

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
David Douglas School District 40

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**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**
Case No. 19-054-049

I. BACKGROUND

On December 19, 2019, the Oregon Department of Education (Department) received a written request for a complaint investigation under Oregon Administrative Rule (OAR) 581-015-2030 from the parent (Parent) of a student who attends school in the David Douglas School District 40 (District). On December 31, 2019, the Department received a complaint from a Therapist who works with the Student.¹ The complainants agreed to merge the separate complaints into one. The Complaint contains allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Department confirmed receipt of the complaints and forwarded them onto the District by email on December 19, 2019 and January 6, 2019, respectively.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.² This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.³ Based on the date the Department received the Complaint, the relevant period for investigation is December 20, 2018 through December 19, 2019.

On January 6, 2020, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of January 20, 2020.

On January 17, 2020, the District submitted a packet of materials for the Department's Complaint Investigator. The materials included in the submission are listed below:

1. Knowledgeable Staff
2. Responses to Allegations
3. October to November 2018
4. March to June 2019
5. August to September 2019
6. October 2020
7. November 2020
8. Communiques

The Investigator determined that on-site interviews were necessary. On February 3, 2020, the Investigator interviewed the Parent and the Therapist. On February 4, 2020, the Investigator interviewed the Elementary School Principal, a Behavior Specialist, the Case Manager, the School Counselor, a Teacher on special assignment, and a Special Education Administrator.

¹ Many of the allegations in the complaint filed by the Student's therapist overlap with the Parent's complaint.

² 34 CFR § 300.152(a); Oregon Administrative Rule (OAR) 581-015-2030(12).

³ 34 CFR § 300.152(b); OAR 581-015-2030(5).

The Investigator reviewed and considered all these 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 the Complaint.⁴ The Complainants' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from December 20, 2018 through December 19, 2019.

1. <u>Prior Written Notice</u> The Complainants allege the District violated the IDEA when it did not provide the Parent with Prior Written Notices related to: (1) A proposed placement change to a more restrictive environment (home tutoring); (2) An IEP meeting to be held on November 28, 2019; and (3) Refusal to implement requests for services for the Student that the Parent made in writing to the District. (34 CFR § 300.503, OAR 581-015-2310)	<u>Substantiated</u> The Student's placement was changed at a meeting on November 12, 2019 but the District did not provide the Parent with a timely Prior Written Notice. Similarly, the District did not provide Prior Written Notice about its refusal to implement evaluation/FAPE provision requests the Parent made in a November 10, 2019 letter. The Department substantiates this allegation.
2. <u>Content of the IEP</u> The Complainants allege the District violated the IDEA when it removed Occupational Therapy (OT) services and trauma informed training services for staff from the Student's IEP without considering the Student's needs. Further, the Complainants allege the District violated the IDEA by not conducting a Functional Behavioral Assessment (FBA) or developing a Behavior Support Plan (BSP) and target behaviors, measurable goals, or strategies to be included in the Student's IEP in order to meet the Student's behavioral needs. (34 CFR § 300.320; OAR 581-015-2200(1))	<u>Substantiated in Part</u> <u>OT and Trauma Informed Practices.</u> The District removed these two components from the Student's IEP without forming a sufficient basis for their removal. The Department substantiates this allegation. <u>FBA, BSP, Goals and Strategies</u> The District had begun the FBA evaluation process, and the IEP contained appropriate and specific goals, accommodations, and supports. The Department does not substantiate this allegation.
3. <u>Least Restrictive Environment and Placement of the Child</u> The Complainants allege the District violated the IDEA when it did not ensure a full continuum of placements was made available to the Student before abbreviating the Student's school day.	<u>Not Substantiated</u> The Student's safety was of primary concern. The District considered the Student's needs, introduced various in-school behavior interventions, and only considered and offered more restrictive

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

	(34 CFR §§ 300.114, 300.115, 300.116, 300.327; OAR 581-015-2240 & 2250)	placements when other behavior interventions were not successful. The District ensured a full continuum of placements were available to meet the Student's needs. The Department does not substantiate this allegation.
4.	<p><u>IEP Implementation</u></p> <p>The Complainants allege the District violated the IDEA when it: (1) Did not implement the Student's October 24, 2019 Safety Plan; and (2) Did not provide the Student with any special education services since November 12, 2019.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220(1)(b))</p>	<p><u>Not Substantiated</u></p> <p><u>Safety Plan</u> Once a safety plan was written, the District implemented it, most specifically when the Student left the classroom or the campus. The Department does not substantiate this part of the allegation.</p> <p><u>Special Education Services since November 12, 2019</u> The District made reasonable offers of service, but the Parent refused one and the other was not implemented before the Complaint was filed. This allegation is not substantiated.</p>

