

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Douglas County School District 4	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 25-054-002

I. BACKGROUND

On January 9, 2025, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Douglas County School District 4 (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On January 14, 2025, 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 January 28, 2025.

The District submitted a *Response* on January 28, 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, 1/28/25
2. Table of Contents, 1/28/25
3. Email Exchange between District Staff and Parents, 12/16/24 -12/20/24
4. Special Ed Student Contact Log, 1/17/23 – 1/7/25
5. Parent Contact Timeline, 1/14/24 – 11/26/24
6. Notice of Team Meeting on 11/13/24, 11/4/24
7. Email Exchange between District Staff and Parents, 11/12/24
8. Email Exchange between District Staff and Parents, 1/13/25
9. Notice of Team Meeting on 1/14/25, 1/7/25
10. Email Exchange between District Staff and Parents, 9/26/24-9/30/24

<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).

11. Email Exchange between District Staff, 1/6/25
12. Email Exchange between District Staff and Parents, 10/18/24-10/21/24
13. Statement of Eligibility for Special Education (SLD), 11/16/23
14. Eligibility Summary, 11/16/23
15. Statement of Eligibility for Special Education (SLD), 1/5/21
16. Eligibility Summary, 1/5/21
17. Prior Notice and Consent for Initial Provision of Special Education Services, 1/19/21
18. Student File Checklist, 12/9/24
19. IEP Progress Report, 6/11/25 (incorrectly dated)
20. Individualized Education Program (IEP), 11/13/24
21. Placement Determination, 11/13/24
22. IEP Meeting Notes, 11/13/24
23. Prior Written Notice (PWN), 11/13/24
24. Comprehensive High School Transition Survey
25. Student Notice of Transfer of Rights, 11/13/24
26. Parent Notice of Transfer of Rights, 11/13/24
27. Student File Checklist, 1/8/24
28. Evaluation Planning Meeting Notice for 9/12/23, 8/28/23
29. Evaluation Planning Meeting Notice for 9/12/23, 9/6/23
30. PWN of Reevaluation Decision, 9/12/23
31. PWN of SPED Action, 11/16/23
32. Parent Permission for Evaluation, 9/12/23
33. Evaluation Planning Meeting Notes, 9/12/23
34. Eligibility Meeting Notice for 11/16/23, 9/22/23
35. Eligibility Meeting Notice for 11/16/23, 11/9/23
36. School Psychologist Report, 10/9/23
37. Special Education Evaluation Report, 11/16/23
38. Eligibility Summary, 11/16/23
39. PWN of Eligibility, 11/16/23
40. IEP Progress Report, 11/6/23
41. IEP, 11/16/23
42. Placement Determination, 11/16/23
43. Eligibility/IEP Agenda/Meeting Notes, 11/16/23

The Parent submitted a *Reply* on February 4, 2025, providing an explanation and rebuttal. The Parent submitted additional documents on February 10, 2025. The Parent submitted the following relevant items:

1. *Reply*, 2/4/25
2. Email exchanges between Parents and District Staff, 9/30/24 – 1/13/25
3. IEP, 1/19/21
4. IEP, 11/21/22

The Complaint Investigator interviewed both of the Student's Parents on February 10, 2025. On February 19, 2025, the Complaint Investigator interviewed District personnel. On February 20,

2025, the Complaint Investigator interviewed the Student. 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 Complainant'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 January 10, 2024, to the filing of this Complaint on January 9, 2025.

Allegations	Conclusions
<p><b>Evaluation and Reevaluation Requirements</b></p> <p>The Parent alleges that the District violated the IDEA when it failed to timely initiate a reevaluation of the Student following the Parent's request for a reevaluation.</p> <p>(OAR 581-015-2105; 34 CFR §300.301)</p>	<p><b>Substantiated</b></p> <p>The Parents requested a reevaluation at the November 13, 2024 IEP meeting. The Parents did not sign consent to evaluate. The District scheduled a meeting for January 14, 2025, with the purpose of the meeting listed in the Meeting Notice as develop and review IEP and placement. When this Complaint was filed, the District put the evaluation process on hold.</p> <p>The 60-school day evaluation timeline was never initiated. However, the District should have either convened an evaluation planning meeting within a reasonable amount of time or provided the Parents with Prior Written Notice (PWN) of the District's refusal to reevaluate the Student or decision to delay the evaluation process.</p>

<p><b>IEP Content</b></p> <p>The Parent alleges that the District violated the IDEA by failing to include specific special education and related services and supplementary aids and services in the Student's IEP necessary to fully address the Student's needs that result from the Student's disabilities.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p><b>Substantiated</b></p> <p>The IEPs implemented during the complaint period lacked sufficient present level information to determine whether the annual goals were appropriate or whether the Student was making progress. The annual goals were carried over for several years and were not tailored to meet the Student's unique disability related needs. The Student's November 2023 and November 2024 IEPs were not reasonably calculated to enable the Student to make progress appropriate in light of their circumstances.</p>
<p><b>Parent Participation</b></p> <p>The Parent alleges 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 (FAPE) to the Student.</p> <p>(OAR 581-015-2190, OAR 581-015-2195; 34 CFR §300.322; 34 CFR §300.501)</p>	<p><b>Substantiated</b></p> <p>Progress was not monitored or reported to the Parents as mandated by the Student's IEPs. The District did not provide sufficient information to enable the Parents to determine whether the Student was making progress. This interfered with the Parents' ability to meaningfully participate in the identification, evaluation, IEP and educational placement of the Student, and the provision of FAPE.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<p>The Parent requested the following corrective action:</p> <ul style="list-style-type: none"> <li>• Immediate full reevaluation will be conducted and show proof of assessment for specific learning disabilities including, but not limited to dyslexia, dysgraphia, and dyscalculia.</li> <li>• Immediate follow up to discuss findings and determine if the Student's High School is equipped to address the Student's needs. If not equipped, alternative remedies must be recommended.</li> <li>• The Student's High School must include both parents in all conversations.</li> </ul>

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before January 10, 2024. 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 fourteen years old and in the ninth grade.
2. The Student is currently eligible for special education services under the category of Specific Learning Disability (SLD).
3. The Student was initially identified for special education services in January 2021, in the fifth grade.
4. District documents included the following information about the Student's January 2021 initial evaluation:
  - a. Cognitive Functioning: "was administered the WISC-IV, WJ-IV COG, and CTOPP-2... [The Student] demonstrated a pattern of cognitive strengths and weaknesses that may be contributing to [their] academic struggles... weakness was in the domain of Phonological Awareness... Scores on the Fluid Reasoning and Working Memory composite fell in the Below Average range. "
  - b. Academic Functioning: "was measured using the KTEA-3." The Student scored in the low range in all areas of the KTEA-3, including the sound-symbol composite, decoding composite, math composite, and written language.
5. The Student's January 5, 2021 Statement of Eligibility noted the Student "does not achieve adequately" in basic reading skills, reading fluency skills, reading comprehension, written expression, mathematics calculation, and mathematics problem-solving.
6. The Student's initial IEP, dated January 19, 2021, (January 2021 IEP) included the following information, in relevant part:
  - a. Present Levels: in addition to the January 2021 evaluation information (listed above), included, "[The Student's] weakness in phonemic awareness impacts [their] reading skills in phonics and comprehension... also has retention struggles... makes maintaining [their] academic learning a struggle from year to year, over small breaks, and when the focus of instruction switches to a new unit of study... able to do 5<sup>th</sup> grade level work with many opportunities to practice and support as needed."

