

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Greater Albany School
District 8J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-044

I. BACKGROUND

On August 5, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Greater Albany School District 8J (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parents and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On August 12, 2024, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 26, 2024.

The District submitted a *Response* on August 26, 2024 denying the allegations, providing an explanation, and submitting documents supporting the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 8/26/24
2. Special Education - Free Appropriate Public Education (FAPE) Policy IGBAJ, 11/19/18, 08/22/22
3. Student Discipline Profile, 05/19/23-01/25/24
4. Letter to Parents, 01/25/24
5. Email, re: [Student] - Request for IEP meeting and copies of suspension paperwork, 01/24-01/31/24
6. Student Discipline Profile, 02/14-02/23/24
7. Letter to Parents, 02/23/24

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

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

8. Student Discipline Profile, 02/28-03/08/24
9. Letter to Parents, 03/06/24
10. Email, re: [Student] question re: 3.6.24, 03/07-03/11/24
11. Sensory Circuit visual, no date
12. Student Discipline Profile, 03/14-04/15/24
13. Letter to Parents, 03/21/24
14. Student Discipline Profile, 04/15-04/26/24
15. Letter to Parents, 04/24/24
16. [Student] Safety Plan, 01/25/24
17. Attendance Report with Notes, 09/11/23-04/30/24
18. Five Point Scale, 03/20/24
19. Level of Service Rubric, 03/06/24
20. Annual Academics and Functional Goals and Objectives Progress Report, 06/06/24
21. Special Education Notice of Team Meeting, 03/14/24
22. Meeting Notes, 03/20/24
23. Prior Notice of Special Education Action, 02/27/24
24. IEP with Amendments, 02/27/24
25. Annual Academics and Functional Goals and Objectives Progress Report, 01/31-02/02/24
26. Five Point Scale, 01/25/24
27. Prior Notice of Special Education Action, 09/27/23
28. IEP, 09/27/23
29. Special Education Placement Determination, 09/27/23
30. Meeting Notes, 09/27/23
31. Email, re: Follow-up question, 8/9/24

The Parents submitted a *Reply* on September 3, 2024, providing an explanation and rebuttal and documents in support of the Parents' position. The Parents submitted the following relevant items:

1. Parents' *Reply* to the District's *Response* to *RFR*, 8/3/24
2. Prior Notice of Special Education Action, 02/27/24
3. Email, re: [Student] questions re: 3.6.24, 03/07-06/19/24
4. Re-Entry meeting notes, 03/11/24
5. Email, re: [Student] 3.18.24, 03/18-03/19/24
6. Class Notes, 03/14-03/21, no year
7. SCC 2023/24 Data Key, no date
8. Direct Messages, 09/05/23-01/31/24
9. Direct Messages, 09/11/23-04/07/24
10. Email, re: [Student]'s day, 04/08-04/16/24
11. Email, re: [Student] - request for documents - request for IEP meeting, 03/08-06/19/24
12. Email, re: [Student] - FBA consent form, OT evaluation request and other concerns, 04/03-04/09/24
13. Daily Attendance Profile, 2023-2024, 07/24/24
14. Office Discipline Referral, 01/05/24
15. Office Discipline Referral, 02/28/24

16. Email, re: [Student] 4/24/24, 04/24/24
17. Email, re: [Student] 4/24/24, 04/24-06/19/24
18. Email, re: documents, 04/02/24

The Complaint Investigator reviewed the following additional policies/documents:

1. [District] Board Policy, JFC-AR, Student Conduct, 2/28/22
2. [District] Board Policy, IGBAJ-AR, Special Education - Free Appropriate Public Education (FAPE)**, 8/22/22
3. [District] Board Policy, JGD, Suspension, 2/28/22
4. [District] Board Policy, JFC, Student Conduct**, 1/23/23
5. [District] Board Policy, IBAG, Special Education - Procedural Safeguards**, 6/10/24
6. [District] Board Policy, IGBAE, Special Education - Participation in Regular Education Programs, 8/22/22
7. [District] Board Policy. IGBAE-AR, Special Education - Procedural Safeguards**, 8/22/22
8. [District] Board Policy, IGBAF, Special Education - Individualized Education Program (IEP)**, 6/10/24
9. [District] Board Policy, JGDA, Discipline of Students with Disabilities**, 2/28/22
10. [District] Board Policy, JGDA-AR, Discipline of Students with Disabilities**, 2/28/22

The Complaint Investigator interviewed one of the Parents on September 4, 2024, and District personnel on September 5, 2024. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits to reach the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from August 6, 2023, to the filing of this Complaint on August 5, 2024.

