

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of South Lane School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 21-054-003

I. BACKGROUND

On March 25, 2021, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the South Lane School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint by email on March 29, 2021.

On April 6, 2021, the Department sent a *Request for Response* (RFR) to the District, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 19, 2021. The District completed its *Response* and the Department's Contract Complaint Investigator (Investigator) received it on April 16, 2021. The *Response* included a narrative, partial exhibit listing, and the following documents:

1. Immunization Records dated between March 21, 2015 and November 12, 2019
2. Authorization to Use and/or Disclose Educational and Protected Health Information – second page missing hence no signature
3. Early Childhood Special Education (ECSE) Evaluation report dated September 14, 2018
4. Prior Written Notice and Consent for Evaluation dated September 14, 2018
5. Statement of Eligibility- Early Childhood Special Education (Developmental Delay 98) signed and dated September 14, 2018
6. Prior Written Notice and Consent for Initial Provision of Special Education Services signed and dated September 14, 2018
7. Medical visit notes July 1, 2019
8. OHSU Speech and Language Evaluation dated July 26, 2019
9. OHSU Developmental Pediatric Notes dated August 27, 2019
10. OHSU Physical Therapy Evaluation dated August 27, 2019
11. OHSU Prosthetic Report dated October 22, 2019
12. OHSU Psychology Diagnostic Interview dated October 28, 2019
13. Immunization update report dated November 12, 2019
14. Medical visit notes dated October 30, 2019
15. Individual Family Service Plan (“IFSP”) dated February 12, 2020
16. Physician’s Statement dated February 13, 2020
17. Prior Notice about Evaluation/Consent for Evaluation dated May 20, 2020
18. Notice of Team Meeting dated June 2, 2020 (unsigned)
19. Oregon Standard Individualized Education Program (“IEP”) dated June 10, 2020
20. Special Education Placement Determination dated June 10, 2020
21. Eligibility Statement (Developmental Delay 98) dated June 10, 2020 (second page missing, hence, no signature)
22. Prior Written Notice of Special Education Action (placement) dated June 10, 2020
23. Prior Written Notice and Consent for Provision of Special Education Services signed and dated June 10, 2020

24. Email between Parent to School Psychologist dated July 27, 2020 through September 22, 2020
25. Emails from School Psychologist to Student's Relief Nursery Worker dated September 16, 2020
26. Notice of IEP meeting dated September 16, 2020
27. Report card academic year 2020-2021
28. Emails between special education teacher and Parent dated between February 9, 2021 and March 12, 2021
29. IEP Agenda (w/o notations or meeting minutes) dated March 3, 2021
30. Individual Student Safety Plan dated March 3, 2021
31. Cover letter from Behavioral Specialist to Parent dated March 5, 2021
32. Student Level Support Plan (incorrectly dated January 1, 2020)¹
33. Correspondence from Principal to Parent dated March 9, 2021
34. Communication between Parent and Principal dated between March 8, 2021 and March 29, 2021,
35. Prior Notice of Special Education Action dated March 10, 2021
36. Annual Progress Report dated March 19, 2021
37. Email from Parent to Special Education Director dated March 29, 2021
38. Interdistrict emails dated between April 9, 2021 and
39. IEP Snapshot dated March 12, 2021
40. Daily Behavior Data Sheet (blank)
41. Undated and unsigned narrative regarding Student's elopement
42. Blank Report Card for School Year 2020-2021
43. General education teacher observation made in response to Complaint²

The Investigator determined that personal interviews were necessary. On April 29 and April 30, 2021, the Investigator interviewed District personnel via Zoom. On May 4, 2021, the Investigator interviewed the Parent.

The Parent submitted the following documents to the Investigator in advance of the in-person interview:

1. IFSP Plan Participants dated September 14, 2018
2. Statement of Eligibility – Early Childhood Special Education dated September 19, 2018
3. IFSP dated February 12, 2020
4. Prior Notice about Evaluation/Consent for Evaluation dated May 20, 2020 (unsigned)
5. Parent copy of IEP dated June 10, 2020
6. Prior Written Notice dated June 10, 2020
7. Statement of Eligibility dated June 10, 2020 (unsigned)
8. Authorization to Use and/or Disclose Educational and Protected Health Information (signature page missing, faxed September 9, 2020)
9. Notice of Team Meeting dated September 16, 2020
10. IEP Team Meeting notice through Google Meet dated September 22, 2020
11. Social Skills Group invitation dated October 13, 2020
12. Level System Overview (undated)
13. Functional Behavioral Assessment (undated)

¹ The Student Level Support Plan is dated January 21, 2020, prior to the Student's enrollment at Bohemia Elementary. The body of the report references incidents that took place in February 2021. The evidence suggests that this document was created to present to the Parent at the March 8, 2021 IEP meeting.

² The data contained in this exhibit was not contemporaneously created nor taken as daily data when the Student was in attendance during LIPI.

14. Student Level Support Plan
15. Notice of Team Meeting dated March 1, 2021
16. Individual Safety Plan dated March 3, 2021
17. Prior Written Notice dated March 10, 2021
18. Report card for academic year 2020-2021
19. IEP Progress Report dated March 19, 2021.

After the personal interviews, the District's Special Education teacher produced a calendar with handwritten notations regarding Specially Designed Instruction (SDI) provided to the Student.

The Investigator requested further documentation from the District, to wit:

1. All IEP meeting minutes, including minutes from the 9/22/2020 IEP meeting and the 3/3/2021 IEP meeting;
2. All IEPs, including drafts and amendments for the aforementioned meetings;
3. All Prior Written Notices for the aforementioned meetings;
4. Any reports regarding any room clears, elopements, or non-school behaviors the Student engaged in during SY 2020-2021;
5. All voicemail messages from the Parents that the District referred to in its Response
6. District Policy regarding COVID-19 protocols

The District provided:

1. IEP dated June 10, 2020
2. Prior Written Notice dated November 11, 2020
3. Voice mail message from Parent to District Behavior Specialist (undated)
4. District Policy regarding COVID-19.

