

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of McMinnville School District)	FINDINGS OF FACT,
40)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 24-054-069

I. BACKGROUND

On November 18, 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 McMinnville School District 40 (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 in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On November 25, 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 December 9, 2024.

The District submitted a *Response* on December 9, 2024, denying some but not all of 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, dated 12/9/24
2. Manifestation Determination and Review, 10/24/24
3. Manifestation Determination and Review, 11/12/24
4. Manifestation Determination and Review, 11/18/24
5. Manifestation Determination and Review, 11/22/24
6. Individualized Education Program (IEP), 09/18/25 [*sic*]
7. IEP Amendment, 09/19/24
8. Behavior Support Plan Summary, 09/2024
9. Email, re: follow up, 10/29-11/05/24

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

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

10. Manifestation and Determination Review Notes, 12/02/24
11. Email, re: Monday October 28th, 10/28/24
12. Special Education Placement Determination, 09/19/24
13. Prior Written Notice (PWN), 11/25/24
14. Email, re: transportation and tour follow up, 11/13/24
15. Email, re: safety plan additions, 10/21/24
16. Email, re: transportation and tour follow up, 11/13-11/14/24
17. Email, re: [student], 09/19-09/30/24
18. Email, re: [student], 11/07-11/08/24
19. Email, re: [student], 10/20-10/21/24
20. Email, re: [student], 09/19-09/25/24
21. Individual Student Safety Plan, 10/03/24
22. IEP, 10/10/23
23. Statement of Eligibility for Special Education, 10/10/23
24. Behavior Support Plan Summary, 05/24
25. Email, re: IEP follow up, 10/21/24
26. Email, re: follow up, 10/29-11/02/24
27. Email, re: temp safety plan, 10/04-10/07/24
28. Email, re: [student], 09/17/24
29. Email, re: [student], 11/13/24
30. Timeline, 12/03/24
31. Data Summary, 2024-2025
32. Email, re: [student], 10/20/24
33. Student Attendance Report, 09/26/23-06/07/24
34. Daily Attendance By Week, 08/26/2024 - 06/11/2025
35. Period Student Attendance Profile, 08/26-12/05/24
36. Discipline of Students with Disabilities Policy JGDA/JGEA-AR, 04/14/08

The Parents submitted a *Reply* on December 16, 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*, 12/16/24
2. Email, re: student discipline reports, 11/30-12/03/24
3. Student Discipline Profile, 09/17/24
4. Suspension Report, 09/17/24
5. Student Discipline Profile, 10/01/24
6. Suspension Report, 10/01/24
7. Student Discipline Profile, 10/02-10/04/24
8. Suspension Report, 10/02/24
9. Student Discipline Profile, 10/14-10/16/24
10. Suspension Report, 10/14/24
11. Student Discipline Profile, 10/18-10/21/24
12. Suspension Report, 10/18/24
13. Student Discipline Profile, 10/28-10/31/24

14. Suspension Report, 10/28/24
15. Student Discipline Profile, 11/04/24
16. Suspension Report, 11/04/24
17. Student Discipline Profile, 11/14/24
18. Suspension Report, 11/14/24
19. Student Discipline Profile, 11/20/24
20. Suspension Report, 11/20/24
21. Student Discipline Profile, 11/25-11/26/24
22. Suspension Report, 11/25/24
23. Parent Response to Response, 12/16/24
24. Email, re: response to school's response, 12/13-12/17/24
25. Email, re: [student], 11/07-12/15/24
26. Email, re: [student], 09/17-12/15/24
27. Email, re: safety plan additions, 10/21-12/15/24

The Complaint Investigator interviewed the Parents on December 13, 2024. On January 7, 2025, the Complaint Investigator interviewed District personnel. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching 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 November 19, 2023, to the filing of this Complaint on November 18, 2024.

Allegations	Conclusions
<p>Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</p> <p>The Parents alleged that the District violated the IDEA when it failed to provide special education services to the Student in an interim alternative educational setting (IAES) when the Student was suspended beyond ten school days during the 2024-25 school year. As of the filing of the Complaint, the Student had not received services.</p> <p>(OAR 581-015-2410, OAR 581-015-2415(4), OAR 581-015-2425; 34 C.F.R §§ 300.530(d)(1), 300.530(d)(5)(f))</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

Allegations	Conclusions
<p>Prior Written Notice (PWN)</p> <p>The Parents alleged that the District violated the IDEA when it failed to provide the Parents with prior written notice of the disciplinary change in placement.</p> <p>(OAR 581-015-2310; OAR 581-015-2315; 34 CFR §§ 300.503,300.530(h))</p>	<p>Substantiated</p> <p>Based on the evidence received, the District did not provide PWN to the Parents regarding disciplinary changes in placement.</p>
<p>Review and Revision of IEP</p> <p>The Parents alleged that the District violated the IDEA when it failed to include one-to-one adult support in the Student’s IEP when requested by the Parents.</p> <p>(OAR-581–015-2225(b); 34 CFR §300.324)</p>	<p>Substantiated</p> <p>The District did not clearly document a review or revision of the IEP in response to the Parents’ request for one-to-one adult support. However, they did acknowledge in writing elsewhere that the request had been made and was being considered by the District.</p>