Allegations	Conclusions
Placement of the Child and Parent Participation The Parents alleged that the District violated the IDEA by making a unilateral placement change outside of an IEP meeting and without the Parents' meaningful participation. (OAR 581-015-2190, OAR 581-015-2250; 34 CFR § 300.322, 34 CFR § 300.501)	Not Substantiated The Student's placement was not changed.
When IEPs Must Be in Effect	Substantiated

Allegations	Conclusions
<p>The Parents alleged the District violated the IDEA by not providing a FAPE when it did not implement the Student's accommodations as written in the IEP.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p>The District did not consistently provide the Parents with daily communication. However, this did not lead to a denial of a FAPE.</p>
<p>Disciplinary Removals for Children with Disabilities</p> <p>The Parents alleged the District violated the IDEA by not providing the correct documentation for the Student's suspensions or a plan for the Student to make up missed schoolwork that occurred during the suspensions.</p> <p>(OAR 581-015-2405, OAR 581-015-2415; 34 CFR § 300.530, 34 CFR § 300.536)</p>	<p>Substantiated in Part</p> <p>The District did not provide the required documentation for several of the suspensions. The District was not required to provide the Student with classwork during the suspensions.</p>
<p>Manifestation Determination Review</p> <p>The Parents alleged the District suspended the Student for ten or more days in a school year without conducting a Manifestation Determination Review.</p> <p>(OAR 581-015-2420; 34 CFR § 300.530)</p>	<p>Not Substantiated</p> <p>The Student was not suspended for ten or more days.</p>
<p>Nonacademic Services and Setting</p> <p>The Parents alleged the District violated the IDEA when the Student was improperly excluded from a general education field trip by a unilateral decision made by the principal and based only on the Student's history of behaviors and attendance in the Structured Support Classroom.</p> <p>(OAR 581-015-2070, OAR 581-015-2240, OAR 581-015-2255; 34 CFR §§ 300.107, 300.116, 300.117)</p>	<p>Substantiated</p> <p>The Student was excluded from a field trip without considering the accommodations or modifications needed to support the Student.</p>

REQUESTED CORRECTIVE ACTION

The Parents requested the following corrective action:

- “Provide training to all staff (both general education and special education) on autism and special education law to ensure that the Student’s IEP is implemented and that staff working with the Student understand the Student’s needs.”
- “Order a comprehensive behavior assessment which includes input from both an occupational therapist and a behavior specialist with familiarity of PDA characteristics (although not formally recognized in the United States) and trauma.”
- “Order a Facilitated IEP meeting.”
- “Order compensatory education for the missed field trip and the days that the Student was suspended.”

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department’s receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before August 6, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student’s disability and special education history.

1. During the 2023-24 school year, the Student was eight years old and attended their resident elementary school in the District. Presently, the Student is nine years old and attends a different elementary school in the District.
2. The Student is eligible for special education services with a primary disability of Autism Spectrum Disorder (ASD). Their most recent reevaluation date was September 27, 2023.
3. The September 27, 2023 IEP described:
 - a. The Special Factors were:
 - i. The Student exhibited behavior that impeded their learning or the learning of others.
 - ii. The Student had communication needs and needed assistive technology devices or services.
 - b. The Student’s strengths were communicating their “thinking, friendships, and mathematical reasoning.”
 - c. The Student had goals in the following areas: speech-language, reading, writing, and self-advocacy.
 - d. The Student’s accommodations were scheduled to begin on September 28, 2023, and included the following:
 - i. A visual schedule, “used all day in the structured support classroom to help transition each activity,” in the general education classroom.
 - ii. A behavior plan, “used all day on all school sites,” at the school site.
 - iii. A break area, “available as student needs,” in the general education classroom.