The Investigator reviewed and considered the previously described documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. The Department must issue a final order within sixty days of receiving the complaint. The District and the Parent can agree to extend the timeline to participate in mediation. The timeline may also be extended for exceptional circumstances.³ This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.⁴ The Parent's 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 the Discussion in Section IV. This Complaint covers the one-year period from March 26, 2020 through March 25, 2021.

³ OAR 581-015-2030(12).

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

	Allegations	Conclusions
1.	<p>IEP Implementation</p> <p>The Parent alleges that the District violated the IDEA because the District failed to implement the Student's IEP in one or more of the following particulars:</p> <ul style="list-style-type: none"> a. Failure to provide access to adult support throughout the day including adult support to address transitions as well as elopement b. Failure to modify the Student's curriculum to accommodate the Student's multiple developmental disabilities; c. Failure to provide specially designed instruction (SDI) as provided in the Student's IEP. <p>(34 CFR §§ 300.323, 300.324, 300.320; OAR 581-015-2220(1)(b))</p>	<p>Substantiated in part.</p> <ul style="list-style-type: none"> a. Not Substantiated. Although the Student exhibited non-conforming behaviors both inside and outside the classroom, the District provided adult assistance as necessary pursuant to the Student's IEP. b. Substantiated. The Student's IEP fails to address the Student's cognitive disabilities and provides no accommodations, modifications, or supplementary services available to the Student in LIPI to address the Student's communication needs. c. Substantiated. The Parent and the Speech Language Pathologist (SLP) both attempted to engage in CDL but struggled to do so due to connectivity and miscommunication issues. However, even if they had been successful, the Student still would not have received the appropriate amount of SDI pursuant to the June 10, 2020 IEP. The District also failed to provide the Student with 75 minutes of SDI per week in Behavior/Social Skills. The Student made no progress towards Behavior/Social Skills goals.
2.	<p>FAPE</p> <p>The Parent alleges that the District violated the IDEA because it:</p> <ul style="list-style-type: none"> a. Failed to provide SDI to the Student in accordance with the Student's IEP and thus denied the Student a FAPE. b. Failed to create an IEP that would enable the Student to transition from the Student's previous program to an academic setting. c. Failed to create a Safety Plan or behavior support plan for the Student thus denying the Student a FAPE. 	<p>Substantiated in part.</p> <ul style="list-style-type: none"> a. Substantiated. The District failed to provide the Student with the required amount of SDI in both behavioral/social skills and communication during CDL. Although the Student did make progress on one short-term communication goal, the Student made no progress in behavioral/social skills goals. b. Substantiated. The District was aware of aids and services that would help the Student transition from a self-contained ECSE program to kindergarten within a regular class setting but did not implement those aids and services into the Student's IEP, which negatively impacted the Student's ability to transition.

	(34 CFR §300.103,OAR 581-015-2040)	<p>c. Not substantiated. The District began the Student’s Functional Behavioral Assessment (FBA) and Behavior Support Plan (BSP) as soon as the Student exhibited dangerous behaviors.</p>
<p>3.</p>	<p>Placement</p> <p>The Parent alleges that the District violated the IDEA because it failed to place the Student in an appropriate setting and failed to consider the Student’s developmental disabilities as well as the Student’s lack of school skills when deciding the Student’s placement.</p>	<p>Substantiated. The District presented only one placement choice for the Parent and predetermined the Student’s placement.</p>
<p>4.</p>	<p>Parent Participation</p> <p>The Parent alleges that the District violated the IDEA because it failed to permit the Parent to participate in the IEP process in the following particulars:</p> <ul style="list-style-type: none"> a. The District removed the Parent from an IEP meeting and continued the meeting without the Parent, ultimately modifying the Student’s IEP without the Parent in attendance at the IEP team meeting. b. The District failed to take the Parent’s input into consideration when creating the Student’s IEP and failed to consider the Student’s IFSP, the Student’s medical and behavioral history, and the Student’s history of elopement. c. The District has thwarted the Parent’s ability to communicate with the District and with its employees regarding the Student’s academic, behavioral, and day-to-day classroom needs by refusing to communicate with the Parent and by failing to give the Parent concise information regarding the Student. 	<ul style="list-style-type: none"> a. Substantiated. The District failed to reschedule the March 8, 2021 IEP team meeting to allow the Parent to attend and adopted the Student’s BSP and Safety Plan on or before March 12, 2021. b. Substantiated. The District failed to adequately consider and respond to the Student’s previous medical and educational history and failed to consider the Parent’s concerns for the education of the Student. c. Substantiated. By failing to give the Parent any notice or give the Parent any incident reports related to the Student’s behavior, the District deprived the Parent of timely information regarding the Student’s behavior, how it was impeding the Student’s learning, and what strategies would be employed to address that behavior.

Ancillary findings	
The District unilaterally reduced the Student's SDI, failed to get Parental consent for the FBA/BSP, failed to properly explain the Student's removal from general education, and failed to create adequate or multiple Prior Written Notices for the school year. These procedural violations, taken as a whole, deny the Parent from meaningful participation in the IEP process.	

REQUESTED CORRECTIVE ACTION
The Student's IEP team, including mother, will engage in Mediation while creating a temporary Safety Plan to fully ensure his safety is prioritized in a suitable manner which works in the Student's best interest and accommodates his needs. Must also revisit a suitable placement for [the Student].

