

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Dallas School)
District 2 and the Oregon) FINDINGS OF FACT, CONCLUSIONS,
Department of Education) AND FINAL ORDER
Case No. 18-054-015

I. BACKGROUND

On February 27, 2018, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parent (Complainant) of a student (Student) residing in the Dallas School District (District) and an Attorney (Complainant, collectively Complainants) representing a state-wide 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 this 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 the 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 emergency experienced by Department staff responsible for the order's issuance. Both the Complainants and the District were notified of the extension.

On April 9, 2018, the District submitted a packet of materials for the Department's investigator to review. These materials are listed in the chart below:

- Initial Individualized Family Service Plan (IFSP), 3/31/2016
- IFSP, 3/6/2017
- Transition Meeting/IBP, 9/11/2017
- IEP Amendment, 10/3/2017
- Notice of IFSP Team Meeting, 9/22/2016

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.

Meeting Minutes, 10/3/2016
Authorizations to Disclose Educational and Protected Health Information, 11/11/2016
Letter and Notice of IFSP Meeting, 2/17/2017
Notice of IFSP Team Meeting, 5/18/2017
Notice of Team Meeting, 9/6/2017
Notice of Team Meeting, 9/25/2017
Meeting Minutes, 9/26/2017
Notes re: Meeting Requested, 10/3/2017
Notice of Team Meeting, 10/4/2017
Notice of Team Meeting, 10/5/2017
Meeting Minutes, 11/28/2017
Parent Meeting, 12/11/2017
Parent Meeting continued from 12/11/2017 to finalize FBA/BSP and IEP, 1/9/2018
Prior Written Notice, 10/3/2016
Prior Written Notice, 5/23/2017
Prior Written Notice, 6/8/2017
Prior Written Notice, 6/14/2017
Prior Written Notices, 9/11/2017
Prior Written Notice, 9/26/2017
Prior Written Notice, 10/3/2017
Prior Written Notice, 10/17/2017
Prior Written Notice, 11/28/2017
Prior Written Notice, 1/19/2018
Initial Evaluation, 6/8/2017
Statement of Eligibility, 6/8/2017
2017-2018 ECSE Transition Checklist
Request for Release of Information Form, Release Information Form, Nov.2017
Assessment, 11/15/2017
Autism Characteristics Checklist, 1/15/2018
2017-2018 Referrals / Incident Reports
2017-2018 School Bus Incident Reports
Abbreviated School Day Notice, 9/26/2017
Abbreviated School Day Notice, 2/26/2018
Special Ed Teacher notes re: Student's 8:30 - 1:45 schedule
2017-2018 Daily Schedule
2017-2018 Attendance Records
Progress Report, 6/14/2016
ENT Audiology Visit, 10/10/2016
Audiological Report, 5/16/2017
2016-2017 Emails
2017-2018 Emails
Parent letter re: objection to shorten school day, 10/9/2017
Service Agency Report, 12/5/17
Threat Assessment, 12/14/17
Student Accident Report, 1/8/18
Accident/Incident Analysis, 1/22/18
Observation Notes
2017-2018 Transportation Requests
2017-2018 Events Log
2017-2018 Meeting Notices

Student Registration Form *(date unknown)*
 Hearing Screening *(date unknown)*
 Community Action Head Start letter, June 2017
 Daily Data Sheet for Discrete Trial Training (Identifying Letters) *(date unknown)*
 EI/ECSE Evaluation Planning, 3/2/2016
 History Form, 2/29/2016
 Head Start- ESD email, 2/25/2016
 Head Start Observation, 10/30/2015
 Initial Eligibility Determination, 3/12/2018
 Initial IEP, 3/12/2018

The Investigator determined that on-site interviews were necessary. On May 1, 2018, the Investigator interviewed the Parent and the Parent’s Attorney. On April 17, 2018, the Investigator interviewed the Special Education Case Manager, the Principal, the School Psychologist, the Behavior Support Specialist, two General Education Teachers,⁴ 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.⁵ 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.