- iv. Sensory breaks, “scheduled sensory breaks to help regulate,” in the general education classroom.
 - v. A safety plan and “staff informed and able to implement on all school sites,” at the school site.
 - vi. Social stories, “To help [the Student] understand new social situations [the Student] is struggling with,” in the general education classroom.
 - vii. A large pencil for “grip and stamina” to be implemented in the general education classroom.
 - viii. Structured recess, “available for [the Student]’s choice,” at the school site.
 - ix. A visual timer, “to help with transitions” in the general education classroom.
 - x. A daily communication card, “Daily communication about [the Student]’s day with [the Student]’s family,” at the community site.
 - xi. Private redirection, “when [the Student] needs help maintaining school rules,” at the school site.
 - xii. First/Then cards, “used for every transition,” in the general education classroom.
 - xiii. Adult assistance, “for transitions and line of sight” at the school site.
 - xiv. A token reinforcement board, “Used all day to earn a reward between home and school,” in the general education classroom.
 - xv. An option to eat in the sensory room instead of the cafeteria, “Give [the Student] a choice of where to eat and allow [the Student] to choose a few friends from [the Student]’s class, at the school site.”
 - xvi. Extra processing time, “especially if [the Student] is at a 3 on [their] behavior plan or above. Start with 2 minutes and increase if [the Student] seems to need it,” in the general education classroom.
 - e. The placement option that was considered and rejected was “[The Student] will be in the general education environment with a combination of push-in and pull-out supports to help [the Student] access the general education curriculum. [The Student] will have a visual schedule to follow with preferred [*sic*]/and non-preferred activities and will have as much access to the resource room as two hours a day, but staff will fade this out as [the Student] is ready to follow more non-preferred routines.” It was determined that this option “may not be enough structure and support to meet [the Student]’s needs. [The Student] may be overwhelmed with the demands and the sensory input.” This option was rejected because “This does not meet [the Student]’s needs at this time.”
 - f. The placement option selected for the Student was the “... structured support classroom with access to the general education environment as [the Student] gains skills and is ready. The team will work to transition [the Student] full time at [the Student]’s neighborhood school when [the Student] is ready.” It was noted that there would be “Removal from general education for longer periods of time,” “Removal from [the Student]’s neighborhood school and peers,” and “A more restrictive environment.” This option was selected because it “does meet [the Student]’s needs.”
 - g. The Federal Placement Code indicated that the Student would spend “30-80% or more of day in regular class [*sic*].”
4. In an interview, the Parent’s understanding of the Student’s placement was that the Student would be in the general education classroom for 80% of their time.

5. Meeting Notes from the September 27, 2023 IEP meeting indicated that the General Education Teacher had not yet used the token board, and the [Structured Support Class] SSC Teacher intended to create a rewards system. The SSC Teacher suggested that the token board remain as an accommodation, but they may switch to a check-in/check-out system. The General Education Teacher indicated they had not used the check-in/check-out system.
6. On September 27, 2023, the Prior Notice of Special Education Action described the changes made to the IEP, "The team also decided to update [the Student's] safety plan and to keep [their] classroom accommodations the same even though [the Student] appears to be [sic] not need as many. The team wants to watch and make sure that [the Student] is able to maintain before removing these supports." It was noted that the Student "has made tremendous progress" since the last IEP review. Options that were considered were "Removing [the Student's] safety plan and token reinforcement system." The Team discussed "transitioning [the Student] out of the structured support program in the spring if [the Student] is doing well."
7. The SSC Teacher described that at the beginning of the year, they offered a token board to the Student, but the Student repeatedly destroyed it. To avoid escalating the situation, the SSC Teacher switched to a different system where the Student's behavior was monitored throughout the day, and the Student received free time based on their performance. To address the Student's anxiety about being different from their peers, the SSC Teacher tried to find a more inconspicuous token system.
8. A Safety Plan was created for the Student on October 5, 2023, and was updated on January 25, 2024. The plan described the areas of concern, preventative strategies, and the action plan and re-entry plan.
9. From September 5, 2023 through April 7, 2024, the SSC Teacher communicated via direct message to the Parents on 43 different days.
10. The SSC Teacher described that the Student "... had three scheduled sensory breaks a day which [the Student] would come and take with me. And we would do it based on what [the Student] was advocating that [the Student] needed because in September [the Student] was advocating for what [they] needed, and what [the Student] was advocating for was not leaving [their] gen ed classroom. [The Student] very much did not want to be associated with [the] SSC for the first three months of school last year. [The Student] didn't want us really in the room, and so ... I would pop in, see how [the Student] was doing, and then leave. ... [The] scheduled breaks that [the Student] was taking with me were usually like a more calming, like [the Student] would draw or like read [their] book for five or ten minutes and then go back."
11. The SSC Teacher indicated that the Student "... actually spent almost 100% of the day, up until Christmas break, in [their] gen ed [sic] classroom with [their] gen ed [sic] teacher, and was only doing breaks with me or [their] rewards at the end of the week ... in my classroom." The SSC Teacher described, "We still don't necessarily know what happened, but we came

back that first week after Christmas break, and [the Student] was just behaving differently. [The Student] was having a hard time staying in [their] gen ed [sic] classroom, having kind of increasing behaviors ... coming in a little bit more agitated.”