III. FINDINGS OF FACT

1. The Student is six years old and most recently attended Limited In Person Instruction ("LIPI") in a District elementary school in a general education kindergarten class.
2. The Student is eligible for Special Education services under the category of Developmental Delay. The Student is delayed by 1.5 standard deviations in cognitive function, delayed by 2 standard deviations in communication function, and is below the typical range in social emotional function.
3. The Student underwent a series of evaluations at Oregon Health Sciences University (OHSU) in October 2019. The Student has diagnoses of global development delays, impulsivity, compulsive behaviors, and aggressive behaviors. The Student is not toilet trained. Throughout the Student's medical records, the notation of "challenging behavior" is made.
4. The Student has dyspraxia and articulation disorder, as well as mixed receptive and expressive language disorder. The Student's communication is unintelligible and he cannot be easily understood.
5. The Student became eligible for special education services in pre-school pursuant to an Individualized Family Service Plan (IFSP) on September 14, 2018.
6. The Student's IFSP contained specially designed instruction (SDI) in cognitive skills, adaptive skills, social skills and receptive communication and expressive communication skills. However, under the heading, "Consideration of Special Factors," behavior is not noted as impeding the Student's learning.

7. The Student's IFSP contained cognitive goals, adaptive goals, social or emotional goals, and receptive/expressive communication goals. The Student was placed in a smaller group setting with individualized teacher attention as opposed to being placed in a community-based program where the Student would have had the opportunity to interact with typically developing peers.
8. The Student's IFSP Progress Report of February 10, 2020 noted that the Student had a hard time engaging peers in play due to the Student's communication delays. With 3-5 word phrases, the Student was understood approximately 50% of the time when the context was unknown and approximately 60% of the time when the context was known. With two-word phrases, it increased to 60-70%. When the Student was tired or extremely excited about a topic, teachers have noticed that the Student's intelligibility decreases. When the Student is focused and willing to repeat words again after a model, the Student's intelligibility increased.
9. After the Student's fifth birthday, the early childhood service provider explained to the Parent that the Student would need to begin attending public school. On May 5, 2020, the District sent a Prior Notice about Evaluation to the Parent stating that the District would review existing information to determine if the Student continued to be eligible for special education services; the District decided that no additional tests were needed to determine if the Student continued to be eligible for special education services.
10. The Student was found eligible for Special Education services under the criteria of Developmental Delay. The determination was based on evaluations that were conducted by OHSU on September 14, 2018, July 25, 2019, and August 27, 2019. The IEP team noted that the Student had a developmental delay 1.5 or more deviations below the mean in communication and cognitive areas.
11. On June 10, 2020, an IEP team meeting was convened to review the Student's IEP that had been drafted by the special education teacher. The Student's IEP noted, under Special Factors, that the Student's behavior did impede the Student's learning and/or the learning of others. The IEP's supporting data stated that the Student's "severely decreased speech intelligibility and receptive and expressive language limit [the Student's] ability to understand, share information, interact verbally to form relationship and to be able to participate fully in the general education ('gen ed') curriculum."
12. According to the Student's Present Levels of Academic Achievement and Functional Performance in the June 10, 2020 IEP, the Student could only recognize the letters "J" and "X" and could not differentiate between colors, although the Student knew what the concept of "color" was. The IEP notes that the Student's "severely decreased speech intelligibility and receptive and expressive language limit [the Student's] ability to understand, share information, interact verbally to form relationships and to be able to participate fully in the gen ed curriculum."
13. The Student's IEP contained the following narrative and supporting data: "Visual strips have been implemented in the classroom and home for routine. Paring [*sic*] visuals with directions and structure routines are helpful. Prompts for transitions and a sand timer have helped with transitioning from one activity to another. The Student enjoys holding a transition object when moving from one routine to another. The Student will calm self when directed by an adult but has a hard time independently completing calming strategies."
14. The Student's IEP contained two goal areas: social skills and communication skills. The

Student was to have Specially Designed Instruction (SDI) in Speech/Language 150 minutes per month. The Student was to have SDI in Social Skills/Behavioral for 15 minutes every day. The Student's IEP does not contain any measurable annual goals or SDI for cognitive skills.

15. The Non-Participation Justification stated that the Student "is receiving speech services and resource support for social skills/behavior." The explanation justifying the removal stated that the Student "needs specially designed instruction in speech and social skill/behavior to help the Student better access the general education curriculum." The Student was to be evaluated for Extended School Year (ESY) Services on June 1, 2020.
16. The Student's IEP contained Supplementary Aid/Services; Accommodations of "Access to Adult Support" through the day in the general education classroom. The Student's IEP does not provide any supplementary aids, services, or accommodations that address the Student's extremely limited verbal ability or provide for any assistive technology to assist the Student in learning to communicate. The Student's IEP does not contain any supplementary aids or services, although both communication and behavior are indicated under the June 10, 2020 IEP's Special Factor section.
17. The Student's Placement Determination contained only one choice: "Regular class with speech services and resource support for social skills/behavior." The required Federal placement code designating the amount of time the Student was to be in a general education class is blank.
18. The Student began the 2020-2021 school year in Comprehensive Distance Learning (CDL) and received special education services through online interaction with the special education teacher for social skills and with the Speech-Language Pathologist (SLP) for communication goals.
19. During CDL, the Student was scheduled to meet with the SLP two times per week to obtain 150 minutes of Communication SDI per month. The CDL therapy sessions were 20 minutes online. Communication SDI began on October 12, 2020 and continued until February 9, 2021. The Student received a total of 280 minutes of Communication SDI between October 12, 2020 and February 9, 2020. Some sessions were not started or completed due to a failure of connectivity or miscommunication between the Parent and the SLP.
20. The Student had short-term communication skills/goals, which included "producing /s/ blends in words, producing phonemes in multi-syllabic words/two-word phrases and correctly telling about a picture with appropriate pronoun usage." According to the Student's Progress Report in speech, the Student consistently attended communication SDI during CDL from October through December 2020, but attendance became problematic starting in 2021. The Student had made progress on making /s/ blends and learning to make "L" words. The Student was also able to repeat a "She is/He is" sentence with an "-ing" verb when telling about a picture.
21. During CDL, the Student was scheduled to meet with the special education teacher twice per week for Social Skills SDI. The sessions were to be approximately twenty minutes long. From October 23, 2020 to February 9, 2021, the Student received 200 minutes of SDI in Social Skills.⁵ The Student's June 10, 2020 IEP states that the Student is to have 15 minutes of

⁵ The SPED teacher's calendar notes several days for services but the Student was absent on some days when services were noted by the SPED teacher as provided. This calculation is based on both the SPED teacher's calendar and the Student's attendance report.

social skills or behavioral skills daily (75 minutes per week).