- i. Reading: “has a difficulty time with retaining sound spelling information... is reading 80 correct words per minute with 93% accuracy on 5th grade level passages... [The Student] has not gained reading fluency and accuracy since the beginning of the year... is well below grade level in reading comprehension and phonics... [The Student’s] difficulties with reading are in [their] ability to decode text and comprehend when [their] errors do not make sense in the sentence. [The Student] is in a reading group that works on both decoding and fluency.” Scored in the sixth percentile on iReady reading diagnostic.
  - ii. Math: “has a difficult time with retaining learned information from one math concept to the next... does well with frequent distributed practice after [the Student] begins to apply concepts correctly until [they have] reached mastery... is in math intervention that targets math facts, vocabulary and basic understanding of multiplication and division [sic]... able to multiply multiple digit numbers by a single digit with 100% accuracy... has passed 75% of [their] iReady math lessons this year.” Scored in the eighth percentile in iReady math diagnostic.
  - iii. Writing: “continues to need support in remembering punctuation and capitals... needs support in correctly distributing sentences into different paragraphs...” Scored at a beginning 3rd grade level on a writing CBM assessment.
  - b. Effect of Disability: “[The Student’s] struggle with phonological awareness and retention of learned concepts makes learning and recalling within the general education curriculum in writing, reading and math very difficult. This makes [their] progress difficult in the general education curriculum.”
  - c. Goals: consisted of four goals targeting specific skills in the areas of math calculation, math problem solving, reading comprehension, and written language.
  - d. Non-Participation Justification: The Student will be pulled from general education to receive Specially Designed Instruction (SDI) for 390 minutes per week.
7. The Student’s November 21, 2022 IEP (November 2022 IEP) from seventh grade included the following, among other things:
- a. Present Levels: consisted of assessment scores from sixth and seventh grade and carried over the evaluation information from January 2021. One sentence was added for reading and writing and one sentence was added for math.
    - i. Reading and Writing: “participates in the core language arts as well as language arts strategies class for [their] reading and writing instruction.”
    - ii. Math: “participates in a core math class as well as a math foundations class that works to build [the Student’s] foundations skill in math and supports the work [the Student] is doing in [their] core math class.”

b. Annual Goals:

- i. Math-Problem Solving: “when given multiple opportunities [the Student] will use appropriate strategies to successfully solve a variety of mathematical operations 80% of the time as measured by classroom based materials and district assessments. (7.EE.1)”
  - ii. Reading-Comprehension: “when given multiple attempts, [the Student] will be able to cite contextual evidence in informational text or literature to support conclusions and answer questions on a grade level text at 90% accuracy as measured by teacher graded assignments, prompts and district reading assessments. (7.RL.1)”
  - iii. Written Language: “when given a writing prompt [the Student] will write a multi-paragraph essay working to improve [their] essay to a level 4 in all areas on a 5 point rubric over multiple opportunities as measured by classroom-based materials and writing samples.”
- c. Non-Participation Justification: “The team has determined no removal is necessary in order for the student to receive specially designed instruction, related services, or supplementary aids or services.”
8. Although the November 2022 IEP did not include any removal from the general education environment, the Parents reported they were under the impression that Student was being removed for SDI for all of middle school. The Parents stated they were told the District could not provide IEP support in core general education classes and the Student had to be pulled out of class to receive special education services.

**2023-24 School Year**

9. The Student started out the school year in special support classes for math and language arts (ELA).
10. The District reported the following about the support classes:
- a. The support classes are pull-out intervention classes, categorized as general education classes. They include students with and without IEPs. These students also participate in regular core instruction classes, in addition to the support class. The support classes are taught by either a general education or special education teacher. If the class is taught by a general education teacher, they are working under the supervision of a special education teacher.
  - b. In District middle schools there are different levels of support classes. The lowest level is the foundations class, the next level is a strategies class, and students above that level

would receive SDI in a regular general education class. In the regular general education class, SDI is provided by the classroom teacher, who often has an instructional assistant.

- c. The District's Special Education Director (the Director) reported, within the support classes, the students are all doing the same lesson provided by the teacher, but the teacher is always attuned to what goals are on each student's IEP and that is how it is individualized.

11. The Student's middle school case manager for seventh and eighth grade (the Case Manager), who taught a foundations math class, reported the following:

- a. In their class, all students were receiving the same lesson from the teacher and doing the same thing. However, some support programs were provided on Chromebooks, which were set to the level for each individual student.
- b. They could not remember any specific information about the Student's special education services or supports, but the Student was in the Case Manager's foundations math class for part of seventh grade. They did not otherwise teach or deliver SDI to the Student. They could not recall which ELA support class the Student took but stated the class would have covered any areas the Student had deficits in.
- c. When asked if the Student made progress, the Case Manager said "definitely" in math because in seventh grade the Student moved out of their foundations math class into the strategies math class. They could not recall enough to say whether the Student made progress in ELA.

12. The District initiated the Student's three-year reevaluation in fall 2023.

13. The District issued an October 9, 2023 School Psychologist Evaluation Report for the Student. The Report included a summary of assessment information from the Student's January 2021 initial evaluation, labeled as evaluation information "from the IEP dated 11/21/22," in addition to the following 2023 evaluation information:

- a. Intellectual Assessment: "administered the WISC-V to [the Student] on 9/14/23... measures a student's intelligence and learning aptitude" and "[t]he WJ-IV ACH... designed to measure academic achievement in the areas of reading, writing, mathematics and writing."
- b. Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V): The Student scored in the low average range in verbal comprehension, working memory, processing speed, and full-scale IQ. Individuals with scores in this range may benefit from "practice on verbally-based tasks and interventions aimed at strengthening verbal skills," "increasing working memory capacity," and "increasing the speed with which they process information."