Requested Corrective Action

The Complainants request the following action be implemented as a resolution to the Complaint:

1.
 - a. Follow guidelines for change in placement or offer 1:1 support in the same placement. Since the school district has not followed [Student's] IEP, another placement at a different school district should be explored with consideration for [Student's] mental health needs with the current provider; and,
 - b. Provide documentation which demonstrates [Student's] needs at school in order to make an informed decision for placement.
2. Put these services back in [Student's] IEP and provide these services to [Student] at school.
3. Explore 1:1 support in the least restrictive environment. Address concerns in writing.
4. Explore options to provide [Student] with an education according to FAPE and IDEA.
5. Explore options to provide [Student] with an education according to FAPE and IDEA.
6. Explore options to provide [Student] with an education according to FAPE and IDEA.
7. The school should have an FBA and BSP for [Student].
8. Explore options to provide [Student] with an education according to FAPE and IDEA.
9. Follow guidelines for IEP meetings.
10. Follow the safety plan and develop a safety plan which is trauma-informed and based on [Student's] needs.
11. [Student's] team needs to assess current needs and consider appropriate placement options for Parent to consider. Prior Written Notice needs to be written prior to meetings and sent to Parent prior to proposals/meetings. These steps need to be taken in accordance with IDEA and FAPE.

12. Complete FBA and create a BSP plan based on the FBA. Establish a safe place for a break. Implement a routine, structure or schedule which includes routine breaks.
13. [Student's] IEP needs to reflect the need for trauma informed practices. Staff who are working with [Student] need to be trained in trauma-informed practices according to [Student's] IEP and demonstrate that they are being implemented.
14. Classroom expectations in the classroom do not support [Student's] learning and do not reflect [Student's] needs according to IEP, as would be expected in an SLP.
15. Complete the FBA and create a BSP plan based on the FBA.
16. Schedule an OT assessment and utilize OT consultation, or take recommendations from [Student's] Parent and therapist, to support [Student] in the classroom until an assessment can be made to determine the level of services needed at school.
17. District needs to follow OARs and provide documentation according to laws.

III. FINDINGS OF FACT

1. The Student is seven years old and is eligible for special education under the category of Other Health Impairment. The Student is a good reader and performs well in math. The Student is interested in bugs and plants, has a good imagination, and likes to draw.
2. Two years ago, the Student was removed from home and until September 21, 2019 lived in six different foster placements and attended school in three different school districts. The Student now resides with one biological parent. The Student receives therapy and Occupational Therapy (OT) services outside the school setting. Currently, the Student is not attending school but is receiving some academic tutoring provided by an outside agency unconnected to the District.
3. On November 5, 2018, the Student attended school in another school district and was in foster care. The Student's Individualized Education Program (IEP) Team met and revised the Student's IEP. The Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) are focused on the Student's behavioral needs. The IEP team noted the Student struggled to focus and complete tasks in the morning, but maintained greater focus in the afternoon. The Team identified behaviors of concern, including noise making, refusal to transition from one activity to another, and destruction of the Student's own property, mostly occurring in the morning. The Team attributed this differing behavior by time of day to a current medication trial.
4. The Student's IEP contained the following goal: "With explicit instruction on self-regulation and adult prompt, [the Student] will identify and utilize strategies to regulate [] body and mind 75% of opportunities observed or measured, in order to listen, participate and transition between classroom activities." To meet this goal, the Student was to receive 180 minutes every month of Specially Designed Instruction (SDI) in Behavior and Emotional skills in the general education classroom. Additionally, the Student was to receive 60 minutes per month of SDI in the same skills in a learning center. Other supports included a Behavior Support Plan, morning and afternoon check-ins, a sensory calming routine, the use of "First/Then" language, and a visual schedule.
5. At the November 5, 2018 IEP meeting, the team selected a general education placement for 80% or more of the day with special education pull-out for individualized or small group instruction in Behavior and Emotional skills. The Parent and Therapist reported to the Investigator that at the time the November 5, 2018 IEP was developed, the Student was almost completely integrated into a first-grade classroom, with minimum pull-out time and was

experiencing success. The Student was also receiving skills training at school from a trainer working for the same agency that provided the Student's therapy.