22. The special education teacher used a puppet to tell a social story or would have the Student retrieve an item from home, using it to tell a story to the special education teacher. According to the Student's Progress Report, no progress was made in social skills between October 12, 2020 and December 18, 2020. The Student's Progress Report for the second grading period ending March 19, 2021 did not discuss whether the Student made progress but rather discussed hybrid learning and expected behaviors.
23. The Student has a very limited attention span and becomes distracted almost immediately, getting "off task" (Parent interview). In CDL, the Student's stamina would fade between 20-25 minutes.
24. The Student did participate in CDL but did not participate for the full class time. The Parent sat with the Student to keep the Student on track and the Student would need assistance verbalizing during "Show and Tell", with the Parent interpreting for the Student. The Student did enjoy school very much but could not stay on task without adult assistance. Further, the Student needed sensory objects to occupy the Student during class time.
25. On February 1, 2021, the District began Limited In Person Instruction ("LIPI"). The Student began LIPI at the kindergarten level for one hour per day. During other school years, the typical kindergarten day in general education has historically been three hours. However, during LIPI the time students attended was individualized based upon how much time was required to ensure that students were able to access CDL and to access SDI (if applicable).
26. The Student's first day of kindergarten was the most successful. Starting on the second day and each day thereafter, the Student required more and more support regardless of the amount of scaffolding the general education kindergarten teacher provided. Although the Student was only in school one hour per day, the Student required constant attention from the classroom Educational Assistant (EA) The EA would need to sit next to the Student to keep the Student on task and would accompany the Student while transitioning. The Student eloped from the EA during transitions or would run out of the classroom during instructional times. Any strategy employed by the general education teacher or EA may have been helpful one day but the next day, another strategy was necessary because the Student was not responding to the previous day's successful strategy. The Student regularly disrupted the general education class and disrupted other classes when the Student would elope into those classes.
27. When participating in LIPI, the Student would be unaware of classmates or of the general education teacher. The general education teacher initially attempted different instructional delivery methods but could not keep the Student's attention for more than 20 minutes at a time. After the Student's first one hour session in the general education kindergarten, the EA started assisting the general education teacher with the Student's instruction. When in LIPI, the Student would elope through the school into other classrooms, into the library, and outside, running from the EA. The Student eloped on at least three different occasions. The EA would also assist the Student with transitions and would walk the Student to the Student's transportation at the end of the Student's school day. The EA also attempted to corral the Student when the Student eloped from the classroom.
28. The Parent was never given notice of any of the elopement incidents or made aware of the Student's non-compliance.

29. Upon learning of the Student's elopement, the special education teacher contacted the District's Behavioral Specialist and requested an observation of the Student. The Student had only been in LIPI for four days for a total of four hours when the Behavioral Specialist started an in-class observation of the Student. The Behavioral Specialist then created a Functional Behavioral Assessment (FBA), a Level Support Plan, and an Individual Safety Plan which included a Behavioral Support Plan (BSP) for the Student. The Parent was never provided a consent form to complete for the evaluation, the FBA, or the BSP. The Parent was unaware of the Behavioral Specialist's observation of the Student.
30. The Parent received an IEP team meeting notice on March 1, 2021 for an IEP team meeting on March 3, 2021. Prior to the IEP team meeting, the Parent received copies of the FBA, BSP, Individual Safety Plan, and Level Support Plan. The Parent did not know of the elopement incidents with the Student until she received the draft documents the Behavioral Specialist had created.
31. The Parent attended the March 3, 2021 IEP team meeting via telephone, demanded an explanation of why she was not given information regarding the elopement, and became irate. The Parent called the general education teacher an idiot. The Parent also threatened legal action. The special education teacher requested the Parent be respectful and engage in the IEP meeting. When the Parent continued to be upset and demanded answers regarding the elopement incidents, the District ended the meeting. The special education teacher was tasked with reconvening the meeting, but the Parent was never contacted to reconvene the IEP team meeting.
32. Following the IEP team meeting, the Parent called the District repeatedly, both at the elementary school level and then at the District/Superintendent level, attempting to reschedule the IEP team meeting and to get answers regarding the elopement incidents. The District did not respond to the Parent's request to reschedule the IEP team meeting.
33. On March 9, 2021, the Principal emailed the Parent and stated that the Parent was no longer permitted to call the school and would need to confine her communication to email, adding that all communication would be done in a respectful manner and threatened the Parent with arrest if she did not follow the communication plan.
34. On March 12, 2021, the District sent the Parent a Prior Written Notice (PWN) dated March 10, 2021 stating that the District "stands ready and willing to serve [the Student] based on the Student's most recent IEP and Safety Plan."
35. Since the June 10, 2020 IEP team meeting wherein the Student was placed in a general education classroom, the Parent has been vocal about her disagreement with the placement and has threatened a lawsuit against the District. The Parent renewed her threat of legal action against the District after learning of the elopement incidents in both writing and via voicemail to the Behavioral Specialist.
36. The March 3, 2021 IEP team meeting was not reconvened during the Complaint period.
37. According to the Student's June 10, 2020 IEP, the Student was to have 150 minutes per month of SDI for communication. After February 9, 2020, the Student's SDI in communication was decreased to 30 minutes per week or 120 minutes per month. The Student's IEP was never amended to reflect this change in services, the Parent was not given a Prior Written Notice

regarding the change to the SDI, and there was no IEP team meeting or written agreement between the Parent and the District regarding this change to the Student's SDI.

