

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Eugene School District 4J	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 24-054-074

I. BACKGROUND

On December 3, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Eugene School District 4J (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District. The Parent amended the Complaint to incorporate additional allegations on December 8, 2024.

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.<sup>1</sup> 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.<sup>2</sup>

On December 11, 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 27, 2024. At the District's request, the Department granted an extension for the provision of requested documents, establishing a *Response* due date no later than January 3, 2025.

The District submitted a *Response* on January 3, 2025, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 01/03/25
2. Behavior Support Plan, 3/14/22
3. Supervision and Safety Plan, 9/16/22
4. Notice of Team Meeting, 5/18/23
5. IEP, 5/24/23
6. Meeting Attendance/Summary, 5/24/23

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

7. Placement Determination, 5/24/23
8. Prior Written Notice (PWN), 5/24/23
9. Notice of Team Meeting, 11/15/23
10. IEP Progress Report, 3/4/24
11. Consent for Individual Evaluation, 4/4/24
12. PWN, 4/4/24
13. Notice of Team Meeting, 4/26/24
14. PWN, 4/26/24
15. Confidential Psychoeducational Evaluation, 5/16/24
16. Disability Statement, 5/17/24
17. Eligibility Summary Statement, 5/17/24
18. PWN, 5/17/24
19. Notice of Team Meeting, 6/7/24
20. Meeting Minutes, 6/7/24
21. PWN, 7/10/24
22. Bus Plan, 9/3/24
23. Notice of Team Meeting, 9/3/24
24. Director's Notes, 9/4/24
25. Consent for Individual Evaluation, 9/4/24
26. PWN, 9/4/24
27. Notice of Team Meeting, 9/11/24
28. PWN, 9/11/24
29. Notice of Team Meeting, 9/13/24
30. IEP, 9/13/24
31. Meeting Minutes, 9/13/24
32. Director's Notes, 9/13/24
33. Placement Determination, 9/13/24
34. Mutual No Contact Order, 10/2/24
35. Mutual No Contact Order, 10/7/24
36. Notice of Team Meeting, 10/16/24
37. OSS Re-Entry Plan, 10/16/24
38. Mutual No Contact Orders, 10/17/24
39. Director's Notes, 10/18/24
40. Updated Behavior and Safety Plan, 10/21/24
41. Meeting Minutes, 10/28/24
42. Director's Notes, 10/28/24
43. FBA Guardian Interview, 10/31/24
44. Notice of Team Meeting, 11/4/24
45. Draft FBA and BSP, 11/7/24
46. Meeting Minutes, 11/7/24
47. Notice of Team Meeting, 11/15/24
48. Notice of Team Meeting, 11/21/24
49. Notice of Team Meeting, 11/22/24
50. Parent Concerns, 11/22/24
51. Director's Notes, 11/22/24

52. Meeting Minutes, 11/22/24
53. Notice of Team Meeting, 11/25/24
54. Emergency Action Plan, 11/26/24
55. "After Hours and Off Campus" Emergency Action Plan, 11/26/24
56. Swim Coach Consultation, 11/2024
57. Meeting Minutes, 12/2/24
58. Director's Notes, 12/2/24
59. PWN, 12/3/24
60. Goal Progress Data, 2024/2025
61. Attendance Profile, 2023-2024
62. Attendance Profile, 2024-2025
63. Discipline Records, 2023-2025
64. Social Story, undated
65. Safety Plan – 9<sup>th</sup> grade, undated
66. Accommodation Notes for Swim Team, undated
67. Personnel Authorized to Review Records, undated
68. Note Regarding Access to Records, undated
69. Emails, 01/2024-12/2025
70. Behavior Data, 10/2024
71. IEP Recording, 6/11/24
72. IEP Recording, 6/18/24
73. List of Staff Members Knowledgeable about the Complaint

The Parent submitted the following documents in support of their Complaint on December 3, 2024:

1. Timeline: Detailed Record of IDEA Violations, Procedural Safeguard Issues and Failures to Provide FAPE, undated
2. Letter to Superintendent, 6/10/24
3. Notice of Intent to Record IEP and Related Meetings, undated
4. Email, 12/1/24
5. Emergency Action Plan, 11/26/24
6. "After Hours and Off Campus" Emergency Action Plan, 11/26/24
7. Swim Coach Consultation, 11/2024
8. Response to District Compensatory Education Offer, 11/24/24
9. Informal Safety Plan, 2024-25
10. PWN, 7/10/24

The Parent submitted a *Reply* to the District's *Response* via an attorney on January 14, 2025. This was not considered as part of this investigation as it was provided past the deadline set by the Investigator for submitting a *Reply*.

On January 21, 2025, at the request of the Investigator, the Parent submitted the following additional document:

## 1. Modified Diploma Agreement, 2024-25

On January 10, 13, 14 and 16, 2025 the Complaint Investigator interviewed District personnel. The Complaint Investigator interviewed the Parent on December 9, 2024 and January 17, 2025. Virtual interviews were conducted instead of on-site interviews. 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 Parent's 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 December 9, 2023 to the filing of the Amended Complaint on December 8, 2024.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>When IEPs Must Be in Effect</b></p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services and not implementing accommodations in accordance with the Student's IEP, and failing to provide the Parent with progress reports that accurately explain the Student's progress toward their annual IEP goals.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Substantiated in Part</b></p> <p>The District failed to provide Behavior Consultation services and adequate progress reports during the 2023-24 school year.</p>
<p><b>Content of IEP</b></p> <p>The Complaint alleged that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs, including goals that are specific and measurable and an appropriate level of adult support.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p><b>Substantiated in Part</b></p> <p>The District failed to include measurable goals in the Student's IEP from December 9, 2023 to September 13, 2024.</p>
<p><b>Review and Revision of IEPs</b></p> <p>The Complaint alleged that the District violated the IDEA by not reviewing and revising the Student's IEP, as appropriate, to address additional educational needs related to peer bullying and safety concerns, and by</p>	<p><b>Substantiated</b></p> <p>The District failed to review and revise the Student's IEP when warranted.</p>

<p>unreasonably delaying IEP meetings to review and revise the Student's IEP.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	
<p><b>Evaluation and Reevaluation Procedures</b></p> <p>The Complaint alleged that the District violated the IDEA by failing to conduct a comprehensive evaluation of the Student's disabilities and failing to timely complete a Functional Behavioral Assessment (FBA) of the Student and review the results at an IEP meeting.</p> <p>(OAR 581-015-2110; 34 CFR §§300.303 and 300.304)</p>	<p><b>Not Substantiated</b></p> <p>The District conducted a comprehensive evaluation of the Student and timely conducted an FBA and reviewed it at an IEP meeting.</p>
<p><b>Education Records</b></p> <p>The Complaint alleged that the District violated the IDEA by failing to maintain the confidentiality of the Student's education records.</p> <p>(OAR 581-015-2300; 34 CFR §300.610)</p>	<p><b>Not Substantiated</b></p> <p>The District did not improperly disclose the Student's educational records.</p>
<p><b>Parent Participation</b></p> <p>The Complaint alleged that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP, and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District did not timely provide draft IEP documents in advance of IEP meetings, failed to allow the Parent to audio-record IEP meetings, and made determinations regarding compensatory education without input from the Parent.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</p>	<p><b>Not Substantiated</b></p> <p>The District allowed the Parent to fully participate in decisions regarding the Student's IEP.</p>
<p><b>Nonacademic Services</b></p> <p>The Complaint alleged that the District violated the IDEA by failing to provide supplementary aids and services to provide nonacademic and extracurricular services and activities in a manner to provide the Student with an equal opportunity to participate.</p>	<p><b>Not Substantiated</b></p> <p>The District provided supplementary aids and services in a manner that gave the Student an equal opportunity to</p>

(OAR 581-015-2070; 34 CFR §300.107)	participate in nonacademic and extracurricular activities.
<b>Free Appropriate Public Education (FAPE)</b>  Due to the alleged IDEA violations detailed above, the Complaint alleges that the District failed to provide the Student with a free appropriate public education.  (OAR 581-015-2040; 34 CFR §300.101)	<b>Substantiated</b>  The District denied the Student a FAPE when it failed to implement the Behavior Consultation Services in the Student's IEP, failed to provide adequate progress reports, and failed to review and revise the Student's IEP when warranted.

#### REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District:

- Assignment of a One-on-One Educational Assistant;
- Compensatory Education, including 326 hours of individualized tutoring, academic intervention aligned with IEP goals, and counseling services;
- Enhanced Behavior Support Training;
- Mandatory IDEA Compliance Training;
- EAP Updates, Implementation, and Documentation;
- Improved Communication Protocols; and
- Correction of FERPA Violations.

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 December 9, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is sixteen years old and is in tenth grade. The Student attends school within the District.
2. The Student has current diagnoses of fetal alcohol syndrome (FAS), sensory processing disorder (SPD), and attention-deficit/hyperactivity disorder (ADHD) and is eligible for special education under the category of Other Health Impairment (OHI).

3. The District convened an annual IEP meeting for the Student on May 24, 2023 when the Student was in eighth grade (May 24, 2023 IEP). The May 24, 2023 IEP includes, among other things:

- a. Strengths of Student: The Student “has grown in maturity and willingness to engage,” “loves to draw and write,” “has strong self-advocacy” and “is a hard worker when [they] put [their] mind to it.”
- b. Concerns of Parent: The Parent shared that “it was important that all the staff that [the Student] might encounter during [their] school day be aware of [their] BSP, escape plan, and IEP accommodations around behavior support.” “[The Student] will need a lot of support with the new changes in routines and environments during the transition to high school from middle school,” and “will need specific instructions on exactly where to go when directed or selecting to leave the classroom to calm.” The Parent also shared that, “[The Student] cannot accurately report bone pain due to [their] sensory processing disorder . . . if [the Student] has broken a bone, [they] won’t feel it.” “[The Parent] stresses that [they need] to be updated the same day whenever there is any kind of injury or physical contact . . . so [they] can check for any injuries.” The Parent also indicated that the Student “is a rapport-based student” and “will need to establish positive professional relationships with one or more trusted adults at [the high school] next year.” Additionally, the Parent “expressed a clear interest in a modified diploma rather than a regular diploma” for the Student.
- c. Present Levels of Performance: On District curriculum-based measures, the Student scored in the 78<sup>th</sup> percentile in reading comprehension and the 43<sup>rd</sup> percentile in math. The Student passed both their grade-level math and English/language arts (ELA) classes for the first trimester and was passing both classes at the time of the IEP meeting. In their ELA class, “while [the Student] missed many assignments [they are] capable of compensating by doing quality work on the assignments that [they do] complete when things are going well for [them] at school.”

In April of the previous school year, the Student began a gradual transition from a specialized public-school program designed to provide intensive interventions and supports to students with social, emotional, and/or behavioral needs (“Separate School”), to a comprehensive middle school within the District (“Middle School”). During this transition, the Student “had been meeting school-wide and classroom behavioral expectations.” In January 2023, the Student began to attend the Middle School full time, and a modified curriculum was added to the Student’s IEP. “After experiencing the demands of full time in [their] neighborhood school [the Student’s] teachers have observed frequent shutdowns, increased cell phone usage, increased use of breaks, and difficulty maintaining positive peer relationships.” The Student was placed on a shortened day with a step-up plan that includes a return to a full day by the last day of the 2022-2023 school year.

- d. How the Student’s disability affects involvement and progress in the general education curriculum: Student’s health teacher reported that the Student “is paying attention to

instruction” but “isn’t producing any student work.” Other teachers reported that the Student is “willing to participate fully when [they are] having a good day,” but “when [they are] having a rough day [they have] a lot of shut downs,” “is often in shutdown modes” and “doesn’t want to do a lot,” “gets quickly upset with other students in class and yells at them,” and often “rests [their] head on the desk or removes [themselves] from the classroom rather than attempt the task.”

- e. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others. No other special factors were identified for further consideration by the IEP team.

- f. Goals:

- i. Social/Emotional/Behavioral: The Student will complete at least 50% of the following short-term objectives:

- (1) During small group instruction, after identifying a cause of stress at school, the Student will identify at least one coping strategy that could be used to address the stressor for 4 out of 5 stress reflection opportunities as measured by a self-monitoring form;
    - (2) Given a hypothetical situation that involves a problem that is potentially frustrating to the Student, the Student will accurately determine the size of the problem (big problem, little problem) with at least 85% accuracy on at least three trials;
    - (3) When presented with a real-world problem, the Student will accurately determine the size of the problem, determine the appropriate emotional response, and then use the most appropriate regulation tool in order to return to the task at hand within 5-10 minutes in 4 out of 5 trials as measured by teacher observational data;
    - (4) During a reflection opportunity, after identifying a situation when they felt a negative emotion and asked to journal about the experience, the Student will write on I-Message (e.g. “I felt hurt because I didn’t like being left out of a group activity”) to describe the reason for their feelings for 4 out of 5 reflections, as measured by a progress monitoring assessment.

- ii. Math: Given specially designed instruction in Pre-Algebraic concepts, the Student will employ content related strategies to identify and retrieve key information for the purpose of solving Pre-Algebra problems, as measured by obtaining grades of 70% or higher on in-class assignments and assessments.

- iii. Reading: When given a grade-level reading assessment with inferential comprehension questions (involving idioms, similes, metaphors, etc), the Student will accurately answer inferential questions with 85% accuracy on at least three attempts.