6. The IEP Team completed a worksheet for Function-based Behavior Support Planning at the November 5, 2018 IEP meeting. The Team focused on the Student's challenges with transitions and identified noisemaking, property destruction, and work non-completion as behaviors of concern. The plan was to teach the Student to use a planned sensory or calming skill to regulate and adjust the task or transition in collaboration with the teacher.
7. On April 12, 2019, the Student was placed in an out-of-state foster placement. Near the end of April 2019, the Student returned to Oregon and was placed first in a hotel with a Department of Human Services (DHS) worker, then in a group home. On May 7, 2019, the Student was reenrolled in the district the Student had been attending earlier in the 2018-2019 school year.
8. The IEP Team met again on May 13, 2019 to discuss the Student's current needs considering the recent changes to the Student's life outside of school. In the PLAAFP, the Team noted the Student had been demonstrating escalating behaviors and increasing challenges with self-regulation and classroom participation before the move out of state. The school district Case Manager noted the Team had revised the Student's Behavioral Support Plan on March 12, 2019 to focus on following routines, being on task, remaining in a designated location, and decreasing harmful behavior to self or others. As a result of the Student's difficulties before the move out of state and the trauma induced by the move, the Team decided to increase the amount of time the Student was removed from the general education setting, from 60 to 120 minutes per month.
9. The Student's previous school district wrote three Prior Written Notices (PWN) dated May 13, 2019. In the first, the district recorded its intention to increase the amount of specially designed instruction (SDI) being provided to the Student in behavior and emotional skills. In the second, the district explained the Student's placement was being changed to interim Home Tutoring because the Student had been out of school since mid-April and the team needed to collect more information. In the third, the district refused the Student's Attorney's request for more than five hours of tutoring per week. On June 3, 2019, the IEP team agreed on a change of placement for the Student to homebound tutoring with special education services.
10. The Student's previous district's IEP team met again on August 29, 2019. The team agreed to add the following goal to the Student's IEP: "Given a structured, familiar environment and adult and game or activity that [the Student] is interested in, [the Student] will enter space with peers and engage in a game or activity with 1-2 peers and adult and participate in the game/activity for at least 5 minutes, 2 of 3 opportunities observed."
11. The team increased the amount of SDI in behavior and emotional skills to 900 minutes every month, to be provided in a "special classroom with a focus on behavioral/emotional skills development—60% or more of the school day away from typically developing peers and opportunity to mainstream into the school building and/or grade-level classroom. Located in a general education building." The team retained the supports already in the IEP and added five more: (1) familiar adults to check in with Student; (2) consistency of daily schedule and routine; (3) wait time when Student is struggling to communicate verbally; (4) access to interest and project-based learning when following classroom group instruction and activities is not working for Student; and (5) during independent work time, preferential seating to limit visual input and increase access to feedback/reinforcement from an adult. Finally, the IEP team agreed that staff working with the Student needed consultation from an Occupational

Therapist, and training and/or resources related to trauma-informed practices in the school setting.⁵