Requested Corrective Action
<p>The Parents requested that the Department order the District to take the following corrective action:</p> <ul style="list-style-type: none"> ● Provide the Parents with the required PWN for the change in placements. ● Convene an IEP meeting with the Parents to determine appropriate Interim Alternative Educational Setting (IAES) and services to enable the Student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the Student’s IEP, including for the days in which they have not provided an IAES and services to the Student. ● Provide the Student with the agreed upon one-to-one staff.

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 November 19, 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. The Student attended the 6th grade at a middle school in the District.
2. The Student is eligible for special education services under the categories of Emotional Behavior Disability (EBD) and Other Health Impairment (OHI).
3. Student strengths include, "[The Student] has a strong sense of justice, and speaks to the need to defend [themselves] and others ([sibling]) when treated badly. [The Student] has a curious mind and isn't afraid to ask questions. [The Student] will self-advocate (although sometimes doesn't have the words). [The Student] can be playful and funny. [The Student] wants to be involved, and enjoys basketball and [their] friends."
4. According to an IEP dated October 10, 2023, the Specially Designed Instruction (SDI) for Behavior - Social/Emotional included 40 minutes a week in the general education/special education classrooms, beginning October 10, 2023 and ending October 9, 2024, and was monitored by the Case Manager. The placement option chosen was general education with special education support, spending 30-80% or more of the day in the regular classroom.
5. A Behavior Support Plan (BSP) Summary, Revision, dated May, 2024, indicated the Student would "Work with other adults in [the] building so as to establish positive relationships with multiple adults with whom [they] can engage in problem-solving when needed." A one-to-one paraprofessional was not listed as a preventative strategy.
6. On September 17, 2024, the Parents emailed the Principal, "At the meeting just prior to school starting, I asked if the recommendations provided to the school by [the Student's] [Applied Behavior Analysis (ABA)] therapist could be added to [the Student's] BSP. I was informed that the recommendations that were possible for the school to implement would be added. There was some concern by the school that some of the recommendations for one-[to]-one support could not be implemented due to a lack of resources. We have not received an updated BSP. ... I am concerned that when [an Office Staff Member] called me, [they] stated that the [P]rincipal was asking if we could pick [the Student] up. I specifically asked if [the Principal] was suspending [the Student], and [they] stated [the Student] was not suspended. Below, you state [the Student] was suspended, so the contradiction is concerning."
7. Relevant items from the amended IEP dated September 19, 2024 indicated the following:
 - a. The re-evaluation for the Student was due on October 9, 2026.
 - b. The Special Factors included:
 - i. The Student had behavior that impeded learning or the learning of others.

- ii. The Student needed assistive technology devices or services.
- c. The Student's Present Levels of Academic Achievement and Functional Performance included:
 - i. Student strengths: The Student was described as generally polite with the adults the Student spends time with (classroom teachers).
 - ii. Parent input: The Parent has expressed "deep concerns for [the Student] in terms of [their] reading and writing skills. Both Parents want [the Student] at school learning and are frustrated with behavior distracting from that. ... Regular communication is needed between school and home, include [Parents and Student Services Coordinator] in emails."
- d. According to The Behavior Evaluation Scale (BES-4), "the [Student] displays higher challenging behaviors than is typical of [students] the same age, including learning problems, interpersonal relationships, and inappropriate behavior. In science, the Student requests breaks and is willing to wait. In health, most interactions are neutral or somewhat positive. In English Language Arts (ELA), "[the Student] disrupts classmates with distractions, disrespectful language, or loud outbursts. [The Student] is generally defiant and disruptive." In math, "[the Student] does not initiate tasks on [their] own and will not start tasks regardless of the number of requests." In social science, the Student attempted to run or hide from the teacher.
- e. The Student had academic goals for reading, written language, and math. The Student's annual goal for social/emotional development was, "By September 2025, [the Student] will follow directions and respond to adult requests in an appropriate and timely (30 sec-1 minute) manner in structured and unstructured contexts 8/10 times."
 - i. Objective 1: "Follow verbal direction in class learning contexts to initiate and complete tasks."
 - ii. Objective 2: "Respond appropriately to reasonable adult requests in unstructured contexts within 30 seconds-1 minute (e.g. let's walk to the office, stay together with the group during a fire drill, etc.)."
 - iii. Objective 3: "Demonstrate knowledge of class and school rules/expectations/policies by complying with them while at school."
- f. The Student's additional social[-]emotional goal was, "By September 2025, [the Student] will display productive school behavior on a daily basis at least 80% of the time."
 - i. Objective 1: "Attend all classes throughout the day."
 - ii. Objective 2: "Attempt tasks that may be considered challenging and ask for help when needed."
 - iii. Objective 3: "Adapt effectively to change (e.g. classroom routines, assemblies, fire drills, schedule changes, seat assignments, new students or exiting [*sic*] students)."
 - iv. Objective 4: "Work cooperatively with peers in small group settings (ex., share materials, allow peers to share different thoughts)."
 - v. Objective 5: "Use appropriate language, volume, and tone in conversation with peers and adults, and raise [their] hand and wait to be called upon during whole-group discussions or when the adult(s) are otherwise occupied."
 - vi. Objective 6: "Be prepared with all materials, begin tasks, participate in class activities (whole group, small group, and independently), and turn in assignments."