- iv. Organizational/Study Skills: When prompted to take out class materials for a routine materials check, the Student will present a laptop/iPad and an organized binder with four requirements (e.g. planner, pencil holder, labeled section dividers, point card) and corresponding materials behind each labeled section for 4 out of 5 binder check opportunities.
  - v. Adaptive Skills: The Student will improve their adaptive skills by completing the routines of engaging in a community activity safely and eating lunch off campus with at least 85% independence on the listed steps of each routine as measured by task analysis observational data.
- g. Specially Designed Instruction:
- i. Study/Organizational Skills for 200 minutes per year;
  - ii. Mathematics for 3240 minutes per year;
  - iii. Behavior/Social Skills for 5400 minutes per year;
  - iv. Reading for 1800 minutes per year;
  - v. Community Living Skills for 100 minutes per year.
- h. Related Services: Transportation to and from school.
- i. Accommodations: One earbud allowed in ear during class for music plan; Modified schedule with an abbreviated day and step up plan to terminate at the end of the 2022-2023 school year; Personal cell phone permitted for use in hallway to contact parent as needed; Self-regulated breaks; Provide alternate locations for snack/meal breaks as needed to avoid over-stimulation from crowds or noise; Escape Plan; Access to a preferred trusted adult as needed; Opportunity to eat in a small group not in the cafeteria, but with peers when available; Visual cue cards to check tone of voice; Provide opportunities for the use of fidgets/sensory tools and noise cancelling headphones when needed; Extra time to complete assignments and/or reduced assignments or assessments for student to demonstrate proficiency on grade level standards; Access to breaks; Reduced assignments/assessments in the professional discretion of the teacher so that student is only required to show proficiency on a standard one time as necessary to stay on pace; Pre-teach expectations and routines, use prompts for transitions; Opportunities to practice escape plan when not escalated; Room temperature should not exceed 80 degrees due to sensory issues that can cause behavioral escalations; Provide information to parent as soon as possible, preferably the same day, if the Student has an incident of any kind at school; Provide prompts for breaks; Behavior Support Plan (BSP) to be updated periodically with input from parent and team; Provide opportunities for checks for understanding of directions; Assignments broken down into smaller segments; Visual (written) cues for breaks and schedules; Provide opportunities for listening to music that soothes the Student.
- j. Modifications: “Modified curriculum in order for [the Student] to perform within [their] zone of proximal development even if that is not at grade level.”
- k. Supports for School Personnel:

- i. Behavior Consultant for 540 minutes per year;
  - ii. Occupational Therapy Consultant for 120 minutes per year.
- I. Non-Participation Justification: “[The Student] will attend regular education 40-79% of [their] school day,” because the Student “needs specially designed instruction in behavior/social skills to make progress toward [their] IEP goals.”
4. During an interview, when asked to explain the statement regarding modifications in the May 24, 2023 IEP, the Student’s Middle School Case Manager, summarized it as meaning “not too hard, and not too easy,” that the Student should be provided with work that was “hard enough to be challenging but still doable.”
  5. According to the Special Education Placement Determination dated May 24, 2023, the Student’s IEP team considered placements in a “Regular Class” for either “40%-79%” or “80% or more” of the Student’s day. The first placement was selected because it “best meets the Student’s needs at this time.”
  6. According to multiple District staff that were interviewed, the BSP in effect at the time of the May 2023 IEP is dated March 14, 2022 and was created by the Separate School (2022 BSP). The strategies listed in the BSP include, among other things, use of a pass/break plan, calming tool/fidgets, access to snacks, extended time to complete assignments, and an Escape Plan.
  7. Attached to the 2022 BSP are supplementary documents, including a “Break Plan and Escape Plan,” “Music Plan” and “Supervision and Safety Plan.” According to the Break Plan and Escape Plan, the Student may either request and wait for a pass to take a break or, if needed, leave the classroom immediately. The plan lists the following steps to be followed as part of the Break Plan and Escape Plan:
    - a. The Student will quickly and quietly leave the classroom. They will head straight to a chair in the office;
    - b. Staff will call the office and tell them, “[The Student] is using [their] escape plan;”
    - c. The Student will choose a calming strategy from a list of pre-approved options including sitting in a quiet space, listening to calming music, or talking to preferred staff;
    - d. Once the Student is calm and re-regulated, they will return to class and rejoin the group.
  8. The Student transitioned to a high school in the District (“High School”) at the start of the 2023-24 school year.
  9. The Student’s new case manager at the High School (“Case Manager”) created a document, identified as the Student’s “Safety Plan” (September 2023 Safety Plan) which they emailed to each of the Student’s teachers and the High School administrators on September 21, 2023. The September 2023 Safety Plan incorporated strategies from the Student’s BSP, Break and Escape Plan, and Music Plan. According to the September 2023 Safety Plan, the protocol for the Student to take a break during class was as follows:

- a. The Student will either indicate to the teacher that they need a break, and the teacher will release them immediately, or the Student will stand up and quietly leave the classroom;
  - b. Breaks should be between 10-15 minutes long, with flexibility for occasional need for a longer break;
  - c. The Student and the Case Manager discussed three locations where the breaks may be taken, 1) in common sitting areas around the school, 2) in room 159 (the Case Manager's classroom), or 3) in the counseling office.
  - d. If the break exceeds fifteen minutes, the Student will be expected to bring a note back to class.
10. The September 2023 Safety Plan also included the following information for the Student's teachers:
- a. The Student should be allowed to use of music as a de-escalation technique in class;
  - b. The Student should be allowed access to snacks and their phone when taking a break outside of class;
  - c. If the Student becomes escalated during class, staff can quietly prompt them to take a break by placing a post-it on their desk. Calling attention to the Student during the escalation may cause the Student to feel humiliated and will likely cause further escalation;
  - d. A list of potential triggers for the Student;
  - e. The Student has a sensory processing disorder that prevents them from feeling bone pain. If the Student sustains an injury that may have resulted in a broken bone, the Student should be reminded to sit still until they can be evaluated, and the Parent should be contacted.
11. On February 20, 2024, at the start of the new semester, the Case Manager emailed a document entitled "IEP Student Info Sheet" (Info Sheet) to each of the Student's teachers. The Info Sheet contained information about the Student including, among other things, the Student's IEP accommodations, IEP goals, that the Student was on a modified diploma, and that the Student had a Behavior Support Plan, which the Case Manager identified as a "Safety/Escape Plan" (February 2024 Safety Plan). The Info Sheet also included strategies for preventing behavior escalation and managing the Student's behavior. The Case Manager attached the February 2024 Safety Plan, which had been updated and revised to reflect the Student's current behavioral needs and the High School environment. A copy of the Info Sheet and February 2024 Safety Plan were provided to the Parent via email on February 26, 2024.

12. On March 4, 2024, the Case Manager completed a Progress Report for the goals and objectives from the May 2023 IEP, which was provided to the Parent. According to the Progress Report, the Student received a “progress code” of 4 on each of their goals, representing that, “Progress has been made toward the goal. It appears that the goal will be met by the next IEP review.” While there is a designated space on the Progress Report for additional comments, the Progress Report did not contain any additional information.
13. On or about April 8, 2024, the Parent contacted the Case Manager and informed them that the Progress Report contained incorrect information.
14. When interviewed, the Case Manager shared that they reviewed the Progress Report and realized that they had completed it incorrectly. They explained that this was their first teaching position in Oregon and, at that time, they were still learning how to use the District’s records-management system. The Case Manager created an updated Progress Report (Updated Progress Report), also dated March 4, 2024, with revised progress data. The Updated Progress Report described the Student’s progress on their IEP goals as follows:
  - a. Social/Emotional/Behavioral: Progress Code 2 (Progress is not sufficient to meet this goal by the time the IEP is reviewed. Consider IEP review meeting). “[The Student] has made some progress toward these goals but requires more behavioral support to . . . meet them completely.”
  - b. Math: Progress Code 2 (Progress is not sufficient to meet this goal by the time the IEP is reviewed. Consider IEP review meeting). “[The Student] requires more behavioral support to access the instruction in mathematics that [they] needs.”
  - c. Reading: Progress Code 3 (Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed). “[The Student] is making progress toward this goal, but we are unable to accurately report data at this time due to lack of behavioral support.”
  - d. Organizational/Study Skills: Progress Code 2 (Progress is not sufficient to meet this goal by the time the IEP is reviewed. Consider IEP review meeting). “[The Student] is not making progress toward this goal due to lack of behavioral support.”
  - e. Adaptive Skills: Progress Code 1 (Your child did not work on this goal during the reporting period). “This is not an appropriate goal for this setting, school cannot track progress on out of school activities.”
15. When asked to explain the comments on the Student’s progress report regarding a lack of behavioral supports, the Case Manager shared that they were not referring to behavioral supports in the Student’s IEP. They did not feel the Student required any additional special education services or supports to be successful. In the Case Manager’s opinion, the High School did not have school-wide systems of behavioral supports, such as Positive Behavioral Interventions and Supports (PBIS), in place for all students. The Case Manager believes that Student would have had more success attending class if the High School had “clear and

consistent building-wide expectations” and school-wide interventions for students who were not attending class.

16. The Case Manager further shared that they had attempted to get assistance from one of the District’s behavior specialists regarding the Student’s BSP, but did not receive a response. In addition, they sought assistance from the High School Principal in developing consistent school-wide behavior support systems, but the Principal was not receptive to their suggestions. In particular, the Case Manager sought guidance on how to get general education teachers at the High School to fill out data forms related to students’ IEP, but did not receive any support. While the Case Manager believed that the Student’s teachers were implementing the Student’s BSP, they did not collect consistent data that would allow the Case Manager to determine the BSP’s effectiveness.
17. When asked why the Case Manager did not convene an IEP meeting before June if the Student was not making progress, the Case Manager explained that they had revised the Student’s BSP and attempted different strategies for supporting the Student but realized in March 2024 that those strategies were not working. Given that they were already planning to meet before the end of the year to review the Student’s three-year-reevaluation and consider eligibility, it made sense to the Case Manager to wait for that evaluation to be completed before revising the Student’s IEP.
18. On April 3, 2024, the School Psychologist met with the Parent via telephone to develop a Consent for Individual Evaluation for the purpose of determining if the Student continued to be eligible for special education services. Based on that conversation, the School Psychologist developed a Consent for Evaluation, dated April 4, 2024, which proposed to evaluate the Student using the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV) and the Behavioral Assessment System for Children, 3<sup>rd</sup> Edition (BASC-3). The Parent consented to the proposed evaluation on April 11, 2024.
19. When interviewed, the School Psychologist stated that the assessment tools proposed in the Consent for Evaluation were appropriate to determine the Student’s special education needs and recalled that the Parent agreed with the tests that were proposed. They also shared that there was subsequent agreement for the Case Manager to complete an academic assessment because the Parent requested more information about how the Student was performing academically.
20. On April 16, 2024, the Case Manager emailed the Parent with numerous potential dates and times for convening the Student’s eligibility meeting. Of the dates proposed, the Parent replied that May 17, 2024 worked best for them, and on April 22, 2024 the Case Manager responded confirming the meeting for that date. A Notice of Team Meeting dated April 26, 2024 indicated that both an Eligibility Determination and Annual IEP meeting were scheduled for May 17, 2024.

According to service logs, the Occupational Therapist provided consultation to staff regarding the Student for a total of 195 minutes between May 24, 2023 and September 16, 2024, which included 120 minutes between the May 24, 2023 IEP and the end of the 2023-24 school year.

21. On May 12, 2024, the District occupational therapist (Occupational Therapist) assigned to the Student sent an email to the Case Manager asking to be invited to the Student's May 17, 2024 IEP Meeting. The Occupational Therapist wrote, "I'm quite sure [the Student] has outgrown [their] need for OT services but it's best practice to meet with teachers and parents and determine that as a group." The Occupational Therapist went on to explain that "OT got a little lost in the shuffle" during the Student's transition from the Separate School to the Middle School, and then to the High School, noting that three different occupational therapists had been assigned to the Student during that time period. The Occupational Therapist expressed a desire to "clean everything up."
22. On May 15, 2024, an email was sent to the Parent with a request to complete behavior rating scales for the Student. The email included a link for the Parent to access the rating scales online.
23. On May 16, 2024, the Case Manager sent an email to the School Psychologist informing them that, that same day, the Parent requested "access to the Eligibility data ahead of the meeting tomorrow," and asking if they could email the Parent any information the School Psychologist had compiled. The School Psychologist responded that they would do their best to get the requested information to the Parent before the meeting.
24. On May 17, 2024, the day that the Eligibility Determination and IEP Meeting were scheduled to occur, the School Psychologist sent a copy of the Confidential Psychoeducational Evaluation, dated May 16, 2024, that they had completed with the Student. (May 2024 Evaluation). According to the Parent, the May 2024 Evaluation did not include behavior rating scales from the Parent or the Case Manager, noting that the Parent had failed to respond when asked to complete the rating scale. The Parent notified the School Psychologist that they had not seen the email requesting that they complete rating scales and indicated that they wanted input from both the Parent and the Case Manager included in the evaluation report.
25. On May 17, 2024, the Parent sent an email to the Case Manager, forwarding the May 15, 2024 email requesting that they complete rating scales. The Parent asked, "Can you fill this out ASAP? This information from you needs to be in [the Student's] 3-year re-eval." The Parent went on to note that they were "shocked" that the School Psychologist had not contacted them regarding their failure to complete the rating scales, given that the request had been sent from a non-district email address, had a "weird title," and was likely to "end up as spam."
26. When interviewed, the Parent explained that the initial report that was provided to them was not adequate because it did not include rating scales from the Case Manager or the Parent. They felt that the School Psychologist should have followed up with the Parent when they did not receive their rating scales. They did not take issue with the revised evaluation report that included the results of the Parent's rating scales. The Parent expressed that, even though the issue with the evaluation was corrected, they still wanted the evaluation process to be investigated.