- c. Woodcock Johnson IV Tests of Achievement (WJ-IV ACH): The Student scored in the low range in the areas of academic fluency (8<sup>th</sup> percentile), math facts fluency (3<sup>rd</sup> percentile), and sentence writing fluency (6<sup>th</sup> percentile); and in the low average range in written expression (14<sup>th</sup> percentile), academic applications (19<sup>th</sup> percentile), and passage comprehension (13<sup>th</sup> percentile).
  - i. The Student will probably find it **difficult** to succeed on age-level tasks requiring the (1) effective and fluent production of writing sentences; (2) ability to quickly read or write sentences and solve basic math facts is limited; (3) ability to apply basic skills when reading, writing, or solving math problems to average; (4) age-level math story problem tasks; and (5) tasks requiring the ability to convey ideas in writing.
  - ii. The Student will probably find it **very difficult** to succeed on (1) age-level passage comprehension tasks; (2) age-level tasks requiring sentence reading speed and comprehension; and (3) age-level tasks requiring the ability to rapidly create and write short sentences.
  - iii. The Student will probably find it **extremely difficult** to succeed on age-level tasks requiring speed and accuracy when performing basic arithmetic operations.
- d. Classroom Observation: the Student was “on task 100% of the observation” but it was “moderately more difficult for [the Student] to keep up with peers and pace of instruction” due to not understanding the assignment requirements.
- e. Recommendations: consisted of five pages of recommendations for cognitive functioning, working memory skills, reading, math fluency, writing, as well as general recommendations.

These included, among other things, minimize distractions in learning environment; use simple and short directions; repeat new concepts in a variety of ways; chunk information and connect new information to concepts already known; routine and structure in learning environment; present new material in a small group setting to limit distractions and allow teacher to monitor students learning more closely; provide frequent immediate and specific feedback especially when learning new skills; present directions one at a time and ask students to rephrase the directions; pre-teach and re-teach lessons; present new material in multiple modalities using simple vocabulary and sentence structure; goals should be small and measurable and steadily increased in complexity as skills grow stronger; and explicit instruction in the mechanics of writing.

- 14. The Student’s November 6, 2023 IEP Progress Report, covering progress updates from January to November 2023, consisted of seventh and eighth grade assessment data, quiz scores, and essay scores. Many of the progress scores lacked measurable data or did not correspond with the goal criteria.

15. The District's November 16, 2023 Special Education Evaluation Report, completed by the Case Manager, included the following:
- a. Assessment data from seventh and eighth grade.
  - b. "Intervention & Progress Monitoring Data": indicated the Student's interventions included math strategies and language arts inclusion (both for 50 minutes per day, five per week), occurring "all of 8th grade" and "[c]urrently ongoing."
  - c. Classroom Functioning: The Student has a difficult time meeting due dates, turning in work, and completing assignments, and needs improvement with organization and quality of class work. The Student will sometimes "check out by putting [their] head down and disconnects with the learning happening around [them]."
16. On November 16, 2023, the District convened a meeting to determine eligibility and conduct the Student's annual IEP review.
17. The November 16, 2023 Statement of Eligibility noted that the Student did not achieve adequately for the Student's age or to meet Oregon grade-level standards in reading comprehension, mathematics problem-solving, and written expression.
18. The November 16, 2023 IEP (November 2023 IEP) from eighth grade included the following, in relevant part:
- d. Parent Concerns: "None noted at this time."
  - e. Present Level of Academic Performance: consisted of writing sample scores from seventh grade and assessment scores, including Districtwide Assessment iReady Math Diagnostics from seventh and eighth grade, and State Smarter Balance Assessment scores from seventh grade.
    - i. Reading: "Approximate percentile ranking 17%, Approximate grade equivalent 5.4." Performance level scores in "Language" from seventh and eighth grade were "far below grade level."
    - ii. Writing: "8<sup>th</sup> grade writing sample has not been turned in and scored." The Student's most recent score, from spring of seventh grade, was "22 out of 30 (73%)," down from 80% in winter and 86% in fall of seventh grade.
    - iii. Math: "5th percentile... [Student's] overall math score fell in the 2nd grade range. Test results indicate that [the Student] would benefit from intervention focused on skills and concepts related to quantitative reasoning and representation. Instruction that connects understanding of algebraic representation, computation, and problem solving skills will strengthen [the Student's] math abilities across domains."

- f. Present Level of Developmental and Functional Performance: indicated it included “[a] summary of the testing results” from the November 2023 reevaluation, however the majority of information listed was from the January 2021 initial evaluation.

The only 2023 reevaluation information included from the October 9, 2023 School Psychologist Report was a list of the Student’s WJ-IV ACH scores.

- g. Impact: “[The Student] has a difficult time keeping up with grade level curriculum due to [their] specific learning disability. This impacts [their] ability to successfully access the general education curriculum without receiving additional support. [The Student] is eligible to receive specially designed instruction for reading comprehension, writing and math.”
- h. Special Factors: needs assistive technology (AT) devices or services, specifically, access to audiobooks.
- i. Annual Goals: the three existing goals were carried over from the November 2022 IEP, with some slight changes in wording and criteria percentage in the math and reading goals (in bold). The writing goal did not change at all.
- i. Math-Problem Solving: “when given multiple opportunities [the Student] will use appropriate strategies to successfully solve a variety of mathematical operations **75%** of the time as measured by classroom based materials and district assessments. (7.EE.1)”
- ii. Reading-Comprehension: “given multiple attempts **on a grade level passage**, [the Student] will be able to cite contextual evidence in informational text or literature to support conclusions and answer questions **about the text** with 75% accuracy as measured by **formative assessments**, teacher graded **materials** and district reading assessments. (8.RI.1)”
- iii. Written Language: “when given a writing prompt [the Student] will write a multi-paragraph essay working to improve [their] essay to a level 4 in all areas on a 5 point rubric over multiple opportunities as measured by classroom-based materials and writing samples.”
- iv. Progress to be reported to parents “[d]uring school’s regular written report time” and “Mailed/Provided at same time as report cards” (anticipated reporting dates: 02/02/2024, 04/08/2024, 06/07/2024, and 11/04/2024).
- v. The present levels for the three goals consisted of undated iReady math diagnostic scores, eight grade reading assessment scores, and scores from a seventh grade writing sample (labeled as “[m]ost recent writing sample”).

- j. SDI: remained as listed in the previous IEP; Reading (150 minutes per week), Written Language (75 minutes per week), and Math (225 minutes per week).

To be provided by "Special Ed Teacher/Provider" in the "General Education Classroom"

- k. Accommodations: remained as listed in the previous IEP; frequent checks for understanding, multiple opportunities to practice, organizational tools, break larger tasks into smaller chunks, access to text to speech, and access to audiobooks when available and requested.
- l. Non-Participation Justification: no changes.