12. The SSC Teacher described, “So when we first came back [from Christmas break] [the Student] was ... still going to class, but [the Student] was asking for more breaks during the day outside of [their] ... expected breaks. And so for January, [the Student] ... would start out in there [the general education classroom], and then sometimes [the Student] would come out for a half hour, 45 minutes, and then we would try to get [the Student] back in there. And so from the beginning of January to when [the Student] unenrolled, the time went down from being in there about 90% of the day to being in there 0% of the day. But it was a decline. [The Student] didn’t immediately start ... not being in there at all.”
13. The SSC Teacher described in an interview, “We were offering, every 15 minutes, to go back to gen ed [sic], so when [the Student] would leave to come out for a break, we would set the timer, the timer would go off, we would say, ‘Okay, would you like to walk back to class yourself or would you like us to walk you?’ And usually, we were met with, ‘I’m not going back.’ And there isn’t a way to force a second grader to go back into [their] classroom, so we would go get [the Student]’s work and bring it into my room to work on what they were working on in class. But we were offering to support [the Student] in gen[ed][sic] to take [the Student] back to move [the Student]’s seat so that we could sit in the back of the room. But ... the reason [the Student] wasn’t in gen ed [general education] wasn’t because we weren’t offering to go to class with [them] or to help [the Student] in class. It’s because [the Student] was refusing to leave my classroom.”
14. An attendance spreadsheet from September 11, 2023 through April 30, 2024, described the Student’s attendance, behavior, and suspensions. There were notes regarding breaks, escalations, and de-escalations. The Student was present at school for:
 - a. 92% of the school days in September 2023;
 - b. 69% of the school days in October 2023;
 - c. 93% of the school days in November 2023;
 - d. 64% of the school days in December 2023;
 - e. 74% of the school days in January 2024;
 - f. 55% of the school days in February 2024;
 - g. 47% of the school days in March 2024; and
 - h. 42% of the school days in April 2024.
15. The District acknowledged in their *Response*, and the Principal in their interview, that the Student’s attendance was not coded correctly, “The attendance wasn’t coded correctly, but we still had ... the actual incident reports.”
16. The Student’s Daily Attendance Profile, from September 5, 2023 through May 7, 2024, listed the Student’s suspensions on the following days:
 - a. January 24, 2024 and January 25, 2024;
 - b. February 23, 2024;

- c. March 6, 2024, March 7, 2024, and March 8, 2024; and
 - d. April 15, 2024, April 25, 2024, and April 26, 2024.
17. The District's *Response* to the allegations included an acknowledgment that the Student was suspended for nine days by April 24, 2024.
18. The Student's Discipline Profile and the School's suspension letters listed the following information about the Student's referrals and dispositions for the 2023-24 school year:
- a. In January 2024, there were three instances of physical aggression, two of which resulted in an out-of-school suspension.
 - b. In February 2024, there were nine behavior violations, six were for physical aggression; two of those violations resulted in out-of-school suspension.
 - c. In March 2024, there were seven behavior violations; four were for physical aggression, and two of those violations resulted in suspensions.
 - d. In April 2024, there were four behavior violations; three were for physical aggression. One of the violations resulted in an out-of-school suspension.
 - e. The Student Profiles indicated that the Student was suspended for 8.5 school days. According to the materials, suspension letters were sent to the parents for five of the eight suspensions.
19. The Principal acknowledged that there were two occasions, one in January and one in April, in which suspension notification letters were not sent to the Parent describing the Student's suspensions.
20. The Parents contended in their *Response* that on January 23, 2024, they were called to pick up the Student early. Despite calming the Student down, the Parent was instructed to wait until dismissal to leave. According to the Parent, this effectively kept the Student out of school for the rest of the day, contradicting the District's claim of no suspension on this date.
21. The Principal described in an interview that there were times when the Student was having "big feelings" and would use the Principal's phone in the office to call a family member, but "then I found out [the Student] was just calling and asking to be picked up" and the family member "always said yes." The Principal indicated that if there were large escalations and the family member was called to retrieve the Student from school, those would be counted as suspensions.
22. The Student's Annual Academic and Functional Goals and Objectives Progress Reports for the 2023-24 school year described the following:
- a. January 31, 2024
 - i. Self Advocacy, "Progressing."
 - b. February 2, 2024
 - i. Reading, "Progressing";
 - ii. Speech Language, "Progressing"; and
 - iii. Writing, "Progressing."
 - c. June 3, 2024

i. Self Advocacy, “No Progress.”