27. The responsive documents provided by the District include a Disability Statement, Eligibility Summary Statement, and Prior Written Notice regarding the Student's continued eligibility for special education, that are all dated May 17, 2024. There is no other evidence, however, indicating that the Student's eligibility meeting occurred on that date.<sup>3</sup> According to an entry in the Occupational Therapy services logs, "Parent was unable to attend. Cancelled at last minute."
28. The Student's Eligibility Determination and IEP Meeting were rescheduled for May 24, 2024. On May 22, 2024, the Parent emailed the Case Manager and Assistant Principal requesting a copy of the May 2024 Evaluation and a draft of the Student's IEP by the following morning. The Parent explained, "I am requesting an accommodation because of my traumatic brain injury (TBI) under the ADA to get the documents . . . ahead of time so that I will have time to read them and process them . . . to be prepared for the meeting." The Parent went on to state that, if their request could not be met, a second meeting would need to be scheduled so that the Parent had adequate time to process any information shared in the first meeting.
29. On May 22, 2024, the Assistant Principal responded to the Parent's email and explained that portions of the May 2024 Evaluation were still "raw data" and had not yet been compiled into a report. They assured the Parent that they would provide the requested documents as soon as possible and offered to schedule a second meeting (as previously suggested by the Parent) if the Parent felt that they needed additional time to process the information. The Case Manager also responded to the Parent, indicating they could provide a draft of the IEP the day before the meeting.
30. On the afternoon of May 23, 2024, the School Psychologist provided the Parent with an updated copy of the May 2024 Evaluation, noting that it included the results of the BASC-3 rating scales completed by the Parent and the Case Manager. The May 2024 Evaluation included an assessment of the Student's cognitive functioning, behavior rating scales completed by the Student, the Parent and the Case Manager, an interview with the Parent, and a review of records. The results of the evaluation included, but were not limited to, the following:
- a. WJ-IV Tests of Cognitive Ability
    - i. Comprehension-Knowledge: Standard Score 98, 45<sup>th</sup> percentile, Average
    - ii. Fluid Reasoning: Standard Score 71, 3<sup>rd</sup> percentile, Low
    - iii. Short-Term Working Memory: Standard Score 93, 31<sup>st</sup> percentile, Average
    - iv. Cognitive Efficiency: Standard Score 102, 55<sup>th</sup> percentile, Average
    - v. General Intellectual Ability: Standard Score 99, 47<sup>th</sup> percentile, Average
  - b. Kaufman Test of Educational Achievement – Third Edition (KTEA-3)
    - i. Reading: Composite Score 88, 21<sup>st</sup> percentile, Average

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<sup>3</sup> Several of the educational records provided by the District as part of its Response have incorrect dates or multiple dates. When asked about these errors, the Case Manager shared that, during the 2023-24 school year, they were still learning how to use the District's records-management software. They noted that some documents would "auto-populate" with the date that a meeting was originally scheduled, even if the meeting was convened on a later date, and that they did always notice and correct those errors.

- ii. Math: Composite Score 75, 5<sup>th</sup> percentile, Below Average
- c. BASC-3
  - i. On the Parent Rating Scale, the Student was rated in the “Clinically Significant” range for Hyperactivity, Conduct Problems, Depression, Attention Problems, Adaptability, and Activities of Daily Living and “At Risk” for Aggression, Social Skills, Functional Communication, and Leadership. All other areas were in the normal range.
  - ii. On the Teacher Rating Scale, the Student was rated in the “Clinically Significant” range for Hyperactivity, Aggression, Somatization, and Atypicality and “At Risk” for Conduct Problems, Anxiety, Depression, Attention Problems, Learning Problems, Withdrawal, Adaptability, Functional Communication, Leadership, and Study Skills. All other areas were in the normal range.
  - iii. On the Self-Report, the Student rated themselves in the “At Risk” range for Hyperactivity, Attention Problems, and Atypicality. All other areas were in the normal range.
- 31. No evidence was provided to indicate that the Eligibility Determination and IEP Meeting were convened on May 24, 2024 as scheduled.
- 32. On May 29, 2024, the Case Manager sent an email to other members of the Student’s IEP team indicating that “[The Parent] is looking to reschedule [the Student’s] IEP meeting” and proposing June 7, 2024 as a potential date.
- 33. On June 6, 2024, the Case Manager sent an email the Director requesting “district support” at the Student’s upcoming IEP meeting. They shared that the Parent did not believe the District was providing FAPE to the Student and wanted to discuss those concerns at the meeting. The Parent’s concerns included, “the absence of PBIS at this school, little to no behavior supports at the high school, and teachers who are unable or unwilling to implement IEPs.”
- 34. The Director responded to the Case Manager on June 6, 2024 noting that, “A school does not have to be a PBIS site to implement FAPE for a student . . . Delivering FAPE to this student is about the individualized education plan and services that meets the disability related needs of that student.” The Director added, “We do have a wide array of behavioral supports that can be used at the high school level – a district behavior consultant can help you navigate those supports that might be needed.” They further advised that, “For teachers who are unable or unwilling to implement IEP accommodations or services, please immediately get those teachers names to [the Principal] and [the Assistant Principal] so they can follow up ASAP.”
- 35. According to Meeting Minutes, dated June 7, 2024, “The team attempted to meet to discuss Eligibility, and prepare for the upcoming IEP. Due to the absence of a general education teacher at the meeting, [the Parent] requested that we postpone.” The meeting was rescheduled for June 11, 2024.



36. On June 10, 2024, the Parent sent an email to the District Superintendent, Principal, Director, and Case Manager. They expressed concern regarding the Student's education and provided a detailed list of alleged incidents during the 2023-24 school year that the Parent believed resulted in the denial of a FAPE to the Student. These incidents were listed under the following categories: a) Failure to Implement IEP/BSP, b) Failure to Provide Transportation in IEP and Failure to Safety Supervise, c) Inappropriate Disciplinary Procedures and Inability to Maintain a Safe Classroom Environment, d) Inadequate and Unsafe Classroom Supervision and Failure of Admin to Respond in a Timely Manner, e) Inappropriate Goals That Are Not Able to Be Monitored, and f) Failure to Monitor and Report IEP Goal Progress. To address these allegations, the Parent requested that the District provide the Student with compensatory education, revise the Student's IEP to include measurable goals and progress monitoring, train staff on the implementation of the Student's IEP and BSP, and development of a transportation plan.
37. On June 11, 2024, the Student's IEP team convened to determine their continued eligibility for special education and develop a new annual IEP (June 11, 2024 Meeting). While the District did not provide any Meeting Minutes from this meeting, it was video recorded. One of the District's Student Services Administrators acted as the District representative at this meeting (and the following meeting). The Student Services Administrator shared that they initially denied the Parent's request to record the meeting but acquiesced when the Parent mentioned that they had a TBI. The Student Services Administrator informed the Parent that the decision to allow them to record the meeting would be revisited at a later date.
38. At the June 11<sup>th</sup> Meeting, the School Psychologist reviewed the results of the May 2024 Evaluation. After a discussion regarding the results, the team agreed that the Student continued to qualify for special education under the category of OHI and completed the Eligibility Determination form. All team members present at the meeting, including the Parent, signed the Eligibility Determination, indicating that they agreed with the decision.
39. After determining the Student's continued eligibility, the Case Manager passed out a draft copy of the Student's annual IEP. It was determined that there likely would not be sufficient time to complete review of the IEP, and it was agreed that a second meeting would be scheduled for June 18, 2024. District staff and the Parent agreed to use a Google Doc to collaborate on the content of the draft IEP in advance of the next meeting, and a link to that document was shared.
40. The IEP team spent the remainder of the June 11, 2024 meeting discussing the Student's behavioral supports, how staff would be trained to implement the Student's BSP, and how a District behavior specialist could consult on both the development of the BSP and staff training. The Case Manager shared that they had contacted a behavior specialist at the beginning of the school year and sought support with addressing the Student's behavioral needs, but did not receive a response. They further shared that the behavior consultation services identified in the Student's May 2023 IEP as "Supports for School Personnel" had not been provided. The meeting concluded after continuing for more than two hours.

41. The Student's IEP team reconvened on June 18, 2024 to continue development of the Student's annual IEP (June 18, 2024 Meeting), and this meeting was also video recorded. The IEP team discussed concerns of the Parent which included, among other things, a request for compensatory education during the summer and the following school year, development of a health plan for the Student, training for staff on how to implement the Student's BSP, and whether the Student should work towards a standard or modified diploma. The Student Services Administrator stated that a District nurse could assist with development of a health plan and that the request for compensatory education could take place outside of the IEP meeting.
42. After reviewing the Parent's concerns, the IEP team discussed diploma options so that the Student, who was present for the first part of the meeting, could be a part of that discussion. The Parent requested that the Student work towards a standard diploma and that curriculum modifications be removed from their IEP. The Student indicated a preference for a modified diploma because they believed it would make it easier for them to reach their goals. The Student also shared that it was their choice not to attend classes during the 2023 -24 school year. They expressed that the high school periods were each ninety minutes, and that they could not tolerate sitting in a room listening to lectures for that long. The Parent continued to request that the Student work towards a standard diploma, and District staff explained that the Student could switch to a modified diploma later if needed.
43. The IEP team then discussed working with a District behavior specialist (Behavior Specialist) during the summer to update the Student's BSP prior to the start of the 2024-25 school year and conducting an updated Functional Behavioral Assessment (FBA) when school resumed in the fall. Finally, the IEP team reviewed and revised the Student's goals and objectives, about which the Parent had provided significant input via the shared Google Doc created at the June 11<sup>th</sup> Meeting. After meeting for nearly two hours, the IEP team agreed to schedule a third meeting to complete the Student's Annual IEP.
44. When interviewed, the School Psychologist confirmed that the IEP team agreed to remove modifications from the Student's IEP at the Parent's request. The School Psychologist agreed with the decision as the results of their assessment did not show that the Student required modifications. They believed that the Student was "more than capable" of accessing the curriculum in their classes.
45. When asked if the Student's curriculum had been modified during the 2023-24 school year, the Case Manager did not recall instructing teachers to implement modifications. They explained that they did not specifically discuss modifying the curriculum because the Student was not in class to complete assigned classwork. They did, however, work with the Student's teachers to reduce the number of assignments, shorten and break assignments down for clarity, and making sure the work was not overwhelming for the Student.
46. When asked if they modified their curriculum for the Student during the 2023-24 school year, the Student's choir teacher (Choir Teacher) shared that modifications can look different in a class like choir, as opposed to more academic classes, but that they worked with the Assistant Principal and the Case Manager to determine what was appropriate for the Student. The

choir class is largely graded based on student engagement, so the Choir Teacher “worked within [the Student’s] ability to be physically present and engaged.” This meant that the Student was not penalized for taking breaks and was excused from a choir concert that they did not attend.

47. The Student’s biology teacher (Biology Teacher) taught the Student during both the 2023-24 and 2024-25 school years. When asked how they modified the curriculum for the Student during the 2023-24 school year, they shared that it was based on “a conversation between me and the Student about how things should be modified.” Specifically, they provided guided notes, allowed the Student to use notes on tests, and would excuse assignments “if they were more than what [the Student] was able to do.” They did not recall receiving any specific instruction from the Case Manager regarding how to implement modifications.
48. A meeting to discuss potential compensatory education for the Student took place on June 25, 2024 with the Parent, the Parent’s Advocate, the Director, the Student Services Administrator, and another Special Education Administrator. When interviewed, the Director shared that they met with the Parent to develop an offer of compensatory services that would work for the Student. According to the Director, the District was considering compensatory education services for the Student because it had not provided behavior consultation to school staff in accordance with the Student’s IEP during the 2023-24 school year. The Director also acknowledged that the Student had missed a significant amount of SDI during the 2023-24 school year because they were frequently absent from class. They clarified, however, that the District stood ready to implement the SDI, but that staff could not get the Student to access it. The Special Education Administrator added that the Parent expressed at the meeting their belief that the Student skipped so many classes because of the District’s failure to implement the BSP. The Special Education Administrator argued that, while there may have been a couple of instances when the BSP was not implemented, skipping class is also considered typical teenage behavior and should not all be attributed to whether the BSP was implemented.
49. During the June 25, 2024 Meeting, the District spoke with the Parent about the areas where the Parent believed services had not been delivered. The Student was short on credits and they discussed multiple options of what could be done over the summer to address that. According to both the Director and the Student Services Administrator, they discussed the pros and cons of each option and the Parent and their advocate were very involved in the discussion. It was decided that the Student would enroll in the District’s credit recovery program and that the District would provide behavioral support. According to the Director and the Student Services Administrator, the Parent appeared to agree with the decision.
50. The Student Services Administrator sent an email to the Parent on July 3, 2024 to follow up on the June 25 2024 discussion about compensatory education. The Student Services Administrator shared that, based on that discussion, they had looked into the Student participating in Extended School Year but believed that a better option would be for the Student to attend “Credit Recovery” classes over the summer with the support of a special education teacher and an Educational Assistant (EA). They noted that the Student could begin

classes as early as July 8, 2024. The Parent responded that they would like to hear more about this option before deciding.