1.	<p>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 team meetings by:</p> <p>a) Conducting multiple meetings that did not provide adequate time for the Team to discuss and consider Parent input about the length of the Student’s day, the adequacy of supports provided to the Student, the nature of the Student’s behavioral needs, and the type of FBA and BSP needed to address the Student’s needs appropriately. Because the District included other equally important items in these short meeting agendas</p>	<p>Substantiated</p> <p>At several IEP team meetings, the District solicited Parent input, and the Parent provided input and suggestions, asked questions, and received responses and consideration from District staff.</p> <p>However, on September 26, 2017, the District changed the Student’s placement without first convening an IEP Team Meeting. The District informed the Complainant, rather than consulting or offering opportunities to participate in reasonable consideration of placement options. The Department substantiates this allegation against the District.</p>
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⁴ Two different individuals taught the class during the time under investigation.

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

	<p>(shortened school day, ASD evaluation, etc.) the Parent was unable to meaningfully participate in the creation and review of an FBA and two BSP's; and,</p> <p>b) Not providing to the Parent the incident reports of many serious behavioral incidents in which the Student was involved. The Complainants 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> <p>c) 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.</p> <p>(581-015-2190 (1) (3) and 34 CFR 300.500, 300.327, 300.501 (b)).</p>	
<p>2.</p>	<p>Prior Written Notice</p> <p>The Complainants 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>(OAR 581-015-2310 and 34 CFR 300.503)</p>	<p>Substantiated</p> <p>On September 26, 2017, the District denied the Parent the procedural safeguard of providing the Complainant with a Prior Written Notice before the District changed the Student's placement. The Department substantiates this allegation against the District.</p>
<p>3.</p>	<p>Placements and Least Restrictive Environment</p> <p>The Complainants allege that the District violated the IDEA when it:</p> <p>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;</p> <p>b) Told the Parent the District could not consider other placements due to budget and staff constraints.</p>	<p>Substantiated</p> <p>The District did not give thorough consideration to the continuum of services and alternative placements. Furthermore, the District made a restrictive placement decision outside the IEP team process. The Department substantiates this allegation against the District.</p>

	(OAR 581-015-2240 – 2250 and 34 CFR 300.114, 300.115, 300.116 and 300.327)	
4.	<p>Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</p> <p>The Complainants allege that the District violated the IDEA when it:</p> <p>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> <p>(OAR 581-015-2405 (3)(a)(b) and OAR 581-015-2415 and 34 CFR 300.504, 300.530,300.531,300.532, and 30.533)</p>	<p>Not Substantiated</p> <p>The District was not required to conduct a manifestation determination review. Even though the District did not identify it as such, the record indicates the Student was suspended for four days. The District is not obligated by IDEA rules and regulations to conduct a manifestation determination review after four days of disciplinary removal in a school year. The Department does not substantiate this allegation against the District.</p>
5.	<p>General Evaluation and Reevaluation Procedures</p> <p>The Complainants allege that the District violated the IDEA when it:</p> <p>a) Failed to conduct an evaluation of the Student that used a variety of assessment tools in all areas of suspected disabilities to determine whether the student had disabilities.</p> <p>(OAR 581-015-2110 (3) (4) and 34 CFR 300.301 and 34 CFR 300.303).</p>	<p>Not Substantiated</p> <p>The District used appropriate and varied instruments, gathered developmental information and observed the Student in differing settings. The Department does not substantiate this allegation against the District.</p>
6.	<p>Content of the IEP</p> <p>The Complainants allege the District violated the IDEA when it failed to include additional Specially Designed Instruction, Related Services and Supplementary Aids and Services that might have supported the Student to the extent the Student was able to attend for a full day of school.</p> <p>(OAR 581-015-2200 and 34 CFR 300.320).</p>	<p>Substantiated</p> <p>At various times, the content of the Student’s IEP did not accurately depict the services and placement the District was providing to the Student. The Department substantiates this allegation against the District.</p>