19. The Case Manager reported the following about the Student's IEP:

- a. They could not recall specific information about the Student's IEP. When asked what the Student struggled with, they said the Student's struggles were mostly centered around focus and staying organized. When asked how the Student's IEP addressed those needs, they said accommodations would have addressed them.
- b. When asked why the Student's goals did not change, the Case Manager could not recall but noted it was not typical to carry over goals.

20. The Director also said was not typical to carry over goals, but possibly the IEP team determined the Student needed to continue working on the same skills.

21. The Parents reported they did not think any changes were made to the Student's IEP since elementary school and the IEP team never recommended any revisions at the annual IEP meetings. At each annual IEP meeting, District staff shared that the Student was doing well, was trying hard, and was making some progress but was "not there yet." The District never expressed any concerns about the Student's progress or raised any other issues.

22. When asked about discussions at IEP meetings during middle school, the Parents stated they were generally told that the Student had reading issues and this was addressed through more reading support. When the Parents raised concerns about the Student's progress, the District added an extra study hour to the Student's schedule to help the Student get caught up on work from all their classes.

23. The Student reported the following about support and services during the second half of the 2023-24 school year:

- a. The Student rarely saw the Case Manager and the Case Manager did not check in with the Student at all. The only time the Student went to the learning center classroom was when they were evaluated. No one ever came into any of the Student's classes to work with them.

- b. There were approximately eight students in each support class.
  - c. The Student moved out of the ELA support class into a regular ELA class, both taught by general education teachers. In the regular ELA class, the entire class received the same instruction and the Student did not receive anything different. The Student did not think they received any extra help from the teacher. The ELA Teacher never mentioned the Student's IEP goals. No one pushed into the class to provide any help or instruction to the Student.
  - d. The Student moved out of foundations math into strategies math, both taught by the same general education teacher. The Student did not think they received anything different than the rest of the class. The Math Teacher would help any student individually if they asked for help. The students worked on individual Chromebooks in class, but the Student did not know if other students were working at a different level. The Student said the Math Teacher talked with them about their IEP goals when discussing how much progress the Student was making.
  - e. The Student said their teachers often offered accommodations for testing, including asking if the Student wanted to take their test in a quiet room. The Student was offered text to speech at times but usually did not want to use it. The Math Teacher would ask the Student if they understood the lessons and offered to break the information down into a lower level for the Student, but no other teacher did this.
24. Parent 2 reported they did not think that the Student received any individualized instruction.
25. The Parents reported they did not receive any IEP Progress Reports during the second half of the 2023-24 school year.
26. When requested, the District was not able to locate IEP Progress Reports for these progress periods (2/2/24, 4/8/24, and 6/7/24).

## **2024-25 School Year**

27. On September 3, 2024, the Student started the ninth grade at a District high school (the School), with a new case manager (the New Case Manager).
28. The School's Assistant Principal reported they meet with middle school math and ELA teachers every year to review progress data for incoming ninth graders. The School assigns students to support classes if the data indicates that a student has gaps or deficits in learning. The School had one level of support classes instead of two.
29. The Student started the school year in support classes for math and ELA.
30. The Student reported the following about their math classes during the first half of the 2024-25 school year:

- a. In the math support class, taught by a general education teacher, the Student did not think they received any differentiated instruction. The class did not use Chromebooks and every student in the class received the same math worksheets.
  - b. Before the end of the first term, the Student asked to change math classes because the pace of the class too slow. The Student moved to a regular algebra class on October 18, 2024.
  - c. In algebra, the Student reported they did not do anything different than the rest of the class except that the teacher excused the assignments the Student missed before joining the class. When the Student asked the teacher for help with the material they missed, they referred the Student to a voluntary “graduation coach” program that provided students with extra help during lunch time.
31. The Student reported the following about their ELA support class during the first half of the 2024-25 school year:
- The class used a reading program (Read 180) on individual Chromebooks. For each lesson the teacher would provide an explanation, then the students would go through the lesson work on their own. The students also had free reading time for 12 minutes each class. The Chromebook program had built in audiobook options and students could select regular books or audiobooks.
32. The Assistant Principal reported that the Read 180 program used in the ELA support class “lends itself to individualized instruction.” It is set at specific level for each student, it provides extra practice in each student’s areas of need, and advances the student automatically as their skill level increases.
33. The Student was not aware of anyone at the School tracking their SDI minutes.
34. The Student reported they were unaware of the New Case Manager until several weeks after school started, when the New Case Manger pulled the Student out of class to fill out transition information.
35. According to the Parent, beginning in September 2024, “[the New Case Manager] emailed [Parent 2] solely regarding changing the date for [the Student’s] annual IEP meeting. The email exchange went back-and-forth for a series, and [the Parent] was not included by the district at all.”
36. Email records between September 30 and October 21, 2024, confirm that the New Case Manager only emailed Parent 2 regarding scheduling for the Student’s annual IEP meeting. The emails indicated the first IEP meeting date was changed to October 15, 2024 at the District’s request, and then rescheduled a second time to November 13, 2024.

37. On the morning of October 15, 2024, the New Case Manager emailed Parent 2 to inform them that the meeting needed to be rescheduled again due to staff being out sick.

Parent 2 responded, "Instead of today?... my work goes by appointments and unfortunately I am unable to keep moving it around I need a set date, or more notice... I would also like to talk about having [the Student] moved out of [support] Math, we were told last year [the Student] wouldn't need to be in a math help class this year since [the Student] was doing well in math."

38. In an October 18, 2024 email exchange with Parent 2 only, the New Case Manager wrote, "We are changing [the Student's] math class today. Let's keep an eye on [their work] work to make sure [they are] staying up with the class. There is a lot of help here and [the Student] can always go on [their] lunch to our grad coaches... to get extra help. [The Student] is doing really well in [their] classes! I will be sending you a list of dates so you can choose for [the Student's] IEP... I am so sorry about scheduling... it has been a difficult start to the year." **(D37)**

The New Case Manager offered three dates for rescheduling the IEP meeting, noting, "We always have them at 2:50 pm. Should take at most 30 minutes. [The Student] is doing really well so there are no issues on our end."

39. In an October 21, 2024 email response to the New Case Manager, Parent 2 stated they were available November 13, 2024.

40. On November 4, 2024 email, the District emailed both of the Parents a meeting notice for an IEP meeting scheduled for November 13, 2024.

The District's "Special Ed Student Contact Log" did not include any contacts recorded between January 18, 2023 and November 4, 2024.

41. The Parents did not know why the New Case Manager only communicated about scheduling with Parent 2.

42. The Parents did not know why the New Case Manager indicated that the Student's annual IEP would take no more than 30 minutes, especially since it was the Student's first year in high school, and they had concerns about the Student's grades and progress.

43. When asked, the Director speculated that the New Case Manager only contacted Parent 2 about scheduling because Parent 2 was listed first in the District's computer system.