51. On July 8, 2024, the Parent and the Student met with an EA from the District's credit recovery program and enrolled the Student in an Algebra class. The Student attended the credit recovery program during the summer, receiving credit for two math classes and a physical education class.
52. The District developed a PWN, dated July 10, 2024, detailing the District's offer of compensatory education to the Student which was emailed to the Parent on July 16, 2024. The PWN notes that the Student had only attended classes 43.46% of the time for the 23-24 school year and had earned two credits, placing them four credits behind what was expected. The Parent had expressed concern regarding staff not implementing the SDI and consultation required by the Student's IEP and requested compensatory education. The PWN goes on to describe multiple options for compensatory education that were discussed with the Parent and indicates that the District and the Parent agreed that the District's credit recovery program, with in-person adult support, was the best choice for the Student. In addition, the District offered the Student support from a behavior consultant over the summer who would conduct an FBA and develop an updated BSP to be implemented in the Fall of the 2024-25 school year. Finally, the PWN proposes that the District collect progress data over the summer and at the start of the school year, which can be used "to determine what additional compensatory education is necessary."
53. When asked why a Consent to Evaluate for an FBA was not provided to the Parent in July 2024, the Director explained that they would not be able to begin an FBA until the Student was back at the High School, so they decided to wait until the fall to get parent consent. The District did, however, pay the Behavior Specialist over the summer to provide behavioral support for the Student and to conduct a review of the Student's educational records in preparation for completing the FBA when the new school year started.
54. On August 28, 2024, the Case Manager sent an email to each of the Student's teachers, as well as the High School administrators, proposing to convene an IEP meeting for the Student on August 30, 2024. When they could not secure the availability of a complete IEP team, the Case Manager sent out a list of other possible dates for the meeting. It was determined that September 4, 2024 was the first mutually agreeable date for continuing the Student's IEP meeting.
55. On September 3, 2024, prior to the first day of school, the Case Manager and Behavior Specialist conducted a training for all the Student's teachers and the High School administrators regarding the Student's IEP. The Student's accommodations, BSP, and supporting plans were reviewed in detail and staff was given an opportunity to ask questions. According to the Behavior Specialist, staff at the training were provided with copies of the Student's BSP, Safety Plan, Escape Plan, Music Plan, and Bus Plan.
56. When asked about the difference between the BSP and Safety Plan, and which the staff were expected to implement, the Behavior Specialist shared that the Safety Plan complemented the BSP, and that staff were expected to implement both.

57. On September 3, 2024, the Case Manager emailed the Parent an updated draft of the Student's IEP. The Parent responded that evening with a list of parent concerns to be included in the IEP and input regarding the Present Levels section, providing detailed suggestions regarding language they believed should be included. They indicated that they had "more thoughts about the goals" but did not have time to share those as they had only received the updated draft that evening.
58. The Student's IEP team met on September 4, 2024 to continue development of the Student's annual IEP (September 4, 2024 Meeting). The Parent attended along with their advocate. According to notes taken by the Director, the Parent requested the District's policy regarding recording IEP meeting. The Parent also noted that they needed to receive documents forty-eight hours prior to meetings. The Director allowed the Parent to audio record the meeting, but did not agree to allow recording of future meetings. They offered to work with the Parent to determine what disability-related accommodations they required. The IEP team reviewed the Present Levels section of the IEP, and the Parent provided input. The Case Manager agreed to update the Present Levels based on the Parent's input. The IEP team discussed the transition planning and began to review the proposed IEP goals. Finally, the discussed the Student's health plan and requested clarification regarding the Student's health needs. The IEP meeting concluded before the IEP was completed due to the Parent's time constraints.
59. Also on September 4, 2024, the District provided the Parent with a Consent for Individual Evaluation, proposing to complete an FBA of the Student. The Parent consented to the evaluation on the same date. A PWN dated September 4, 2024 further explains why an FBA of the Student was warranted. According to the PWN, the Student's behavior had changed since their last FBA and more current data would assist the District in developing a new BSP for the high school setting. The PWN goes on to note that the Student's previous BSP had been developed at the Separate School, but that a Safety Plan had been developed during the 2023-24 school year "that went along with the previous BSP."
60. On September 9, 2024, the Director sent an email to the Parent regarding what disability-related accommodations the Parent needed to participate in the Student's IEP meetings. The email states, "At the upcoming IEP meeting, we will be providing a notetaker so that you have solid notes that you can use as a memory aid for processing the content of the meeting later on. We will not be allowing the meeting to be video recorded." The Director then asked the Parent to share any additional information regarding their need for accommodations noting that, "We are very open to interactive discussion with you on your accommodation needs and about reasonable ways to fulfill this."
61. On September 9, 2024, the Parent replied to the Director via email stating, "To be clear, in the meeting, you stated that [the District] only allows recordings when a parent provides an ADA request and that you wanted to follow up with me about it. When I spoke, I said I did not think it was an ADA question and asked you to send me the [District] policy that articulates this." The Director responded with the District's "ADA Policy" and the Parent replied with a request for the District policy that disallows the recording of IEP meetings.

62. On September 10, 2024, the Director notified the Parent that the District did not have a specific policy regarding recording IEP meetings but would follow legal guidance and “ensure that your ADA accommodations are fulfilled.” The Parent responded, “I want to clarify that I have never made a request for accommodation to record the meetings under the ADA.”
63. On September 12, 2024, the Case Manager emailed the Parent an updated draft of the Student’s IEP.
64. On September 12, 2024, the Occupational Therapist emailed the Case Manager with written input for the Student’s IEP. They stated that the occupational therapist who served the Student at the Separate School had recommended to discontinue occupational therapy services when the Student transitioned to the Middle School. They further explained that “The May 2023 IEP happened without me so the 2022 OT service time was just rolled over to the 2023 IEP,” and requested, “If I am overlooking skills that need to be addressed, please let me know.”
65. The Student’s IEP team reconvened on September 13, 2024 to finish the Student’s annual IEP (September 13, 2024 IEP). The Parent attended, along with their advocate. The September 13, 2024 IEP includes, among other things:
- a. Strengths of Student: The Student is “not afraid to say what [they are] thinking,” “social to peers” and a “talented vocalist.” According to the Parent, “When [the Student] feels safe and supportive, [they] can learn literally everything.”
  - b. Concerns of Parent: The content of the Parent’s June 10, 2024 email to the Superintendent, expressing concern regarding the Student’s education, is copied into the IEP.
  - c. Present Levels of Performance: In the area of Mathematics, the Student’s ability to recall times tables and other basic math facts is a “comparative strength,” while division is a “relative weakness.” The Student struggles to persist with math problems and requires multiple prompts to complete them. The Student works best when presented with small chunks of work to complete.

In the area of behavior, the Student “anecdotally has shown a strength in [their] ability to identify when [they need] to leave the room to deescalate” and “has done a good job advocating for [themselves] and [their] needs.” An area of weakness was identified as the Student’s “ability to redirect back to class after de-escalating.” Work completion was noted to be difficult for the Student during the 2023-24 school year due to “the amount of time [the Student] has been in crisis, and unable or unwilling to work on academics. [The Student] is often fully distracted and distraught by friends, boyfriends, girlfriends, and other group dynamics.

The Present Levels section also includes a summary of the results of the May 2024 Evaluation.

- d. How the Student's disability affects involvement and progress in the general education curriculum: "[The Student's] cognitive abilities are within the average range overall, but [the Student] struggles with fluid reasoning and math. Behavioral and executive functioning challenges are a major barrier to [their] progress with high concerns reported by [their] teacher and moderate concerns by [their] parent and self-reports. Academically, [they are] performing average in reading and significantly below average in math, both of which affect [their] ability to engage in the general education curriculum effectively."
- e. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others. No other special factors were identified for further consideration by the IEP team.
- f. Goals:
  - i. Social/Emotional/Behavioral: The Student will develop a menu of coping strategies to choose from when they feel escalated. They will check in with a trusted adult within 24 hours after using these strategies to debrief and reflect on their effectiveness for 80% of check-ins;
  - ii. Social/Emotional/Behavioral: The Student will transition back into the classroom after a break or redirection within 5-10 minutes, using strategies listed on a co-created menu of calming strategies for 80% of incidents;
  - iii. Math: The Student will persist in identifying and proving that two triangles are congruent using the side-side-side, side-angle-side, angle-side-angle, or hypotenuse-leg congruence criteria, and apply this knowledge to find missing side lengths and angle measures in geometric problems with 80% accuracy;
  - iv. Math: When given a single or multistep algebraic equation (including the Pythagorean theorem), the Student will identify the correct operation needed, and persist in using that operation to solve problems with 80% accuracy on 4/5 trials;
  - v. Transition: The Student will research three entry level jobs that interest them, reporting the name of the job, hourly rate, job requirements, and build a resume based on these descriptions with at least 90% completion;
  - vi. Transition: The Student will research at least three opportunities to share their voice and music production, provide a written description of the opportunity, and select at least one to attempt before the end of the IEP;
  - vii. Organizational/Study Skills: The Student will record classwork assignments, such as, What is the assignment? How to do this assignment? How to turn this in? Due date? In a planner for all regular education classes and do a daily planner check for 80% completion.
- g. Specially Designed Instruction:

- i. Transition Services for 240 minutes per year;
    - ii. Study/Organizational Skills for 100 minutes per year;
    - iii. Mathematics for 1800 minutes per year; and
    - iv. Behavior/Social Skills for 3000 minutes per year.
  - h. Related Services: Transportation to and from school.
  - i. Accommodations: Provide opportunities for checks for understanding of directions; BSP; Access to a preferred trusted adult as needed (counselor, case manager, etc.); Pre-teach expectations and routines; Use prompts for transitions; Provide opportunities for the use of fidgets/sensory tools and noise canceling headphones when needed; Opportunities to practice leaving instructional spaces for self-regulation; Visual (written) cues for breaks and schedules; Participation in a daily check-in and check-out system; Assignments broken down or chunked into smaller segments; Provide opportunities for listening to music as a tool for de-escalation; Extra time to complete assignments and assessments for the Student to demonstrate proficiency on grade level standards.
  - j. Modifications: Not needed.
  - k. Supports for School Personnel:
    - i. Behavior Consultant for 540 minutes per year.
66. Non-Participation Justification: “[The Student] will attend regular education 40-79% of [their] school day,” because the Student “needs specially designed instruction to make progress toward [their] IEP goals.”
67. According to the Meeting Minutes from the September 13, 2024 IEP Meeting, the Student’s attendance had improved, and the Student had attended all their classes for the previous two days. The IEP team reviewed changes that had been made to the Present Levels and IEP Goals since the previous meeting and made revisions based on input from the Parent. The Parent asked whether the Student had accessed Canvas (the High School’s assignment and grade monitoring system), and the Student’s English Teacher shared that they had helped the Student access Canvas in class. The team discussed the amount of SDI that the Student required and adjusted the level of SDI in the draft IEP with input from the Parent. The Meeting Minutes go on to note that the Student was not currently receiving any modifications.
68. The Meeting Minutes reflect that the IEP team discussed continuing to include consultation from the Occupational Therapist to support school staff. The Parent shared that the Student had previously benefited from sensory supports, such as fidgets, a wiggle cushion, ball seat and a blanket to wrap over their head. It was agreed that sensory supports for the Student would more appropriately be reflected as an accommodation. The IEP team then discussed the Student’s placement and agreed that the Student would continue to spend 40-79% of their day in the general education setting. The IEP team agreed to implement the new IEP beginning September 18, 2024 and planned to meet again to review the FBA and new BSP that were in the process of being completed.



69. A PWN created by the District following the September 13, 2024 IEP Meeting notes that the IEP team discussed a modified diploma for the Student, “which was rejected by the team as not reflecting the life goals of [the Student] and [their] family.”
70. On September 15, 2024, the School Nurse emailed the Parent the Student’s Emergency Action Plan (also known as a health plan), which had been updated based on conversations at the September 13, 2024 Meeting and requested that the Parent provide feedback.
71. On September 23, 2024, the School Nurse sent an email to all the Student’s teachers and administrators at the high school with a copy of the Student’s Emergency Action Plan. The School Nurse informed staff that the Student “is unable to feel bone pain due to [their] sensory condition” and “may deny the need for medical care when [they have] a severe injury.” The email went on to emphasize, “Most important point – if something that happens to [the Student] that could cause back, neck or head injury, [the Student] needs immediate medical attention, even if [they feel] fine.”
72. The Student’s Emergency Action Plan, dated September 20, 2024, provides guidance on how to address potential injury to the Student including, in relevant part:
- a. If the Student has experienced a “mechanism of injury” capable of causing serious injury, such as a “significant blow” to the head, neck, back, abdomen, or chest, or whiplash-type trauma, staff should call the school office immediately, call 911, and notify the Parent.
  - b. If the Student has experienced a “mechanism of injury” causing non-life-threatening serious injury, such as trauma to arm, leg, foot, or hand, staff should take the following steps:
    - i. Instruct the Student to remain still and remind them that they do not feel bone pain and that staff need to take precautions in case there is an injury;
    - ii. Call for wheelchair escort to nurse’s office. Do not allow the Student to use or put weight on the injured body part;
    - iii. Notify the Parent and the School Nurse of potential for injury and follow their instructions.
73. On September 23, 2024, the Parent sent an email to the Director regarding their continued request for compensatory education. The Parent acknowledged a previous agreement to discuss compensatory education outside of an IEP meeting but expressed that it would be important to involve IEP team members in decisions regarding appropriate compensatory education and requested an IEP meeting to determine compensatory services for the Student.
74. On September 24, 2024, the Director responded to the Parent stating that “it is not in the purview of an IEP team to address compensatory education requests.” The Director proposed meeting with the Parent during the second week of October to discuss the Parent’s request.