<p>7.</p>	<p>Free Appropriate Public Education (FAPE)</p> <p>The Complainants allege that the cumulative result of the allegations listed above in this complaint resulted in a denial of FAPE to the Student.</p> <p>(OAR 581-015-2040 and 34 CFR 300.101).</p>	<p>Substantiated</p> <p>Due to procedural errors that led to substantive violations, the Student was deprived a FAPE. The Department substantiates this allegation against the District.</p>
<p>8.</p>	<p>State General Supervision</p> <p>The Complainants 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>(OAR 581-015-2015 and 34 CFR 300.101)</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>

<p>Complainants' Requested Corrective Action</p>
<p>The Complainants request the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> 1. To adequately compensate the Student for the many days of instruction and services the student has lost, the Department should: <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.
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:
“(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA 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 five years old. At the time of the Complaint, the Student was eligible for special education services as a student with a Hearing Impairment. On March 12, 2018, the District established additional eligibilities of Other Health Impairment and an Emotional Disturbance. The Student resides in the District and attends kindergarten at a District elementary school.
2. On March 31, 2016, the Student became eligible for special education services as a student with a Developmental Delay. For approximately the next year and a half, the Student received early childhood special education (ECSE) services for approximately 7 hours per week.⁶
3. On October 11, 2016, the Student underwent a hearing evaluation and was found to have bilateral impacted cerumen and bilateral hearing loss. A physician recommended the Parent take the Student to be evaluated for hearing aids.
4. The Individualized Family Service Plan (IFSP) team met on March 6, 2017 and revised the Student’s IFSP. The IFSP team noted the Student demonstrated a need for behavioral support, assistive technology, and the Student was hard of hearing. The IFSP includes cognitive and social emotional goals, and identifies a home setting for the provision of special education.

⁶ The Student exhibited disruptive behavior in several different placements decided upon by the Student’s Individual Family Service Plan (IFSP) team.

5. On June 8, 2017, the educational service district (ESD) received consent from the Parent to evaluate the Student for an initial school age eligibility. The ESD conducted hearing testing. The Student was found eligible as a Student with a Hearing Impairment.
6. began the 2017-2018 school year in a full-time general education kindergarten class.⁷ The Student's IEP Team met on September 11, 2017 to develop a school-age Individualized Education Program (IEP) for the Student. The IEP Team noted the Student had behavioral, hearing, communication needs, and needed assistive technology.
7. The IEP Team wrote goals in the areas of "Behavior/Social Skills," "Adaptive Skills," and "Independent Skills – Hearing Aid." The IEP Team included a total of 25 minutes per day of specially designed instruction (SDI) to be provided to the Student in the general education classroom in the areas of "Behavior – social/emotional," "Adaptive Skills," and "Independent Skills." The IEP notes the Student needs accommodations of visual and verbal cueing, sensory breaks and choices within routines. The Team obtained parent consent to conduct a functional behavioral assessment and developed an interim Behavior Support Plan focused on helping the Student use the hearing aids appropriately.
8. As to placement, the IEP Team agreed that the Student would spend a full school day in the general education environment. The Student's Nonparticipation Justification statement notes "[the Student] will not be removed from the classroom at this time." The IEP Team selected the Student's placement as, "80% or more in the general education setting."
9. Between September 11, 2017 and September 26, 2017, the District recorded numerous incidents involving the Student, including disrupting class, using obscene language, pushing and biting other students, eloping, destroying property and making threats of harm and self-harm.
10. On September 20, 2017, an internal District email indicates the Principal had received authorization for a 1:1 educational assistant for the Student. The Principal also stated that the "modified school is a direction that I think we need to explore asap."
11. Beginning September 20, 2017, District staff exchanged emails internally about how to implement Senate Bill 263⁸ to abbreviate the Student's school day. District staff outlined the issues the IEP Team must consider, shared that the decision must be documented in writing, but that there was no official form to use.
12. On September 25, 2017, the District sent the Parent a notice for an IEP Team Meeting to be held on October 3, 2017. The stated purpose of the meeting was to "[d]evelop or review an individualized education program (IEP) and placement for your child."
13. On September 26, 2017, the Principal met with the Parent to discuss safety concerns and an immediate intervention regarding the Student. At this meeting, the Principal informed the Parent that the Student would begin attending school immediately on an abbreviated school day schedule. Instead of attending for a full day of instruction, going forward the Student would be transported to school for one-hour each day, between 1:00 p.m. and 2:00 p.m. The

⁷ In the District, elementary school students attend school for 6 hours and 10 minutes per day. This represents a total of 370 minutes per day, 1850 minutes per week.