23. On January 24, 2024, one of the Parents requested an IEP meeting.
24. Drafts of the 5-Point Behavior Plan were created on January 25, 2024 and March 20, 2024.
25. On February 27, 2024, the Student’s IEP was amended to include weekly speech and language services and adult assistance for specific transitions. The Meeting Notes from the February 27, 2024 IEP meeting indicated that “The token board will be used across [the Student’s] school day including general education. ... [The Resource Teacher] suggested we increase the frequency of tokens and increase the token board to 10. Parents requested check[-]in phone calls when at level 5. Team will continue with communication to home daily.”
26. On February 27, 2024, a Prior Notice of Special Education Action described the changes that resulted from a meeting, which included a commitment by the Team to “review rewards and incentives to ensure that they are accurately representing [the Student’s] interests” and to add “an additional sensory break space in the building to ensure that [the Student] can access this space in a timely manner.” The document indicated that this was a proposal to change the following aspect of the “provision of a free, appropriate public education (included IEP).” The document indicated that other options were rejected because “[The Student]’s sensory breaks continue to be an important part of addressing [the Student]’s sensory needs. Changing the location should help support meet [sic] [the Student’s] sensory needs in a more appropriate environment.”
27. One of the Parents described in an interview that they knew the token board accommodation was not being followed because “I think it was the next day ... February 28th. They tried to reintroduce it and it didn’t work ...”
28. The District’s *Response* described that “following the suspension on March 6, 2024, [the] Student was in a Personalized Learning Environment for one day to help [them] transition back into the school environment based on information from Parents that [the Student] was embarrassed to be in [their] class. Parents were sent a daily schedule for one day only on March 11, 2024, to reflect this Personalized Learning Environment. Messages between the Special Education Teacher [SSC Teacher] and the Parent reflect multiple discussions around [the] Student’s refusal to go to [their] general education class”
29. According to the Parents’ *Reply*, the Parents were concerned that the Student was placed in the sensory room alone with only an assistant, SSC, or administrator, and the connecting door was locked. They were not aware that this isolation from peers would happen, and it occurred multiple times. They understood the schedule was to be followed until the Student complied. Additionally, a message received a month later indicated the Student was still being isolated.
30. On March 6, 2024, a Level of Service Rubric was created for the Student, which listed the Student’s skill areas, current abilities, supports needed, supports available, areas of need, and criteria.

31. On March 8, 2024, the SSC Teacher sent the Parents a copy of the Student's visual schedule for when the Student was in the SSC and the visual "Sensory Circuit" that was created for the Student. The SSC Teacher wrote, "[The Student] will have [their] token board as well. I know you didn't have a chance to come up with the two goals we had talked about earlier in the week but if [the Student] has two specific goals [they] would like to work on we can use that to guide the token board. Otherwise, [the Student] can earn tokens by having a safe body, safe words (not cursing and not yelling at staff/peers), and going up to resource with [The Resource Teacher]."
32. On March 8, 2024, the Parents emailed the Principal with clarifying questions about an incident and asked: "We want to know why [the Student's] accommodations were not implemented by the school team" The Principal responded by asking for clarification as to which accommodations were not being implemented. There is no record that the Parent replied and identified the specific accommodations they believed were not being implemented.
33. The Parent recalled meeting with the District on March 11th with the Student, "This is where the District alleged that it was a one-time thing. When I was sitting in that room, they had a schedule for [the Student], a visual schedule for [the Student], and they were explaining what [the Student]'s day would look like. While we were in that room, it wasn't a one-time thing that they told me, it was something that was going to be stretched out until [the Student] could show that [they] had ... safe body and following the rules, compliance-based things, and then [the Student] would be back in to [their] classroom."
34. A schedule was created for the Student for March 11, 2024, which included working in the SSC and Resource classroom. The Student was scheduled to engage in the sensory circuit, classwork, preferred activities, recess, lunch, and specials.
35. On March 14, 2024, a Notice of Team Meeting was generated for a meeting scheduled for March 20, 2024, to develop and review the IEP and discuss placement for the Student. Meeting Notes from March 20, 2024 described a review of the Student's safety plan, 5-point plan, data that was collected, breaks, and safety issues.
36. On March 14, 2024, March 20, 2024, and March 21, 2024, the SSC Teacher collected data on the Student in the following areas: the majority of time in the General Education Classroom, behavior, engagement, requesting breaks, and support provided. The data for the three days indicated that the Student spent the majority of their time at level three, indicating that 0-50% of the Student's time was spent in the general education classroom.
37. On March 18, 2024, the SSC Teacher and one of the Parents exchanged emails about the Student's day. The SSC Teacher indicated that the Student earned the tablet from the token board.