44. The District issued an IEP Progress Report for the Student (misdated) with progress information dated November 4, 2024, which included progress codes and comments but did not include any measurable information. It stated the following, in relevant part:

- a. Math: progress code 4 (“Progress has been made toward the goal. It appears that the goal will be met by the next IEP review”); the “score” column was left blank; the comment section stated, “Moved up in math.”
  - b. Reading Comprehension: progress code 1 (“Your child did not work on this goal during the reporting period”); the “score” column was left blank; the comment section stated, “we are working on writing complete sentences that start with capital letters and end with periods. [The] Student is making progress, but it is slow.”
  - c. Written Language: progress code 2 (“Progress is not sufficient to meet this goal by the time the IEP is reviewed”); the “score” column was left blank; the comment section stated, “we are working on writing complete sentences that start with capital letters and end with periods. [The] Student is making progress, but it is slow.”
45. The Parents reported they never received quarterly IEP Progress Reports. Rather, they received one IEP progress report per year in the mail at the time of the Student’s annual IEP meeting in November.
46. On November 13, 2024, the District convened the Student’s annual IEP meeting.
47. The November 13, 2024 IEP (November 2024 IEP) included the following, in relevant part:
- m. Parent Concerns: included one word, “Reevaluation.”
  - n. Present Levels: consisted of the same information carried over from the November 2023 IEP (assessment information from seventh and eighth grade; 2021 and 2023 evaluation information), except for the following two changes.
    - i. A chart for state and district group assessment measures was added, however, the chart was left blank and no scores for the Student were included.
    - ii. A list of the Student’s grades from their current classes was added, but no additional information from the 2024-25 school year was included.
  - o. Annual Goals: all three goals were carried over, word-for-word, except for the addition of one sentence (“This goal is to help meet transition goals aligned with transition services”), which was added to the end of each goal. The present levels for the three goals remained unchanged.
  - p. No changes were made to the Student’s SDI or Non-Participation justification. No changes were made to the Student’s accommodations except that the accommodations for statewide assessments were removed.
48. The November 13, 2024 IEP Meeting Notes listed the parent concerns as, “Re-evaluation for dislexia, discalculia [*sic*], dysgraphia (by Jan. 10)”; “2023-24 talk about removing services”;



“Clarification around missing assignments”; the Student transferred math classes while “in the middle of a unit”; and “Concerns about supporting [the Student’s] gaps in learning.”

49. According to the Parent, the following occurred at the November 13, 2024 IEP meeting:

- a. The Parents shared concerns about (1) how the Student was doing academically, as the Student had several F’s at the time, (2) lack of progress on the Student’s IEP (still at a fourth grade reading level), and (3) whether the District was providing sufficient supports to the Student or had the ability to do so.
- b. “[We] made it explicitly clear that we were requesting full reevaluation based on concerns that the school had missed identifying factors in [the Student’s] learning disabilities that factor in to [their] ability to learn and comprehend materials, specifically reading and math, on grade level. We specifically mentioned that we had concerns that [the Student] has dyslexia, dysgraphia, and dyscalculia.”
- c. In response, the New Case Manager “went on the defensive about how much time it would take to reevaluate and the time we would lose in providing services for [the Student] in order to move forward with reevaluation.” When they asked how the Student would lose time in receiving services, as the current IEP would remain in effect through the reevaluation process, the New Case Manager “avoided answering that question and stated that with all of the holidays coming up, it would take some time to get [the Student] reevaluated.”
- d. The team discussed the 60-day evaluation timeline and the team noted that the reevaluation would need to be completed by January 10, 2025, which would be difficult with the upcoming holidays and winter break. The Parents made it clear that they wanted reevaluation to start immediately, and the District said it would start the process. The District did not mention needing to first conduct another meeting for evaluation planning or signing consent before the evaluation timeline would start.
- e. When the Parent asked about the Student’s failure to make progress in reading comprehension, “if [the Student] had been provided appropriate supports,” the New Case Manager said, “it is clear that [the Student’s] phonemic reasoning is very low and likely a primary cause of [their] reading deficits.” When the Parent asked about phonemic supports available at the School, the New Case Manager said they were “not equipped to address phonemics specifically” at the School. The Parent’s interpretation was, “regardless of further identification of [the Student’s] learning disabilities the school would not be able to provide appropriate supports to address [the Student’s] learning deficits, and perhaps has not been able to for [the Student’s] entire education.”
- f. The District did not recommend any specific changes for the Student’s IEP.
- g. According to Parent 2, the New Case Manager indicated if the Parents wanted the Student to receive more help than they were currently receiving, the Student would have switch

to a modified diploma and get help outside of school. Additionally, the Student's electives would be taken away.

- h. The Parents were concerned about how this would affect the Student and "expressed [their wish] for [the Student's] supports to remain as is, since the IEP team did not seem to think they could offer any other support, until we reevaluated [the Student's] needs."
- i. The New Case Manager mentioned the District could offer services in the Student's general education classes. This was the first time the Parents heard of this delivery option. The Parents were unaware of any supports or services ever being provided in the classroom.

50. During interviews, the Director reported the School does provide phonemic supports in the Read 180 curriculum.

51. The District issued a Prior Written Notice (PWN) dated November 13, 2024, which stated "Provision of FAPE is offered in general education classes with accommodations as specified in current IEP" based on "current teacher reports, grades, and parent input." "Modified diploma considered and rejected."

The record indicates this was the only PWN provided by the District during the complaint period.

52. According to District, the request for reevaluation was communicated to the School Psychologist on November 14, 2024.

53. The School Psychologist called Parent 2 on November 15, 2024, "reaching out to answer [Parent 2's] questions about [the Student's] services. [Parent 2] informed [the School Psychologist]... [they] were requesting a full reevaluation specifically to identify concerns around dyslexia. [The School Psychologist] told [Parent 2] that they 'don't use those terms'... it would be 'wasting time to reevaluate' and they were interested in getting [the Student] 'more targeted help now.'"

54. A few days after the November 13, 2024 IEP meeting, the New Case Manager pulled the Student out of class to discuss the November 2024 IEP. Witnesses reported the following about this discussion:

- a. The Parents stated the Student came home and reported someone pulled them aside at school, talked about the November 2024 IEP meeting, and told the Student they were doing really well. The Student reported being asked if they wanted to be reevaluated and they said, "no."
- b. The Director reported the District has a policy for students over the age of 14. If the student does not attend their IEP meeting, staff will review the IEP with the student, go over expectations, and have the student sign the IEP.