75. On September 29, 2024, the Parent sent another email to the Director, indicating that they “respectfully insist” that the IEP team be a part of discussions regarding compensatory education and reiterating their request for an IEP meeting for that purpose. The Parent explained that, “Given the IEP team’s ongoing role in developing, reviewing, and revising [the Student’s] educational program, their involvement is essential for ensuring that compensatory education is appropriately tailored to [the Student’s] current needs.”
76. On October 2, 2024, the Parent sent an email to the Assistant Principal, Case Manager, Director, and Behavior Specialist requesting a meeting to discuss “the district’s failure to provide FAPE, both last year and now this school year.” The email goes on to detail four incidents where the Parent believed the Student’s BSP had not been implemented appropriately, as well as one incident of alleged bullying by the Student’s peers.
77. On October 3, 2024, the Director sent an email to the Parent agreeing that input from the IEP team would be helpful in determining compensatory education for the Student. They proposed “a two-step process” with an IEP meeting to review current data on IEP goals, behavior and attendance, and then a follow up meeting where the Director would make an offer of compensatory education based on the data presented during the IEP meeting, with “an opportunity to collaborate and come to agreement.” The Director requested that the Case Manager, who was copied on the email, work on scheduling an IEP meeting.
78. On October 4, 2024 District sent a scheduling poll to the Parent and other members of the IEP team, seeking their availability for an IEP meeting, and providing six different date and time options for convening an IEP meeting for the Student. The Parent responded, expressing frustration that they had requested a meeting to discuss compensatory education on September 23, 2024, and that the earliest date proposed for an IEP meeting was October 23, 2024. The Parent stated that, “it is essential that we meet within 30 days of this request, per IDEA regulations.”
79. Also on October 4, 2024, In response to the Parent’s concerns, the Case Manager sent an email to the Parent suggesting that they schedule a “touch point meeting” with the Student’s classroom teachers “to check in on implementation of behavior supports” and then schedule an IEP meeting to discuss compensatory education “later in the month, when all team members will be available.”
80. On October 4, 2024, the Parent sent an email to the Director in response to the PWN detailing the District’s initial offer of compensatory education that had been provided to them on July 16, 2024. The Parent stated, “I didn’t read the details of this document so I refute this as a compensatory education offer.” When interviewed, the Parent stated that they had “missed the email in July” with the PWN addressing compensatory education.
81. On October 5, 2024, the Assistant Principal offered to meet with the Parent and the Case Manager on October 8, 2024 “to review the incidents that occurred over the last week.” The Assistant Principal reminded the Parent that the FBA was still in the process of being completed, meaning that “we do not have a formalized BSP at this time.” They suggested reviewing the Student’s Safety Plan, “as well as several new supports [the Case Manager] and I have crafted for [the Student] and [their] teachers.”

82. The Parent responded that they were available to meet on October 8, 2024, and clarified that the Student does have a current BSP that needs to be implemented, and that the FBA was being done to update the BSP.
83. On October 8, 2024, the Parent, Case Manager, and Assistant Principal held a “Parent Check-in Meeting” regarding the Student. According to the Agenda from that meeting, the group discussed four incidents the previous week when the Parent alleges that the Student’s teachers did not follow their BSP. Information was shared with the Parent regarding the training of District staff on implementation of the Student’s BSP that had occurred on September 3, 2024. The Case Manager also shared several reminders they had provided to staff regarding implementation of the Student’s accommodations and BSP, as well as “tracking of positive feedback.” The Parent was also informed of “Newly Implemented Supports” including:
- a. Start of each day in Access Center – daily check in, goal setting, computer checks, etc.;
  - b. Break Pass (attached); and
  - c. No Contact Orders with several students.
84. On October 9, 2024, there was an incident when the Student became escalated and kicked a wall. The Case Manager texted the Parent immediately and, according to the Case Manager, the Parent was with the Student within thirty minutes of the incident. When asked why they did not get a wheelchair for the Student, as dictated by the Student’s EAP, the Case Manager explained that the Student was more escalated than usual and went straight to the office. They did not believe that the Student had kicked the wall hard enough to break a bone, so it did not occur to them to try to get a wheelchair.
85. On October 9, 2024, the Case Manager sent an email to the Student’s teachers informing them that the Student “is in a very fragile place” due to a recent break up with a partner and an injury suffered by the Parent. The Case Manager requested that the teachers “be gentle and compassionate” with the Student and suggested that the Student “will be in extra need of positive words and actions from [their] teachers over the coming days.” In addition, the email included a reminder that, “[The Student] can access breaks for self regulation as needed without confirmation from the teacher. Please allow [the Student] to leave and re-enter the classroom without comment, and focus on documenting the length of [their] break and number of breaks taken.”
86. On October 21, 2024 the Case Manager updated the 2024 Safety Plan, to include a list of “Safe Spaces and Personnel” for the Student to access and retitled it “Behavior and Safety Plan” (2024 Behavior and Safety Plan).
87. After multiple attempts to find a mutually agreeable date and time, an IEP meeting to review the Student’s IEP and discuss compensatory education was scheduled for October 28, 2024.
88. An IEP meeting for the Student was convened on October 28, 2024 for the purpose of discussing a modified diploma, compensatory education, and updates regarding the FBA. (October 28, 2024 IEP Meeting). According to the Meeting Minutes, the Parent expressed several concerns, including that substitute teachers receive the Student’s BSP and that the

Student have the supports they need to participate in Choir, including attendance at performances outside of the regular school day. It was agreed that the Student would be moved to a modified math class and that the IEP would be amended to indicate that the Student would be working towards a modified diploma. The Parent shared that the Student wanted to “catch up” in their English and Biology classes. The Biology Teacher reviewed labs that could still be completed and offered the Student two additional weeks to turn in assignments after their due date. The team discussed additional strategies that may help the Student be more successful in class. The District also provided an update on the completion of the FBA and updated BSP.

89. The Meeting Minutes also detail the discussion of compensatory education services that took place at the October 28, 2024 IEP Meeting. The Parent shared that they were not interested in tutoring at that time and that the Student needs support getting into a new routine of attending their classes. The Parent suggested that an EA could help the Student get to class and gather information regarding the struggles that prevented the Student from attending. The Parent indicated that they were not requesting a permanent EA, “just enough time to change the behavior.” The team also discussed alternative options for compensatory education, such as online courses through the District. The outcome of this discussion was a “Proposal for EA support to help transition [the Student] from class to class, and for frequent check in support throughout the day.” The Director indicated that they would “be agreeing to this most likely,” and would try to provide the Parent with a proposal for compensatory education “in the next week or so.”
90. According to the Meeting Minutes, it was agreed at the October 28, 2024 IEP Meeting that, among other things, 1) The Case Manager will complete the necessary paperwork for the Student to transition to a modified diploma and the Student’s teachers will be notified that the Student “is going to be modified,” 2) The Student’s math class will be changed to “small business math,” 3) The Student’s IEP will be amended to add the modifications and revise the Student’s math goal, and 4) A meeting to review the results of the FBA and develop a new BSP would take place on November 7, 2024 at 2:00 pm.
91. When asked why the District was considering additional compensatory education for the Student when services had already been provided over the summer, the Director explained that the Parent was insistent that the summer services had not been sufficient. The District was willing to consider additional services because they were trying to create a good relationship with the Parent as well as meet the Student’s needs.
92. On October 31, 2024, the Parent met with the Case Manager and completed paperwork for the Student to transition to a modified diploma (Modified Diploma Agreement). The Parent signed the Modified Diploma Agreement on that date, which included a form for each of the Student’s teachers describing the modifications that the Student required.
93. A Notice of Team Meeting, dated November 4, 2024, indicates that an IEP meeting to review the FBA and draft a BSP was scheduled for November 7, 2024 at 2:00 p.m. The Case Manager emailed the Notice of Team Meeting to the Parent and other IEP team members on November 5, 2024.

94. On November 5, 2024, the Parent sent an email to the Director inquiring about the status of the District's offer of compensatory education. The Parent shared that, "multiple times each week, no one knows where [the Student] is for extended periods after [they use their] pass or escape plan." Additionally, the Parent shared that, on October 31, 2024, the Student was "attacked and assaulted" when unsupervised in a classroom with two other students. The Parent expressed that these incidents, along with the Student's "recent struggles with self-harm," created an urgent need for additional supervision of the Student.
95. When asked about the amount of time the Student was "unaccounted for" on campus, the Assistant Principal explained that the classroom teachers may not have known where the Student was, but that did not mean the Student was not supervised. The Case Manager similarly reported that they knew where the Student was "90% of the time," and that it was an unusual occurrence if they were unable to locate the Student.
96. On November 6, 2024, the Case Manager provided the Parent with a draft of a new BSP for the Student, which includes a summary of the FBA data. The Case Manager emphasized that this was a draft document and clarified that it would be revised and developed further at the IEP meeting scheduled for the following day.
97. An IEP meeting was convened for the Student on November 7, 2024 at 2:00 p.m. for the purpose of reviewing and finalizing the FBA and BSP, finalizing the Student's transition to a modified diploma, and discussing compensatory education. According to the Meeting Minutes, the required general education teacher and District representative were not present at the scheduled time. The general education teacher arrived at 2:30, "but as the district rep was not there the team felt they could not continue with the meeting" and the Parent left at 2:45 p.m. The Director joined the meeting at 2:54 p.m. and the Meeting Minutes note confusion with the start time of the meeting. The team agreed to reschedule the meeting to November 14, 2024.
98. On November 7, 2024, the Parent emailed the Case Manager and other District staff to inform them that the Student was planning to join the High School's swim team and would require accommodations and support to participate. The Parent shared that the first practice was scheduled for November 18, 2024 and that the IEP team needed to "come up with a plan to train the coaches and provide any needed support for [the Student] to participate."
99. The Case Manager responded to the Parent on November 8, 2024 and shared that they had scheduled a meeting with the High School's athletic director and swim coaches on November 12, 2024 to discuss how to support the Student's participation on the swim team.
100. The Student's rescheduled IEP Meeting to review the FBA and develop a BSP did not take place on November 14, 2024 as planned because the Case Manager was out of work due to illness.
101. On November 14, 2024, the Director emailed the Parent with a "rough draft" of the District's offer of additional compensatory education, noting that the District was, "open to discussing and amending it," and asking when the Parent would be available to meet to discuss the offer. In summary, the attached document offered the Student: 1) Four weeks of dedicated support

from a Special Education EA for the Student at the High School. Specifically, this would include two weeks of dedicated full-time support and supervision, followed by two weeks of slowly fading adult support; 2) Training of the EA on the Student's BSP by the Behavior Specialist; and 3) Daily support of the EA by the Case Manager, to include supervision, feedback, and ongoing guidance on how to effectively support the Student. The document goes on to detail the specific responsibilities of the EA when supporting the Student.

102. On November 15, 2024, the Parent went to the community pool where the swim team practices and spoke with the Head Swim Coach. The Head Swim Coach provided the Parent with a document describing the Student's accommodations that they had received from the Athletic Director. In an email that day to the Case Manager and High School administrator, the Parent expressed concern that the document provided by the Athletic Director was incomplete and did not include a copy of the Student's BSP and Safety Plan. The Parent also relayed that the Head Swim Coach and the manager of the pool expressed to the Parent that they did not "prepare to implement the plan" as it references additional documents they did not have. The Parent requested, among other things, that the "swim team staff and facility personnel" receive training on the Student's BSP, Safety Plan and medical protocols.
103. When interviewed, the Head Swim Coach recalled talking with the Parent at the pool but denied telling them that they felt unprepared to implement the Student's accommodations.
104. When interviewed, the Case Manager acknowledged that the document describing the Student's accommodations that was initially provided to the Head Swim Coach was incomplete. The Case Manager had been out ill during the week prior to the start of swim practices and another staff member had provided the document to coach in error. The Case Manager explained this to the Parent and provided the Parent with a written timeline of steps that were taken to ensure that the Student received the accommodations they needed to participate on the swim team. In summary, the following actions were taken:
  - a. November 12, 2024: The Case Manager met with the Athletic Director, Head Swim Coach, and one of the High School assistant principals. Information was shared about the setting and requirements of the swim team and the Case Manager asked specific questions to aide in determining what supports the Student would require;
  - b. November 20, 2024: The Case Manager met with the Athletic Director and Head Swim Coach and provided a hard copy of the Student's current EAP. The Case Manager read the entire document and discussed possible scenarios where the plan may need to be implemented. The Case Manager scheduled a time to visit the pool to see the facility.
  - c. November 21, 2024: The Case Manager visited the pool facility and received a tour of the facility by the Aquatic Director. The Case Manager then met with the Head Swim Coach and Assistant Swim Coach to discuss what spaces were accessible to the Student and how the Student's accommodations could be implemented in that setting.