12. When the 2019-2020 school year began, DHS established some conditions to be met for the Student to return to the Parent, and all parties agreed it would be more positive for the Student to start school in a new school district once the conditions were met. The Parent met the conditions and the Student enrolled in the District. After the Student's home school in the District received the Student's IEP on August 29, 2019, it referred the family to the District's special education office. They in turn asked the family to enroll the Student in a particular District school, which has the Structured Learning Program for Behavior (SLP-B), a self-contained behavior program for students from kindergarten through third grade.
13. On September 18, 2019, the District held an intake meeting with the Student and Parent. The District Case Manager and the Parent were the only individuals at the meeting. At the meeting, the District described the SLP-B. The Student started school on September 23, 2019 in the SLP-B. The District sent a PWN to the Parent after this meeting. The District noted: "Student has moved in from another Oregon district with a valid IEP and eligibility. [The District] will implement the special education services as outlined in the IEP."
14. On October 14, 2019, the District sent the Parent a notice of an IEP meeting to be held on October 28, 2019. On October 16, 2019, the District asked for and received the Parent's consent to conduct a Functional Behavioral Assessment (FBA). The IEP Team met as scheduled on October 28, 2019 to complete an annual review of the Student's IEP. The Parent expressed concern that the Student was not safe at the school, given a recent episode of running away from the school.⁶
15. In the PLAAFP, the Case Manager noted that on an Acadience Reading Assessment,⁷ the Student scored at or above benchmark levels except for the Retell Word Count subtest. However, the Student was resistant to testing in Math and Writing and so there were no results for those skill areas. The District Case Manager noted that when regulated, the Student was able to recognize feelings and expectations when presented in social stories; and that trauma informed practices would be helpful when working with the Student. Finally, the Case Manager reported current behavioral data: (1) In 22 days of school, the Student had left the classroom 26 times, left the building 6 times and the property twice; (2) When dysregulated, the Student sings and moves about the room acting like a zombie or Spider-Man; and, (3) The Student keeps body safe 51% of the time, is respectful 48% of the time and follows directions the first time 20% of the time.
16. After the October 24, 2019 incident, the District wrote a Safety Plan for the Student. The Plan outlined appropriate staff responses for a continuum of unsafe behaviors. For example, when the Student was running around the classroom singing, staff were to remind the Student of the current expectation (sitting in seat, reading), or ask the Student what the Student was looking for or wanted. The most serious unsafe behavior addressed in the plan was the Student leaving the campus, at which point one possibility was to call 911 and then notify the Parent. Crisis Prevention Intervention (CPI) holds were identified as possible strategies but only as a last resort when bodily injury might be a result.

⁵ The previous district did not provide any meeting minutes, so the reason for the addition of these two items is unclear. On the PWN dated August 29, 2019, the previous district wrote: "Add consult from Occupational Therapist regarding sensory needs and supports in the school setting to promote regulation."

⁶ On October 24, 2019, the Student left the school and ran to a major street several blocks away. District staff could not persuade the Student to return to school, the police were called, and the Student returned to school in a police car. Shortly thereafter, the Student left the school again and ran to a second major street several blocks away. Again, the District called the police, who returned the Student to school and the Parent took the Student home.

⁷ Previously known as DIBELS.

17. The Team wrote three goals for the October 28, 2019 IEP: (1) With explicit instruction on self-regulation and adult prompt, the Student will identify and utilize strategies to regulate body and mind 75% of opportunities observed or measured, in order to listen, participate and transition between classroom activities by November 2020; (2) Given explicit instruction about expectations, and visual and verbal cues, Student will demonstrate body movements appropriate to the situation to meet grade level expectations 80% of the time, as measured by daily point sheets, by November 2020; and, (3) When dysregulated and with a familiar adult using trauma-informed practices, Student will follow a one-step direction, to stay safe 75% of the time, as measured by daily point sheets, by November 2020.
18. The Team specified 225 minutes per week of SDI in Social/Emotional/Behavioral Skills. All the accommodations and supports from the Student's previous IEP were continued, and an accommodation for providing materials in large print format⁸ was added. The Team agreed that the Student needed to be removed from the general education setting for up to 390 minutes daily.
19. At the October 28, 2019 IEP meeting, the Team considered three possible placements for the Student: (1) Special education classroom with behavior support; (2) Special Education in a public separate school; and, (3) General education for more than 80% of the time with special education behavioral support. The Team decided that the first option best met the Student's needs.
20. From September 23, 2019 to November 5, 2019 the Student attended school 28 of 30 possible days. The Student's classes were all in the SLP-B, with opportunities to attend "specials" (PE, Computers, Library and Music) once daily. District staff tracked the Student's compliance with five identified behaviors: "Safe, Respectful, Responsible, Stay on Task, and Communicate the Right Way". Each behavior was tracked during ten different sessions of the day, and staff recorded 2 points if the Student demonstrated the behavior independently, 1 point if the Student needed reminders or support, and 0 points if the Student needed more than two reminders. Each day, the Student could earn a total of 100 points.
21. The Student earned less than 50 points for 16 of the days in class, and only 8 days of more than 60 points per day. The Student's average daily score was 40. On several occasions, the Student spent a large portion of the day with the Principal, the Student's Therapist, or left school early with the Parent or the Therapist. On four days, (October 31, November 1, 4, and 5) the Student left the building and the playground and ran into the neighborhood surrounding the school. On November 5, 2019, the Student ran to a yard behind a home in the neighborhood and played with a shovel in a sand pile in the yard. The police were called and four school staff members were also there. When any one of the adults approached the Student, the Student shook the shovel at them until they backed away. Eventually, one staff member distracted the Student enough so that another staff member could put the Student in a CPI hold. They retrieved the shovel and calmed the Student, eventually transporting the Student in the police car to the school to meet the Parent. The Student was suspended from school for two days,⁹ and a reentry meeting was set for November 12, 2019.
22. The Parent sent a letter to the Case Manager on November 10, 2019 expressing concern about ten separate items and suggesting a possible resolution for each concern. The Case Manager responded in writing on November 20, 2019. These are summarized in the table below:

⁸ The Student has vision needs which are not fully addressed by prescription glasses. The Student does not like to wear the glasses and will often refuse to do so.

⁹ A suspension letter was sent to the Parent on November 5, 2019.

23.

Parent Concern	Parent suggested Resolution	District Response
1. Safety: The Student has been outside the school for several hours at a time without the Parent being notified. Police have had to pick the Student up three times off campus.	Individualized Safety Plan needs to be drafted and approved by Parent.	District agrees Student is not safe at school, but District does not regularly call parents when students leave the building. District has written a safety plan which was mailed to the Parent after the November 12, 2019 meeting.
2. Behavior Plan: Student does not have a behavior support plan informed by Student's needs and FBA.	Complete FBA and create Behavior Support Plan.	Started FBA process on October 18, 2019. It is a process that takes time to complete.
3. Trauma Informed Practices: Student has experienced significant trauma and experiences anxiety.	Parent is asking for Trauma Informed Practices to be implemented.	District has provided Trauma Informed Practices training during professional development.
4. Free Appropriate Public Education (FAPE): Student's IEP is routinely disregarded.	Parent is asking that an appropriate program is put into place in the least restrictive environment.	Student's IEP is fully implemented by the staff at the school.
5. Least Restrictive Environment (LRE): Student needs a 1:1 assistant with whom Student has a positive relationship to develop rapport and to support Student in the classroom.	Assign 1:1 Assistant to develop rapport and support Student in classroom.	1:1 support has been available to Student at all times in current program. Even when the Student's Therapist has been in the school, the Student has not always engaged or returned to the expected area. Relationship building is done on a daily basis.
6. Sensory Issues and Occupational Therapy: Student has significant sensory issues, but sensory needs are not being met.	Parent is requesting an OT evaluation to determine sensory needs.	Referral was made for OT services, but Student was not in classroom when screening was to be done. District will continue screening when appropriate.
7. Vision Issues: Student needs corrective glasses but frequently does not wear them.	Parent is requesting a plan be developed to encourage the Student to wear glasses throughout the day.	District encourages Student to wear glasses, and gives rewards when Student does so; but the rewards appear to be meaningless to the Student. District is open to any suggestions Parent or others have about a plan.

8. Suspensions: Student has been suspended, sent home and yet no suspension notices have been written when these have occurred. No Safety plan has been implemented.		Student has only been suspended two days, (11/6 & 11/7); when the Student has gone home on other days, that decision has been made by the Parent or Therapist.
<p>9. Self-Advocacy: The Student needs help with self-advocacy so that the Student can:</p> <ul style="list-style-type: none"> a. get out of seat to look at something not visually available, take a sensory break; b. know where to go to take a sensory or movement break; c. have access to high protein snacks and the option to eat lunch in the cafeteria. 		<p>Student is prompted throughout the day to take breaks. When Student is out of seat, Student is darting around the room singing or sliding on the floor. Student has been shown break areas.</p> <p>Student is allowed to eat snacks as long as Student follows the rules—being seated while eating, no mess. Student has eaten lunch in the cafeteria.</p>
<p>10. Parent is not meaningful member of the IEP Team: Parent input at meetings is disregarded. Parent has not been given Behavioral Incident reports when generated. Decisions are made prior to IEP meetings.</p>		<p>Point sheets have been sent home daily; I had not heard the Parent was not receiving them. I have been in touch with Parent via an App. Parent attended IEP meeting and was asked for input in all areas. No decisions have been made prior to any IEP meeting other than deciding what options are available.</p>