38. The Student's home school contains a behavioral classroom and the District has programs in other elementary schools for students experiencing behavioral and social challenges.

IV. DISCUSSION

1. IEP Implementation

a. Failure to provide adult support.

The Parent alleges the District failed to provide access to adult support throughout the day including adult support to address transitions and elopement.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the school district's jurisdiction. The IEP must include a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.⁶

In the instant case, the Student's June 10, 2020 IEP included an accommodation for "adult support" throughout the day in all school sites. The Student started LIPI the first week of February 2021, attending kindergarten for one hour per day. The general education teacher attempted to engage the Student in various activities using multiple delivery methods but the Student had an extremely limited attention span. Staff had to create new strategies every day because the Student would not respond to previous strategies. After the Student's first hour in general education kindergarten, the classroom EA was assigned to the Student to assist with classroom instruction as well as transitions. The Student did not respond to any instructional scaffolding regardless of the intervention and assistance of the EA. The classroom EA was with the Student on several occasions when the Student eloped. The Student continually exhibited non-conforming behaviors both inside and outside the classroom and the District had provided adult assistance as necessary. Even though the adult assistance was ineffective, the District did implement this portion of the Student's IEP.

The Department does not substantiate this portion of the allegation.

b. Failure to accommodate Student's multiple developmental disabilities.

The Parent alleges that the District failed to modify the Student's curriculum to accommodate the Student's multiple developmental disabilities.

An IEP must contain a statement of the specific special education and related services and supplementary aids and services to be provided to the child and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities⁷; In developing, reviewing and revising the child's IEP, the IEP team must consider the communication needs of the child and whether the child needs assistive technology

⁶ OAR 581-015-2200(1)(d)

⁷ OAR 581-015-2200(1)(d)

devices and services.⁸

In the instant case, the Student's inability to communicate in an intelligible manner is arguably one of the Student's greatest barriers to accessing education or to establishing school ready skills. Although the Student does have SDI to address speech and to develop basic verbal skills, there are no modifications, accommodations or supplementary services given to the Student in the classroom related to the Student's nearly unintelligible speech. While in CDL, the Student had the Parent available to interpret, thus allowing the Student to participate, but the Student does not have any communication tools available in LIPI. The Student's IEP even notes that decreased speech intelligibility limits the Student's access to the general education curriculum.

Further, the Student's IFSP contained goals related to the Student's cognitive impairment. Although the District did note cognitive impairment on the Student's Eligibility Statement, the District created no goals to address the Student's cognitive impairment and failed to provide any SDI to address the Student's cognitive impairment. There are also no supplementary aids, services, modifications, or accommodations addressing the Student's cognitive impairment in the IEP.

The Department substantiates this portion of the allegation.

c. Failure to provide SDI pursuant to the Student's IEP

The Parent alleges that the District failed to provide specially designed instruction (SDI) as provided in the Student's IEP.

A school district must provide special education and related services in accordance with the student's IEP. A material failure to implement an IEP constitutes a violation of the IDEA. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."⁹

The Student's June 10, 2020 IEP requires that the Student receive 150 hours of SDI in Speech/Language every month. The Student's IEP also provides that the Student will have 15 minutes of SDI in social skills/behavior every day for a total of 75 minutes of social skills/behavioral skills per week.

The District began CDL during the last week of September 2020. The District onboarded Students into CDL over time, to ensure connectivity and access issues were resolved. The Student began participating in CDL services in the general education kindergarten at that time. The Student began participating in SDI via CDL for communication on October 12, 2020 and began receiving SDI via CDL for Behavior/Social Skills on October 23, 2020.

The Student received 280 minutes of speech/language services from October 12, 2020 until February 9, 2021. During this period of CDL, the Student did make progress toward the annual goal with "blends" and focusing on "L". Under the IEP, the Student should have had 600 minutes of speech/language SDI. The student did not receive 320 minutes of speech/language SDI.

The Student received 200 minutes of SDI in behavioral/social skills from October 23, 2020 to January 29 2021. The Student's IEP states the Student is to have 75 minutes of SDI in

⁸ OAR 581-015-2205(2)

⁹ Van Duyn v. Baker Sch. Dist. SJ, 502 F.3d 811, 822 (9th Cir. 2007).

Behavior/Social Skills per week. During the period of CDL, the District unilaterally modified the provision of SDI to the Student, scheduling only 40 minutes of SDI in behavior/social skills per week, automatically creating a shortfall in the provision of SDI. Under the June 10, 2020 IEP,¹⁰ the Student should have received 930 minutes of SDI in behavioral/social skills from October 23, 2020 through January 31, 2021. The Student did not receive 730 minutes of SDI in behavioral/social skills from October 23, 2020 through January 31, 2021.

According to the Progress Notes, the Student did not make any progress in any behavioral/skills goals for either the marking period ending December 18, 2020 or March 19, 2021.

The Department substantiates this portion of the allegation.

2. FAPE

“School districts school districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible”¹¹

a. Failure to provide SDI in accordance with the Student’s IEP

See Section A, 2, above for initial analysis.

The measure of educational benefit is whether the Student makes progress appropriate in light of the child’s circumstance.¹²

In the instant case, the Student’s IEP was written so that the Student could integrate into a classroom in a brick and mortar setting and access the general education curriculum. To that end, the IEP contained goals and SDI in communication so the Student could participate with other children in the general education class and so the Student could be understood when attempting to communicate. Further, the IEP contained goals and SDI in social skills and behavior which may have assisted the Student to transition from a small classroom to a general education setting by teaching the Student acceptable social skills and behavioral modeling so the Student could actively participate in classroom activities and access the general education curriculum.