- d. November 25, 2024: The Case Manager has a phone conference with both swim coaches. They ensure that the coaches are familiar with the Student's EAP and both coaches confirm they are confident following the plan if needed. The Case Manager then provided direction to the swim coaches about how the Student may take a break during swim practice. They identified a number of spaces where the Student could take a break, including a bench outside the pool, the locker room, the front office, or outside. The Case Manager informed the swim coaches that, if the Student does take a break, an adult must check in with the Student every ten minutes.
  - e. December 18, 2024: A meeting with the Parent, the Parent's advocate, the Case Manager, the Director and both swim coaches was held to discuss how things were going with the Student's participation on the swim team. The coaches and the Parent discussed an After Hours EAP that was created for the Student, as well as other ways to support the Student.
105. When interviewed, both the Head Swim Coach and Assistant Swim Coach confirmed that the Case Manager had consulted with them regarding the implementation of accommodations for the Student. During swim practices, the Student will typically take breaks in the locker room. When this occurs, the Assistant Swim Coach periodically checks on the Student. While the coaches are not able to supervise the Student during the entirety of their breaks, there have not been any occasions when the Student has left the pool facility or otherwise appeared to be unsafe when taking breaks. The coaches shared that the Student regularly attends swim practice and meets. While the coaches expressed some interest in further consultation with the Case Manager to learn how better to support the Student, they believe the Student is currently able to access the swim team with the accommodations that are in place.
106. On November 19, 2024, the Aquatics Director for the pool, who is not a District employee, emailed the Parent with questions about what accommodations the Student required to participate on the swim team. In the email, they referenced the Student's BSP and IEP accommodations. At the time, the Parent had not signed a Release of Information for the District to provide the Student's educational records to the Aquatic Director.
107. When asked about the relationship between the pool and the swim team, the Head Swim Coach shared that the District rents the pool for use by the swim team. Pool staff, who are not District employees, provide support during team practices by checking students into the pool facility and by providing lifeguarding services. The Head Coach expressed that it would be necessary for staff at the pool, particularly the lifeguards, to understand the Student's need for support if the Student became escalated in the pool.
108. On November 22 2024, the Student's IEP team met to review the results of the FBA and develop a new BSP (November 22, 2024 IEP Meeting). The Parent was present along with their advocate and the Student's older sibling. According to the Meeting Minutes, the team agreed at the start of the meeting that it was unlikely to complete the meeting that day and proactively scheduled a second meeting for December 2, 2024. When discussing the

Student's strengths, the English Teacher notes that they had not seen the Student "for awhile," but that the Student always advocated for themselves and puts forth effort. The Biology Teacher reported that the Student was earning a passing grade, showing effort, and turning in quality work. The Parent shared that the Student was committed to passing their classes and was "more excited this year compared to last." The Student's sibling shared that they "did not expect [the Student] to be in school," the Student has exhibited "lots of physical violence" in the past, and "the growth [they have] seen has been a dream."

109. The IEP team then discussed a thirteen-page list of written concerns provided by the Parent, noting that the "dominant concerns" involved supervision of the Student and request for a one-on-one EA. The Director shared that "research does not support the use of a one-on-one EA," and the Parent reiterated concern that the Student was unsupervised during the day when taking breaks. After further discussion, the IEP team did not come to agreement regarding the one-on-one EA. The team also discussed a possible change of placement for the Student, but no decisions were made.
110. The Parent was provided with copies of a draft FBA, BSP, Safety Plan, Break and Escape Plan, and a Check-in/check-out Plan for the Student and the IEP team began to review those documents, the Parent provided input, and District staff responded to the Parent's questions about the document. The meeting continued for slightly more than an hour and then reached the end of the scheduled meeting time. The Director needed to leave, but the Case Manager offered to continue the meeting in their absence. The Parent declined and the meeting concluded.
111. During an interview, the Director expressed frustration that the IEP team had not been able to complete the development of a new BSP for the Student at the November 22, 2024. They shared that the Parent would often come to IEP meetings with multiple pages of concerns and want them all addressed. The IEP team would spend "huge amounts of time" discussing parent concerns, making it difficult to complete other agenda items, like developing the BSP. The District made the decision to "err on the side of parent participation" even if that meant holding many meetings to complete the Student's IEP.
112. On November 26, 2024, the Case Manager sent an email to the Director and other District and High School administrators requesting that another staff member be assigned as case manager for the Student. The Case Manager cited "the intensity of parent communication," and negative impacts on their mental health as reasons for the request. The Case Manager suggested that an individual outside of the High School be assigned, "as the parent's excess communication with building staff is causing confusion . . . making concerns unclear and making it difficult for us to respond."
113. Also on November 26, 2024, the School Nurse met with the Parent to update the Student's EAP. New health information was added regarding the Student being at higher risk for fractures and small adjustments were made to wording for clarity. In addition, the School Nurse created an "After Hours EAP" for use during field trips and athletic practices and meets. The School Nurse provided a copy of these updated plans to the numerous staff, including the Student's teachers, High School administrators, and athletics staff.



114. When asked if any training was provided to the swim coaches, or other athletic staff, regarding implementation of the After Hours EAP, the School Nurse shared that training is provided at their discretion. Based on typical practice, the School Nurse believed that providing the written plan to staff was sufficient and that further training on the plan was not warranted.
115. On or around December 2 2024, the Choir Teacher arranged an event for students in the choir class to attend a movie together outside of school hours. When the Parent requested more information about how the Student would be supported at the event, the Choir Teacher informed them via email that it was an “optional outside of school activity” and that “behavior and academic supports are not available.” The Parent responded with concern that the Student may need behavioral support at the event, particularly if there were any incidents of bullying. After consulting with their administrator, the Choir Teacher offered to sit by the Student during the movie and provide support. The Student attended the event without any issue.
116. On December 2, 2024, the Student’s IEP team reconvened to continue review of the FBA and BSP. The Director began by addressing an email from the Parent indicating that they planned to record the meeting and declined the Parent’s request to record. The Parent refused to hold the meeting without it being recorded and the meeting ended.
117. The District sent a PWN to the Parent, dated December 3, 2024, notifying them that the District “stands ready to hold an IEP meeting” to discuss the FBA/BSP and other requests from the Parent. The District also denied the Parent’s request for a one-to-one EA “due to evidence showing that the student’s support needs can be met in alternate ways that are less intrusive and disruptive for the student,” and “the body of research showing that one on one aides can be detrimental to student success, especially in high school.” The District offered the Student an alternate bathroom to use and reiterated a previous offer of “alternate supervised locations” where the Student could go when not in class. Finally, the PWN noted that the Student “has made significant progress with attending classes as expected and at staying in assigned locations.”
118. On December 6, 2024, the Student participated in a swim meet. During an event, the Student’s swim goggles came off. The Student became upset and approached the Parent, who was attending the swim meet. The Student expressed that they wanted to go home and left with their mother before the conclusion of the swim meet. The Assistant Swim Coach recalled that when the Student became upset, they attempted to support the Student but that the Parent approached within one minute and took over. They expressed that, if they had additional time with the Student, they would have taken further steps to help the Student calm down. Following the meet, one of the swim coaches texted the Parent expressing a desire to talk with them about ways to support the Student during swim meets.
119. In the Complaint, the Parent described several instances when they believe the District did not implement the Student’s accommodations, including:
  - a. January 23, 2024: the Student became distressed when there was not a space available for a break as their typical space was unavailable due to a water leak in

the roof. Staff did not make a plan with the Student to use an alternate space or adjust the BSP;

- b. February 19, 2024: the Student's teacher denied their attempt to take a break when the Student was initially told to "go sit down," until the Student informed the teacher that they needed a break because other students were watching disturbing content on a laptop;
- c. March 4, 2024: a substitute teacher was unfamiliar with the Student's BSP and did not provide the Student with the required support;
- d. March 22, 2024: another student was "baiting" the Student, leading to an escalation, and the Assistant Principal requested that the Parent pick the Student up rather than remove the other Student;
- e. June 8, 2024: the Choir Teacher told the Student they needed a note from the Case Manager to take a break;
- f. June 10, 2024: another one of the Student's teachers told the Student that they needed a note to use their break pass;
- g. October 3, 2024: the Student's Spanish teacher did not allow the Student to take a break;
- h. October 4, 2024: the Student's teachers failed to inform the school office when the Student left the class using their break pass;
- i. October 22, 2024: when the Student used their break pass to de-escalate, no supervision or support was provided;
- j. November 20, 2024: the Student left their second-period class with no supervision or support and was unaccounted for during that time.

120. When asked about the incident on March 22, 2024, the Assistant Principal recalled that the High School was "severely understaffed" that day and the Student's Case Manager was out. They texted the Parent during the Student's escalation to inform them of what was happening. They explained that they did not do a "room clear" as suggested in the Student's Safety Plan because the incident occurred in the school auditorium and it was not practical in that setting. The Assistant Principal recalled that they were able to get the Student calmed down and thought they had remained at school for the rest of the day. According to attendance records, however, the Parent did pick the Student up early that day.
121. When asked about the June 8, 2024 incident in the Complaint, the Choir Teacher explained that the Case Manager had provided new guidelines regarding how to implement the Student's breaks. According to these guidelines, the Student's was expected to bring a note back from the Case Manager after taking a break. This was intended to create some accountability regarding where the Student was going during their breaks. The Choir Teacher

recalled informing the Student that they needed to bring back a note at the conclusion of the break, not that they needed a note to take a break. The Choir Teacher knew that the Student was permitted to take breaks and never prevented them from taking one.

122. During interviews, when asked how the Student's teachers implemented the accommodations in the Student's IEP, including the BSP, they shared the following:

- a. The Biology Teacher had the Student in class during both the 2023-24 and 2024-25 school years. They reviewed the Student's IEP accommodations prior to the start of each school year and consulted with the Case Manager when they had any questions. They were provided with a copy of the Student's BSP by the Case Manager and believe that they implemented it as written. They provided guided notes where the Student filled in the blanks during class, so they were required to do less writing and could focus on listening. They allowed the Student to use their notes during tests and gave them extra time to complete tests. Assignments were reduced and the Biology Teacher worked with the Parent to determine what assignments the Student needed to complete to demonstrate proficiency. They never told the Student that they could not take a break but noted that the Student sometimes did not return to class after a break.
- b. The Choir Teacher also had the Student in class during both the 2023-24 and 2024-25 school years. They identified the 2024 Safety Plan as one of the documents they implemented for the Student. They also believe they fully implemented the other accommodations in the Student's IEP. When asked if the Student received accommodations to participate in choir concerts outside of the school day, the Choir Teacher responded that the Student had access to a space for breaks and an adult available to provide support if needed. They could not recall any choir activities that the Student was unable to access due to a lack of accommodations.
- c. The English Teacher had the Student in class during the 2024-25 school year. When asked about implementation of the Student's BSP, they explained that they were sometimes confused regarding which of the behavior plans was in effect at a given time. When there was confusion, they received guidance from the Case Manager regarding what to implement. They were familiar with the accommodations in the Student's IEP and fully implemented them in their class.
- d. The Case Manager shared that there were occasional misunderstandings regarding how the Student's BSP should be implemented, but that the Student's teachers generally followed the BSP.

123. In the Complaint, the Parent also described several instances when they believe the Student was bullied by peers. When interviewed, District staff could recall incidents when they observed the Student being bullied by peers, as well as the Student bullying peers, but none saw it as a pervasive issue or as something that required additional special education services or supports. The Case Manager and the Student's teachers agreed that the High School administrators handled allegations of bullying appropriately by conducting investigations

and, when needed, issuing No Contact Orders between the Student and peer with whom they were having conflict. A total of four No Contact Orders involving the Student were issued during the 2024-25 school year.

124. During interviews, when asked if the Student made progress during the time period of the Complaint, District staff shared the following:

- a. Biology Teacher: When compared to the previous school year, the Biology Teacher shared that the Student's behavior has improved this year when they are in class and that the Student spends more time working on the content the class is covering. They expressed concern, however, that the Student still is not accessing the curriculum in their class due to frequent absences.
- b. Choir Teacher: When asked if the Student made progress this year, when compared to the previous school year, the Choir Teacher shared that the Student was physically and verbally aggressive during the 2023-24 school year, which has improved a lot during the current school year. They believe the Student has been taught a lot of new skills to manage their behavior and has noticed a "huge improvement" in how the Student behaves in class. They also shared that the Student's "attitude and work ethic have really improved" when compared to the previous school year. They are concerned, however, with the Student's continued poor attendance.
- c. English Teacher: In the 2024-25 school year, prior to winter break, the English Teacher observed that the Student was attending class more frequently and had gotten caught up on some of their assignments. The Student's attendance, however, continues to be a significant issue in their class.
- d. Case Manager: The Case Manager reported that the Student has made significant progress over the past year. Specifically, they are "not spending 80% of [their] day with me" and are spending more time in class than previously. The Student is also turning in more assignments and is passing some of their classes. While the Student still has difficulty with engagement in the classroom, it has improved, and the Student is having more positive interactions with other students and staff.

125. According to the District's Attendance Reports, during the 2023-24 school year, the Student was absent for 42.3% of class periods on days that they were at school. This does not include excused absences, such as those due to illness, medical appointments, or Parent request.

126. From the start of the 2024-24 school year to the date that the Parent filed the amended Complaint, the Student was absent 21.0% of class periods on days that they were at school. This does not include excused absences, such as those due to illness, medical appointments, out-of-school suspension, bereavement, or Parent request.