⁸ During the 2017 Session, the Oregon State Legislature passed Senate Bill 263, which was subsequently signed by Governor Kate Brown. Effective July 1, 2017, Senate Bill 263 (SB 263) set forth requirements relating to the placement of students on abbreviated school day programs.

proposed instruction was 15 minutes each of the following: Recess, Sensory, Academics (literacy), Academics (math). The District informed the Parent that all instruction would be delivered in the Developmental Learning Center (DLC).⁹

14. A District case manager gave the Parent a document drafted on a District prior written notice (PWN) form that states the following action occurred: "met today to discuss and implement interventions for [the Student]." The PWN form does not mention that the District placed the Student on an abbreviated school day.
15. Also on September 26, 2017, the District obtained the Parent's signature on a District-created form stating that "[the Student] will be participating in an abbreviated (modified) school day schedule beginning on 9/26/17." The document is dated September 26, 2017 and is signed by a District administrator.¹⁰
16. The Student did not attend school between September 26, 2017 and October 3, 2017. The Parent reported that the Student would not come to school until the October 3, 2017 IEP Team meeting took place.
17. The IEP Team convened on October 3, 2017. The Parent objected to the District placing the Student on an abbreviated school day schedule.
18. In the IEP's Present Level of Academic Achievement and Functional Performance, the District noted that the Student had been refusing to participate in and disrupting classroom activities, running from the classroom, hitting other students, destroying properties, and showing defiance to adults, as well as making threats and using inappropriate language.
19. The District stated that it had attempted multiple interventions to help the Student regulate behavior. These included: "PBIS (Positive Behavior Intervention) supports, earned rewards and privileges, visual reward charts, visual schedules, multiple sensory breaks (scheduled and unscheduled) throughout the day, breaking activities down into smaller chunks, attempted reasoning and conversation at times when [the Student] is not escalated, front-loading of expectations and schedule, and 1:1 adult support."
20. At the October 3, 2017, IEP Team Meeting, Team Members discussed convening another IEP Team Meeting to plan further evaluations to see what was affecting the Student's ability to participate in school.
21. The IEP Team revised the Student's IEP to reflect the one-hour daily schedule that had been implemented on September 26, 2017 and changed the Student's placement to "Less than 40% of the day in the general education setting."
22. The October 3, 2017 "Special Education Placement Determination" page considers four placement options. Three placement options are rejected, and one is selected. The reason for rejection or selection of each of the four options is the same: "As appropriately meeting [the Student's] academic needs at this time."

⁹ 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.

¹⁰ This District-created form goes on to list the date the Student's abbreviated school day schedule would begin, the amount of time the Student would spend in school, and the following statement: "The student's plan for returning to a non-abbreviated schedule will be documented within the IEP through a revision meeting scheduled for 10/3/17. The abbreviated school day schedule is being implemented as an intervention plan."