- c. The Student reported being pulled aside by the New Case Manager to talk about the IEP and their Parents. The New Case Manager shared the Parents' request for a reevaluation and stated, "are you sure you want to be tested again," "are you sure you want to do this," and "you have your help classes." The Student was under the impression that Parent 2 did not support retesting, so the Student said no.
  - d. The Student reported the New Case Manager asked about the Student's relationship with the Parent, including whether the Parent scares them and if the Student did not want to see the Parent. The Student reported the New Case Manager did not go through the IEP with them but did have the Student sign it.
  - e. After talking to Parent 2, the Student went to see the New Case Manager a few weeks later and said they did want to be tested. The New Case Manager said the Student could not be retested because they already said no. This was the last time the Student recalled having contact with the New Case Manager.
55. The first page of the November 2024 IEP noted that the Student was present at the meeting, although they did not attend. The Student's signature was dated "11/18/24."
56. The Parents reported they were not notified of any conversation between staff and the Student about the IEP. "While we feel that open communication with [the Student] is important, it is not up to the school district to determine what and how to discuss topics of [the Student's] support with [them] without parent consent or presence."
57. The School Psychologist called the Parent on November 22, 2024. The Parent reported the School Psychologist "asked what questions I had about [the Student's] evaluations. I informed [the School Psychologist] that I did not have questions, we were requesting full reevaluation and requested specific assessments to identify markers for dyslexia, dysgraphia, and dyscalculia."
- The Parent reported expressing concerns that the District missed something in past evaluations. When the School Psychologist offered to conduct a file review, the Parent did not object but noted their request for reevaluation had not changed and the 60-day timeline started on November 13, 2024. The School Psychologist said that was not a problem, and did not correct the Parent's understanding of the evaluation timeline.
- "[The School Psychologist] said [they] had not completed a file review, but would do so ASAP and would get back to me the week after Thanksgiving with [their] findings. To date, I have not heard back from [the School Psychologist] regarding their findings."
58. The District reported, "After [the School Psychologist's] review it was determined that it would be best to pull the IEP team together."

59. The School Psychologist reported they were trying to understand the Parents' concerns because the 2023 reevaluation conducted the previous year appeared to be very thorough. They conducted the file review and saw nothing concerning about the 2023 reevaluation and noted they would have chosen the same or similar assessments. School staff did not express significant concerns but agreed that the Student continued to need the support they were receiving.

Rather than calling the Parents back to have "piecemeal conversations," they suggested the New Case Manager schedule a meeting, assuming it would occur within the next few weeks.

60. According to the District's Student Contact Log, on November 26 and December 3, 2024, the New Case Manager emailed only Parent 2, "to schedule for amendment to IEP. December dates won't work. Asked [Parent 2] to send me availability in January."
61. On December 5, 2024, the New Case Manager emailed both of the Parents, offering to hold a meeting on January 8 or 14, 2025.

Parent 2 responded that they were available to meet on January 14, 2025.

62. The Parent responded on December 6, 2024, stating, "is this meeting to go over the reevaluation we requested back in November? I don't see what the agenda or meeting topic is in your email. Furthermore, we have had zero communication back from the school psychologist after my phone conversation with [them].... [the School Psychologist] indicated that [they] would do a quick review of the past evaluation and [the Student's] current supports. [The School Psychologist] then promised an email to both [Parent 2] and I no later than the week after Thanksgiving... The 60-day evaluation period started the night [Parent 2] and I requested [the Student] be reevaluated. I'm looking forward to your teams' explanation [sic] of the current progress they've made. Once we've had a full update, then we can discuss setting a meeting to... review [the Student's] reevaluation and discuss [their] new support options."
63. On December 10, 2024, the New Case Manager replied by email to both of the Parents, "We will set the date for January 14<sup>th</sup> at 2:50 pm... School district representatives will answer any questions that come up."
64. On December 16, 2024, the Parent emailed the Superintendent, the Principal, the Director, the New Case Manager, and the School Psychologist, "to follow up on [their] request for a full reevaluation for [the Student]... No communication has been provided regarding the status of this reevaluation, nor have we received confirmation that the testing has been conducted or completed... reevaluations must be completed within a specified time frame... once a reevaluation is formally requested, the process should be initiated promptly." The Parent asked when they could expect "to receive the results and review them" and "[a] date for a follow up IEP meeting to discuss changes to [the Student's] current supports." "Additionally, attempts to determine the context of the meeting that's scheduled for January 14 have gone unanswered. Please provide context and intent of this meeting."

The School Psychologist responded, "I have reviewed the information you provided, as well as school records and teacher feedback. I would like to share my findings with you at the team meeting scheduled for January 14, 2025... During this meeting, we will discuss the information I have gathered, as well as your concerns... This includes the specially designed instruction [the Student] may need to access [their] education and any needed assessment procedures. I have noted concerns from our earlier conversation, and I will help convey them to the team during our meeting."

The Principal responded, "the school team is requesting a meeting January 14<sup>th</sup> to discuss assessment data (per a thorough file review), documentation regarding current services, concerns that you have as a parent that will help the team determine best next steps and how this may affect specially designed instruction needs. Evaluation planning documents outlining additional assessment has not been completed at this time. It is the signature on this document that outlines the mandated completion of assessment to occur within 60 days. Signed provisions and an evaluation planning meeting is a direction that the team may determine at the January 14<sup>th</sup> meeting. Please bring concerns regarding specific assessment requests that tie into the direct areas you feel that [the Student] requires to be able to access [their] instruction/education... This meeting will also provide the opportunity to review the current IEP and discuss the need for changes."

65. The Parent responded on December 18, 2024, expressing concern about the evaluation timeline. "[Parent 2] signed off on [the November 13, 2024 IEP] meeting notes in person, thereby acknowledging, confirming, and consenting to reevaluation... The school's failure to send any additional required consent forms or a letter of dispute to reevaluate does not excuse them for meeting the appropriate federal and state mandate timelines for reevaluations."
66. In a December 20, 2024 email to the Parents, the Director wrote, "The school psychologist completed a full file review... Such reviews are generally conducted to determine, after speaking to the parents or referring individuals, what additional assessment should be conducted to address the specific areas of need/concern that are directly impacting the student's ability to access instruction. Should it be determined that additional... assessment information is needed, an Evaluation Planning Meeting (EPM) is held. After discussing the specific evaluations and connections to areas of concern, the parent signs for permission to conduct the reviewed assessment(s). The 60-school day provision starts after signature from the parent following an EPM. Currently, there is no signed permission to test.... In the state or Oregon, Dyslexia, Dysgraphia, and Dyscalculia are not considered independent disabilities and the school district does not test for these conditions... fall under the eligibility of Specific Learning Disability and instructional supports are addressed through specially designed instruction, accommodations, and/or academic interventions... The meeting requested for January 14, 2025, provides opportunity to review the current IEP, to discuss the need for changes, as well as an opportunity to hold conversation with the team that includes the individuals that would perform additional assessment should the team determine areas that are deficient of data."