38. On March 19, 2024, the Director of Special Programs emailed the Parents' Advocate and the Parents and asked the following question, "Can you clarify specifically which of the accommodations were not being utilized prior to the IEP meeting? The school believes that accommodations have been offered but [the Student] is not always in a space to be able to access them." Regarding placement, the Director of Special programs wrote, "I am not aware of any formal conversations around placement outside of the IEP meeting. We understand that placement is an IEP team decision. ... In the spring we always start to think about the options for students who will need to transition. Certainly no decisions have or will be made without full participation of the parents and the IEP team."
39. During interviews, the Parent and the Advocate understood that the District's *Response* was that the Student was only in the SSC for one day, March 11, 2024, but they believed that there were "other supporting documents" that indicated that the Student was "in that type of placement for more than just the March 11th date." The Advocate referenced a behavior tracking sheet as evidence that indicated the Student was not in "general education for the bulk of the day."
40. On April 2, 2024, the Principal emailed the SSC Teacher and cc'd the Parents, "[The SSC Teacher] included me in your email regarding the field trip. SSC students who are not regularly attending their Gen Ed [General Education] classes due to behaviors do not attend field trips. Because [the Student] would not have access to [their] sensory plan while on the trip and these activities would be overstimulating there is a greater risk of elopement, escalation and aggression [*sic*]. My job is to ensure that all students can be safe while off campus. The increased behavior over the last three months would indicate that taking [the Student] off campus would be a safety risk for [the Student]."
41. The SSC Teacher described that, at the time leading up to the field trip, the Student was exhibiting extremely aggressive behavior. According to the SSC Teacher, the Student was making threats of violence and frequently eloping.
42. The Principal indicated in an interview that the decision to not take the Student on the field trip in April "was completely my decision."
43. On April 3, 2024, the Parents' Advocate emailed the Director of Special Programs with the following concerns:
- "Access to general education time - general education time is not "earned" and there was not a change of placement agreed to at an IEP meeting."
 - "Daily home school communication is not occurring. This needs to start as it is already in [the Student's] IEP."
 - "After [the Student] is suspended, [the Student] frequently is absent for an additional day, resulting in more missed school."
 - "[The Student] was excluded from a field trip; safety concerns along with [the Student's] placement (SCC) [*sic*] were mentioned as the reason. Would it be appropriate for [the Student] to have one[-]on[-]support for field trips?"

44. On April 9, 2024, the Director of Special Programs responded to the Parents' Advocate, "[I] Agree that general education time is not earned. Unless there is a change of placement, the starting point should be general education (when that is what is scheduled). If [the Student] is unsafe or disruptive, we should follow the plan including using the sensory space and then returning back to the general education classroom." The Director of Special Programs wrote that "One[-]to[-]one support for field trips could be an option. There should not be a blanket statement that SSC students cannot attend field trips. I think it would be good to make decisions in collaboration with the family taking into account where the field trip is, any safety risks, and what supports may help [the Student] to access."
45. On April 24, 2024, the Principal emailed the Parents, "This will be [the Student's] 7th and 8th suspension for the school year. The [D]istrict will be in touch to schedule a manifest *[sic]* determination meeting in the coming weeks."
46. On April 25, 2024, the Principal emailed the Parents, "During our debrief the question arose regarding the family's inquiry about the [School's] SSC program's ability to respond and address the level of needs [the Student's] current behavior requires. I wanted to clarify if your family is seeking a review of placement for the remaining weeks of school? This can be addressed at the IEP meeting that your advocate is currently scheduling with our Special Programs office."
47. The District acknowledged "... that the accommodation of daily parent communication was not happening consistently. The IEP was not specific in regard to the format or content of daily communication."
48. During interviews, the Parent described the "daily communication ... was pretty sporadic in the months of September through December. And then pretty inconsistent. And then January they started picking up where it was almost daily, but not quite ... not till March did I receive daily communication." The Parent indicated that in January and February the classroom teacher's communication decreased and the SSC Teacher's communication increased.
49. The District acknowledged "... that the documentation regarding suspensions was not accurate."
50. The District acknowledged that the "Parent was informed Student was not allowed to go on a class field trip. The District acknowledged that the Principal made a unilateral decision to exclude the Student from the field trip, however the Student was not suspended and could have participated in other educational opportunities on that day at the school." The District indicated, "This decision was made based around concerns for the [S]tudent's safety on the fieldtrip *[sic]*, but the District acknowledged that this decision should have been made in collaboration with the IEP team, and the team should have considered if there were any supplementary aids and supports that could have provided to allow the [S]tudent to participate in the fieldtrip *[sic]*."