23. On October 3, 2017, the District provided the Parent with a PWN confirming the decisions made at the meeting.
24. On October 9, 2017, the Parent sent the District a letter requesting that the District “provide [the Student] with a full school day program supported by appropriate services that include an effective Behavior Support Plan based on an accurate and current Functional Behavioral Assessment.” The Parent also requested an IEP Team Meeting to develop a plan to increase the Student’s participation in school and to revisit the Student’s functional behavioral assessment (FBA), behavior support plan (BSP), behavior goal and IEP accommodations. The Parent asked that the District provide several dates so that the Student’s Advocate could attend the meeting. The Parent further requested that an instructional assistant trained in proactive behavioral strategies accompany the Student while at school. Finally, the Parent noted that it was evident that the Student needed more than 10 minutes per day of SDI in behavior skills and requested implementation data about the Student’s IEP accommodations.
25. The IEP Team met again on November 28, 2017. An Advocate accompanied the Parent. At the meeting, District staff described the evaluation instruments they would use to evaluate the Student for eligibility as a student with an Emotional Disturbance, Other Health Impairment, and/or as a student with Autism. Additionally, the Team discussed an FBA and BSP for the Student, but did not complete the discussion. The Team decided to move the Student’s one hour of school from the afternoon to the morning and split its location of service between the Structured Learning Program (SLP)¹¹ and the general education classroom.
26. At the November 28, 2017 IEP Team Meeting, the Parent and Advocate requested that an hour of home tutoring be added to the Student’s IEP. District staff at the meeting agreed to request authorization for such tutoring.¹² The IEP Team agreed to meet every three weeks to evaluate the Student’s progress toward a full-day attendance at school.
27. The IEP Team met again on December 11, 2017. The purpose of this meeting was to discuss the results of the evaluation of the Student to determine potential eligibility for Autism Spectrum Disorder (ASD) and to discuss the plans for evaluating other possible areas of eligibility.
28. At the meeting, the District told the Parent and Advocate that the Student had not yet undergone an evaluation to determine ASD eligibility. The Autism Specialist had told the Parent that an evaluation could not be conducted without first completing an ASD Checklist.¹³ District staff explained the process and the IEP Team agreed that the District would proceed with other evaluations (for eligibility under Emotional Disturbance and/or Other Health Impairment), then return to determine the appropriateness of an ASD evaluation. The Parent signed a consent for some adaptive skills evaluations. The IEP Team also discussed the length of the Student’s school day and the possibility of adding tutoring time at home. The IEP Team also briefly continued the discussion on the FBA and BSP.

¹¹ In the SLP, students receive intensive behavior/emotional instruction in special education classroom programs from a special education teacher. The SLP setting is where individualized instruction programs and teaching techniques have an emphasis on building cognitive skills, social skills, emotional development, behavior management, communication development, as well as, provision of sensory supports. Skills are developed with significant adult support.

¹² On December 5, 2017, the District added one hour of tutoring at the Student’s home. However, home tutoring did not prove successful, so the District added the hour of time to the Student’s schedule at school.

¹³ The Checklist is a document the District uses to screen a student to see if there is reason to suspect the student has Autism. The District does not refer for an Autism evaluation unless this screening checklist indicates there is reason to consider Autism as an area of eligibility.

29. On December 12, 2017, the Student made several verbal threats to others during the school day. The District referred the Student to the ESD for a threat assessment, which was conducted on December 14, 2017 by ESD staff trained in threat assessment techniques. The assessment team made certain recommendations to the District as an outcome of the assessment, including alerting staff and teachers, focusing on social skill building programs, and considering making an admonition to the Student's Parents about ownership of firearms. The Team also recommended that the District assign an identified staff to build a trusting relationship with the Student.
30. The District had its winter break between December 20, 2017 and January 2, 2018.
31. On January 19, 2018, the District sent a PWN to the Parent outlining the decisions the IEP Team made at the December 11, 2017 IEP Meeting.
32. On January 5, 2018, the Case Manager completed the Autism Checklist. The Case Manager noted that the Student did not have issues with "communication" or "social," but did struggle with changes in routine and transitions, and suspected some sensory needs.
33. The IEP Team met again on January 9, 2018. At this meeting, the Team completed the FBA and the BSP. The IEP Team completed its analysis of the Student's disruptive behavior, including running, throwing items, kicking, hitting, and aggressiveness toward other students. The Team noted that the likely functional consequence of these behaviors was that the Student might feel more in control and might also be sent home from school to spend time with the Parent.
34. The Team identified social skills training, adult support, visual supports, choices within boundaries, breaks, snacks, direct instruction and positive reinforcements as interventions which might help the Student learn more appropriate behavior. The Team also noted the SLP program had become a negative setting for the Student and the Student did not want to be in that classroom at any time. The Team also discussed the Student's current performance in school and agreed to add time to the length of the Student's school day. On January 10, 2018, the District extended the Student's school schedule to 9:30 a.m. to 11:45 a.m.
35. The Student regularly attended school, accruing one unexcused absence and eight excused absences between February 28, 2017 and February 27, 2018. The District did not maintain official suspension records for this Student. However, based upon data made available, during the relevant Complaint period, the Student was sent home on four separate occasions for violations of the school code of conduct.
36. The District did not maintain official discipline referral records for the Student. Based upon data made available, the Student had five "Major" referrals. Elsewhere in the Student's record, the District notes the Student had eight "Major" referrals. On 22 different days, the District recorded incidents of the Student exhibiting physical aggression toward peers or staff, running, destroying property, or otherwise being defiant.
37. The District completed evaluations in three additional eligibility areas and discussed them at an IEP Team Meeting on March 12, 2018. The District employed various evaluation instruments to assess the Student's needs in three different areas of disability eligibility. The IEP Team found the Student eligible as a student with an Emotional Disturbance and Other Health Impairment. The IEP Team did not find the Student eligible as a student with Autism Spectrum Disorder.