127. On December 3, 2024, the Parent filed this Complaint, which was amended by the Parent on December 8, 2024.

## IV. DISCUSSION

### **When IEPs Must Be in Effect**

The Parent alleged that the District violated the IDEA by not providing special education and related services and not implementing accommodations in accordance with the Student's IEP, and failing to provide the Parent with progress reports that accurately explain the Student's progress toward their annual IEP goals.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.<sup>4</sup> The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.<sup>5</sup> "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."<sup>6</sup>

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability. "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction: 1) to address the child's unique needs resulting from the disability; and 2) ensuring the child's access to the general education curriculum.<sup>7</sup>

A district violates the IDEA when it materially fails to implement an IEP.<sup>8</sup> "A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation."<sup>9</sup> As further explained by the court in *Van Duyn*:

"The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For instance, if the child is not provided the reading instruction called for and there is a shortfall in the child's reading achievement, that would certainly tend to that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material."<sup>10</sup> The components of the Student's IEP that the Parent alleged were not implemented include: 1) Modified curriculum; 2) BSP; 3) Accommodations regarding the Student's use of breaks; 4) Behavior Consultation; 5) Occupational Therapy Consultation; 6) EAP; and 7) Progress reports.

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<sup>4</sup> OAR 581-015-2220(1)(b); 34 CFR §300.323(c)

<sup>5</sup> OAR 581-015-2220; 34 CFR §300.323

<sup>6</sup> Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)

<sup>7</sup> OAR 581-015-2000(37); 34 CFR §300.39(b)(3)

<sup>8</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811 (9<sup>th</sup> Cir. 2007) ("Van Duyn")

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### Modified Curriculum

During the time period of this Complaint, the District was required to modify the Student's curriculum from December 9, 2023 until June 18, 2024 when modifications were removed from the Student's IEP. The Case Manager acknowledged that they did not provide guidance to the Student's general education teachers regarding how to modify the Student's instruction and that modifying instruction was not their focus when working with the Student during this time period. While the Choir Teacher and Biology Teacher recalled making some modifications for the Student, there was a lack of consistency and common understanding as to what modifications the Student required.

The question then turns to whether the absence of consistent modifications rose to the level of a material failure to implement the IEP. As explained by Student's teachers, at least some modification of the curriculum occurred during the 2023-24 school year. The teachers had very little opportunity to implement modifications, however, due to the Student's lack of attendance. One might hypothesize that the Student failed to attend class because the curriculum wasn't appropriately modified and was, thus, too difficult for the Student. The attendance records do not support this theory. The Student's rate of absence during the 2023-24 school year, when modifications were required by their IEP, was nearly double that of the time period when the Student's IEP did not include modifications. Further, based on teacher report, the Student displayed improved participation in class and increased work completion after modifications were removed from their IEP. Given each of these factors, the District's failure to consistently implement modified curriculum between December 9, 2023 and June 18, 2024 was not a material failure to implement the IEP.

### Accommodations/Behavior Support Plan

The Parent described approximately ten incidents when they allege the District did not implement the Student's accommodations. All of these incidents relate to implementation of the Student's BSP, primarily in regard to the Student taking breaks from class. Of these ten incidents, the Parent alleged four occasions when the Student was not given a break as required by their IEP. Two of those incidents involved the teachers' interpretation of the BSP and whether the Student required a note from their Case Manager upon returning from their break, and not a refusal to allow the Student a break. The Parent alleged just two incidents, on February 19, 2024 and October 3, 2024, when a teacher outright refused to allow the Student to take a break. Even if these two incidents occurred as reported by the Parent, in light of the number of breaks that the Student was reported to take, two isolated incidents would only amount to a minor discrepancy, not a material failure, in implementing the Student's IEP.

The remaining allegations regarding the Student's BSP (including supplementary plans) relate to how the BSP was implemented. For each of these, there appears to be a disconnect between the Parent's interpretation of the Student's BSP and what the BSP actually requires. For instance, on January 23, 2024, the Parent alleges that the Student's preferred break location was unavailable due to a water leak and the District did not make a plan with the Student to use an alternate space. The September 2023 Safety Plan, however, identified three locations

where the Student could take a break and did not limit the Student to the single location that was impacted by a water leak. On March 22, 2024, the Parent alleged that the Assistant Principal failed to implement the BSP by not completing a room clear when the Student was engaged in an altercation with a peer, and by requesting that the Parent pick the Student up from school, rather than removing the peer. While the use of a room clear is one of many strategies suggested in the BSP, it is not required. Similarly, there is nothing in the BSP that requires staff to remove another Student from school if they are involved in an altercation with the Student. On October 4, 2024, the Parent alleged that staff failed to notify the front office when the Student left class, but the February 24, 2024 Safety Plan, in effect at that time, did not require that the front office be notified when the Student took a break.

During the time period of the Complaint, the District and the Case Manager made regular and diligent efforts to ensure that all staff working with the Student had copies of their BSP and related plans. The Student's teachers and the Case Manager also provided great detail about how the Student's BSP and related plans were implemented. While the behavioral strategies in the Student's BSP may not have been successful each time they were implemented, this could reasonably be explained by any number of factors, including the Student's transition to a new setting, the Student's transition from an abbreviated day to a full day, peer conflict, or that the BSP did not appropriately address the Student's behavior. It does not necessarily indicate that the BSP was not implemented. To the contrary, the evidence provided by the District supports that the BSP was generally implemented as written.

#### Consultation Services

Regarding implementation of consultation services, service logs provided by the District establish that Occupational Therapy Consultation was provided as required by the Student's IEP and the Parent did not provide any evidence to the contrary.

The District acknowledged, during the June 11, 2024 IEP, in the Director's November 14, 2024 offer of compensatory education, and during interviews that were a part of this investigation, that it failed to provide the Behavior Consultation services during the 2023-24 school year as required by the Student's May 24, 2023 IEP. The May 24, 2023 IEP was in effect, during the time period of this Complaint, from December 9, 2023 until a new IEP was completed on September 13, 2024. The Parent did not allege that there was any failure to implement Behavior Consultation during the 2024-25 school year. During the June 11, 2024 IEP, and when interviewed for this investigation, the Case Manager stated that the failure to provide the Behavior Consultation services negatively impacted the Students' ability to receive a FAPE during the 2023-24 school year. As reflected in the March 2024 Progress Reports, the Student was not making progress on their goals and objectives and the behavioral strategies in place at the time were not successful in increasing the Student's engagement in class. Given all of the above, the failure to implement the Behavior Consultation services was clearly a material failure to implement the Student's IEP. It should be noted that, in an attempt to rectify the failure to implement Behavior Consultation, compensatory educational services were provided to the Student during Summer 2024, and additional compensatory services have been offered to the Student during the 2024-25 school year.

### Emergency Action Plan

The Parent alleged that the District failed to implement the Student's EAP on October 9, 2024 after the Student kicked a wall by failing to notify the Parent and failing to provide medical attention, including "imaging to rule out fractures and spinal precautions for potential injuries."

In cases when the Student has experienced something capable of causing "non-life-threatening serious injury," the Student's EAP requires that the Student should be, among other things, escorted to the health room, with a wheelchair in the case of a lower limb injury, and that the Parent be notified immediately. The Case Manager, who was present when the Student kicked the wall, reasonably explained that they did not believe the Student's kick to the wall could cause a "serious injury." Nevertheless, the Case Manager immediately texted the Parent, accompanied the Student to the office, and Student was with the Parent within thirty minutes. The EAP does not require that the District secure imaging of any potential injury, or take "spinal precautions" in the case of a non-life-threatening injury.

The Parent also alleged that the District failed to implement the EAP on October 31, 2024 by failing to contact the health team or check the Student for spinal injuries when the Student was assaulted by a peer and hit in the back. When the Student has experienced something capable of causing "potentially life-threatening injury" such as a "significant blow to head, neck or back" the Student's EAP requires, among other things, that staff call 911, notify the Parent and School Nurse immediately, and attempt to keep the Student in the position they were in when the trauma occurred. As explained by the Case Manager, no staff were present during the incident and did not observe the Student being hit in the back. There was no indication that the assault was capable of causing a life-threatening injury. Further, before staff could notify the Parent, the Parent arrived on campus for an unrelated meeting and the Student informed the Parent of the incident. The evidence presented does not establish that incident on October 31, 2024 was significant enough to warrant implementation of the EAP.

### Progress Reports

The Case Manager acknowledged that the initial progress report provided to the Parent in March 2024 did not include accurate information regarding the Student's progress towards their goals. The revised progress reports, however, also do not provide sufficient explanation of how the Student was progressing towards their goals. The report only included numbered codes to indicate whether the Student was likely to meet their goals, along with comments regarding a lack of appropriate behavior supports. The progress reports lack any data or other information related to the substance or criteria of the goals that would allow the Parent to understand the progress that the Student made throughout the year. Further, the May 24, 2023 IEP indicates that progress would be reported to the Parent in June 2024. There was no evidence provided that those progress reports were provided to the Parent. The anticipated dates for reporting progress in the September 13, 2024 IEP have not yet passed.



Without accurate evidence of a student's progress, a parent is unable to understand their child's present levels, determine whether proposed goals are appropriate, and judge whether the special education services and supports in their child's IEP are appropriate. The failure to provide progress reports, as required by the Student's IEP, prevented the Parent from effectively participating in the Student's IEP as the Parent did not have the information they needed to understand what adjustments, if any, needed to be made to the Student's IEP in light of the Student's progress (or lack of progress). A failure to implement that deprives a parent of meaningful participation in the IEP process is a material failure to implement the IEP.

The Department substantiates this allegation, in part, as it relates to a failure to provide Behavior Consultation services and a failure to provide adequate progress reports during the 2023-24 school year only.

### **Content of IEP**

The Parent alleged that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs, including goals that are specific and measurable and an appropriate level of adult support.

When developing a student's IEP, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. It must also include measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. The IEP must also include information on how the student's progress toward meeting the annual goals will be measured and provided to the parents. Finally, each IEP must include a statement of the specific special education and related services and supplementary aides and services to be provided to the student, or on behalf of the student.<sup>11</sup>

The specific special education, related services, and supports to be provided must enable the student to: 1) advance appropriately toward attaining their annual goals, 2) be involved and make progress in the general education curriculum, and 3) be educated and participate with other students with and without disabilities.<sup>12</sup> The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>13</sup> In considering this standard, "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."<sup>14</sup>

Regarding goals that are specific and measurable, the only goal that the Parent alleged was not measurable is the Adaptability goal in the May 24, 2023 IEP. The May 24, 2023 IEP was in effect, during the time period of this Complaint, from December 9, 2023 until a new IEP was completed

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<sup>11</sup> OAR 581-015-2205(1); 34 CFR §300.320

<sup>12</sup> OAR 581-2200(1)(d); 34 CFR §300.320(a)(4)

<sup>13</sup> *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

<sup>14</sup> *Id.* at 1000

on September 13, 2024. This goal requires that the Student successfully complete tasks outside of the school setting. As reflected in the March 2024 progress report, “this is not an appropriate goal for this setting, school cannot track progress on out of school activities.” The remainder of the goals in the May 24, 2023 and September 13, 2024 IEPs are sufficiently specific and measurable.

The Parent also alleged that the Student requires a full-time one-on-one EA in order to access their education and make progress on their IEP goals. The first time that the Parent requested an EA for the Student was at the October 28, 2024 IEP. At that meeting, the request was for a temporary EA and was presented as a form of compensatory education, not as a support that the Student required to receive FAPE. The Parent requested that the Student receive a full-time EA as a required component of their IEP on November 16, 2024. The District considered the Parent’s request at the November 22, 2024 IEP and provided a well-reasoned explanation for why an EA would not be appropriate for the Student and how the Student’s needs could be met in other ways. Further, none of the District staff interviewed as part of this investigation believe that the Student requires a full-time EA, or that it would be an appropriate support for them. Overall, the evidence does not support the Student requires the support of a full-time EA.

The Department substantiates this allegation, in part, from December 9, 2023 to September 13, 2024, as it relates to the failure to include measurable goals in the Student’s May 24, 2023 IEP.

### **Review and Revision of IEPs**

The Parent alleged that the District violated the IDEA by not reviewing and revising the Student’s IEP, as appropriate, to address additional educational needs related to peer bullying and safety concerns, and by unreasonably delaying IEP meetings to review and revise the Student’s IEP.

The IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to: (a) determine whether a student with a disability is achieving their IEP goals, and (b) to revise the IEP as appropriate.<sup>15</sup> The requirement for the IEP team to review and revise an IEP is not limited to once per year. The IEP team must review and revise a student’s IEP at any time to address:

1. A lack of expected progress toward the annual goals and in the general education curriculum;
2. The results of any reevaluation;
3. Information about the student provided to, or by, the student’s parents;
4. The student’s anticipated needs; or
5. Other matters.<sup>16</sup>

The District convened frequent and lengthy IEP meetings for the Student between June and December 2024 to review the Student’s special education supports, address parent concerns,

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<sup>15</sup> OAR 581-015-2225(1); 34 CFR §300.324(b)

<sup>16</sup> OAR 581-015-2225(1)(b)(A)-(E)

and revise the IEP. While there was some acknowledgement of instances of peer bullying, these were not pervasive and were addressed by the High School staff. There was no evidence that revisions to the Student's IEP were necessary because of bullying.