- g. The Student's additional social/emotional goal was, "By September 2025, [the Student] will identify [their] level of anxiety or frustration and use an appropriate strategy to de-escalate 80% of the time."
 - i. Objective 1: "[The Student] will identify [their] level of anxiety or frustration using school-appropriate tools (mood meter, RULER)."
 - ii. Objective 2: "[The Student] will learn at least three school-appropriate coping strategies and select one to address [their] anxiety or frustration."
 - h. SDI instruction for social/emotional included 480 minutes per month in the special education classroom, starting on September 23, 2024 and ending on September 17, 2025.
 - i. Supplementary Aids/Services and Accommodations occurred in all school settings and were monitored by a case manager, starting on September 23, 2024 and ending on September 17, 2025. Listed are the Supplementary Aids/Services and Accommodations regarding behavior:
 - i. "Frequent check-ins to provide help and encourage task initiation and completion."
 - ii. "Provide alternative means to demonstrate mastery as needed ([e.g.] oral vs written, video recording, etc.)."
 - iii. "Use the [BSP] to guide proactive and reactive practices when [the Student] needs support."
 - iv. "Provide a menu of coping strategy options for [the Student] to select from when dysregulated ([e.g.] desk break, walking break, 5 min [student services counselor] SSC , quiet space, etc.)."
 - j. The Statement of Non-Participation Justification stated, "[The Student] will receive instruction in a self-contained classroom in a separate public school 100% of [the Student's] school day." The Explanation and Justification indicated, "Due to difficulties with self-regulation, attention, and cognitive flexibility, [the Student] needs specially designed instruction in a structured environment with a smaller population of students and a higher number of staff."
8. A Special Education Placement Determination dated September 19, 2024 considered the placement option of "less than 40% of the day in regular class, Emotional Growth Center [EGC] placement Advisory, 1/2, 5/6, and 7/8, Gen Ed Health/PE and Electives, Literacy support." The benefits were, "Will receive small group/individualized instruction. Will receive specific behavior monitoring." The placement was selected because it met the needs of the Student.
9. The Parents emailed the Principal on September 20, 2024. They stated, "We talked and would like to finalize the IEP and also the placement in the EGC. Do we need to meet again or can you send us the paperwork to sign and return?" On September 24, 2024, the Parents emailed the Principal, "We left the IEP/placement meeting with the understanding that we were going to talk to [the Student] and then decide on whether we agreed to changing [the Student's] school placement. ... We noticed that the school implemented the placement change apparently before we agreed to it."
10. During interviews with the Complaint Investigator, the Principal reviewed the Parents' September 24, 2024 email regarding the change in school placement and explained their

response. The Principal said placement options had been discussed at the IEP meeting, and “we left with a plan for the Student to begin attending classes in the placement that [they were] in.” They further explained, “We were not required to meet again because we were not making a change to what we had talked about in the IEP meeting.” The Principal also stated that no signature was required at that point.

11. According to a BSP Summary with a revision date of September 2024, several preventative strategies were listed, but a one-to-one paraprofessional was not listed as a support for the Student. “Work with other adults in [the] building so as to establish positive relationships with multiple adults with whom [the Student] can engage in problem-solving when needed; build [the Student’s] confidence by talking [the Student] up to other adults.”
12. An Individual Student Safety Plan dated October 3, 2024 indicated the Student would receive adult line-of-sight supervision.
13. On October 7, 2024, the Parents emailed the Principal, “Thank you so much for providing us with all of the bus referrals: we had not received any previously. It has been difficult to talk to [the Student] about [their] behaviors without them. [The Student] has also been suspended from school three times, and we only have the report for the first suspension. Will you please send us the reports for the 10/01/24 and 10/02/24 suspensions? We were also told there were other school referrals, but have not received any. Can we get those please?”
14. On October 20, 2024, the Parents emailed the Principal, “[The Clinical Director] asked about [the Student] having a one-[to]-one staff. I believe it was [the Student Services Coordinator] that stated [the Case Manager] would need to fill out a packet for this. It has been seen that [the Student] can do well with one-[to]-one attention. Can the packet be filled out?”
15. On October 21, 2024, the Principal emailed the Parents, stating, “[The Student] can return to school tomorrow. We will continue with the current safety plan with the following additions:”
 - a. “A written schedule for [the Student’s] day, which will include the neutralizing activities that [the Clinical Director] recommended, breaks, academic activities, etc. [The Student Services Coordinator] is working on this tonight, and tomorrow, we will make sure that other duties are covered for [the Case Manager], so [they] can go over the schedule with [the Student].”
 - b. “Increased 1:1 supervision and interaction for both [the Student] and the other student to ensure that both students are with adults.”
 - c. “Daily bag checks to ensure that [the Student] does not have any items outside of school supplies and snacks. This will be built into [the Student’s] daily schedule for predictability and conducted by me in the office.”
 - d. “Items you requested:”
 - i. “An updated [Functional Behavior Assessment (FBA)]. We will get a timeline for this request to you as soon as we can talk to our school psychologist.”
 - ii. “The timeline for filling out a 1:1 packet.”