24. The reentry meeting was held on November 12, 2019. The Parent, Therapist, Principal, Case Manager and Behavioral Specialist attended the meeting. All agreed the Student was unable to remain safe in their current placement. The District suggested home tutoring as an interim while they looked for another placement that would better address the Student's behavior needs. District staff also outlined an abbreviated school day proposal¹⁰ but the Parent refused to return the Student to the current placement at that school. The Team did not review the IEP. The District assigned a home tutor to provide 5 hours per week of instruction. The tutor left several voice messages for the Parent between November 15, 2019 and December 11, 2019 to set up tutoring. On December 12, 2019, the Parent called the District and shared obstacles to establishing a tutoring schedule. The Parent and tutor decided the tutor would contact the Parent between December 26, 2019 and December 31, 2019 to discuss a tutoring schedule for January 2020.

¹⁰ The proposed abbreviated school day would have started with the Student attending 1.5 hours daily, with a six-step extension plan as the Student met certain criteria of "spending 80% of time on task, less than 50% of time spent 1:1, not leaving classroom or expected area. The data will be recorded on the Daily Point Sheets, will be reviewed every two weeks and time increased based on meeting goal. Time will be increased in 45-75 minute segments.

25. The IEP Team met on November 25, 2019. The Team discussed recent events during which the Student left school grounds and the difficulty staff was having getting the Student to return to campus and the classroom. Additional points of discussion included the Student's recent behavioral data (on-task time decreased from 16% to 10% and the Student was requiring 1:1 supervision 90% of the time).¹¹ When the Parent asked why Trauma Informed Practices could not be included as a support to staff on the IEP, the District replied that it does not have a Trauma Informed Practices Therapist. The District also noted it had scheduled an OT screening for the Student, but the Student was not present at school when the Therapist arrived.
26. After discussing interventions and strategies the District had implemented, the Team considered the three placement options proposed by the District. The first was an abbreviated school day, the second was a more restrictive classroom,¹² and the third involved home instruction/tutoring. After considering the options, the Team selected home instruction as the Student's new placement. The District provided the Parent with a PWN outlining this decision.
27. The Parent filed this Complaint on December 19, 2019.

IV. DISCUSSION

A. Prior Written Notice

The Complainants allege the District violated the IDEA when it did not provide the Parent with Prior Written Notices related to: (1) A proposed placement change to a more restrictive environment (home tutoring); (2) An IEP meeting to be held on November 28, 2019; and (3) Refusal to implement requests for services for the Student that the Parent made in writing to the District. A school district meets its responsibility to an eligible student and the parent when it provides prior written notice (PWN) before the District proposes or refuses to initiate or change a student's identification, evaluation, educational placement or the provision of FAPE.¹³

1. November 12, 2019 Meeting

On November 12, 2019, the District convened a "reentry" meeting after the Student was suspended for two days. District staff noted this is a common practice at this school for all students, and that such meetings are not IEP team meetings. At this meeting however, a decision was made to change the Student's placement to home tutoring. Indeed, the Student did move to home tutoring after the November 12, 2019 meeting, but the District did not send the Parent a PWN at or soon after this meeting. It was not until after a later IEP team meeting, held on November 28, 2019, that the District sent the Parent PWNs for the decisions made at that meeting. The Department substantiates this allegation.

2. November 28, 2019 IEP Team Meeting

The District provided appropriated PWNs for the decisions made at that meeting. The Department does not substantiate this allegation.

¹¹ District staff observed that the Student was not experiencing success in the classroom even with 1:1 support.

¹² The District had proposed a classroom supervised by the local education service district. This classroom is focused on behavioral instruction, is located in a locked building which is not attended by students who do not have IEPs.

¹³ 34 CFR § 300.503; OAR 581-015-2310.