67. On January 7 and 13, 2025, the District emailed the Parents a copy of a meeting notice for January 14, 2025. The purpose of the meeting was listed as develop or review an IEP and placement for your child.
68. The Director reported that although the meeting notice for the January 14, 2025 meeting stated something different, the meeting was clearly meant to be an evaluation planning meeting. This was made clear by the School Psychologist and by the fact that the School Psychologist would be at the meeting to discuss the Parents' concerns and any needed assessments.
69. The School Psychologist reported the objectives of the meeting were to review parent concerns, review data, and discuss whether any evaluations were needed based on that information. After that, if time allowed, the meeting would transition into an evaluation planning meeting.
70. On January 9, 2025, the Parent filed this Complaint.
71. On January 14, 2025, the District notified the Parent that the January 14, 2025 IEP meeting was canceled.
72. The Director reported the evaluation process was put on hold when the Parent filed the Complaint.

#### **IV. DISCUSSION**

##### **Evaluation and Reevaluation Requirements**

The Parent alleges that the District violated the IDEA when it failed to timely initiate a reevaluation of the Student following the Parent's request for a reevaluation.

A reevaluation should be conducted if the educational or related service needs of the child warrant a reevaluation, or if the child's parents or teacher requests a reevaluation.<sup>3</sup> A reevaluation must occur at least every three years, and may not occur more than once a year, unless the district and the parents agree otherwise.<sup>4</sup> The IDEA does not "require that educational agencies test all children for whom evaluations are requested."<sup>5</sup> However, if a school district refuses a reevaluation requested by a parent, the school district must provide the parent with prior written notice.<sup>6</sup>

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<sup>3</sup> OAR 581-015-2105(4); 34 CFR § 300.303.

<sup>4</sup> OAR 581-015-2105(4); 34 CFR § 300.303.

<sup>5</sup> *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9<sup>th</sup> Cir. 1996).

<sup>6</sup> OAR 581-015-2110(2); 34 CFR § 300.503(a).

Before conducting any reevaluation, school districts must conduct evaluation planning<sup>7</sup> and obtain informed written consent from a parent.<sup>8</sup> A reevaluation must be completed within 60 school days from written parent consent to the date of the meeting to determine eligibility of the student's educational needs.<sup>9</sup>

A child must be evaluated in all areas related to the suspected disability and an evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs.<sup>10</sup> Districts must ensure that an evaluation includes assessment tools and strategies that provide relevant information that directly assists the IEP team in determining the education needs of the child and content of the IEP.<sup>11</sup> When evaluating students for Specific Learning Disability, districts are not required to "refer to specific reading and writing disorders as dyslexia or dysgraphia" as long as the assessments used address the student's relevant areas of need.<sup>12</sup>

The Parents requested a full reevaluation of the Student at the November 13, 2024 IEP meeting. The Parent made additional email requests for a reevaluation between November 2024 and January 2025, specifically asking that the Student be evaluated for dyslexia, dysgraphia, and dyscalculia. In response, the School Psychologist conducted a file review and determined that the IEP team should meet to review the information and discuss the Parents' concerns.

The Parent was not initially included in communication from the District about scheduling. When Parent 2 indicated they were not available on the two dates offered, the District concluded the meeting could not be held until January. On December 5, 2024, the District emailed both Parents, offering two dates in January 2025. The Parent, who had not been included on previous emails, asked for clarification on the purpose of the meeting and the status of the reevaluation. The District scheduled the meeting for January 14, 2025, and indicated the meeting was to discuss concerns about services, review the current IEP and discuss changes, give the School Psychologist an opportunity to share information gathered, and discuss any needed assessment procedures. The Director claimed the meeting was clearly intended to be an evaluation planning meeting, notwithstanding the District's meeting notice. However, District staff indicated that an evaluation planning meeting was a direction the team may decide to take at the January 14, 2025 meeting.

When the Parent filed this Complaint, the District cancelled the January 14, 2025 meeting and put the evaluation process on hold.

Neither Parent was provided with or signed an evaluation consent form. The 60-school day evaluation timeline was never initiated. However, the District should have either convened an evaluation planning meeting within a reasonable amount of time or provided the Parents with prior written notice of the District's refusal to initiate, or decision to delay, the reevaluation.

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<sup>7</sup> OAR 581-015-2110(1); 34 CFR § 300.305.

<sup>8</sup> OAR 581-015-2110(2); 34 CFR § 300.300.

<sup>9</sup> OAR 581-015-2110(5); 34 CFR § 300.301.

<sup>10</sup> OAR 581-015-2110(4); 34 CFR § 300.304.

<sup>11</sup> OAR 581-015-2110(4); 34 CFR § 300.304.

<sup>12</sup> *Avila v. Spokane School District 81*, 69 IDELR 204 (9<sup>th</sup> Cir. 2017).

The Department substantiates this allegation.

## IEP Content

The Parent alleges that the District violated the IDEA when it failed to include specific special education and related services and supplementary aids and services in the Student's IEP necessary to fully address the Student's needs that result from the Student's disabilities.

A school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>13</sup> "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth."<sup>14</sup> "The instruction offered must be '*specially* designed' to meet a child's '*unique* needs' through an '*[i]*ndividualized education program.'"<sup>15</sup>

An IEP must contain (1) a statement of the student's present levels of achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum; (2) measurable annual goals and a description of how the student's progress toward meeting the annual goals will be measured and reported; (3) a statement of the specific special education and related services and supplementary aids and services to be provided to the student; (4) the projected dates for initiation of services and the anticipated frequency, amount, location, and duration of the services; and (5) an explanation of the extent to which the student will not participate with children without disabilities in the regular class and activities.<sup>16</sup>

Measurable annual goals must be designed to (1) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and (2) meet each of the child's other educational needs that result from the child's disability.<sup>17</sup> The specific special education and related services and supports to be provided must enable the student to (1) advance appropriately toward attaining annual goals, (2) be involved and progress in the general education curriculum, and (3) be educated and participate with other children with and without disabilities.<sup>18</sup> "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."<sup>19</sup> School districts are expected to "be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable a child to make progress appropriate in light of his circumstances."<sup>20</sup>

There were two IEPs implemented during the complaint period, the November 2023 IEP and the November 2024 IEP. Both IEPs failed to appropriately identify the Student's disability

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<sup>13</sup> *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

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

<sup>15</sup> *Id.*

<sup>16</sup> OAR 581-015-2200(1); 34 CFR § 300.320(a).

<sup>17</sup> OAR 581-015-2200(1); 34 CFR § 300.320(a).