The District’s failure to provide an adequate amount of SDI in behavior and social skills during CDL was not only detrimental the Student’s ability to access the general education curriculum, it precluded the Student from being successful when LIPI began. The Student began LIPI with global unawareness of not only classroom behaviors, but of the teaching staff in general. Further, the Student’s lagging skills did not allow the Student to respond to basic commands or to meet classroom expectations, e.g. the continued elopement from class and the building.

Finally, the Student’s behavior, after only being in LIPI for a total of four (4) hours, was so extreme that the Behavior Specialist was contacted for a consult and began an FBA, BSP, Safety Plan, and level up plan for the Student. The Student made no progress in Behavioral/Social Skills and the record does not evidence the provision of SDI in accordance with the Student’s IEP. The District has failed to provide an appropriate education to the Student in regard to the Student’s need for behavioral and social skills.

¹⁰ This calculation takes into consideration the holiday breaks, in-service teacher days, and conference days as noted on the SPED teacher’s calendar.

¹¹ OAR 581-015-2040(1)

¹² Endrew F. v. Douglas County, 137 S.Ct. 988 (2017)

The Department substantiates this portion of the allegation.

Likewise, the Student did not obtain the appropriate amount of SDI in speech/language. Although the Student made measurable progress on one short term goal in SLP, the Student's amount of SDI in speech/language ultimately fell short of the June 10, 2020 IEP's requirement. As with behavior/social skills, the SDI in speech/language was integral to allowing the Student to make progress appropriate in the general education setting. Because the Student's speech has historically been unintelligible, without the appropriate amount of instruction and without working on appropriate skills, the Student's communication problems persist. Moreover, the IEP provided for SDI but failed to provide for any assistive technology or other supplemental aids to allow the Student to communicate in a general education setting (see Section B. 2, below). The District has failed to provide appropriate instruction to the Student regarding communication skills.

The Department substantiates this portion of the allegation.

b. Failure to create an IEP that would allow the Student to transition.

Prior to starting kindergarten, the Student was previously placed in a smaller classroom so that the Student would garner more individualized attention from the teacher and so the Student could make progress on the Student's IFSP goals. When the Student's June 10, 2020 IEP was created, the IEP's narrative section noted multiple items that would assist the Student in implementing classroom and school routines, including using a sand timer for transitions, creating a structured routine, giving the Student help with calming strategies, pairing visuals with directions, and allowing the Student to hold an object when transitioning. Although all these strategies were presented in the "supporting data" portion of the Student's June 10, 2020 IEP, none of these items were included as evidenced by the blank Supplementary Aids/Services; Modifications section of the Student's June 10, 2020 IEP.

The Student was not placed in the smaller classroom at the Student's elementary home school nor was the Student considered for any behavioral classroom although those were available in the District. Conversely, the Student was placed in a general education classroom with pull out special education services for 15 minutes per day and was not given any supplementary aids or supports to assist in transitioning from a small pre-school setting to a general education kindergarten setting. Most importantly, the Student's unintelligible speech and communication delays were not adequately addressed in the IEP, further affecting the Student's ability to transition to a general education setting from a self-contained pre-school setting.

The Department substantiates this portion of the allegation.

c. Failure to create a Safety Plan and/or Behavioral Support Plan

A school district must conduct a functional behavioral assessment and develop a behavior intervention plan within 45 school days of receiving parental consent¹³ to conduct the assessment for every student who has an individualized education program and placed the student, other students or staff at imminent risk of serious bodily injury as a result of the student's behavior.¹⁴

In the instant case, the Student's elopement began as soon as the Student started LIPI. The

¹³ The issue of parental consent is addressed below in the Additional Findings section.

¹⁴ OAR 581-015-2181(2)(a)

Student's elopement placed both the Student and other children in danger as the school was attempting to enforce COVID-19 protocols (e.g., physical distancing) and the Student eloped at least once through the library and at least once outdoors in the transportation pick up area.

The District had notice that the Student had behavioral challenges from the Student's IFSP, but the Student's IFSP did not contain a Behavioral Support Plan or a Safety Plan. The District did not know the extent of the Student's non-compliance until the Student began LIPI in February 2021. Prior to the Student's dangerous behavior in LIPI, the District only had anecdotal evidence regarding the Student's elopement. The Student's IFSP does not contain any information regarding the Student's endangering the Student or other Students. The District conducted a FBA and implemented a BSP as soon as the Student exhibited dangerous behaviors.

The Department does not substantiate this portion of the allegation.

3. Placement

The Parent alleges that the District violated the IDEA because it failed to place the Student in an appropriate setting and failed to consider the Student's developmental disabilities as well as the Student's lack of school skills when deciding the Student's placement.

School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.¹⁵ Further, school districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.¹⁶ Finally, when a school district "has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives"¹⁷ predetermination of placement occurs.

In the instant case, the Student's June 10, 2020 IEP contains only one choice for placement, a general education classroom. Although the Student's home elementary school does contain a smaller behavioral classroom and the District does have behavioral programs for students at other locations, none of these options were made available to the Student.

The Department substantiates this allegation.

4. Parent Participation

a. Removal from IEP meeting and finalizing IEP/Safety Plan

The Parent alleges that the District removed her from the March 8, 2021 IEP team meeting and continued the meeting without the Parent, ultimately modifying the Student's IEP without the Parent in attendance at the IEP team meeting.