38. 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.
39. 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.
40. Complainants filed the 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 decision-making proceedings at several IEP team meetings. The Complainants allege the District conducted meetings without adequate time to consider Parent input regarding the Student's length of school day, the adequacy of supports, and the nature of the Student's behavior needs. The Complainants further allege that the Parent was unable to fully participate in IEP Team decision-making because the District did not provide the Parent with reports describing serious behavioral incidents involving the Student. Complainants further contend that the District impeded the Parent's opportunity to meaningfully participate when it predetermined the Student's educational placement to be an abbreviated school day without first convening an IEP Team Meeting.

The 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).¹⁴ 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.¹⁵

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

¹⁵ *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

1. The District Generally Provided the Parent an Opportunity to Meaningfully Participate in IEP Team Meetings

The District convened several IEP team meetings between September 11, 2017 and February 27, 2018. During these meetings, the IEP Team covered a wide variety of topics involving the Student. The Parent alleges feeling “confused and cornered” during these meetings. Beginning with the November 28, 2017 IEP Team Meeting, the Parent was accompanied by an Advocate. Despite the Parent’s expressed feelings of confusion, the IEP documents beginning with the September 11, 2017 IEP reflect that the Parent attended each meeting, either alone or accompanied by an Advocate. There is no indication that the District limited the Advocate’s attendance or participation in these IEP team meetings. Furthermore, the IEP meeting notes records are replete with the District soliciting Parent input, and the Parent providing input and suggestions, asking questions, and receiving responses and consideration from District staff.

2. The District Denied the Parent an Opportunity to Meaningfully Participate in the October 3, 2017 IEP Team Meeting

At the October 3, 2017 IEP Team Meeting, the District denied the Parent the opportunity to meaningfully participate. On September 26, 2017, the District informed the Parent that beginning that day, it would be abbreviating the Student’s school day. Up until that time, the Student was attending school on a full-day schedule entirely in the general education environment. Going forward, the District notified the Parent that the Student would be transported to school for one-hour each day, between 1:00 p.m. and 2:00 p.m. The Student would receive all instruction in the Developmental Learning Center (DLC)—a special education classroom.

The District predetermined the Student’s placement on an abbreviated school day schedule. The October 3, 2017 IEP Team Meeting convened to reflect the abbreviated school day decision the District had already implemented. The Parent was unable to participate meaningfully regarding a decision the District had made one week earlier.

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.