16. On October 21, 2024, the Clinical Director emailed the Parents notes from the October 17, 2024 IEP meeting, and let the Parents know the threat assessment was completed.
17. A Manifestation Determination and Review (MDR) dated October 24, 2024 indicated the Student exhibited a “pattern of behavior - big reaction to dysregulation.” The IEP Team determined that “the conduct in question was caused by or had a direct and substantial relationship to the [S]tudent’s disability(ies) [sic].” The MDR indicated the number of suspension days for the most recent incident was 1.50. The number of suspension days before the incident was 6.0. The MDR stated that the Parents and the school would like the FBA updated with the goal of a revised BSP. “Parents requested a 1:1 [paraprofessional]. The school will begin that process.”
18. On October 28, 2024, the Student Services Coordinator emailed the Parent regarding a behavior incident, “[The Student] came in with [their] breakfast with very high energy. [The Student] called the [(Instructional Assistants)] IAs, ‘bitches’ and told all of us to ‘shut the f— up’ as we were trying to talk to the class ... [The Student] asked [the Paraprofessional] to take [them] for a walk or break several times throughout the day. ... While the disrespect, directed swearing and posturing were all very inappropriate and disruptive to the classroom environment, my bigger concerns are the sexualized behavior and the urinating on the track. Before going to the office for a break this morning, [the Student] pressed [their] body against the door, moved [their] hips and said [they were] ‘humping’ the door. This afternoon, [the Student] first put a paper towel down [their] shorts and was rubbing [themselves], making moaning noises. Then [the Student] put a Gatorade bottle in [their] shorts and motioned like [they were] masturbating, again making moaning sounds. ... [The Student] will need to stay home at least for tomorrow. Based on the attached document, we may need to do some further investigation into the sexualized [sic] behaviors. Someone will call to follow up.”
19. On October 29, 2024, the Student Services Coordinator emailed the Parent, “I was able to meet with [the Principal] after school to discuss a plan for [the Student’s] return. Based on the document I sent you last night, we need to connect with our contact at [the Education Service District] before we can have [the Student] back at school. We have a safety plan and an updated BSP, but are still struggling to find ways to keep [the Student] regulated and safe at school. I will call tomorrow afternoon with an update. We may need to meet again and brainstorm some more!”
20. During interviews with the Complaint Investigator, the Student Services Coordinator explained the need to communicate with the Educational Service District (ESD) before the Student returned to school. They said, “We went through a level one. It’s called the behavior safety assessment now. It used to be a threat assessment. We went through a level one with [the Student], and we had written a safety plan. There [were] a few things in place, and then there was another behavior that resulted in needing a level two behavior safety assessment, and I wanted to talk with them to know what they were going to, to get their input before we brought [the Student] back.” They said the Student returned to school the next day.