3. Parent Letter

The Parent sent a letter to the District on November 10, 2019 listing ten concerns the Parent had about the Student's current program and making some specific requests of resolution actions the District could take to remedy the concerns. The Parent's correspondence included requests for certain special education evaluations (occupational therapy) and changes to the District provision of FAPE to the Student. These were never considered at an IEP meeting with the whole team in attendance, and the District did not send PWNs in response to the Parent's requests. A District Case Manager replied to the Parent on November 20, 2019, but the reply did not contain the required elements of a PWN, such as a description of the proposed or refused action, an explanation of why the District is proposing or refusing the action, a description of the records or tests, etc. the District used to make its decision, a statement that the Parent of an eligible child has protections under procedural safeguards and how the Parent can obtain these, etc.¹⁴

The District changed the Student's placement at a meeting on November 12, 2019 and did not provide the Parent with a timely and complete PWN. Similarly, the District did not provide Prior Written Notice about its refusing the Parent's evaluation, FAPE provision, and other requests in their November 10, 2019 letter. The Department substantiates this allegation.

B. Content of the IEP

The Complainants allege the District violated the IDEA when it removed Occupational Therapy (OT) services¹⁵ and Trauma Informed Training services for staff from the Student's IEP without considering the Student's needs. Further, the Complainants allege the District violated the IDEA by not conducting a Functional Behavioral Assessment (FBA) or developing a Behavior Support Plan (BSP) and target behaviors, measurable goals, or strategies to be included in the Student's IEP in order to meet the Student's behavioral needs.

1. Occupational Therapy and Trauma Informed Practices

Elements included in an IEP are not limited by a student's eligibility category, but are developed based on the student's strengths, challenges, and areas of need. Here, a previous IEP team (from a different school district) had included occupational therapy (OT) services for the Student and Trauma Informed Practices supports for staff. In a PWN written on August 29, 2019, the Student's previous school district had noted: "Add consult from Occupational Therapist regarding sensory needs and supports in the school setting to promote regulation." When the Student moved into the District, the District agreed to implement the IEP as written until the annual review meeting approximately one month later. At that meeting, the District removed the OT and Trauma Informed Practices elements. The District stated that the Student could not receive OT services because there was no OT screening in the Student's record. However, even though the District recognized the Student's difficulty with self-regulation and sensory issues, the District did not conduct any OT assessment before the IEP meeting. The District removed the OT consult without gathering information to establish a basis for such removal.

In its response, the District contends that providing Trauma Informed Practices as a staff support was concomitant to providing a specific curriculum. The Student's record contains information about some of the trauma the Student has experienced, and the Parent, Therapist, and the Student's personal Attorney, as well as DHS staff willingly shared the Student's history with District staff. The District has provided training to staff in Trauma Informed Practices, but District practice does not warrant removal of aspects from the Student's IEP without gathering information and establishing a basis for that removal.

¹⁴ 34 CFR § 300.503, OAR 581-015-2310.

¹⁵ District staff told the Parent that "by law, the Student does not qualify to receive OT services."

The Department substantiates this part of the allegation on the basis that the District removed these two elements from the Student's IEP, which had been adopted by the District, without collecting information and forming a sufficient basis for such removal.

2. Functional Behavioral Assessment, Behavior Support Plan, Goals and Strategies

The Complainants allege that the Student's IEP did not contain a Functional Behavioral Assessment (FBA) or develop a Behavior Support Plan (BSP) and target behaviors, measurable goals, or strategies. Here, the District moved to begin an FBA with an objective of developing an effective BSP for the Student. The District sought consent from the Parent to conduct an FBA within three weeks of the Student's enrollment in the District. Though the District had begun the evaluation process, its completion was interrupted when the Parent did not return the Student to the SLP-B classroom in November 2019 for safety reasons. While the FBA was underway, the District placed the Student in a self-contained classroom with a fully developed behavioral framework to teach and reinforce appropriate skills. The Student's goals were focused on specific behavioral needs, and the Student's IEP contains appropriate accommodations.

The District had begun the FBA process, and the Student's IEP contained relevant and specific goals, accommodations and supports. The Department does not substantiate this part of the allegation.