Pursuant to OAR 581-015-2110, school districts must ensure that the IEP team for each child with

¹⁵ OAR 581-015-2245(1)

¹⁶ OAR 581-015-2190(1)

¹⁷ H.B. v. Las Virgenes Unified School Dist. 239 Fed App'x 342, 344 (9th Cir. 2007)

a disability includes one or both of the child's parents. When a District excludes a parent from meaningful participation in an IEP meeting, it is a procedural violation of the IDEA which may further result in a denial of FAPE.¹⁸ When a parent is excluded from discussion and input regarding a child's BSP, the parent's right of participation is seriously infringed upon as is the right to participate in the IEP process.¹⁹ A District may end an IEP meeting if the meeting is unproductive but it cannot fail to reconvene a meeting and "cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents."²⁰

During the March 3, 2021 IEP team meeting, the District attempted to keep the discussion focused solely on the Student's IEP but the Parent insisted on speaking about the Student's elopement incidents and the District's failure to notify her. The District then disconnected the Parent's phone line from the March 3, 2021 IEP team meeting after the Parent continued to demand information regarding the Student's behavior and the elopement incidents. When the Parent immediately called back to re-engage the team, her call was not answered. In the following days when the Parent continually telephoned the elementary school and the District office in an attempt to continue the IEP team meeting and to get answers to her queries, her calls were not returned and the IEP team meeting was not rescheduled.

Although the special education teacher was tasked with rescheduling the IEP team meeting, no rescheduling took place during the Complaint Period. The Parent received the March 10, 2021 PWN via email on March 12, 2021 from the special education teacher stating that the Student was welcome to return to school and would be served under his most recent IEP and Safety Plan,²¹ which were completed without the participation of the Parent.

Although a District does have the right to discontinue an IEP team meeting if the meeting becomes unproductive, the IEP team meeting must be rescheduled to ensure the parent is given the ability to meaningfully participate.²² The District failed to reschedule the IEP team meeting and deprived the Parent of her right to meaningfully participate in the IEP process.

The Department substantiates this portion of the allegation.

b. Parent input when adopting the Student's IEP.

The Parent alleges that the District failed to take the Parent's input into consideration when creating the Student's IEP including failing to consider the Student's IFSP, the Student's medical and behavioral history, and the Student's history of elopement.

In developing, reviewing and revising the child's IEP, the IEP team must consider the concerns of the parent for enhancing the education of their child. The IEP team must also consider whether a child's behavior impedes the child's learning or that of others and must consider the use of positive behavioral interventions and supports, as well as other strategies to address that behavior.²³

¹⁸ Howard G. v. State of Hawaii, 72 IDELR 59 (D. Hawaii 2018)

¹⁹ Hawaii v. L.S., 74, IDELR 71 (D. Hawaii, 2019)

²⁰ Anchorage School District v. M.P., 689 F.3d 1047, 1055. See also, W.G. v. Board of Trustees of Target Range School Dist. No. 23, 60 F.2d 1479, 1485 (9th Cir.1992)

²¹ The FBA, BSP and Safety Plan issues are addressed below in the Additional Findings section.

²² Lake Oswego Sch. Dist., 112 LRP 14681 (SEA Or 2012), Lake Oswego Sch. Dist. 7J v. Ore. Dept. of Educ., Clackamas County Circuit Court Case No. CV1202465.

²³ OAR 581-015-2205

As previously discussed, the Student's IFSP contained cognitive goals which were not addressed in the Student's June 10, 2020 IEP. Further, as previously discussed, the District did not consider the input of the Parent when the District unilaterally decided the Student's placement.

The Parent voiced concern about the Student being unable to adjust to a larger general education classroom and re-iterated that the Student would run away, echoing the IFSP data. However, the District failed to consider the Parent's concern about behavior and elopement, failed to consider the Student's medical history of "challenging behaviors" and failed to consider the Student's extreme communication delays when creating the June 10, 2020 IEP. The Student's IEP does not adequately address the Student's communication needs or challenging behaviors and places the Student in a general education kindergarten class on a full-time basis, a marked deviation from the Student's previous placement in a self-contained pre-school class.

The Department substantiates this portion of the allegation.

c. Communication Plan/Incident Reports

The Parent alleges that the District thwarted the Parent's ability to communicate with the District and with its employees regarding the Student's academic, behavioral, and day-to-day classroom needs by refusing to communicate with the Parent and by failing to give the Parent concise information regarding the Student.

Pursuant to OAR 581-015-2290, a parent has the right to participate in the identification, placement, evaluation, and IEP development of their child. However, a District has the right to create a communication plan if a parent's communication demands are overwhelming school staff so long as the parent is still able to participate in the IEP team process.²⁴ For a child whose behaviors impede learning, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.²⁵

After the March 3, 2021 IEP meeting was discontinued, the Parent called several administrators and teachers both requesting information on the three elopement incidents of which she was aware and trying to reschedule the IEP meeting. On March 9, 2021, the Principal imposed a communication protocol on the Parent, stating the Parent could only email, that the Parent was to use appropriate language, and that the Parent was not to repeatedly call or email staff. The District did not reschedule or complete the IEP team meeting that began on March 3, 2021.

In the instant case, the Parent's phone calls began on the evening of the IEP team meeting when she was disconnected from the phone call and continued for at least four (4) more business days. The Parent was disrespectful to the general education teacher but did not threaten staff with violence and did not use profane language in the voice message provided to the Complaint Investigator.

Pursuant to the June 10, 2020 IEP, behavior was noted as a Special Factor which the IEP team had to consider when creating the Student's IEP -- more, specifically whether the Student's behavior impeded the Student's learning or the learning of others.

When the Student's eloping behavior occurred, it created an impediment to not only the Student's accessing curriculum, but other students accessing the same. The Student's behaviors were

²⁴ Forest Grove School District v. Student, 118 LRP 48402 (D.Ore 11/27/18)

²⁵ OAR 581-015-2205(3)(a).

drastic enough to call in a Behavior Specialist. Given the Student's behaviors had risen to such a degree that a BSP and FBA were being created, the Parent should have had notice of not only the behaviors but the impact it was having on the other children during COVID-19 protocols.²⁶ Most importantly, the Parent had the right to know that the Student's behavior was impeding the Student's learning.