21. On October 30, 2024, the Student Services Coordinator emailed the Parents, letting them know that the Student would have a schedule change with the morning to start with movement and then moving into SEL the following Monday, “We have talked about abbreviating [the Student’s] school day to try to build more success. The concern is that [the Student] is here for seven hours and is dysregulated for almost the entire time. Do you think if we shorten [their] day, we may be able to get more regulation?”
22. An email from the Student Services Coordinator to the Parents dated November 5, 2024 stated, “We will need to complete another [MDR] meeting, and a Level 2 Threat Assessment. Based on the additional information about what happened yesterday, [the Student] will need to be out until we can complete those meetings. We can have the [MDR] meeting on Tuesday at 2:00, if that works for you. The earliest the team can meet for the Level 2 is Wednesday the 13th at 8:00. This team includes staff from the [ESD] and Family and Youth. [The Student] has not consistently completed work, but if you would like [the Case Manager] to send some things home to work on, please let us know.”
23. On November 7, 2024, the Parent emailed the Student Services Coordinator requesting an updated copy of the IEP. On November 8, 2024, the Student Services Coordinator sent the Parents an updated copy of the IEP that included transportation. The Student Services Coordinator also included the placement document.
24. In a timeline entry dated November 7, 2024, the Parents were upset that:
- “FBA was not completed.”
 - “Safety plan has not been updated.”
 - “Behavior Support [P]lan and IEP aren’t being followed.”
25. On November 12, 2024, an MDR indicated, “[The Student] and another student were insulting/threatening each other. ... [The Student] threw a chair, then removed items from the table so [the Student] could throw the table. Staff stood between [the Student] and the [other] student, and [the Student] lifted and threw the table.” The number of suspension days for this incident of misconduct was 6 days. The total number of suspension days prior to the incident was 9.5. The Team determined that the conduct was caused by or had a direct and substantial relationship to the Student’s disabilities and was a manifestation of the Student’s disability.
26. An email from the Principal to the Student Services Coordinator, dated November 13, 2024, stated, “We are still waiting for the recommendations from the Level 2 behavioral safety team. ... They did not have additional short[-]term recommendations for a safety plan for [the Student’s] return tomorrow and recommended that we continue the current safety plan. Most importantly, [the Student] will need to have adult supervision at all times. ... When I receive their additional recommendations, I will share them with the team.”
27. On November 13, 2024, the Parents emailed the Principal, “Please schedule an IEP meeting ASAP, so the team can determine the appropriate services in real time (the actual days [the

Student] is removed from school) if [the Student] is suspended again. At this time, [the Student] is receiving no services when [the Student] is removed from school.”

28. The Parents emailed the Principal on November 14, 2024, “We still need the official report from [the Student’s] suspension from 11/05/24 through 11/13/2024. Can we please get the report for the suspension for today 11/14/24 [sic]. We have [the Student] scheduled at [Local Hospital] for a psychiatric evaluation and an evaluation with a development/behavioral pediatrician next week and we need these for the evaluations.”
29. An MDR document completed on November 18, 2024, stated, “[The Student] had continuous behavior incidents throughout the day, including threatening a student involved in a previous incident that resulted in a suspension.” The MDR described that “The conduct in question was caused by or had a direct and substantial relationship to the [S]tudent’s disability(ies).” In addition, “The conduct subject to disciplinary action is a manifestation of the [S]tudent’s disability.” The number of suspension days for the action was .25 days. The total number of suspension days prior to the incident was 13.50 days.
30. According to a Data Summary dated Quarter 1, 2024-25, the Student exhibited responsibility, respect, safety, and regulation, which included:
 - a. “Transitions to activity and initiates the task-56.6%.”
 - b. “Follows expectations-23.2%.”
 - c. “Time on task-34%.”
 - d. “Interacts appropriately with peers-38.2%.”
 - e. “Interacts appropriately with adults, responds respectfully to feedback and redirections-29.4%.”
 - f. “Maintains a safe body and uses items respectfully -51.8 %.”
 - g. “Maintains safe words-33.8%.”
 - h. “Uses a coping strategy to maintain regulation.”
 - i. “Uses self-advocacy skills-48%.”
31. According to an Attendance By Period for the 2024-25 School Year Profile, the Student was suspended 15 days total and had one excused absence.
32. The 2024-25 Student Discipline Profiles indicated the following suspensions for a total of 17 days:
 - a. “Disruption/Disrespect .05 days on 9/17/2024.”
 - b. “Unsafe Behavior, .05 days on 10/1/2024.”
 - c. “Threat of Violence, 2 days on 10/2/2024.”
 - d. “Unsafe Behavior, 2 days on 10/14/2024.”
 - e. “Threat of Violence, 2 days on 10/18/2024.”
 - f. “Defiance/Defy Authority, 2 days on 10/28/2024.”
 - g. “Threat of Violence, 6 days on 11/4/2024.”
 - h. “Unsafe Behavior, .05 days on 11/14/2024.”
 - i. “Unsafe Behavior, .05 days on 11/20/2024.”
 - j. “Unsafe Behavior, 1 day on 11/25/2024.”