If a school district proposes to change the 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.¹⁶ The PWN must contain specific information, including a description of the action the school district proposes, why the school district proposes that action, how the school district arrived at its decision, and other options considered.¹⁷

After the District decided to abbreviate the Student’s school day, a District case manager gave the Parent a document drafted on a District prior written notice (PWN) form that states the following action occurred: “met today to discuss and implement interventions for [the Student].” The PWN form does not mention that the District placed the Student on an abbreviated school day. The District implemented the Student’s abbreviated school day on September 26, 2017. After

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

¹⁷ *Id.*

the October 3, 2017 IEP Team Meeting, the District provided the Parent with a PWN confirming the Student's placement on an abbreviated school day.

The District implemented changes to the Student's educational placement one week before it provided the Parent's with a PWN. By doing so, the District deprived the Parent of the ability to fully consider the District's proposed changes and voice any objections or otherwise respond. The District's failure to issue a PWN prior to implementing the Student's abbreviated school day does not align with the requirements of the IDEA. The Department substantiates 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 potential placements before deciding to abbreviate the Student's school day. The Complainants also allege the District told the Parent the District could not consider other placements due to budget and staff constraints.¹⁸

Students with disabilities must be educated to the extent possible with other children who do not have disabilities. In addition, a 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.¹⁹ 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.²⁰

The Student began the 2017-2018 school year spending a full day in a general education kindergarten class. An IEP Team Meeting convened on September 11, 2017 confirming this placement as the IEP Team's determination of least restrictive environment. Between September 11, 2017 and September 26, 2017—the latter date being when the District abbreviated the Student's school day—the Student was involved in a number of behavior incidents, including disrupting class, using of obscene language, pushing and biting other students, eloping, destroying property, and making threats of harm and self-harm.

At the October 3, 2017 IEP Team Meeting, the District noted that District staff had attempted multiple interventions to help the Student regulate behavior. These included: "PBIS (Positive Behavior Intervention) supports, earned rewards and privileges, visual reward charts, visual schedules, multiple sensory breaks (scheduled and unscheduled) throughout the day, breaking activities down into smaller chunks, attempted reasoning and conversation at times when [the Student] is not escalated, front-loading of expectations and schedule, and 1:1 adult support."

Eleven school days after agreeing that the Student's appropriate placement was a full-time general education kindergarten classroom, the District removed the Student from school for all but five hours per week, without an IEP Team Meeting, and without introducing other supports or attempting less restrictive alternative placements.

The District could have offered any of the following supports: (1) revising the draft Behavior Support Plan that was referenced in the September 11, 2017 IEP; (2) increasing the 10 minutes of specially designed instruction in "Behavior – social/emotional" that was being delivered in the Student's IEP; (3) implementing a dedicated 1:1 for the Student; and/or (4) placing the Student in

¹⁸ It could not be confirmed whether the District staff actually told the Parent that the District could not afford other options for the Student.

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

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

a self-contained classroom for a full school day. Instead, the District removed the Student entirely from the general education environment, rejecting three placement options and selecting one, all for the same reasons as memorialized in the IEP, “[a]s appropriately meeting [the Student’s] academic needs at this time.”

The District unilaterally abbreviated the Student’s school day without considering other less restrictive alternatives on the continuum of placements that were available to meet the needs of the Student. 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 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.

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.²¹ 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.²² 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.

The District’s records do not indicate the Student was ever “officially” suspended from school. There is documentation that the District asked the Parent to take the Student home before the end of the school day at least four times, planning for a better start the following day. Even though the District did not characterize these as official suspensions, each act was tantamount to a day of disciplinary removal, totaling four days. 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 District did not remove the Student from school for disciplinary reasons for more than ten consecutive or cumulative days that constitute a pattern. The Department does not substantiate this allegation.

E. General Evaluation and Reevaluation Procedures

The Complainants allege that the District violated the IDEA when it failed to conduct an evaluation of the Student that used a variety of assessment tools in all areas of suspected disabilities to determine whether the Student had disabilities.

