schedule, and at other junctures during the Complaint period. In each instance, the District issued a PWN providing the Parent with information within a reasonable time after it proposed to change or refused to change an aspect of the Student's placement.

The purpose of a Prior Written Notice is to allow the parent to consider what the District is proposing or refusing to do, and then to decide how to respond to the District. The District provided the Parent with such notice. The Department does not substantiate this allegation.

C. Placements and Least Restrictive Environment

The Complainants allege that the District violated the IDEA when it did not consider a full continuum of placements as possibilities when the District decided to abbreviate the Student's school day, instead considering a narrow range of placements. The Complainants further allege the District told the Parent the District could not consider other placements due to budget and staff constraints.¹⁵

Students with disabilities must be educated to the extent possible with other students who do not have disabilities. A school district may only remove a child with a disability from the regular education setting when the nature or severity of the disability is such that education in regular classes cannot be provided satisfactorily.¹⁶ Furthermore, school districts have a continuum of alternative placements available to meet the needs of students with disabilities, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.¹⁷ A school district's continuum of services must be fluid in design, so they can be modified in the amount of time, adult support, and/or design of instruction provided to a student.

The District violated the IDEA when it did not convene to consider alternative placements besides placement in the Developmental Learning Center (DLC) class or home instruction. At the August 28, 2017 IEP Team Meeting before the 2017-2018 school year began, the Parent expressed concern about the Student's adjustment to high school and inquired about what placement options were available. A District administrator told the Parent there were only two options for the Student: homebound instruction and the DLC class. The District did not consider other placement options as possibilities, or other changes to the Student's IEP to provide the Student with a free appropriate public education (FAPE) in the least restrictive environment.

Also, on September 19, 2017, the District unilaterally placed the Student on an abbreviated school day without considering less restrictive options. Examples of less restrictive paths for placement and services include: (1) revising the Student's Behavior Support Plan; (2) increasing SDI for the Student in the areas of Behavior and/or Social Skills; (3) revisiting the Student's Behavior and/or Social Skills goal; (4) reconsidering supplementary aids and services available to the Student. Instead, the District decided—without meaningful parent participation—to place the Student on

¹⁴ *Id.*

¹⁵ The Investigator did not establish whether District staff told the Parent that the District could not afford other options for the Student.

¹⁶ 34 C.F.R. § 300.114; OAR 581-015-2240.

¹⁷ 34 C.F.R. § 300.115; OAR 581-015-2245.

an abbreviated school day, substantially reducing the Student's opportunity to be in an environment with nondisabled students during the school day.

The District signaled its narrow offer of a continuum of services at the beginning of the 2017-2018 school year. Then, the District made the decision to abbreviate the Student's school day without considering other less restrictive alternative placement options. The Department substantiates this allegation.

D. Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

The Complainants allege that the District violated the IDEA when it changed the Student's educational placement by removing the Student from school for more than ten school days (pattern or consecutive) without determining whether the Student's behavior that caused the removals was a manifestation of the Student's disability.

A school district may remove a child from school for violating the school's code of conduct, including 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.¹⁸ If a Student is disciplinarily removed for more than ten consecutive days, or for more ten cumulative days in a school year that constitute a pattern, the District must conduct a manifestation determination review.¹⁹ The purpose of this review is to determine whether the student's behavior that violated the student code of conduct was caused by or had a direct and substantial relationship to the student's disability, or was a direct result of the school district failing to implement the student's IEP.

Here, the District suspended the Student for a total of four days during the 2017-2018 school year. The District did not maintain a clear record of the Student's disciplinary removal to Detention and/or In-School Suspension. However, the Department did not find that the Student was removed from the educational environment for disciplinary purposes in an amount that required a manifestation determination review. While it may have been prudent to convene a manifestation determination review to evaluate the connection between the Student's disability and the Student's violation of the school's code of conduct, one was not required. The Department does not substantiate this allegation.

E. Free Appropriate Public Education (FAPE)

The Complainants allege that the cumulative result of the allegations listed above in this complaint resulted in a denial of FAPE to the Student. To determine whether a child with a disability has been denied a FAPE, we must consider whether there have been substantive violations of IDEA. Procedural violations of the IDEA do not automatically require a finding of a denial of FAPE. However, when procedural inadequacies "result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the individualized education program formulation process," a FAPE denial is the clear result.²⁰

Here, the District committed IDEA violations that resulted in the Student experiencing a loss of educational opportunity. At the August 28, 2017 IEP team meeting, the District informed the Parent that only two placement options were available to the Student: the DLC or home instruction. Soon thereafter, at the September 19, 2017 IEP team meeting, the District abbreviated

¹⁸ 34 C.F.R. § 300.530; OAR 581-015-2405.

¹⁹ 34 C.F.R. § 300.530; OAR 581-015-2415.

²⁰ *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

the Student's school day without the Parent's attendance or participation. When the Parent joined the meeting 25 minutes after its scheduled start time, the District informed the Parent of its decision to abbreviate the Student's school day.