33. During interviews with the Complaint Investigator, one of the Parents explained that their Student was suspended for behavioral issues. When the Student's suspensions accumulated to more than ten days, the School held MDR meetings to determine if the behavior was a result of their disability. They determined it was but did not provide an "IAES" and services. Although the School said they would get back to one of the Parents about the services, they never did. According to the Parents, the Student ended up with a [15.5]-day suspension, during which the Student did not receive the services they were entitled to. One of the Parents shared that when the Student reached the ten-day suspension rate, the School held a manifestation meeting every time the Student was suspended. One of the Parents shared that after each suspension, the Student would return to the self-contained classroom.
34. One of the Parents shared during interviews that they did not receive any PWNs about the Student's suspensions or changes in placement. One of the Parents also mentioned that the School changed the Student's placement by implementing a new special education placement without their agreement. The School tried to move the Student to a self-contained classroom within the same school, but one of the Parents wanted time to consider the change. Despite this, the School implemented the new placement the very next day [after the IEP meeting held on September 19, 2024]. Then, the Student started another new placement on December 3, 2024, according to one of the Parents.
35. During interviews, one of the Parents reported not receiving PWN for several significant changes to the Student's IEP. These changes included one-to-one support, IAES and services, and the need for an additional FBA. The Parent stated they requested this notice indicating whether or not the changes would be made but did not receive it. According to one of the Parents, the one-to-one support was given verbal approval, but the Case Manager had to fill out paperwork for it to happen, which the Case Manager did not complete.
36. During interviews, the Student Services Coordinator explained why a one-to-one paraprofessional was not added to the accommodations page at the September 18, 2024 IEP meeting. They said, "We never discussed it at that meeting. There was never a discussion about [the Student] having a one-[to]-one assistant during that meeting. They said any discussion about providing adult support or supervision would have been during one of the October behavior safety assessment meetings. They explained the District's response to one-to-one assistance, "We said that there is a process to get a one-[to]-one. It's an IEP Team decision, and we have to collect the data and determine if that's what's needed. But at that time, we also created a safety plan for [the Student] that ensured [they] had an adult with [them] at all times. So without actually giving [them] a one-[to]-one, based on [the Student's] safety plan, [they] couldn't be out the classroom without an adult."
37. During interviews, the Principal discussed receiving additional recommendations from the ESD for a behavioral safety plan for the Student. They said they received the recommendations (not a safety plan itself) on November 18, [2024], approximately one week after conducting a level two threat assessment. According to the Principal, those recommendations were incorporated into the Student's existing safety plan.

The Principal also explained the suggestion to increase supervision for the Student to one-to-one. They said, “The suggestion to do that was based off of a safety assessment, a behavioral safety assessment where the Student had made a threat to another student and we were suggesting that when the Student was in any unstructured times, so the hallways, a lunch period, a recess period, that Student would have additional one-to-one supervision to ensure that we did not have any further threatening behaviors happening.” They reported that one-to-one support was “provided the entire time from the first date that it was suggested until [the Student] moved to a different placement.” The Principal could not recall the exact date, but said it was “about six weeks.”

38. During interviews, the Director of Student Services clarified that one-to-one support was already available in the EGC classroom, where there was a higher staff ratio with more flexibility for those staff to support things like hallway transitions than in a general education classroom. The Principal added, “So it was kind of happening simultaneously, so it made it easier for us to implement. But yes, [the Student] was transitioning to the EGC placement at the same time that we were doing the original level one threat assessment. Yes, it was provided by staff from the EGC and/or an [administrator] if that wasn’t possible.”

The Director of Student Services further attempted to clarify the situation around “one-to-one support.” They said as a result of the behavior assessment, “That’s what the recommendation was, line of sight supervision and it just seems like there’s been a lot of confusion about that. ... We offered that. And then [the] Parents, I believe, were also asking for a one-[to]-one, but there was a lot of confusion around that because what I recall is that wasn’t what the plan was and what was needed from the threat assessment.” They said sometimes the terms get used interchangeably and cause confusion, but as they recalled, there were two separate issues - the line of sight supervision for unstructured times as recommended by the behavior assessment, and then a request from the Parents for one-to-one assistance for the Student.

39. During interviews, the Special Education Teacher discussed “one-to-one” and “adult support for line of sight” supervision. They said in addition to themselves, there were two IAs in the room and one of the three of them was required to have “vision on [the Student] at all times.” They described “one-[to]-one support” as working with the Student on academics, while “one-[to]-one line of sight” would be watching the Student grab their lunch, walk to the restroom, or take a break. The Special Education Teacher read from the October 3, [2024] safety plan, “one-to-one adult attention and supervision during unstructured times.” They described that to mean, “The one-[to]-one adult attention was because a lot of [the Student’s] behaviors came from seeking adult attention, so if [they] could get that attention, it would do a lot with regulating [the Student’s] behavior and just generally have [them] do better in class.”
40. The Special Education Teacher also said, to their knowledge, the team did begin the process of approving a one-to-one paraprofessional, as discussed in the MDRs, that paperwork had been signed, but no one had applied for the position. They also believed this discussion

occurred after the September 2024 IEP meeting, so it would have been a later amendment and not listed as an accommodation at that IEP meeting. They could not recall any team discussion at that IEP meeting about providing a one-to-one aide. It was later clarified that the Special Education Teacher did not attend the September 18, 2024 IEP meeting because they were not invited.