The District failed to make the Parent aware that the Student had eloped on at least three (3) separate occasions. By failing to give the Parent any notice or any incident reports related to the Student's behavior, the District deprived the Parent of timely information regarding the Student's behavior, how it was impeding the Student's learning, and what strategies would be employed to address that behavior. By threatening the Parent with arrest after the Parent made anxious and upset inquiries into elopement incidents, the District further engaged in chilling the Parent's participation in the IEP process.

The Department substantiates this portion of the allegation.

5. ADDITIONAL FINDINGS

During the Complaint Period, the District has committed the following procedural violations of the IDEA:

a. Failure to obtain consent from the Parent for the FBA and BSP

Parental consent is required prior to a District commencing a Functional Behavioral Assessment.²⁷

The District began the FBA and BSP pursuant to a request from the special education teacher. The Behavioral Specialist should have prepared a Consent for the Parent to execute prior to undertaking the observations of the Student and prior to creating the FBA and BSP. Failure to include the Parent in this process arises to a procedural violation under the IDEA and prevents the Parent from fully participating in the Student's IEP process.

b. Unilateral reduction of SDI service hours.

A District cannot unilaterally reduce a student's number of service minutes in a student's IEP.²⁸

The District decreased the Student's SDI in behavioral/social skills during CDL from 15 minutes per day (or 75 minutes per week) to 30 minutes per week. Further, according to the SLP data notes, the Student's SDI in speech/language was to be decreased the week of February 10, 2021 to one session per week for 20 minutes rather than twice per week for one half hour. The IDEA prohibits a school district from decreasing any SDI without a written document following agreement between the parent and school district or an IEP team meeting to modify the Student's IEP.

²⁶ See Sacramento Unified School District, Board of Education v. Rachel H., 14 Fd.3 (1994) for a discussion of factors regarding behaviors impeding the learning of others.

²⁷ OAR 851-015-2181(2)(a)

²⁸ Letter to Carroll, 72 IDELR 74 (OSEP 2018)

c. Failure to appropriately specify the amount of time the Student would be removed from general education and failure to state specific justification for removal

The IDEA requires that the IEP state in detail the anticipated frequency, location, and duration of the proposed specialized instruction.²⁹

The Student's June 10, 2020 IEP did not specify the amount of time the Student would be removed from the general education classroom to receive SDI. The IEP also did not state what percentage of the day the Student would not be participating in general education with nondisabled peers.

d. Failure to create Prior Written Notices for all Special Education decisions

Prior written notice must be given to the parent of a child within a reasonable period of time before a school district proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.³⁰

The District failed to provide Prior Written Notices or provided inadequate Prior Written Notices in the following particulars:

1. The District provided a Prior Written Notice regarding eligibility dated June 10, 2020. However, this Prior Written Notice was inadequate in that it did not specify the basis for the educational decision, offer other options to the educational decision, or discuss other factors involved when making this educational decision.
2. The District did not provide a Prior Written Notice when it reduced the Student's SDI during CDL for behavioral/social skills. from 15 minutes daily to 20 minutes twice weekly.
3. The District did not provide a Prior Written Notice when it sought to conduct a FBA and developed a BSP, or when the District should have sought consent for evaluation for this purpose.
4. The District did not provide a Prior Written Notice when it reduced the student's SDI in speech/language beginning February 10, 2021.

Conclusion

The District unilaterally reduced the Student's SDI, failed to get Parental consent for the FBA/BSP, failed to properly explain the Student's removal from general education, and failed to create adequate or multiple PWNs for the school year. These procedural violations, taken as a whole, denied the Parent from meaningful participation in the IEP process and denied the student a FAPE.

²⁹ 34 C.F.R. § 300.320(a)(7)

³⁰ OAR 581-015-2310

V. CORRECTIVE ACTION³¹

In the Matter of South Lane School District
Case No. 21-054-003

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

Action Required	Submissions	Due Date
<p>1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to the student's IEP. This Compensatory Education shall include at least:</p> <ul style="list-style-type: none"> a. 320 Minutes of SDI in speech/language for SDI not provided from October 12, 2020 to February 20, 2021, and b. 730 Minutes of SDI in behavioral/social skills for SDI not provided from October 23, 2020 to January 31, 2021. 	<p>Proof of delivery of compensatory education services</p>	<p>May 24, 2022</p>
<p>2. The District must ensure that staff responsible for developing and implementing IEPs receive training in each of the following areas:</p> <ul style="list-style-type: none"> a. IEP Development b. Implementation of IEPs c. Consent Requirements d. Nonparticipation Justification Statements e. Prior Written Notices f. Parent Participation g. Transfer Students h. Evaluation Planning i. General Evaluation Requirements j. IEP Review/Revision, and k. Parent Participation. 	<p>Training agenda/materials to County Contact for review/approval</p> <p>Sign-in sheet for training</p>	<p>September 15, 2021</p> <p>February 1, 2022</p>
<p>3. The IEP team must hold a Facilitated IEP Meeting to discuss Student's Educational Placement, Specially Designed Instruction, Related Services, and Evaluation Planning (if necessary) and, based on that discussion develop and implement an IEP that is reasonably calculated to enable the Student to receive FAPE.</p>	<p>Documentation that IEP team had required discussions during a Facilitated IEP Meeting</p> <p>Student's IEP following Facilitated IEP meeting</p>	<p>September 1, 2021</p>

³¹ The Department's order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (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).)

Dated: this 25th Day of May 2021

A handwritten signature in cursive script that reads "Sara Green".

Sara Green
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: May 25, 2021

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).)