A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information to determine if a child has a disability and what the child’s IEP must contain to enable the child to participate in the general education curriculum. A District must not use any single measure and must technically sound instruments in evaluating the child. Trained personnel must administer the measures and the total evaluation

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

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

must be sufficiently comprehensive to identify all of the child's needs for special education and related services.²³

The Student began the 2017-2018 school year eligible as a student with a hearing impairment. It became quickly apparent that the hearing impairment was not the full explanation for why the Student was struggling in the school setting. The District decided to assess the Student for three other areas of eligibility (Other Health Impairment, Emotional Disturbance, and Autism Spectrum Disorder). The District used appropriate and varied instruments, gathered developmental information and observed the Student in differing settings. The Department does not substantiate this allegation.

F. Content of the IEP

The Complainants allege the District violated the IDEA when it failed to include additional Specially Designed Instruction, Related Services and Supplementary Aids and Services that might have supported the Student to the extent the Student was able to attend for a full day of school.

A student's IEP must include such components as: (1) a statement of the child's present levels of academic achievement and functional performance; and (2) a statement of the special education and related services and supplementary aids and services to be provided to the student to advance appropriately toward attaining annual goals, and be involved in the general education curriculum both with children with and without disabilities.²⁴

During the 2017-2018 school year, the Student's IEPs did not contain accurate statements of the Student's special education services, nor the amount of time the Student would be involved in the general education curriculum. As described above, between September 26, 2017 and October 3, 2017, the Student's IEP stated that the Student's placement was full-day placement in a general education kindergarten class. In fact, the Student had been placed by the District on an abbreviated school day, with no time dedicated to placement in a general education classroom. Additionally, after the District completed a functional behavior assessment and behavior support plan in January 2018, it did not note this in the Student's IEP or otherwise revise the Student's services page to indicate the BSP was now part of the Student's educational program.

At various times, the Student's IEP content varied dramatically from the services and placement the District provided to the Student. The Department substantiates this allegation.

G. 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. 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.²⁵

The District impeded the Student's right to FAPE when it abbreviated the Student's school day without the benefit of the IEP process. Had a meeting convened before the Student was removed

²³ 34 C.F.R. § 300.304; OAR 581-015-2110.

²⁴ 34 C.F.R. § 300.320; OAR 581-015-2200.

²⁵ *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

from school, the Team could have considered other, less restrictive options available on the continuum of alternative placements to meet the Student's needs. The District infringed upon the Parent's opportunity to participate in the Student's IEP formation when it unilaterally changed the Student's placement outside of the IEP process. The District deprived the Student of educational benefit when it did not write an IEP that took into consideration the Student's circumstances. And the District deprived the Student of educational opportunity after it reduced the Student's participation in the school environment by five hours and ten minutes, daily, without first implementing an IEP Team approved less restrictive alternative placement. The Department substantiates this allegation.

H. State General Supervision

The Complainants allege the Department violated the IDEA when it: (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.

The Department is responsible for general supervision and monitoring of special education programs for children with disabilities.²⁶ 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.²⁷ 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.²⁸

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 files²⁹ 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 do not focus on individual children. Rather, the data depicts 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.

Until this Complaint was filed, the Department was unaware of the District refusing or wrongfully neglecting to adequately serve the Student. In light of the Department not having any adequate

²⁶ ORS 343.041; OAR 581-015-2015.

²⁷ OAR 581-015-2015.

²⁸ *Doe v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986).

²⁹ The compliance program algorithm did not select the Student's special education file for District self-review in 2016-2017 or 2017-2018.


notice of the Student's circumstances, it follows that the Department was not afforded any reasonable opportunity compel local compliance. The Department does not substantiate this allegation.

CORRECTIVE ACTION³⁰

In the Matter of Dallas School District 2 and the Oregon Department of Education
Case No. 18-054-015

No.	Action Required	Submissions ³¹	Due Date
1.	Convene an IEP Meeting and, in conjunction with the review of the Student's IEP, offer extended school year services for Student in Summer 2018 to address social communication skills.	Submit to ODE and parent, evidence of completed meeting including notice of meeting, complete copy of IEP, any meeting notes/minutes, and copy of prior written notice.	June 15, 2018

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).)

³⁰ 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)).

³¹ 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.