41. During interviews, the Special Education Teacher recalled that during the Student's suspension period in November [2024], they had prepared a folder with assignments for the Student to complete while they were out of school, but the Parents "never came by to pick it up."
42. During interviews, the Director of Student Services explained the change in placement discussion. They said there had been two meetings on the same day in November around Thanksgiving, possibly November 22, [2024]. The first was an MDR meeting; after that meeting ended, there was a placement meeting. They recalled the Parents "very much participated in that conversation" about how the current setting "just wasn't working." The Director of Student Services said they described, in detail for the Parents, the separate public school setting program and how it was operated by the ESD. They said, "The whole team was in agreement."
43. During interviews, the Student Services Coordinator explained the two placement changes for the Student. They said they used data from the previous year, such as behavior tracking data and behavior referrals, and then daily behavior data from the first three weeks of the 2024-25 school year to make the first decision. They said the team agreed to the change of placement to the EGC at a September (believed to be September 17) meeting. Initially, it was supposed to be three periods in the EGC classroom and one period out [in general education], but the Student wanted to be in the EGC the whole time, so it "just became a self-contained placement for [them]." Then, according to the Student Services Coordinator, at an October [2024] meeting, the team looked at daily behavior tracking from the EGC, the updated FBA, and the modified BSP and discussed what else could be done to support the Student. One of the Student's counselors reportedly recommended the separate public school setting program, but it was not actually being considered at that meeting. As the Student's behavior increased, the Parents became more interested in the separate school placement and took a tour. Afterward, the Team met and changed the Student's placement.
44. During interviews, the Student Services Coordinator clarified whether or not the Student received services while out of school and the phrase "alternative setting" as used by the Parents in their allegations. They said the Student was suspended for 17.5 days before beginning attendance at the separate public school setting program on December 3, 2024, which was officially the alternative setting. They explained that during the extra days (day 11 through day 17.5) that the Student was suspended out of school, they were not considered to be in an alternative setting. However, they confirmed the Student did not receive special education services during that time. They said, "[The Student] was suspended for behavior and we went through the process of the behavior safety assessment, the threats, and when [one of the Parents] asked for services, I said we will figure out how to get that in place. And

[the Student] moved to [the separate public school setting program] before, [they] didn't get services."

The Student Services Coordinator then explained whether compensatory education had been offered for the Student since services were not provided during the suspension beyond 10 days. They said, "We talked about it." One of the Parents told them they owed the Student time, and the Student Services Coordinator responded, "We do, and we need to figure out when we can get that done. ... We never did get to the discussion about how we're going to make that time up before [the Student] moved to [the separate public school setting program]." The Director of Student Services and the Attorney for the District were also present for this interview, and together, they confirmed that the Student was still considered a resident of their District and it was their responsibility to provide FAPE.

45. According to Board Policy JGDA/JGEA-AR, removal by the District to an interim alternative educational setting for not more than 45 days under special education circumstances indicated:
 - a. "The district may remove a student with disabilities from the student's current educational placement to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 school days in a school year for a drug or weapon violation, or for infliction of serious bodily injury, without regard to whether the behavior is a manifestation of the student's disability. This removal is considered a change in placement. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order such a removal."
46. On November 17, 2024, the Parents filed this Complaint.
47. An email dated December 16, 2024, from one of the Parents stated that there was a correction to the original Complaint at the time the Complaint was filed. The Student had been suspended for 15.5 days.

IV. DISCUSSION

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

The Parents alleged that the District violated the IDEA when it failed to provide special education services to the Student in an interim alternative educational setting when the Student was suspended beyond ten school days during the 2024-25 school year. As of the filing of the Complaint, the Student had not received services.

The District does not contest this allegation.

Prior Written Notice

The Parents alleged that the District violated the IDEA when it failed to provide the Parents with prior written notice of the disciplinary change in placement.

Prior written notice must be given to the parents of a child and to the adult student after rights are transferred. Prior written notice must be given within a reasonable period of time before a school district can propose to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.³

The content of the prior written notice must include a description of the action proposed or refused by the school district and an explanation of why the district proposes or refuses to take the action. Also needed is a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action. A statement is needed that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained. In addition, sources for parents to contact to obtain assistance in understanding their procedural safeguards, a description of other options that the IEP Team considered, and the reasons why those options were rejected. In addition, a description of other factors that are relevant to the agency's proposal or refusal. The prior written notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.⁴

During interviews, one of the Parents explicitly stated that they did not receive any PWNs about the Student's suspensions or changes in placement. This includes the initial suspension and subsequent suspensions that led to the accumulation of more than 10 days.

The Parents emailed the Principal on September 20 and 24, 2024 stating their understanding that the placement change to the self-contained classroom had been discussed at the September 18, 2024 IEP meeting, but not finalized. They expected follow-up and a PWN explaining the change, but claimed the District implemented a change in placement without their agreement. This also was a change from the placement determination on the previous IEP and should have been documented.

Despite the detailed record of emails, IEPs, and behavior documentation, there is no mention or evidence of any PWN being provided to the Parents regarding the Student's suspensions beyond 10 days. Disciplinary removals of more than 10 days in a school year are considered a change of placement, and therefore, the District was required to provide PWN. The Student was suspended multiple times, triggering the requirement for MDRs, which the District

³ OAR 581-015-2310(2) and 34 CFR §§ 300.503.300.530(h)

⁴ OAR 581-015-2310(4)(5) and 34 CFR §§ 300.503.300.530(h)

completed. However, while MDRs are separate from PWNs, the repeated disciplinary actions and subsequent placement changes highlight the need for clear and consistent communication with the parents, including the provision of PWNs. The District failed to provide the required PWNs regarding disciplinary changes in placement. This lack of notification violated the Parents' right to be informed and involved in decisions about their child's education, as mandated by IDEA.