C. Least Restrictive Environment and Placement

The Complainants allege the District violated the IDEA when it did not ensure a full continuum of placements was made available to the Student before abbreviating the Student's school day. A District must ensure that an educational placement outside the general education environment is determined by a team which includes the parents and others knowledgeable about the student, is based on the current IEP, is as close as possible to the student's home, and, is made in conformity with the provision of Least Restrictive Environment (LRE). A student's placement must be one that educates students with disabilities, to the maximum extent appropriate, with students without disabilities. In addition, a special class, separate school or other placement removed from the general education environment must only be selected when the student cannot satisfactorily participate in the general education environment with the use of supplementary aids and services.¹⁶

The Student's IEP Team agreed the Student was not safe in their current setting. The District offered an abbreviated school day plan with a goal of reintegrating the Student to a full day in a measured manner. The Parent, the Therapist, and the Student's and Parent's Attorneys had all asked for an assigned 1:1 educational assistant. They also asked if the Student could be placed in two other self-contained therapeutic classrooms in different districts' catchment areas. The District refused to 1:1 educational assistant request on the basis that 1:1 support was already available in the Student's SLP-B classroom. The District also refused placement in the out-of-District classrooms on the basis that the District did not have access to these programs. As an alternative to an abbreviated school day, the District offered a self-contained classroom managed by the local Education Service District. The Parent declined this offer.

Safety for this Student was a primary concern. The District considered the Student's school experience, demonstrated needs, and attempted different interventions before offering placement in more restrictive environments. The District met its LRE obligations. The Department does not substantiate this allegation.

¹⁶ 34 CFR §§ 300.114, 300.115, 300.116, 300.327; OARs 581-015-2240, 581-015-2250.

D. IEP Implementation

The Complainants allege the District violated the IDEA when it: (1) Did not implement the Student's October 24, 2019 Safety Plan; and (2) Did not provide the Student with any special education services since November 12, 2019.

There are two components to implementing an IEP for an eligible student. A district must have an IEP in place for the student at the start of the school year and must provide the services in accordance with the IEP.¹⁷

1. Safety Plan

After an October 24, 2019 incident when the Student left the campus twice in one day and had to be returned to campus by police, the District wrote a Safety Plan for the Student. On or around October 24, 2019, the District was implementing an IEP that had been written by a previous school district, which did not contain a Safety Plan. This IEP did not contain a provision for a Safety Plan. Once the plan was written however, the District did implement it, most specifically when the Student left the classroom or the campus totally. The Department does not substantiate this part of the allegation.

2. Special Education Services since November 12, 2019

The District offered two possible placements for the Student on November 12, 2019. The Student could move to an abbreviated school day schedule, with a plan to increase attendance as the Student met certain criteria related to the Student's time on task, time spent with a 1:1 and remaining in the classroom/expected area. Alternatively, the District offered home tutoring for five hours weekly. The Parent refused the abbreviated school day plan on the basis that the District could not keep the Student in class or on the campus and safe. The District had also offered placement through an ESD program. The District assigned a tutor, who attempted contact the Parent 19 times before the Parent filed the Complaint on December 19, 2019. On December 12, 2019, the Parent communicated with the District, informing it of various obstacles in the way of scheduling tutoring. As a result, the Student did not receive services during this time period. The District made an offer of service, but the Parent refused one and the other was not implemented, despite the efforts of the District tutor, before the complaint was filed. This part of the allegation is not substantiated.

V. CORRECTIVE ACTION¹⁸

In the Matter of David Douglas School District 40

Case No. 19-054-049

	Action Required	Submissions ¹⁹	Due Date
1.	With the assistance of the County Contact, the District shall develop and deliver training to	Submit a copy of the agenda, sign-in sheet, materials used, and attendance sheet to ODE.	May 15, 2020.

¹⁷ OAR 581-015-2220.

¹⁸ 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)).

¹⁹ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634, e-mail: mike.franklin@ode.state.or.us fax number (503) 378-5156.

	special education staff members and administrators addressing when issuing Prior Written Notices is required and what must be included.		
2.	With the assistance of the County Contact, the District shall review its current procedures for reviewing transfer IEPs, and, if necessary, revise these procedures. The District shall also develop and deliver training to special education staff members and administrators addressing the review and implementation of transfer IEPs.	Submit a copy of the current procedures for reviewing transfer IEPs to ODE. Submit a copy of the new procedures for reviewing transfer IEPs to ODE (if determined necessary after current procedures reviewed by County Contact). Submit a copy of the agenda, sign-in sheet, materials used, and attendance sheet to ODE.	March 19, 2020. April 19, 2020. May 15, 2020.

Dated: this 19th day of February, 2020

Candace Pelt, Ed.D

Candace Pelt Ed.D
 Assistant Superintendent
 Office of Enhancing Student Opportunities

Mailing Date: February 19, 2020

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).)