At the relevant IEP team meetings, the District did not seriously consider any number of alternatives that could provide the Student with educational opportunities in a setting less restrictive than an abbreviated day. Such potential alternatives include: (1) increasing SDI for the Student in the areas of Behavior and/or Social Skills; (3) revisiting the Student's Behavior and/or Social Skills goal; (4) reconsidering supplementary aids and services available to the Student

The District denied the Student a FAPE. The Department substantiates this allegation.

F. State General Supervision

The Complainants allege the Department violated the IDEA when it: (a) did not provide the necessary supervision and monitoring to ensure the Student and others in the District received FAPE even though the Student evidences behavioral and other challenges in the school setting; and (b) did not provide access to a comprehensive educational system of supports and services so that the District could provide FAPE to this Student and others.

The Department is responsible for general supervision and monitoring of special education programs for children with disabilities.²¹ The Department carries out its general supervision and monitoring responsibilities in various ways, including facilitating district self-assessment, data collection, analysis and reporting; as well as on-site visits, review of district policies and procedures, review of the development and implementation of IEP's, improvement planning and auditing use of federal funds.²² The Department's obligation to directly provide FAPE to a District student with disabilities arises when a school district refuses or wrongfully neglects to serve a student, provided that school district's failure is significant, and state agency officials are given adequate notice of the school district's noncompliance, and the state agency is afforded reasonable opportunity to compel local compliance.²³

The Department fulfills its monitoring and supervision responsibilities through a variety of procedures. These include overseeing District self-assessment of compliance with specific IDEA requirements based on a sample of student special education files²⁴ and the collection of data related to indicators of program effectiveness (e.g., graduation rates, dropout rates, statewide assessment, discipline, least restrictive environment placement, disproportionate representation in special education, etc.) The data the Department collects from the District, and every other school district in the State, does not focus on individual children. Rather, the data depict a school district's system-wide progress toward achieving defined goals. Little, if any, of the data obtained through the Department's monitoring and supervision processes yields information that could put the Department on notice of any issues related to a specific student.

The Department timely and completely fulfilled its monitoring and supervision responsibilities with respect to the District. Also, there is no indication that the Department does not distribute funding to the District in compliance with law in the same manner it does all other school districts in the State.

²¹ ORS 343.041; OAR 581-015-2015.

²² OAR 581-015-2015.

²³ *Doe v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986).

²⁴ The compliance program algorithm did not select the Student's special education file for District self-review in 2016-2017 or 2017-2018.

Until this Complaint was filed, the Department was unaware of the District refusing or wrongfully neglecting to serve the Student in a significant fashion. In light of the Department not having any adequate notice of the Student's circumstances, it follows that the Department was not afforded any reasonable opportunity to compel local compliance. The Department does not substantiate this allegation.

CORRECTIVE ACTION²⁵

In the Matter of Dallas School District 2 and the Oregon Department of Education
Case No. 18-054-016

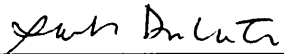
No.	Action Required	Submissions ²⁶	Due Date
1.	<p>IEP Review and Revision Preparation for Meeting</p> <p>In consultation with an Autism Consultant from ODE's Regional Program and input from the Parents, analyze existing Student data collected between January 1, 2018 and April 30, 2018, to identify the most frequent conditions and catalysts associated with the Student's positive and disruptive behaviors.</p> <p>Based on the analysis of data, the Consultant will -</p> <ol style="list-style-type: none"> 1. Identify the behaviors and conditions most frequently associated with results for the Student; 2. Identify evidence-based/best practices for teenagers with Autism most likely to increase and extend the Student's existing positive behaviors to enable reintegration into less restrictive environments. 	<p>Provide to the Parent, the District, and to ODE a written report of the data analysis and the associated recommendations regarding effective practices to be considered by the IEP team.</p>	<p>September 20, 2018</p>

²⁵ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030 (17) & (18)).

²⁶ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeannray@state.or.us; fax number (503) 378-5156.

2.	<p>IEP Meeting</p> <p>Convene an IEP Meeting, including the Parent, to review and revise the IEP. The Team will address each component of the IEP, and develop measurable goals in the areas of functional behavior and academic performance. At the discretion of the IEP Team, the IEP may include transition services.²⁷</p> <p>Additionally, the Team will review any related services, accommodations, modifications, supplementary aids and services, extended school year, and supports to personnel needed to address the Student's special education needs and enable the Student to be involved and make progress in the general education curriculum.</p> <p>Separately, and following the IEP Meeting, convene a placement meeting with all needed participants to determine the Student's placement in the Least Restrictive Environment (LRE). If all participants are available, this meeting may be held on the same day as the IEP Meeting.</p>	<p>Submit to ODE, with copies to Parent, evidence of the completed IEP Meeting and placement meeting. Include meeting notices provided for the IEP Team and placement team meeting notices, log of contacts to determine mutually convenient time and place for meetings, completed IEP and placement documents, and meeting notes/minutes, and copies of prior written notices.</p>	<p>September 30, 2018</p>
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Dated: this 4th Day of June 2018



 Sarah Drinkwater, Ph.D.
 Assistant Superintendent
 Office of Student Services

Mailing Date: June 4, 2018

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).)

²⁷ Transition services may be included in the IEP before the student reaches age 16. Including transition services requires advance planning to ensure the requirements and information related to the student's participation are met.