The Department substantiates this allegation.

Review and Revision of IEP

The Parents alleged that the District violated the IDEA when it failed to include one-to-one adult support in the Student's IEP when requested by the Parents.

Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate. The IEP Team reviews the IEP when a reevaluation is conducted, and information about the child is provided to or by the parents when reviewing the child's anticipated needs or other matters.⁵

On September 17, 2024, the Parents emailed the Principal requesting that recommendations from the Student's ABA therapist, including one-to-one support, be added to the BSP. On October 20, 2024, the Parents emailed the Principal again, specifically requesting one-to-one staff support for the Student, noting that it had been observed that the Student did well with this type of attention. During interviews, one of the Parents reiterated their request for one-to-one support and stated that it was verbally approved by the Student Services Coordinator but never implemented due to the Case Manager allegedly not completing the necessary paperwork. The Case Manager noted that paperwork for a one-to-one paraprofessional had been signed, but no one had applied for the position.

The September 17, 2024 email indicated initial concerns from the District about implementing one-to-one support due to a lack of resources. On October 21, 2024, the Principal emailed the Parents with details of a safety plan and confirmation of the intent to update the FBA and complete the one-to-one support paperwork. Despite acknowledging the need for increased support, according to District records, the District did not immediately include one-to-one support in the Student's IEP. There is also conflicting information from District staff about when and how one-to-one support was discussed and implemented. Some staff indicated it was never formally discussed at the September IEP meeting, while others suggested it was addressed later in safety assessments and through increased supervision in the EGC classroom.

An MDR document dated October 24, 2024, stated that the "Parents requested a 1:1

⁵ OAR 581-015-2225(b) and 34 CFR § 300.324

[paraprofessional]. The school will begin that process." However, evidence was not provided during this investigation that this process was completed or that one-to-one support was formally added to the IEP. Despite the Parents' repeated requests and the District's acknowledgment of the need for increased support, the evidence does not clearly indicate that one-to-one support was consistently provided to the Student or that the District held an IEP meeting to formally review and consider the Parents' information and request.

These facts suggest that the District failed to adequately respond to the Parents' requests for one-to-one support in the Student's IEP. Although the District was not required to include one-to-one support in the IEP, the lack of clear documentation, conflicting accounts from District staff, and the delay in implementing this support after it was acknowledged by the District indicate a potential violation of the Parents' right to participate in the development of their child's IEP and to have their requests for services considered.

The Department substantiates this allegation.

V. CORRECTIVE ACTION⁶

*In the Matter of McMinnville School District 40
Case No. 024-054-069*

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

Action Required	Submissions	As Soon As Possible But No Later Than Due Date
<p>1. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to the Student's IEP during their suspension of more than 10 days. The Compensatory Education to be offered to the Parent shall include at least:</p> <ul style="list-style-type: none"> • 2.75 hours of specially designed instruction in reading; • 2.25 hours of specially designed 	<p>The District shall submit the following:</p> <p>Completed plan for delivery of Compensatory Education developed in IEP meeting with Parent;</p>	<p>March 21, 2025</p> <p>May 20, 2025</p>

⁶ 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)).

<p>instruction in written language;</p> <ul style="list-style-type: none"> • 2.75 hours of specially designed instruction in math; • 2.25 hours of specially designed instruction in social/emotional skills; and • 1 hour of specially designed instruction in organizational/study skills. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver this SDI.⁷</p>	<p>Evidence showing compensatory education was provided.</p>	
<p>2. The District must provide copies of PWNs to Parents regarding disciplinary changes in placement during the 2024-25 school year.</p>	<p>Copies of the PWNs that are provided to Parents as well as confirmation of when and how they were provided and who was responsible.</p>	<p>March 21, 2025</p>
<p>3. The District must convene an IEP review meeting to consider information from the Parents regarding the Student's increased behavior and their request for one-to-one adult support.</p> <p>The District must provide copies of all meeting documentation to the Parents.</p>	<p>Meeting notice, minutes, and other documentation of the IEP review meeting and determinations.</p>	<p>March 21, 2025</p>
<p>1. The District must ensure that all District staff responsible for the provision of special education services receive training in the following areas:</p> <ul style="list-style-type: none"> a. Disciplinary Removals of More than 10 School Days b. Prior Written Notice c. Review and Revision of IEP 	<p>Training agenda/materials to ODE District Support Specialist for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>March 21, 2025</p>

Dated: this 17th Day of January, 2025

⁷ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email ode.disputeresolution@ode.state.or.us.

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: January 17, 2025

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).)