51. The Parent acknowledged that they withdrew the Student from the School in May. The Parent indicated that they were trying to schedule a manifestation determination review and that they “requested a facilitated IEP meeting, and it was taking a little bit of time to get everyone’s schedule.”
52. The Director of Special Programs described that for suspensions, “The [S]chool does not typically send work home. Most of the work at that level is in[-]class learning and since suspensions are usually short[-]term, they don’t send work home but also do not penalize the student for missed work. It is up to the teacher if they want to send some work home, if it is learning that could be done at home.”
53. On August 5, 2024, the Parents filed this Complaint.

IV. DISCUSSION

Placement of the Child and Parent Participation

The Parents alleged the District violated the IDEA by making a unilateral placement change outside of an IEP meeting and without the Parents’ meaningful participation.

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child, as well as the provision of a free appropriate public education to the child. School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend. The written notice must state the purpose, time, and place of the meeting and who will attend, and inform the parents that they may invite other individuals whom they believe have knowledge or special expertise regarding the child. The written notice must inform the parent that the team may proceed with the meeting even if the parent is not in attendance and inform the parent of whom to contact before the meeting to provide information if they are unable to attend.³

At the beginning of each school year, a school district must have an IEP for each child with a disability within the district’s jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.⁴ Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation, and inform each teacher and provider of their specific responsibilities for implementing the child’s IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.⁵

³ OAR 581-015-2190 (1)(2)

⁴ OAR 581-015-2195(1)

⁵ OAR 581-015-2220(1)(3)

The school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting. A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. A meeting may be conducted without a parent in attendance if the school district has given the parent notice for the IEP or placement meetings.⁶

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options, is made in conformity with the Least Restrictive Environment (LRE) provisions, and is based on the child's current IEP. The educational placement of a child with a disability is determined at least once every 365 days and is to be as close as possible to the child's home. Alternative placements must be made available to the extent necessary to implement the IEP for each child with a disability. Unless the child's IEP requires some other arrangement, the child is educated in the school that they would attend if not disabled. In selecting the LRE, consideration is given to any potentially harmful effect on the child or on the quality of services that they need, and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.⁷

The September 27, 2023 IEP indicated that the Student would be placed in the SSC with access to the general education environment as the Student gained skills and was ready. The IEP team rejected the option of placing the Student in the general education environment with push-in and pull-out supports due to concerns about the lack of structure and support.

The Student's progress reports for the 2023-24 school year showed progress in all areas except for self-advocacy as of June 3, 2024. The IEP was amended on February 27, 2024, to include weekly speech and language services and adult assistance for specific transitions. There were no placement discussions or changes. On March 20th, an IEP Review meeting was convened; placement was not discussed.

The District's communication in response to the Parents' concerns about the Student's placement in the sensory room indicated that it was temporary, not a placement change. They also indicated there were no formal placement discussions outside of the IEP meeting. However, the Parents and their Advocate believed that the Student's increased isolation in the SSC effectively changed the Student's placement, limiting their access to general education.

The Student's IEP clearly outlined the placement of the Student in the SSC with access to the general education environment as the "Student gains skills and is ready." It is unclear from the

⁶ OAR 581-015-2190(3-5)

⁷ OAR 581-015-2250

record whether the Student was placed in a separate class setting (where they had access to their nondisabled peers for less than 40 percent of the school day) or in a resource setting (where they would have access to their nondisabled peers for between 40 and 80 percent of the school day). Rather, the IEP team documented that the Student would spend “30-80% or more of day in regular class.” The Parents were part of this IEP Team decision. This placement determination requires flexibility in the Student’s schedule and instructional location in light of the Student’s current needs.

Documentation from both the Parents and the District revealed an escalation in behaviors of concern exhibited by the Student between January and May, resulting in out-of-school suspensions and increased communication with the family. The use of the sensory room aimed to provide a temporary and responsive intervention to address these evolving behaviors, in order to facilitate the Student’s successful return to the general education classroom.

The Department does not substantiate this allegation.

When IEPs Must Be in Effect

The Parents alleged the District violated the IDEA by not providing a FAPE when it did not implement the Student’s accommodations as written in the IEP.

At the beginning of each school year, a school district must have an IEP for each child with a disability within the district’s jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child’s IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation. School districts must inform each teacher and provider of their specific responsibilities for implementing the child’s IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.⁸

Although the use of the token board was included in the September IEP, its implementation faced challenges. The General Education Teacher had not yet utilized it and, while the SSC teacher had attempted a token board, they planned to create a new rewards system that could better meet the Student’s needs. Despite the Student’s progress toward their goals, the IEP team decided to keep the token board listed as an accommodation. The SSC Teacher’s efforts to implement the token board were met with resistance as the Student reportedly destroyed it five times. The token board was reintroduced in February 2024 but was unsuccessful. There was evidence of the token board being used in March 2024, indicating that there were some attempts to implement this accommodation.