The District also did not unreasonably delay IEP meetings to review and revise the Student's IEP. The District made prompt and diligent efforts to schedule IEP meetings when requested by the Parent for mutually agreeable dates and times. While there were two meetings rescheduled because required team members were not present, each was reconvened within days of the originally scheduled meeting. One other meeting was canceled because the Case Manager was out ill, but that was also promptly rescheduled. It is true that the Student's annual IEP meeting was not completed within the required timeline. The District, however, attempted to complete the IEP over multiple meetings. In order to ensure full participation by the Parent, the IEP spent significant time addressing parent concerns, which meant that additional meetings had to be scheduled to complete the IEP. The District correctly prioritized parental participation over meeting a procedural deadline for completing the annual IEP.

Arguably, the District should have convened an IEP meeting to review and revise the Student's IEP when the March 2024 Progress Reports revealed that the Student was not making expected progress. The Case Manager indicated that they did not convene an IEP meeting at that time because the Student was due for their three-year-reevaluation, with a Consent to Evaluate signed on April 4, 2024. Given that the District was in the process of collecting updated data regarding the Student's eligibility and special education needs, the Case Manager believed it made sense to delay an IEP meeting until the evaluation could be reviewed by the IEP team. The March 2024 Progress Reports, however, were not the first indication that a review of the Student's IEP was warranted. From the start of the 2023-24 school year, the Student's IEP included an Adaptability goal that was never worked on because it involved the Student eating lunch off campus and was deemed "not an appropriate goal for this setting." Further, the Case Manager was aware throughout the school year that the Student's Behavior Consultation minutes were not being implemented, a failure that they described as negatively impacting the Student's ability to receive a FAPE. Either of these circumstances should have triggered an IEP meeting to review and/or revise the Student's IEP prior to the Case Manager's initial attempt to schedule an IEP meeting on April 16, 2024.

The Department substantiates this allegation from December 9, 2023 to April 16, 2024.

### **Evaluation and Reevaluation Procedures**

The Parent alleged that the District violated the IDEA by failing to conduct a comprehensive evaluation of the Student's disabilities and failing to timely complete an FBA of the Student and review the results at an IEP meeting.

School districts must conduct an evaluation or reevaluation of a student before determining that a student has a disability that meets eligibility requirements for special education,

determining that a student continues to be eligible for special education, changing the student's eligibility category, or terminating a student's eligibility for special education.<sup>17</sup>

Before conducting an evaluation or reevaluation of a student, school districts must conduct evaluation planning, provide notice to the student's parents that describes the evaluation procedures that the school district proposes to conduct as a result of the evaluation planning, and obtain informed written consent for the evaluation from the student's parents.<sup>18</sup>

Once consent is received, a reevaluation of a student must be completed within sixty (60) school days from written parent consent to the date of the IEP meeting to consider the results of the reevaluation.<sup>19</sup>

Regarding the completion of a comprehensive evaluation, the Parent's only objection to the May 2024 Evaluation Report was that the initial draft of the report did not include behavior rating scales from the Parent or the Case Manager. This was quickly corrected, however, and the Parent was satisfied with the corrected evaluation report.

The Parent signed consent for an FBA on September 4, 2024 and the results of the FBA were reviewed at an IEP meeting on November 22, 2024. While the IEP team may make updates to the FBA and/or develop an updated BSP at a subsequent IEP meeting, the District met its obligation to complete the FBA and review the results at an IEP meeting within sixty school days.

The Department does not substantiate this allegation.

### **Education Records**

The Parent alleged that the District violated the IDEA by failing to maintain the confidentiality of the Student's education records.

The Oregon Administrative Regulations incorporate by reference the requirements of FERPA and the IDEA for purposes of safeguarding the education records of students with disabilities.<sup>20</sup> The regulations implementing the IDEA require that school districts protect the confidentiality of student education records. Parent consent must generally be obtained before a school district discloses a student's personally identifiable information to individuals other than school officials who have a legitimate educational interest.<sup>21</sup> A contractor, consultant, volunteer, or other party to whom a school district outsources services or functions may be considered a "school official" under certain circumstances.<sup>22</sup>

The District acknowledges that it provided confidential information regarding the Student's accommodations and BSP to the Aquatic Director before asking the Parent to sign a Release of

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<sup>17</sup> OAR 581-015-2105(1)(a)-(d)

<sup>18</sup> OAR 581-015-2110(1) and (2)(a)-(b)

<sup>19</sup> OAR 581-015-2110(5)(b)

<sup>20</sup> OAR 581-015-2300

<sup>21</sup> 34 CFR §300.622; 34 CFR §99.31

<sup>22</sup> 34 CFR §99.31

Information (ROI) authorizing that disclosure. The District contracted with the community pool to provide facilities for the swim team to practice. Staff at the pool provided support to the swim team by checking students in and performing lifeguarding duties during practice. Arguably, the District was permitted to disclose this information to the Aquatics Director so that pool staff would know how to support the Student in the event of a behavioral escalation. Further, while a formal ROI may not have been signed prior to the disclosure, the Parent sent an email to the Case Manager on November 15, 2024 requesting that the District train both the swim team staff and “facility personnel” on the Student’s BSP, Safety Plan and medical protocols. This was reasonably interpreted as Parent consent to the release of this information to the Aquatics Director.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleged that the District violated the IDEA by interfering with the Parent’s ability to participate in decisions with respect to the identification, evaluation, IEP, and educational placement of the Student, and the provision of a FAPE to the Student. Specifically, the District did not timely provide draft IEP documents in advance of IEP meetings, failed to allow the Parent to record IEP meetings, and made determinations regarding compensatory education without input from the Parent.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>23</sup> School districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student’s academic, developmental, and functional needs.<sup>24</sup> “[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child’s needs and the services to be provided to meet those needs.”<sup>25</sup> School districts must also ensure that parents understand the proceedings of an IEP meeting, including providing an interpreter for parents whose native language is other than English.<sup>26</sup> A meeting, in which parents must be given the opportunity to participate, 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.”<sup>27</sup>

The IDEA is silent regarding the use of audio or video recording devices at IEP meetings. Accordingly, the Office of Special Education Programs for the U.S. Department of Education (OSEP) has advised that State educational agencies and school districts have the right to regulate the use of recording devices at IEP meetings, including prohibiting or otherwise limiting

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<sup>23</sup> OAR 581-015-2190(1); 34 CFR §300.501(b)

<sup>24</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

<sup>25</sup> Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)

<sup>26</sup> OAR 581-015-2190(3); 34 CFR §300.322(e)

<sup>27</sup> OAR 581-015-2190(4); 34 CFR §300.501(b)(3)

their use.<sup>28</sup> A school district may be required to allow a parent to record an IEP meeting, however, if necessary to ensure that the parent understands the IEP or the IEP process.<sup>29</sup>

There is no requirement that a District create draft documents in advance of an IEP meeting. Nevertheless, the District consistently provided draft documents to the Parent when requested, and when drafts were available, to accommodate the Parent's disability. While the Parent requested that drafts of documents be provided at least forty-eight hours prior to meetings, it is clear that drafts often did not exist forty-eight hours prior to meetings. When there were not drafts available to provide to the Parent according to their requested timeline, the District offered to schedule follow up meetings to ensure that the Parent understood the IEP and had the opportunity to ask questions.

There is also not a requirement that the District allow the Parent to record IEP meetings and the Director informed the Parent that it was not their practice to allow the recording of IEP meetings. In an attempt to ensure full participation of the Parent in the IEP process, and understanding that the Parent was requesting to record as a disability-related accommodation, the District did allow the Parent to record three IEP meetings. The District then offered alternate means to accommodate the Parent, such as offering detailed meeting minutes, until the Parent declared that they were not requesting to record as an accommodation related to their disability.

Regardless of whether the Parent received drafts of IEP documents, or was permitted to record every meeting, there is ample evidence that the Parent was an active participant in each of the Student's IEPs. The District sought input from the Parent in advance of meetings and incorporated that input into the Student's IEPs. The District also made numerous revisions to the Student's IEP during meetings based on the Parent's feedback and scheduled additional meetings to ensure that all of the Parents concerns were addressed. The District also involved the Parent extensively in decisions regarding the provision of compensatory education services to the Student. District administrators met with the Parent over the summer to develop a plan for compensatory education, and agreed to the Parent's request to discuss compensatory education services as part of the Student's October 28, 2024 IEP Meeting. There is no evidence that the Parent did not understand any evaluation or component of the Student's IEP, or that the Parent was prevented in any way from participating in decisions about the Student's education.

The Department does not substantiate this allegation.

### **Nonacademic Services**

The Parent alleged that the District violated the IDEA by failing to provide supplementary aids and services to provide nonacademic and extracurricular services and activities in a manner to provide the Student with an equal opportunity to participate.

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<sup>28</sup> *Letter to Anonymous*, 40 IDELR 70 (OSEP 2003)

<sup>29</sup> *Letter to Savit*, 67 IDELR 216 (OSEP 2016)

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 with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

The Parent alleged that the District failed to provide the Student with accommodations to participate in an event where choir students were invited to attend a movie outside of school hours. After the Choir Teacher consulted with their administrator, however, the Student was offered the accommodation of sitting next to the Choir Teacher during the movie. The Parent also alleged that the District should have provided the Student with transportation to the event because the Student has transportation as a related service in their IEP. Offering to have the Student sit next to the Choir Teacher was a reasonable accommodation as the Choir Teacher is a trusted adult and is familiar with implementing the Student's BSP. While the Student's IEP includes transportation to and from school as a related service, there is no evidence that the Student required transportation to access this event. The Student was, in fact, able to attend and fully participate in the choir event.

Regarding the Student's participation on the swim team, the District was notified that the Student would be joining the swim team less than two weeks before the first practice. The Case Manager went to great lengths to ensure that accommodations were in place for the Student and that the swim coaches understood how to support the Student during practices and meets. While the Student has experienced some behavioral escalations during swim meets and practices, the Student has been able to utilize their accommodations, such as taking a break in

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<sup>30</sup> OAR 581-015-2070; 34 CFR §300.107

<sup>31</sup> OAR 581-015-2240; 34 CFR §300.117

<sup>32</sup> OAR 581-015-2255 34 CFR § 300.114(a)(2)

the locker room. The Student regularly attends swim practice, participates in swim meets, and is otherwise a full and active participant on the swim team.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education**

Due to the alleged IDEA violations detailed above, the Parent alleged that the District failed to provide the Student with a FAPE.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.<sup>33</sup> The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.<sup>34</sup>

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>35</sup> Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.<sup>36</sup>

### **Failure to Implement Behavior Consultation Services**

The District failed to implement the Behavior Consultation services required by the Student's May 24, 2023 IEP. To determine whether this resulted in a denial of FAPE, one must consider whether it resulted in a loss of educational benefit or opportunity to the Student. As explained by the Case Manager, the behavioral strategies attempted with the Student during the 2023-24 school year were not effective. They sought the support of a District behavior consultant to review the Student's BSP, but did not receive a response. The Case Manager asserted that the failure to provide these services negatively impacted the Student's ability to receive a FAPE, and the Student's lack of progress on their IEP goals, as reflected in the March 2024 Progress Reports, bolsters that assessment.

### **Failure to Provide Adequate Progress Reports**

As discussed above, the failure to provide the Parent with adequate progress reports significantly infringed on the Parent's opportunity to participate in the development of the IEP. Accordingly, this failure resulted in a denial of FAPE to the Student.

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<sup>33</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

<sup>34</sup> OAR 581-015-2040; 34 CFR §300.17

<sup>35</sup> *Endrew F.*, 137 S.Ct. at 999

<sup>36</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)



### Failure to Review and Revise the IEP

The District committed a procedural violation by failing to review and revise the Student's IEP when warranted. If an IEP meeting had been convened earlier in the school year the IEP team, including the Parent, would have been made aware that the Student's BSP was not effective and that behavior consultation services were not being provided as required. The absence of behavior consultation services was first raised at an IEP meeting on June 11, 2024. After that meeting, an FBA was initiated, the Behavior Consultant started working with the Case Manager to revise the Student's BSP, and further training on how to implement the BSP was provided to staff who work with the Student. Since these supports were put into place, the Student has made progress both with their attendance and their level of engagement in the classroom. If an IEP meeting had been convened as soon as the Case Manager realized that the Student's services were not being implemented, these supports could have been put into place. By delaying the review of the Student's IEP, the Student was denied educational opportunity.

The Department substantiates this allegation.

### **V. CORRECTIVE ACTION**

*In the Matter of Eugene School District 4J  
Case No. 024-054-074*

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

<b>Action Required</b>	<b>Submissions</b>	<b>Due As Soon As Possible But Not Later Than</b>
1. The District will convene an IEP meeting for the Student to determine if the Student requires additional compensatory education services for the loss of educational benefit and opportunity caused by the failure to provide Behavior Consultation services and adequate progress reports, and the failure to review and revise the Student's IEP when warranted during the 2023-24 school year.	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent.  Evidence showing that compensatory services were provided.	May 1, 2025  September 30, 2025

<p>2. The District will develop and conduct training for all staff responsible for developing and implementing IEPs on:</p> <ul style="list-style-type: none"> <li>a. the District's responsibility to develop measurable goals and to provide parents with timely and informative progress reports, and</li> <li>b. When it is warranted to review and/or revise a student's IEP.</li> </ul>	<p>Training agenda/materials to ODE for review/approval.</p> <p>Sign-in sheet from training.</p>	<p>March 31, 2025</p> <p>April 30, 2025</p>
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Dated: this 31st Day of January 2025




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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: January 31, 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).)