<sup>18</sup> OAR 581-015-2200(1)(d); 34 CFR § 300.320(a)(4)

<sup>19</sup> *Endrew F.*, 137 S.Ct. at 1001

<sup>20</sup> *Id.* at 1002



related needs. The present levels primarily included assessment scores and 2021 evaluation information (incorrectly dated 2023). The IEPs did not include measurable annual goals based on the Student's present levels, disability, and potential for growth. The same generic goals, which failed to target specific skills and were not tailored to meet the Student's individual needs, remained for several years. The IEPs did not contain sufficient information to determine whether the Student was making progress.

It is unclear what individualized special education instruction the Student received. It is also unclear whether the Student's SDI minutes were determined by the length of the Student's math and ELA classes or based on the Student's individual needs. The District and the Student reported that all students in their classes received the same instruction from the teacher. The Student indicated they did not receive any differentiated instruction from teachers in their support or regular math and ELA classes. The District maintained that teachers were attuned to the Student's IEP goals and provided individualized instruction to the Student, such as Chromebook programs set to each student's individual level. However, all students in the class used the same program whether they received special education services or not, and there was no indication that teachers monitored the design and delivery of instruction provided to the Student.

The IEPs failed to include sufficient information necessary to (1) identify the Student's individual disability related needs and (2) enable the IEP team to develop appropriately tailored goals to meet those needs. As written, the Student's November 2023 and November 2024 IEPs were not reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

The Department substantiates this allegation.

## **Parent Participation**

The Parent alleges 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.

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>21</sup> 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>22</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>23</sup> While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions

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<sup>21</sup> OAR 581-015-2190(1); 34 CFR § 300.322(a).

<sup>22</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1).

<sup>23</sup> Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006).

concerning their children.”<sup>24</sup> This includes notifying parents of meetings early enough to ensure they will have an opportunity to attend and scheduling the meetings at a mutually agreeable place and time.<sup>25</sup>

“Parents must be able to use the IEP to monitor and enforce the services their child is to receive.”<sup>26</sup> “IEP Teams must implement policies, procedures, and practices relating to... how a child’s progress towards meeting annual goals will be measured and reported,” to ensure that the district offers “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>27</sup> “IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child’s progress.”<sup>28</sup>

Progress was not monitored or reported to the Parents as mandated by the IEPs. The Parents stated they received one IEP progress report each year, not quarterly. The District could not provide a record of IEP progress data for the first half of the complaint period (January through June 2024). The only IEP progress information submitted from the complaint period, dated November 5, 2024, did not contain any scores or measurable progress data. The Parents were not provided with sufficient information to determine whether the Student was making progress.

As discussed above, the District convened one IEP meeting during the complaint period, on November 13, 2024. The Parents left November 13, 2024 meeting with the impression that the District was initiating a reevaluation and were surprised when the District wanted to schedule another meeting. The meeting notice for the January 14, 2025 meeting listed the purpose of the meeting as develop and review IEP and placement for the Student. If it was intended to be an evaluation planning meeting, this was not clear to the Parents. Ultimately, the District canceled the meeting and put the evaluation process on hold. The District did not provide the Parents with prior written notice related to the evaluation request or delay in the evaluation process.

It is unclear why the Parent was not included on communication from the District for part of the scheduling process for the November 2024 and January 2025 meetings.

The District did not provide the Parents with IEPs or IEP progress reports containing sufficient information to identify whether the Student was making progress. The District did not provide prior written notice in response to the Parents’ requests for a special education reevaluation. This interfered with the Parents’ right to be notified, and have the opportunity to contest, decisions made about their child.

The Department substantiates this allegation.

### Additional Findings

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<sup>24</sup> *Pasatiempo* at 804.

<sup>25</sup> OAR 581-015-2195(1); 34 CFR § 300.322(a).

<sup>26</sup> *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9<sup>th</sup> Cir. 2017)

<sup>27</sup> Q&A on *U.S. Supreme Court Case Decision Endrew F.*, 71 IDELR 68

<sup>28</sup> Q&A on *U.S. Supreme Court Case Decision Endrew F.*, 71 IDELR 68

## Free Appropriate Public Education (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>29</sup> In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. Reviewing courts must inquire 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>30</sup>

Not every procedural error is sufficient to rise to a denial of FAPE.<sup>31</sup> The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;<sup>32</sup> (2) whether the parent's right to participate in the IEP process was infringed;<sup>33</sup> or (3) whether the procedural error caused a "deprivation of educational benefit."<sup>34</sup> Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."<sup>35</sup>

The District's failure to develop IEPs reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, and appropriately monitor progress on IEP goals, resulted in the loss of educational opportunity and benefit. The failure to provide the Parents with sufficient information to identify whether the Student was making progress infringed on the Parents' right to participate in the IEP process. These procedural and substantive errors resulted in a denial of FAPE.

## V. CORRECTIVE ACTION

*In the Matter of Douglas County School District 4*  
*Case No. 25-054-002*

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

Action Required	Submissions	Due Date
1. The District must ensure that all District staff who were responsible for evaluating, developing IEPs, implementing IEPs, and	Training agenda/materials to ODE for review/approval.	May 1, 2025

<sup>29</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

<sup>30</sup> *Endrew F.*, 137 S.Ct. at 999

<sup>31</sup> *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9<sup>th</sup> Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990))

<sup>32</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, 969 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

<sup>33</sup> *Id.*

<sup>34</sup> *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

<sup>35</sup> *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9<sup>th</sup> Cir. 2005)

<p>monitoring and reporting progress for this Student receive training in each of the following areas:</p> <ul style="list-style-type: none"> <li>• Evaluation Requirements;</li> <li>• IEP Content, including developing IEP goals</li> <li>• Progress Monitoring;</li> <li>• Parent Participation;</li> <li>• Prior Written Notice.</li> </ul>	Sign-in sheet for training.	<b>October 15, 2025</b>
<p>2. The District must convene (1) an evaluation planning meeting to discuss the Parents' reevaluation request; and (2) an IEP meeting with the Parents to review the Student's IEP, including revising the IEP to address the lack of present level information and develop individualized goals tailored to meet the Student's disability related needs, and determine an appropriate amount of compensatory education services for the Student and method of delivery.</p> <p>If the parties are unable to reach an agreement on the amount of compensatory education hours to be offered by the District, either party can request that the determination be made by the Department.</p>	<p>Documentation of offer to hold evaluation planning and IEP meeting made to the Parents.</p> <p>Documentation of agreements between the Parents and the District, involving the type and amount of compensatory education services that the Student will receive.</p> <p>Evidence of delivery of compensatory services to the Student.</p> <p>Documentation of PWN issued related to compensatory education services for the Student.</p>	<p><b>April 1, 2025</b></p> <p><b>May 1, 2025</b></p> <p><b>February 1, 2026</b></p> <p><b>June 10, 2025</b></p>

Dated: this 10th Day of March 2025

*Ramonda Olaloye*

Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: March 10th, 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).)