⁸ OAR 581-015-2220

While the IEP included using a daily communication card as an accommodation, the Parent reported sporadic communication from September 2023 to December 2023. Despite the SSC Teacher's direct messages to the Parents on 43 different days as an effort to communicate, the District acknowledged in their *Response* that there was inconsistency in the implementation of this accommodation.

The Department substantiates this allegation.

Disciplinary Removals for Children with Disabilities

The Parents alleged the District violated the IDEA by not providing the correct documentation for the Student's suspensions or a plan for the Student to make up missed schoolwork that occurred during the suspensions.

School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for up to 10 school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement. During disciplinary removals, school districts are not required to provide access to special education and the general education curriculum unless students without disabilities are provided access during this time. School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.⁹

For the purpose of counting days of suspensions, suspensions of a half-day or less are counted as a half-day. Suspensions of more than a half-day are counted as a whole day.

The Student was suspended multiple times throughout the school year. The District acknowledged they did not send suspension letters on several occasions despite the fact that the IDEA required the District to provide the same notice of suspension as for other students. Board policy JGD indicated that work may be provided for a Student while on suspension. The IDEA describes specific circumstances in which work must be provided. The School did not typically send work home for suspensions, and there were no expectations placed upon the Student to complete work during their suspensions.

The Department substantiates this allegation in part.

Manifestation Determination Review

The Parents alleged the District suspended the Student for ten or more days in a school year without conducting a Manifestation Determination Review.

⁹ OAR 581-015-2405(1)(2)

In determining whether a child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP. If the school district, the parent, and relevant members of the IEP team determine that it is applicable to the child, the conduct must be determined to be a manifestation of the child's disability. If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.¹⁰

While official records show 8.5 days of suspension, the Parent contested this, citing additional unrecorded suspensions, including being asked to remain at school until dismissal after calming the Student down - an event they perceived as a suspension. The District acknowledged the inaccuracies in the suspension documentation, but maintained the Student was not suspended on January 23rd. The District acknowledged there was an additional half-day absence that should have been recorded as a suspension for a total of nine suspensions during the 2023-24 school year.

While there is disagreement between the District and the Parents on whether a suspension should have been recorded on January 23, a MDR does not need to be conducted until the 10th day of suspension which, by all accounts, was not met. Both the District and the Parents indicated they were trying to schedule a manifestation determination review when the Student was withdrawn from the School.

The Department does not substantiate this allegation.

Nonacademic Services and Setting

The Parents alleged the District violated the IDEA when the Student was improperly excluded from a general education field trip by a unilateral decision made by the Principal. The Student's exclusion was based only on the Student's history of behaviors and attendance in the SSC.

School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals

¹⁰ OAR 581-015-2420

with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.¹¹

School districts must ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability. School districts must ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹² In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and services and activities, each school district must ensure that each child with a disability participates with children who do not have a disability in extracurricular services and activities to the maximum extent appropriate to the needs of that child. School districts must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.¹³

The Principal unilaterally decided to exclude the Student from a field trip citing safety concerns and increased behavioral issues. The District acknowledged the Principal's decision was made without IEP team collaboration and that alternative supports should have been considered to allow the Student's participation.

The Department substantiates this allegation.

V. CORRECTIVE ACTION¹⁴
In the Matter of Greater Albany School District 8J
Case No. 024-054-044

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

Action Required	Submissions	As Soon As Possible But No Later Than Due Date

¹¹ OAR 581-015-2070

¹² OAR 581-015-2240

¹³ OAR 581-015-2255

¹⁴ 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)).

1. Review and revise the District's written procedures to include the IDEA requirements for: <ul style="list-style-type: none"> a. When IEPs Must Be in Effect b. Disciplinary Removals for Children with Disabilities c. Nonacademic Services and Setting 	Draft of revised procedures to be provided to ODE for review/approval. Finalized procedures to be provided to ODE.	November 15, 2024 January 15, 2025
2. Train all special education staff on the District's written procedures to include the IDEA requirements for: <ul style="list-style-type: none"> a. When IEPs Must Be in Effect b. Disciplinary Removals for Children with Disabilities c. Nonacademic Services and Setting 	Training agenda/materials to ODE for review/approval. Sign-in sheet for training.	November 15, 2024 January 15, 2025

Dated: this 4th Day of October 2024



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: October 4th, 2024

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)